NOTICE
Decision filed 11/26/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 150393-U

NO. 5-15-0393

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).

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Montgomery County.
	)	
v.	)	No. 14-CF-122
	)	
LLOYD R. PERKINS,	)	Honorable
	)	James L. Roberts,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Cates and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: Because the trial judge did not, in response to the defendant's posttrial *pro se* assertion of ineffective assistance of counsel, conduct adequate proceedings pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), and its progeny, we remand, with directions, for the circuit court to conduct such proceedings.

¶ 2 The defendant, Lloyd R. Perkins, appeals his conviction of the offense of obstructing justice following a jury trial in the circuit court of Montgomery County. For the following reasons, we remand with directions.

¶ 3 FACTS

¶ 4 The defendant raises a number of issues in this appeal. However, as explained below, only one issue is dispositive of this appeal at this time. Accordingly, we will confine our recitation of facts to those facts necessary to an understanding and analysis of the dispositive

issue. On August 6, 2014, the defendant was charged, by indictment, with the offense of obstructing justice. See 720 ILCS 5/31-4(a)(1) (West 2014). The indictment alleged that the defendant, "with the intent to obstruct his prosecution, knowingly concealed physical evidence, in that [he] requested that Meghan Finley find and destroy a shotgun that was ultimately placed into a pond by Finley at" an address in Montgomery County. On August 13, 2014, attorney Michael R. Glenn entered his appearance as trial counsel for the defendant, entered a plea of not guilty for the defendant, demanded a speedy trial by jury, and waived arraignment. On that same date, Glenn filed a motion for discovery and a motion for substitution of judge. He subsequently filed additional motions on behalf of the defendant, including various motions to continue proceedings and a motion for a private investigator in both this case and in the defendant's companion case for armed robbery (No. 14-CF-110 in the trial court, No. 5-16-0182 on appeal) (the armed robbery case).

¶ 5 On December 17, 2014, a hearing was held on the motion for a private investigator. The trial judge began the hearing by stating, "This is 14-CF-110 and 14-CF-122." Thereafter, Glenn asserted that he needed a private investigator in both cases, stating, "I can't interview witnesses and impeach them. I'm a solo practitioner. I have nobody else to go talk to witnesses and be able to impeach them. I really need an investigator to take statements and do my investigation for me." Glenn added that the investigator to whom he had spoken believed "it would take up to 30 hours at $50 an hour" on the armed robbery case and 20 hours on this case. The State did not object to the appointment of a private investigator in the armed robbery case, subject to a cap of $1500, and that portion of the motion was granted. The State objected to the appointment of a private investigator in this case, contending it was "a simple case" with "one potential witness and a co-defendant." Glenn responded that the State was speaking only of "their witnesses," then stated, "I can't interview witnesses and impeach them both and, likewise, we may have our

witnesses to interview that would present a different set of facts to the trier of fact and we would need the investigator to talk to our witnesses likewise to present a case in defense." Glenn reiterated that he was "a solo practitioner with limited staff" and that he believed the State wanted to get this case "on fast track" which presented "problems for a solo practitioner to be able to focus on one thing like this that's going to be a contested matter on a short basis if that's what happens." The trial judge granted the request for a private investigator in this case, but capped the expenses at $750, which amounted to 15 hours at the stated rate of $50 per hour. The trial judge added, "if you can come back with some valid or specific request for additional time, witnesses *** that have been discovered *** and you can justify a reason for further need for an investigator, then I'll take that up at the time." Thereafter, the State objected to a motion by Glenn to continue this case's jury trial. Over the State's objection, the trial judge set the jury trial for February 9, 2015. He noted that he "would consider the February date a firm date unless there is some very specific need to continue that."

¶ 6 On January 14, 2015, the defendant was charged, by information, with obstructing justice. The information was similar to the previous indictment on the same charge, although the information alleged in detail that on the date in question, the defendant "with the intent to obstruct the prosecution of [the defendant] for the offense of Armed Robbery, knowingly concealed physical evidence, in that [the defendant] directed Meghan Finley to the location of a shotgun that she then placed into a pond located at" an address in Montgomery County. The State also requested that the previous indictment be dismissed. On January 28, 2015, the defendant, then incarcerated in the county jail, filed a *pro se*, handwritten letter to the circuit clerk of Montgomery County in which he asked (1) if Glenn had filed a motion to suppress evidence and a motion for a private investigator and if he could have a copy of the motion to suppress, (2) if the clerk could assist him with case law because the jail had no law library, and

(3) when a hearing was set on the motion to suppress. The handwritten header to the letter referenced both this case and the armed robbery case, and did not differentiate between the two cases with regard to the defendant's questions. Meanwhile, Glenn continued to file various motions on behalf of the defendant in this case, including to continue proceedings.

¶ 7 At what was scheduled to be the final pretrial hearing in this case, on March 25, 2015, Glenn attempted to present a motion to suppress physical evidence. However, as he began to question his first witness, he realized that he had "gotten the facts mixed up" on affidavits relating to this case, as opposed to the armed robbery case, and the searches relevant to each case. Glenn stated, "I'm going to have to amend—I'll have to prepare a different motion to suppress on this case because I did not have my facts correct." He apologized, and the hearing was recessed until March 30, 2015, so that Glenn could fix his mistakes. At the March 30, 2015, reconvened hearing, Glenn presented his motion to suppress physical evidence. It was denied.

¶ 8 On April 7, 2015, the defendant's jury trial in this case began. Over the course of that day and the following day, the State presented lengthy testimony from five witnesses: (1) Captain Craig Foster, a jail administrator at the Montgomery County Jail, (2) Meghan Finley, (3) George Pollard, (4) Chief Deputy Bruce Sanford, and (5) Deputy Sheriff Rick Furlong. Thereafter, Glenn presented brief[1] testimony from the two witnesses for the defense: (1) Illinois State Police Special Agent James D. Wolf and (2) Glenn's investigator, Rhonda Keech. The jury subsequently found the defendant guilty of the offense of obstructing justice.

¶ 9 On April 21, 2015, the defendant filed a *pro se* motion for a new trial. Therein, he noted that Glenn had filed a motion to withdraw as the defendant's attorney in the armed robbery case.

[1]We characterize the testimony as brief because the direct examination of Wolf comprises approximately one page in the transcript included in the record on appeal, and the direct examination of Keech comprises approximately two pages. In total, the full examination of the two witnesses combined comprises 6½ transcript pages.

The defendant alleged Glenn had "made it clear he is overwhelmed *** these days" and the defendant needed "an attorney that can defended [*sic*] me." The defendant queried, "Was he overwhelmed last week at trial where he couldn't do his best?" In a separately numbered paragraph, immediately thereafter, the defendant stated, "I never did get to listen to phone recordings discovery until during trial." He thereafter raised other allegations of error at his trial. In the last numbered paragraph of the motion, the defendant referred to "Exhibit A," the letter he received from Glenn informing the defendant that Glenn had filed the motion to withdraw in the armed robbery case. The defendant stated, "If he is [overwhelmed] now with cases[,] he was last week at my trial and that establish [*sic*] ineffective assistance of counsel." He asked the trial judge to "look into" the issues raised in the motion and grant him a new trial. Thereafter, on April 22, 2015, the defendant filed a *pro se* motion for discovery in which he requested documentation of contacts between the State and Finley, and between the State and Pollard, relating to the testimony given by Finley and Pollard at his trial.

¶ 10 On April 24, 2015, a hearing was held before the trial judge, who began the hearing by describing the case as "14-CF-110 and 14-CF-122," and noting the motions up for hearing in each case. With regard to this case, the trial judge stated that the defendant had "been filing motions on his own," and that because Glenn was still the defendant's "counsel of record for at least 30 days *** it would be incumbent upon [Glenn] to file any post-trial motions on his behalf or to at least address those." Glenn then asked that the court first address his motion to withdraw, which the trial judge agreed to do. Glenn stated, *inter alia*: "After trying the [o]bstructing [j]ustice case, it's become apparent to me that I do not have sufficient time in my schedule to devote to the [a]rmed [r]obbery trial, and as the [c]ourt knows, I'm a solo general practitioner with no associates or anything." Glenn stated that he had "a great deal of work on [his] plate," and that "I do some criminal but mostly civil practice, and I'm having a very difficult time

keeping up with my obligations in that regard even apart from court-appointed cases." He added that "I regret doing it, but I must do what I have to do to practice competently and take care of matters that I'm pledged to take care of." He noted that his mother had died approximately a year and a half before, and that he was "trying" to handle her estate himself, and dealing with "some other family personal matters that are causing [*sic*] an extreme amount of time right now." He requested permission to withdraw from the armed robbery case and stated, "I will finish out the obstructing case." He contended there would be no prejudice to the State and said, "but it is very impossible at this point to get everything done."

¶ 11 The State objected to the motion to withdraw, claiming it would be prejudiced by any delays resulting therefrom. The trial judge then stated that he agreed with the State "that it would be extremely prejudicial and would unnecessarily delay this trial to at this point permit you to withdraw after being involved in this case for such a lengthy period of time and on the eve of the matter being scheduled for trial." He added that he would "accommodate reasonably" Glenn's needs with regard to the upcoming armed robbery trial, stating, "I would be willing to give you some additional time if you need it, give you some latitude with regard to preparation and an opportunity to be ready for trial. Doesn't necessarily have to be June. If we need to do something in July or even possibly August, I may consider that." Subsequently, with the agreement of Glenn and the State, the armed robbery trial was moved to August 24, 2015.

¶ 12 Thereafter, the trial judge addressed the defendant, stating, "I've not given you an opportunity, and that was remiss on my part *** but Mr. Glenn has asked to withdraw." After reiterating to the defendant that the request to withdraw was being denied, the trial judge asked the defendant if he had "any objection or position with regard to" delaying the armed robbery trial until August 24, 2015. The defendant replied, "No, sir." Turning to this case, the trial judge stated, "with 14-CF-122, *** [the defendant] has filed some *pro se* post-conviction, post-

judgment *** motions with regard to the trial and reconsideration of issues involving the case that just went to trial." He noted that Glenn remained the defendant's counsel in this case and that Glenn had "indicated [his] intention to be able to conclude that." He suggested that Glenn get copies of "anything that [the defendant had] filed" and that "[i]f there needs to be amendments made to those motions," Glenn could "do those on [the defendant's] behalf and we could set a short status date in a week or so to find out where we're at." As the hearing concluded, the trial judge reiterated that Glenn was "to review and revise any motions filed *pro se* by the defendant" in this case, with the matters to be addressed at the defendant's sentencing hearing or prior thereto.

¶ 13 Thereafter, the defendant continued to file *pro se* motions in this case, including a motion for the transcript of the jury trial and an "informational filing" in which the defendant stated, *inter alia*, "I need [Glenn] to follow up on the *pro se* motions I filed." The defendant alleged Glenn "was supposed to visit with me last week. And no show-no hear. My life is on the line[;] will Mr. Glenn concentrate and give all his clients' cases the attention they deserve?" He added that his "cases need attention," and "I don't know the law or my rights." He asked if he could have "some access to case law or law books" because Glenn did not "have the time to defend me to his fullest in his dilemma."

¶ 14 On May 13, 2015, Glenn filed a motion to extend time to amend motion for new trial. On May 19, 2015, a sentencing hearing was held in this case. At the outset of the hearing, the trial judge stated that his "inclination" would be to grant the motion for an extension of time to amend the motion for a new trial, and that he would subsequently "address any issues that are created by any new pleading." The trial judge then turned to the matter of sentencing. The State argued for the maximum sentence of six years imprisonment, followed by one year of mandatory supervised release. The defendant argued for a sentence of three years, or possibly four years if an extended

term were required, "and for such other mercy as the [c]ourt is willing to show." The trial judge sentenced the defendant to the maximum sentence of six years' imprisonment, followed by one year of mandatory supervised release, with credit for time served prior to the sentencing hearing. Thereafter, he repeatedly told the defendant that Glenn "is still representing you," and would file motions on the defendant's behalf.

¶ 15 On June 17, 2015, Glenn filed a second motion for extension of time to amend the posttrial motion. That same day, he filed a motion requesting approval of fees for his private investigator, along with an invoice from the investigator that showed a total of 15 hours and 48 minutes spent on this case prior to the defendant's trial. The invoice showed 5 hours and 48 minutes on March 21, 2015, which included an unspecified amount of time for "[t]ravel to Litchfield" (presumably from the investigator's office, which according to the invoice was in Springfield) and "return travel," as well as an unspecified amount of time to "review witness videos and interview witnesses." The invoice showed 9 hours and 30 minutes on April 3, 2015, which included an unspecified amount of time for "[t]ravel to Litchfield," "travel to Nokomis," "travel to Decatur," and "return travel," as well as an unspecified amount of time to conduct a "conference and case review with M. Glenn," "attempt to locate witness," "watch witness video," and do an unspecified "interview." The invoice showed 30 minutes on April 6, 2015, to "[p]repare interview report." Also on June 17, 2015, the defendant filed a second *pro se* "informational filing," in which he again raised issues related to his trial in this case, and raised issues regarding evidence that presumably was to be introduced in his armed robbery case. On June 29, 2015, the defendant filed a third *pro se* "informational filing," in which he requested an update on various pending matters and reiterated his position on some of the matters he had previously raised, in addition to raising new issues. On July 1, 2015, the defendant filed a *pro se* motion in which he again requested transcripts from the jury trial. Also on July 1, 2015, Glenn

filed his amended motion for a new trial. The motion raised numerous issues. It did not address the defendant's *pro se* claims that he received ineffective assistance of counsel from Glenn, although it did note the claims, stating that "the defendant believes" he received ineffective assistance of counsel as a result of Glenn's statement that he was "covered up with cases" and Glenn's attempt "to withdraw from the case."

¶ 16 On August 6, 2015, a hearing was held in this case and in the armed robbery case. With regard to this case, the trial judge noted that the defendant "filed some *pro se* motions" which Glenn "was given an opportunity to address." As Glenn moved forward on his amended motion, he did not mention the defendant's *pro se* allegations of ineffective assistance of counsel. As the trial judge ruled on the various aspects of Glenn's motion, denying each point in turn, he noted the defendant's *pro se* allegations of ineffective assistance of counsel and stated that Glenn had "adopted and done about all he can in that regard *** just confirmed and adopted [the defendant's] request that because of Mr. Glenn's case load that he believes that Mr. Glenn was ineffective as counsel because he was too busy and he was covered up with other cases." The trial judge then stated, "I believe quite the contrary. In spite of the fact that Mr. Glenn was busy, I believe he presented an ample and substantial defense and provided effective assistance for [the defendant] in this trial. So I'll deny any relief there." Ultimately, the trial judge denied Glenn's motion in its entirety and reminded the defendant that Glenn continued to represent him in this case "for the next 30 days or so." This timely appeal followed.

¶ 17 ANALYSIS

¶ 18 On appeal, the defendant contends, *inter alia*, that the trial judge "failed to conduct a proper *Krankel* inquiry following [the defendant's *pro se*] claims of ineffective assistance of counsel." Because we agree, and because the issue is dispositive of this appeal, we remand for further proceedings, and we do not reach the defendant's other claims of error.

¶ 19 Under *People v. Krankel*, 102 Ill. 2d 181 (1984), and its progeny, when a criminal defendant, subsequent to the defendant's trial, raises a *pro se* claim of ineffective assistance of counsel, "the trial court must conduct an inquiry into the factual basis of the defendant's claim to determine whether new counsel should be appointed to assist the defendant." *People v. Bell*, 2018 IL App (4th) 151016, ¶ 35. The inquiry may involve (1) asking defense counsel to answer questions and explain facts and circumstances relating to the claim, (2) discussing the claim with the defendant, or (3) evaluating the claim on the basis of the trial judge's knowledge of defense counsel's performance at trial and, if applicable, the insufficiency of the *pro se* allegations on their face. *Id*. If, as a result of the inquiry, the trial judge determines there has been a possible neglect of the case by defense counsel, the trial judge "should appoint new counsel to independently investigate and represent the defendant at a separate hearing." *Id*. However, if the trial judge determines that the *pro se* allegations are without merit, or pertain only to matters of trial strategy, the trial judge may deny the *pro se* claim without appointing new counsel to represent the defendant. *Id*.

¶ 20 With regard to triggering this process, the Illinois Supreme Court has examined the question of how much detail a *pro se* defendant must provide to warrant a *Krankel* inquiry. *People v. Ayres*, 2017 IL 120071, ¶¶ 9-18. The *Ayres* court concluded that "when a defendant brings a clear claim asserting ineffective assistance of counsel, either orally or in writing, this is sufficient to trigger the trial court's duty to conduct a *Krankel* inquiry." *Id.* ¶ 18. The *Ayres* court noted that for a reviewing court, the operative concern is whether the trial judge conducted an inquiry that was adequate. *Id.* ¶ 13. The goal of the inquiry "is to facilitate the trial court's full consideration of a defendant's *pro se* claim and thereby potentially limit issues on appeal." *Id*. A proper inquiry will create the record necessary to adjudicate any claims raised on appeal. *Id*. Likewise, the failure to conduct a proper inquiry precludes appellate review. *Id*. The court

reiterated that the purpose of the inquiry by the trial judge "is to ascertain the underlying factual basis for the ineffective assistance claim and to afford a defendant an opportunity to explain and support [the defendant's] claim." *Id.* ¶ 24.

¶ 21 In this case, the State contends that notwithstanding the fact that there was not a separate hearing focused solely on a *Krankel* inquiry, the trial judge "complied with *Krankel*'s dictate that it specifically address [the] defendant's allegations of ineffective assistance of counsel." The State posits that this is true because the trial judge "made clear" that his conclusion that there was no ineffective assistance of counsel was based upon his "own knowledge of defense counsel's performance at trial," which, under the above case law, is one of the acceptable ways to assess and address a *pro se* claim of ineffective assistance of counsel. According to the State, only Glenn's "performance at trial could be considered by the trial [judge] in determining [the] defendant's claims." The principal problem with the State's argument is that it ignores the fact that the defendant's *pro se* allegations include more than only Glenn's performance at trial, and instead include allegations beyond Glenn's performance at trial: matters of which the trial judge could not and did not have firsthand knowledge, and thus matters that required an additional factual inquiry. See, *e.g.*, *People v. Cabrales*, 325 Ill. App. 3d 1, 6 (2001) (inquiry required where alleged instances of ineffective assistance of counsel occurred outside presence of trial judge, not merely during trial).

¶ 22 It is true, as described above, that much of the defendant's concern appeared to be focused on the letter he received from Glenn in which Glenn expressed a desire to withdraw in the armed robbery case. Referencing the letter, the defendant alleged in his *pro se* motion that Glenn had "made it clear he is overwhelmed *** these days," and that the defendant needed "an attorney that can defended [*sic*] me." The defendant queried, "Was he overwhelmed last week at trial where he couldn't do his best?" However, also as described above, in a separately numbered

paragraph, immediately thereafter, the defendant stated, "I never did get to listen to phone recordings discovery until during trial." The only reasonable reading of this paragraph (which we reiterate was drafted by a *pro se* nonlawyer defendant who in multiple pleadings professed not to know the law or his own rights) is that the defendant also took issue with Glenn's performance *prior to trial*, including Glenn's preparation for trial and his consultation with the defendant thereupon—an area into which the trial judge made no inquiry at all and undertook no evaluation at all, despite the fact that the *pro se* motion asked that the trial judge "look into" the issues raised in the motion and grant a new trial, a clear request from the defendant for further inquiry into his factual claims. Instead, the trial judge asked Glenn to deal with the defendant's *pro se* claims of Glenn's ineffectiveness, as well as the defendant's other *pro se* claims.

¶ 23 Notably, the other evidence presently of record does not contradict the defendant's *pro se* claims of ineffective assistance of counsel, and, depending upon what is revealed on remand, possibly may corroborate them. Evidence already of record that may be of relevance includes (1) Glenn's repeated assertions, described in detail above, that he could not do his own interviewing of witnesses and needed "an investigator to take statements and do my investigation for me," as well as his repeated assertions, also described in detail above, about the other limitations he believed he faced as a solo practitioner with "no associates or anything"; (2) Glenn's in-court statement, to the trial judge at the April 24, 2015, motion hearing, that it was only after the defendant was convicted in this case that it became apparent to Glenn that he did not have sufficient time in his schedule to devote to the armed robbery case, particularly in light of his statement to the judge that although he regretted withdrawing from the armed robbery case, he had to do so "to practice competently"; (3) the presentation by Glenn of only two witnesses at trial, each of whom testified very briefly and one of whom was Glenn's own private investigator, despite Glenn's pretrial statement that the case was not as simple as the State

claimed and that "we may have our witnesses to interview that would present a different set of facts to the trier of fact and we would need the investigator to talk to our witnesses likewise to present a case in defense"; (4) the fact that despite a pretrial estimate that 20 hours would be needed to investigate this case, Glenn's investigator billed for a total of only 15 hours and 48 minutes spent on the case prior to the defendant's trial, which included unspecified amounts of time for "travel," as well as "return travel," between Litchfield, Nokomis, Decatur, and (presumably) the investigator's office in Springfield; and (5) Glenn's bungled presentation, on March 25, 2015, of his motion to suppress, which can hardly be said to inspire confidence in the diligence of Glenn's pretrial preparation. We note as well that evidence of the defendant's lack of confidence in Glenn's pretrial preparation in both this case and the armed robbery case[2] also might be seen in the defendant's January 28, 2015, *pro se*, handwritten letter to the circuit clerk of Montgomery County in which he asked (1) if Glenn had filed a motion to suppress evidence and a motion for a private investigator and if he could have a copy of the motion to suppress, (2) if the clerk could assist him with case law because the jail had no law library, and (3) when a hearing was set on the motion to suppress. Based upon the foregoing, although we take no position with regard to the merits of the defendant's *pro se* claims, we conclude that further inquiry by the circuit court is required in this case.

¶ 24 Because this case must be remanded to allow the circuit court to conduct proper *Krankel* proceedings, we decline to address the defendant's other allegations of error. See *Ayres*, 2017 IL 120071, ¶ 13 ("[T]he goal of any *Krankel* proceeding is to facilitate the trial court's full consideration of a defendant's *pro se* claim and thereby potentially limit issues on appeal."). Depending upon the results of the circuit court's proceedings on remand in this case, the

---

[2]As explained above, the handwritten header to the letter referenced both this case and the armed robbery case, and did not differentiate between the two cases with regard to the defendant's questions.

defendant's other claims of error may become moot. We direct appellate counsel to provide copies of their briefs to the trial attorneys and trial judge on remand. See *Bell*, 2018 IL App (4th) 151016, ¶ 37.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, we remand with directions for the circuit court to conduct proper *Krankel* proceedings with regard to the defendant's *pro se* assertions of ineffective assistance of trial counsel in this case. Although we have no way of knowing at this point what will be revealed on remand, and although we stress that at this point it is the province of the circuit court, rather than this court, to inquire into and assess the defendant's *pro se* claims, we recognize that circumstances could arise on remand that would cause the circuit court to wish to reconsider the decision not to allow Glenn to withdraw in the armed robbery case. The propriety of that decision is the sole issue raised by the defendant on appeal in that case. For that reason, today we issue an order in that case (No. 14-CF-110 in the trial court, No. 5-16-0182 on appeal) in which we remand it for the limited purpose of allowing the circuit court to, if necessary based upon the results of the remand proceedings in this case, reconsider the denial of Glenn's motion to withdraw in that case.

¶ 27 Remanded with directions.