2011 IL APP (1st) 083019-U

FIRST DIVISION
September 12, 2011

No. 1-08-3019

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 05 CR 20591
PARIS KNOX,	)	
Defendant-Appellant.	)	Honorable Lawrence P. Fox, Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justices Karnezis and Rochford concurred in the judgment.

O R D E R

¶ 1 ***Held***: A review of the record showed a clear basis for an allegation of ineffective assistance of counsel and therefore fundamental fairness required the trial court to *sua sponte* conduct a preliminary investigation of trial counsel's performance under *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984) .

¶ 2 Defendant Paris Knox was indicted for the stabbing death of Malteeny Taylor, her boyfriend and the father of their baby son. She was tried by a jury. Evidence at trial showed that defendant and Taylor had a tumultuous relationship, with arguments frequently escalating to verbal and physical abuse by both individuals.

¶ 3 The jury was instructed on self-defense and second-degree murder for provocation and unreasonable self-defense. Defendant was ultimately convicted of first-degree murder and sentenced to 40 years' imprisonment.

¶ 4 Defendant raises a number of issues on appeal. However, at this time, we address but one: whether the case should be remanded for a hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984) . Defendant contends that we should remand this case to the trial court for a *Krankel* hearing to determine whether trial counsel provided ineffective assistance by failing to investigate and discover records of her psychiatric history, which she claims would have bolstered her theories of provocation or an unreasonable belief in the need for self-defense. We agree.

¶ 5 "*Krankel* provides a defendant with an opportunity to have a fair hearing on his or her claim of ineffective assistance of counsel." *People v. Gillespie*, 276 Ill. App. 3d 495, 501, 659 N.E.2d 12 (1995). *Krankel* requires a trial court to conduct a preliminary investigation into a defendant's *pro se* claims of ineffective assistance of counsel in order to determine whether new and independent counsel should be appointed to evaluate and advance the claims. *People v. Ward*, 371 Ill. App. 3d 382, 430, 862 N.E.2d 1102 (2007). However, the appointment of independent counsel is not automatically required merely because a defendant alleges his trial

counsel was ineffective. *People v. Moore*, 207 Ill. 2d 68, 77, 797 N.E.2d 631 (2003); *People v. McCarter*, 385 Ill. App. 3d 919, 940, 897 N.E.2d 265 (2008).

¶ 6 Rather, the trial court must first examine the factual basis underlying the claim. And if the trial court determines that the claim is meritless or pertains to matters of trial strategy, then the court may dispose of the claim without appointing new counsel. *Moore*, 207 Ill. 2d at 78. It is only when the claim points to possible neglect of the case that new counsel must be appointed. *McCarter*, 385 Ill. App. 3d at 940.

¶ 7 The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* claims of ineffective assistance of counsel. *People v. Johnson*, 159 Ill. 2d 97, 125, 636 N.E.2d 485 (1994); *Moore*, 207 Ill. 2d at 78. A trial court can conduct such an inquiry in one or more of the following ways: (1) questioning trial counsel, (2) questioning the defendant, or (3) relying upon its own recollection of trial counsel's performance. *Moore*, 207 Ill. 2d at 78-79; *People v. Johnson*, 372 Ill. App. 3d 772, 775, 867 N.E.2d 49 (2007); *People v. Peacock*, 359 Ill. App. 3d 326, 339, 833 N.E.2d 396 (2005).

¶ 8 Where the record reveals a clear basis for an allegation of ineffective assistance of counsel, fundamental fairness requires a trial court to *sua sponte* conduct a preliminary investigation of trial counsel's performance under *Krankel*. See *People v. Williams*, 224 Ill. App. 3d 517, 524, 586 N.E.2d 770 (1992). In the instant case, the record reveals a clear basis for an allegation of ineffective assistance of counsel based on counsel's failure to investigate and discover records of defendant's psychiatric history prior to trial. Trial counsel's lack of pretrial knowledge of defendant's psychiatric history was revealed at a hearing concerning defendant's

fitness for sentencing, as shown by the following colloquy:

"[Assistant State's Attorney]: Judge, today was set for post-trial motions and sentencing. One of the issues that counsels had brought up pursuant to some information provided in the presentence investigation was that they wanted the defendant evaluated *** for fitness and that was done by Dr. Kelly.

THE COURT: Yes.

***

[Assistant State's Attorney]: Judge, in reviewing the report of Dr. Kelly which was filed in this court on June 10th and counting up the days, we are outside of the 45 day period.

So I am going to ask that [defendant] be resent up to the tenth floor for an updated evaluation that is fresh and within 45 days for our hearing. And Judge, the report that I have received yesterday which is causing this delay is written by a Dr. Hayden.

MS. BROWN [Defense Counsel]: Hanlon.

[Assistant State's Attorney]: Hanlon. And there is an opinion here. It is in my opinion within a reasonable degree of neurophysiological and scientific certainty that [defendant] manifests significant cognitive defects involving impaired executive functioning and memory capacity which are consistent with her previously diagnosed mood disorders, specifically bipolar disorder.

Judge, although counsel has insisted and repeatedly told me that they are not trying to make an issue as to sanity at the time.

THE COURT: Or their ineffective assistance.

[Assistant State's Attorney]: For not having raised it, I would ask that a further evaluation be done by Dr. Kelly specifically addressing this issue so it's not brought up at some later date in a PC where Dr. --

MR. SARLEY [Defense Counsel]: Hanlon.

[Assistant State's Attorney]: Hanlon is called in to give an opinion as to that.

MR. SARLEY [Defense Counsel]: Judge, Dr. Hanlon is a sentencing witness. And I think the defendant's state of mind at the time of the incident is relevant to the sentencing. That is what we are calling it as. It is not an insanity defense.

THE COURT: I would assume you are not trying to say that the state doesn't have the right to have somebody else examine her with respect to the same kind of statement that you plan to offer through the doctor, correct?

MR. SARLEY [Defense Counsel]: Of course not.

THE COURT: So what's the big deal?

MS. BROWN [Defense Counse]: We are not asserting any type of insanity.

THE COURT: You know –

MS. BROWN [Defense Counse]: It should be clear. We would have done it before trial.

THE COURT: I would hope so but who knows what somebody else's interpretation of what's going on here might be or what someone else might make of what you're doing at this point in this case.

MR. SARLEY [Defense Counsel]: Just so it's clear, Judge, this came up when we got the PSI and the PSI indicated that Cermak there was a diagnosis of bipolar disorder and that's where this is all stemming.

THE COURT: At Cermak when? Before trial?

MR. SARLEY [Defense Counsel]: Yes.

THE COURT: Okay. Are you saying that you didn't know about it before trial? Do we want to keep going on with this, Mr. Sarley?

MR. SARLEY [Defense Counsel]: No. I am just explaining the situation.

THE COURT: All right. Fine. This is called a can of worms, I think, as you well know based on your experience that you have opened up here basically. So we need to proceed with all due caution which we will do ***."

¶ 9 The trial court's comments clearly show there was a clear basis for an allegation of ineffective assistance of counsel based on counsel's failure to investigate and discover readily discoverable records of defendant's psychiatric history prior to trial. See, *e.g.*, *Williams*, 224 Ill. App. 3d at 524 (finding that a trial judge's strong comments to counsel indicate that the judge was made aware of counsel's possible neglect of defendant's case). A defense counsel's failure to investigate and discover a defendant's readily discoverable psychiatric history can amount to ineffective assistance of counsel. See *People v. Baldwin*, 185 Ill. App. 3d 1079, 1090-91, 541 N.E.2d 1315 (1989) (finding ineffective assistance of counsel where counsel failed to investigate and discover records of defendant's psychiatric history prior to trial); *People v. Howard*, 74 Ill. App. 3d 138, 142, 392 N.E.2d 775 (1979) (pre-*Strickland* case finding the same).

¶ 10 The State raises various arguments on this issue all of which we have considered. We find only one argument merits discussion.

¶ 11 The State maintains that the defendant was not prejudiced by defense counsel's failure to investigate and discover defendant's psychiatric history because Dr. Jonathan Kelly, a psychiatrist with Forensic Clinical Services, made a post-trial finding that the defendant was legally sane at the time of the offense and therefore we know how this "psychiatric" issue "would have come out if raised before trial." The State overlooks the fact that Dr. Kelly's expert opinion was never presented to the jury. "As a general rule, the question of the defendant's sanity at the time of the offense is a question of fact for the jury." *People v. Seaman*, 203 Ill. App. 3d 871, 882, 561 N.E.2d 188 (1990).

¶ 12 Moreover, there was a conflict of opinion between Dr. Kelly and Dr. Robert Hanlon, a clinical neuropsychologist and board certified clinical psychologist, concerning whether defendant was legally sane at the time of the offense. The jury never got an opportunity to evaluate and resolve these conflicting expert opinions.[1] It is the function of the jury, as the trier of fact, to resolve conflicting expert opinions regarding the issue of a defendant's sanity and the weight to be given such opinions. *People v. McCleary*, 208 Ill. App. 3d 466, 478-80, 567 N.E.2d

[1] At one of the sentencing hearings, Dr. Hanlon opined as follows: "I believe that given my opinion and objective findings, that [defendant] does manifest some cognitive deficits which are typical of patients with bipolar disorder. That those cognitive deficits as her, in combination with her emotional instability and behavioral abnormalities due to bipolar disorder, did contribute to her actions on May 21st of '05."

434 (1990); *People v. Fierer*, 260 Ill. App. 3d 136, 143, 631 N.E.2d 1214 (1994).

¶ 13 Accordingly, we remand the cause to the trial court with directions to conduct a preliminary investigation of defense counsel's performance. If the court determines that the claim of ineffectiveness lacks merit or pertains to trial strategy, no new counsel need be appointed to represent defendant. *Williams*, 224 Ill. App. 3d at 524; *Moore*, 207 Ill. 2d at 81.

¶ 14 If, however, it is indicated that defense counsel may have neglected defendant's case, the court should appoint new counsel to argue defendant's claim of ineffective assistance of counsel. *Williams*, 224 Ill. App. 3d at 524. If the trial court rules against defendant on this issue, she may still appeal her assertion of ineffective assistance of counsel along with her other assignments of error. *Moore*, 207 Ill. 2d at 81-82.

¶ 15 For the foregoing reasons, we remand the cause to the circuit court of Cook County for further proceedings consistent with this order.

¶ 16 Remanded with directions.