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No. 3--10--0011

Order filed January 6, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 14th Judicial Circuit,
)	Rock Island County, Illinois,
Plaintiff-Appellee,)	
)	No. 07--CF--234
v.)	
)	
TERRANCE J. WILLIAMSON,)	Honorable
)	Charles H. Stengel,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Carter and Justice Holdridge concurred in
the judgment.

ORDER

Held: Where posttrial counsel's failure to review the trial transcript did not result in prejudice to defendant at his *Krankel* hearing, counsel was not ineffective.

Defendant, Terrance J. Williamson, was convicted of attempted first degree murder (720 ILCS 5/8--4 (West 2006); 720 ILCS 5/9--1(a) (West 2006)) and aggravated domestic battery (720 ILCS 5/12--3.3(a) (West 2006)). After conducting a hearing under *People v.*

Krankel, 102 Ill. 2d 181 (1984), the trial court denied defendant's posttrial motion alleging ineffective assistance of trial counsel. On appeal, defendant claims that newly appointed posttrial counsel failed to provide effective representation at the hearing. We affirm.

In March of 2007, officers responded to a domestic disturbance involving defendant and his estranged girlfriend, Abbie Desseyn-Baker. They arrived at defendant's home and found Desseyn-Baker, badly beaten, in a bathroom in the basement. A pair of bloody scissors was recovered from the top of the toilet. Defendant was arrested and charged with attempted murder and domestic battery.

At trial, Desseyn-Baker testified that defendant stabbed her in the head with a knife four or five times and beat her with his fists for four or five minutes while she lay on the living room floor. Desseyn-Baker ran to the basement and tried to lock herself in the bathroom. Defendant grabbed a lamp and lunged at her. When she raised her arms to stop him, the blow from the lamp broke her lower arm. Defendant grabbed a pair of scissors and starting stabbing Desseyn-Baker in the leg. Defendant then left her in the bathroom and went upstairs. When she heard the officers at the front door, she screamed at them to take her to the hospital.

Desseyn-Baker was treated at the hospital for numerous injuries. She explained that a metal plate was inserted in her arm to hold the broken bones in place. Her treatment included six

stitches in her forehead, forty-eight staples on top of her head, four stitches in her hand, and four stitches in her thigh. Desseyn-Baker also needed root canal surgery to correct nerve damage to her front teeth.

A crime scene technician testified that defendant sustained only minor scrapes and bruises. When the technician asked defendant about any possible injuries, defendant mentioned a mark on his arm.

Before defendant testified, the trial court advised him that he was not required to do so and that his decision not to testify could not be used against him. Defendant then took the stand and stated that he and Desseyn-Baker were involved in "mutual combat." He admitted that he had a knife in his hand but did not intend to hurt anyone with it. Defendant testified that Desseyn-Baker hit him on the head and back with various household items and then swung a lamp at him, striking him in the arm. He then picked up the lamp and chased Desseyn-Baker into the bathroom, hitting her several times. He then grabbed a pair of scissors and stabbed her in the leg. He denied intending to kill her. The jury found defendant guilty of both counts.

At the sentencing hearing, defendant claimed that he received ineffective assistance from his trial counsel because counsel encouraged him to take the stand, failed to introduce Desseyn-Baker's medical records which demonstrated the lack of seriousness

of her injuries, and failed to call medical experts to testify about her injuries. The trial court sentenced defendant to 30 years for attempted first degree murder and an extended term of 14 years for aggravated domestic battery.

Defendant appealed and argued, among other things, that his ineffective assistance claims were sufficient to warrant an inquiry under *People v. Krankel*, 102 Ill. 2d 181 (1984). We agreed and remanded the case for resentencing and a *Krankel* hearing. *People v. Williamson (Williamson I)*, No. 3--07--0854 (2009) (unpublished order under Supreme Court Rule 23).

On remand, the trial court appointed new counsel to represent defendant in the posttrial proceedings. Defendant took the stand and asserted that his trial attorneys rarely met with him to discuss the case. He alleged that counsel failed to seek a change of venue and that, when counsel did file the motion, it was denied as untimely. Defendant also claimed that trial counsel failed to subpoena medical experts who would have testified to the lack of seriousness of Desseyn-Baker's injuries. He further claimed that counsel rendered improper advice and failed to make arguments relating to his defense that he did not intend to kill Desseyn-Baker.

Defendant was represented by two attorneys at trial, both of whom testified at the *Krankel* hearing. Jack Schwartz stated that he assisted Robert Rosenstiel and that Rosenstiel worked diligently

on defendant's case. Rosenstiel testified that he met with defendant several times prior to trial and spent a lot of time reviewing the evidence with him. He denied that he forced defendant to testify at trial or that he encouraged defendant to lie when he took the stand. He testified that the defense's strategy was to shift the focus away from Desseyn-Baker's injuries and argue lack of intent to kill. On cross-examination, Rosenstiel was asked whether he discussed the need to subpoena Desseyn-Baker's medical records with defendant. He responded, "I don't recall the exact nature of the discussions regarding whether or not we would hire doctors or nurses to testify at trial. And I'm concerned that speaking directly about what was said during attorney - confidential conversations between myself and Mr. Williamson would violate attorney/client privilege." He then explained that calling additional medical witnesses to testify about Desseyn-Baker's injuries would have been detrimental to the defense.

During closing arguments, defendant's appointed counsel stated that he did not review the trial transcript because it was "not available." The trial court found that defendant was not credible and was not forced to testify at trial. The court concluded that defendant's allegations did not demonstrate ineffective assistance of trial counsel and denied his posttrial motion.

ANALYSIS

Defendant argues that posttrial counsel failed to provide

effective representation at the *Krankel* hearing because he did not read the trial transcript and was unfamiliar with the proceedings at trial. Defendant requests a remand for the appointment of new counsel and a new *Krankel* hearing.

New posttrial counsel is not automatically required when the defendant raises *pro se* claims of ineffective assistance of trial counsel. *People v. Allen*, 391 Ill. App. 3d 412 (2009). When a defendant presents such a claim, the trial judge should first examine the factual basis surrounding the claim. *People v. Moore*, 207 Ill. 2d 68 (2003). If the issues raised lack merit or only pertain to matters of trial strategy, the trial judge need not appoint new counsel for the defendant and may deny the *pro se* motion. *Moore*, 207 Ill. 2d at 77-78. On the other hand, if the claims show possible ineffectiveness, new counsel should be appointed. *Moore*, 207 Ill. 2d at 78.

To show ineffective assistance of counsel, a defendant must demonstrate both that (1) counsel's performance was deficient and (2) the deficiency so prejudiced the defendant that, but for counsel's deficient performance, there is a reasonable probability that the result of the proceeding would have been different. *People v. Gutman*, 401 Ill. App. 3d 199 (2010). An attorney's strategic decisions at trial are protected by a strong presumption that counsel's decisions were competent. *People v. Lemke*, 384 Ill. App. 3d 437 (2008). Decisions regarding the appropriate witnesses

to call are strategic ones that cannot support a finding of ineffective assistance. *People v. Richardson*, 189 Ill. 2d 401 (2000). A reviewing court need not determine whether counsel was deficient before examining whether a defendant was sufficiently prejudiced by the alleged deficiencies. *People v. Whiting*, 365 Ill. App. 3d 402 (2006).

Initially, we note that our inquiry of the effective assistance of posttrial counsel is confined to those claims of ineffective assistance of trial counsel raised by defendant at the postsentencing hearing and outlined by this court in *Williamson I*. See *People v. Moore*, 389 Ill. App. 3d 1031 (2009). At his postsentencing hearing, defendant did not claim that trial counsel was ineffective for failing to file a timely motion for change of venue. Thus, posttrial counsel was not appointed to review this claim, and we will not review the argument on appeal.

However, at his postsentencing hearing, defendant did claim that trial counsel was ineffective for encouraging him to take the stand, failing to introduce medical records, and neglecting to call medical experts at trial. On appeal, defendant argues that posttrial counsel's performance affected the outcome of his *Krankel* hearing on these claims. We find that posttrial counsel's failure to review the transcript, while not condoned, did not result in prejudice to defendant.

At the *Krankel* hearing, the trial judge questioned defendant

about whether his trial attorneys advised him that he had a choice as to whether to testify at trial. Defendant responded, "I'm not sure." The judge also asked defendant if he had advised defendant at trial whether defendant had the choice of testifying or not. Defendant answered, "You probably did." At the conclusion of the hearing, the trial judge stated that he did not believe defendant's statement that he was forced to testify and that the decision to take the stand was a matter of trial strategy. The trial judge is in the best position to assess the credibility of the defendant (*People v. Smith*, 214 Ill. App. 3d 327 (1991)) and the presentation of witnesses at trial is a matter of trial strategy (*Richardson*, 189 Ill. 2d at 414)). In addition, the record establishes that the trial judge advised defendant about his right to testify and informed defendant that it was his choice. Thus, posttrial counsel's review of the transcript would not have changed the trial judge's determination that trial counsel was not ineffective.

The decisions to introduce medical records and to call medical experts to testify were also strategic trial decisions. See *Richardson*, 189 Ill. 2d at 414; see also *Fautenberry v. Mitchell*, 515 F. 3d 614 (6th Cir. 2008). At the *Krankel* hearing, defendant's trial counsel testified that he evaluated the victim's medical records and discussed whether they should hire medical experts with defendant. He further testified that the focus of the defense was on defendant's lack of intent, rather than the extent of Dessey-

Baker's injuries. The defense wanted to draw the jury's attention away from the physical evidence. In reaching his decision that counsel was not ineffective, the trial judge found that these decisions were strategic ones. The judge also noted that the evidence established that defendant used a large knife to stab Desseyn-Baker in the skull and that Desseyn-Baker's injuries required 48 staples, 14 stitches and a metal plate.

The trial record establishes that the defense theory was that defendant and Desseyn-Baker were engaged in "mutual combat." Given Desseyn-Baker's numerous injuries, defense counsel chose not to emphasize them by introducing medical records and experts. Instead, counsel used defendant's testimony to suggest that he fought with Desseyn-Baker in a common struggle. Counsel cross-examined officers who were at the scene about defendant's admission that he hit the victim but did not intend to kill her. Counsel also questioned another officer as to his recollection of the lack of seriousness of the victim's injuries. During closing argument, counsel argued that defendant did not intend to kill Desseyn-Baker because her injuries were not life threatening. Given the evidence, trial counsel's decision not to introduce the victim's medical records or call medical experts was a sound trial strategy. Thus, defendant was not prejudiced by posttrial counsel's failure to review the trial proceedings prior to the *Krankel* hearing.

Defendant also argues that posttrial counsel was ineffective

when, on cross-examination, Rosenstiel stated that he believed his conversations with defendant were protected by the attorney-client privilege. However, prior to making this statement, Rosenstiel testified that he did not recall the exact nature of his discussions with defendant about subpoenaing medical experts. Thus, Rosenstiel answered the question before he invoked the attorney-client privilege. Any instruction from posttrial counsel that defendant had waived the privilege would not have produced more revealing or expository testimony on this issue. Moreover, as the trial judge stated, trial counsels' decision regarding the introduction of medical records and use of medical experts is "a matter of trial strategy." Thus, posttrial counsel's failure to advise the witness did not prejudice defendant.

CONCLUSION

The judgment of the circuit court of Rock Island County affirmed.

Affirmed.