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2018 IL App (3d) 160155-U

Order filed November 29, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 13th Judicial Circuit, La Salle County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-16-0155 Circuit No. 15-CF-370
ROBIN R. BARTLETT,)	Honorable H. Chris Ryan Jr., Judge, Presiding.
Defendant-Appellant.)	

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

ORDER

¶ 1 *Held:* Defendant received an adequate preliminary inquiry into her *pro se* allegations of ineffective assistance of counsel. A second preliminary inquiry into defendant's *pro se* allegations of ineffective assistance of counsel was unnecessary because defendant had new independent counsel represent her during the postplea proceedings.

¶ 2 Defendant, Robin R. Bartlett, appeals her conviction and sentence. She contends that the trial court failed to conduct a preliminary inquiry into her allegations of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). We affirm.

FACTS

¶ 3

¶ 4 The State charged defendant with aggravated driving under the influence of alcohol (625 ILCS 5/11-501(d)(1)(I) (West 2014)). On September 22, 2015, Public Defender Douglas Kramarsic entered an appearance. On September 24, 2015, Public Defender Anthony Cappellini was present with defendant in court and received a copy of the two-count complaint. However, attorney Kramarsic represented defendant during the preplea proceedings, the guilty plea hearing, and the sentencing hearing.

¶ 5 During the course of the proceedings, defendant wrote several letters to the court complaining about the quality of representation she was receiving from the public defender's office. Defendant's first letter asserted the public defender's office was prejudiced against her. Defendant sought to fire Kramarsic and asked the court to appoint an attorney who was not employed by the public defender's office. Defendant's next letter again asked the court to remove the public defender's office from the case because the office was prejudiced against her.

¶ 6 On November 3, 2015, the court addressed defendant's letters. Defendant asserted that she had not spoken to the public defender's office until that day, her attorney had not explained the charges to her, and she was confused because her attorney was not communicating with her. Kramarsic responded that he had not spoken with defendant about the specifics of her case because he had not yet reviewed the discovery because the State had just provided it to him on that day. Kramarsic noted that he would speak with defendant when he received the discovery. Kramarsic stated that he did explain the potential penalties with defendant, but he wanted to review the discovery to be sure he was correct that she was eligible for an extended-term sentence. The court concluded that there was no need to appoint outside counsel at that time and allowed Kramarsic to continue representing defendant.

¶ 7 On November 25, 2015, defendant entered a blind guilty plea. The court asked defendant if she was made any promises if she pled guilty, and defendant responded “No.” Defendant also responded, “Yes,” when the court asked her if she was voluntarily pleading guilty. Following the hearing, the court accepted the guilty plea. Ultimately, defendant was sentenced to three years’ imprisonment.

¶ 8 Subsequently, Kramarsic filed a motion to vacate the guilty plea. The motion alleged that defendant believed she was coerced by her attorney and the State into accepting the guilty plea.

¶ 9 While the motion remained pending, defendant sent two letters to the court. In the first letter, defendant asked the court to reduce her sentence and to withdraw her guilty plea. The letter alleged that Kramarsic induced her to plead guilty and that he “knowingly slacked on [her] case.” In the second letter, defendant accused Kramarsic of being ineffective and lying to the court regarding his readiness for trial. Defendant also alleged that Cappellini, who only appeared at the initial hearing, had informed her that the court would be “hard pressed” to send her to prison for the charged offense.

¶ 10 At a subsequent hearing, the court informed Kramarsic that defendant had sent “some correspondence” to the court. There was no discussion of defendant’s allegations of ineffective assistance. The cause was then continued.

¶ 11 Next, defendant filed a *pro se* motion to withdraw her guilty plea and vacate the sentence. The motion asserted that she believed she had no choice but to plead guilty, and both Kramarsic and Cappellini said that she would only receive probation.

¶ 12 At a later hearing, Cappellini appeared with defendant. Cappellini continued to represent defendant for the remainder of the proceedings. The parties did not discuss defendant’s allegations of ineffective assistance, and the cause was continued.

¶ 13 Cappellini then filed a motion to vacate the guilty plea. The motion alleged that Kramarsic provided ineffective assistance by failing to: (1) have the Breathalyzer machine tested for accuracy, (2) interview witnesses that could have provided a viable defense, (3) examine the qualifications of the officer that administered the Breathalyzer test, and (4) prepare for trial and coercing defendant into pleading guilty. Cappellini also filed a motion to reconsider defendant's sentence.

¶ 14 At the hearing on Cappellini's motions, the court noted that defendant had sent letters to the court complaining about Cappellini's representation. The court asked Cappellini if he had ever represented defendant. Cappellini stated that he had not, and informed the court, "[n]or would I have ever talked to her about anything about the disposition." Cappellini did acknowledge that he "stepped up" for defendant during an initial hearing in the case. Defendant disputed Cappellini's statement that he had never spoken to her about the sentence. According to defendant, both Cappellini and Kramarsic were with her when Cappellini informed her that the court would be "hard pressed" to sentence her to prison prior to her pleading guilty. The court asked if defendant had anything else to add regarding what Cappellini said to her on that day, and defendant responded, "That is what he said to me on that day." Cappellini replied, "[i]t's not true. I never even spoke to her." Following this discussion, the court allowed Cappellini to present his motion to vacate defendant's guilty plea.

¶ 15 At the hearing, Kramarsic testified that he had reviewed the discovery in the case. Kramarsic explained that he did not have the Breathalyzer tested for accuracy because he had no reason to believe it was inaccurate. Kramarsic also stated that he did speak to one potential witness, but that individual provided no information that was relevant to the case. Kramarsic also received documentation showing that the officer performing the Breathalyzer test was

qualified. Kramarsic then stated he did not pressure defendant into pleading guilty, and Kramarsic was prepared for trial. Kramarsic also denied promising defendant that she would receive probation.

¶ 16 Defendant testified that during the pretrial proceedings, she was in a room with Cappellini and Kramarsic, and Kramarsic stated that he was not prepared for trial and defendant would be in jail for a couple of months if she wanted to go to trial. Defendant acknowledged that Kramarsic had informed her that the results of her Breathalyzer test were over the legal limit and that she would likely be found guilty. Although defendant understood this, she denied consuming alcohol on the day she was arrested and had asked Kramarsic to find out why her Breathalyzer test produced a 0.179 reading. Defendant was then asked if she realized that the cause would proceed to a sentencing hearing if she pled guilty. Defendant then asked Cappellini if he was her attorney. Defendant stated that Cappellini had told her the judge would be “hard pressed” to send her to prison based on the charge.

¶ 17 Following the testimony, Cappellini argued that Kramarsic failed to fully investigate the incident, and that defendant had been coerced into pleading guilty. Ultimately, the court denied the motion to vacate the plea finding defendant’s plea was voluntary. The court also found that Kramarsic had not performed deficiently. The court also denied the motion to reconsider defendant’s sentence.

¶ 18

ANALYSIS

¶ 19 On appeal, defendant claims the court failed to conduct a proper preliminary *Krankel* inquiry into her claims of ineffective assistance against both Kramarsic and Cappellini. Upon review, we find the court conducted a proper preliminary *Krankel* inquiry into defendant’s *pro se* claims against Cappellini. We also find that a preliminary inquiry into defendant’s claims

against Kramarsic was unnecessary because defendant already had new independent counsel represent her during the postplea proceedings.

¶ 20 When a defendant raises a claim of ineffective assistance of counsel, the trial court is not required to automatically appoint new counsel. *People v. Ayres*, 2017 IL 120071, ¶ 11. Rather, the trial court must conduct an adequate inquiry into the underlying factual basis, if any, of the *pro se* posttrial ineffective assistance of counsel claim during a *Krankel* hearing, which is a common law procedure that evolved from our supreme court's decision in *Krankel*. *Id.*; *Krankel*, 102 Ill. 2d at 189. A *Krankel* inquiry is a limited inquiry into a defendant's *pro se* allegations of ineffective assistance of counsel. *People v. Nitz*, 143 Ill. 2d 82, 134-35 (1991).

¶ 21 A reviewing court reviews *de novo* the issue of whether a proper *Krankel* hearing to determine if new counsel should be appointed was conducted in the trial court. *People v. Jolly*, 2014 IL 117142, ¶ 28. Where a proper *Krankel* hearing was conducted, a trial court's finding that it was unnecessary to appoint new counsel will not be disturbed on appeal unless it is manifestly erroneous. *People v. Haynes*, 331 Ill. App. 3d 482, 484 (2002). If the trial court determines that the defendant's claims lack merit or pertain to only matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. *People v. Moore*, 207 Ill. 2d 68, 78 (2003). On the other hand, if the trial court determines defendant's allegations of ineffective assistance of counsel show trial counsel possibly neglected the case, the trial court should appoint new counsel to investigate the claims and to represent defendant on his ineffective assistance of counsel claim. *Id.*

¶ 22 First, defendant claimed that Cappellini provided ineffective assistance. The only allegation defendant made regarding Cappellini's representation was that he told her the court would be "hard pressed" to impose a prison term as part of her sentence. The court held a

hearing regarding defendant's *pro se* allegation. During the discussion, both Cappellini and defendant addressed defendant's claim. The discussion therefore, addressed the facts and circumstances surrounding defendant's *pro se* claim of ineffective assistance against Cappellini. Consequently, we find the discussion between the court, defendant, and Cappellini constituted a proper preliminary inquiry under *Krankel*.

¶ 23 Having found the court conducted a preliminary *Krankel* inquiry, the next question is whether the inquiry demonstrated possible neglect of the case on the part of Cappellini such that the appointment of new counsel is necessary. We find defendant's claim against Cappellini lacks merit. Cappellini denied ever advising defendant regarding the possible disposition of the case. Cappellini noted that the only time he represented defendant until the postplea stage was when he appeared at the initial hearing and explained the charges. Given the fact that Kramarsic (not Cappellini) appeared on defendant's behalf throughout the proceedings, we cannot say that it was against the manifest weight of the evidence for the trial court to accept Cappellini's representation that he did not advise defendant regarding the possible sentences. Therefore, we find that the appointment of new counsel to investigate this claim was unnecessary and it was proper to allow Cappellini to continue representing defendant during the postplea proceedings.

¶ 24 Next, defendant contends the trial court failed to conduct a preliminary *Krankel* inquiry into her *pro se* allegations of ineffective assistance against Kramarsic. Defendant made several claims against Kramarsic alleging his ineffectiveness during the plea proceedings. The trial court did not conduct a preliminary *Krankel* inquiry into defendant's *pro se* claims against Kramarsic. Still, we note that the narrow purpose of a preliminary *Krankel* inquiry is to decide whether to appoint independent counsel to argue a defendant's *pro se* postplea ineffective assistance claims. *Ayres*, 2017 IL 120071, ¶ 11. Therefore, a preliminary inquiry as to

defendant's claims against Kramarsic was unnecessary because defendant was represented by new counsel, Cappellini, during the postplea proceedings. Cappellini filed a motion to vacate and withdraw defendant's guilty pleas specifically raising claims of Kramarsic's ineffectiveness. In other words, defendant actually obtained the relief allowed by a preliminary *Krankel* inquiry: defendant's new counsel, Cappellini, to investigate and represent her postplea claims of ineffective assistance of counsel against Kramarsic. Therefore, we find remand is unnecessary because defendant received a *Krankel* inquiry in the form of her post plea motion hearing.

¶ 25 In reaching this conclusion, we reject defendant's argument that Cappellini should not have represented defendant in presenting her claims against Kramarsic. Defendant notes that she had previously claimed that Cappellini was ineffective. She also notes that "Cappellini was apparently friendly enough with Kramarsic to refer to him as 'Doug' in open court." Defendant claims that Cappellini questioned her in an "adversarial manner that caused her to ask whether [Cappellini] was functioning as her attorney." As noted above, defendant's claim that Cappellini was ineffective is meritless. Further, we find nothing in Cappellini's examination of defendant or his use of Kramarsic's first name that would suggest he provided ineffective assistance at the hearing on the motion to vacate defendant's guilty plea. *People v. Downs*, 2017 IL App (2d) 121156-C, ¶ 4 (claims regarding the performance of *Krankel* counsel are analyzed under *Strickland v. Washington*, 466 U.S. 668 (1984)). Critically, defendant makes no argument that Cappellini was ineffective at that stage.

¶ 26 CONCLUSION

¶ 27 The judgment of the trial court of La Salle County is affirmed.

¶ 28 Affirmed.