

2018 IL App (4th) 180390-U

NO. 4-18-0390

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 28, 2018

Carla Bender

4th District Appellate

Court, IL

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
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 Holder White and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* This court lacks jurisdiction of most of defendant’s issues and declines to grant defendant the relief he requested as to his remaining issue.

¶ 2 Defendant, Tavaris Hunt, appeals from the circuit court’s order denying his ineffective assistance of counsel claims after a third hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). In February 2018, this court had remanded the case for a third time to adequately address defendant’s claims in accordance with *Krankel* and its progeny. *People v. Hunt*, 2018 IL App (4th) 170213-U. On appeal, this court granted the motion to withdraw as counsel filed by the office of the State Appellate Defender and allowed defendant to proceed *pro se*. Defendant first contends this court should vacate the judgments in this case (hereinafter case No. 1868), as well as the judgments in (1) *People v. Hunt*, No. 12-CF-1867 (Cir. Ct. Champaign Co.) (hereinafter case No. 1867), (2) *People v. Hunt*, No. 12-CF-1869 (Cir.

Ct. Champaign Co.) (hereinafter case No. 1869), and (3) *People v. Hunt*, No. 12-CF-1870 (Cir. Ct. Champaign Co.) (hereinafter case No. 1870) for numerous reasons. Included in that argument is a claim defendant is entitled to an additional 352 days of sentencing credit. Defendant also raises several other claims as to why this court should vacate the judgments in case No. 1868. Last, he contends the circuit court ignored this court's mandate at the third *Krankel* hearing and prejudged all of his ineffective assistance of counsel claims. We affirm.

¶ 3

I. BACKGROUND

¶ 4

A. Original Proceedings

¶ 5

In November 2012, the State charged defendant by information with six counts of domestic battery with a prior domestic battery conviction (counts I through VI) (720 ILCS 5/12-3.2(a)(1) (West 2010) (as amended by Pub. Act 96-1551, § 1035 (eff. July 1, 2011))) and one count of aggravated domestic battery (count VII) (720 ILCS 5/12-3.3(a-5) (West 2010) (as amended by Pub. Act 96-1551, § 5 (eff. July 1, 2011))). All seven counts related to a series of incidents occurring on September 27, 2012. In December 2012, pursuant to a plea agreement, defendant pleaded guilty to count VII in this case, and the State recommended defendant serve 48 months' probation and requested the dismissal of the other charges in this case as well as the charges in case Nos. 1869 and 1870. In case No. 1867, defendant also pleaded guilty to aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2010) (as amended by Pub. Act 96-1551, § 5 (eff. July 1, 2011))) for his actions on November 12, 2012. The circuit court accepted defendant's guilty pleas and sentenced defendant to 48 months' probation for aggravated domestic battery in this case and five years' imprisonment for aggravated domestic battery in case No. 1867 with the sentences to be served concurrently.

¶ 6

In January 2014, the State filed a petition to revoke defendant's probation,

alleging he violated the conditions of his probation when he consumed alcohol and committed the offenses of domestic battery and resisting a peace officer. In February 2014, defendant agreed to admit the allegations in the State's petition, and the circuit court revoked defendant's probation. The next month, the court conducted the resentencing hearing. After hearing the parties' arguments, the court resentenced defendant to seven years' imprisonment. The sentencing judgment awarded defendant 103 days of credit for time served but found defendant was not entitled to good time credit until he provided proof of participation and completion of a substance-abuse program. Defense counsel filed a motion to reconsider sentence. Defendant later filed a *pro se* letter with the court, asserting ineffective assistance of trial counsel. In April 2014, the court held a hearing on counsel's motion to reconsider sentence, and defendant did not appear. Defense counsel did not add anything to the motion to reconsider based on defendant's letter. The court denied the motion to reconsider defendant's sentence.

¶ 7

B. *Krankel* Proceedings

¶ 8 Defendant appealed his revocation of probation and resentence. On appeal, he asserted the circuit court erred by failing to conduct an inquiry into his ineffective assistance of counsel claims as required by *Krankel*. On December 1, 2015, this court entered an order agreeing with defendant and remanding the case for the limited purpose of allowing the circuit court to perform the required *Krankel* hearing. *People v. Hunt*, 2015 IL App (4th) 140313-U, ¶ 16.

¶ 9

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 circuit court held a *Krankel* hearing and denied defendant's claims. Defendant appealed. On October 18, 2016, this court entered an order, in which we

again remanded the case for another *Krankel* hearing because the circuit court failed to address defendant's claims concerning counsel's performance at the resentencing hearing. *People v. Hunt*, 2016 IL App (4th) 160183-U, ¶ 18.

¶ 10 On February 21, 2017, while the case was on remand for the second time, defendant again filed an amended claim of ineffective assistance of counsel. In March 2017, the circuit court held a second *Krankel* hearing and again denied defendant's ineffective assistance of counsel claims. Defendant appealed, asking this court to, once again, remand this case for a new *Krankel* hearing because the circuit court did not address all of defendant's ineffective assistance of counsel claims raised in the amended motion. On February 23, 2018, we entered an order, again finding the circuit court failed to conduct an adequate inquiry into defendant's ineffective assistance of counsel claims related to the resentencing hearing. *Hunt*, 2018 IL App (4th) 170213-U, ¶ 22. Thus, we once again remanded the case to the circuit court for it to conduct an adequate hearing under *Krankel*. *Hunt*, 2018 IL App (4th) 170213-U, ¶ 22.

¶ 11 In April 2018, defendant filed an amended claim of ineffective assistance of counsel, asserting defense counsel did not contact him after the revocation of defendant's probation and before the resentencing hearing and thus counsel did not inquire into mitigating evidence for the resentencing hearing. Defendant attached to his amended claim a document from the Champaign County sheriff's office indicating he did not receive an attorney call or visit during the period between January 2014 and April 2014. Moreover, defendant argued defense counsel failed to object to (1) the State's use of a cellular telephone recording, (2) the State's witness Mike Talbot's hearsay testimony, (3) the circuit court's characterization of him as "incredibly dangerous," and (4) the State's recommendation of the maximum sentence. Defendant also alleged counsel was ineffective for failing to obtain an additional 352 days of

sentencing credit. Additionally, defendant argued his judgment in this case was void because the circuit court did not admonish him about his right to a preliminary hearing and the consequences of having his probation revoked and the court initially entered a not guilty finding in this case.

¶ 12 In April 2018, defendant also filed a motion for substitution of judge, seeking to remove Judge Thomas Difanis from this case. On May 15, 2018, Judge John Kennedy held a hearing on defendant's motion for substitution of judge and took the matter under advisement. We note defendant was respectful to Judge Kennedy at the hearing on the substitution motion. On May 18, 2018, Judge Kennedy entered a written order denying defendant's motion for substitution of judge.

¶ 13 On May 30, 2018, Judge Difanis held a third *Krankel* hearing pursuant to our order in *Hunt*, 2018 IL App (4th) 170213-U, ¶ 22. The court began the hearing by disparaging our remand order and explaining why defendant's ineffective assistance of counsel claims were frivolous. The court then allowed defense counsel to explain his contacts with defendant after the petition to revoke and before the resentencing hearing. Defense counsel did not have defendant's file in front of him but explained what he generally did with his clients before sentencing. After defense counsel explained what he did with every client, defendant started to speak about his amended claim of ineffective assistance of counsel. The following dialogue took place.

“THE DEFENDANT: I got a paper right here with exhibits which I filed April 9th, 2012 on my amended claim of ineffective assistance—

THE COURT: Mr. Hunt, did I ask you to address the court?

THE DEFENDANT: It's from the Champaign County Office—

THE COURT: Mr. Hunt, Mr Hunt, we'll conduct this hearing without

you if you interrupt the court one more time.

You're now in contempt, Mr. Hunt.

THE DEFENDANT: What's contempt, sir?

THE COURT: Six months in my county jail—

THE DEFENDANT: And what—

THE COURT: —consecutive to what you've already got, if you keep this up.

THE DEFENDANT: I'm confused. Can I not—

THE COURT: The *Krankel* hearing is denied. ***"

¶ 14 On June 1, 2018, the circuit court filed a written order describing its version of the *Krankel* hearing. The court indicated defendant "sat at counsel table literally making faces at the Court." The court remanded defendant to the Department of Corrections to avoid the risk of a contempt order. The court's written order also correctly noted this court's order erroneously referred to defense counsel with the pronoun "she." The court denied defendant's "*Krankel* motion" and noted defense counsel was not ineffective.

¶ 15 On June 7, 2018, defendant filed a timely notice of appeal in compliance with Illinois Supreme Court Rule 606 (eff. July 1, 2017) appealing the circuit court's denial of his ineffective assistance of counsel claims after the third *Krankel* hearing. Accordingly, this court has jurisdiction of the circuit court's judgment after the third *Krankel* hearing under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 16 B. Collateral Proceedings

¶ 17 Defendant is not a stranger to this court, and we note his other appeals. In December 2015, defendant filed a joint *pro se* postconviction petition in this case and in case No.

1867. The circuit court dismissed the petition at the first stage of the proceedings. Defendant appealed the dismissal of his postconviction petition, and this court docketed the appeal in case No. 1868 as No. 4-16-0098. This court affirmed the circuit court's dismissal of defendant's postconviction petition. *People v. Hunt*, 2018 IL App (4th) 160097-U, petition for leave to appeal pending, No. 124217.

¶ 18 In September 2016, defendant filed a joint motion for leave to file a successive postconviction petition for both case Nos. 1867 and 1868. The circuit court denied the motion. In both cases, defendant appealed the dismissal of his postconviction petition, and this court docketed the appeal in case No. 1868 as No. 4-16-0760. On appeal, this court affirmed the circuit court's denial of defendant's motion for leave to file a successive postconviction petition. *Hunt*, 2018 IL App (4th) 160097-U.

¶ 19 In January 2017, defendant filed a joint petition for *mandamus* for both case Nos. 1867 and 1868, which the circuit court *sua sponte* denied. He appealed the denial of the *mandamus* petition in only this case. This court docketed that appeal as No. 4-16-0694. On April 26, 2017, this court *sua sponte* dismissed defendant's appeal in No. 4-16-0694 because he failed to file an appellant's brief. *People v. Hunt*, No. 4-16-0694 (Apr. 26, 2017) (nonprecedential order dismissing the case).

¶ 20 In June 2017, defendant filed a joint section 2-1401 petition for both case Nos. 1867 and 1868. The circuit court granted the State's motion to dismiss defendant's section 2-1401 petition on September 11, 2017. Defendant appealed the dismissal of his section 2-1401 petition, and this court affirmed the circuit court's judgment. *People v. Hunt*, 2018 IL App (4th) 170775-U. Defendant filed a petition for leave to appeal this court's judgment, which the Illinois Supreme Court denied. *People v. Hunt*, No. 123830 (Ill. Sept. 26, 2018) (supervisory order

denying petition for leave to appeal).

¶ 21 On October 30, 2017, defendant filed a motion for a *nunc pro tunc* order, contending he was entitled to 352 additional days of sentencing credit based on his concurrent imprisonment in case No. 1867. He argued it was part of the plea agreement and should be doubled to 704 days based on day-for-day credit. On November 8, 2017, the circuit court entered a docket entry denying defendant’s motion. Defendant appealed, and this court consolidated the appeal with appellate court case Nos. 4-17-0775 and 4-17-0776. On appeal, this court vacated the circuit court’s denial of defendant’s *nunc pro tunc* motion and dismissed defendant’s October 30, 2017, motion for a *nunc pro tunc* order due to lack of jurisdiction. *Hunt*, 2018 IL App (4th) 170775-U.

¶ 22 II. ANALYSIS

¶ 23 A. Jurisdiction

¶ 24 Our supreme court has emphasized a reviewing court’s duty to ascertain its jurisdiction before considering the appeal’s merits. See *People v. Lewis*, 234 Ill. 2d 32, 36-37, 912 N.E.2d 1220, 1223 (2009); *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213, 902 N.E.2d 662, 664 (2009); *People v. Smith*, 228 Ill. 2d 95, 106, 885 N.E.2d 1053, 1059 (2008). “The filing of a notice of appeal ‘is the jurisdictional step which initiates appellate review.’ ” *Smith*, 228 Ill. 2d at 104, 885 N.E.2d at 1058 (quoting *Niccum v. Botti, Marinaccio, DeSalvo & Tameling, Ltd.*, 182 Ill. 2d 6, 7, 694 N.E.2d 562, 563 (1998)). Illinois Supreme Court Rule 606(d) (eff. July 1, 2017) requires a notice of appeal to list the date of judgment or order and the nature of the order appealed if not from a conviction. “Illinois courts have held that a notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts thereof specified in the notice of appeal.” *Smith*, 228 Ill. 2d at 104, 885 N.E.2d at 1058.

¶ 25 In this case, defendant’s June 7, 2018, notice of appeal listed the date of the judgment as May 30, 2018, and the judgment appealed from as the “Denial of Motion of Ineffective Counsel.” It also only lists case No. 1868. Thus, we find this court clearly lacks jurisdiction of the judgments in case Nos. 1867, 1869, and 1870.

¶ 26 As to case No. 1868, the notice of appeal only lists the circuit court’s judgment after the May 30, 2018, *Krankel* hearing. We recognize a void judgment can be challenged “ ‘at any time or in any court, either directly or collaterally.’ ” *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103, 776 N.E.2d 195, 201 (2002) (quoting *Barnard v. Michael*, 392 Ill. 130, 135, 63 N.E.2d 858, 862 (1945)). In *People v. Castleberry*, 2015 IL 116916, ¶¶ 11-12, 43 N.E.3d 932, our supreme court recognized a judgment is void only if the circuit court which entered the challenged judgment lacked jurisdiction over the parties or the subject matter. In his brief, defendant does not raise any issues challenging the circuit court’s jurisdiction of his criminal proceedings. Thus, none of defendant’s issues unrelated to the *Krankel* hearing can be addressed as a void-judgment argument.

¶ 27 Defendant also does not assert and cite supporting authority establishing any other exception to the rule that we can only consider the judgment listed in the notice of appeal. We emphasize this court is entitled to have all issues raised on appeal clearly defined with citations to pertinent authority and supported by a cohesive legal argument. *People v. Macias*, 2015 IL App (1st) 132039, ¶ 88, 36 N.E.3d 373. A reviewing court is not a depository for which the appellant, in this case defendant, may dump his burden of argument and research. *Macias*, 2015 IL App (1st) 132039, ¶ 88. Illinois Supreme Court Rule 341(h)(7) (eff. May 25, 2018) requires defendant to include in his brief “[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on.” A

party's failure to comply with Rule 341(h)(7) results in forfeiture of the argument. *Macias*, 2015 IL App (1st) 132039, ¶ 88. Illinois courts do not treat *pro se* litigants more lenient than attorneys. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78, 987 N.E.2d 1. A party who chooses to represent himself or herself without a lawyer must comply with the same rules and is held to the same standards as licensed attorneys. *Holzrichter*, 2013 IL App (1st) 110287, ¶ 78.

¶ 28 Accordingly, we will only address defendant's argument related to the May 30, 2018, *Krankel* hearing.

¶ 29 B. Third *Krankel* Hearing

¶ 30 Defendant asserts the circuit court failed to follow the specific instructions this court gave in remanding his case for a third *Krankel* hearing. See *Hunt*, 2018 IL App (4th) 170213-U, ¶¶ 22-23. However, he does not want a remand for another *Krankel* hearing.

Defendant contends this court should grant him a new resentencing hearing. The State asserts this court cannot grant defendant any relief because he does not want another remand. It further contends defendant's behavior was the reason for the circuit court's noncompliance with our mandate.

¶ 31 This court does not condone defendant's behavior during the *Krankel* hearing. However, if the circuit court had not spent so much time disparaging this court's judgment and, instead focused on the directions we gave it, defendant may have had more patience in waiting to present the court with his claims. The circuit court's insolent remarks concerning this court reflect its disdain for our audacity to reverse its prior order and remand with directions. This likely left defendant with the impression his arguments would be rejected regardless of what transpired during the hearing. Moreover, the circuit court clearly did not comply with our mandate in *Hunt*, 2018 IL App (4th) 170213-U, ¶¶ 22-23, as it did not comply with all of our

directives. Nonetheless, defendant does not ask for remand for the circuit court to complete our prior mandate. He instead wants a resentencing hearing. For the following reasons, we find that relief is inappropriate.

¶ 32 In this case, the circuit court did address defendant's four ineffective assistance of counsel claims that we noted in our prior order (*Hunt*, 2018 IL App (4th) 170213-U, ¶ 22) and found they were meritless. With a *Krankel* hearing, the circuit court's inquiry will generally take one of three forms. *People v. Bolton*, 382 Ill. App. 3d 714, 718, 888 N.E.2d 672, 675 (2008). Usually, the circuit court will have some discussion with defense counsel. *Bolton*, 382 Ill. App. 3d at 718, 888 N.E.2d at 675. The circuit court may also discuss the defendant's claim with him. *Bolton*, 382 Ill. App. 3d at 718, 888 N.E.2d at 675. Finally, the circuit court may rely on its own recollection of defense counsel's performance. *Bolton*, 382 Ill. App. 3d at 718, 888 N.E.2d at 675. Here, the court relied on its own recollection in addressing two of defendant's claims and discussed the other two claims with defense counsel. The circuit court did not speak with defendant about his claims because defendant was disrespectful with the court. While the circuit court's inquiry was brief, the inquiry did not reveal any possible neglect by defense counsel regarding defendant's resentencing. Thus, defendant is not entitled to a new resentencing hearing.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the Champaign County circuit court's denial of defendant's ineffective assistance of counsel claims after a third *Krankel* hearing. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 35 Affirmed.