

2011 IL App (1st) 100272-U

No. 1-10-0272

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FIFTH DIVISION  
September 30, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 14532
	)	
MARK JOHNSON,	)	
	)	Honorable
Defendant-Appellant	)	James B. Linn,
	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Justices Joseph Gordon and McBride concurred in the  
judgment.

O R D E R

¶ 1 *Held*: Because a reasonable probability exists that a motion to quash defendant's arrest and suppress evidence recovered after the police initiated a *Terry* stop would have been granted below, we find defendant established an ineffective assistance of counsel claim based on defense counsel's failure to file such a motion.

¶ 2 Following a bench trial, defendant Mark Johnson was convicted of forgery and sentenced to a four-year prison term. On appeal, defendant contends his sixth amendment right to effective assistance of counsel was denied by trial counsel's failure to file a motion to quash defendant's arrest and suppress the evidence recovered following an allegedly unjustified *Terry* stop initiated by the police. Defendant also contends the trial court erred by not conducting an adequate inquiry into his *pro se* post-trial claim of ineffective assistance of counsel, as required by *People v. Krankel*, 102 Ill. 2d 181 (1984). For the reasons that follow, we remand defendant's case to the trial court for further proceedings consistent with this order.

¶ 3 BACKGROUND

¶ 4 Defendant was charged with six counts of forgery, namely possession with the intent to issue or deliver counterfeit United States currency on August 7, 2009. Defendant pled guilty on August 25, 2009, and received a three year prison sentence. Defendant later filed a *pro se* motion to withdraw his guilty plea

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and vacate his sentence on September 21, 2009, which the trial court granted. In his motion, defendant alleged his attorney did not advise him of the evidence that would be presented against him by the State, and that his attorney led him to believe he would be incarcerated for "a very long time" if he did not plead guilty.

¶ 5 At the hearing of the motion on October 9, 2009, defendant was warned that if he withdrew his guilty plea he could risk going to prison for longer than three years. Defense counsel also informed the court on the same day that defendant no longer wished to be represented by counsel. The court inquired into defendant's educational background and discovered he had only completed 8th grade. The court then expressed its concern with defendant's decision to proceed pro se and encouraged him to accept the assistance of a free attorney. Defendant agreed to be represented by counsel and informed the court he wanted to call a witness. The court informed defendant that counsel could call the witness on his behalf. After defense counsel requested a bench trial, the court informed the defendant that he had a right to a trial by jury, but that he could waive the right if he preferred. The court explained the differences between both

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trials and defendant elected to have a bench trial.

¶ 6 During the bench trial, Chicago Police Officer Don Story testified that on July 17, 2009, he was on patrol when he received a tip from a "concerned citizen" that defendant was in possession of "a lot of counterfeit money and he was selling it for real money." Officer Story knew defendant because he had arrested him before. The location given by the "citizen" was an area Officer Story knew the defendant was known to frequent, as he had stopped defendant there numerous times before.

¶ 7 On July, 28, 2009, eleven days later, Officer Story was patrolling the area of 2015 W. Madison with his partner, Officer Ziembra. Officer Story noticed defendant and another person sitting on a grassy hill around 1 p.m. Officer Story and Officer Ziembra stopped their vehicle and approached defendant in order to conduct a field interview. As they approached, defendant stood up with his hands in his pockets. Officer Story testified that "for officer safety, [he] asked [defendant] to remove his hands from his pockets." When defendant removed his hands from his pockets, Officer Story saw two bundles of what appeared to be United States currency. Upon further investigation, Officer Story noticed that the money was off-colored and did not appear

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to be real. When Officer Story asked defendant what he does with the money, defendant said "I give them 120 fake money and they give me 30 bucks real money." When asked, defendant did not indicate who he gives the money to.

¶ 8 The officers arrested defendant and transported him to the 13th district police station, where they notified the U.S. Secret Service of the money. Secret Service Agent Kathleen Bernhardt arrived at the police station to inspect the money. She marked the currency with a counterfeit pen that would turn black if the money was fake. After marking all of the bills, they turned black and Agent Bernhardt determined the currency was counterfeit. Officer Story testified he never personally witnessed defendant exchange the counterfeit money for real money.

¶ 9 Defense counsel argued defendant was not guilty of forgery because the State failed to prove defendant had the requisite intent to make an exchange. Defense counsel did not call any witnesses. The trial court found defendant guilty and sentenced him to four years in prison. Defendant appeals.

#### ¶ 10 ANALYSIS

##### ¶ 11 I. Ineffective Assistance of Counsel

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¶ 12 Defendant contends he received ineffective assistance of trial counsel because his attorney did not move to quash his arrest and suppress the evidence recovered by the police. Defendant contends such a motion would have likely succeeded in this case because the officers lacked a reasonable suspicion to stop and question him, which resulted in an unjustified *Terry* stop.

¶ 13 In order for this court to find ineffective assistance of counsel, a defendant must establish that: (1) counsel's performance was deficient because it fell below an objective standard of reasonableness; and (2) there is a reasonable probability that but for counsel's unprofessional errors, the outcome of the trial would have been different. *Strickland v. Washington*, 446 U.S. 668, 687 (1984). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.* at 669.

¶ 14 A strong presumption exists that counsel's conduct falls within the wide range of reasonable, professional assistance. *Strickland*, 446 U.S. at 689; *People v. Moore*, 279 Ill. App. 3d 152, 157 (1996); *People v. Albanese*, 104 Ill. 2d 504, 526 (1984). Mistakes in strategy or tactics alone do not amount to

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ineffective assistance of counsel. *People v. Johnson*, 372 Ill. App. 3d 772, 777-78 (2007), citing *People v. Palmer*, 162 Ill. 2d 465, 476 (1994). Further, a defendant must establish he was prejudiced by the deficient performance. *People v. Burks*, 343 Ill. App. 3d 765, 775 (2003); *Albanese*, 104 Ill. 2d at 525. Absent a showing of prejudice, it is unnecessary for the reviewing court to consider whether counsel's representation fell below an objective standard of reasonableness. *Burks*, 343 Ill. App. 3d at 775.

¶ 15 In determining whether a defendant suffered substantial prejudice due to counsel's failure to file a motion to suppress, a reviewing court considers whether a reasonable probability exists that: (1) the motion to suppress would have been granted; and (2) the outcome of the trial would have been different had the evidence been suppressed. *People v. Richardson*, 376 Ill. App. 3d 612, 615 (2007).

¶ 16 A. Seizure of the Defendant

¶ 17 The fourth amendment to the United States Constitution and article 1, section 6 of the Illinois Constitution protect citizens from unreasonable searches and seizures by the government. U.S. Const., amends. IV, XIV; Ill. Const. 1970, art

1, § 6. However, "[n]ot every encounter between police and a private citizen results in a seizure." *People v. Jackson*, 389 Ill. App. 3d 283, 287 (2006). There are three tiers of police-citizen encounters: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions, or *Terry* stops, which require a reasonable suspicion of criminal activity; and (3) consensual encounters which do not involve coercion or detention and therefore fourth amendment rights are not at issue. *Id.*, citing *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006).

¶ 18 An encounter is consensual so long as a reasonable person would feel free to disregard the police and go about his business. *People v. Gherna*, 203 Ill. 2d 165, 178 (2003), citing *Florida v. Bostick*, 501 U.S. 429, 434 (1991). If, when taking into account all the circumstances surrounding the incident, the conduct of the police would lead a reasonable, innocent person under identical circumstances to believe that he or she was not free to decline the officers' requests or otherwise terminate the encounter, that person is seized. *Gherna*, 203 Ill. 2d at 178, citing *Immigration and Naturalization Service v. Delgado*, 466 U.S. 210, 215 (1984); *Bostick*, 501 U.S. at 436.

¶ 19 The United States Supreme Court has noted four circumstances

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in which a seizure might occur absent any attempt to leave: (1) the threatening presence of several officers; (2) the display of weapons by the officers; (3) physical touching of the citizen; or (4) the use of language or tone of voice suggesting mandatory compliance with officer requests. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). Further, a person is seized when, by means of physical force or a show of authority, his freedom of movement is restrained. *Terry v. Ohio*, 392 U.S. 1, 19 (1968).

¶ 20 Defendant contends that when both Officer Story and Officer Ziembra approached the defendant to conduct a field interview, a Terry stop occurred when they requested defendant remove his hands from his pockets. Defendant further contends that because the Terry stop was not founded on a "reasonable and articulable suspicion of criminal activity," his fourth amendment right against unlawful searches and seizures was implicated. The State counters that the encounter in this case was consensual, and that defendant has failed to show any of the Mendenhall factors were present during the encounter. What separates these two opposing views is whether the officers' conduct conveyed a "means of physical force or a show of authority," such that defendant's "freedom of movement [was] restrained." See *People v. Cosby*, 231

Ill. 2d 262, 273 (2008), citing *Mendenhall*, 446 U.S. at 553.

¶ 21 In this case, we find the evidence presented below suggests the encounter between Officer Story and defendant constituted a "Terry stop," rather than a "consensual stop" as the State suggests. Although we recognize there was no testimony that Officer Story displayed his weapon or that he physically touched defendant during the initial part of the encounter, we note Officer Story's first statement to defendant upon approaching him indicates defendant's compliance with his request might have been compelled. See *Mendenhall*, 446 U.S. at 553.

¶ 22 This court has previously recognized that when an officer approaches a defendant and tells him to remove his hands from his pockets, a reasonable person would interpret that statement as a command, not a request. See *Jackson*, 389 Ill. App. 3d at 288 ("When Officer Connor approached the defendant the first thing he did was to tell the defendant to remove his hands from his pockets. It was not a question or a request. It was an order, and he repeated it three or four times"), citing *People v. Smith*, 331 Ill. App. 3d 1049, 1053 (2002) ("Under other circumstances we would find that a seizure occurred no later than when the defendant was told to stop and to remove his hands from his

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pockets." )

¶ 23 While on patrol at around one in the afternoon, Officer Story saw defendant and another individual sitting on a grassy hill. Officer Story decided to stop his car and conduct a field interview. When Officer Story and his partner approached defendant, defendant started to stand up with his hands in his pockets. Officer Story then immediately asked defendant to remove his hands from his pockets "for officer safety." Defendant complied and removed his hands from his pockets, at which point Officer Story saw defendant holding two bundles of what appeared to be U.S. currency.

¶ 24 Similar to *Jackson*, the first thing Officer Story did when approaching defendant was to tell him to remove his hands from his pockets. Officer Story's statement to defendant was not framed as a question or a request; it was an order. A consensual encounter loses its consensual nature " 'if law enforcement officers convey a message by means of physical force or show of authority, that induces the individual to cooperate.' " *Jackson*, 389 Ill. App. 3d at 288, quoting *Ghera*, 203 Ill. 2d at 179. Based on Officer Story's immediate order for defendant to remove his hands, we find an "innocent person under identical

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circumstances" would not believe he was free to decline the officer's request or otherwise terminate the encounter. See *Ghera*, 203 Ill. 2d at 178. In accordance with the fourth *Mendenhall* factor, we find Officer Story's order to defendant to remove his hands indicated that " 'compliance with the officer's request might be compelled.' " See *Jackson*, 389 Ill. App. 3d at 288, quoting *Mendenhall*, 446 U.S. at 553. Accordingly, we find defendant was seized at that point.

¶ 25 Because we find Officer Story's encounter with defendant amounted to a *Terry* stop based on the record before us, we must determine whether the officers had a reasonable and articulable suspicion of criminal activity sufficient to justify initiating the stop and subsequent seizure. See *Smith*, 331 Ill. App. 3d at 1053.

¶ 26 B. Justification for *Terry* stop

¶ 27 A *Terry* stop requires a reasonable and articulable suspicion of criminal activity that justifies the officer's stop at the very onset. *People v. Croft*, 346 Ill. App. 3d 669, 674-75 (2004), citing *People v. Robinson*, 322 Ill. App. 3d 169, 174 (2001). There is a two-step process in determining whether a stop was an unreasonable seizure: (1) whether the stop was justified

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at its inception; and (2) whether the scope of the stop was proportional to the circumstances that justified the interference in the first place. Croft, 322 Ill. App. 3d at 675, citing People v. Sparks, 315 Ill. App. 3d 786, 792 (2000). Whether a stop was justified at its inception is based on an objective consideration of whether the officer's actions were appropriate based on the facts available to him. Id, citing People v. Thomas, 198 Ill. 2d 103, 109 (2001).

¶ 28 When an officer observes unusual conduct which leads him to reasonably conclude that criminal activity may be taking place, he is entitled for the safety of himself and others, to conduct a carefully limited search of the outer clothing of the persons engaged in the conduct. Florida v. J.L., 529 U.S. 266, 269-70 (2000), citing Terry, 392 U.S. at 30. It is not sufficient that the officer suspected or had a hunch of criminal activity. Gherna, 203 Ill. 2d at 177. The situation confronting the officer must be so far from the ordinary that any competent officer would be expected to act quickly. Croft, 322 Ill. App. 3d at 675, citing People v. Avant, 331 Ill. App. 3d 144, 152-53 (2001).

¶ 29 In the present case, the record reflects neither Officer

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Story nor Officer Ziemba saw defendant exhibiting any suspicious or criminal behavior when the officers decided to approach him.

Defendant was merely sitting on a grassy hill. It is undisputed that the primary basis for the officers' stop was information they received from a "concerned citizen" 11 days prior.

Defendant contends that because the tip was unreliable, uncorroborated, and over 11 days old when the officers approached him, there was not a reasonable, articulable suspicion of criminal activity sufficient to justify his instigative detention.

¶ 30 "Where an informant's tip is received by telephone, it may form the basis for a lawful *Terry* stop, but the informant must bear some indicia of reliability, and the information upon which the police act must establish the requisite quantum of suspicion." *People v. Rollins*, 382 Ill. App. 3d 833, 836 (2008).

¶ 31 When determining whether a *Terry* stop was justified based on an informant's tip, courts consider: (1) whether a tip established the informant's basis of knowledge; (2) whether the informant indicated witnessing any criminal activity; (3) whether the tip contained more than hearsay reports of other individuals; (4) whether the caller had previously supplied reliable

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information to the police; (5) whether more than innocent details can be corroborated by the tip when stopping the defendant; and (6) whether the tip accurately predicts future activity of the subject. *People v. Salinas*, 383 Ill. App. 3d 481, 492 (2008); *People v. Jackson*, 348 Ill. App. 3d 719, 732 (2004), citing *People v. Yarber*, 279 Ill. App. 3d 519, 528 (1996). Generally, " 'where the information lacks sufficient detail and the informant does not claim to have witnessed any criminal activity, the informant is not reliable without corroboration and a stop may not be warranted.' " *Salinas*, 383 Ill. App. 3d at 492, quoting *Jackson*, 348 Ill. App. 3d at 731.

¶ 32 Initially, the State contends defendant's claim that the tip was unreliable is speculative because no testimony was ever elicited at trial regarding whether the tip was unreliable. The State contends there is nothing in the record to indicate the informant was not an eyewitness, did not make the tip in person, did not have personal knowledge of defendant's activities, or did not have specific details about the amount of money involved.

¶ 33 Although we recognize issues regarding the tip's reliability were not specifically explored during Officer Story's trial testimony, we note we must make our decision here based solely on

the record before us. See *People v. Canulli*, 341 Ill. App. 3d 361, 368 (2003) ("The purpose of appellate review is to evaluate the record presented in the trial court, and review must be confined to what appears in the record.") We cannot assume the tip was reliable solely because evidence was not presented to establish it was unreliable. This is especially important given defendant's contention on appeal that the issues were not explored in detail below based on defense counsel's ineffectiveness in not raising the issue.

¶ 34 Based on the limited record before us, we cannot say a Terry stop was justified based solely on the informant's tip. Officer Story's trial testimony does not indicate whether Officer Story knew the informant, whether the informant knew defendant, or whether the informant had ever supplied reliable information to the police in the past. There is also nothing in Officer Story's testimony regarding the tip that establishes the informant's basis of knowledge. Nor is there any evidence in the record suggesting the informant actually witnessed the alleged crime.

¶ 35 Because specific details were not provided regarding how the informant knew defendant was engaged in criminal activity, there is no way of determining whether the tip was based on the

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informant's own knowledge or merely a recitation of the hearsay reports of others. Without assurance of either the accuracy of the information in the tip or the accuracy of the informant himself, there is no way to ensure the reliability of the tip used to justify the *Terry* stop based on the record before us. See *Adams v. Williams*, 407 U.S. 143, 146-47 (1972); *Alabama v. White*, 496 U.S. 325, 329 (1990) (indicating that a tip from a known informant can be assessed and the party held responsible for any inaccurate information, but with an unknown tip, it seldom demonstrates the informant's basis of knowledge or veracity).

¶ 36 Moreover, Illinois courts have recognized that the time of the stop in relation to the time the tip was received is a consideration in determining whether there was a reasonable suspicion of criminal activity. See *People v. Shafer*, 372 Ill. App. 3d 1044, 1049 (2007). Here, Officer Story received the anonymous tip 11 days prior to initiating contact with defendant. The rather long delay between receiving the tip and making contact with defendant further calls into question the reliability of the information used to justify the *Terry* stop.

¶ 37 In the absence of any factors that would speak to the

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reliability of the tip, we cannot say the tip--based solely on our review of the record currently before us--was reliable enough to justify a *Terry* stop without further corroboration of the information. See *Jackson*, 383 Ill. App. 3d at 492; *People v. Moraca*, 124 Ill. App. 3d 561, 564-65 (1984).

¶ 38 One of defendant's viable defenses in this case was to contest the legality of the seizure of the counterfeit money through a motion to quash defendant's arrest and suppress the evidence. Since a significant question exists with regards to whether the informant's tip in this case provided Officer Story with a reasonable suspicion sufficient to justify a *Terry* stop, we find a reasonable probability exists that such a motion would have been granted. Because the counterfeit money recovered from defendant constituted the bulk of the evidence presented against him, we also find a reasonable probability exists that the outcome of defendant's trial would have been different had the evidence been suppressed by the trial court. Given the importance of this evidence to the State's case, defendant has adequately established defense counsel was ineffective for failing to file a motion to quash arrest and suppress the evidence. See *People v. Davis*, 349 Ill. App. 3d 93, 99-100

(2004), *modified by* 211 Ill. 2d 590 (2004).

¶ 39 In reaching our conclusion, we find it important to note we are not saying such a motion would have in fact succeeded if a suppression hearing had been held and the facts had been fully developed in this case; rather, we simply hold that based on the rather limited record before us such a motion would have stood a reasonable probability of success. Therefore, we find counsel was ineffective by failing to file such a motion.

¶ 40 Accordingly, we find it necessary to remand the cause in order for defendant to file such a motion and for the trial court to conduct a suppression hearing, where the trial court will be tasked with determining whether such a motion should ultimately be granted after the record is fully developed. If the outcome of the hearing on remand results in the trial court granting the motion and excluding the evidence recovered as a result of the stop, a new trial should be held to determine defendant's guilt absent such evidence. See *Davis*, 349 Ill. App. 3d at 99-100, *modified by* 211 Ill. 2d 590 (2004).

¶ 41 II. Failure to Inquire into Pro Se Claim

¶ 42 Defendant contends the trial court failed to adequately inquire into the factual basis of defendant's pro se post-trial

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allegations of ineffective assistance of counsel, as required by *People v. Krankel*, 102 Ill. 2d 181 (1984). Although we have already determined defendant's case should be remanded for a suppression hearing, we address defendant's remaining *Krankel* claim in the event the trial court determines a new trial is not warranted after such a hearing is conducted.

¶ 43 Defendant filed a pro se petition to withdraw his guilty plea on September 21, 2009, in which he alleged defense counsel failed to advise him of the evidence the State would have against him and coerced him into pleading guilty by convincing him that if he went to trial he would be imprisoned for a long time. Defendant informed the court he would like to proceed without counsel. The judge informed defendant such a request was a "bad idea" because of his limited education. The court told defendant it would give him an attorney free of charge, and asked if defendant would allow the lawyer to represent him. Defendant said, "Yeah, but I got a witness I want to be able to call." The court replied, "He'll get the witness for you but you don't know how to -- I'm concerned that you may not know how to call the witness." The court then granted defendant's motion to withdraw his guilty plea. Following the grant of the motion, defense

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counsel informed the court that he would not be calling any witnesses and requested a bench trial date.

¶ 44 Following the bench trial, defense counsel filed a motion for a new trial, while the defendant filed his own *pro se* motion to reconsider. Defendant alleged in his *pro se* motion that he had been illegally handcuffed and shackled and denied a fair trial by being forced to appear at trial in a prison uniform, and that his attorney should not have represented him because the reason he withdrew his guilty plea was based on counsel's "lack of representation," which created a "conflict of interest" between himself and counsel.

¶ 45 Defense counsel indicated to the court that there was only one issue in defendant's *pro se* motion that had not been addressed in defense counsel's own motion, namely the issue regarding whether defendant was denied a fair trial because he was forced to appear in court while wearing leg shackles and a prison uniform. The court informed defendant that what defendant wore during the bench trial made no difference in the outcome of the court's decision. In denying defendant's post-trial motion, the court did not specifically address defendant's remaining issue regarding defense counsel's alleged lack of representation

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and conflict of interest.

¶ 46 Our supreme court, in interpreting Krankel, has previously held "new counsel is not automatically required in every case in which a defendant presents a pro se post-trial motion alleging ineffective assistance of counsel." *People v. Moore*, 207 Ill. 2d 68, 77 (2003). When a defendant presents a pro se post-trial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. *Id.* at 77-78. If the trial court determines that the claim lacks merit or relates only to matters of trial strategy, then the court does not need to appoint new counsel and may deny the pro se motion. *Id.* at 78. If, however, the allegations show possible neglect of the case, new counsel should be appointed. *Id.*, citing *People v. Chapman*, 194 Ill. 2d 186, 230 (2000). The question before us is whether the trial court conducted an adequate inquiry into defendant's pro se motion.

¶ 47 The State contends defendant's claim was not ineffective assistance of counsel, but, rather, an allegation that having defense counsel represent him presented a potential conflict of interest.

¶ 48 While we recognize courts are not required to formulate an

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ineffectiveness claim where the language is ambiguous, we note a *pro se* claim for ineffective assistance of counsel generally need not take a specific form. *People v. Hamilton*, 242 Ill. App. 3d 194, 198 (1992); *People v. Reed*, 197 Ill. App. 3d 610, 613 (1990).

Although defendant did not use the words "ineffective assistance of counsel" in presenting his claims, it is clear he intended to specifically inform the court that he believed his counsel provided inadequate representation. For example, defendant specifically alleged: "Public Defender William Woelkers should not have represented me because my reson (sic) to withdraw my guilty plea was base (sic) on his lack of representation therefor (sic) it was a conflict of interest."

¶ 49 There is nothing ambiguous about defendant's *pro se* claims. He stated his reason for filing his *pro se* post-trial motion was based on defense counsel's alleged "lack of representation," as evidenced by defendant's decision to remove counsel and withdraw his guilty plea. Although defendant did not specifically say he was raising a claim of ineffective assistance of counsel, we find his claim was sufficient to implicitly raise the issue of counsel's effectiveness in representing defendant to the court.

While we recognize defendant specifically mentions a "conflict of interest" existed between himself and defense counsel to support his claim that counsel should not have represented him, we note raising the issue of a potential conflict and its impact on counsel's representation of defendant at trial did not necessarily place defendant's claim outside *Krankel's* purview. See *People v. Hardin*, 217 Ill. 2d 289, 299-300 (2005); *People v. Titone*, 151 Ill. 2d 19, 32 (1992) (treating a conflict of interest argument as an ineffectiveness argument). The court did not address defendant's claim against his appointed defense counsel, and, instead, focused solely on defendant's pro se claim that he was denied a fair trial by having to appear in court while wearing leg irons and IDOC clothing. Accordingly, we find the trial court erred in not conducting a sufficient inquiry into defendant's pro se claim that counsel did not adequately represent him.

¶ 50 On remand, the trial court has already been directed to order a new trial if it determines defendant's motion to quash arrest and suppress evidence should be granted. If a new trial is ordered, defendant's *Krankel* claim becomes moot. If, however, the trial court determines the motion should be denied and a new

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trial is not warranted, we further direct the trial court to conduct an adequate inquiry into defendant's remaining *pro se* claim of ineffective assistance of counsel based on an alleged conflict of interest, as required under *Kranke1*.

¶ 51 CONCLUSION

¶ 52 We remand defendant's case to the trial court for further proceedings consistent with this order.

¶ 53 Remanded.