

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) 170879-U

NO. 4-17-0879

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 20, 2018

Carla Bender

4th District Appellate Court, IL

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
STEVEN BERRY,)	No. 14CF1275
Defendant-Appellant.)	
)	Honorable
)	Scott D. Drazewski,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

¶1 *Held:* We grant appellate counsel’s motion to withdraw and affirm the trial court’s decision declining to appoint new counsel following a limited remand for a preliminary *Krankel* inquiry.

¶2 This case comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on the ground that no meritorious issue can be raised on this appeal following the limited remand for a preliminary *Krankel* inquiry. We grant OSAD’s motion and affirm the trial court’s judgment.

¶3 I. BACKGROUND

¶4 In November 2014, a grand jury indicted defendant, Steven Berry, on one count of aggravated identity theft (720 ILCS 5/16-30(b)(1) (West 2014)), alleging defendant, or one for whose conduct defendant was legally responsible, “knowingly used a personal identification document of Betty Phillips, a PNC credit card, to fraudulently obtain over \$300 in goods in the

name of Betty Phillips, a person 60 years of age or older.”

¶ 5 A. Initial Remand

¶ 6 In March 2015, after receiving all appropriate admonishments, defendant entered an open guilty plea to aggravated identity theft, a Class X felony, which carries a possible sentence of 6 to 30 years in the Illinois Department of Corrections. The court accepted the plea as knowingly and voluntarily made. Ultimately, the trial court sentenced defendant to 12 years’ imprisonment. Defendant filed a motion to reconsider his sentence, which the court denied. Defendant appealed.

¶ 7 However, this court remanded the case for strict compliance with Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014). *People v. Berry*, No. 4-15-0560 (Mar. 15, 2016) (agreed summary remand). While on remand, the trial court accepted a new Rule 604(d) certificate and denied a second motion to reconsider filed by defendant. During that hearing, defendant made *pro se* allegations of ineffective assistance of trial counsel. Specifically, defendant made the following statement:

“I’m charged with identity theft, and I was just a driver. I’ve been charged of accountability[—]where’s the people that I’m accountable for? The only reason why I didn’t go to trial was because my attorney, the day before trial, says “ ‘we’re going to trial.’ ” I’m not going to trial with a person I don’t even—he never came and talked to me. One time, he came and talked to me. How am I going to trial about a—a jury at that, and he never talked to me about nothing? That’s what I’m here [*sic*], for poor service.”

¶ 8 Defendant added, “I’m dealing with a person who don’t—I’m just, like, by myself. That’s why I’m here today.” Defendant also told the trial court, “I have never—he’s never communicated with me the whole time I was incarcerated. I have been by myself the whole

time, you know.”

¶ 9 B. *Krankel* Remand

¶ 10 Once the matter returned to this court, defendant asserted the trial court erred by failing to adequately address his *pro se* allegations of ineffective assistance of counsel. We agreed and remanded with instructions that the trial court conduct a preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). *People v. Berry*, 2017 IL App (4th) 160296-U, ¶ 6.

¶ 11 C. Preliminary *Krankel* Inquiry

¶ 12 On remand, the trial court conducted a preliminary *Krankel* inquiry. We summarize the representations made to the court by defendant and trial counsel. According to defendant, his conduct lacked seriousness because at no point did he use the credit card but instead only drove those who did. Thus, defendant questioned his counsel’s inability to secure a lesser charge or much shorter sentence. Defendant claimed surprise at the length of the sentence he received. Defendant inconsistently asserted counsel failed to give him the option of going to trial and also claimed counsel said, “ ‘we’re going to trial.’ ” Defendant initially denied rejecting a plea offer but eventually admitted being told of an offer for 20 years. Finally, defendant asserted that given his counsel’s failure to adequately discuss the case with him, he questioned counsel’s readiness for trial.

¶ 13 In response to questioning by the court, trial counsel indicated that while defendant disagreed with the law of accountability in Illinois, counsel provided a copy of the statute and explained its impact on defendant’s case. Moreover, counsel represented he engaged in extensive negotiations in defendant’s case. Counsel pointed out that in the end, he secured the open plea along with the State’s agreement to dismiss an unrelated three-count Class X case

pending before another judge. Counsel said the open plea came about after multiple rounds of intense negotiations that followed an original offer of 24 years on this case alone. Counsel referred to notifying defendant by letter of the 24-year offer, which defendant rejected.

According to counsel, this case and the case pending in the other courtroom exposed defendant to consecutive sentencing. Also, counsel represented engaging in multiple discussions about the case with defendant and referred to discussions between counsel's intern and defendant. Counsel assured the court of his preparedness to take defendant's case to trial. Following the November 30, 2017, preliminary *Krankel* inquiry, the court declined to appoint new counsel.

¶ 14 D. Motion to Withdraw

¶ 15 Defendant filed a timely notice of appeal, and the trial court appointed OSAD to represent defendant. In March 2018, OSAD filed a motion for leave to withdraw, asserting no meritorious claim can be raised on appeal. This court allowed defendant leave to file additional points and authorities by April 9, 2018. Defendant has not done so. After examining the record, we grant OSAD's motion to withdraw and affirm the trial court's decision declining to appoint new counsel.

¶ 16 II. ANALYSIS

¶ 17 As pointed out by OSAD, we first note that given the procedural posture of this case, the only issues defendant may raise are compliance with the remand order and the denial of new counsel following the preliminary *Krankel* inquiry. *People v. Jackson*, 182 Ill. 2d 30, 88-89, 695 N.E.2d 391, 419 (1998) ("Where a defendant appeals, the reviewing court remands, and the defendant appeals again, the issues which that defendant may raise on the second appeal are limited to those which arose in the remand proceedings.").

¶ 18 Under *Krankel*, 102 Ill. 2d 181, a trial court is required to inquire into a defendant's *pro*

se post-trial claim of ineffective assistance of counsel for the purpose of determining whether new counsel should be appointed. If the trial court determines the claim lacks merit or pertains only to a matter of trial strategy, then the court need not appoint new counsel. *People v. Moore*, 207 Ill. 2d 68, 78, 797 N.E.2d 631, 637 (2003). If the allegations reveal possible neglect of the case, however, new counsel should be appointed. *Id.*

¶ 19 When reviewing the trial court’s ruling on the merits, we reverse only if manifest error occurs. Manifest error is error that is plain, evident, and indisputable. *People v. McLaurin*, 2012 IL App (1st) 102943, ¶ 41, 982 N.E.2d 832. Procedural issues, however, are reviewed *de novo*. *People v. Jackson*, 2016 IL App (1st) 133741, ¶ 68, 50 N.E.3d 66.

¶ 20 Here, the record reveals the trial court followed proper procedure in complying with our remand. The *Krankel* inquiry properly lacked participation by the State, evidence of consideration of matters outside the record is absent, and the court appropriately examined whether defendant established a claim for possible neglect. Thus, even with *de novo* review, it is clear no error occurred in the court’s compliance with our remand.

¶ 21 As to the court’s decision to decline to appoint counsel, we find no error. At the preliminary *Krankel* hearing, the trial court addressed defendant’s complaints that trial counsel: (1) failed to sufficiently discuss the case with him, including his “part” in the case; (2) never gave him “the option” he was looking for, such as a lesser offense or much shorter sentence; and (3) was not prepared to go to trial because he failed to discuss trial strategy with Mr. Berry.

¶ 22 After hearing from defendant and trial counsel, the trial court correctly stated it was “required to look at whether or not trial counsel has neglected the case and neglected his responsibilities for the defendant.” In declining to appoint new counsel, the court found defendant’s claims lacked merit and failed to reveal possible neglect. Given defendant’s claims

were rebutted by counsel and the outcome resulted from defendant's predicament and not failures of counsel, the court's decision regarding appointment of counsel cannot be said to be error, let alone, manifest error that is plain, evident, and indisputable. *McLaurin*, 2012 IL App (1st) 102943, ¶ 41.

¶ 23 Because the court provided defendant an appropriate preliminary *Krankel* inquiry and correctly declined to appoint new counsel, the trial court did not err. Accordingly, we agree with OSAD that there are no meritorious issues for review.

¶ 24 III. CONCLUSION

¶ 25 Based on the foregoing, we grant OSAD's motion to withdraw and affirm the trial court's denial of the appointment of new counsel.