2018 IL App (4th) 160670-U

NO. 4-16-0670

FILED
October 16, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Douglas County
JOSEPH J. MURPHY III,	)	No. 15CF85
Defendant-Appellant.	)	
	)	Honorable
	)	Richard L. Broch,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Harris and Justice Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court remanded for further proceedings, finding defendant is entitled to a preliminary *Krankel* hearing.

¶ 2 In January 2016, a jury found defendant, Joseph J. Murphy III, guilty of unlawful possession of a converted vehicle. The trial court sentenced him to nine years in prison.

¶ 3 On appeal, defendant argues his case must be remanded due to the trial court's failure to conduct a hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), on his posttrial complaint about counsel's performance. We remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In September 2015, the State charged defendant by information with one count of unlawful possession of a converted vehicle, a Class 2 felony (625 ILCS 5/4-103(a)(1), (b) (West 2014)), alleging he, a person not entitled to possession of said vehicle, possessed a red 2008 Dodge Charger, knowing it to have been converted. Defendant pleaded not guilty.

¶ 6 In January 2016, defendant's jury trial commenced. Korrie Morrow testified he lives in Indianapolis, Indiana. In August 2015, Morrow owned a red 2008 Dodge Charger. On August 23, 2015, Morrow drove the vehicle to a shopping mall in Indianapolis. He left the car running and went inside the mall. When he returned after "three or four minutes," the car was gone. A day or two later, the Tuscola, Illinois, Police Department contacted Morrow after having found the vehicle.

¶ 7 Tuscola police officer Heath Thurston testified he was contacted by a finance company on August 24, 2015, regarding a car that had been stolen in Indiana. A signal from the vehicle's global positioning system indicated it was located at an apartment complex in Tuscola. Once he confirmed the vehicle had been stolen, Thurston had it towed to an impound lot for processing by a crime-scene investigator.

¶ 8 December Melville, a crime-scene investigator with the Illinois State Police, testified the Tuscola Police Department requested she process a recovered stolen vehicle. Inside the car, she found a Walmart receipt, a check payable to Walmart, a Walmart plastic bag, a birthday card, and an empty bag of chips. She also processed the vehicle for fingerprints.

¶ 9 Kevin Horath, a forensic scientist with the Illinois State Police, testified as an expert in latent-print examination. He conducted an examination on a Pepsi bottle, a bag of chips, a canceled check, a receipt and shopping bag from Walmart, and a bag of beef jerky. Horath found two suitable latent prints on the bag of chips. He compared the prints on the bag of chips to known print cards of defendant and found a match.

¶ 10 Ebony Murphy, defendant's wife, lived in the apartment complex where the stolen vehicle was found. She testified she gave a voluntary statement to the police on August 24, 2015. Ebony wrote she walked outside the apartment and noticed a red Dodge Charger with

Indiana license plates. In her statement, she wrote she returned to the apartment and asked defendant about the vehicle.

¶ 11 The State recalled Officer Thurston, who testified he had conversations with Ebony in late August 2015. He arrested defendant on an unrelated matter on August 24, 2015, and defendant stated he did not know anything about the red Dodge Charger. In a later interview, defendant stated he knew about the vehicle, but he was never in it. Instead, he was part of a convoy and followed the Charger from Indianapolis to Tuscola. Defendant's story "changed a few times," but he claimed to have helped remove items from the Charger and put them into a black Cadillac. Defendant also stated he purchased items from Walmart with a check given to him by a passenger in the Charger. The convoy stopped in Champaign, and the participants purchased drugs.

¶ 12 Sometime later, Ebony contacted Thurston and said she found the Charger's key underneath the bed. After obtaining the Charger's keys, Thurston again talked with defendant, who stated he and others went to buy drugs. The vehicle was to be taken to Champaign and traded for drugs. Defendant stated he knew without asking the car was stolen. Defendant also stated he went to Walmart and purchased beef jerky, a Pepsi, a birthday card, and a bag of chips.

¶ 13 On cross-examination, Thurston testified defendant told him Christian Howard was the driver of the Charger. Defendant stated he was a passenger in the black Cadillac and denied driving or riding in the Charger.

¶ 14 Defendant did not testify, and the defense did not present any evidence. Following closing arguments, the jury found defendant guilty.

¶ 15 Following the trial, defendant wrote a four-page letter to the trial court that was filed on February 18, 2016. In his first sentence, he indicates that, upon sentencing, he would

like his "appeal process started." Among other things, defendant stated he was innocent and did not commit the crime. He wrote as follows:

> "There are a lot of things that were said by [the prosecutor] that were completely untrue. There were also questions that my attorney said he would ask but didn't. I can't fault [the prosecutor] for things my counsel should've done. My only concern is the fact I did not receive a jury of my peers. Two-thirds of the jury was over fifty years of age. Also there was not one African-American or minority in the entire jury pool. Your Honor that is a direct violation of my constitutional right to a 'jury of my peers.' "

Defendant also stated the prosecutor "was correct about one thing, my attorney had the power of subpoena and cross-examination. Yet he did not even attempt to help me. Does not that also seem odd Your Honor? I did not receive a fair trial."

¶ 16 On the same date, defense counsel filed a motion for a new trial. In March 2016, the trial court conducted the sentencing hearing. The court made no mention of defendant's letter. The parties indicated they had an agreed recommendation for a sentence in conjunction with other pending cases. In this case, the parties agreed on a sentence of nine years in prison and $1436.39 in restitution to Morrow. In a separate case, defendant agreed to plead guilty to the offense of forgery in exchange for a nine-year sentence, restitution, and the dismissal of other charges. The court sentenced defendant to nine years in prison for the offense of unlawful possession of a converted vehicle, awarded him 200 days of presentence credit, and ordered him to pay $1436.39 in restitution. The court also sentenced him to a concurrent term of nine years in prison on the forgery count and ordered him to pay restitution in that case.

¶ 17 In April 2016, defendant filed a *pro se* motion to reduce his sentence, which was later dismissed. In September 2016, the trial court conducted a hearing on the motion for a new trial. No mention was made of defendant's letter, and defendant did not make any statements. The court denied the motion. Thereafter, defense counsel indicated defendant was under the impression that a *pro se* motion was to be heard. The court stated it was not aware of any other motions set for hearing. This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 Defendant argues remand is necessary because the trial court failed to conduct a *Krankel* hearing after he complained about counsel in a letter prior to sentencing. We agree.

¶ 20 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.

¶ 21 "[A] *pro se* defendant is not required to do any more than bring his or her claim to

the trial court's attention." *Moore*, 207 Ill. 2d at 79, 797 N.E.2d at 638. 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." *People v. Ayres*, 2017 IL 120071, ¶ 18, 88 N.E.3d 732; see also *People v. Jindra*, 2018 IL App (2d) 160225, ¶ 14 (stating "the complaint must be clear" to trigger a *Krankel* inquiry); *People v. Thomas*, 2017 IL App (4th) 150815, ¶ 26, 93 N.E.3d 664 (noting "[c]ourts have found a defendant is entitled to a *Krankel* inquiry when the defendant makes an explicit or 'clear' complaint of trial counsel's performance or ineffective assistance of counsel"). "[T]he primary purpose of the preliminary inquiry is to give the defendant an opportunity to flesh out his claim of ineffective assistance so the court can determine whether appointment of new counsel is necessary." *Ayres*, 2017 IL 120071, ¶ 20, 88 N.E.3d 732.

¶ 22 On appeal, "[t]he 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. "The issue of whether the circuit court properly conducted a preliminary *Krankel* inquiry presents a legal question that we review *de novo*." *People v. Jolly*, 2014 IL 117142, ¶ 28, 25 N.E.3d 1127.

¶ 23 In the case *sub judice*, defendant wrote a letter to the trial court prior to sentencing. Along with a claim of innocence, defendant complained "[t]here were also questions that my attorney said he would ask but didn't." Defendant stated he could not "fault [the prosecutor] for things my counsel should've done." In claiming he did not receive a fair trial, defendant also argued his "attorney had the power of subpoena and cross-examination," but "he did not even attempt to help me."

¶ 24 In *Jindra*, 2018 IL App (2d) 160225, ¶ 5, the defendant filed a *pro se* posttrial

motion based on the nonappearance of a witness and stated as follows:

> " 'I would like the judge to reconsider this case. the [*sic*] key witness Brissa Cuphbertson [*sic*], did not appear in court, nor was her written statement submitted to the judge. The public defender was Mr. Travis Lutz. This eye witness [*sic*] is crucial to this defense.' "

¶ 25 On appeal, the issue centered on whether the defendant sufficiently raised a claim of ineffective assistance of counsel to trigger the preliminary inquiry under *Krankel*. *Jindra*, 2018 IL App (2d) 160225, ¶¶ 10, 15. The Second District found he did not. *Jindra*, 2018 IL App (2d) 160225, ¶ 15. The court noted the "[d]efendant never stated, orally or in writing, that counsel was ineffective" and, although he mentioned counsel, it was unclear he was complaining about counsel. *Jindra*, 2018 IL App (2d) 160225, ¶ 16.

¶ 26 In *People v. Lobdell*, 2017 IL App (3d) 150074, ¶ 15, 83 N.E.3d 502, the defendant, following his conviction but before sentencing, wrote a letter to the trial court stating his arrest was in violation of his constitutional rights because officers did not have a warrant. He also stated " 'why [my attorney] never mentioned this during trial I do not know, that[']s why I am mentioning it now your honor.' " *Lobdell*, 2017 IL App (3d) 150074, ¶ 15, 83 N.E.3d 502. The defendant also read the letter at sentencing. *Lobdell*, 2017 IL App (3d) 150074, ¶ 16, 83 N.E.3d 502.

¶ 27 On appeal, the Third District considered whether the trial court erred in failing to conduct a preliminary inquiry to examine the defendant's claim of ineffective assistance of counsel. *Lobdell*, 2017 IL App (3d) 150074, ¶ 34, 83 N.E.3d 502. The court noted "a claim does not need to be supported by facts or specific examples as 'the primary purpose of the

preliminary inquiry is to give the defendant an opportunity to flesh out his claim of ineffective assistance so the court can determine whether appointment of new counsel is necessary.' " *Lobdell*, 2017 IL App (3d) 150074, ¶ 36, 83 N.E.3d 502 (quoting *Ayres*, 2017 IL 120071, ¶ 20, 88 N.E.3d 732). Based on his letter, the court found the defendant raised a clear claim of ineffective assistance and concluded the trial court failed to conduct a preliminary *Krankel* inquiry. *Lobdell*, 2017 IL App (3d) 150074, ¶ 37, 83 N.E.3d 502.

¶ 28 We find the facts of this case more in line with *Lobdell* than *Jindra*. Here, it is clear defendant raised concerns about counsel's representation. Defendant claimed his counsel failed to ask questions and stated he could not fault the prosecutor "for things [his] counsel should've done." He also claimed that, although counsel had the power of subpoena and cross-examination, "he did not even attempt to help" defendant. While defendant's claims lack specificity, "a claim does not need to be supported by facts or specific examples." *Lobdell*, 2017 IL App (3d) 150074, ¶ 36, 83 N.E.3d 502; see also *Ayres*, 2017 IL 120071, ¶¶ 6, 24, 88 N.E.3d 732 (finding even a bare assertion of ineffective assistance of counsel is sufficient to trigger a *Krankel* inquiry); *People v. Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 17, 966 N.E.2d 1069 (finding the defendant's comment at the hearing on her *pro se* motion to reconsider her sentence that trial counsel did not represent her " 'to his fullest ability during [her] trial' " triggered a *Krankel* inquiry because it was an implicit claim of ineffective assistance). The State argues defendant did not provide a factual basis for his claims, but it fails to cite authority in support of that contention. The State also fails to cite authority in support of its claim that the *Krankel* issue was resolved by defendant's decision to enter into the sentencing agreement without raising the issue of ineffectiveness at the hearing. However, the claim of ineffectiveness had been adequately raised, but it was never addressed.

¶ 29 We find the trial court erred in failing to conduct the necessary preliminary examination as to the factual basis of defendant's allegations against defense counsel. Although it ultimately falls to the court, it is unfortunate under these circumstances that neither the State nor defense counsel mentioned the somewhat cryptic letter of defendant, since it would be reasonable for the court to believe defendant's complaints were no longer an issue given the extremely favorable disposition. Had defendant been given a chance at allocution, it is possible he would have raised the concerns set forth in his letter. However, as no mention was made of the letter, we find remand is necessary. We note we are not remanding this cause for a full evidentiary hearing. *Moore*, 207 Ill. 2d at 81, 797 N.E.2d at 639. Instead, "we remand the cause for the limited purpose of allowing the trial court to conduct the required preliminary investigation" to determine if a full evidentiary hearing is warranted. *Moore*, 207 Ill. 2d at 81, 797 N.E.2d at 640.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we remand this cause to the trial court for a preliminary *Krankel* inquiry.

¶ 32 Remanded with directions.