2017 IL App (4th) 150590-U

NO. 4-15-0590

FILED
December 4, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
DUSTIN LAWSON,	)	No. 14CF602
Defendant-Appellant.	)	
	)	Honorable
	)	Nancy S. Fahey,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court remanded for the trial court to conduct an inquiry into defendant's *pro se* posttrial claims of ineffective assistance of counsel.

¶ 2 In December 2014, the State charged defendant, Dustin Lawson, with one count of armed robbery (720 ILCS 5/18-2(a)(1) (West 2014)) and one count of attempt (armed robbery) (720 ILCS 5/8-4(a), 18-2 (West 2014)), alleging that he displayed a knife to a clerk at a Walgreens store and took cigarettes and a lighter. After an April 2015 trial, a jury found him guilty of both counts.

¶ 3 Prior to sentencing, defendant *pro se* mailed the trial court a letter alleging that trial counsel failed to present certain evidence attacking the credibility of the Walgreens clerk. At the May 2015 sentencing hearing, defendant reiterated his complaint about counsel. The court did not inquire further about defendant's complaints and sentenced defendant to 15 years in prison.

¶ 4 Defendant appeals, arguing that (1) the trial court failed to conduct an inquiry into his *pro se* claims of ineffective assistance of counsel; (2) the court erred by admitting testimony about a missing surveillance video and by refusing defendant's proposed jury instructions regarding that video; (3) the State committed misconduct during its closing argument; and (4) certain fines imposed by the circuit clerk must be vacated.

¶ 5 We agree that this case must be remanded for a hearing on defendant's *pro se* claims of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984).

¶ 6 I. BACKGROUND

¶ 7 In December 2014, the State charged defendant with one count of armed robbery and one count of attempt (armed robbery), alleging that he took cigarettes and a lighter from a clerk at a Walgreens store by the threat of force with a dangerous weapon.

¶ 8 Prior to trial, defendant argued that the State had failed to tender in discovery a video-recording that allegedly showed defendant holding a knife and approaching a Walgreens clerk who was operating the cash register. The State acknowledged that police officers had viewed the described video at Walgreens the day of the incident. However, Walgreens later turned over video of a different camera angle to police, showing the entrance of Walgreens, and claiming to no longer have the video showing the interaction at the cash register. The trial court determined that the State could introduce the video of the Walgreens entrance but that neither party could introduce evidence about the existence of other cameras or what video from those other cameras might have shown.

¶ 9 On the day of trial, the State disclosed photographs that police had turned over to prosecutors that day. The photographs were taken by police as they watched surveillance videos

at Walgreens. One photograph showed a person matching defendant's description standing at the cash register. The trial court ruled that the State could introduce the photographs but could not testify to what the rest of the video of the cash register showed.

¶ 10 At trial, Danville police officer, Patrick Bostwick, testified, over defendant's objection, to the contents of the cash-register video. The Walgreens clerk, Leroy Harmon, also testified to the contents of the cash-register video over defendant's objection. In addition, Harmon testified that defendant approached the counter to buy cigarettes and a lighter. After Harmon rang up those items, defendant displayed a knife and ordered Harmon to give him the money in the cash register. Harmon was unable to open the cash register and ran from defendant. Harmon testified that defendant initially pursued Harmon before running out of the store with the cigarettes and lighter. Harmon also testified that he did not know defendant and had never seen him before.

¶ 11 During the jury-instructions conference, defendant proposed two instructions not included in the Illinois Pattern Jury Instructions, Criminal. Those instructions would have allowed the jury to infer that the missing cash-register video was adverse to the State. The trial court rejected those instructions.

¶ 12 The jury found defendant guilty on both counts.

¶ 13 Prior to the sentencing hearing, defendant *pro se* mailed a letter to the trial court. In it, he argued that Harmon lied when he stated that he did not know defendant. Defendant claimed that Harmon's brother-in-law, Craig Sullivan, had introduced them in October 2014 and that they had spoken "many" times since. Defendant further claimed that he informed trial counsel before trial that he knew Harmon. According to defendant's letter, his counsel replied that it was counsel's decision whether to present evidence and that he chose not to present evidence

that Harmon knew defendant.

¶ 14 At the May 2015 sentencing hearing, defendant told the trial court that trial counsel advised him, "[S]ometimes you must plead guilty to things you don't do." Defendant then reiterated his claim that Harmon had lied about not knowing defendant. Defendant added that he made "the biggest mistake of my life" by not testifying on his own behalf.

¶ 15 The trial court responded that it was bound by the jury's verdict. The court did not inquire further about defendant's claims concerning Harmon's testimony. The court sentenced defendant to 15 years in prison.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Defendant raises the following issues on appeal: (1) the trial court failed to conduct a *Krankel* inquiry into defendant's *pro se* claims of ineffective assistance of counsel; (2) the court erred by admitting testimony about the missing surveillance video and by refusing defendant's proposed jury instructions regarding that video; (3) the State committed misconduct during its closing argument; and (4) certain fines imposed by the circuit clerk must be vacated. We agree that this case must be remanded for a *Krankel* hearing.

¶ 19 A. *Krankel* Hearing

¶ 20 Pursuant to *Krankel* and its progeny, when a defendant raises a *pro se* posttrial claim of ineffective assistance of counsel, the following procedure should be followed to determine whether new counsel should be appointed:

> " '[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. If the trial court determines

> that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. However, if the allegations show possible neglect of the case, new counsel should be appointed.' " *People v. Jolly*, 2014 IL 117142, ¶ 29, 25 N.E.3d 1127 (quoting *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637 (2003)).

To determine whether counsel should be appointed, "some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary." *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 638. As part of that interchange, the trial court may question defense counsel and the defendant about the facts and circumstances surrounding the defendant's allegations. *Id.*

¶ 21 In this case, the State concedes that the trial court should have conducted a *Krankel* hearing into defendant's claims that counsel failed to present evidence about the credibility of Harmon's testimony. The State agrees with defendant that this case must therefore be remanded for a *Krankel* hearing. We accept the State's concession.

¶ 22 B. Fines Imposed by Circuit Clerk

¶ 23 Defendant argues that the following fines must be vacated because they were imposed by the circuit clerk: (1) $50 "Court" fine; (2) $2 "Anti-Crime Fund" fine; (3) $20 "Violent Crime" fine; (4) $4 "Youth Diversion" fine; (5) $.20 "Clerk Op Deduction"; (6) $3.80 "Drug Court" fine; (7) $15 "State Police Ops" fine; and (8) $2 "SA Automation Fee."

¶ 24 The State concedes that all of the contested assessments *except for the "SA Automation Fee"* must be vacated. The State argues that the State's Attorney automation fee is truly a fee, which may be imposed by the circuit clerk.

¶ 25 Circuit clerks have the authority to impose a fee but lack authority to impose a fine, which is solely a judicial act. *People v. Daily*, 2016 IL App (4th) 150588, ¶ 28. Any fines imposed by the circuit clerk are void. *Id.*

¶ 26 We accept the State's concession that the following assessments constitute fines: (1) $50 "Court" fine; (2) $2 "Anti-Crime Fund" fine; (3) $20 "Violent Crime" fine; (4) $4 "Youth Diversion" fine; (5) $.20 "Clerk Op Deduction"; (6) $3.80 "Drug Court" fine; and (7) $15 "State Police Ops" fine. The clerk therefore lacked authority to impose those assessments. We agree with the State that the State's Attorney automation fee (55 ILCS 5/4-2002(a) (West 2016)) is indeed a fee. See *Daily*, 2016 IL App (4th) 150588, ¶ 31, 74 N.E.3d 15. Therefore, the circuit clerk had authority to impose it.

¶ 27 If, on remand, the trial court ultimately denies defendant's posttrial claims of ineffective assistance of counsel, then we direct the court to vacate the following fines: (1) $50 "Court" fine; (2) $2 "Anti-Crime Fund" fine; (3) $20 "Violent Crime" fine; (4) $4 "Youth Diversion" fine; (5) $.20 "Clerk Op Deduction"; (6) $3.80 "Drug Court" fine; and (7) $15 "State Police Ops" fine. After vacating those fines, the court shall not then impose them again. *Daily*, 2016 IL App (4th) 150588, ¶ 30, 74 N.E.3d 15.

¶ 28 III. CONCLUSION

¶ 29 Given our decision to remand for a *Krankel* hearing, we decline to address defendant's other claims on appeal. Depending on the result of the *Krankel* hearing, those other issues may become moot.

¶ 30 For the foregoing reasons, we remand this case for a *Krankel* hearing.

¶ 31 Remanded with directions.