

NOTICE  
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2016 IL App (5th) 140188-U

NO. 5-14-0188

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).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 13-CF-274
	)	
DWIGHT LONG,	)	Honorable
	)	Zina R. Cruse,
Defendant-Appellant.	)	Judge, presiding.

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

**ORDER**

¶ 1 *Held*: Cause remanded with instructions for the trial court to conduct a hearing to address the defendant's *pro se* ineffective assistance of counsel claims, as required by *People v. Krankel*, 102 Ill. 2d 181 (1984), and to determine, based on the trial court's conclusion following the hearing, whether additional proceedings are required.

¶ 2 The defendant, Dwight Long, was convicted by jury on October 9, 2013, of attempted first-degree murder, aggravated domestic battery, aggravated fleeing or eluding police, and violating an order of protection. On appeal, the defendant alleges that the trial court failed to conduct a preliminary inquiry into his *pro se* posttrial claims of ineffective assistance of counsel as required by *People v. Krankel*, 102 Ill. 2d 181 (1984) (*Krankel*

hearing). For the following reasons, we remand with instructions for the trial court to conduct a *Krankel* hearing, and to determine, based on the conclusion following the hearing, whether additional proceedings are required.

¶ 3

#### FACTS

¶ 4 On October 9, 2013, the defendant was found guilty, following a jury trial, of attempted first-degree murder, aggravated domestic battery, aggravated fleeing or eluding police, and violating an order of protection. The domestic battery charge merged into the attempted murder charge. On October 21, 2013, the defendant filed a *pro se* motion entitled "Motion for Appointment of Counsel Other Than [trial counsel] Due to Ineffective Assistance." The motion alleged, *inter alia*, that trial counsel failed to prepare the defendant for trial by not discussing with him the contents of discovery motions, and failed to object to the jury pool being comprised of only 7 black jurors out of 42 total people. The motion further alleged that the defendant repeatedly advised the trial court that his counsel was ineffective, and requested that new counsel be appointed.

¶ 5 On October 30, 2013, defense counsel filed a posttrial motion requesting a new trial. The motion erroneously stated that the defendant had been convicted of retail theft. Various grounds in support of the motion were asserted, but the motion made no reference to the defendant's *pro se* motion or his ineffective assistance of counsel claims. Defense counsel noted that the motion was prepared without a transcript of proceedings.

¶ 6 On November 14, 2013, the defendant filed, *pro se*, a motion for trial transcripts. In the motion, the defendant referenced the earlier-filed *pro se* motion for appointment of

new counsel, and stated that he needed the transcripts to assist him in the presentation of exhibits to accompany the motion.

¶ 7 On November 20, 2013, defense counsel filed an amended posttrial motion, which was identical to the October 30, 2013, posttrial motion, except the amended motion reflected the correct charges for which the defendant was convicted. In an order entered on December 9, 2013, the trial court stated that the transcript was ordered, but would not be released to the defense without a court order. At a hearing on January 13, 2014, the trial court acknowledged that "the Defendant was concerned that there may be some errors that he wanted to make sure were caught for purpose of appeal," indicated that the transcript had been prepared, and granted the defendant unlimited time to review the transcript because "it's critical for his understanding and for his information." The sentencing hearing was set for January 23, 2014.

¶ 8 At the sentencing hearing, when the trial court inquired about posttrial motions, defense counsel referenced the posttrial motion that she had filed, and indicated, *inter alia*, that she stood behind the written motion and the arguments therein. Again, she made no mention of the defendant's *pro se* motion or his allegations that she was ineffective. The trial court again acknowledged the defendant's request to review the transcript. Defense counsel replied that the defendant did review the transcript and wrote down certain items which they subsequently discussed. Defense counsel stated that, other than what she had discussed with him, "I don't believe that there should be anything additional based on the conversations I had with [the defendant]."

¶ 9 The trial court asked the defendant if he had sufficient time to discuss the sentencing range with his counsel. He responded that he had not. The trial court stated that they would review the sentencing range and asked the State to also review the range in its argument. During the hearing, the trial court orally denied the posttrial motion that defense counsel had filed, by stating as follows: "For the record, I certainly wouldn't want you all to have to infer it, I am denying the post trial motion."<sup>1</sup>

¶ 10 On January 28, 2014, the defendant filed a *pro se* "Supplemental Motion for Appointment of Counsel other [than defense counsel] Due to Ineffective Assistance of Counsel." The motion alleged that defense counsel failed to object when the prosecutor made statements to the trial court on October 9, 2013, regarding a prior charge against the defendant that occurred 40 years ago.

¶ 11 On February 3, 2014, defense counsel filed a motion to reduce sentence, but did not incorporate into the motion the defendant's claims of ineffective assistance of counsel. On February 19, 2014, the defendant filed a *pro se* motion to reduce sentence. The motion alleged that defense counsel did not properly prepare the defendant for trial and failed to object to the jury pool being comprised of only 7 black jurors out of 42 people, and that the trial court and prosecutor prevented his "efforts to fire [defense

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<sup>1</sup>The only posttrial motion under consideration was the one that was filed by defense counsel, as stated when the hearing commenced. Neither the trial court nor defense counsel ever addressed the defendant's *pro se* posttrial motion or his claims of ineffective assistance of counsel.

counsel]." The same date, the defendant filed a *pro se* motion to withdraw guilty plea and vacate sentence in which he alleged, *inter alia*, that he complained to the trial court about his defense counsel "on a constant basis." He again alleged that defense counsel did not properly prepare him for trial because she failed to discuss with him the contents of the discovery motion.

¶ 12 A hearing was conducted on April 14, 2014. At the hearing, defense counsel informed the trial court that she would like to proceed on the motion to reduce sentence that she had filed on February 3, 2014. Defense counsel reiterated the allegations of the motion and requested the trial court to reduce the defendant's sentence on those bases. Defense counsel made no reference to any of the defendant's *pro se* motions, nor did the trial court acknowledge the *pro se* motions. Accordingly, the defendant was not given an opportunity to explain to the trial court his claims of ineffective assistance of counsel. On April 14, 2014, the trial court entered an order denying the motion to reduce sentence that defense counsel had filed, again with no mention of any of the defendant's *pro se* motions. The defendant filed a timely notice of appeal.

¶ 13

#### ANALYSIS

¶ 14 The sole issue on appeal is whether the case must be remanded where the trial court failed to conduct a preliminary inquiry into the defendant's *pro se* posttrial claims of ineffective assistance of counsel, as required by *People v. Krankel*, 102 Ill. 2d 181 (1984). We begin by noting our standard of review. "The issue of whether the trial 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.

¶ 15 In 1984, the Supreme Court of Illinois in *Krankel* announced the manner in which the court should handle ineffective assistance of counsel posttrial claims. *People v. Krankel*, 102 Ill. 2d 181 (1984). 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." *People v. 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 that 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 [the] defendant's position." *Id.*

¶ 16 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 the 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.

¶ 17 The goal of a preliminary *Krankel* inquiry "is to facilitate the trial court's full consideration of" the defendant's claims. *People v. 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)).

¶ 18 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.

¶ 19 In this case, none of the aforementioned procedures were complied with. The defendant filed several *pro se* motions in which he alleged ineffective assistance of counsel. None of these motions were ever acknowledged nor were any of his ineffective assistance of counsel claims addressed. The State argues that the defendant never actually presented his *pro se* posttrial claim of ineffective assistance of counsel to the trial court, and cites *People v. Jocko* for the proposition that when the trial court is never made aware of the defendant's posttrial motion, it cannot be criticized for not conducting a *Krankel* hearing. *People v. Jocko*, 239 Ill. 2d 87, 93-94 (2010). We disagree.

¶ 20 Here, there is evidence in the record that the trial court was in fact aware of the defendant's ineffective assistance of counsel claims. After filing his *pro se* "Motion for Appointment of Counsel Other Than [trial counsel] Due to Ineffective Assistance," the defendant filed a *pro se* motion for trial transcripts in which he directly referenced the earlier filed *pro se* motion alleging ineffective assistance, and stated that he needed the transcripts to prepare exhibits to that motion. At a hearing on January 13, 2014, the trial court acknowledged the defendant's desire to review the transcripts, and granted him unlimited time to review the transcripts. In being aware of the defendant's motion for transcripts, the trial court was also aware of the earlier *pro se* motion for appointment of counsel other than defense counsel because that motion was directly referenced in the motion for transcripts. Accordingly, we reject the State's argument that the trial court



was unaware of the defendant's claims of ineffective assistance of counsel and remand this case with instructions for the trial court to conduct a *Krankel* hearing.

¶ 21

#### CONCLUSION

¶ 22 For the aforementioned reasons, we remand with instructions for the trial court to conduct a hearing to address the defendant's *pro se* ineffective assistance of counsel claims, as required by *People v. Krankel*, 102 Ill. 2d 181 (1984), and to determine, based on the trial court's conclusion following the hearing, whether additional proceedings are required.

¶ 23 Cause remanded with directions.