2012 IL App (4th) 110359-U Filed 8/1/12

NO. 4-11-0359

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
AMANDA BEASLEY,	)	No. 09CF972
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court conducted an adequate inquiry into defendant's *pro se* postsentencing claim she was denied the effective assistance of counsel.

¶ 2 On October 22, 2009, the State charged defendant, Amanda Beasley, with two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2008)), a Class 2 felony. In September 2010, a jury convicted defendant of one count of aggravated criminal sexual abuse. In January 2011, the trial court sentenced defendant to 48 months' conditional discharge, with conditions including 90 days in jail, with credit for 17 days served. After the sentencing hearing, defendant alleged her counsel was ineffective. At the March 2011 hearing on defendant's motion to reconsider her sentence, the trial court found defendant's claims lacked merit and did not conduct a *Krankel* hearing. See *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). Defendant appeals, arguing the court erred in failing to conduct a *Krankel* hearing. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant and her husband, Quentin Hess, delivered papers for the Pantagraph. Defendant and Quentin's shift usually lasted from midnight until noon each day. Quentin met M.H. through another job and M.H. eventually began helping defendant and Quentin with their paper route. Defendant became friends with M.H., and M.H. would spend time at defendant and Quentin's home.

¶ 5 On October 20, 2009, Bloomington police received a call about a young child running in the street without any shoes on. The caller informed the police the child lived at 1117 Omega Street in Bloomington, Illinois—defendant's address. The caller told police the child went into the house at 1117 Omega Street, but she did not follow the child inside. When police arrived, they knocked on the door and received no response. The police eventually entered the residence to check on the child. In a back bedroom of the house, police found the child sitting on the end of a bed, watching television. The police also found two other people in the bed, under the covers and fully clothed—defendant and M.H.

¶ 6 The police questioned M.H. and defendant separately about the nature of their relationship. Defendant explained M.H. was a friend, but the two had previously engaged in sexual intercourse. Defendant told the police she thought M.H. was 17. M.H. told the police he was 16. The police then arrested defendant and escorted her to the police station to be interviewed.

¶ 7 During the interview, defendant denied knowing M.H. was only 16. She again told the officers she thought M.H. was 17. She told the officers she and M.H. had engaged in

sexual intercourse and fondling on three or four separate occasions over the course of a week. Defendant admitted she learned at some point that defendant was only 16 and said she stopped having intercourse with M.H. after she learned he was 16. Defendant told the officers her husband was also in bed with her and M.H. during these encounters and sometimes also had intercourse with defendant.

¶ 8 On October 22, 2009, the State charged defendant with criminal sexual assault. In September 2010, the trial court held a jury trial. The only question at trial was whether defendant reasonably believed M.H. was 17 when she engaged in sexual intercourse with M.H. The State played a recording of defendant's interrogation for the jury.

¶ 9 At the trial, Amanda Olson, another employee of the Pantagraph, testified on behalf of the State. Amanda testified that she knew M.H. was 16 when he started working at the Pantagraph. Amanda told defendant that M.H. was only 16 the first day defendant and M.H. met. Amanda and defendant had a conversation about M.H.'s age because Amanda overheard M.H. discussing moving in with defendant and Quentin. Amanda told defendant "that would not be appropriate because he [i]s only 16."

¶ 10 Defendant testified she thought M.H. was 17 at the time they engaged in sexual intercourse. Defendant said Amanda did tell her M.H. was 16 but not until after she had already had intercourse with M.H. Defendant testified that once she learned M.H. was 16, she no longer engaged in sexual acts with M.H. When the police found defendant and M.H. in bed, they were fully clothed and had not engaged in intercourse.

¶ 11 On this evidence, the jury found defendant guilty on count II of aggravated criminal sexual abuse.

¶ 12 On December 21, 2010, defense counsel filed a motion for a new trial. On December 30, 2010, counsel field an amended motion for a new trial. The amended motion included the additional claim that "[n]ew information has become available which may provide a defense to the charge." It further explained that defendant had located a new witness, Michael Russo, who was living with defendant and Quentin at the time of the incident. Russo could not be found at the time of trial because he had relocated to Michigan and started using the surname Russo. The motion alleged Russo would testify that Quentin "directed defendant to perform the prohibited acts and even insisted that she comply with his demands." On January 25, 2011, the trial court denied defendant's motion for a new trial and amended motion for a new trial as untimely filed.

¶ 13 On January 25, 2011, the trial court sentenced defendant to 48 months' conditional discharge, including a condition of 90 days in jail, with credit for 17 days served. On January 27, 2011, counsel for defendant filed a motion to reconsider her sentence.

¶ 14 Following her sentencing, defendant wrote a letter to the trial court, complaining of her trial counsel's performance. In her letter, she alleged counsel was ineffective because (1) counsel's closing statement was "horrid and demoralizing" and counsel "degrade[d]" her to the jury, and (2) counsel failed to have three different witnesses testify on defendant's behalf, one of whom would have testified that defendant's husband forced her to perform the sexual acts with M.H. The letter was filed with the court on March 30, 2011.

¶ 15 At the March 30, 2011, hearing on defendant's motion to reconsider her sentence, defendant had another public defender. Defense counsel informed the trial court he was only going to argue the sentencing issues, but that defendant "still want[ed] to bring up a number of

issues to the court having to do with the trial." Counsel stated that if defendant were allowed to file her letter with the court, "that would make an adequate Krankel—that would be sufficient." Defense counsel further stated, "just so the record is clear, I have looked into all these allegations, and I don't think any of them rise to the level of ineffective assistance of counsel. They mostly involve trial decisions, so that was my conclusion." The court then noted, "Miss Beasley, I have filed the letter that you've written." The court then denied defendant's motion to reconsider sentence.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant argues the trial court erred when it failed to conduct an appropriate examination of defendant's posttrial claim that she had been denied the effective assistance of counsel. The State argues the court performed an adequate inquiry and defendant's claims of ineffective assistance are facially insufficient, concern matters of trial strategy, and relate to newly discovered evidence not known to counsel at the time of trial. We agree with the State.

¶ 19 When a defendant presents a *pro se* claim of ineffective assistance of counsel, a trial court is required to examine the factual basis of defendant's claim. *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637 (2003). The court may deny a defendant's *pro se* motion if the court finds the defendant's claim lacks merit or pertains solely to matters of trial strategy. *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 637. However, if the defendant can demonstrate that counsel possibly neglected the case, new counsel should be appointed. *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 637. New counsel can then make an independent evaluation of the defendant's

claim and represent the defendant on the issue. *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 637-38.

¶ 20 On appeal, this court will address whether the trial court "conducted an adequate inquiry into the defendant's *pro se* allegations." *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 638. "During the evaluation, some 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." *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 638. The trial court may base its evaluation on the facial insufficiency of defendant's allegations or on its knowledge of counsel's performance at trial. *Moore*, 207 Ill. 2d at 79, 797 N.E.2d at 638. Further, if defendant's allegations pertain solely to trial strategy, the court may deny defendant's motion. *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 637.

¶ 21 Initially, defendant concedes that her claims regarding her attorney's conduct at trial are facially invalid. Specifically, defendant's complaint that her attorney's closing argument was "horrid" and "demoralizing" was a matter of trial strategy. Defendant admits that although counsel could have handled the closing with more grace, such behavior does not amount to a claim of ineffective assistance. See *People v. Beard*, 356 Ill. App. 3d 236, 244, 825 N.E.2d 353, 361 (2005) (allegations arising from counsel's trial strategy will not support a claim of ineffective assistance).

¶ 22 Defendant argues, however, that defendant did advance one argument in her letter that required investigation by the trial court. Defendant's letter alleged her trial counsel failed to have three different witnesses testify: "One witness never showed, one witness was never found, one witness arrived to testify and was waiting to be called." As for the witness that "never

showed," the letter does not indicate whether that witness was subpoenaed. The letter does not indicate what that witness's testimony would have been or whether it would have been helpful. As for the witness who was present but was never called, the letter does not explain what that witness would have testified to or why he or she was not called. Generally, the decision to subpoena or call a witness is a matter of trial strategy, "and such decisions enjoy a strong presumption they are sound." *Beard*, 356 Ill. App. 3d at 244, 825 N.E.2d at 361. Moreover, where a defendant cannot point to "potentially favorable testimony the witnesses might offer," the failure to call such witnesses does not indicate incompetence on the part of counsel. *People v. Williams*, 147 Ill. 2d 173, 245, 588 N.E.2d 983, 1012 (1991). We have not found any evidence in the record, nor has defendant presented any, to rebut the presumption that the absence of these witnesses' testimony was a matter of trial strategy and a sound decision by defense counsel. Thus, it does not amount to ineffective assistance of counsel.

¶ 23 As for the third witness, the letter indicates defendant "had located the witness that never received his subpo[e]na, because he had moved to another state." Defendant said she gave trial counsel the potential witness's new address and written information about his intended testimony. She explained, "this witness was present almost all during the incident and is a crucial key witness to the case." Defendant also asserted that defense counsel had spoken with this witness over the telephone. However, defendant did not explain whether she presented this information to counsel before, during, or after trial, and she did not specify when defense counsel spoke with this witness.

¶ 24 The State argues that counsel was not ineffective for failing to call the third witness because information about this witness did not come to light until after the trial. The

record supports the State's assertion. On December 30, 2010, defense counsel filed an amended motion for a new trial, alleging that "new information has become available which may provide a defense to the charge." The motion provided the following:

> "A. Defendant has located a witness now using the name Michael Russo, now living in the State of Michigan.
>
> B. Michael Russo was, at the time of the offense, living with [d]efendant and her husband, Quentin Hess.
>
> C. Michael Russo would testify that Quentin Hess directed [d]efendant to perform the prohibited acts and even insisted that she comply with his demands.
>
> D. Michael Russo was not able to be found for trial because he had relocated to Michigan and started using the surname Russo."

Defense counsel's inclusion of Russo's presumed testimony in the motion confirms that such information was new to counsel and Russo was not available at trial, and thus, counsel was not ineffective for failing to call him as a witness.

¶ 25 We further note in closing that new defense counsel reviewed defendant's letter and advised the court that defendant's claims did not "rise[] to the level of ineffective assistance of counsel," but rather "mostly involve[d] strategic decisions." Additionally, the same judge presided over both the trial and defendant's *pro se* motion for ineffective assistance of counsel, and assured the parties that he had reviewed the record.

¶ 26 After reviewing the record, we conclude the trial judge made an adequate inquiry

into defendant's claim and found defendant's claims lacked merit based on (1) advice from new defense counsel that the allegations were matters of trial strategy, (2) his knowledge of the record, (3) the facially insufficient nature of the allegations, (4) and his familiarity with defense counsel's performance throughout the trial.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated above, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 29 Affirmed.