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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 12-CF-3430
)	
OSCAR GARCIA, a/k/a Alfonso Gallardo,)	Honorable
)	George D. Strickland,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BIRKETT delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Because the trial court failed to properly inquire under Krankel into the basis for defendant's claim of ineffective assistance of counsel, we remanded for that inquiry; (2) under Rule 472, we remanded the cause for defendant to move for credit against his sentence.

¶ 2 Following a bench trial, defendant, Oscar Garcia, a/k/a Alfonso Gallardo, was convicted of possession with intent to deliver 15 or more grams but fewer than 100 grams of a controlled substance containing cocaine (720 ILCS 570/401(a)(2)(A) (West 2012)) and sentenced to eight years in prison. Defendant timely appeals and now argues (1) that the trial court failed to inquire into his posttrial claim of ineffective assistance of counsel and (2) that the judgment does not

reflect credit for time spent in custody prior to sentencing. For the reasons that follow, we remand for the limited purpose of allowing the trial court to inquire into the factual basis of defendant's ineffective-assistance claim and for defendant to file a motion, pursuant to Illinois Supreme Court Rule 472 (eff. Mar. 1, 2019), to correct any sentencing errors.

¶ 3

I. BACKGROUND

¶ 4 On July 27, 2016, defendant was convicted. On August 18, 2016, defense counsel filed a motion for judgment notwithstanding the verdict or, in the alternative, a new trial. On August 25, 2016, defendant filed a *pro se* motion for a new trial. The motion alleged that defense counsel was ineffective in the following manner: "Denied research and also questioning Officer Brian Falotico, as to why he purgered and mislead [*sic*] Grand Juries." Attached to the motion was case law and a grand jury transcript.

¶ 5 On January 6, 2017, the trial court denied defense counsel's motion. No mention was made of the *pro se* motion for a new trial. The court sentenced defendant to eight years in prison

¶ 6 Defendant timely appealed.

¶ 7

II. ANALYSIS

¶ 8 Defendant argues that, because the trial court failed to inquire into his *pro se* allegation of ineffective assistance of counsel, the matter must be remanded for that inquiry. In response, the State does not dispute that a *pro se* document entitled "Motion for a New Trial," alleging ineffective assistance of counsel, was filed on August 25, 2016, and purportedly signed by defendant. However, the State does dispute that the document was "subject to review by the trial court." According to the State, because defendant failed to properly serve the State and provide certification as to who submitted the document, the trial court had no reason to believe that it was

defendant who submitted the document. Thus, the State maintains that defendant's claim was never properly before the trial court.

¶ 9 When a defendant brings a *pro se* posttrial claim that trial counsel was ineffective, the trial court must adequately inquire, pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), into the factual basis of the claim and, under certain circumstances, must appoint new counsel to argue the claim. *People v. Ayres*, 2017 IL 120071, ¶ 11; *People v. Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9. If the defendant's allegations show possible neglect of the case, the court should appoint new counsel to argue the defendant's claim. *Ayres*, 2017 IL 120071 ¶ 11; *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9. However, if the court concludes that the defendant's claim lacks merit or pertains only to matters of trial strategy, the court may deny the claim. *Ayres*, 2017 IL 120071, ¶ 11; *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9. "If the court fails to conduct the necessary preliminary examination as to the factual basis of the defendant's allegations, the case must be remanded for the limited purpose of allowing the court to do so." *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9.

¶ 10 The question here is whether the *pro se* motion was sufficient to trigger the court's duty to inquire. This raises a question of law, which we consider *de novo*. See *People v. Taylor*, 237 Ill. 2d 68, 75 (2010); *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9. To trigger the court's duty to inquire, "[a] *pro se* defendant is not required to do any more than bring his or her claim to the trial court's attention." *Ayres*, 2017 IL 120071, ¶ 11 (quoting *People v. Moore*, 207 Ill. 2d 68, 79 (2003)). "[T]hus, a defendant is not required to file a written motion but may raise the issue orally or through a letter or note to the court." (Citations omitted.) *Id.*

¶ 11 Here, there is no dispute that a *pro se* motion for a new trial containing defendant's allegations of ineffectiveness was timely filed on August 25, 2016. The State argues that the

motion did not trigger the trial court's duty to inquire under *Krankel* because defendant failed to serve the State and failed to provide a proper proof of service. We disagree. As noted, there is no requirement that a defendant file *any* motion to raise his claim of ineffectiveness. All the defendant must do is bring the claim to the trial court's attention. See *People v. Patrick*, 2011 IL 111666, ¶ 29. Given the timely filing of a *pro se* motion containing defendant's allegations of ineffectiveness, his claim was properly before the trial court despite defendant's failure to serve the motion on the State and provide a proof of service. See *id.* (the defendant's *pro se* allegations of ineffective assistance of counsel were sufficient to warrant a *Krankel* inquiry despite being raised in a *pro se* motion for a new trial that did not comply with the statutory requirement that a motion for a new trial be filed within 30 days of a guilty verdict or finding). As such, an inquiry under *Krankel* was warranted.

¶ 12 We reject the State's argument that "without an affidavit or certification, there is no way to authenticate that it was defendant who signed the document and made the allegations in it, or if it was a random person, without any standing, who decided to 'file' such a motion," as any such questions could have been readily resolved with the proper inquiry. The State also notes that defendant did not ask the court to review the *pro se* motion, nor did he raise the issue of counsel's ineffectiveness when asked if he would like to make a statement. However, to the extent that the State is suggesting that defendant abandoned the motion, it makes no actual argument to that effect. In any event, all defendant needed to do was bring his claim to the court's attention, which he did by filing a motion raising the claim.

¶ 13 Based on the foregoing, we hold that the trial court erred in failing to conduct a preliminary examination into the factual basis of defendant's *pro se* claim of ineffective assistance of counsel. Accordingly, the matter must be remanded for that inquiry.

¶ 14 Defendant next argues that, because the sentencing order does not include an award of credit for time spent in presentencing custody, we should order the trial court to issue a corrected mittimus reflecting the proper credit despite defendant's failure to raise the issue below.

¶ 15 At oral argument, both parties agreed that this issue was governed by Illinois Supreme Court Rule 472 (eff. Mar. 1, 2019), which was adopted after defendant filed his brief. Rule 472 sets forth the procedure in criminal cases for correcting certain sentencing errors, including “[e]rrors in the imposition or calculation of fines, fees, and assessments or costs,” “[e]rrors in the application of *per diem* credit against fines,” “[e]rrors in the calculation of presentence custody credit,” and “[c]lerical errors in the written sentencing order.” Ill. S. Ct. R. 472(a) (eff. Mar. 1, 2019). The rule provides that, in criminal cases, “the circuit court retains jurisdiction to correct” the enumerated errors “at any time following judgment ***, including during the pendency of an appeal.” Ill. S. Ct. R. 472(a) (eff. Mar. 1, 2019). Additionally, “[n]o appeal may be taken” on the ground of any of the sentencing errors enumerated in the rule “unless such alleged error has first been raised in the circuit court.” Ill. S. Ct. R. 472(c) (eff. Mar. 1, 2019). More recently, our supreme court amended Rule 472 by adding paragraph (e) (Ill. S. Ct. R. 472(e) (eff. May 17, 2019)), which provides: “In all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule.”

¶ 16 Here, defendant's appeal was pending on March 1, 2019. Thus, pursuant to the provisions of Rule 472, we remand to allow defendant the opportunity to file a motion to correct any sentencing errors.

¶ 17

III. CONCLUSION

¶ 18 For the reasons stated, we remand for the limited purpose of allowing the trial court to inquire into the factual basis of defendant's ineffective-assistance claim. If defendant's allegations show possible neglect of the case, the court should appoint new counsel to argue defendant's claim of ineffective assistance. However, if the court concludes that defendant's claim lacks merit or pertains only to matters of trial strategy, the court may deny the claim. On remand, defendant shall be allowed to file a motion under Rule 472 to correct any sentencing errors.

¶ 19 Remanded.