

NOTICE
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2019 IL App (5th) 160290-U

NO. 5-16-0290

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Randolph County.
)	
v.)	No. 14-CF-167
)	
JESSICA D. HEATH,)	Honorable
)	Richard A. Brown,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE OVERSTREET delivered the judgment of the court. Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion in denying the defendant’s motion for a continuance on the day of the trial; the case is remanded for the limited purpose of conducting a preliminary *Krankel* inquiry into the defendant’s *pro se* claim of ineffective assistance of counsel.

¶ 2 After a stipulated bench trial, the defendant, Jessica D. Heath, was convicted of one count of unlawful possession of methamphetamine with intent to deliver in violation of section 55(a)(2)(C) of the Methamphetamine Control and Community Protection Act (Act) (720 ILCS 646/55(a)(2)(C) (West 2014)). The circuit court sentenced her to 14 years of imprisonment in the Illinois Department of Corrections. In this direct appeal of her conviction and sentence, the defendant argues: (1) that the circuit court abused its

discretion in denying her request for a continuance and (2) that the circuit court failed to conduct an adequate *Krankel* inquiry (*People v. Krankel*, 102 Ill. 2d 181 (1984)) into her posttrial claim of ineffective assistance of counsel. For the following reasons, we affirm in part, reverse in part, and remand for further proceedings.

¶ 3 BACKGROUND

¶ 4 The defendant's conviction was based on evidence obtained by police officers upon executing a search warrant on the defendant's house located at 639 Chestnut Street in Chester, Illinois. The facts leading up to the issuance of the search warrant involved controlled methamphetamine purchases that took place on August 6, 2014, in Sparta, Illinois, which is a town located 19 miles from the defendant's home.¹

¶ 5 I. The Investigation

¶ 6 In the afternoon of August 6, 2014, Officer Ralph Jones of the Sparta Police Department arranged for a confidential informant to purchase 1.5 grams of methamphetamine for \$160 from two individuals, Isaiah and Chrystal Williams. When the confidential informant met with Isaiah and Chrystal to complete the purchase, they told the informant that they had more methamphetamine to sell, but that it was still "wet," meaning that it was recently produced and had not dried out. They told the informant that she could buy some of this additional methamphetamine after it dried out. While conducting the sale, Isaiah and Chrystal drove a 2005 blue Chevy Impala that was

¹We have referred to Google Maps in determining that Sparta is 19 miles from the defendant's house in Chester. See *People v. Clark*, 406 Ill. App. 3d 622, 633-34 (2010) (recognizing that "case law supports the proposition that information acquired from mainstream Internet sites such as Map Quest and Google Maps is reliable enough to support a request for judicial notice").

registered to the defendant and her husband, Derril Heath. The defendant and Derril lived at the residence located at 639 Chestnut Street in Chester, Illinois.

¶ 7 Approximately 30 minutes after this controlled methamphetamine purchase, Officer Jones called Officer Joe Jany, who was a member of the Chester Police Department's drug enforcement team. Officer Jones informed Officer Jany of the controlled drug transaction and the sellers' use of the defendant's blue Chevy Impala to make the sale. Prior to receiving Jones's call, Jany knew that the defendant lived at the 639 Chestnut Street residence with her husband Derril. Jany drove to the Chestnut Street residence to observe any activity at the residence. When he got there, he saw two vehicles parked at the residence: the defendant's blue Chevy Impala that Isaiah and Chrystal had used earlier to make the drug transaction in Sparta and a black Hyundai Tiburon that Jany knew was driven by the defendant's 16-year-old son. While observing activities at the residence, Jany saw Isaiah exit the house, retrieve something from the trunk of the blue Chevy Impala, and walk back inside the house.

¶ 8 Meanwhile, in Sparta, Jones had the informant arrange to make another methamphetamine purchase from Isaiah and Chrystal, with the exchange to occur at approximately 5:45 p.m. in Sparta. Back in Chester, at approximately 5:20 p.m., Jany observed Isaiah and Chrystal leave the 639 Chestnut Street residence with a small child, get into the defendant's blue Chevy Impala, and drive away. Jany followed them to the Chester city limits and watched them leave town, driving toward Sparta. Sometime later, Jones called Jany and told him that the informant had completed another controlled

purchase of 1.5 grams of methamphetamine from Isaiah and Chrystal in Sparta. Jones told Jany that Isaiah and Chrystal had left Sparta in the direction toward Chester.

¶ 9 Jany continued surveillance at the Chestnut Street residence and saw the defendant and Derril leave the residence at approximately 6:15 p.m. At approximately 7 p.m., he saw the defendant's 16-year-old son drive up to the residence in the blue Chevy Impala with a small child and then leave to another residence located at 1106 Opdyke Street in Chester where the defendant and Derril previously lived.

¶ 10 The record establishes that Jany had been an employee of the Chester Police Department since 2005 and had been involved with numerous drug investigations. Through his experience, he knew that people involved in buying, distributing, and manufacturing controlled substances often kept records of their activities at the same location where they manufactured the substances, along with other materials used in the manufacturing and distribution process, including packaging materials, the raw materials used for manufacturing the illegal substances, and large quantities of cash.

¶ 11 Based on the two controlled buys in Sparta and his observations of the activities at the Chestnut Street residence, Jany concluded that there was probable cause to believe that a search of the defendant's residence at 639 Chestnut Street in Chester would result in the seizure of items used in the manufacture of methamphetamine.

¶ 12 At approximately 8 p.m. on August 6, 2014, Jany obtained a search warrant relating to persons, property, and vehicles associated with 639 Chestnut Street in Chester, Illinois, and officers from the Chester Police Department executed the search warrant that evening. The search resulted in the seizure of 60 items associated with the possession,

manufacture, and distribution of illegal substances including, but not limited to, substances that tested positive for methamphetamine, a notebook containing names and cash amounts, plastic baggies, and over \$9000 in cash. The officers also recovered mail at the residence addressed to the defendant and Derril.

¶ 13 On August 8, 2014, the State charged the defendant and Derril with several drug offenses, including unlawful possession of methamphetamine with intent to deliver in violation of section 55(a)(2)(C) of the Act (720 ILCS 646/55(a)(2)(C) (West 2014)).

¶ 14 II. The Pretrial Proceedings

¶ 15 On September 25, 2014, attorney Thomas Mansfield entered his appearance for both the defendant and Derril. In both of their cases, he filed motions to quash the search warrant and suppress the evidence obtained from the search warrant. The motions maintained that Jany's affidavit in support of the warrant failed to establish sufficient probable cause for the issuance of the warrant because it did not include "any factual allegation or observation that any contraband was present within the residence at 639 Chestnut Street on the afternoon of August 6, 2014."

¶ 16 The circuit court scheduled a March 12, 2015, hearing on the motions, but the defendant and Derril failed to appear for the hearing. Therefore, on March 16, 2015, on a motion filed by the State, the circuit court ordered the defendant's and Derril's bail bonds forfeited. The following week, however, Mansfield filed a motion alleging that Derril contacted him on March 18, 2015, and informed him that he and the defendant failed to appear for the March 12 hearing because he misunderstood the date on which they were

supposed to appear. The defendant and Derril turned themselves in, and the court reinstated their bonds.

¶ 17 On April 9, 2015, the circuit court conducted a hearing on the defendant's and Derril's motions to quash the search warrant and suppress evidence. The court took judicial notice of the allegations in Jany's affidavit in support of the State's complaint for the search warrant and considered arguments from counsel concerning the sufficiency of the affidavit. The circuit court denied their motions, finding that Jany had probable cause that justified the issuance of the search warrant. The circuit court explained its ruling as follows:

“[T]he fact that [Isaiah] was driving the defendants' Chevrolet; the fact that he went to Sparta and we know there was a drug transaction that occurred; the fact that [Isaiah] said that he had more of the methamphetamine available but it was still wet; the fact that he then basically immediately returned to the defendants' home where they—I guess the Chester police were alerted; the defendants' car is parked in front of his home; and the fact that then relatively soon the car left and another drug transaction occurred, which we know of, would give the officers probable cause based on reasonable inferences that they were cooking the methamphetamine in the defendants' house on Chestnut Street.”

¶ 18 On July 10, 2015, the defendant and Derril filed waivers of their right to a jury trial. At a hearing on the same day, attorney Mansfield informed the court that they anticipated that the cases were going to be stipulated bench trials in front of Circuit Court Judge Richard A. Brown. Mansfield and the prosecutor tentatively scheduled the bench

trials before Judge Brown on August 20, 2015. For reasons unexplained in the record, the court later rescheduled the bench trials to October 1, 2015. Between August 20 and October 1, 2015, the State and Mansfield exchanged discovery requests and answers.

¶ 19 On October 1, 2015, the parties appeared in court for the scheduled bench trials in front of Judge Brown. At the outset, Mansfield informed the court that he had been with the defendant and Derril “over the past couple of weeks” and that a “fundamental difference of opinion [had] developed as to how [they] should proceed at that point, which [had] resulted in their decision to seek other counsel.” Mansfield moved to withdraw as the defendant’s and Derril’s attorney and asked the court to give them 21 days to obtain new counsel. When the circuit court expressed its reluctance because the case was set for trial that day, Mansfield responded that he believed the defendants’ “right to counsel of their choice supersede[d] the fact that the case will have to be rescheduled.”

¶ 20 Both the defendant and Derril told the court that they agreed that Mansfield should withdraw. The defendant told the court that she planned on hiring another lawyer, had “called a couple,” but they all wanted money up front. She stated that she needed to speak to her parents. The court noted that witnesses were present at the courthouse and that they were ready to start the trial, adding that it did not agree that it now had to stop the trial from going forward merely because the defendant wanted a new attorney on the day of the trial. The prosecutor told the court that he did not want to force Mansfield to be involved in the case if he was not getting along with his clients. The prosecutor, therefore, stated that the State had no objection to Mansfield withdrawing from the case.

¶ 21 The court allowed Mansfield to withdraw but added that it “simply [could not] have, as busy as this Court is, lawyers getting out of the cases when all the witnesses are here and were ready to go.” The court admonished the defendant and Derril, “I’ll give you 21 days to hire a lawyer, but then we’re going to have to move this case forward.” The court set the matters for status hearings 21 days later. The court stated that it wanted the defendant and Derril to be present so they could discuss what their situation was with respect to legal counsel.

¶ 22 The circuit court conducted status hearings on November 2, 2015. There is no transcript of this hearing. Judge Brown entered orders appointing the public defender to represent the defendant and Derril and scheduled status hearings for the cases on November 25, 2015.

¶ 23 Associate Judge Gene E. Gross presided over the November 25, 2015, status hearings. The public defender told the court that he had been appointed to represent the defendant and Derril the last time they were in court but that “[they had] not had an opportunity as yet to meet in [his] office and discuss the case.” He stated that the defendant and Derril were contemplating hiring private counsel and that, as their attorney, he needed “a little more time to prepare.” The public defender asked that the bench trials be set “sometime the first week of March.”

¶ 24 The prosecutor reminded the court that the cases were getting old and that the State would like the trials to be scheduled in January “due to the fact that that would give them well over a month to get together.” The prosecutor added that if the cases were set at the end of January that would be almost two months away which would “give them

plenty of time.” Judge Gross scheduled the bench trials to be held in front of Judge Brown on January 22, 2016, which was two months from the date of the status hearings.

¶ 25 On January 22, 2016, the parties appeared in court in front of Judge Brown for the bench trials. On that day, private counsel entered an appearance on behalf of Derril. At the outset, the prosecutor told the court that he was ready for trial and that all of the State’s witnesses were present. The public defender told the court that it was his understanding that the defendant and Derril had each hired private attorneys, that the attorney representing Derril was present in court, and that the attorney representing the defendant was on his way to the courthouse.

¶ 26 Derril’s new attorney told the court that he understood that the case was scheduled for a bench trial that day, that he had spoken with Derril about the matter, and that he was requesting “a very brief continuance to review the police reports, review pleadings, prepare for trial.” He told the court that he explained to Derril that there was “absolutely zero guarantee that [a continuance] would be granted [and that] this case [was] old and this would not be the opportunity for him to bob and weave to avoid trial.”

¶ 27 The State objected to the continuance, noting that it was “the second time that we have all of our witnesses here.”

¶ 28 Because the defendant’s new attorney had not arrived, the public defender spoke on her behalf, stating that he had met with his clients only on the two occasions when they were in court. He told the court that he ordered them to come and see him, but they had not contacted him or made an effort to see him. He stated, therefore, that he was “not prepared to try the case either because [he has had] no contact with [his] clients.” On

behalf of the defendant, he requested the court to continue the matter so her new counsel could get to the courthouse and enter his appearance.

¶ 29 The court asked the defendant about her failure to cooperate with the public defender. She told the court, “Because I knew I wasn’t going to use him as my counsel. I—we thought we were going to hire one counselor, but when we got there, he said, no, we can’t hire just one counselor. We have to be separate.” The court then denied the motions to continue and directed the State to call its first witness.

¶ 30 III. The Stipulated Bench Trial

¶ 31 The public defender and Derril’s new counsel asked for a brief recess, which the court granted. After the recess, the prosecutor told the court that the defendant and Derril were “prepared to conduct a stipulated bench trial.” The public defender and Derril’s new counsel agreed. The prosecutor stated the stipulation was as follows:

“[I]f the matter were to proceed to trial today, our first witness would be Officer Joe Jany with the Chester Police Department. Joe Jany would testify that he appeared before a judge and obtained a search warrant for the residence and dwelling at 639 Chestnut in Chester, Randolph County, Illinois. At that time officers executed the search warrant and a return of the search warrant would be offered into evidence as People’s Exhibit 1. *** Which would show the items that were seized from the residence located at 639 Chestnut Street, which the State would mark that as People’s Exhibit 1.”

¶ 32 The prosecutor told the court that the evidence recovered from the residence included mail addressed to the defendant and Derril in the master bedroom of the house, a

notebook located in the master bedroom with names and cash amounts, a digital scale in the master bedroom, plastic baggies, a 12-gauge shotgun and shells, over \$9000 in cash, and several bags containing a total of 25.4 grams of methamphetamine.

¶ 33 The prosecutor told the court that Isaiah and Chrystal were present in court and were prepared to testify that the defendant told them that “they were selling meth for approximately \$32,000 with a cost of \$6,000 for the product.” The prosecutor stated, “Chrystal advised that she received the meth she herself had been caught with earlier in the day from Derril Heath and [the defendant].” The prosecutor told the court, “Isaiah Williams also gave an interview to Officer Joe Jany, who would testify, being Isaiah himself who was here, that Derril and [the defendant] were involved in the sale and distribution of methamphetamine from the residence at 639 Chestnut Street in Chester, Randolph County, Illinois.”

¶ 34 Based on the stipulation, the circuit court found the defendant and Derril guilty of unlawful possession of methamphetamine with intent to deliver. On March 18, 2016, the circuit court sentenced the defendant to a term of 14 years in the Department of Corrections along with 3 years of supervised release.

¶ 35 IV. Posttrial Proceedings

¶ 36 On April 18, 2016, the defendant filed a *pro se* motion for reduction of sentence. In the motion, she alleged ineffective assistance of counsel because her attorney asked for a continuance in order to become “more familiar with the case, because he wouldn’t properly represent [her] to the best of his ability but was denied.” The public defender represented the defendant at a hearing on the *pro se* motion and “adopted” her motion. He

presented a brief argument, stating that there was “only three or four salient points that the Court could consider.” In his argument, the public defender did not address the defendant’s contention that she was denied effective assistance of counsel. The court denied the motion to reconsider the sentence, and the defendant now appeals her conviction and sentence.

¶ 37

ANALYSIS

¶ 38

I. Denial of the Motion to Continue

¶ 39 The first argument the defendant raises on appeal is that the circuit court abused its discretion when it denied the public defender’s oral motion for a continuance prior to the stipulated bench trial. We disagree.

¶ 40 A trial court’s decision to grant or deny a motion to continue for substitution of counsel is a discretionary matter, and we will not set aside the trial court’s determination unless it amounts to an abuse of discretion. *People v. Segoviano*, 189 Ill. 2d 228, 245 (2000). “The factors to be considered in evaluating a trial court’s exercise of its discretion include the diligence of the movant, the right of the defendant to a speedy, fair and impartial trial, and the interests of justice.” *Id.* Other factors that might be considered include whether defense counsel was unable to prepare for trial because he had been held to trial in another case, the history of the case, the complexity of the matter, the seriousness of the charges, docket management, judicial economy, and inconvenience of the parties and witnesses. *People v. Walker*, 232 Ill. 2d 113, 131 (2009). When a defendant seeks a continuance for new counsel, the court can also consider whether the defendant articulates an acceptable reason for desiring new counsel, whether the

defendant has been in continuous custody, whether the defendant has informed the trial court of her efforts to obtain new counsel, whether the defendant has cooperated with current counsel, and the length of time the defendant has been represented by her current counsel. *People v. Burrell*, 228 Ill. App. 3d 133, 142 (1992).

¶ 41 In the present case, when the parties appeared in court for trial on October 1, 2015, the State was ready for trial, and witnesses had been subpoenaed to the courthouse to testify. The court expressed reluctance to grant a continuance right before trial was scheduled to begin, but nonetheless granted the continuance to allow the defendant the opportunity to hire counsel of her choice. The court gave her 21 days to obtain counsel and warned her that, after that, it was “going to have to move this case forward.” Over four weeks later, at a status hearing held on November 2, 2015, the defendant appeared in court and apparently had not obtained new counsel although she had time to do so. The court appointed the public defender to represent her and scheduled a status conference 21 days later. The public defender told the defendant to come and see him so they could prepare for trial. The defendant did not do so.

¶ 42 At the status conference held on November 25, 2015, the public defender told the court that the defendant had not met with him to discuss the case. The attorney, therefore, requested more time to prepare for trial. The court scheduled the bench trial for January 22, 2016, giving the defendant and her counsel two additional months to prepare. Finally, when the defendant showed up for the January 22, 2016, bench trial, the public defender requested yet another continuance, this time stating that the defendant hired new counsel, who was not present in court and had not entered an appearance in the case, but was on

the way to the courthouse from another county. Accordingly, the new attorney was not present and standing ready, willing, and able to make an appearance for the defendant. Derril had hired new counsel who did appear on his behalf, but he also asked for a continuance for additional time to prepare for trial. Again, the State was ready to proceed to trial, and witnesses were at the courthouse prepared to testify. The court denied the defendant's second request for a continuance, and under these circumstances, we cannot conclude that it abused its discretion in doing so.

¶ 43 After the court allowed the defendant's first attorney (Mansfield) to withdraw, the defendant had from October 1, 2015, to January 22, 2016, to hire new counsel and prepare for trial. In *People v. Friedman*, 79 Ill. 2d 341, 348 (1980), the Illinois Supreme Court held the trial court did not err in denying a motion to continue when defendant had more than 2½ months to find substitute counsel but first made contact with a potential substitute only three days before trial and moved to continue on the day of trial because counsel was unavailable. Likewise, in *People v. Free*, 112 Ill. App. 3d 449, 454 (1983), the court affirmed the trial court's denial of a motion to continue when the defendant "had ample time [from December 3, 1981, when counsel was appointed, until March 2, 1982, when trial was set to begin,] to attempt to obtain counsel of his own choosing if he so wished and was able to do so." See also *People v. Belk*, 403 Ill. App. 3d 1056, 1061 (2010) ("Defendant had three months from the time counsel withdrew to the time his trial started. This was a reasonable time in which to obtain private counsel.").

¶ 44 Here, the second time the parties appeared for trial the court asked the defendant about her failure to cooperate with the public defender who had been appointed to

represent her. She offered no explanation concerning why she wanted new counsel or why she refused to cooperate with the public defender. See *People v. Robinson*, 254 Ill. App. 3d 906, 911 (1993) (“[A]lthough the new attorney was identified by name, he was not present and there is no indication that he had filed an appearance and was ready, willing and able to represent defendant. Defendant offered no evidence to verify his alleged new counsel’s employment and no explanation as to why he wanted new counsel.”).

¶ 45 The defendant posted bond and remained out of custody leading up to her trial, except for the brief period in which the court revoked her bond. Therefore, she was capable of meeting with the public defender to prepare for trial or, alternatively, she had ample time to retain new counsel. “Where a defendant’s request for a continuance is necessitated by [her] own lack of cooperation, the denial of his request will not be set aside.” *People v. Watson*, 98 Ill. App. 3d 296, 303 (1981); see also *People v. Solomon*, 24 Ill. 2d 586, 590 (1962) (“the public defender was appointed as defendant’s counsel approximately two weeks before trial in ample time to prepare a defense,” and “[s]ince defendant utterly refused to cooperate with his counsel, he cannot now be heard to complain that the denial of the motion for continuance embarrassed his defense or prejudiced his rights”). “[A] defendant may be forced to trial where there is no showing of diligence.” *People v. Trolia*, 107 Ill. App. 3d 487, 498 (1982). See also 725 ILCS 5/114-4(e) (West 2016) (“All motions for continuance are addressed to the discretion of the trial court and shall be considered in the light of the diligence shown on the part of the movant.”).

¶ 46 Here, the circuit court could reasonably conclude that the defendant's refusal to cooperate with the public defender and her delay in securing private counsel were means for causing delay. *People v. Staple*, 402 Ill. App. 3d 1098, 1104 (2010). Also, we note that, although the public defender stated that he had not met with the defendant, he did not state that he did not have access to the discovery materials or was otherwise was unable to prepare to cross-examine the State's witnesses.

¶ 47 In denying the defendant's motion, the circuit court also properly considered prejudice to witnesses who had already appeared at the courthouse once before to testify and were now at the courthouse a second time for trial. "A defendant cannot assert [the right to counsel] in order to, even temporarily, thwart the administration of justice or to otherwise impede the effective prosecution of a crime." *People v. Jones*, 269 Ill. App. 3d 925, 932 (1995). The defendant was warned by the court four months prior to the trial date that it was giving the defendant the opportunity to hire private counsel, but that it was "going to have to move this case forward."

¶ 48 Under these facts, we cannot say that the circuit court abused its discretion in denying the defendant's second motion to continue. An abuse of discretion occurs when a circuit court's decision is "fanciful, arbitrary, or unreasonable to the degree that no reasonable person would agree with it." *People v. Ortega*, 209 Ill. 2d 354, 359 (2004). Here, the circuit court's decision to deny the defendant's second request for a continuance was not fanciful, arbitrary, or unreasonable.

¶ 49 The defendant cites *People v. Basler*, 304 Ill. App. 3d 230, 233 (1999), and argues that the circuit court failed to inquire whether the defendant's request to substitute

counsel was being made as a delay tactic. *Basler* is distinguishable. In that case, the defendant sought a continuance to seek private counsel because she and her appointed attorney did not agree on certain matters, she wanted to hire private counsel, she was ill and did not feel that she was capable of assisting with her defense, and some of her witnesses were not able to testify that day. *Id.* at 232. The trial court had granted the defendant two previous continuances with the State's consent. *Id.* The trial court denied the continuance without any further inquiry. *Id.* In reversing the trial court's denial of the continuance, the *Basler* court was concerned, in part, that the trial court did not inquire about the materiality of the testimony of the defendant's missing witnesses and the seriousness of her medical condition that she claimed hampered her ability to assist in her defense. *Id.* at 233.

¶ 50 The present case did not involve a situation in which the defendant had a disagreement with the public defender or stated other reasons for requesting a continuance that the circuit court failed to inquire about. The record establishes that the circuit court appointed the public defender with sufficient time prior to the trial for the defendant to either work with the public defender to prepare for trial or hire new counsel to enter an appearance and prepare for the scheduled trial. She did neither. The trial court asked the defendant about the public defender's assertion that she would not meet with him, and she admitted that she intentionally chose not to do so. The defendant's second request for a continuance did not include allegations of missing witnesses, illness, or other reasons beyond her refusal to cooperate with the public defender and delay in hiring

private counsel. Under the facts of this case, the circuit court conducted a sufficient inquiry before denying the defendant's request for a continuance.

¶ 51 The defendant also cites *People v. Walker*, 232 Ill. 2d 113 (2009), but in that case, the court concluded that there was no evidence that the continuance request was a delay tactic. The defendant's attorney had written the wrong trial date in her calendar and was unprepared for trial, but the trial court denied counsel's motion for a continuance on the sole basis that the case had been set for trial; the court did not analyze any other relevant factors. *Id.* at 127-29. The Illinois Supreme Court held that the trial court's denial of a continuance was reversible error because it "mechanically denied the continuance without engaging in thoughtful consideration of the specific facts and circumstances presented in this matter." *Id.* at 126. The court noted that the record did not show a pattern of delay by defense counsel and that nothing in the record suggested that defense counsel requested a continuance "to thwart the administration of justice or as a vehicle for improper delay." *Id.* at 126-28. The court stressed that the trial court's entire consideration of the request for a continuance "comprise[d] less than one page of trial transcript." *Id.* at 129.

¶ 52 The Illinois Supreme Court has also emphasized, however, that there is no "mechanical test, statutory or other, for determining the point at which the denial of a continuance in order to accelerate the judicial proceedings violates the substantive right of the accused to properly defend. The circumstances of each case must be weighed, particularly the reasons presented to the trial judge at the time the request is denied." *People v. Lott*, 66 Ill. 2d 290, 297 (1977).

¶ 53 The present case is distinguishable from *Walker*. Here, when the parties and witnesses appeared in court for the first bench trial, the court granted the defendant's attorney's request to withdraw from the case on the day of the trial and granted a continuance. The trial court asked the defendant whether she was planning on hiring a new attorney, and she said that she was, that she had "called a couple," but they all wanted money up front and that she had to speak with her parents. The court granted the defendant 21 days to hire new counsel and admonished her that it was going to move the case forward. When the court conducted a status conference over 30 days later, the defendant still had not retained counsel. The court appointed the public defender who directed the defendant to come see him so he could begin to prepare for trial. At the next status hearing over three weeks later, the defendant still had not retained new counsel and, in addition, she had refused to cooperate with the public defender. The court set a new trial date, giving the defendant two more months to prepare for trial or hire new counsel.

¶ 54 The record, therefore, establishes that the circuit court accommodated the defendant's request for the first continuance and accommodated her right to counsel of her choice. The court granted the defendant several additional months, but no new counsel entered an appearance prior to the trial date or filed any motions on her behalf prior to trial. The entirety of the record suggests that, in denying the second continuance, the court considered the defendant's lack of diligence, the interests of justice, the history of the case, and inconvenience to the witnesses. These are all factors that the *Walker* court held a trial court "may consider" depending on the facts of each case. *Walker*, 232

Ill. 2d at 125-26. The history of this case makes it distinguishable from *Walker*, where the trial court summarily denied a request for a continuance without considering any relevant factors. *Id.* at 126-31.

¶ 55 II. Posttrial Claim of Ineffective Assistance of Counsel

¶ 56 After sentencing, the defendant filed a *pro se* motion for reduction of sentence in which she alleged, among other claims, ineffective assistance of counsel. She noted that her attorney asked for a continuance in order to become “more familiar with the case, because he wouldn’t properly represent [her] to the best of his ability but was denied.” The public defender represented the defendant at a hearing on her *pro se* motion and “adopted” her motion. The court denied the motion to reconsider the sentence.

¶ 57 On appeal, the defendant argues that the circuit court failed to conduct any inquiry as required by *People v. Krankel*, 102 Ill. 2d 181, 187 (1984). In response, the State agrees that the circuit court improperly failed to address the defendant’s *pro se* ineffective assistance of counsel claim. The State concedes that this case “should be remanded to the trial court for the limited purpose of determining whether defendant’s claim lacks merit or pertains only to matters of trial strategy, or whether it shows possible neglect.” We agree.

¶ 58 Pursuant to *Krankel* and the cases that followed that decision, when a defendant raises a *pro se* posttrial claim of ineffective assistance of counsel, the trial court is required to inquire into the basis of the defendant’s claim and determine whether to appoint independent counsel to argue the claim on the defendant’s behalf. *People v. Ayres*, 2017 IL 120071, ¶ 11. The trial court is not required to automatically appoint

counsel when a defendant raises a *pro se* posttrial claim of ineffective assistance of counsel, but must “conduct some type of inquiry into the underlying factual basis” of the claim. (Internal quotation marks omitted.) *Id.* On review, our concern is whether the trial court conducted an adequate inquiry into the *pro se* allegations of ineffective assistance of counsel. *Id.* ¶ 13. “By initially evaluating the defendant’s claims in a preliminary *Krankel* inquiry, the circuit court will create the necessary record for any claims raised on appeal.” *People v. Jolly*, 2014 IL 117142, ¶ 38.

¶ 59 Here, the defendant made a *pro se* claim of ineffective assistance of counsel in her motion to reduce her sentence, but the circuit court did not make any inquiry into the factual basis of her claim. “[W]hen 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.” *Ayres*, 2017 IL 120071, ¶ 18. “[S]ome interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted on a defendant’s claim.” (Internal quotation marks omitted.) *Id.* ¶ 12. The court is also permitted to discuss the allegations directly with the defendant and can “make its determination based on its knowledge of defense counsel’s performance at trial and the insufficiency of the defendant’s allegations.” *Id.* Here, neither the defendant’s counsel nor the trial court addressed the defendant’s claim of ineffective assistance of counsel during the hearing on the motion to reduce her sentence.

¶ 60 Based on the record before us, we agree with the State that remand is required for the purpose of a preliminary *Krankel* inquiry into the defendant's claim of ineffective assistance of counsel and a determination of whether counsel should be appointed to represent the defendant in presenting her claim.

¶ 61 CONCLUSION

¶ 62 For the foregoing reasons, we affirm the defendant's conviction and sentence. However, we reverse the circuit court's order denying the defendant's motion to reduce her sentence and remand this cause to the circuit court for the limited purpose of conducting a preliminary *Krankel* inquiry.

¶ 63 Affirmed in part, reversed in part, cause remanded.