2017 IL App (2d) 160102-U
No. 2-16-0102
Order filed September 1, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 09-CF-1505
MICHAEL DELANEY,	)	Honorable Daniel Guerin,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: On remand for a *Krankel* inquiry into defendant's claim of ineffective assistance of trial counsel, the inquiry court's decision not to appoint counsel and conduct a full *Krankel* hearing was not manifestly erroneous.

¶ 2 A jury found defendant, Michael Delaney, guilty of first degree murder (see 720 ILCS 5/9-1(a)(1) (West 2008)) and the aggravating factor that "the murder was perpetrated in a cold, calculated and premeditated manner pursuant to a preconceived plan, scheme or design to take a human life by unlawful means, and the conduct of the defendant created a reasonable expectation

that the death of a human being would result therefrom" (see 720 ILCS 5/9-1(b)(11) (West 2008)). The trial court imposed a 55-year prison term.

¶ 3 On direct appeal, defendant argued that the State had failed to prove the aggravating factor beyond a reasonable doubt and that the trial court had erred in failing to investigate his posttrial assertion of ineffective assistance of counsel. We held that the State proved the aggravating factor, but we remanded the cause for a preliminary inquiry under *People v. Krankel*, 102 Ill. 2d 181 (1984), based on defendant's claim of ineffective assistance and the court's failure to investigate the allegation. *People v. Delaney*, 2015 IL App (2d) 130573.

¶ 4 On remand to the inquiry court, defendant retained a private attorney (inquiry counsel), who filed motions to summarize his allegations and to obtain a copy of the file from the Du Page County public defender's office, which had represented defendant at trial. The inquiry court deemed the trial file unnecessary, denied the motion to compel, heard defendant's allegations, and determined that defendant had failed to make a showing of possible neglect under *Krankel*. The court declined to appoint counsel to pursue the ineffective assistance claim, and defendant appeals again. He disputes the finding of no possible neglect and requests a hearing with the benefit of trial counsel's file. We affirm.

¶ 5 I. BACKGROUND

¶ 6 A. Trial

¶ 7 We summarize the evidence supporting the guilty verdict because defendant's allegations of ineffectiveness are based on trial counsel's alleged failure to investigate and present certain exculpatory evidence. Edita Pranckute and defendant had a brief dating relationship. But Edita revealed that she had begun dating Jonathan Nkhoma (John), and two days later, defendant

fatally stabbed John's friend, Michael Scalzo, in the parking lot of the apartment complex where Edita and defendant had shared a home.

¶ 8 Edita described her breakup with defendant as "very civil," as defendant allowed her to store her belongings in the apartment until she settled in somewhere. Edita spent the rest of that day at the home of her next door neighbor, Ryan Busic. John arrived at Ryan's apartment after work, and John and Edita spent the night at Ryan's apartment, with defendant next door. During the evening, Edita heard noises outside Ryan's apartment, and each time she opened the door, she found a bag of her belongings sitting in the hallway.

¶ 9 John went to work the next morning, and Edita stayed in Ryan's apartment and watched television with him. Several times, defendant knocked on Ryan's door and asked Edita to return various items. In the afternoon, Edita went to defendant's apartment to calm him because he seemed to be getting angry, but after an hour he just grew angrier. Edita returned to Ryan's apartment, and John arrived soon thereafter. Ryan's girlfriend, Carrie Fernandes, was also there.

¶ 10 Edita testified that defendant began "constantly" knocking on the door, and each time he entered he would ask for things like cigarettes and beer. The last time defendant entered, he angrily told Edita, "I will kill you bitch. I will kill you first, and then I will kill John." Carrie told defendant to leave and not come back. Defendant left. Defendant's threats caused Carrie to ask John and Edita to find somewhere else to spend the night. A short time later, Bill Murphy, a friend of John and Ryan, came to Ryan's apartment. Bill allowed Edita and John to spend the night at his apartment.

¶ 11 Around 5:30 a.m. the next day, John left Bill's apartment to drive to work, but he and Edita found that three tires on her car had been slashed. Near the fourth tire was a broken blade from a steak knife that Edita recognized from the apartment she had shared with defendant.

¶ 12 John got a ride to work from his boss, and Edita spent the day in Bill's apartment. Around noon, defendant knocked "aggressively" on the door, but Bill and Edita remained quiet. Bill later left for a doctor's appointment, and Edita stayed in the apartment.

¶ 13 Around 5 p.m., John returned from work, and he and Edita ordered a pizza. Bill returned to his apartment a short time later, but left at 5:45 p.m. to visit his friend Michael, the victim. Edita remained in Bill's apartment.

¶ 14 The parking lot of the apartment building had several single-car garages, including Michael's garage, where John and Bill often hung out with their friend. On the date of the murder, Bill, Michael, and John were in the garage with another friend, Fred Slaughter. Defendant walked over and asked for a beer and then a cigarette. Michael refused both times. Defendant then looked at John and asked him for "daps," meaning bumping fists in greeting. Bill heard John say, "I don't have anything for you." Bill recalled that defendant responded by saying something like, "I can see this isn't my crowd here, don't trip. I've always got something on my hip." John recalled that defendant angrily said "Well, I take it nobody wants me here."

¶ 15 Bill and John testified that defendant left the garage and called John a "bitch." John stood from his chair, put down his beer, and he and defendant began "exchanging words." Defendant pulled out a knife and said, "John I'm going to kill you." John testified that he saw the knife handle, which had been hidden behind defendant's back, under his shirt. John asked defendant to put down the knife and fight with his fists. Defendant turned and yelled at John as he walked across the parking lot toward the entrance of the apartment building. Bill heard defendant yell, "I'm going to kill you motherfuckers," and then defendant entered the building.

¶ 16 Paul Neumann lived in an apartment, next door to Michael, in an adjacent building. On the evening of the incident, Paul was in his apartment with his friends, Troy Beavers and Eric

Jackson. Around 6 p.m., they heard arguing and yelling outside, and Troy recognized Michael's voice. The men went outside and saw John and defendant arguing. Paul recalled hearing defendant say he had a gun and would kill John.

¶ 17 When defendant entered his building, Troy, Paul, and Eric joined Michael, Bill, John, and Fred in the garage. From 6:30 p.m. to 7:30 p.m., the group talked in the garage. Periodically, defendant would step outside, talk angrily, yell, and gesture at the group. Paul recalled defendant saying things like, "fuck you motherfuckers, I'm going to kill somebody, I'm going to kill you." Defendant did not direct his threats to any one person, but to the group in general.

¶ 18 Around this time, Edita was in Bill's apartment and heard a "prolonged scraping" on the door. Edita remained quiet and did not go to the door. About 7 p.m., Edita heard someone pounding on the door at the same time someone else was buzzing Bill's apartment from the vestibule. Edita did not answer the door or the buzzer. She heard defendant "screaming" in the hallway and running up the stairs.

¶ 19 About 7 p.m., John went to check on Edita in Bill's apartment. At the entrance of the building, John encountered defendant, who asked to talk. John refused, and defendant replied "John, nobody wants to talk to you. Get out of here." Defendant brandished a steak knife, and John left.

¶ 20 John returned to the garage and described what had just happened. The group decided that Edita should be moved to Michael's apartment. The group walked toward Bill's apartment, and Michael carried a baseball bat. Troy, Bill, and John noticed blood smeared on the wall and the handrail of the vestibule. On the door to Bill's apartment were the freshly-carved words "will kill." The men escorted Edita to Michael's apartment and returned to the garage.

¶ 21 Defendant stepped out of his building again, and Michael said he would "rectify" or "try to diffuse" the situation. Bill, Troy, and Paul testified that Michael walked "calmly" over to defendant. Troy saw Michael extend his hand for a handshake, and Paul heard Michael tell defendant to take his dispute with John someplace else because it did not involve the rest of the group. Troy and Paul saw Michael turn toward the garage, and defendant turned toward his building. Troy heard defendant say "What the fuck did you say?" Defendant then charged at Michael, who was walking away.

¶ 22 Michael turned around, defendant punched him in the face, and Michael punched defendant twice. Defendant pulled Michael's shirt over his head and hit him in the chest and ribs. Michael and defendant separated, and defendant ran past the door to his building. The group ran to Michael and saw that he had been stabbed in the side. The police were called, defendant was arrested, and Michael was transported to a hospital, where he died a few hours later.

¶ 23 Wheaton police officer Jason Scott testified that he transported and booked defendant. Defendant asked to call his "fiancé," and the telephone call was recorded on video, which was played for the jury. Defendant left a message stating, "Uh, Edita, this is Mike. Hey you go ahead and have everything in that apartment. I ain't coming home for a long, long time, if I come home again. Alright, I love you, and I hope you come see me."

¶ 24 Defendant testified in his own defense, generally denying the allegations that he threw Edita's clothes in the hallway, slashed her tires, brandished a knife, threatened anyone, or carved "will kill" in the door. Defendant admitted that, around 8:30 p.m. on the date of the incident, he exited his apartment to smoke a cigarette. He grabbed his key and wallet off the kitchen counter, and he also grabbed a knife that was nearby.

¶ 25 According to defendant, Michael jumped from his seat and started yelling obscenities at defendant. Michael and John ran from the garage toward defendant. Defendant dropped his key and wallet and was very afraid. Michael struck defendant and yelled "What the fuck is your problem, what's going on with you?" Defendant did not hear everything that was said, because he fell back and partially lost consciousness when Michael struck him repeatedly in the head. Defendant began fighting back.

¶ 26 According to defendant, John pulled Michael away twice, momentarily. It did not occur to defendant to run away because he was "incoherent" and not "in a thinking capacity." Michael attacked defendant a third time, and when John pulled Michael away again, John yelled "he's been stabbed!" Defendant did not realize that he had stabbed Michael. Defendant ran away because he had lost his key and was afraid. Defendant claimed he was just defending himself and denied any animosity toward Michael or any intent to injure or kill him.

¶ 27 The jury found defendant guilty of first degree murder and that he committed the offense in a cold, calculated, and premeditated manner. Defendant filed a motion for a new trial, which was denied.

¶ 28 At the sentencing hearing, the trial court gave defendant the chance to make a statement in allocution. Defendant offered his condolences to Michael's family and reiterated that the stabbing was accidental. Defendant also told the court that his attorney had failed to investigate the case, call particular witnesses, and present evidence that would have supported his defense. Specifically, defendant alleged that he drew and gave to his attorney a diagram of where Michael and John were sitting in the garage and the location of Troy and his girlfriend. Defendant explained that the diagram was important because the police disturbed the crime scene by pulling everything from the garage and moving the chairs. Defendant also asserted that he gave his

attorney "a letter showing what was going on" among John, Edita, and defendant. Defendant said the letter showed that his relationship with Edita ended amicably. Defendant argued that the diagram and letter should have been shown to the jury. Defendant also said that he informed his attorney that the police searched his apartment without a warrant.

¶ 29 Finally, defendant restated his denial that he carved anything into Bill's door. He explained that Bill and a neighbor named Jennifer had multiple altercations. Bill allegedly had spent two days in jail for breaking bottles on Jennifer's door, and another time Bill called the police after Jennifer threw something at his door. Defendant argued that the evidence of these altercations should have been presented at trial. The trial court imposed a 55-year prison term, but his complaints about trial counsel went unanswered.

¶ 30 Defendant filed a motion to reconsider the sentence, and at the hearing, he made additional assertions about counsel's ineffectiveness. When the court asked whether he was willing to reimburse the public defender's office for representing him, defendant responded "No, I am not, Judge, because I feel, your Honor, that there was no investigation done by the public defender's office on this case. And *** [trial counsel] withheld evidence that would have cleared a lot of this up." The trial court denied the motion to reconsider but did not address defendant's allegations of ineffective assistance.

¶ 31 B. *Krankel* Inquiry

¶ 32 On direct appeal, we affirmed defendant's murder conviction and sentence, but we remanded the cause for a *Krankel* inquiry into his allegations of ineffective assistance of trial counsel. On November 16, 2015, inquiry counsel filed a "preliminary *Krankel* motion" for the appointment of a new attorney to investigate and present evidence of certain allegations that trial counsel was ineffective. Inquiry counsel informed the court that she was pursuing only three of

the five grounds alleged in the motion and was not pursuing other allegations that defendant had raised at the posttrial hearings regarding sentencing. On appeal, defendant has further narrowed the allegations to two.

¶ 33 First, trial counsel allegedly failed to present evidence that defendant was treated for post traumatic stress disorder (PTSD) before and after the offense, which allegedly would have supported a verdict of second degree murder based on imperfect self defense.

¶ 34 Second, counsel allegedly failed to present evidence that Bill had ongoing disputes with two neighbors: Jennifer, with whom Bill had exchanged "malicious pranks," and someone named Molly, who had accused Bill of sexual assault. The evidence of these disputes would have refuted the State's claim that only defendant had a motive and the opportunity to carve the words "will kill" on Bill's door.

¶ 35 Also on November 16, 2015, and in support of the *Krankel* motion, defendant moved to compel the Du Page County public defender's office to tender its file so inquiry counsel could amend the motion for the *Krankel* inquiry as needed. The motion indicated that, on remand, the inquiry court had permitted defendant to discharge the public defender and allowed inquiry counsel to file an appearance. The motion further indicated that inquiry counsel asked the public defender's office to either make a copy of defendant's file or allow counsel to copy it. The request was refused on the grounds that the file was too large for the public defender's office to copy and that it would likely become unnecessarily disorganized if released to inquiry counsel. Expecting to represent defendant in the future, the public defender's office offered to make the file available for inspection, which inquiry counsel initially refused as inconvenient. The motion claimed that "[t]rial discovery and the correspondence between trial counsel and client is essential in the preparation of claims of ineffective assistance of counsel [and] the only way to

obtain the necessary material is by tender of the defendant's trial file." The motion also alleged a violation of Rule 1.16 of the Illinois Rules of Professional Conduct, which imposes an ethical obligation on an attorney to turn over his former client's files, papers, and property to his successor counsel. Ill. R. Prof. Conduct (2010) R. 1.16 (eff. Jan. 1, 2010). Inquiry counsel eventually reviewed the file at the public defender's office, but was not allowed to view correspondence between defendant and trial counsel or make copies of any documents. Inquiry counsel confirmed that she drafted the *Krankel* motion after consultation with defendant.

¶ 36 The inquiry court explained that, while *Krankel* inquiries usually involve only the defendant, his trial counsel, and the court's recollection of the proceedings, defendant had representation for the purposes of the remand. The court allowed inquiry counsel to make the *Krankel* presentation on defendant's behalf and relied on the court's recollection and trial counsel's input as needed. The court agreed with inquiry counsel that, if a full evidentiary *Krankel* hearing became warranted, she could use the file to present witnesses and other evidence in support of the ineffective assistance claim. Citing the preliminary nature of a *Krankel* inquiry, the court deemed the public defender's file unnecessary to the inquiry and denied defendant's motion to turn over the file.

¶ 37 For purposes of this appeal, we address the two grounds argued regarding trial counsel's ineffectiveness. First, trial counsel was allegedly unreasonable for failing to present evidence that defendant suffered from PTSD, which allegedly would have supported the theory that defendant had an unreasonable belief in the need to defend himself against the victim. According to the defense, defendant's PTSD was precipitated by an army parachute training incident in 1982, where defendant jumped out of a helicopter and was injured and several other

people died. Defendant was diagnosed and treated for PTSD intermittently before the stabbing incident.

¶ 38 Inquiry counsel explained that defendant's PTSD made him more likely to re-experience the precipitating trauma and cause him to be very aggressive and to misperceive threats. She asserted that an expert would have testified that, without PTSD, defendant would not have misperceived the threat and acted as the State alleged. Counsel concluded that the information would have resulted in an acquittal of first degree murder and, at worst, a conviction of second degree murder based on imperfect self defense. Inquiry counsel acknowledged that the record shows that defendant agreed to forego the PTSD strategy, but she claimed that his consent was based on trial counsel falsely telling defendant that the expert had refused to testify.

¶ 39 Trial counsel refuted inquiry counsel's characterization of the decision not to present the PTSD evidence. Trial counsel cited a pretrial order allowing the evidence but barring the expert's conclusion that, "without the influence of PTSD symptoms, it is unlikely that [defendant] would have reacted in the manner that resulted in his arrest." Trial counsel explained that this ultimate opinion was needed to make a causal connection between defendant's PTSD and the incident. Trial counsel pointed out that, in contrast, the State was prepared to present experts who believed that defendant was malingering or exaggerating his PTSD symptoms to reduce or avoid punishment for his offense. Trial counsel explained that raising the PTSD issue risked transforming the trial into one over whether defendant was faking PTSD, which would be harmful to the defense. Based on the trial court's limitation on the defense expert's testimony and the expected testimony of the State's experts and other witnesses, trial counsel made the "very specific strategic decision to not put in the PTSD issue." Trial counsel "categorically" denied telling defendant that any witness was not willing to testify.

¶ 40 The court's recollection was consistent with trial counsel's account, and the court also pointed out the trial testimony that defendant acted as the aggressor throughout the incident. The court determined that trial counsel's handling of the PTSD evidence was strategic and there was "certainly no possible indication of any neglect of the case involving" that evidence.

¶ 41 Next, inquiry counsel argued that trial counsel was ineffective for failing to present evidence that Bill had ongoing disputes with Jennifer, with whom Bill had exchanged "malicious pranks," and Molly, who had accused Bill of sexual assault. Inquiry counsel alleged that defendant had told trial counsel about Jennifer and Molly "before trial" but did not provide any further detail about the timing of defendant's alleged disclosure. Counsel claimed that evidence of these disputes between the women and Bill would have shown that someone other than defendant had a motive and the opportunity to carve the words "will kill" on Bill's door.

¶ 42 Trial counsel and his co-counsel each informed the inquiry court that the first time they heard of Jennifer and Molly was in defendant's *Krankel* motion. The attorneys conceded that the purported testimony of Jennifer and Molly would have been helpful to the defense at trial, but they insisted that defendant never disclosed their existence. The attorneys also pointed out the overwhelming circumstantial evidence that defendant carved the words in the door. The inquiry court found that there was no indication of possible neglect in regard to the purported testimony of Jennifer and Molly. The court denied defendant's motion for the appointment of counsel and a full evidentiary hearing under *Krankel*, and this timely appeal followed.

¶ 43 II. ANALYSIS

¶ 44 On direct appeal from his conviction, defendant argued that the trial court failed to conduct an adequate inquiry into his posttrial allegation of ineffective assistance of counsel, and

therefore, he was entitled to that inquiry under *Krankel*. We agreed and remanded the cause for a proper *Krankel* inquiry.

¶ 45 When a defendant brings a *pro se* posttrial claim that trial counsel was ineffective, the trial court must inquire adequately into the claim and, under certain circumstances, must appoint new counsel to argue the claim. *Krankel*, 102 Ill. 2d at 187-89; *People v. Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9. The trial court is not automatically required to appoint new counsel to assist the defendant; rather, the court should first examine the factual basis of the defendant's claim. *People v. Moore*, 207 Ill. 2d 68, 77-79 (2003); *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9. The supreme court has listed three ways in which a trial court may conduct its examination: (1) the court may ask trial counsel about the facts and circumstances related to the defendant's allegations; (2) the court may ask the defendant for more specific information; and (3) the court may rely on its knowledge of counsel's performance at trial and "the insufficiency of the defendant's allegations on their face." *Moore*, 207 Ill. 2d at 78-79 (2003); *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9.

¶ 46 If the defendant's allegations show possible neglect of the case, the court should appoint new counsel to argue the defendant's claim of ineffective assistance. *People v. Taylor*, 237 Ill. 2d 68, 75 (2010). However, if the court concludes that the defendant's claim lacks merit or pertains only to matters of trial strategy, the court may deny the claim. *Taylor*, 237 Ill. 2d at 75. If the court fails to conduct the necessary preliminary examination as to the factual basis of the defendant's allegations, as occurred after defendant's trial, the case must be remanded for the limited purpose of allowing the court to do so. *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9.

¶ 47 Once the court conducts an adequate inquiry, the decision to decline to appoint new counsel based on a judgment that the ineffective assistance claim is spurious shall not be

overturned on appeal unless the decision is manifestly erroneous. *People v. McCarter*, 385 Ill. App. 3d 919, 941 (2008) (citing *People v. Woodson*, 220 Ill. App. 3d 865, 877 (1991)). "[T]he question of whether defendant's ineffective assistance claims are meritorious is necessarily grounded in the specific facts of the case, so it is appropriate for us to give deference to the finding of the trial court." *McCarter*, 385 Ill. App. 3d at 941.

¶ 48 A. Jennifer and Molly

¶ 49 On appeal from the *Krankel* inquiry, defendant reiterates his claim that trial counsel allegedly failed to present evidence that Bill had ongoing disputes with Jennifer and Molly, which would have tended to refute the State's position that only defendant had a motive and the opportunity to carve the words "will kill" on Bill's door. Defendant requests another remand under *Krankel* for a full evidentiary hearing of this allegation.

¶ 50 Before the *Krankel* inquiry, counsel filed a motion to compel the Du Page County public defender's office to turn over defendant's trial file. According to inquiry counsel, she needed the entire file, a copy or the original, because she did not have time to go the public defender's office to review the file there as the public defender had offered. Counsel told the court that she needed the file for meaningful consultation with defendant about correspondence with his trial counsel about Jennifer and Molly and their relationships with Bill. The circuit court denied defendant's motion to compel, finding that the procedural posture of the case did not support granting the motion to compel.

¶ 51 Defendant now contends that the inquiry court committed reversible error in denying the motion to compel production of the trial file. This court reviews a trial court's decision to compel compliance with a request for documents for an abuse of discretion. *Citi Mortgage v. Lewis*, 2014 IL App (1st) 131272, ¶ 42. A trial court abuses its discretion only when no

reasonable person would take the view adopted by the trial court. *People v. Donoho*, 204 Ill. 2d 159, 182 (2003).

¶ 52 Defendant argues that trial counsel's refusal to turn over the file violates Rule 1.16 of the Illinois Rules of Professional Conduct, which imposes an ethical obligation on an attorney to turn over his former client's files, papers, and property to his successor counsel. Ill. R. Prof. Conduct (2010) R. 1.16 (eff. Jan. 1, 2010). Defendant cites several disciplinary proceedings in which the Attorney Registration and Disciplinary Commission (ARDC) has taken enforcement action under the rule, but defendant cites no authority for the proposition that an attorney's alleged violation of the rule compels reversal of an order entered by the circuit court.

¶ 53 We remanded the cause for the limited purpose of a *Krankel* inquiry, during which (1) the court may ask trial counsel about the facts and circumstances related to the defendant's allegations; (2) the court may ask the defendant for more specific information; and (3) the court may rely on its knowledge of counsel's performance at trial and "the insufficiency of the defendant's allegations on their face." *Moore*, 207 Ill. 2d at 78-79 (2003); *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9. *Krankel* only required an examination of defendant's ineffective assistance claim in light of the recollections of defendant, his trial counsel, and the court.

¶ 54 Inquiry counsel was invited to inspect the trial file at the public defender's office and eventually reviewed the file there. But inquiry counsel should not have even needed the file to develop the ineffective assistance allegations regarding the potentially exculpatory testimony of Jennifer and Molly. If there were any merit to defendant's claim, one could reasonably expect him to explain the nature of his communication with trial counsel about these witnesses, but neither he nor inquiry counsel offered any details. Inquiry counsel informed the court that she and defendant had thoroughly discussed trial counsel's alleged mistakes. Trial counsel and his

co-counsel offered their input at the hearing, and the inquiry court commented on trial counsel's performance as well. This information was sufficient for a preliminary assessment under *Krankel*. As the inquiry court correctly observed, the trial file would have become relevant only upon the matter proceeding to a full evidentiary hearing under *Krankel*. See *Moore*, 207 Ill. 2d at 78 (the inquiry court appoints new counsel only if the defendant's *pro se* claims show possible neglect on trial counsel's part, after which the matter proceeds to an adversarial and evidentiary hearing on the defendant's claims of ineffective assistance). Under these unique circumstances, the inquiry court's denial of defendant's motion to turn over the trial file was not an abuse of discretion.

¶ 55 The inquiry court determined that there was no merit to defendant's unsubstantiated claim that trial counsel should have investigated and presented potentially exculpatory testimony of Jennifer and Molly. Trial counsel and co-counsel unequivocally denied that defendant informed either of them before trial that someone else might have carved "will kill" into Bill's door. Defendant mentioned Jennifer's name at allocution, but this comment was made long after it might have been useful to preparing a defense. Furthermore, as pointed out by trial counsel at the *Krankel* inquiry, any argument that someone other than defendant had carved the words would have strained credulity. Circumstantial evidence showed that the words were carved during a 90-minute period preceding the murder. During that time, Edita was in Bill's apartment, and defendant was seen walking up and down the hallways with a knife, spreading blood on the walls. Trial counsel and co-counsel insisted that defendant never mentioned Jennifer or Molly before trial, and even if there was some indication that someone other than defendant carved the words, declining to present that evidence would not have prejudiced

defendant. The inquiry court's decision not to appoint new counsel for a full hearing on this allegation of ineffective assistance was not manifestly erroneous.

¶ 56 B. PTSD

¶ 57 Next, defendant argues that trial counsel unreasonably failed to present evidence that defendant was treated for PTSD before and after the offense, which allegedly would have supported a verdict of second degree murder based on imperfect self defense. Before trial, the court ruled that defendant could present the PTSD evidence to show its effect on his mental state at the time of the offense but not to elicit an expert opinion that, without the influence of PTSD, defendant would not have reacted in a way that resulted in his arrest. The record shows that trial counsel considered and rejected a PTSD defense before trial. Trial counsel recognized that pursuing a PTSD defense would allow the State to inform the jury of defendant's past violent behavior.

¶ 58 Before trial, when the decision was made, counsel informed the court that he had discussed the PTSD evidence with defendant and co-counsel, and they all decided against presenting it to the jury. When the court asked if defendant understood the decision to leave out the evidence, he responded, "I'm in agreement."

¶ 59 At the *Krankel* inquiry, defendant claimed that trial counsel falsely told him that his expert witness had refused to testify at his trial. Trial counsel denied the allegation and confirmed that the decision against presenting PTSD evidence was strategic. First, trial counsel explained that the State had expert witnesses who would opine that defendant was faking the condition, which might cause the jury to focus on whether defendant actually suffered from PTSD. Second, counsel concluded that the defense expert's testimony would be outweighed by the State's evidence. Third, counsel concluded that, without his expert's opinion that defendant

likely would not have been arrested without behaving under the influence of PTSD, counsel could not causally connect the stabbing with the precipitating event in 1982 involving the helicopter.

¶ 60 We conclude that the inquiry court did not err in declining to appoint counsel for a full evidentiary hearing under *Krankel* to address the decision against presenting PTSD evidence at trial. Defendant did not raise an arguable ineffective assistance claim with regard to the failure to present PTSD evidence, and the decision not to present such evidence was strategic and not the result of any type of neglect. See *People v Manning*. 241 Ill. 2d 319, 327 (2011) (counsel's strategic decisions are immune from a claim of ineffective assistance of counsel); *People v. Reid*, 179 Ill. 2d 297, 309-312 (1997) (a defense counsel's choice not to present PTSD evidence can be strategic). The ruling was not manifestly erroneous.

¶ 61 III. CONCLUSION

¶ 62 For the reasons stated, we affirm the order of the circuit court of Du Page County denying new counsel for a full evidentiary hearing under *Krankel*.

¶ 63 Affirmed.