2019 IL App (4th) 160890-U

NO. 4-16-0890

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 1, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
RAYMOND J. McBRIDE,	)	No. 16CF176
Defendant-Appellant.	)	
	)	Honorable
	)	John P. Schmidt,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court remanded for further proceedings, finding defendant is entitled to a preliminary *Krankel* hearing.

¶ 2 In September 2016, defendant, Raymond J. McBride, pleaded guilty to one count of aggravated battery. The trial court sentenced him to 12½ years in prison. Defendant filed a motion to reconsider his sentence and a motion to withdraw his guilty plea, both of which the court denied.

¶ 3 On appeal, defendant argues the trial court erred in (1) denying his motion to vacate his guilty plea and (2) failing to conduct a preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), on his postplea complaint about counsel's performance. We remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In March 2016, the State charged defendant by information with one count of aggravated battery (720 ILCS 5/12-3.05(g)(3) (West 2016)), alleging he knowingly caused a correctional institution employee to come in contact with feces by throwing, tossing, or expelling fecal material, and he was an inmate at the Sangamon County jail at the time of the offense.

¶ 6 The trial court conducted a plea hearing in May 2016, but defendant did not enter a plea. Instead, following an outburst by defendant along with a statement he was on psychiatric medication, the court ordered a fitness examination. At an August 2016 hearing, the court stated defendant had "deposited fecal material throughout the courtroom" during a preliminary hearing and, on the date of the hearing, "smeared" the window of the holding cell with his own feces. The court continued the hearing. At the next hearing, defense counsel stated the fitness examination had been conducted and defendant had been found fit to stand trial.

¶ 7 At a hearing in September 2016, the trial court was preparing for *voir dire* of prospective jurors when defense counsel indicated defendant sought to enter an open guilty plea. Defendant indicated he understood he was giving up his right to a jury trial and the court would determine his sentence. Defendant also indicated he understood the trial rights he would be giving up by pleading guilty.

¶ 8 In its factual basis, the State indicated the evidence would show defendant, a jail inmate, knowingly caused a correctional institution employee, Paul Garret, to come into contact with feces by throwing, tossing, or expelling fecal material. Defense counsel agreed the evidence would show the offense.

¶ 9 When the trial court asked defendant whether he agreed the State's evidence would be consistent with its factual basis, defendant stated he was "frustrated" and wanted to go to trial. When the court asked defendant if he wanted to plead guilty, defendant again stated he

wanted to go to trial. The court then ordered the jury to be brought into the courtroom. After further discussion, defense counsel stated defendant wanted to "resume with the guilty plea." The following exchange took place:

> "THE COURT: [Defendant], before we—before we had the jury brought up the question was: Are you pleading guilty here today of your own free will, no one is making you? That was the question. Is the answer yes or no?
>
> THE DEFENDANT: Yeah.
>
> THE COURT: All right. Then knowing the nature of the charge, the minimum and maximum penalties for that charge and knowing all your rights that I just explained to you, how do you plead to the charge of aggravated battery as alleged in the sole information in 16-CF-176, guilty or not guilty?
>
> THE DEFENDANT: Guilty.
>
> THE COURT: Let the record reflect that the defendant persists in his plea of guilty. He knowingly and voluntarily waives his rights here in open court. The Court finds the plea is voluntary and that there is a factual basis for the plea of guilty."

¶ 10 In October 2016, the trial court sentenced defendant to 12½ years in prison. Thereafter, defense counsel filed a motion to reduce the sentence, and the State filed a response. In November 2016, defendant filed a *pro se* motion to withdraw his guilty plea. Defense counsel then filed a motion to withdraw the guilty plea, claiming defendant had a meritorious defense to the charge and his plea was not entered knowingly, intelligently, and voluntarily. Counsel also

filed a certificate of compliance pursuant to Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016).

¶ 11 At the hearing on the motion to withdraw the guilty plea, defense counsel and the prosecutor made arguments for and against the motion, respectively. Thereafter, defendant asked to speak to the trial court. The court told him to speak with his attorney, and defendant said he had no attorney. Defendant also stated counsel did not "turn in [his] evidence" on his grounds for appeal. He then complained counsel "ain't listening" and was "violating [his] constitutional rights." Defendant claimed counsel "lied" every time defendant called him and did not want to listen to him. Although defendant apologized for his past rudeness, the court noted he continued to be rude and disrespectful and could not expect to always get his way in life. Defendant stated he was "not trying to get [his] way" but had "an issue with the attorney." The following exchange then occurred:

> "THE COURT: I told you no. You're represented by Mr. Scherschligt. He's filed your Motion to Withdraw Guilty Plea on your behalf. He's raised all your motions, all your issues you wanted to. You've shown him a piece of paper that he has chosen not to read. Mr. Scherschligt is a well-trained, well-experienced attorney. That's his tactical decision to make, and I assumed—I don't assume, I know he made it in your best interest.
>
> THE DEFENDANT: No, he did not, sir. He railroaded me. I think he's working with the State.
>
> THE COURT: I'm not going to listen to that.

THE DEFENDANT: He railroaded me. What I got to do, Judge Schmidt, file an appeal to the supreme court?"

The court stated it listened to the arguments of counsel and defense counsel's motion and concluded defendant knowingly and voluntarily pleaded guilty. The court denied the motion to vacate the guilty plea. The court also denied the motion to reconsider the sentence. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Defendant argues the trial court erred in failing to conduct a preliminary *Krankel* inquiry into his complaint against defense counsel at his postplea hearing. We agree, and the State concedes remand is necessary.

¶ 14 When confronted with a defendant's posttrial allegations of ineffective assistance of counsel, our supreme court set out the procedural steps to follow in *People v. Moore*, 207 Ill. 2d 68, 797 N.E.2d 631 (2003) (noting the rule that had developed since *Krankel*).

> "New counsel is not automatically required in every case in which a defendant presents a *pro se* posttrial motion alleging ineffective assistance of counsel. Rather, when a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. However, if the allegations show possible neglect of the case, new counsel should be appointed." *Moore*, 207 Ill. 2d at 77-78, 797 N.E.2d at 637.

¶ 15 "[A] *pro se* defendant is not required to do any more than bring his or her claim to the trial court's attention." *Moore*, 207 Ill. 2d at 79, 797 N.E.2d at 638. A defendant's "clear claim asserting ineffective assistance of counsel, either orally or in writing, *** is sufficient to trigger the trial court's duty to conduct a *Krankel* inquiry." *People v. Ayres*, 2017 IL 120071, ¶ 18, 88 N.E.3d 732; see also *People v. Jindra*, 2018 IL App (2d) 160225, ¶ 14, __ N.E.3d (stating "the complaint must be clear" to trigger a *Krankel* inquiry); *People v. Thomas*, 2017 IL App (4th) 150815, ¶ 26, 93 N.E.3d 664 (noting "[c]ourts have found a defendant is entitled to a *Krankel* inquiry when the defendant makes an explicit or 'clear' complaint of trial counsel's performance or ineffective assistance of counsel"). "[T]he primary purpose of the preliminary inquiry is to give the defendant an opportunity to flesh out his claim of ineffective assistance so the court can determine whether appointment of new counsel is necessary." *Ayres*, 2017 IL 120071, ¶ 20, 88 N.E.3d 732.

¶ 16 On appeal, "[t]he operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 638. "The issue of whether the circuit court properly conducted a preliminary *Krankel* inquiry presents a legal question that we review *de novo*." *People v. Jolly*, 2014 IL 117142, ¶ 28, 25 N.E.3d 1127.

¶ 17 In the case *sub judice*, the trial court and defendant engaged in multiple exchanges during the hearing on the motion to withdraw the guilty plea. When defendant first asked to speak to the court, he was told to speak to his attorney. Defendant, however, claimed he had no attorney. He then stated his attorney did not listen to him, failed to turn in evidence for him, and violated his constitutional rights. He also stated he had "an issue with the attorney" and claimed his counsel "railroaded" him.

¶ 18 As the State concedes, these remarks were a sufficiently clear allegation of ineffective assistance of counsel requiring an initial inquiry under *Krankel*. Because the trial court failed to conduct an inquiry into defendant's claims, the matter must be remanded. *People v. Bell*, 2018 IL App (4th) 151016, ¶ 36, 100 N.E.3d 177. As remand for a preliminary *Krankel* inquiry is required, we decline to address defendant's remaining issue. *Bell*, 2018 IL App (4th) 151016, ¶ 37, 100 N.E.3d 177. "Depending on the result of the preliminary *Krankel* inquiry, defendant's other claims may become moot." *Bell*, 2018 IL App (4th) 151016, ¶ 37, 100 N.E.3d 177.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we remand for the trial court to conduct an inquiry into defendant's *pro se* postplea claim of ineffective assistance of counsel.

¶ 21 Remanded with directions.