2017 IL App (3d) 150261-U

Order filed September 27, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-15-0261
v.	)	Circuit No. 14-CF-2097
	)	
IAN K. CLARK,	)	Honorable
	)	Daniel J. Rozak,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant was not in custody such that *Miranda* warnings would be required. (2) Circuit court did not err in failing to conduct a *Krankel* inquiry into an ineffectiveness claim not explicitly made by defendant.

¶ 2 Defendant, Ian K. Clark, appeals from his conviction for possession of a controlled substance. He argues that the circuit court erred in denying his motion to quash arrest and suppress evidence. Defendant also argues that the circuit court erred in failing to appoint new counsel to pursue his posttrial claim of ineffective assistance. We affirm.

¶ 3 FACTS

¶ 4 The State charged defendant by indictment with possession of a controlled substance (720 ILCS 570/402(c) (West 2014)). The indictment alleged that defendant knowingly possessed heroin.

¶ 5 On December 31, 2014, defense counsel filed a motion to quash arrest and suppress evidence. The motion alleged that deputies in the Will County sheriff's office searched defendant's bedroom without defendant's consent, a warrant, or reasonable articulable suspicion. Prior to the hearing on the motion, defendant expressed to the court that he had some disagreement with the grounds presented in the suppression motion. He told the court that counsel had told him that "it was [alright] for the police to lie in order to get the consent." Defendant continued:

> "So I asked [counsel] if she could put in for the Fourth Amendment rights, which she refuses to hear me out, and she's trying to turn the tables, because I feel like I am being biased against because I am a recent parolee and I have a criminal background. Because I am not getting a fair trial."

After the case was briefly passed, counsel announced that she was withdrawing the suppression motion, commenting that "due to the fact that the defendant was on parole and had [a] greatly diminished expectation of privacy, I don't believe that I can ethically proceed on this motion."

¶ 6 On February 2, 2015, defense counsel filed a new motion to suppress. The motion argued that defendant's admission to the deputies regarding the location of the heroin in his home should be suppressed because (1) the admission was involuntary because defendant was under the influence of heroin, and (2) defendant was not advised of his *Miranda* rights prior to making the admission.

¶ 7 Once again, defendant addressed the court prior to his suppression hearing. Again, defendant expressed discontent with defense counsel, alleging that she had only visited him once, that she had repeatedly told defendant he was "guilty as hell," and that she had refused to bring a suppression motion based upon the police lying to defendant to obtain consent. The court informed defendant that the police were allowed to lie to him, and that any motion to suppress based on that would be unsuccessful. Defendant agreed to proceed on the pending motion to suppress.

¶ 8 Deputy Josh Christensen testified that he responded to a call of a disturbance on the evening of October 22, 2014. When Christensen arrived at the residence, he encountered defendant. Defendant explained to Christensen that he was having an argument with his father. Defendant told Christensen that his father had weapons in the house, and that defendant could not be in a house with firearms because he was on parole. Christensen understood defendant to be the person that had called 911. Christensen testified that defendant was calm when he met him, characterizing defendant as "cooperative, coherent, very well-spoken, [and] very polite."

¶ 9 Christensen was accompanied at the scene by two other deputies. While all of the deputies spoke with defendant initially, the other two deputies eventually left to speak with defendant's father. Christensen, dressed in full uniform, stood five or six feet from defendant as they spoke. Defendant told Christensen that he had "done a bump of dope" before the deputies arrived in an effort to calm himself. Despite his admission, defendant was responding appropriately to all of Christensen's questions. Christensen's initial conversation with defendant lasted between 5 and 15 minutes.

¶ 10 Christensen described what happened next:

> "We asked him where the narcotics were, and he stated they were in his bedroom. When asked if he would escort us and show us where they were, he did so. He let us into his bedroom and pointed to his dresser where he stated there was some dope on top of it underneath some papers."

Christensen found narcotics where defendant had indicated. Deputies did not search any other part of the room. Christensen testified that defendant had led deputies to his bedroom, and that none of the deputies put their hands on defendant. Christensen testified that defendant was not in custody at that time. Deputies never provided defendant with *Miranda* warnings.

¶ 11 Defendant testified that on the evening of October 22, 2014, he was attempting to confront his father about his father's controlling behavior. Prior to the confrontation, defendant had consumed an amount of heroin. When asked how heroin affected him, defendant replied: "I had not even done enough to really alter—I mean, not that I noticed, you know. Maybe to somebody else, I guess." He agreed that he was distraught and under the influence of heroin when he spoke with Christensen. Defendant was 41 years old at the time of trial and had obtained a general education diploma.

¶ 12 The circuit court denied the motion to suppress.

¶ 13 Christensen's testimony at defendant's jury trial was substantially similar to his testimony at the suppression hearing. Defendant also testified at trial. He agreed that the deputies had promised to not alert his parole officer if defendant told them where the drugs were located. The jury found defendant guilty of possession of a controlled substance.

¶ 14 The circuit court began defendant's sentencing hearing by addressing what it referred to as a "list of grievances" filed by defendant. The filing, included in the common law record, bears a heading of "This statement to be added to the court record." The filing contains a dated

list of alleged errors, beginning on the date of defendant's arrest, next to which defendant wrote "was wrongfully incarcerated w/ malicious prosecution by Will Co. [sheriff's office]."[1] Defendant also took exception to the jury instructions. Specifically, defendant lamented that the court had failed to instruct the jury that his statements were not admissible if they were made (1) pursuant to a promise of leniency or immunity, (2) while suffering mental or physical abuse, or (3) under the influence of drugs. Defendant also noted that the court "failed to tell the jury to vote their conscience and not necessarily vote according to the law which is prejudiced and in violation of my constitutional right to a fair trial."

¶ 15 In his filing, defendant also alleged that defense counsel, in discussing a posttrial motion, "refused to add the fact that judge Daniel Rozak allowed [the] State to perjure itself in denying/impeaching evidence pertaining to my innocence." He also alleged that counsel threatened him by asking " 'Do you want to represent yourself?' " Defendant also generally accused counsel of misconduct and harassment.

¶ 16 The circuit court informed defendant that his allegations relating to jury instructions were "simply wrong." The court then asked defendant what he meant by "malicious prosecution." In the diatribe that followed, defendant noted that the deputies had promised him leniency, then alleged that they had taken advantage of him in a weakened mental state, because his father had caused him great anguish most of his life. Defendant also alleged that counsel had essentially abandoned him because he had expressed displeasure with her representation. He told the court that counsel was condescending.

[1]The copy of defendant's filing on the record is cut off so that the far right portion of the page is missing. Where relevant, we have filled in the missing words based upon the circuit court's reading of the filing.

¶ 17 The court responded by telling defendant that counsel likely did not have a good defense for him, and that it had been unwise for defendant to call police to his house when he was in possession of illegal drugs. The court continued: "[Defense counsel] was only honest enough to tell you that. We went through pretrial motions. You know, she presented everything to me that she could possibly present, and I denied it all. That's not her fault. She did her job." The court sentenced defendant to a term of six years' imprisonment.

¶ 18 ANALYSIS

¶ 19 Defendant raises two issues on appeal. First, he asserts that the circuit court erred in denying his motion to quash arrest and suppress evidence because his admission to possessing heroin in his home was elicited during a custodial interrogation that had not been preceded by *Miranda* warnings. He also argues that the circuit court erred in not conducting a *Krankel* inquiry after what defendant describes as his own posttrial claims of ineffective assistance of counsel.

¶ 20 I. Motion to Suppress

¶ 21 In *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), the United States Supreme Court held that before being questioned by law enforcement officers, a person must first "be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed," as long as that person "has been taken into custody or otherwise deprived of his freedom of action in any significant way." "The finding of custody is essential, as the preinterrogation warnings required by *Miranda* are intended to assure that any inculpatory statement made by a defendant is not simply the product of ' "the compulsion inherent in custodial surroundings." ' " *People v. Slater*,

228 Ill. 2d 137, 149-50 (2008) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 661 (2004), quoting *Miranda*, 384 U.S. at 458).

¶ 22 An individual is considered to be in custody "if, under the circumstances of the questioning, 'a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave.' " *People v. Jordan*, 2011 IL App (4th) 100629, ¶ 17 (quoting *People v. Braggs*, 209 Ill. 2d 492, 506 (2003)). Courts have identified a number of factors relevant to the custody determination, including:

> "(1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused." *Slater*, 228 Ill. 2d at 150.

Whether the interrogee "had reason to believe that he or she was the focus of a criminal investigation" is also relevant. *People v. Vasquez*, 393 Ill. App. 3d 185, 190 (2009).

¶ 23 When reviewing a circuit court's ruling on a motion to suppress, findings of fact and credibility determinations are accorded great deference and will not be reversed unless they are against the manifest weight of the evidence. *Braggs*, 209 Ill. 2d at 505. However , the ultimate question posed by the legal challenge to the circuit court's ruling is reviewed *de novo*. *People v. Nicholas*, 218 Ill. 2d 104, 116 (2005).

¶ 24 Defendant contends that his interaction with the deputies became a custodial interrogation once the deputies asked where his drugs were located. Defendant emphasizes that

this question revealed that he was being questioned as a suspect in a crime, creating circumstances where a reasonable person would no longer feel free to leave. Defendant also points out that there were multiple officers on the scene, he was mentally distraught, and he was not accompanied by friends and family during the questioning. Defendant concludes that "the majority of the custody factors favor a finding of custody."

¶ 25 We reject defendant's argument and find that defendant was not subjected to a custodial interrogation, such that the *Miranda* warnings would be required. Defendant was never placed in handcuffs, told he was under arrest, or restrained in any way. There were no indicia of formal arrest procedure in the encounter between defendant and the deputies. The entire encounter lasted between 5 and 15 minutes, and occurred in the evening hours outside of the house where defendant was living. There was no transportation to the place of questioning, as defendant had actually called the police to his location. Three deputies were on the scene, and Christensen indicated that at one point the other deputies departed to question defendant's father, leaving only Christensen talking to defendant.

¶ 26 While other relevant factors do militate in favor of a finding of custody, those factors, contrary to defendant's assertion, are a minority, and do not carry as much weight. For example, while the presence of family or friends is often cited as a relevant factor, here it seems unlikely that defendant would have felt more or less free to leave if he had been surrounded by such people. He was, after all, standing in front of his own house.

¶ 27 It is also reasonable to assume that once defendant was asked where his drugs were, defendant had reason to believe that he had become the subject of a criminal investigation. However, this fact is insufficient to overcome the many factors indicating defendant was not in custody. Moreover, to hold that such a factor was dispositive would be to conflate the *Miranda*

custody analysis with the *Miranda* interrogation analysis. A person is "interrogated" for *Miranda* purposes when the police ask questions that are "reasonably likely to elicit an incriminating response from the subject." *People v. Olivera*, 164 Ill. 2d 382, 391-92 (1995). Unless more is required for custody, every instance of interrogation would necessarily be custodial.

¶ 28 We also note, in closing, that defendant informed Christensen that he was on parole before Christensen inquired as to the location of the drugs. At that point, deputies could have constitutionally searched defendant's house and bedroom. *People v. Wilson*, 228 Ill. 2d 35 (2008) (holding that reasonable suspicion was not required to search the bedroom of a person serving a period of mandatory supervised release). Thus, had there been any *Miranda* violation, it would have ultimately been harmless.

¶ 29 II. *Krankel*

¶ 30 Defendant next contends that he made a posttrial claim of ineffective assistance of counsel that warranted further inquiry by the court. Specifically, defendant argues that one item from his posttrial list of grievances should be construed as a claim that counsel was ineffective for failing to raise the issue of defendant's admission being induced by promises of leniency from Will County sheriff's deputies. Defendant asserts that this failure shows possible neglect of the case, requiring a remand for the appointment of new counsel to argue the claim.

¶ 31 When a defendant makes a *pro se* posttrial claim of ineffective assistance of counsel, the circuit court must examine the factual basis of that claim, appointing new counsel if the allegations show "possible neglect of the case." *People v. Moore*, 207 Ill. 2d 68, 78 (2003). This rule, adopted in *People v. Krankel*, 102 Ill. 2d 181 (1984), provides that the circuit court need not appoint new counsel where it determines that a defendant's claims relate to matters of trial

strategy or are otherwise without merit. *Moore*, 207 Ill. 2d at 77-78. Because claims of ineffective assistance of counsel cannot be resolved before trial, "*Krankel* is inapposite in that context." *People v. Jocko*, 239 Ill. 2d 87, 92 (2010).

¶ 32 The threshold question in the *Krankel* context is whether a defendant's posttrial statements may be construed as claims of ineffective assistance of counsel. See *People v. Taylor*, 237 Ill. 2d 68, 75-76 (2010). In *Taylor*, our supreme court held that while a claim of ineffectiveness need not be conventional, it must be an explicit complaint about the representation provided by counsel. *Id*. at 77. In that case, the defendant expressed to the circuit court in allocution that he had been unaware of the possible sentence he faced. *Id*. at 73. On appeal, the defendant argued that this comment was implicitly an argument of ineffective assistance of counsel, premised upon counsel's purported failure to inform him of his possible sentence. *Id*. at 75. In finding that this did not require a *Krankel* inquiry, our supreme court wrote:

> "[T]here is nothing in defendant's statement specifically informing the court that defendant is complaining about his attorney's performance. Indeed, defendant does not mention his attorney. In addition, because of the rambling nature of defendant's statement, it is amenable to more than one interpretation." *Id*. at 77.

¶ 33 In the present case, defendant did not make an explicit posttrial claim of ineffective assistance of counsel based upon counsel's failure to challenge his admissions on the basis that they were induced by a promise of leniency. Each of defendant's posttrial mentions of leniency, either in his written list of grievances or in his oral comments to the court, were framed as complaints against the Will County sheriff's office or against the court.

¶ 34 Defendant claims on appeal, however, that when his mention of the deputies' promise of leniency are considered in proper context, "the [circuit] court should have known [defendant] was raising [an ineffectiveness] claim." Defendant continues:

> "It is common sense that if [defendant] is complaining that his statements to the deputies were involuntary and inadmissible and that he was made a promise of leniency, and if the admissibility of his statements are to be challenged by pretrial motion, but no pretrial motion to challenge the admissibility of his statements on the basis of a promise of leniency was ever filed, then there may be an issue of ineffective assistance of trial counsel, particularly when [defendant] is claiming that counsel was ineffective for a variety of reasons. *** By using common sense, the trial court should have known that Clark was renewing his claim that trial counsel was ineffective by not raising the promise-of-leniency issue in a motion to suppress."

¶ 35 We reject this argument based upon the holding *Taylor*. In that case, where the defendant stated that he was unaware of the sentence he faced, it could be argued that the circuit court, in defendant's words, "should have known" that the defendant was making an ineffectiveness claim. Perhaps such a conclusion could be considered "common sense." However, the *Taylor* court held the claim of ineffective assistance of counsel must be explicit in order to trigger a *Krankel* inquiry. *Id.* at 77. Accordingly, the circuit court in the present case was not obliged to divine defendant's actual intent.

¶ 36 Defendant next argues that his ineffectiveness argument relating to the purported promise of leniency was first made, explicitly, at pretrial hearings in which defendant told the court that counsel had refused to file a suppression motion on that ground. Defendant thus contends that

those pretrial claims should have triggered a posttrial *Krankel* inquiry. In support, defendant cites to *Jocko*, in which our supreme court stated:

> "Generally a *pro se* defendant is not obligated to renew claims of ineffective assistance once they are made known to the circuit court [citation], and there is, of course, nothing to prevent a circuit court from addressing, at the conclusion of trial, a *pro se* claim of ineffective assistance that was previously raised by the defendant." *Jocko*, 239 Ill. 2d at 93.

¶ 37 The language quoted by defendant, wherein our supreme court states that there is "nothing to prevent" the circuit court from hearing a defendant's previous claims after trial, cannot be read as creating a requirement that the circuit court do so. Indeed, the *Jocko* court held that *Krankel* is "inapposite" in the context of pretrial claims of ineffectiveness. *Id.* at 92. Defendant has cited no case law that would support the position that the circuit court must *sua sponte* recall arguments that defendant made, in some cases, months or years prior.

¶ 38 Finally, defendant argues that, in his posttrial list of grievances, he did "complain[] about counsel's performance." Indeed, defendant's letter did contain specific complaints about defense counsel. He asserted that counsel "refused to add the fact that judge Daniel Rozak allowed [the] State to perjure itself in denying/impeaching evidence pertaining to my innocence." He also alleged that counsel threatened him by asking " 'Do you want to represent yourself?' " Defendant also generally accused counsel of misconduct and harassment. He also found her condescending. On appeal, defendant contends that "[t]his was all that was needed to require a preliminary *Krankel* inquiry."

¶ 39 Initially, we note that the circuit court did directly address defendant's stated concerns with counsel's performance. In summary, the court told defendant that counsel had done all that

she could for him. See *supra* ¶ 17. By considering defendant's concerns and finding them without merit, the court satisfied the *Krankel* requirement with respect to those specific claims. See *Moore*, 207 Ill. 2d at 78. More importantly, defendant on appeal has raised only one issue which he argues requires a *Krankel* inquiry: counsel's failure to challenge his admission on promise-of-leniency grounds. This argument was *not* explicitly made before the circuit court, and therefore did not require a *Krankel* inquiry. *Taylor*, 237 Ill. 2d at 77.

¶ 40 In closing, we point out that defendant's only ineffectiveness-related argument on appeal has been couched solely in *Krankel* terms. He only argues that the matter should be remanded for such an inquiry. He does not argue before this court that defense counsel was ineffective. Accordingly, we need not consider the merits of such a claim.

¶ 41 CONCLUSION

¶ 42 The judgment of the circuit court of Will County is affirmed.

¶ 43 Affirmed.