2017 IL App (4th) 160574-U

NO. 4-16-0574

FILED
June 7, 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.	)	Champaign County
BOBBY T. THOMAS,	)	No. 11CF1968
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding remand was not required based on defendant's allegations of ineffective assistance of counsel.

¶ 2 In January 2013, defendant, Bobby T. Thomas, pleaded guilty to unlawful possession of a controlled substance. In May 2013, the trial court sentenced him to nine years in prison. In January 2014, the court denied defendant's postplea motion, and defendant appealed. In July 2014, this court remanded the case for a corrected certificate under Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). In January 2015, counsel filed a third amended motion to withdraw defendant's guilty plea, which the trial court denied. On appeal, this court remanded the case again for a proper Rule 604(d) certificate. In July 2016, the trial court denied defendant's motion to withdraw his guilty plea.

¶ 3 On appeal, defendant argues his case should be remanded for further proceedings

because his allegations of ineffective assistance of counsel were sufficient to trigger a factual inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). We affirm.

¶ 4 I. BACKGROUND

¶ 5 In December 2011, the State charged defendant by information with one count of being an armed habitual criminal (count I) (720 ILCS 5/24-1.7(a)(3) (West 2010)) and one count of unlawful possession with intent to deliver a controlled substance (count II) (720 ILCS 570/401(a)(2)(A) (West 2010)).

¶ 6 In February 2012, attorney LeRoy Cross entered an appearance on defendant's behalf. Counsel also filed motions to suppress evidence in February and October 2012. In November 2012, the State charged defendant by information with one count of unlawful possession with intent to deliver a controlled substance (count III) (720 ILCS 570/401(c)(2) (West 2010)). In January 2013, the State charged defendant by information with one count of unlawful possession of a controlled substance (count IV) (720 ILCS 570/402(a)(2)(A) (West 2010)).

¶ 7 Also in January 2013, defendant pleaded guilty to count IV. In exchange for his plea, the State agreed to (1) cap its sentence recommendation at 10 years in prison; (2) the dismissal of counts I, II, and III; (3) the dismissal of Champaign County case No. 12-CF-1546; and (4) the imposition of a $1,500 street-value fine. The trial court accepted defendant's guilty plea. In May 2013, the court sentenced defendant to nine years in prison.

¶ 8 In June 2013, defense counsel filed a motion to reconsider the sentence. According to the docket sheets, defendant filed numerous *pro se* postplea motions, including a motion to withdraw his guilty plea. In September 2013, appointed counsel, Janie Miller-Jones, filed an amended motion to withdraw defendant's guilty plea. The amended motion alleged

defendant (1) received ineffective assistance of counsel because he did not understand the terms of the plea agreement and (2) felt pressured to plead guilty to received a negotiated plea in a pending Madison County case. In October 2013, counsel filed a certificate under Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). In November 2013, Miller-Jones withdrew as counsel, and Alfred Ivy III entered an appearance on defendant's behalf. In January 2014, the trial court denied defendant's motion to withdraw his guilty plea.

¶ 9 Defendant appealed. In July 2014, this court remanded the case for a corrected Rule 604(d) certificate that tracked the language of the rule and for the filing of a new postplea motion, if counsel concluded one was necessary. *People v. Thomas*, No. 4-14-0087 (July 18, 2014) (agreed summary order on defendant's motion remanding with directions).

¶ 10 On remand, Ivy filed a second amended motion to withdraw defendant's guilty plea, and defendant filed a *pro se* motion to withdraw his guilty plea. In October 2014, the trial court granted Ivy's motion to withdraw as counsel. In December 2014, Miller-Jones filed a third amended motion to withdraw defendant's guilty plea. The motion alleged defendant (1) received ineffective assistance of counsel when he was incorrectly told he would be eligible for service credit and (2) felt pressured to plead guilty to receive a negotiated plea in his Madison County case. In January 2015, Miller-Jones filed a Rule 604(d) certificate. The court denied defendant's third amended motion to withdraw his guilty plea.

¶ 11 Defendant appealed, arguing his case should be remanded again for a proper Rule 604(d) certificate. This court reversed the trial court's judgment and remanded for further proceedings in strict compliance with Rule 604(d). *People v. Thomas*, No. 4-15-0039 (Mar. 24, 2016) (unpublished summary order under Illinois Supreme Court Rules 23(c)(2), (c)(4)).

¶ 12 On remand in May 2016, the trial court appointed attorney Edwin Piraino to

represent defendant and directed him to file a Rule 604(d) certificate. On July 21, 2016, defendant filed a *pro se* "Informational Filing," claiming Piraino was ineffective because he refused to amend defendant's motion to withdraw his guilty plea. Defendant also alleged he had witnesses he wanted to call at the hearing on the motion to withdraw his guilty plea.

¶ 13 On July 29, 2016, a letter from defendant was filed, wherein he stated he wanted to add issues to his motion to withdraw his guilty plea. On the same date, the trial court conducted a hearing based on our remandment. The court asked Piraino if he wished to file an amended pleading, and Piraino stated:

> "Your Honor, I have reviewed ad nauseum, through four different lawyers, the court file, all of the transcripts, the letters that I've received from my client, the Third Amended Motion to Withdraw the Guilty Plea which was filed by Ms. Jones. There is absolutely nothing that I would add to that motion, or that I could add to that motion. I find nothing else that is there that is not considered trial strategy to add to that motion, and so I will stand on that motion. My client did write me a letter that had a couple of issues in it that I would like orally to present to the court, if the court would consider them in its ruling."

The court discussed Piraino's Rule 604(d) certificate and called for a recess to print a new one. At that point, defendant stated: "Objection, your Honor. May I speak?" The court stated he could not and told him he could talk to his attorney.

¶ 14 After a recess, the trial court asked Piraino about what defendant wanted to say. Piraino stated defendant wanted to object to the filing of the Rule 604(d) certificate. The court

noted the certificate was required and done "to protect your interests." The court then allowed Piraino to orally amend the motion to withdraw defendant's guilty plea to include defendant's claim that he should have never been allowed to plead guilty because the evidence against him was illegally seized. Piraino argued, in part, as follows:

> "I just gave you his letter, simply because he wanted those two matters brought up. I did explain to him, when I talked to him in regards to trial strategy, things that weren't brought up before. I gave him my opinion as to what those items were, those were rulings by the court, in addition to strategy by counsel. But to protect his rights so that we couldn't go up further, that was never—those items were never brought up, I bring that to your attention simply because that's his wish. He has been advised of those two things, in my opinion only."

The court denied defendant's motion to withdraw his guilty plea. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Defendant argues this court should remand the case for further proceedings because his allegations that his attorney was ineffective were sufficient to trigger a factual inquiry pursuant to *Krankel*. We disagree.

¶ 17 When confronted with a defendant's posttrial allegations of ineffective assistance of counsel, our supreme court set out the procedural steps to follow in *People v. Moore*, 207 Ill. 2d 68, 797 N.E.2d 631 (2003) (noting the rule that had developed since *Krankel*).

> "New counsel is not automatically required in every case in which a defendant presents a *pro se* posttrial motion alleging ineffective

> assistance of counsel. Rather, when 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." *Moore*, 207 Ill. 2d at 77-78, 797 N.E.2d at 637.

¶ 18 "The purpose of the preliminary inquiry is to ascertain the underlying factual basis for the ineffective assistance claim and to afford a defendant an opportunity to explain and support his claim." *People v. Ayres*, 2017 IL 120071, ¶ 24. A court can conduct an inquiry into allegations counsel was ineffective by doing one or more of the following: "(1) questioning the trial counsel, (2) questioning the defendant, and (3) relying on its own knowledge of the trial counsel's performance in the trial." *People v. Peacock*, 359 Ill. App. 3d 326, 339, 833 N.E.2d 396, 407 (2005). 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, ¶ 18. "The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 638.

¶ 19 In the case *sub judice*, defendant filed a document titled "Informational Filing," wherein he stated he had asked Piraino to amend the motion to withdraw his guilty plea but Piraino refused. Defendant claimed Piraino's refusal to amend the motion amounted to ineffective assistance of counsel. Defendant also filed a letter, stating he had "a couple of

issues" he wanted to add to his motion to withdraw his guilty plea. Those issues included the claim the State used illegal evidence at his sentencing hearing and defendant's belief the police had no probable cause to obtain search warrants.

¶ 20 At the hearing, Piraino told the trial court he had reviewed the court file, the transcripts, defendant's letters, and the amended motion to withdraw his guilty plea, and he found nothing to add to the motion. Piraino also filed a Rule 604(d) certificate. Piraino mentioned defendant's letter "that had a couple of issues in it" and presented it to the court as an addition to the amended motion.

¶ 21 We find the trial court conducted an adequate inquiry under *Krankel* and its progeny. In his "Informational Filing," defendant claimed counsel was ineffective for refusing to amend his motion to withdraw his guilty plea. Piraino discussed this issue with the court and even provided defendant's letter, which set forth the issues defendant wanted raised. The court noted defendant had been "allowed to supplement the motion with further concerns" but ultimately denied the motion to withdraw the guilty plea. Given the interaction between the court and counsel, along with the court's knowledge of the history of the case, we find the court adequately considered defendant's claim that counsel was ineffective for refusing to amend the motion to withdraw his guilty plea.

¶ 22 III. CONCLUSION

¶ 23 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.

¶ 24 Affirmed.