FILED
July 24, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160296-U

NO. 4-16-0296

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
STEVEN BERRY,	)	No. 14CF1275
Defendant-Appellant.	)	
	)	Honorable
	)	Scott D. Drazewski,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Holder White and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court remanded the cause with directions for the trial court to conduct an examination under *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984).

¶ 2 In March 2015, defendant, Steven Berry, pleaded guilty to one count of aggravated identity theft. In April 2015, the trial court sentenced him to 12 years in prison.

¶ 3 On appeal, defendant argues the trial court failed to conduct an inquiry into his claim of ineffective assistance of counsel. We remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In November 2014, a grand jury indicted defendant on one count of aggravated identity theft (720 ILCS 5/16-30(b)(1) (West 2014)), alleging he, or one for whose conduct he was legally responsible, "knowingly used a personal identification document of Betty Phillips, a PNC credit card, to fraudulently obtain over $300 in goods in the name of Betty Phillips, a

person 60 years of age or older." Defendant had been previously convicted of the offense of aggravated identity theft in Cook County.

¶ 6 In March 2015, defendant agreed to plead guilty to the charge of aggravated identity theft, and the State agreed to drop three charges in another pending case for aggravated identity theft, aggravated identity theft (subsequent offense), and burglary. The trial court admonished defendant the aggravated identity theft charge was a Class X felony with a sentencing range of 6 to 30 years in prison. The court found defendant knowingly entered his guilty plea.

¶ 7 In April 2015, the trial court sentenced defendant to 12 years in prison. Defendant filed a motion to reconsider his sentence, which the trial court denied. Defendant appealed, and this court remanded the case on the ground defense counsel failed to file a certificate in compliance with Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014). *People v. Berry*, No. 4-15-0560 (March 15, 2016) (unpublished summary order under Supreme Court Rule 23(c)(2)).

¶ 8 On remand, defense counsel set a status hearing for April 25, 2016. At the status hearing, defense counsel advised the trial court of defendant's desire "to ask for a sentence reduction." Defense counsel also stated defendant had "made a few comments to me that may kind of mix the issues." Although defense counsel did not sense a problem with his representation of defendant at his guilty plea hearing, he invited the court "to have any *Krankel* inquiries right now to see if that's going to be a thing."

¶ 9 The trial court did not inquire but advised defendant he could move to withdraw his guilty plea and also move to reconsider his sentence. In response, defendant assured the court he "never told [his] attorney about filing a motion for withdrawing my—filing a motion for

withdraw of the sentence. I never mentioned that to him. I mentioned to him about a hearing and that's it. I never mentioned to him about withdrawing my guilty plea. I never said that in the back room, I never told him nothing about withdrawing no guilty plea. I never mentioned that to him in the back."

¶ 10 Defendant next expressed his desire "to get a fair hearing within this case," explaining:

> "I'm charged with identity theft, and I was just a driver. I've been charged of accountability, where's the people that I'm accountable for? The only reason why I didn't go to trial was because my attorney, the day before trial, says we going to trial. I'm not going to trial with a person I don't even—he never even came and talked to me. One time, he came and talked to me. How am I going to trial about a—a jury trial at that, and he never talked to me about nothing? That's what I'm here, for poor service."

¶ 11 The trial court reminded defendant he could not proceed with a motion for a new trial because there had been no trial. The court told defendant he could move to withdraw his guilty plea and move to reconsider his sentence. Defendant stated, "he never came and explained to me what the repercussion behind if I withdraw my plea. He never came and explained to me about that—." The court then provided defendant a detailed explanation regarding his filing of a motion to withdraw his guilty plea and the various implications for defendant.

¶ 12 Following a conversation with defense counsel, defendant stated he "would just like the motion for reconsideration" and the opportunity to appeal, "because I'm dealing with a person who don't—I'm just, like, by myself. That's why I'm here today."

¶ 13 The trial court again reviewed with defendant the possible consequences of filing a motion to withdraw his guilty plea and a motion to reconsider his sentence. Defendant requested an opportunity to speak with defense counsel, and following a brief recess, he confirmed his desire to proceed with a motion to reconsider his sentence.

¶ 14 Defense counsel filed a Rule 604(d) certificate, and after a hearing, the trial court denied defendant's motion to reconsider his sentence.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Defendant argues the trial court erred in failing to conduct an inquiry into his claim of ineffective assistance of counsel as required by *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). We agree.

¶ 18 A *Krankel* inquiry is triggered "when a defendant raises a *pro se* posttrial claim of ineffective assistance of trial counsel." *People v. Jolly*, 2014 IL 117142, ¶ 29, 25 N.E.3d 1127. Under *Krankel*, when a defendant raises such a claim, the trial court employs the following procedure to determine whether new counsel should be appointed. First, the court examines the factual basis of the defendant's claim. *Jolly*, 2014 IL 117142, ¶ 29, 25 N.E.3d 1127. If the court determines the claim lacks merit or pertains only to matters of trial strategy, then the court does not need to appoint new counsel and may deny the *pro se* motion. *Jolly*, 2014 IL 117142, ¶ 29, 25 N.E.3d 1127. However, if the allegations show possible neglect of the case, the court should appoint new counsel. *Jolly*, 2014 IL 117142, ¶ 29, 25 N.E.3d 1127. In examining the factual basis, the trial court may (1) ask defense counsel to "answer questions and explain the facts and circumstances" relating to the claim; (2) briefly discuss the claim with the defendant; or (3) evaluate the claim based on "its knowledge of defense counsel's performance at trial," as well as

"the insufficiency of the defendant's allegations on their face." *People v. Moore*, 207 Ill. 2d 68, 78-79, 797 N.E.2d 631, 638 (2003). Whether the trial court properly conducted a preliminary *Krankel* inquiry presents a legal question, which we review *de novo*. *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 72, 35 N.E.3d 1095.

¶ 19 Recently, in *People v Ayres*, 2017 IL 120071, our supreme court considered whether the defendant's bare allegation of "ineffective assistance of counsel" contained in a posttrial motion to withdraw his guilty plea and vacate his sentence triggered the trial court's duty to conduct a preliminary *Krankel* inquiry, even though the allegation lacked any explanation or supporting facts. The court concluded a defendant's "clear claim asserting ineffective assistance of counsel, either orally or in writing, *** is sufficient to trigger the trial court's duty to conduct a *Krankel* inquiry." *Ayres*, 2017 IL 120071.

¶ 20 In the instant case, during a status hearing following remand for strict compliance with Rule 604(d), defendant stated he was present at the hearing "for poor service." Defendant claimed he did not go to trial because defense counsel "never even came and talked to me. One time, he came and talked to me." Defendant also stated he was "trying to get a fair hearing within this case." In response to defendant's claim of "poor service," the trial court admonished defendant as follows: "That's why you think you're here. You're here for one or two reasons ***. *** You can either move to withdraw your guilty plea, and/or move to have the Court reconsider the sentence ***." The court reminded defendant, "there's no motion for [a] new trial."

¶ 21 During the same hearing, defense counsel advised the trial court defendant had "made a few comments" to him "that may kind of mix the issues." Defense counsel invited the court "to have any *Krankel* inquiries right now to see if that's going to be a thing." The court did

not question defendant or defense counsel to ascertain the factual basis underlying defendant's claims, ignoring defendant's attempt to raise an ineffective-assistance-of-counsel issue and advising defendant, "you can't have your cake and eat it, too." Thus, the court failed to conduct an adequate inquiry under *Krankel* and its progeny.

¶ 22 Because the trial court failed to conduct the necessary preliminary examination as to the factual basis of defendant's ineffective-assistance-of-counsel claim, the cause must be remanded "for the limited purpose of allowing the trial court to conduct the required preliminary investigation." *Moore*, 207 Ill. 2d at 81, 797 N.E.2d at 640. "If the court determines the allegations show possible neglect of the case, the court should appoint new counsel to represent defendant in a hearing regarding his ineffective-assistance-of-counsel claim." *People v. Raney*, 2014 IL App (4th) 130551, ¶ 56, 8 N.E.3d 633. If, however, the court determines the defendant's claims are spurious or involve matters of trial strategy, "the court may then deny the motion and leave standing defendant's convictions and sentences." *Moore*, 207 Ill. 2d at 81, 797 N.E.2d at 640.

¶ 23 In light of our conclusion, we need not address the State's alternative argument of abandonment.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we remand the cause with directions to conduct an initial *Krankel* inquiry.

¶ 26 Remanded with directions.