

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2018 IL App (4th) 160790-U

NO. 4-16-0790

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

September 27, 2018  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee	)	Circuit Court of
v.	)	Coles County
JOHN K. ADAMS,	)	No. 14CF284
Defendant-Appellant.	)	
	)	Honorable
	)	Teresa Kessler Righter,
	)	Judge Presiding.

---

JUSTICE STEIGMANN delivered the judgment of the court.  
Justices DeArmond and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court vacates the trial court’s ruling denying defendant’s motion to withdraw his guilty plea, remands for further proceedings on that motion, and directs on remand the appointment of new postplea counsel for defendant.

¶ 2 In March 2015, defendant, John K. Adams, pleaded guilty to three separate felony offenses, and the trial court sentenced him to prison. He later filed a motion to withdraw his guilty plea, but the trial court denied it.

¶ 3 Defendant appeals, arguing, in pertinent part, that (1) counsel who represented him on his motion to withdraw his guilty plea (hereinafter his postplea counsel) did not make necessary amendments to that motion or consult with him as required under Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014) and (2) the trial court erred by not conducting an inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984) on defendant’s claim that postplea counsel was ineffective.

¶ 4 We vacate the trial court's ruling denying defendant's motion to withdraw his guilty plea, remand for further proceedings on that motion, and direct on remand the appointment of new postplea counsel for defendant.

¶ 5 I. BACKGROUND

¶ 6 In June 2014, the State charged defendant with unlawful possession of a converted motor vehicle (625 ILCS 5/4-103(a)(1) (West 2014)) (count I), aggravated driving under the influence of alcohol (625 ILCS 5/11-501(a)(1), (2)(D) (West 2014)) (count II), aggravated driving under the influence of alcohol (625 ILCS 5/11-501(a)(2), (2)(D) (West 2014)) (count III), and felony driving while license revoked (625 ILCS 5/6-303(d-4) (West 2014)) (count IV). The State's information also alleged that the first three counts required "mandatory class X sentencing" because of defendant's prior Class 2 felony convictions in Jackson County and Logan County. The information also alleged that count IV was "non-probationable and extended term-eligible" due to defendant's prior Class 2 felony conviction in Logan County.

¶ 7 In March 2015, defendant pleaded guilty to counts I, II, and IV pursuant to a fully negotiated guilty plea. Count III was dismissed. The trial court sentenced defendant to 12 years in prison on count I, 12 years in prison on count II, 10 years in prison on count IV, and ordered all of these sentences to run concurrently. The court also ordered defendant to pay several fines and fees, as well as restitution.

¶ 8 On April 9, 2015, defendant placed a *pro se* motion to withdraw his guilty plea and for the appointment of counsel in the Graham Correctional Center mailbox, but the motion was not filed stamped by the Coles County Circuit Clerk until April 15, 2015. In that motion, defendant discussed extensively his medical condition, asserting that he was permanently disabled and also suffered from a variety of mental health problems the motion described at length.

In that motion, defendant also contended that defense counsel was ineffective for presenting him with a plea offer without hearing his story when counsel knew that defendant had a traumatic brain injury and suffered from multiple mental disorders. Defendant also claimed that he was a passenger, not the driver, of the vehicle involved in the incident with which he was charged and that other exculpatory evidence existed that his trial counsel did not pursue.

¶ 9 In April 2015, in response to defendant's motion, the trial court appointed an assistant public defender to represent him. In June 2015, the trial court appointed another attorney because of a conflict the first appointed counsel had. This other attorney was defendant's postplea counsel in all proceedings thereafter.

¶ 10 In September 2015, the trial court conducted a hearing in this case at which postplea counsel appeared, but defendant was not personally present. The State mentioned at that hearing that defendant's *pro se* posttrial motion was not timely filed and should be subject to a motion to dismiss. The court then continued the case for two months.

¶ 11 In November 2015, the trial court conducted a hearing on the State's oral motion to dismiss. The State argued that because defendant pleaded guilty on March 11, 2015, and his motion was not filed until April 15, 2015, it was untimely. Defendant was not personally present at this hearing, but his postplea counsel was. She concurred that the dates as represented by the State were accurate, and the trial court dismissed defendant's motion.

¶ 12 Between April 2015, when the trial court first appointed counsel to represent defendant on his *pro se* motion to withdraw his guilty plea, and the November 2015 hearing at which the trial court denied that motion, defendant engaged in lengthy correspondence (which is part of the record on appeal) with both the trial court and counsel in support of various claims he made regarding why his motion to withdraw his guilty plea should be granted. Given our resolu-

tion of this appeal, we need not discuss that correspondence further.

¶ 13 Later in November 2015, defendant filed *pro se* a motion for reconsideration of the trial court's dismissal of his motion, arguing that the mailbox rule applied. He subsequently filed supplemental motions in support of his earlier motion, and the court reappointed postplea counsel. Ultimately, after still further correspondence and motions from defendant, he was personally present in court in March 2016 when the trial court conducted a hearing on his motion to reconsider and granted it.

¶ 14 Thereafter, defendant sent more correspondence to his counsel and the court, and in May 2016, the trial court conducted a hearing on defendant's motions at which defendant was personally present and testified. Despite the extensive testimony defendant gave at this hearing on the motion to withdraw his guilty plea, as well as the testimony presented by his counsel who represented him at the time he pleaded guilty, defendant's postplea counsel relied solely on defendant's *pro se* motion to withdraw his guilty plea and did not file a revised motion. The trial court denied the motion, and defendant appealed.

¶ 15 In September 2016, this court granted defendant's agreed motion for summary remand for the filing of an Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016) certificate. This court also stated that the remand will provide "the opportunity to file a new post-plea motion, if counsel concludes that a new motion is necessary, and a new hearing on the motion, and strict compliance with the requirements of Rule 604(d)."

¶ 16 In October 2016, when defendant was not present, the trial court conducted a hearing pursuant to this court's remand at which postplea counsel noted that she had filed an amended Rule 604(d) certificate and did not anticipate filing any additional motions on defendant's behalf. The court stated that it would stand on its prior rulings regarding defendant's mo-

tions and denied defendant's motion to withdraw his guilty plea. This appeal followed.

¶ 17

## II. ANALYSIS

¶ 18 Defendant appeals, arguing, in pertinent part, that (1) counsel who represented him on the motion to withdraw his guilty plea (hereinafter his postplea counsel) did not make necessary amendments to that motion or consult with him as required under Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016) and (2) the trial court erred by not conducting an inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984) on defendant's claim that postplea counsel was ineffective.

¶ 19 In response, the State concedes the trial court erred by failing to conduct a *Krankel* inquiry and agrees that a limited remand is required to address defendant's *Krankel* allegations. The State also offers the following:

“Should the trial court agree postplea counsel's performance was ineffective, the proper remedy would be appointment of new postplea counsel, the opportunity to file a new 604(d) motion, and a new hearing on the motion. \*\*\* In such a case, whether postplea counsel's performance was compliant with Rule 604(d) and whether the trial court abused its discretion at the hearing will be moot because the prior proceedings will be nullified and treated as if they never occurred.”

¶ 20 We accept the State's concession but conclude that instead of remanding for a *Krankel* hearing, we will vacate the trial court's denial of defendant's motion to withdraw his guilty plea, remand this case for further proceedings on that motion, and direct that new postplea counsel be appointed for defendant to ensure that defendant's new counsel on remand will fully consider the multitude of claims defendant has raised.

¶ 21 In so concluding, this court has elected not to discuss in greater detail than we

have the torturous procedural history this case presents both before and after defendant pleaded guilty. Instead, given the unusual circumstances of this case, we conclude that a fresh assessment by new postplea counsel of defendant's claims and concerns is the best way to proceed. Taking that course of action, as the State points out, means that whatever earlier errors may have been committed by the trial court or previous postplea counsel will be moot, and a *Krankel* inquiry will no longer be necessary.

¶ 22 We also note that in this appeal, defendant raised some additional issues that primarily concerned fines and fees, but given our resolution of the case, we need not address those issues.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we vacate the trial court's ruling denying defendant's motion to withdraw his guilty plea, remand for further proceedings on that motion, and direct on remand the appointment of new postplea counsel for defendant.

¶ 25 Vacated and remanded.