

NOTICE

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FILED

February 23, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 170213-U

NO. 4-17-0213

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
TAVARIS HUNT,)	No. 12CF1868
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Holder White 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 2017, on remand pursuant to this court’s order in *People v. Hunt*, 2016 IL App (4th) 160183-U, the trial court held a hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and denied defendant’s claim his trial counsel was ineffective. Defendant appeals, asking this court to, once again, remand this case for a new *Krankel* hearing because the trial court did not address all of the claims of ineffective assistance of counsel defendant raised in his amended motion. We remand with directions.

¶ 3 A. BACKGROUND

¶ 4 In December 2012, defendant, Tavaris Hunt, pleaded guilty to aggravated domestic battery and was sentenced to probation. In January 2014, the State filed a petition to

revoke defendant's probation. In February 2014, defendant agreed to admit the allegations in the State's petition. After receiving a factual basis, the trial court revoked defendant's probation. In March 2014, the court resentenced defendant to seven years in prison.

¶ 5 Before a hearing on defendant's motion to reconsider, defendant filed a letter with the trial court, claiming his trial counsel was ineffective for not providing him proper legal advice throughout the proceedings. In April 2014, the court held a hearing on the motion to reconsider sentence. Defendant did not appear. The court noted defendant filed a few things *pro se* and asked defense counsel if she wanted to add anything to the motion to reconsider sentence. Defense counsel indicated she did not, and the court denied the motion to reconsider sentence.

¶ 6 On direct appeal, defendant argued the trial court erred by not conducting a preliminary inquiry into his *pro se* claim of ineffective assistance of counsel as required by *Krankel*. This court agreed and remanded for a *Krankel* hearing. *People v. Hunt*, 2015 IL App (4th) 140313-U, ¶ 16.

¶ 7 In February 2016, while the case was on remand, defendant filed a *pro se* amended ineffective assistance claim adding additional claims of ineffective assistance of counsel. On February 29, 2016, the trial court held a *Krankel* hearing and denied defendant's claim. Defendant appealed, and this court again remanded the case for another *Krankel* hearing. *People v. Hunt*, 2016 IL App (4th) 160183-U. According to this court's decision:

“The trial court noted the petition to revoke alleged the commission of domestic battery, resisting a peace officer, and consumption of alcohol. Defendant admitted he ‘probably’ did not have any witnesses to rebut the allegation of resisting a peace officer, but he claimed to have witnesses to rebut the other two allegations. The court stated that because defendant did not have any witnesses to testify

against the allegation of resisting a peace officer, counsel's alleged deficient representation did not affect defendant's case. Defendant responded he was unable to find witnesses because counsel failed to conduct an investigation and noted [Akeenen] Hunt and [Tevin] Locket 'would testify to everything.' New defense counsel stated he had no witnesses to rebut the resisting charge.

The trial court denied defendant's claim of ineffective assistance of counsel. Thereafter, defendant stated his amended claim had 'more issues' pertaining to resentencing and mentioned the use of 'illegal video evidence.' The court stated it did not believe there was a video and denied defendant's claims." *Hunt*, 2016 IL App (4th) 160183-U at ¶¶ 13-14.

Defendant argued this case needed to be remanded for a new *Krankel* hearing because the trial court did not address his claims defense counsel failed to investigate and present mitigating witnesses at his resentencing hearing. This court agreed, stating:

"In the case *sub judice*, the record indicates the trial court conducted an adequate *Krankel* hearing with regard to defendant's assertions concerning the petition to revoke probation. However, the court failed to adequately address defendant's claims concerning the effectiveness of counsel at the resentencing hearing, including counsel's alleged failure to investigate and present mitigating evidence. Thus, the court failed to conduct an adequate inquiry under *Krankel* and its progeny." *Hunt*, 2016 IL App (4th) 160183-U at ¶ 18.

As a result, this court remanded the case, directing the trial court to conduct a *Krankel* hearing concerning the effectiveness of defense counsel at the resentencing hearing. *Hunt*, 2016 IL App (4th) 160183-U at ¶ 18.

¶ 8 On February 21, 2017, while the case was on remand, defendant filed an amended claim of ineffective assistance of counsel. According to his amended claim, his “lawyer failed to tell [him] anything about [his] resentencing, and since [he] did not know, [he] did not know to ask.” Defendant stated his attorney did not contact him about reaching out to possible character witnesses to write letters to the court or testify on his behalf at the resentencing hearing. Defendant claimed he did not know he could have people write letters on his behalf for use at the sentencing hearing. Defendant also alleged his defense counsel failed to object to the State’s use of a video as aggravating evidence at his resentencing hearing. In addition, defendant stated his attorney did not investigate or present potential mitigating evidence at the resentencing hearing, including his mental health issues, “bad upbringing,” and alcohol and substance abuse issues. Defendant noted the trial court referred to the lack of mitigating evidence in sentencing defendant. Finally, defendant argued his attorney did not object to or correct the court’s erroneous statement defendant had two prior aggravated domestic batteries. Defendant asked for a new resentencing hearing with new counsel.

¶ 9 On March 20, 2017, the trial court held another *Krankel* hearing. At the beginning of the hearing, the court stated:

“This matter has been remanded to this court by the appellate court for this court to conduct a *Krankel* hearing concerning the defendant’s allegations of ineffective assistance of counsel at his sentencing hearing. The court’s—the appellate court said that this court failed to adequately address defendant’s claims concerning ineffectiveness of counsel at re-sentencing hearing, including counsel’s alleged failure to investigate and present [sic] mitigating evidence, thus this court failed to conduct an adequate *Krankel* hearing. So this matter is called to determine

whether or not there was ineffective assistance of counsel at the sentencing hearing in this matter.”

The court then asked defendant what type of mitigating evidence he expected his attorney to present at the sentencing hearing. Defendant responded, “Character witnesses, and those likes. I didn’t know—I didn’t know anything about character witnesses or anything like that. I was never told. I was never contacted.”

¶ 10 The trial court then asked defendant what kind of character witnesses defendant would have had available. Defendant mentioned some of the individuals who had since written letters on his behalf. The court then questioned defendant what the letters or character witnesses would have said about defendant. Defendant responded they would have said he was a “bright young man” who has issues when he drinks alcohol. Defendant believed the character witnesses would have stated he was not an extremely violent person.

¶ 11 The trial court then asked defense counsel:

“Were you aware of—I know I have a TASC report that indicates the defendant was—he meets the diagnostic impression for opioid and alcohol dependency. I believe I had a letter, I do—there was a letter in the file from the defendant’s mother. As to other mitigation, Mr. Vargas, what were you aware of or what were you—what were you aware of?”

Defense counsel said he presented everything to the court that was sent or given to him.

¶ 12 The trial court then noted defendant indicated the mitigation in this case would show defendant was not necessarily a dangerous or violent person. However, the court pointed out the presentence report showed defendant was adjudicated delinquent as a result of an aggravated battery in 2001 and committed to the Department of Juvenile Justice. As an adult,

defendant was convicted of resisting a peace officer five times, domestic battery twice, and aggravated battery. The court noted it did not know what other mitigating evidence could have “mitigated [defendant’s] extensive criminal convictions for what this court determines to be crimes of violence.” The court then made a finding defendant’s attorney at his resentencing hearing was not constitutionally ineffective. The court appointed the office of the State Appellate Defender to represent defendant on appeal. Defendant asked the trial court, “Did you read my amended version?” The trial court did not respond to defendant’s question, stating the court “will be in recess.”

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Defendant argues this case should be remanded for another *Krankel* hearing because the trial court did not address defendant’s claims his trial counsel was ineffective at the resentencing hearing for not presenting mitigating evidence on defendant’s behalf and for not objecting to the (1) State’s use of a video during the re-sentencing hearing, and (2) the trial court’s mischaracterization of defendant’s criminal record.

¶ 16 We note the trial court did ask defendant what type of mitigating evidence his attorney should have introduced during his resentencing hearing. Defendant responded he did not know—other than character witnesses—because he was never told or contacted by his attorney prior to the resentencing hearing. The trial court then asked defendant what character witnesses would have been available. Defendant provided a few names to the court. However, the court did not inquire of defense counsel, *first*, whether she ever contacted defendant between the revocation of his probation and his resentencing hearing or informed defendant of the type of mitigating evidence allowed at the sentencing hearing. The court also did not ask defense

counsel, *second*, whether she asked defendant if he knew of anyone who would write letters or testify on his behalf at the resentencing hearing. Instead, the court simply asked defense counsel if she was aware of any mitigation other than a TASC report and a letter from defendant's mother. Defense counsel replied, "Judge, I presented to the court everything that was sent to me or given to me. I'm not aware of any, if it's—all those other letters."

¶ 17 *Third*, the trial court did not address defendant's claim his attorney was ineffective for not objecting to the court's mischaracterization of his criminal record. *Fourth*, the court also failed to address defendant's claim his attorney was ineffective for not objecting to the State's use of a video during his resentencing hearing.

¶ 18 The following rule has developed in interpreting our supreme court's decision in *Krankel*. When a defendant makes a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should examine the factual bases of the defendant's claims. If the court determines the claims lack merit or pertain to matters of trial strategy, the court may deny the motion without appointing new counsel to represent the defendant with regard to his claims of ineffective assistance of counsel. *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637-38 (2003); *People v. Ayres*, 2017 IL 120071, ¶ 21, 88 N.E.3d 732 (quoting *People v. Jolly*, 2014 IL 117142, ¶ 29, 25 N.E.3d 1127). A "trial court must conduct an adequate inquiry ***, that is, inquiry sufficient to determine the factual basis of the claim." *People v. Banks*, 237 Ill. 2d 154, 213, 934 N.E.2d 435, 468 (2010). Our supreme court recently stated:

"The goal of *Krankel* is to 'facilitate the trial court's full consideration of a defendant's *pro se claims* of ineffective assistance of trial counsel and thereby potentially limit issues on appeal.' [Citation.] Moreover, '[b]y initially evaluating the defendant's *claims* in a preliminary *Krankel* inquiry, the circuit court will

create the necessary record for any claims raised on appeal.’ [Citation.] Absent such a record, as in the case at bar, appellate review is precluded. Moreover, the inquiry is not burdensome upon the circuit court, and the facts and circumstances surrounding the claim will be much clearer in the minds of all involved when the inquiry is made just subsequent to trial or plea, as opposed to years later on appeal.” (Emphasis added.) *Ayres*, 2017 IL 120071, ¶ 21 (quoting *Jolly*, 2014 IL 117142 at ¶¶ 29, 38).

¶ 19 Once again, we must remand this case for another *Krankel* hearing because the trial court failed to adequately consider defendant’s claims of ineffective assistance of counsel for the same reasons we provided in our analysis in defendant’s prior appeal. *Hunt*, 2016 IL App (4th) 160183-U at ¶¶ 16-18.

¶ 20 In the prior appeal in this case, which was similar to the situation before us now, the State conceded the case should be remanded to the trial court for another *Krankel* hearing. However, in this appeal, while conceding the trial court did not address all of defendant’s allegations of ineffective assistance of counsel, the State does not concede the issue, arguing the trial court complied with this court’s order in the prior appeal. *Hunt*, 2016 IL App (4th) 160183-U. According to the State’s brief, “The trial court, following this Court’s second remand, complied with this Court’s direction and conducted a preliminary inquiry into defendant’s claim that trial counsel failed to investigate and present mitigating evidence.” The State cites *People v. Knox*, 3 Ill. App. 3d 22, 23, 278 N.E.2d 252, 254 (1971), for the proposition a trial court must follow an appellate court’s specific instructions on remand.

¶ 21 We disagree with the State’s assertion the trial court complied with the directions this court provided in the prior appeal. According to this court’s prior decision:

“[T]he court failed to adequately address defendant’s claims concerning the effectiveness of counsel at the resentencing hearing, including counsel’s alleged failure to investigate and present mitigating evidence. Thus, the court failed to conduct an adequate inquiry under *Krankel* and its progeny. Accordingly, the cause must be remanded for the court to conduct a *Krankel* hearing concerning the effectiveness of defense counsel at the resentencing hearing.” *Hunt*, 2016 IL App (4th) 160183-U at ¶ 18.

The State’s assertion this court only instructed the trial court to consider defendant’s claim his counsel failed to investigate and present mitigating evidence at defendant’s sentencing hearing is incorrect. At most, this court’s decision could be strictly construed to mean the trial court was just to consider defense counsel’s actions at the resentencing hearing. However, even then, the court did not comply with this court’s instructions because it did not have an adequate *Krankel* hearing with regard to defense counsel’s effectiveness at the resentencing hearing. The court gave no consideration to defendant’s claims his counsel was ineffective at the resentencing hearing for not objecting to the State’s use of the video and for failing to correct the trial court’s mischaracterization of defendant’s criminal history.

¶ 22 Because the trial court failed to conduct an adequate inquiry into defendant’s claims of ineffective assistance of counsel at the resentencing hearing, we once again remand this case to the trial court for it to conduct an adequate inquiry under *Krankel* and its progeny. The trial court is instructed to consider defendant’s claims regarding the effectiveness of his trial counsel during the period after his probation was revoked through his resentencing hearing. (This court has already held “the record indicates the trial court conducted an adequate *Krankel* hearing with regard to defendant’s assertions concerning the petition to revoke probation.” *Hunt*,

2016 IL App (4th) 160183-U at ¶ 18). This includes, but is not limited to, the following:

(a) inquiring of defense counsel whether she ever contacted defendant between the revocation of probation and his resentencing *or* informed defendant of the type of mitigating evidence allowed at the sentencing hearing;

(b) inquiring of defense counsel whether she asked defendant if he knew of anyone who would write letters or testify on his behalf at the resentencing hearing;

(c) address defendant's claim his attorney was ineffective for not objecting to the court's mischaracterization of his criminal record; and

(d) address defendant's claim his attorney was ineffective for not objecting to the State's use of a video during his resentencing hearing.

¶ 23 For the sake of judicial economy, after the trial court, *first*, makes an inquiry sufficient to determine the factual basis for each of defendant's claims of ineffective assistance of counsel allegedly occurring during the period from the revocation of his probation through completion of the resentencing hearing, we direct the court, *second*, to ask defendant if the court has questioned defendant as to all of his claims of ineffective assistance of counsel for the period in question. If defendant says the court has not questioned defendant as to all of his claims of ineffective assistance, the court, *third*, shall make an inquiry into those claims. Only after complying with these directives shall, *fourth*, the court determine whether appointment of counsel is needed so this court can hopefully avoid having to remand this matter again for another *Krankel* hearing.

¶ 24

III. CONCLUSION

¶ 25

For the reasons stated, we remand the cause with directions for the trial court to

conduct a *Krankel* hearing on all of defendant's claims of ineffective assistance of counsel which occurred during the period from the revocation of his probation through his resentencing hearing.

¶ 26 Remanded with directions.