2019 IL App (3d) 170439-U

Order filed July 5, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal Nos. 3-17-0439 and 3-17-0440
v.	)	Circuit Nos. 16-CF-2371 and
	)	16-CF-2447
DAVID L. PULLEY,	)	
	)	Honorable
Defendant-Appellant.	)	Daniel Rippy,
		Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant failed to make a clear claim of ineffective assistance of counsel such that the circuit court was required to conduct an inquiry into defendant's allegations.

¶ 2 Defendant, David L. Pulley, appeals his convictions and sentences. Defendant contends that the Will County 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). We affirm.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant with possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(2) (West 2016)), delivery of a controlled substance between 1 and 15 grams of cocaine (*id.* § 401(c)(2)), and delivery of any amount of a controlled substance (*id.* § 401(d)(i)).

¶ 5 Initially, the court allowed defense counsel's request to have defendant evaluated for Treatment Alternatives for Safe Communities (TASC) probation. A presentence investigation report (PSI) was also prepared.

¶ 6 Subsequently, defense counsel informed the court that defendant intended to enter blind guilty pleas to the charges. Counsel stated that if the court found defendant eligible for participation in TASC, TASC would consider him acceptable into the program. However, counsel continued,

> "[B]efore I proceed, Judge, and I have had this conversation with [defendant], I still believe based on my reading of the statute, the TASC statute specifically, there may be some problems with eligibility due to [defendant's] prior record that the TASC personnel did not take into account.
>
> I represented that to [defendant]. I told him that once his guilty plea is entered, it's not a situation where he can go ahead and say, well, if I'm not eligible, I'll take the plea back. I made this clear to [defendant] it's my reading of the TASC statute. He wishes to proceed with it."

¶ 7 The court then questioned defendant,

"THE COURT: [Defendant], you understand the mere fact that you're eligible for TASC, that doesn't force my hand. It doesn't mean I have to give you TASC. You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And as [defense counsel] is telling me, is that correct, he has informed me you may still have some issues with your eligibility, which means you may not be eligible to receive TASC. You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You cleared up some things, but there still may be other things that could prevent you from getting that. And even if there's not, again it wouldn't mean you automatically get it. It's just a possible sentencing alternative that I could give you, but there's no guarantee that I would do that. You understand that?

THE DEFENDANT: I understand.

THE COURT: I'm not saying what I'll do because I haven't heard your history and I haven't accepted it. We haven't gotten to the sentencing yet so I don't know what the facts that are going to be presented are. I'm telling you the mere fact that you could be eligible doesn't mean you're going to get it. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And knowing that, do you still wish to go forward?

THE DEFENDANT: Yes, sir."

¶ 8 The State then interjected by informing the court that due to defendant's criminal history he would be subject to Class X sentencing. As a result, the State believed that defendant would not be eligible for participation in TASC. Instead, defendant would be subject to a mandatory sentencing range of 6 to 30 years' imprisonment. The court followed by asking defendant if he understood that the State believed defendant would not be eligible for TASC and that he would face a mandatory prison term. Defendant informed the court that he understood. Later, the following discussion occurred regarding defendant's plea:

> "THE COURT: You understand in each of these cases, there is no agreement with the State, what we called a blind plea, which means that there is no recommendation and then your sentence will be solely up to the purview of this Court? Do you understand that?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: All right. And you were present when we had the conversations, the full conversations, regarding TASC, your possible eligibility or ineligibility, and the fact that the State believes you to be a Class X sentencing which means it would be a minimum of six to 30 years in the Illinois Department of Corrections, correct?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: And knowing all that, do you still wish to plead guilty?
>
> THE DEFENDANT: Yes, sir.

The court then read the charges and repeated that defendant could be subject to Class X sentencing. The State provided the factual basis for the charges and the court accepted

defendant's plea as knowing and voluntary. The parties then proceeded to argue factors in mitigation and aggravation.

¶ 9 In aggravation, the State noted that defendant's PSI showed that he had prior felony convictions which meant that defendant was subject to Class X sentencing. In mitigation, defense counsel acknowledged that the PSI was accurate and that defendant's prior convictions "are such that it looks as though [defendant] would be X sentencing for these offenses." (R76) Counsel later argued that defendant desired to participate in TASC, but because of his criminal history, defendant would be ineligible. Counsel therefore argued that the court should impose the minimum term of imprisonment.

¶ 10 Ultimately, the court found defendant subject to Class X sentencing, and ineligible for TASC. The court imposed two concurrent nine-year terms of imprisonment for each conviction.[1]

¶ 11 Subsequently, defendant sent a *pro se* letter to the court. The *pro se* letter stated,

> "I was sentence to nine years. June 9, 2017. My attorney said he was filing a motion to reconsider my sentence. The Judge said I had 30 days to file my appeal. I went to court today to hear my reconsider motion. My attorney asked for a continue until 7-10-2017. That's one day pass my 30 days to file my appeal. My attorney put me in for T.A.S.C. T.A.S.C. approved me. But my attorney told the Judge I was class X mandatory sentencing. I took a blind plead. If I had knowen that I was madatory class X I would have took the 6 yrs the State offerd me."

¶ 12 At the next hearing, the court addressed defendant's letter noting that defendant was concerned about timely filing his postsentencing motions Defense counsel and the court determined that the postsentencing motion would be presented in a timely fashion.

[1]The State dismissed the charge for delivery of any amount of a controlled substance.

¶ 13 Defense counsel then filed a motion to reconsider sentence. At the hearing, defendant asked the court to stay his sentence and allow him to participate in TASC. According to defendant, the State had offered him six, seven, and eight-year terms of imprisonment. Defendant asked the court to reduce his sentence to six or seven years if he "can't get the help I need." The court responded by reminding defendant that both defense counsel and the court had admonished defendant about the fact that his prior criminal history would prevent him from participating in TASC. Despite being admonished about this fact, defendant still chose to plead guilty. The court denied defendant's motion to reconsider sentence.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant contends that a remand is necessary because the circuit court failed to conduct a *Krankel* inquiry based on the content of defendant's *pro se* postsentencing filing. 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. Upon review, we find that defendant failed to make a clear claim of ineffective assistance of counsel. Therefore, we hold that the circuit court was not required to inquire into defendant's *pro se* allegations.

¶ 16 A *Krankel* inquiry is required "when a defendant raises a *pro se* posttrial claim of ineffective assistance of trial counsel." *People v. Ayers*, 2017 IL 120071, ¶ 11. 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' [citations], 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*. (quoting *People v. Moore*, 207 Ill. 2d 68, 79 (2003)).

¶ 17 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.

¶ 18 Here, defendant never explicitly claimed that counsel provided ineffective assistance. At no point in the proceedings did defendant specifically express his dissatisfaction with counsel's performance. In other words, defendant failed to make a clear indication that he believed counsel provided ineffective assistance. Consequently, the circuit court was not required to conduct a *Krankel* inquiry.

¶ 19 Despite the above, defendant contends that his *pro se* postsentencing letter to the court implicitly challenged counsel's effectiveness. Thus, defendant contends that he triggered the circuit court's duty to conduct a *Krankel* inquiry. In his letter, defendant stated, "My attorney put me in for T.A.S.C. T.A.S.C approved me but my attorney told the Judge I was class X mandatory sentencing. I took a blind plead. If I had knowen that I was madatory class X I would have took the 6 yrs the State offerd me." We disagree.

¶ 20 "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). First, we note that the context of defendant's letter suggests that his overriding concern was the timely filing of a motion to reconsider sentence. Defendant

noted that his counsel had previously requested a continuance to file a postsentencing motion. Defendant believed that the continuance would result in his postsentencing motions to be untimely filed. Defendant emphasized that he desired a lower term of imprisonment. In other words, defendant's claim that he would have accepted the State's lower term plea offers suggests that defendant simply desired a shorter sentence than the one imposed by the court.

¶ 21 Second, defendant's letter did not imply that counsel performed deficiently. Defendant merely recited the facts of the case: his attorney attempted to receive TASC approval but later conceded that defendant was subject to Class X sentencing due to defendant's criminal history. Although defendant claimed he would have accepted the State's prior plea offers if he had known he was subject to Class X sentencing, defendant's letter did not allege that counsel's actions were erroneous. Instead, we find that defendant's statements merely amounted to defendant lamenting his decision of not accepting a shorter plea offer. Accordingly, we conclude that these general statements are insufficient to constitute an implicit claim of ineffective assistance of counsel.

¶ 22 Even assuming defendant's *pro se* letter triggered the court's duty to conduct a *Krankel* inquiry, we find that the court's discussion with defendant during the hearing on defendant's motion to reconsider sentence sufficiently qualifies as a preliminary *Krankel* inquiry. Defendant addressed the court at the hearing and again asked the court to sentence him to TASC. However, the court explicitly told defendant that it and defense counsel had admonished defendant that his prior criminal history would preclude the court from recommending placement into TASC. The court then noted that despite defendant's knowledge of his inability to participate in TASC, defendant still chose to plead guilty. In other words, the court specifically found that defendant had been made aware of his inability for placement in TASC. This conclusion is supported by

the fact that defendant was admonished several times that his prior criminal history would prevent him from placement in TASC. Given the court's knowledge of the plea proceedings, the court did not err in rejecting defendant's claim that he did not know that he would be subject to Class X sentencing. *People v. Jolly*, 2014 IL 117142, ¶ 30 (the court may make its determination based on its knowledge of defense counsel's performance and the insufficiency of defendant's allegations).

¶ 23 III. CONCLUSION

¶ 24 The judgment of the circuit court of Will County is affirmed.

¶ 25 Affirmed.