

NOTICE
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2016 IL App (5th) 140068-U

NO. 5-14-0068

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Jackson County.
)	
v.)	No. 13-CF-310
)	
WILSON FRANKLIN,)	Honorable
)	William G. Schwartz,
Defendant-Appellant.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's denial of the defendant's motion for a new trial is vacated because the trial court did not conduct a proper preliminary *Krankel* inquiry into the defendant's allegations of ineffective assistance of trial counsel. Cause is remanded with directions for the trial court to conduct a proper preliminary *Krankel* inquiry.

¶ 2 The defendant appeals denial of his posttrial motion for a new trial wherein he alleged ineffective assistance of trial counsel. He argues that the circuit court failed to make an inquiry regarding the factual basis for his claims of ineffective assistance of counsel as required by *People v. Krankel*, 102 Ill. 2d 181 (1984). The State concedes that the cause should be remanded for a preliminary inquiry pursuant to *Krankel*.

Consequently, we vacate the denial of the defendant's posttrial motion and remand the cause for additional proceedings on the issue of the defendant's ineffective assistance of counsel claim in his motion for new trial.

¶ 3

BACKGROUND

¶ 4 On July 11, 2013, the defendant, Wilson Franklin, was arrested and admitted to having a gun on his person. At the time, the defendant was living and working at Econo Lodge motel in Carbondale, Illinois. He asserted that he had found the weapon while cleaning a motel room and that he had removed it, as children were going to inhabit the room later. Just prior to trial, the defendant alleged on the record that his attorney had told him he could not subpoena two of the witnesses he wanted to testify at his trial. He believed these witnesses could support his necessity affirmative defense. Those two individuals were listed as potential witnesses in discovery materials; however, neither person was called to testify at trial by the defense. On October 30, 2013, the defendant was found guilty by a jury of one count of armed habitual criminal and one count of unlawful possession of a firearm by a felon. On November 15, 2013, the defendant filed a motion for new trial averring (1) he was not proven guilty beyond a reasonable doubt and (2) he was not properly represented by his attorney, as she did not call the witnesses he wanted for his defense. His attorney also filed a motion to withdraw due to the defendant's allegations.

¶ 5 The sentencing hearing was scheduled to occur on January 15, 2014. On that date, the court first heard the motion for new trial. Counsel did not discuss the defendant's allegations of ineffective assistance at that time; she argued only that he was not proven

guilty beyond a reasonable doubt. The court denied the motion for new trial. The court then heard the motion to withdraw, whereby counsel stated: "[The defendant] alleges that I did not investigate the case or present the witnesses that he wanted to be presented at trial. Based on that, he felt he was not represented adequately at trial. That would be the basis for my motion to withdraw as counsel."

¶ 6 The court ruled that the motion for leave to withdraw "prior to sentencing is denied" and then stated it would "consider appointment of counsel on appeal as the Court regularly does." The court made a docket entry that the motion was "denied as far as sentencing is concerned," but that the court would "consider the appointment of alternate counsel for post-judgment matters including appeal as is the normal ruling of the court."

¶ 7 According to the record, the court did not ask for more information from the defendant or from defense counsel. It did not articulate any basis for denial of this motion as a result of its own knowledge of counsel's performance at trial. Further, it did not state any insufficiency in the defendant's allegations on their face. Immediately after the court's ruling, defense counsel represented the defendant in his sentencing hearing. The defendant was sentenced to 10 years' imprisonment. Notice of appeal was timely filed on February 13, 2014.

¶ 8 ANALYSIS

¶ 9 On appeal, the defendant claims, and the State concedes, the trial court failed to conduct a proper preliminary *Krankel* inquiry into his allegations of ineffective assistance of trial counsel prior to denying his motion for new trial. We agree.

¶ 10 We begin by noting our standard of review. "The issue of whether the circuit court properly conducted a preliminary *Krankel* inquiry presents a legal question"; therefore, we will use a *de novo* standard of review. *People v. Jolly*, 2014 IL 117142, ¶ 28. In 1984, the Supreme Court of Illinois in *Krankel* announced the manner in which the court should handle ineffective assistance of counsel posttrial claims (*Krankel*, 102 Ill. 2d 181). Since that time, and in accordance therewith, a common law procedure has developed that "is triggered when a defendant raises a *** posttrial claim of ineffective assistance of trial counsel." *Jolly*, 2014 IL 117142, ¶ 29. It is well-settled law that in such situations, the trial court is not automatically required to appoint new counsel for a defendant. *Id.* "If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *** motion." *People v. Moore*, 207 Ill. 2d 68, 78 (2003). If, on the other hand, "the allegations show possible neglect of the case, new counsel should be appointed" to represent the defendant at a hearing on the defendant's claims. *Id.* This ensures newly appointed counsel can independently evaluate the defendant's allegations, and it also avoids "the conflict of interest that trial counsel would experience if trial counsel had to justify his or her actions contrary to defendant's position." *Id.*

¶ 11 To determine whether the appointment of new counsel is required, the trial court must take action. The first step is to "examine the factual basis of the defendant's claim." *Id.* at 77-78. To do this, "some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted

on a defendant's claim." *Id.* at 78. The trial court may ask trial counsel to "simply answer questions and explain the facts and circumstances surrounding the defendant's allegations." *Id.* Further, "[a] brief discussion between the trial court and the defendant may be sufficient" to assist the trial court in understanding the defendant's allegations. *Id.* Lastly, the trial court may base its evaluation of the defendant's allegations on its own "knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face." *Id.* at 79.

¶ 12 The goal of a preliminary *Krankel* inquiry "is to facilitate the trial court's full consideration of" the defendant's claims. *Jolly*, 2014 IL 117142, ¶ 29. Moreover, by conducting the initial evaluation of the defendant's claims by such an inquiry, the trial court "will create the necessary record for any claims raised on appeal." *Id.* ¶ 38. To ensure this goal of the preliminary *Krankel* inquiry is met, "[t]he law requires the trial court to conduct some type of inquiry into the underlying factual basis" of the ineffective assistance of counsel claims, and if no such inquiry is conducted, the cause must be remanded to the trial court for that purpose. *Moore*, 207 Ill. 2d at 79, 80. As the Supreme Court of Illinois has recognized, even where a defendant's claims may ultimately be without merit, the trial court must afford " 'the defendant the opportunity to specify and support his complaints,' " and the trial court may not " 'precipitously and prematurely' " deny the defendant's motion. *Id.* at 80 (quoting *People v. Robinson*, 157 Ill. 2d 68, 86 (1993)).

¶ 13 However, as in any case that is remanded for a proper preliminary *Krankel* inquiry, if, after a proper inquiry and any results that may flow from it, the trial court

ultimately determines that the defendant's claims are without merit, "the court may then deny the motion and leave standing [the] defendant's convictions and sentences." *Id.* at 81. If that happens, the defendant remains able to "appeal his assertion of ineffective assistance of counsel along with his other assignments of error." *Id.* at 81-82.

¶ 14 Turning to the case at bar, we agree that the trial court did not conduct an adequate preliminary *Krankel* inquiry. In his motion for new trial, the defendant raised two issues: (1) he was not proven guilty beyond a reasonable doubt and (2) he "was not properly represented in that his attorney *** did not call the witnesses that he wanted to in his defense." However, when the motion was before the court, defense counsel stated only that the defendant felt he was not proven guilty behind a reasonable doubt. There was no mention of counsel's alleged improper representation at trial made at that time. The court wrote, "Motion is denied." The court immediately moved on to the motion for leave to withdraw, whereby defense counsel stated: "Judge, my client has written me at least one letter since the time of the trial in which he alleges that I did not investigate the case or present the witnesses that he wanted to be presented at trial. Based on that, he felt he was not represented adequately at trial. That would be the basis for my motion to withdraw as counsel." The court responded, "Motion for leave to withdraw prior to sentencing is denied." The court did this without seeking any input from the defendant or any substantive input from the defendant's trial counsel, and without articulating a basis for denial as a result of the court's knowledge of counsel's performance at trial or recording any insufficiency in the defendant's allegations on their face. The trial court simply stated that the motion was denied.

¶ 15 We agree that because the court did not question the defendant or trial counsel about the allegations and because the court failed to articulate whether it was taking judicial notice of any action or inaction by the defendant's counsel at trial, the trial court's actions were not adequate under *Krankel*. Accordingly, we must vacate the trial court's order that denied the defendant's motion for a new trial and remand with directions for the trial court to conduct a proper preliminary *Krankel* inquiry. See, e.g., *Jolly*, 2014 IL 117142, ¶ 46.

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, we vacate the trial court's order that denied the defendant's motion for a new trial and remand with directions for the trial court to conduct a proper preliminary *Krankel* inquiry.

¶ 18 Order vacated; cause remanded with directions.