2019 IL App (3d) 160592-U

Order filed January 17, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
	)	Henry County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-16-0592
v.	)	Circuit No. 12-CF-181
	)	
JOHN D. MOBLEY,	)	Honorable
	)	Gregory G. Chickris,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Schmidt and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The defendant failed to make a clear claim of ineffective assistance of counsel such that the circuit court was required to conduct an inquiry into the defendant's allegations. (2) The Violent Crime Victims Assistance Fund fine must be reduced.

¶ 2 The defendant, John D. Mobley, appeals his conviction and sentence. The defendant contends that the circuit court failed to conduct a preliminary inquiry into his posttrial allegations of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984).

¶ 3 I. BACKGROUND

¶ 4 The State charged the defendant with felony driving while license revoked (625 ILCS 5/6-303(a), (d-4) (West 2012)). The charge was based on the allegation that the defendant committed the offense of felony driving while license suspended by driving a motor vehicle at a time his license was suspended and the defendant had at least 9 but less than 14 driving while license suspended violations.

¶ 5 Initially, the circuit court appointed the public defender to represent the defendant, but the defendant later retained private counsel. At a pretrial hearing, defense counsel explained that there had been several prior continuances so that counsel could attempt to have the Secretary of State rescind the defendant's 1996 statutory summary suspension. Counsel believed he could use the rescission of the suspension as a legal defense. While the defendant did have his driver's license reinstated, he did not have the summary suspension rescinded. Because the statutory summary suspension was still in place during all of the defendant's subsequent driving while license revoked violations, counsel advised the defendant that it was in his best interests to accept the plea offer from the State. The State added that the defendant agreed to accept a plea offer of three years' imprisonment. The defendant asked for a continuance before starting his sentence. The plea was set for a later date, but the defendant failed to appear and a bench warrant was issued for the defendant's arrest.

¶ 6 At a subsequent hearing, defense counsel informed the court that the defendant was no longer happy with counsel's services and the defendant no longer wanted counsel to continue his representation. The defendant told the court he was unhappy with counsel's advice to accept a plea agreement because the defendant assumed that having his driver's license reinstated would mean that he would not have to serve time in prison. The court then inquired,

"THE COURT: *** [A]re you dissatisfied with [defense counsel]?

THE DEFENDANT: I don't know how to answer that because—

THE COURT: He's done quite a bit. The only problem is, nobody's responded to it.

THE DEFENDANT: I mean, I have respect for the Courts. I have respect for people. I can't say I'm dissatisfied, but I feel that, as a paid lawyer, that—I mean, it's like—I don't know. I don't know what I want to say, you know.

THE COURT: Well—

THE DEFENDANT: It's up to [defense counsel] to decide what he wants to do.

I'm just asking for something that's fair, and what I'm asking for—because it was enhanced from a misdemeanor to a felony, you know. It was a misdemeanor at first, and they enhanced it to a—

THE COURT: Well that's because the police officer wrote it on the road and didn't know what the background was.

THE DEFENDANT: Well, okay. I don't know what to say, [Y]our Honor, but all I know is that there's cases that's worse than mine, you know, that hasn't been to the Department of Corrections, you know, and things in that order.

THE COURT: Well, you've got a long list.

THE DEFENDANT: Huh?

THE COURT: You've got a long list.

THE DEFENDANT: I know, but I was told that, you know, the reason I was being sent to the Department of Corrections was because they felt I was going to do the same thing.

THE COURT: No, you were sent to the Department of Corrections because there's a mandatory minimum—

THE DEFENDANT: Okay.

THE COURT: —in the sentencing ranges that it requires that time.

I'm going to set this down for a bench trial. [Defense counsel], I'm going to keep you in based on what we've discussed here today."

¶ 7 Ultimately, the defendant chose not to accept the State's plea offer, and the cause proceeded to a bench trial. Following a trial, the circuit court found the defendant guilty of felony driving while license revoked.

¶ 8 Subsequently, the defendant filed a *pro se* motion to dismiss. The defendant also wrote a letter to the court that reiterated his arguments in his motion to dismiss, and claimed, in relevant part, that his attorney was "not helping [him]" and that he was having a difficult time contacting his attorney.

¶ 9 At the defendant's sentencing hearing, the court allowed the defendant to argue his *pro se* motion to dismiss, which the court denied. The court did not address the defendant's claims that his attorney was not helping him and that he was having a difficult time contacting his attorney. After hearing the sentencing arguments from defense counsel and the State, the court sentenced the defendant to three years' imprisonment and imposed a $100 Violent Crime Victims Assistance Fund fine. The court did not specifically order any additional fines. After the notice of appeal was filed in this case, the circuit clerk generated an itemized assessment of fines and fees, which included additional fines that were not part of the court's sentence.

¶ 10 II. ANALYSIS

¶ 11 A. *Krankel*

¶ 12 On appeal, the defendant contends that a remand is necessary because the circuit court failed to conduct a *Krankel* inquiry based on his "*pro se* post-trial allegations of ineffective assistance of counsel." Whether the circuit court was obligated to conduct a preliminary *Krankel* inquiry as to a defendant's posttrial claim of ineffective assistance of counsel is a question of law that we review *de novo*. *People v. Branch*, 2017 IL App (5th) 130220, ¶ 26.

¶ 13 A *Krankel* hearing is required "when a defendant raises a *pro se* posttrial claim of ineffective assistance of trial counsel." *People v. Ayers*, 2017 IL 120071, ¶ 11. Generally, to trigger a *Krankel* inquiry,

> " '[A] *pro se* defendant is not required to do any more than bring his or her claim to the trial court's attention' (*People v. Moore*, 207 Ill. 2d 68, 79 (2003); [citation]), and thus, a defendant is not required to file a written motion ([*People v.*] *Patrick*, 2011 IL 111666, ¶ 29) but may raise the issue orally (*People v. Banks*, 237 Ill. 2d 154, 213-14 (2010)) or through a letter or note to the court (*People v. Munson*, 171 Ill. 2d 158, 200 (1996))." *Id*.

Although a defendant's bare assertion of " 'ineffective assistance of counsel' " is sufficient to trigger a *Krankel* hearing, the defendant must nevertheless clearly state that he is asserting a claim of ineffective assistance of counsel. *Id*. ¶¶ 18-23. Further, as is the case here, when a defendant is represented by private counsel *Krankel* applies if the defendant makes a *pro se* posttrial claim of ineffective assistance of counsel and informs the court that he both (1) desires new counsel, and (2) cannot afford new private counsel. *People v. Mourning*, 2016 IL App (4th) 140270, ¶ 20.

¶ 14 During the posttrial proceedings in this case, the defendant never explicitly claimed that counsel provided ineffective assistance. The defendant also did not inform the court that he

desired new counsel or that he could not afford new counsel. We acknowledge that during the pretrial proceedings counsel informed the court that the defendant was unhappy with his services and no longer desired counsel's representation. However, during the exchange the defendant also told the court that he could not say that he was dissatisfied with counsel. In other words, the defendant never made a clear indication that he believed counsel was ineffective or that he desired new counsel. Consequently, we find that the circuit court was not required to conduct a *Krankel* inquiry.

¶ 15 Despite this, the defendant contends that his posttrial letter to the court implicitly challenged counsel's effectiveness, which triggered the circuit court's duty to conduct a *Krankel* inquiry. In his letter, the defendant stated that counsel was "not helping [him]" and "I've been trying to reach [counsel] since Feb; in order to have my case droped [*sic*] or droped [*sic*] down to its lowest charge. Sir I ended up putting the [*pro se* motion to dismiss] in myself." The defendant ended his letter by stating, "all I'm asking is for my case to be time severed, that's all within right drop the charge the State charged me with at first to it lowest charge and because I turned myself in reinstate my bone [*sic*] and give me a fine."

¶ 16 "In instances where the defendant's claim is implicit and could be subject to different interpretations, a *Krankel* inquiry is not required." *People v. Thomas*, 2017 IL App (4th) 150815, ¶ 26 (finding a hearing was not required where the defendant failed to mention his attorney in his letter to circuit court complaining about sentence); *People v. King*, 2017 IL App (1st) 142297, ¶ 20 (*Krankel* not implicated when the defendant, without mentioning her attorney, claimed error because a witness was not called). Although the defendant's letter indicates that he was having difficulty communicating with counsel, the context of the letter suggests that the defendant was dissatisfied with the result of the proceedings rather than a challenge to the effectiveness of

counsel. Moreover, as noted above, the defendant never asked the court to discharge counsel or request the court to appoint new counsel during the posttrial proceedings. The defendant's decision to allow counsel to continue representing him during the posttrial proceedings demonstrates that the defendant was not claiming that counsel provided ineffective assistance. Consequently, we find these general statements are insufficient to constitute an implicit claim of ineffective assistance.

¶ 17 B. Fines

¶ 18 Next, the defendant asks this court to vacate the fines imposed by the circuit clerk after the court sentenced the defendant. The State correctly notes that under our supreme court's recent decision in *People v. Vara*, 2018 IL 121823, this court lacks jurisdiction to vacate fines improperly assessed by the circuit clerk. In his reply brief, the defendant acknowledges this decision and withdraws his request. Therefore, we need not reach this issue.

¶ 19 Finally, the defendant asks this court to reduce the Violent Crime Victims Assistance Fund fine from $100 to $20 under *ex post facto* laws. The State concedes error. Upon review of the record, we accept the State's concession and reduce this fine to $20. At the time of the defendant's sentencing hearing, the statute providing for the fine set the amount at $20 if no other fines were imposed. 725 ILCS 240/10(c) (West 2012). Here, the Violent Crime Victims Assistance Fund fine was the only fine specifically imposed by the circuit court. Consequently, the amount should have been set at $20, not $100. *People v. Prince*, 371 Ill. App. 3d 878, 880 (2007). We therefore vacate this fine and remand the matter for the circuit court to impose this fine at the correct amount of $20.

¶ 20 III. CONCLUSION

¶ 21 The judgment of the circuit court of Henry County is affirmed in part, vacated in part, and remanded with directions.

¶ 22 Affirmed in part, and vacated in part, and remanded with directions.