

**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).

**FILED**

May 23, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 150121-U

NO. 4-15-0121

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
KENNETH A. GUISE,	)	No. 14CF63
Defendant-Appellant.	)	
	)	Honorable
	)	Timothy J. Steadman,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.  
Justices Harris and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's *pro se* motion of appeal was not a posttrial motion subject to inquiry under *Krankel*.

¶ 2 In October 2014, a jury found defendant, Kenneth A. Guise, guilty of being an armed habitual criminal. In December 2014, the trial court sentenced him to 11 years in prison.

¶ 3 On appeal, defendant argues the trial court erred by failing to inquire into his *pro se* posttrial claims of ineffective assistance of trial counsel as required by *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). We affirm.

¶ 4 I. BACKGROUND

¶ 5 In January 2014, the State charged defendant by information with a single count of being an armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2014)). The State alleged defendant knowingly possessed a firearm on or about January 13, 2014, after having been

convicted of robbery and unlawful possession of a controlled substance with the intent to deliver. Defendant pleaded not guilty.

¶ 6 The matter proceeded to a jury trial on October 28, 2014. We summarize the evidence presented only to provide context for defendant's claims.

¶ 7 On January 13, 2014, multiple police officers were dispatched to the area of Edward and Division Streets in Decatur in response to two 9-1-1 calls reporting a disturbance involving a gun. The second caller reported seeing a black male with "dreads" and wearing a white T-shirt holding a gun. Police officers observed defendant, an individual fitting the description given by the caller, leaving the area "at a quickened pace." Following a search of the neighborhood, police officers found defendant hiding behind a porch railing. While retracing defendant's path through the neighborhood, police officers searched an old, dilapidated garage finding a handgun hidden in an old tire. Decatur police officer Warren Hale testified he interviewed defendant at the police station. The recording of the interview was published to the jury. During the interview, defendant admitted the handgun was his and he hid it in a tire in the garage. The parties stipulated to defendant's "two qualifying felonies under the law for armed habitual criminal." Following closing arguments, the jury found defendant guilty of being an armed habitual criminal. On December 19, 2014, the trial court sentenced defendant to 11 years in prison.

¶ 8 On December 24, 2014, defendant *pro se* filed a "Motion of Appeal," in which he alleged (1) defense counsel did not have an adequate opportunity to cross-examine a witness at defendant's preliminary hearing, (2) fingerprint and deoxyribonucleic acid evidence found on the gun attributed to defendant was inconclusive, (3) another inmate told defense counsel he owned the gun, (4) the jury did not view the entire interrogation video, (5) law enforcement coerced

defendant into stating he owned the gun, (6) he was denied his constitutional right to face his accuser, *i.e.*, "the person whom called 911 and stated he seen [defendant] with a gun," and (7) he was provided ineffective assistance of counsel where counsel (a) "did not comply with [his] wishes in the matter in which he proceeded," (b) did not return defendant's phone calls, and (c) did not advise the trial court another inmate hid the gun on January 13, 2014. Defendant signed the motion on December 21, 2014. On December 22, 2014, defense counsel filed a "motion for appellate defender," requesting the court appoint the "Appellate Public Defenders project to handle the appeal." In a docket entry dated December 29, 2014, the court acknowledged defendant filed a timely notice of appeal "labeled Motion of Appeal" and appointed the office of the State Appellate Defender (OSAD) to represent defendant.

¶ 9 On January 15, 2015, defense counsel filed a motion to reduce defendant's sentence, arguing defendant's sentence was excessive. On January 20, 2015, the trial court entered an order striking defendant's notice of appeal filed on December 24, 2014, as defendant "filed a *pro se* motion for reduction of sentence [and it] is still pending." Following a hearing on February 6, 2015, the court denied defendant's motion to reduce his sentence. Upon inquiry by the court, defense counsel confirmed defendant was "requesting another notice of appeal." The court directed a notice of appeal to be filed on behalf of defendant and again appointed OSAD to represent defendant on appeal.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues the trial court erred when it failed to make any inquiry into his *pro se* allegations of ineffective assistance of counsel. Defendant asks this court to remand the case for the requisite inquiry.

¶ 13 "The common law procedure developed in *Krankel* and subsequent cases is intended to promote consideration of *pro se* ineffective assistance claims in the trial court and to limit issues on appeal." *People v. Patrick*, 2011 IL 111666, ¶ 41, 960 N.E.2d 1114. "[W]hen a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim." *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637 (2003). "[I]f the allegations show possible neglect of the case, new counsel should be appointed" to independently investigate and represent the defendant at a separate hearing. *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 637. New counsel and a hearing are not required, however, in each case a defendant presents a *pro se* posttrial motion claiming ineffective assistance of counsel. *Moore*, 207 Ill. 2d at 77, 797 N.E.2d at 637. When the trial court finds a claim "lacks merit or pertains only to matters of trial strategy," the appointment of new counsel is unnecessary and the defendant's claim may be denied. *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 637. Whether the trial court should have conducted a *Krankel* inquiry presents a legal question subject to *de novo* review. *People v. Jolly*, 2014 IL 117142, ¶ 28, 25 N.E.3d 1127.

¶ 14 The record shows defendant filed a *pro se* "motion of appeal" on December 24, 2014, and not a posttrial motion claiming ineffective assistance of counsel. In his "motion of appeal," defendant identified multiple issues aside from those concerning counsel. The trial court struck defendant's first notice of appeal because defense counsel filed a motion to reduce defendant's sentence. See Illinois Supreme Court Rule 606(b) (eff. Dec. 11, 2014) ("When a timely posttrial or postsentencing motion directed against the judgment has been filed by counsel or by defendant, if not represented by counsel, any notice of appeal filed before the entry of the order disposing of all pending postjudgment motions shall have no effect and shall be stricken by the trial court."). However, immediately after the court denied defendant's motion to reduce his

sentence, defense counsel confirmed defendant was "requesting another notice of appeal" and had "the renewed motion" ready to file. The "renewed motion" filed by defendant's counsel was for the appointment of "the Appellate Defender" to represent defendant on appeal. The court directed a notice of appeal to be filed on behalf of defendant and appointed OSAD to represent him. Nothing in the record suggests defendant intended his renewed motion to be construed as anything other than a notice of appeal. Defendant clearly labeled the document as an appeal and requested the court appoint an appellate defender to represent him "in his appeal." We conclude the trial court properly treated the document as a notice of appeal and not a posttrial motion subject to inquiry under *Krankel*.

¶ 15

### III. CONCLUSION

¶ 16 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 17 Affirmed.