SIXTH DIVISION
Order filed: November 17, 2017

No. 1-16-0015

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. YE 002-054
	)	
STEFAWN GILBERT,	)	Honorable
	)	Stanley L. Hill,
Defendant-Appellant.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: We affirm the defendant's conviction for driving with a revoked or suspended license where: (1) he forfeited his claim that the State's evidence violated his right to confrontation and, because no error occurred, plain-error review is unwarranted and defense counsel was not ineffective; and (2) the defendant's posttrial letter to the trial court constituted his notice of appeal and did not necessitate an inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984).

¶ 2 Following a bench trial, the defendant, Stefawn Gilbert, was convicted of driving with a revoked or suspended license in violation of section 6-303(a) of the Illinois Vehicle Code (Code) (625 ILCS 5/6-303(a) (West 2014)), and sentenced to 40 days' incarceration. On appeal, he

contends that the trial court: (1) violated his constitutional right to confrontation when it allowed the State to admit into evidence a certified abstract of his driver's license file; and (2) failed to conduct an inquiry, pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), into allegations of ineffective assistance of counsel contained in his posttrial letter to the trial court. For the reasons that follow, we affirm.

¶ 3 Due to an incident on August 18, 2015, in Cicero, Illinois, the defendant was charged with multiple traffic offenses, including driving with a revoked or suspended license in violation of section 6-303(a) of the Code. 625 ILCS 5/6-303(a) (West 2014). On November 10, 2015, the matter proceeded to a bench trial, at which the following evidence was adduced.

¶ 4 At trial, the State called Cicero Police Officer Elizabeth Gamez, who testified that, at approximately 9 a.m. on August 8, 2015, she and her partner, Officer Velasquez (collectively, the officers), observed the defendant driving a vehicle without brake lights on Ogden Avenue. When the defendant pulled into a parking lot, the officers approached him and asked for his driver's license and proof of insurance. The defendant failed to produce either document, so the officers asked for his name and date of birth in order to determine whether he had a valid driver's license. The officers provided this information to "dispatch," learned the defendant's driver's license was revoked, and arrested him.

¶ 5 The State introduced a photocopy of an abstract of the defendant's "drivers [*sic*] license file" from the Illinois Secretary of State, which contains the phrase "court purposes" and the date, November 10, 2015. The abstract states that "revocation was in effect on 08-18-2015 * end of record * [.]" Additionally, the abstract contains the following certification by the Secretary of State:

> "This official record is received directly from the Secretary of State's Office via computer link-up system. This is to certify, to the best of my knowledge and belief, after a careful search of my records, that the information set out herein is a true and accurate copy of the captioned individual's driving record; identified by driver's license number, and I certify that all statutory notices required as a result of any driver control actions taken have been properly given."

¶ 6 Defense counsel objected to admitting the abstract into evidence because it was a photocopy and lacked an "original" certification stamp. The trial court, citing the certification, overruled the objection and allowed the abstract into evidence. Afterwards, the State rested and the defense presented no evidence.

¶ 7 Following closing arguments, the trial court convicted the defendant of driving with a revoked or suspended license. On the same day, the trial court held a sentencing hearing and sentenced the defendant to 40 days' incarceration. The trial court did not admonish the defendant regarding posttrial motions or appeal rights, and no posttrial motions were filed.

¶ 8 On December 10, 2015, the defendant mailed to the trial court a letter stating that "[t]he reason for this brief letter is to inform you of my decision to appeal the judgement [*sic*] made against me." In the letter, he asks the trial court to "excuse any tardiness, [as] it is beyond my control and part of the reason that I appeal to you." The defendant then claims that he did not "recall any information" regarding his appeal rights, and that defense counsel was ineffective for: (1) not rebutting the State's case; (2) disregarding legal research provided by the defendant; and (3) promising, and failing, to include "a few questions of the defendant in the cross-examination of the prosecutors [*sic*] witness ***." The letter was file-stamped by the clerk of court on

January 5, 2016, and the half-sheet indicates that the trial court appointed the Office of the State Appellate Defender to represent the defendant on January 11, 2016.

¶ 9 For his first assignment of error, the defendant contends that the trial court violated his constitutional right to confrontation by allowing the State to admit into evidence the certified abstract of his driver's license file.

¶ 10 The defendant did not raise this issue at trial or in a posttrial motion and, therefore, forfeiture applies. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (objection both at trial and in a posttrial motion is required to preserve an issue for appeal). He argues, however, that this court should consider the matter pursuant to either prong of plain-error review, or, alternatively, under the theory that defense counsel was ineffective for failing to object to the admission of the certified abstract on the basis that it violated his right to confrontation.

¶ 11 First, we consider the defendant's claim for plain error. A reviewing court considers unpreserved error under plain-error review when either: (1) the evidence at trial was so closely balanced that the guilty verdict may have resulted from the error; or (2) the error was so serious that it deprived the defendant of a fair trial. *People v. McLaurin*, 235 Ill. 2d 478, 489 (2009). Absent an error, there can be no plain error under either prong. *Id.*

¶ 12 The sixth amendment of the United States Constitution and article I, section 8, of the Illinois constitution guarantee a defendant the right to confront the witnesses against him. U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8. The right to confrontation protects the defendant from testimonial hearsay. See *Davis v. Washington*, 547 U.S. 813, 823-26 (2006); *People v. Leach*, 2012 IL 111534, ¶ 66 (hearsay is "[a]n out-of-court statement" offered for the proof of the matter asserted). Whether an out-of-court statement violates the right to confrontation is a

question of law and, therefore, our review is *de novo*. *People v. Williams*, 238 Ill. 2d 125, 141 (2010).

¶ 13 In *Crawford v. Washington*, 541 U.S. 36, 56 (2004), the Supreme Court explained that, in analyzing an alleged violation of a defendant's right to confrontation, the question is not merely whether the evidence falls within an exception to the general bar on hearsay, but, rather, whether that evidence is testimonial. Under *Crawford*, the sixth amendment's confrontation clause precludes the use of a "testimonial" statement made by a witness who does not testify at a criminal trial, unless the witness is unavailable to testify at trial and was previously subjected to cross-examination. *Id.* at 67-68. Where the statement is not "testimonial" in nature, the confrontation clause is not implicated and the statement's admissibility is determined by applying evidentiary hearsay rules and various hearsay exceptions. *Davis*, 547 U.S. at 821.

¶ 14 While the *Crawford* Court declined to provide a comprehensive definition of what constitutes "testimonial" evidence, it stated that such evidence would include, in relevant part, "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." (Internal quotation marks omitted.) *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 310 (2009) (citing *Crawford*, 541 U.S. at 51-52). Therefore, "[b]usiness and public records are generally admissible absent confrontation not because they qualify under an exception to the hearsay rules, but because—having been created for the administration of an entity's affairs and not for the purpose of establishing or proving some fact at trial—they are not testimonial."

¶ 15 Applying these principles in *Melendez-Diaz*, the Court concluded that certificates provided by laboratory analysts averring that a substance the police had seized from the defendant was cocaine were testimonial because they were created for trial and "functionally

identical to live, in-court testimony." *Id.* at 310-11. As the laboratory analysts did not testify at trial, were not shown to be unavailable, and the defendant did not have a prior opportunity to cross-examine them, the admission of the certificates into evidence violated the defendant's right to confrontation. *Id.* at 311.

¶ 16 Relying on *Melendez-Diaz*, this court found in *People v. Diggins*, 2016 IL App (1st) 142088, that a violation of the confrontation clause occurred when the State introduced a "certified letter" from the Illinois State Police in order to prove that the defendant, who was charged with aggravated unlawful use of a weapon, lacked a Firearm Owners Identification (FOID) card. In the letter, an officer stated that he "search[ed] the FOID files" and determined that: (1) prior to his arrest, the defendant submitted a FOID card application that was denied; and (2) as of May 7, 2013, a date after the defendant's arrest but before his trial, "this office has no other record" pertaining to him. *Id.* ¶ 6. We reversed the defendant's conviction, finding that the letter constituted an affidavit that was "presumably" created for the defendant's prosecution and, therefore, constituted a testimonial statement. *Id.* ¶¶ 16, 21.

¶ 17 In this case, the defendant claims that the Secretary of State's certified abstract was testimonial and that its admission was improper because: (1) the State did not call a representative from the Illinois Secretary of State to authenticate it; and (2) nothing in the record suggests that such a witness was unavailable to testify or that the defense had a prior opportunity to cross-examine him or her.

¶ 18 We find no error because, based on our examination of the record, the certified abstract from the defendant's driver's license file was non-testimonial and admissible under the public records exception to the hearsay rule.

¶ 19 Turning first to the non-testimonial nature of the abstract, we observe that the Secretary of State's certification states that "the information set out herein is a true and accurate copy of the captioned individual's driving record[ ] ***." Unlike the certificates in *Melendez-Diaz* and the certified letter in *Diggins*, both relied on by the defendant, this certification does not set forth the Secretary of State's personal knowledge of a fact necessary for the defendant's conviction, *i.e.*, that his driver's license had been revoked. To the contrary, the certification describes the Secretary of State's knowledge as to what was contained in the defendant's driver's license file on the date of his arrest. That information, included in the body of the abstract, was collected prior to the defendant's arrest and not in anticipation of his prosecution. As such, the record was not created for the purpose of establishing a fact at trial and, therefore, was not testimonial. To the extent the defendant argues that admission of the certified abstract was improper because it contains the phrase "court purposes" and the date of trial, we disagree. At most, this information indicates when and why the certified abstract was copied and transmitted, but not that the abstract itself was created for the defendant's prosecution.

¶ 20 We also find that the certified abstract was admissible under the public records exception to the hearsay rule. Illinois Rule of Evidence 803(8) (eff. Apr. 26, 2012), provides that "[r]ecords, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth *** matters observed pursuant to duty imposed by law as to which matters there was a duty to report" are generally admissible as evidence. The Code, in turn, requires the Illinois Secretary of State to "maintain appropriate records of all licenses *** revoked[ ] or suspended" (625 ILCS 5/6-117(b) (West 2014)), and provides that "[a]ny certified abstract *** transmitted electronically by the Secretary of State *** shall be admissible *** as proof of *** records, notices, or orders recorded on individual driving records maintained by the Secretary of

State." (625 ILCS 5/2-123(g)(6) (West 2014). The certified abstract of the defendant's driver's license file, therefore, contained information that the Secretary of State was, by law, required to observe and report. See *Leach*, 2012 IL 111534, ¶¶ 130, 137 (finding that the admission of an autopsy report did not violate the defendant's right to confrontation because, although autopsy reports "might eventually be used in litigation," they are generally "prepared in the normal course of operation of the medical examiner's office," and, therefore, non-testimonial).

¶ 21 Although the defendant further argues, without citation to the record, that the abstract should not have been admitted into evidence because it is allegedly incomplete, a certified abstract of a motorist's driver's license file is *prima facie* evidence of the facts stated therein. 625 ILCS 5/2-123(g)(6) (West 2014). Where, as here, the defendant presented no evidence at trial to rebut the veracity of a certified abstract, its contents are deemed to be accurate. See *People v. Meadows*, 371 Ill. App. 3d 259, 263 (2007). Consequently, we conclude that the certified abstract was admissible. As the trial court did not err in admitting the certified abstract into evidence, the defendant's forfeiture is not excused under either prong of the plain-error doctrine. *McLaurin*, 235 Ill. 2d at 489.

¶ 22 Next, we consider the defendant's claim for ineffective assistance of counsel. Claims of ineffectiveness of counsel are judged using the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Peterson*, 2017 IL 120331, ¶ 79. Under *Strickland*, the defendant must demonstrate that: (1) counsel's performance fell below an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *People v. Manning*, 241 Ill. 2d 319, 326 (2011) (citing *Strickland*, 466 U.S. at 688, 694). The defendant's failure to establish either prong

of the *Strickland* test precludes a finding that counsel was ineffective. *People v. Henderson*, 2013 IL 114040, ¶ 11.

¶ 23 We find that the defendant cannot establish the second prong of the *Strickland* test. As the admission of the certified abstract did not violate his right to confrontation, he cannot establish that he was prejudiced by defense counsel's failure to raise an objection to that evidence based on the confrontation clause. As such, his claim for ineffective assistance as to his confrontation clause argument is without merit.

¶ 24 For his second assignment of error, the defendant contends that the trial court erred by failing to conduct an inquiry into the allegations of ineffective assistance of counsel set forth in his posttrial letter. The State, in response, argues that the defendant's letter was not a *Krankel* motion but, rather, served as his notice of appeal and is identified as such in the jurisdictional statement in his initial brief; therefore, according to the State, the letter divested the trial court of jurisdiction and, as a result, never triggered its obligation to conduct an inquiry into the defendant's allegations.

¶ 25 In *Krankel*, our supreme court held that, when a defendant raises a *pro se* posttrial claim of ineffective assistance, the trial court should conduct an inquiry to examine the factual basis for the claim and determine whether it has merit. *Krankel*, 102 Ill. 2d at 189; *People v. Taylor*, 237 Ill. 2d 68, 75 (2010). Although "[t]he pleading requirements for raising a *pro se* claim of ineffectiveness of counsel are somewhat relaxed[ ] *** a defendant must still meet the minimum requirements necessary to trigger a *Krankel* inquiry." *People v. Porter*, 2014 IL App (1st) 123396, ¶ 12. Relevant here, the defendant must raise his claim of ineffective assistance in a posttrial motion. See *People v. Ayres*, 2017 IL 120071, ¶ 22 (finding that the circuit court is not "required to 'minutely scrutinize' every *pro se* filing" for a complaint of ineffective assistance

because "*Krankel* is limited to posttrial motions."). Whether the trial court should have conducted a *Krankel* inquiry presents a legal question subject to *de novo* review. *People v. Moore*, 207 Ill. 2d 68, 75 (2003).

¶ 26 Based on our review of the record, we find that the defendant's letter to the trial court was his notice of appeal and not a *pro se* motion directed to defense counsel's alleged ineffective assistance. In the letter, the defendant states that his "reason" for writing "is to inform *** [the trial court] of my decision to appeal the judgement [*sic*] made against me." He also expresses concern that his request to appeal is "tard[y]," and attributes the delay to reasons "beyond my control." The defendant then alleges that he did not "recall any information" regarding his appeal rights, and provides several examples of defense counsel's alleged ineffectiveness. Reading the defendant's letter as a whole, it is apparent that his purpose was to appeal the trial court's judgment and, in doing so, explain why his notice of appeal should be accepted although he believed it might have been untimely.[1] See *People v. Patrick*, 2011 IL 111666, ¶ 21 (a notice of appeal should be considered as a whole); *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002) (courts consider the content and substance of a filing, and not merely how it is titled or characterized by the party filing it). Because the letter was not, in fact, a *Krankel* motion, we need not reach the State's additional jurisdictional argument. The defendant's claim of error is, therefore, without merit.

¶ 27 For all the foregoing reasons, we find that: (1) the defendant forfeited his claim that the State's evidence violated his right to confrontation and, because no error occurred, plain-error

[1] The defendant's notice of appeal was, in fact, timely filed because he mailed it on December 10, 2015, exactly 30 days after judgment was entered. See *People v. White*, 333 Ill. App. 3d 777, 780 (2002) ("Under the date of mailing rule, if a notice of appeal is received after the due date, the time of mailing is deemed to be the time of filing.").

review is unwarranted and his claim for ineffective assistance fails; and (2) the trial court did not err in failing to conduct a *Krankel* inquiry based on the defendant's posttrial letter.

¶ 28 Affirmed.