

NOTICE
Decision filed 05/31/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 180330-U

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).

NO. 5-18-0330

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)
)
 Plaintiff-Appellee,)
)
 v.)
)
 DWIGHT LONG,)
)
 Defendant-Appellant.)

Appeal from the
Circuit Court of
St. Clair County.

Nos. 13-CF-274 and 13-CM-853

Honorable
Zina R. Cruse,
Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Chapman and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the order of the circuit court of St. Clair County because the trial judge did not err when she found the defendant had failed to demonstrate that he received ineffective assistance of trial counsel; moreover, the trial judge did not “bar” counsel from investigating any other claims of ineffective assistance of counsel.

¶ 2 The defendant, Dwight Long, appeals the May 22, 2018, order of the circuit court of St. Clair County that concluded that there was no basis for the defendant’s posttrial claims of ineffective assistance of court-appointed trial counsel. For the following reasons, we affirm.

¶ 3 **FACTS**

¶ 4 The facts necessary to our disposition of this appeal follow. The defendant was convicted following a trial by jury on October 9, 2013, of attempted first-degree murder, aggravated

domestic battery, aggravated fleeing or eluding police, and violating an order of protection. Thereafter, this court remanded this case with instructions for the trial court to conduct a hearing to address the defendant's *pro se* ineffective assistance of trial counsel claims, as required by *People v. Krankel*, 102 Ill. 2d 181 (1984), and to determine, based on the trial court's conclusion following the hearing, whether additional proceedings were required. See *People v. Long*, 2016 IL App (5th) 140188-U.

¶ 5 On remand, a hearing was held on April 3, 2017. At the hearing, the trial judge explained to the defendant that she would first have “a preliminary inquiry” with the defendant about his ineffective assistance of counsel claims, and that if she found a basis existed for any claim, “then we will proceed to a full hearing on that claim.” On June 5, 2017, the trial judge issued an order in which she found that there were two possible bases for ineffective assistance of counsel claims: (1) that trial counsel failed to confer with the defendant, and (2) that the defendant “was not afforded the opportunity to review the discovery in this case.” The trial judge's order rejected the remainder of the defendant's *pro se* claims. The order set a hearing date for the two claims for which the court had determined there was a possible basis, and appointed the public defender to represent the defendant at the hearing.

¶ 6 On May 17, 2018, the hearing was held. The parties were offered the opportunity to make opening statements, pursuant to which the following colloquy between the trial judge and the defendant's appointed counsel, James P. Stiehl, occurred:

“MR. STIEHL: Just because of the somewhat protracted nature of the proceedings, I just wanted to make certain things clear.

THE COURT: Sure.

MR. STIEHL: In my discussion with [the defendant], I understand that he has raised several issues that are not before the [c]ourt this afternoon.

THE COURT: Other than those that were previously addressed? You mean new issues, or the ones that have been addressed?

MR. STIEHL: Well, my understanding is that there had previously been a request for a change of judge.

THE COURT: Yes.

MR. STIEHL: That—

THE COURT: Did you notice in the record that that had been addressed, there was a hearing on that?

MR. STIEHL: I have, Your Honor.

THE COURT: Okay. So—

MR. STIEHL: And I also—I also noticed that he raised multiple issues, other than these two issues.

THE COURT: Right.

MR. STIEHL: Which were also apparently addressed—or were addressed by the [c]ourt in its order following the preliminary hearing.

THE COURT: Correct. Okay.

MR. STIEHL: I just wanted to make it clear that my understanding is we're restricted to those two issues that the [c]ourt—

THE COURT: Correct.

MR. STIEHL: —enumerated. But obviously [the defendant] is not waiving any of the other issues that he raised—

THE COURT: Obviously.

MR. STIEHL: —for purposes of appeal.

THE COURT: All right.

MR. STIEHL: Thank you.”

¶ 7 The trial judge then asked the State if it wished to make an opening statement, and the State declined. The defendant then testified. When defense counsel attempted to ask the defendant questions that were beyond the scope of the two issues on which the hearing was being held, the State objected, and the trial judge sustained the objection, stating, “We’re not going down that road. Let’s get to our two issues.” The defendant then testified about his interactions with his court-appointed trial counsel, as well as her alleged failure to share discovery with him.

¶ 8 When asked if there were “any other documents or any other defenses or any other subjects” he “brought to” his court-appointed trial counsel, the defendant testified, “Substitution of a judge. She didn’t—she didn’t even blink. She just acted like, ‘No.’ And—.” The trial judge then interjected, “Can we stop? Do you remember having a hearing about your substitution of judge?” The defendant replied, “Yes, ma’am.” The trial judge then stated, “We’re not talking about it again. Do you hear me?” Stiehl responded, “Yes, ma’am.” The trial judge then asked Stiehl if he had read her order in this case, and Stiehl again responded, “Yes, ma’am.” The trial judge then said, “Follow it.” The trial judge then asked the defendant a question about one of the two issues on which the hearing was being held, the defendant responded, and the hearing continued with the defendant’s testimony and the testimony of additional witnesses. At the end of the hearing, the trial judge took the matter under advisement.

¶ 9 On May 22, 2018, the trial judge entered her order in this case. She found both that the defendant’s court-appointed trial counsel’s “performance was *not* so deficient that the” defendant received ineffective assistance of counsel, and that due to the overwhelming evidence of the defendant’s guilt, even if counsel had been ineffective, there was no prejudice to the defendant. (Emphasis in original.) The trial judge therefore concluded that there was “no basis for the [d]efendant’s claim of ineffective assistance of counsel.” This timely appeal followed.

¶ 10

ANALYSIS

¶ 11 On appeal, the defendant contends the trial court deprived him “of his constitutional right to counsel when it limited post-trial counsel’s appointment to only two of [the defendant’s] *pro se* post-trial claims of ineffective assistance and barred counsel from investigating any other claims.” In support of this proposition, the defendant asserts that “it is clear from the record that counsel did not choose to limit his representation to just the issues selected by the court, that he attempted to explore additional areas where trial counsel’s assistance was ineffective, and that the trial court forced counsel to stay within the scope the court had chosen.” We agree with the State that there is no factual support in the record for this assertion by the defendant’s counsel on appeal. At no point did Stiehl indicate, verbally or in writing, that he “did not choose to limit his representation to just the issues selected by the court,” or that he wished to “explore additional areas where trial counsel’s assistance was ineffective.” To the contrary, at the outset of the May 17, 2018, hearing, as described in detail above, Stiehl sought clarification, during his opening statement, of what the parameters of *that hearing* would be; he was told it was limited to the two issues identified in the trial judge’s June 5, 2017, order. Stiehl did not indicate he had additional issues he wished to raise, did not file any type of pleading attempting to raise such issues, and did not request a hearing on any such issues. Stiehl also did not ask that the scope of the May 17, 2018, hearing be expanded, although he certainly could have done so. Instead, he ensured that the remainder of the defendant’s issues were properly preserved for appeal. In these factual circumstances, there is no merit to the defendant’s contention that the trial judge “barred counsel from investigating any other claims.” She did no such thing.

¶ 12 The defendant’s counsel on appeal does not claim that Stiehl was ineffective in his representation of the defendant, either before, during, or after the hearing. Accordingly, the defendant has forfeited consideration of any argument related thereto. See Ill. S. Ct. R. 341(h)(7)

(eff. May 25, 2018) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). Moreover, although all of the defendant's claims of ineffective assistance of trial counsel were properly preserved for appeal, the defendant does not raise any of those claims on appeal. Accordingly, the defendant has forfeited consideration of any argument related thereto as well. See *id.*

¶ 13

CONCLUSION

¶ 14 For the foregoing reasons, we affirm the order of the circuit court of St. Clair County.

¶ 15 Affirmed.