

2017 IL App (1st) 151035-U
No. 1-15-1035
Order filed September 13, 2017

Third Division

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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. 14 CR 3115
)	
RAMIRO DELGADO,)	Honorable
)	James Michael Obbish,
Defendant-Appellant.)	Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Cobbs and Justice Howse concurred in the judgment.

ORDER

- ¶ 1 *Held:* Remanded for preliminary *Krankel* inquiry where the trial court failed to conduct an inquiry into defendant's posttrial claims of ineffective assistance of counsel.
- ¶ 2 Following a bench trial, defendant Ramiro Delgado was convicted of aggravated battery of a police officer and sentenced to seven years' imprisonment as a Class X offender based upon his criminal history. On appeal, defendant solely contends that the trial court erred when it failed to conduct an adequate inquiry into his *pro se* posttrial claims of ineffective assistance of counsel

pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). We agree and remand this cause for the limited purpose of allowing the trial court to conduct the required preliminary inquiry.

¶ 3 Defendant does not challenge his conviction or sentence, and thus, a limited discussion of the facts in this case is sufficient. The evidence established that about 2 a.m. on January 31, 2014, Chicago police officer Fristel responded to a call of a person burglarizing vehicles near 1605 South Miller Street. She observed defendant quickly emerging from between two parked vehicles in a crouched position. Fristel handcuffed defendant and noticed a strong odor of alcohol on his breath. After being placed in the back of a squad car, defendant began yelling and kicking the side window with his feet. Defendant was removed from the vehicle. He resisted police and was taken down to the ground. Defendant's belt was used to secure his ankles together. He was lifted from the ground and placed in the back of a squadrol.

¶ 4 Defendant began yelling that he needed to go to the hospital. Consequently, the police transported him to the emergency room at the University of Illinois Hospital. Police officer Gerome Summers brought a gurney to the squadrol and transferred defendant from the vehicle to the gurney. Defendant was belligerent and yelled obscenities. Inside the hospital, police removed the handcuffs and belt. Defendant tried to sit up and began moving his legs "wildly." While Summers attempted to restrain defendant's legs, defendant kicked Summers on the left side of his face with his leg and knee. Summers sustained slight redness and swelling to his face.

¶ 5 Defendant presented a stipulation that Chicago police officer Harriet Lewis interviewed four nurses in the emergency room. Although the nurses heard the commotion, none of them witnessed the incident between defendant and Summers. Defendant also presented photographs of Officer Summers taken on the day of the incident, which were published to the court.

¶ 6 The trial court found defendant guilty of aggravated battery of a police officer. On the next court date, defendant handed the court a written *pro se* motion raising claims of ineffective assistance of counsel. The following colloquy then occurred:

“THE COURT: All right. What I would suggest to you, Mr. Delgado, if you want to file motions along the lines of what you’re doing here, you need to be somewhat more specific as to what your complaints are. You’re just making kind of a general statement somewhat, there was not effective communication with you. That’s just too general to, for the court to really consider.

You say counsel didn’t file any motions on your behalf. You know, you better figure out exactly what kind of a motion you believe counsel was supposed to file on your behalf and tell me.

Filing motions is more than just getting a piece of paper and giving it to the clerk. Motions have to have a basis in law before attorneys file them. Attorneys are not supposed to file futile motions or motions just to make their claim. So you better tell me what kind of motion.

You allege failure to subpoena witnesses, you better tell me who those witnesses were and what they were supposed to testify to.

THE DEFENDANT: The witnesses –

THE COURT: Not now. Failure of lawyer to challenge 911 call. That doesn’t mean anything, Mr. Delgado. Failure to impeach, you better point out what the impeachment would be.

Counsel failed to, you know, subpoena exculpatory evidence. Photos of injuries on the day of incarceration, explain why that would be exculpatory. Failure regarding your medical records, why would your medical records have been relevant. You have to explain that, you know. Failed to, you know, get a video of the emergency room. You know, how do you know there is such an object?

You have to be way more specific. If you want me to give these back and then you file them on the next court date, be more specific.

THE DEFENDANT: Yes.

THE COURT: I'll give you back what you gave to me, and have copies – you have got to be very specific in what you're trying to ask for there.

THE DEFENDANT: Yes, sir.”

¶ 7 On the following court date, defense counsel filed an amended motion for a new trial, which the court denied. The court sentenced defendant to seven years' imprisonment as a Class X offender. No further mention was made of defendant's *pro se* motion alleging ineffective assistance of counsel.

¶ 8 On appeal, defendant solely contends that the trial court erred when it failed to conduct an adequate inquiry into his *pro se* posttrial claims of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). Defendant argues that the court incorrectly advised him that he was required to file a written motion that was more specific in order for the court to consider his allegations. Defendant asserts that, in accordance with our supreme court's recent decision in *People v. Ayres*, 2017 IL 120071, his motion was sufficient to trigger the trial court's duty to conduct a *Krankel* inquiry.

¶ 9 Where defendant raises a *pro se* posttrial claim that trial counsel rendered ineffective assistance, the trial court is required to examine the factual basis of the claim to determine if it has any merit. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). The court can evaluate defendant's *pro se* claim by either discussing the allegations with defendant and asking for more specific details, questioning trial counsel regarding the facts and circumstances surrounding defendant's allegations, or relying on its own knowledge of counsel's performance at trial and determining whether the allegations are facially insufficient. *Id.* at 78-79. On review, the appellate court's primary concern is whether the trial court conducted an adequate inquiry into defendant's *pro se* claims. *Id.* at 78. Where, as here, no inquiry was made into defendant's ineffective assistance claims, our review is *de novo*. *People v. Washington*, 2015 IL App (1st) 131023, ¶ 11.

¶ 10 In *Ayres*, our supreme court resolved a split in the appellate court as to whether a defendant's allegation of ineffective assistance of counsel without any factual support was sufficient to trigger a *Krankel* inquiry. *Ayres*, 2017 IL 120071, ¶ 9. The court noted that it previously held that “ ‘[A] *pro se* defendant is not required to do any more than bring his or her claim to the trial court's attention.’ ” *Id.* ¶ 11 (quoting *Moore*, 207 Ill. 2d at 79; *People v. Taylor*, 237 Ill. 2d 68, 76 (2010)). Therefore, “a defendant is not required to file a written motion ([*People v.*] *Patrick*, 2011 IL 111666, ¶ 29) but may raise the issue orally (*People v. Banks*, 237 Ill. 2d 154, 213-14 (2010)).” *Id.*

¶ 11 After reviewing both sides of the split of authority, as well as its own post-*Krankel* jurisprudence, the *Ayres* court held “when a defendant brings a clear claim asserting ineffective assistance of counsel, either orally or in writing, this is sufficient to trigger the trial court's duty to conduct a *Krankel* inquiry.” *Id.* ¶ 18. The court explained “[o]ur holding in *Moore* supports a

conclusion that a claim need not be supported by facts or specific examples. If that were not the case, this court would not require the circuit court to conduct an inquiry into the underlying factual basis for the claim.” *Id.* ¶ 19. The court further pointed out that “[t]he purpose of the preliminary inquiry is to ascertain the underlying factual basis for the ineffective assistance claim and to afford a defendant an opportunity to explain and support his claim.” *Id.* ¶ 24. By doing so, the trial court can then determine whether the appointment of new counsel is necessary. *Id.*

¶ 12 Here, the record shows that defendant handed the trial court a *pro se* written posttrial motion raising several allegations of ineffective assistance of counsel. It appears from the record, however, that defendant did not include any factual support for his allegations. Consequently, the trial court found that defendant’s motion was insufficient, and it did not conduct a preliminary *Krankel* inquiry.

¶ 13 We recognize that at the time, the trial court’s ruling complied with many decisions issued by this court which held that claims lacking factual support were insufficient to require an inquiry. See, e.g., *People v. Walker*, 2011 IL App (1st) 072889-B; *People v. Ward*, 371 Ill. App. 3d 382 (2007); *People v. Radford*, 359 Ill. App. 3d 411 (2005). However, our supreme court has now rejected this view. In accordance with *Ayres*, we find that defendant’s *pro se* motion, which clearly raised allegations of ineffective assistance of counsel, was sufficient to trigger the trial court’s duty to conduct a preliminary inquiry.

¶ 14 For these reasons, we remand this cause to the trial court for the limited purpose of allowing defendant to file his *Krankel* motion, and for the court to conduct the required preliminary inquiry.

¶ 15 Remanded with directions.