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No. 3-09-0115

Order filed April 14, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the Twelfth Judicial Circuit Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	No. 08-CF-2045
CARLUIS MAETHIS,	)	The Honorable Robert Livas,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Justices Lytton and Holdridge concurred in the judgment.

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**ORDER**

*Held:* Where the trial court failed to conduct an inquiry into defendant's *pro se* motion alleging ineffective assistance of counsel to determine whether to appoint counsel to argue the motion, and sentenced defendant for a felony without a presentence investigation report, the defendant's appeal of his convictions for burglary and theft were determined to be premature and the cause was remanded for new proceedings on his posttrial motion.

The State indicted defendant, Carluis Maethis, for one count of burglary and one count of theft. Following a bench trial, the circuit court of Will County found defendant guilty of both

counts. Defendant filed *pro se* posttrial motions for a new trial on, *inter alia*, grounds of ineffective assistance of counsel. The trial court granted defense counsel's motion to withdraw, held a hearing on defendant's motions, in which defendant proceeded *pro se*, and ultimately denied the motions. For the reasons that follow, we reverse defendant's sentence and remand for new posttrial proceedings.

## BACKGROUND

The State indicted defendant for one count of burglary and one count of theft alleging that defendant knowingly entered Joan Buechel's motor vehicle with the intent to commit a theft therein, and knowingly obtained control over Buechel's debit card with the intent to permanently deprive her of its use and benefit.

Joliet police officer James Kilgore responded to a report of a man on a bicycle harassing customers at the Crown Inn Motel on Jefferson in Joliet. Officer Kilgore saw a man riding a bicycle east on Jefferson in the vicinity of the hotel matching the description of the man harassing customers. Kilgore ordered the man to stop, but the bicyclist accelerated away. Following a brief pursuit, Kilgore stopped the man and detained him. Kilgore identified defendant, Carluis Maethis, as the man he stopped.

Kilgore placed defendant under arrest for resisting a peace officer and searched him. Defendant does not challenge the initial seizure following the pursuit, the arrest, or the search incident to arrest. Police seized keys, a gold ring, lottery tickets, credit cards, and a debit card bearing the name "Joan Buechel" from defendant as a result of the search. Defendant told police the items were his.

Police contacted Joan Buechel. When police asked whether she had lost her debit card,

she realized that she had left her purse containing the debit card and other items, and her car keys, in her vehicle the previous night. When Buechel went to her vehicle, she discovered the glove compartment open, a CD holder she kept attached to the visor laying on the car seat, various items on the floor of the car, and that her purse and keys were no longer in the car. Buechel testified that when she last had the purse, it contained a checkbook, medications, an Eddie Bauer card, a Sears card, \$20 cash, a coin bag with various coins, her debit card, her mother's ring, and lottery tickets. She testified that she inadvertently left her keys in the ignition. After police spoke to Buechel, an officer took the items seized from defendant to her home and showed them to her. Buechel identified the items seized from defendant as the items that had been in her purse in her vehicle.

Police later recovered an unzipped purse from a street located southeast of Buechel's residence. Police telephoned Buechel and informed her they found her purse a couple of blocks from her home. Police returned Buechel's purse, medications, and checkbook to her. Buechel testified that she did not know defendant, did not give him or anyone else permission to enter her car, or to take her purse or any other property. Defendant lives northwest of Buechel's residence. Buechel lives east of defendant and west of the motel. The motel is east of Buechel's residence.

Defendant did not present any evidence. The trial court found defendant guilty of burglary and theft and continued proceedings for the preparation of a presentence investigation report and for sentencing. Before sentencing, defendant filed *pro se* motions for a new trial alleging, *inter alia*, ineffective assistance of counsel at trial. Defense counsel filed a separate motion for a new trial, and defendant filed a second motion alleging ineffective assistance of trial counsel. At a subsequent hearing, defense counsel informed the trial court that defendant wished

to proceed *pro se* on his *pro se* posttrial motions.

The trial court informed defendant that if he chose to proceed *pro se* on his posttrial motions, he would also have to proceed *pro se* at his sentencing hearing. The trial court admonished defendant as to the applicable sentencing range and asked if he still desired to proceed *pro se*. Defendant responded that he only wanted counsel to represent him if his counsel would argue defendant's own motions. Defense counsel informed the court that he could not adopt defendant's motions. Defendant reasserted his desire, in that case, to proceed *pro se*, and the court discharged counsel and the Public Defender's office. The trial court then noted that defendant had not submitted to an interview with the probation department in connection with the preparation of a presentence investigation report. The court informed defendant that it was his right not to submit to the interview, but warned defendant that his refusal to be interviewed would restrict the court from understanding defendant's full background when imposing sentence.

The trial court held a hearing on defendant's *pro se* motions for a new trial. Defendant asked about his second motion alleging ineffective assistance of counsel and the court responded it would rule on the motions for a new trial first. The court again asked defendant if he wished to participate with the preparation of the presentence investigation report. The court informed defendant that he had a right not to participate and that preparation of the report would delay proceedings. Defendant declined participation in the preparation of a presentence investigation report.

The trial court denied defendant's *pro se* motions for a new trial. Defendant inquired as to his second motion alleging ineffective assistance of counsel. The trial court responded it

denied them all. Defendant again confirmed his agreement to proceed with sentencing absent a presentence investigation report. During the sentencing hearing, the court inquired of the State as to defendant's criminal background. Following the hearing, the court ruled that, based on prior convictions, defendant was eligible receive a sentence for a Class X felony for his Class 2 burglary conviction. The court sentenced defendant to 11 years for burglary and 3 years for theft to be served concurrently.

This appeal followed.

#### ANALYSIS

Defendant argues that the evidence produced at trial is insufficient to prove him guilty beyond a reasonable doubt of burglary. Defendant also argues that the cause must be remanded for resentencing because the trial court sentenced him without the benefit of a presentence investigation report and without an agreement between the prosecution and the defense to a specific sentence. Finally, defendant argues that the trial court erred in failing to determine whether to appoint new counsel to argue his *pro se* allegations of ineffective assistance of counsel, and erroneously informed him that his claims of ineffective assistance of counsel could only be considered if defendant proceeded *pro se* for posttrial proceedings. Defendant further asserts that he did not know of—and the trial court did not consider—the possibility that the court could appoint new counsel to argue those claims. Thus, because the trial court erroneously forced defendant to choose between proceeding *pro se* on his allegations of ineffective assistance and not having those allegations considered at all, he contends his waiver of counsel for posttrial proceedings was not voluntary, knowing and intelligent.

The supreme court has provided guidance for determining when new counsel is provided

in this situation as follows.

"In interpreting *People v. Krankel*, 102 Ill. 2d 181 (1984), the following rule developed. New counsel is not automatically required in every case in which a defendant presents a *pro se* posttrial motion alleging ineffective assistance of counsel. Rather, when a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion." *People v. Moore*, 207 Ill. 2d 68, 77 (2003).

Defendant argues that, had the trial court followed proper procedure when faced with defendant's *pro se* allegations of ineffective assistance of trial counsel, defendant would have known whether or not the court would appoint new counsel to argue those claims, and he could have then decided to proceed with new counsel, proceed on those claims *pro se*, or abandon the claims of ineffective assistance and proceed on other posttrial motions with his original counsel. The State responds the trial court is not required to engage in some interchange with trial counsel or the defendant to ascertain whether allegations of ineffective assistance of counsel lack merit or pertain only to trial strategy in every case, and that no such inquiry was required in this case.

The State argues that the trial court did not prejudice defendant by failing to engage in some exchange with counsel or defendant to determine whether it needed to appoint new counsel

to argue defendant's initial claims of ineffective assistance because defendant argued all of those claims during his argument on his first two motions for a new trial. The State claims that the trial court did not have to engage in a preliminary inquiry with regard to defendant's second motion alleging ineffective assistance because it contained matters raised and argued, by defendant *pro se*, in his initial two motions for a new trial.

The State's argument fails to address the central concern that the rule from *Krankel* is meant to address.

“The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel. [Citation.] During this 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 77.

We cannot rely on the fact that defendant actually argued all of the grounds on which he claimed to have received ineffective assistance but ignore the fact that, due to the trial court's neglect, defendant had to make those arguments without the assistance of counsel while further action may have been warranted on defendant's *pro se* claims. When defense counsel informed the trial court that he would refuse to adopt defendant's *pro se* motions, which contained defendant's allegations of ineffective assistance, the trial court stated that counsel's decision left defendant “in the position, \*\*\* of rejecting his continued representation \*\*\* or deciding from

this point on, to represent yourself.”

Prior to excusing defendant’s counsel, the court never engaged in any exchange, either with defendant’s counsel or defendant himself, to assess what further action, if any, was warranted on defendant’s claims of ineffective assistance, including whether to appoint new counsel to argue those claims. Rather, the court merely stated that it had “examined [defendant’s motions] on a cursory manner (sic).” The court concluded that defendant’s motions were “intelligible, it is knowledgeable, and certainly understand (sic) your own prior record.” The court did not discuss the facts and circumstances surrounding the allegedly ineffective representation.

Instead, after discharging defendant’s counsel, the court merely stated as follows:

“And based on your experience in the criminal justice system, the motions that you have now filed on your own behalf, being aware of the sentencing potential and being cognizant, obviously, of the fact that you have compared your prior attorney’s motion to your motion and have rejected his position, decided to adopt your own, I am going to allow you to proceed in representing yourself.”

We reject the State’s argument that the preceding language “implies” the trial court considered defendant’s arguments that he received ineffective assistance of counsel and determined that new counsel need not be appointed. The court’s finding that defendant’s *pro se* motions are intelligible and knowledgeable implies, if anything, that defendant’s allegations were sufficient to show possible neglect of his case.

“[I]f the allegations show possible neglect of the case, *new counsel should be appointed*. [Citations.] The new counsel would then represent the defendant at the hearing on the defendant's *pro se* claim of ineffective assistance. [Citations.] The appointed counsel can independently evaluate the defendant's claim and would avoid the conflict of interest that trial counsel would experience if trial counsel had to justify his or her actions contrary to defendant's position. [Citations.]” (Emphasis added.) *Moore*, 207 Ill. 2d at 77.

Regardless, we are not convinced that the trial court conducted an adequate inquiry into defendant's *pro se* allegations of ineffective assistance of counsel. *Cf. People v. McCarter*, 385 Ill. App. 3d 919, 941 (2008) (“there are instances where a brief discussion between the trial court and the defendant is sufficient for the trial court to properly deny an ineffective assistance claim of this sort”). The trial court never discussed the allegations with defendant and did not make a finding that the allegations in defendant's *pro se* motions pertained only to matters of trial strategy. Moreover, the trial court's error was compounded when it forced defendant to choose between proceeding without counsel and having his ineffective assistance claims heard. Therefore, we remand this cause for the purpose of conducting an inquiry into defendant's *pro se* claims of ineffectiveness and any further proceedings necessitated thereby. *People v. Vargas*, 396 Ill. App. 3d 465, 479 (2009), citing *Moore*, 207 Ill. 2d at 79.

In light of our judgment remanding for further posttrial proceedings on defendant's *pro se* claim of ineffective assistance of counsel, we hold that defendant's challenges to his conviction

and sentence are premature. See *People v. Young*, 341 Ill. App. 3d 379, 382 (2003) (noting that court had "dismissed the appeal as premature and remanded the case for proceedings on the posttrial motion"). Defendant can preserve his right to appeal by "requesting a new notice of appeal after the rulings on the posttrial motion." *People v. Alston*, 302 Ill. App. 3d 207, 210 (1999).

#### CONCLUSION

The judgment of the circuit court of Will County is reversed and the cause remanded for further proceedings consistent with this court's judgment and order.

Reversed and remanded.