

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).

2020 IL App (4th) 170586-U
NOS. 4-17-0586, 4-17-0587 cons.
IN THE APPELLATE COURT

FILED
April 8, 2020
Carla Bender
4th District Appellate
Court, IL

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
CHRISTOPHER EVANS,)	Nos. 14CF154
Defendant-Appellant.)	15CF760
)	
)	Honorable
)	Leslie J. Graves,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices DeArmond and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant’s *pro se* allegations of ineffective assistance of counsel require remand for a preliminary *Krankel* inquiry.

¶ 2 On August 9, 2017, defendant, Christopher Evans, at a hearing on his motion to reconsider sentence, orally requested a *Krankel* hearing. The same day, defendant filed a written motion requesting the same. The trial court scheduled a hearing on the motion for October 3, 2017. Also, on August 9, 2017, counsel for defendant filed a notice of appeal. On October 3, 2017, the trial court declined to conduct the *Krankel* hearing, finding defendant’s notice of appeal divested it of jurisdiction.

¶ 3 On appeal, defendant argues this court should remand the matter because the trial court failed to conduct a preliminary *Krankel* inquiry into his *pro se* allegations of ineffective assistance of counsel. We agree.

¶ 4 I. BACKGROUND

¶ 5 A. Case No. 14-CF-154

¶ 6 In February 2014, a grand jury indicted defendant in Sangamon County case No. 14-CF-154 on charges of resisting a peace officer (count I) (720 ILCS 5/31-1 (West 2012)), criminal damage to government supported property (count II) (720 ILCS 5/21-4(a) (West 2012)), unlawful restraint (count III) (720 ILCS 5/10-3(a) (West 2012)), and domestic battery (count IV) (720 ILCS 5/12-3.2(a)(1) (West 2012)). In March 2015, defendant pleaded guilty to counts I and IV in exchange for the State's agreement to dismiss counts II and III. Subsequently, the trial court sentenced him to 24 months' probation.

¶ 7 B. Case No. 15-CF-760

¶ 8 In August 2015, a grand jury indicted defendant in Sangamon County case No. 15-CF-760 on charges of criminal damage to property (count I) (720 ILCS 5/21-1(a)(1) (West 2014)), criminal trespass to property (count II) (720 ILCS 5/21-3(a)(2) (West 2014)), and stalking (counts III and IV) (720 ILCS 5/12-7.3(a)(1) (West 2014)). Based on these charges, the State filed a petition to revoke defendant's probation in case No. 14-CF-154. In July 2016, defendant pleaded guilty to count I in exchange for the State's agreement to dismiss the remaining counts and withdraw the petition to revoke. The trial court sentenced defendant to 12 months' probation, to be served concurrently with his probation in case No. 14-CF-154.

¶ 9 C. Case Nos. 14-CF-154 and 15-CF-760

¶ 10 In December 2016, the State filed a petition to revoke defendant's probation in both cases, this time alleging defendant violated the terms of his probation by committing the offenses of unlawful violation of an order of protection and domestic battery in Sangamon County case No. 16-CF-1102 and the offense of theft in Sangamon County case No. 16-CF-1244. At a May 23, 2017, hearing, the trial court found that the State proved the allegations in its petition by clear and convincing evidence. On July 12, 2017, the trial court revoked defendant's probation in both cases and resentenced defendant to three years' imprisonment in case No. 14-CF-154, concurrent to six years' imprisonment in case No. 15-CF-760.

¶ 11 D. Postsentencing Motions

¶ 12 On July 21, 2017, counsel for defendant filed a motion to reconsider sentence. On August 9, 2017, following a hearing, the trial court denied the motion to reconsider sentence. At the hearing on the motion to reconsider sentence, defendant orally requested a *Krankel* hearing. Counsel for defendant represented to the court that defendant had a written motion for a *Krankel* hearing on his person. After reviewing the motion, the trial court stated the following:

“THE COURT: [Defense counsel is] going to review it, determine whether or not she agrees it's worthy of being argued and whether or not her office can or should represent you on it. If not, I will set the matter for hearing, the State's Attorney's office will be notified, and we will bring you back for that hearing at a date in the very ne[ar] future.

[B]ased on a cursory review of your motion, it is—I believe the people in this room with law degrees that you will have to do that *pro se*. I'm going to set this matter for hearing.”

¶ 13 The same day, August 9, 2017, defendant *pro se* filed a “Motion to Conduct a Preliminary Inquiry of Defendant’s Claims Alleging Ineffective Assistance of Trial Counsel,” raising seven claims of ineffective assistance of counsel. The trial court scheduled the hearing on defendant’s motion for October 3, 2017.

¶ 14 At no point following the denial of the motion to reconsider sentence did defendant ask the court to direct the filing of a notice of appeal. However, on that same date, August 9, 2017, counsel for defendant filed a notice of appeal which appointed appellate counsel amended on August 23, 2017. (The appeal in case No. 14-CF-154 was docketed in this court as case No. 4-17-0586 and the appeal in case No. 15-CF-760 was docketed as case No. 4-17-0587. On this court’s own motion, we consolidated the appeals.)

¶ 15 An October 3, 2017, docket entry states that “[d]ue to pending Notice of Appeal, Court does not have jurisdiction to proceed on any pending matters in this case.”

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Defendant argues this court should remand the matter because the trial court failed to conduct a preliminary inquiry into his *pro se* allegations of ineffective assistance of counsel as required by *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and its progeny.

¶ 19 A. Jurisdiction

¶ 20 As an initial matter, the State asserts we lack jurisdiction to address defendant’s argument because his notice of appeal was untimely (*i.e.*, premature) as it was filed before the trial court disposed of defendant’s *Krankel* motion. See Ill. S. Ct. R. 606(b) (eff. July 1, 2017).

Whether this court has jurisdiction is a question of law reviewed *de novo*. *People v. Salem*, 2016 IL 118693, ¶ 11, 47 N.E.3d 997.

¶ 21 The only jurisdictional step in initiating appellate review is the timely filing of a notice of appeal. *People v. Patrick*, 2011 IL 111666, ¶ 20, 960 N.E.2d 1114; see also *People v. Bounds*, 182 Ill. 2d 1, 3, 694 N.E.2d 560, 561 (1998) (“When the notice of appeal is filed, the appellate court’s jurisdiction attaches *instanter*, and the cause is beyond the jurisdiction of the trial court.”). Here, counsel for defendant timely filed a notice of appeal the same day the trial court denied the motion to reconsider sentence—August 9, 2017—and, as a result, this court’s jurisdiction attached *instanter* and the trial court lost jurisdiction. See Ill. S. Ct. R. 606(b) (eff. July 1, 2017); *Bounds*, 182 Ill. 2d at 3. We therefore have jurisdiction to address defendant’s argument.

¶ 22 The State’s assertion to the contrary relies on the assumption, rejected by this court in *People v. Bell*, 2018 IL App (4th) 151016, ¶ 32, 100 N.E.3d 177, that Illinois Supreme Court Rule 606(b) (eff. July 1, 2017) applies to the common law procedure developed by the supreme court in *Krankel* and its progeny. See also *People v. Darr*, 2018 IL App (3d) 150562, ¶ 95, 95 N.E.3d 10 (noting it is doubtful that Rule 606(b) “has any import on a *Krankel* claim”). We again reject the State’s attempt to apply Rule 606(b) to *Krankel* proceedings and instead adhere to the common law procedure “that once a notice of appeal has been filed, the trial court loses jurisdiction of the case and may not entertain a *Krankel* motion ***.” *Patrick*, 2011 IL 111666, ¶ 39. Accordingly, we have jurisdiction to address defendant’s argument and may, if appropriate, remand to allow the trial court to conduct a preliminary *Krankel* inquiry.

¶ 23 B. Preliminary *Krankel* Inquiry

¶ 24 Defendant argues we should remand the matter because the trial court failed to conduct a preliminary *Krankel* inquiry into his *pro se* allegations of ineffective assistance of counsel. The State concedes “it is certainly a problem that the inquiry was not conducted here and *** agrees remand is warranted.”

¶ 25 “The common-law [*Krankel*] procedure *** is triggered when a defendant raises a *pro se* posttrial claim of ineffective assistance of trial counsel.” *People v. Ayres*, 2017 IL 120071, ¶ 11, 88 N.E.3d 732. The claim may be raised orally or through a written motion, and an express allegation of ineffective assistance, without any factual support, is sufficient. *Id.* ¶¶ 11, 18. Once the claim has been raised, the trial court has a duty to conduct some type of inquiry into its underlying factual basis. *Id.* ¶ 11. Where, as here, the trial court fails to conduct an inquiry, the only question on review becomes whether the defendant sufficiently brought the claim to the trial court’s attention, which we review *de novo*. *Bell*, 2018 IL App (4th) 151016, ¶ 36.

¶ 26 Here, defendant clearly triggered the trial court’s duty to inquire into the underlying factual basis of his ineffective assistance of counsel claims; defendant orally requested a *Krankel* hearing and filed a “Motion to Conduct a Preliminary Inquiry of Defendant’s Claims Alleging Ineffective Assistance of Trial Counsel.” The difficulty in resolving this case stems from the reality that although the filing of the notice of appeal deprives the trial court of jurisdiction, defendant raised the ineffective assistance of counsel claim prior to the filing of the notice of appeal. In this instance, although the trial court correctly concluded it lacked jurisdiction to entertain defendant’s motion, the common-law procedure was triggered nonetheless, and therefore, the matter must be remanded to allow the trial court to conduct a preliminary *Krankel* inquiry. See *id.* ¶ 36 (citing *Patrick*, 2011 IL 111666, ¶ 43).

¶ 27 We note that the *Krankel* procedure’s intention “to promote consideration of *pro se* ineffective assistance claims in the trial court and to limit issues on appeal” surely is not furthered in situations such as this where the trial court is deprived of the opportunity to entertain a timely-filed *Krankel* motion. *Patrick*, 2011 IL 111666, ¶ 39.

¶ 28 III. CONCLUSION

¶ 29 We remand for the trial court to conduct a preliminary *Krankel* inquiry into defendant’s *pro se* allegations of ineffective assistance of counsel.

¶ 30 Remanded with directions.