

No. 1-14-1199

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 09 CR 6853
)	
TREMAINE MASON,)	Honorable
)	Stanley J. Sacks,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the ruling of the trial court where it conducted a proper inquiry into the defendant's *pro se* post-trial allegations of ineffective assistance of counsel in accordance with its obligations under *Krankel*. Sentencing order corrected.

¶ 2 Following a jury trial, the defendant, Tremaine Mason, was convicted of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2008)) and sentenced to 40 years' imprisonment. On appeal, the defendant argues that the trial court failed to conduct an adequate inquiry into his *pro se* motion alleging ineffective assistance of trial counsel pursuant to *People v. Krankel*, 102 Ill.

2d 181 (1984). He also argues that the trial court failed to award him the correct amount of presentence incarceration credit. For the reasons that follow, we affirm as modified.

¶ 3 The evidence adduced at trial established that, on October 5, 2008, at approximately 4 p.m., the defendant was driving a rental vehicle with three passengers when they started shooting at a group of individuals standing near 15th Street and South Christiana Avenue. One of those individuals, Sharron Wilkins, was struck in the head and thigh and died as a result of the gunshot wounds. The State's main witness, Sharron Winters, the victim's father, testified that he was sitting in his car waiting for his son when he observed the shooting and saw the defendant driving the vehicle used in the shooting.

¶ 4 The defense's theory of the case was that the defendant was misidentified as the driver of the rental vehicle. Although the defendant acknowledged that his former girlfriend, Lavonzell Coleman, rented the vehicle for him, he testified that he loaned the vehicle to his friend, Dominique Evans, at approximately 12 p.m. on October 5, 2008, so that Evans could visit his newborn daughter in the hospital. The defendant explained that he received a call from Evans later in the day informing him that the vehicle was involved in a shooting and that it was parked near the intersection of Polk Street and Central Park Avenue. Following closing arguments, the defendant was found guilty of first-degree murder.

¶ 5 Prior to sentencing, the defendant filed a motion to proceed *pro se* and requested a continuance to file a motion for a new trial with claims of ineffective assistance of counsel. The court granted the defendant leave to proceed *pro se* and two continuances to prepare for his ineffective-assistance-of-counsel hearing.

¶ 6 Although the defendant did not file a written motion, the trial court held a preliminary *Krankel* hearing to investigate the defendant's claim of ineffective assistance of counsel. The

defendant appeared *pro se*. At the hearing, the court's procedure was to give the defendant an opportunity to explain why he believed he was deprived of his right to effective assistance of counsel. The court periodically interjected, asked the defendant for additional information, and allowed the defendant's mother, Belinda Mason, an opportunity to speak. In sum, the defendant asserted that his attorney was ineffective because he: (1) only visited him three times in jail; (2) failed to prepare him for trial; (3) refused to share discovery or discuss trial strategy; (4) failed to file a motion to suppress DNA evidence and statements made by Coleman; (5) failed to investigate and obtain hospital records to show that Evans, in fact, had a newborn baby; (6) failed to cross-examine Coleman regarding her grand jury testimony; (7) failed to obtain Coleman's phone records; (8) instructed him to lie while testifying; (9) failed to request an instruction for the offense of conspiracy to commit murder; (10) failed to call the defendant's girlfriend, Patrice Hope, to testify that she gave the car keys to Evans on the day of the shooting; (11) told the jury during closing argument that the defendant did not have braids unless he bought a wig before the incident; and (12) failed to remain in the courtroom during jury deliberations.

¶ 7 The court then asked defense counsel to address the allegations. The defendant's trial attorney did not address all of the defendant's claims, such as his alleged failure to obtain hospital records or cross-examine Coleman about her grand jury testimony. Defense counsel did, however, acknowledge that he only visited the defendant three times in jail, but clarified that his associates visited the defendant "at [least] a dozen times" with the "entire file." He also stated that the defendant's mother visited his office "40 or 50 times" and brought a woman who said she was with the defendant when he was arrested and who wanted to testify that the defendant was at her house and had nothing to do with the shooting. Counsel then outlined his

theory of the case and explained why he pursued the misidentification strategy at trial. Finally, defense counsel denied the defendant's allegation that he instructed him to lie while testifying.

¶ 8 The trial court gave the defendant an opportunity to "make a final argument." The court then addressed the defendant's allegations in detail and determined that each of his claims lacked merit. In particular, it detailed the evidence presented against the defendant at trial and stated that "[l]awyers *** are not miracle workers." The court noted that the evidence put the defendant in the car and the jury did not believe him when he testified that he was not in the car during the shooting. The court told the defendant that his lawyer could not change the fact that a witness saw him driving the car during the shooting or that Coleman rented it for him and told him not to retaliate for his friend's death. The court determined that defense counsel's misidentification strategy was "excellent." The court stated it had presided over the trial and "[t]here's nothing about the way [counsel] tried this case that would be ineffective at all." The court further observed that the defendant admitted to lying on the stand and it did not believe "even [for] a second" that defense counsel told him to lie. It concluded that "there is no credible evidence to establish even minimally that [defense counsel] *** was ineffective." In denying the motion, the court declined to appoint new counsel or proceed to a full evidentiary hearing.

¶ 9 At a subsequent sentencing hearing, the trial court sentenced the defendant to 40 years' imprisonment. This appeal followed.

¶ 10 On appeal, the defendant contends that the trial court failed to conduct a proper preliminary *Krankel* inquiry because it failed to ascertain whether defense counsel investigated evidence that corroborated his version of events.

¶ 11 When a defendant, *pro se*, raises posttrial claims of ineffective assistance of counsel, he is entitled to have those claims heard by the trial court. *Krankel*, 102 Ill. 2d at 189. New counsel

is not automatically appointed when a defendant alleges ineffective assistance of counsel. *People v. Moore*, 207 Ill. 2d 68, 77 (2003). Rather, "the trial court should first examine the factual basis of the defendant's claim." *Id.* at 77-78. If, after a preliminary investigation into the allegations, the court concludes that the defendant's claims are facially insufficient, contradicted by the record, or pertain merely to matters of trial strategy, the court may deny the claim. *Id.* at 78. If, however, the defendant's allegations reveal "possible neglect," the court should appoint new counsel to assist the defendant in presenting his claim. *Id.* at 78.

¶ 12 During the preliminary-inquiry phase, "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.* In other words, the court may (1) discuss the allegations with the defendant, (2) briefly question defense counsel regarding the allegations, and (3) rely on its personal knowledge of defense counsel's performance at trial. *Id.* at 78-79. We will not overturn the trial court's determination that the defendant's allegations of ineffective assistance of counsel were meritless unless the decision is manifestly erroneous. *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 72. Manifest error is error which is plain, evident, and indisputable. *People v. Smith*, 2016 IL App (1st) 1400039, ¶ 14.

¶ 13 In this case, the defendant asserts that the trial court did not conduct an adequate inquiry into two of his ineffective-assistance claims, namely counsel's failure to (1) investigate and obtain hospital records, and (2) cross-examine Coleman about her testimony before the grand jury. He argues that this evidence would corroborate his trial testimony that he gave the keys to the rental car to Evans so Evans could visit his newborn child and his claim that he was not in the car when the shooting occurred. The defendant claims that the trial court and defense counsel

failed to address these issues and, therefore, the court did not conduct an adequate inquiry into these allegations. We disagree.

¶ 14 During the *Krankel* hearing, the trial court gave the defendant an opportunity to explain why he believed he was deprived of his right to effective assistance of counsel. The court went through each of these claims and periodically interjected and asked the defendant for additional information. For example, regarding the defendant's claim that his trial attorney failed to obtain hospital records, the court asked the defendant what the hospital records would have shown. The defendant responded that they would have corroborated his testimony that he lent the rental vehicle to Evans on the day of the shooting. The court also questioned the defendant on his claim that defense counsel failed to cross-examine Coleman about her grand jury testimony, wherein she allegedly corroborated the defendant's trial testimony that he gave the rental vehicle to a friend. The court specifically asked the defendant how his giving the car to Evans proved that he was not in the car at the time of the shooting. The defendant responded that Winters' identification of him as the driver was "vague and doubtful."

¶ 15 The court clearly addressed the two allegations with the defendant. It then found all of the defendant's allegations meritless based upon his answers and explanations, and its personal knowledge of defense counsel's performance at trial. The fact that it did not question defense counsel regarding his failure to obtain hospital records or his cross-examination of Coleman is immaterial. The court made a clear finding, based upon its own personal knowledge of counsel's performance at trial, that counsel was effective and his misidentification strategy was "excellent." Therefore, further colloquy with defense counsel was not necessary since the trial court could otherwise determine that the two claims did not warrant appointment of new counsel. *People v. McCarter*, 385 Ill. App. 3d 919, 942 (2008).

¶ 16 Next, the defendant contends, and the State concedes, that his sentencing order must be corrected to reflect 97 additional days of credit for presentence incarceration. A defendant is entitled to credit for any part of a day he spent in custody up to, but not including, the day of sentencing. 730 ILCS 5/5-4.5-100(b) (West 2012); *People v. Williams*, 239 Ill. 2d 503, 510 (2011). Here, the record establishes that the defendant was arrested on February 26, 2009, and remained in custody until his sentencing on April 2, 2014, a total of 1,861 days, excluding the day of sentencing. However, the defendant's sentencing order reflects 1,764 days in custody. We, thus, agree with the parties that the defendant is entitled to an additional 97 days of presentence custody credit and, pursuant to our authority under Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), order that the sentencing order be corrected to reflect 1,861 days of presentence custody credit.

¶ 17 Finally, the State requests that we assess a \$100 fee against the defendant pursuant to section 4-2002.1(a) of the Counties Code (55 ILCS 5/4-2002.1 (West 2016)) for costs of this appeal. "It is well settled that '[t]he successful defense of any part of a criminal judgment challenged on appeal entitles the State to a *per diem* fee and costs for its efforts.'" *People v. Roberson*, 401 Ill. App. 3d 758, 774 (2010) (quoting *People v. Smith*, 133 Ill. App. 3d 613, 620 (1985)). Here, because the State successfully defend a portion of the criminal judgment challenged on appeal, it is entitled to its \$100 statutory assessment.

¶ 18 For the foregoing reasons, we find that the trial court conducted a proper inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel and correctly determined that no further hearing was required. We correct the sentencing order to reflect 1,861 days of presentence custody credit. As part of our judgment, we grant the State its \$100 statutory assessment against the defendant as costs of this appeal.

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¶ 19 Affirmed as modified.