

No. 1-10-1713

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 440238
)	
RONALD FULLER,)	Honorable
)	Carol A. Kipperman,
Defendant-Appellant.)	Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's alleged complaint regarding the ineffective assistance of his counsel, which appeared solely in the presentence investigation report, was insufficient to trigger an obligation on the part of the trial court to conduct an inquiry into the factual basis of the allegation.
- ¶ 2 Following a bench trial, defendant Ronald Fuller was convicted of attempted burglary and sentenced to five years in prison. On appeal, defendant contends that where his presentence investigation (PSI) report includes a detailed allegation of ineffective assistance of counsel, the trial court's failure to conduct an inquiry into the factual basis of that allegation requires remand.

¶ 3 For the reasons that follow, we affirm.

¶ 4 Defendant's conviction arose from the events occurring February 20, 2009. At trial, Berkeley police detective Patti testified that about 2:55 a.m. on the day in question, he was on routine patrol when he saw a car pull out of the parking lot of a closed gas station. Without losing sight of the car, Detective Patti made a u-turn and followed it. He paced the car driving above 50 miles per hour (mph) on a road with a speed limit of 30 mph. Detective Patti contacted the dispatcher, activated his emergency lights, and curbed the car about four blocks from the gas station. In court, Detective Patti identified the car's driver as defendant.

¶ 5 Detective Patti testified that he informed defendant of his speeding violation and then asked why he had been at a closed business. Defendant appeared nervous. When defendant got out of the car at Detective Patti's request, Detective Patti noticed a knife with a white plastic bag wrapped around the handle lying on the floor mat on the driver's side. Detective Patti had defendant walk toward the rear of the car, where another officer who had responded to the scene detained him. Detective Patti thereafter recovered a 15-inch flat head screwdriver from between the driver's seat and the center console, as well as a pair of white gloves with a bumpy surface from the passenger's seat.

¶ 6 Berkeley police sergeant Tom Duffy testified that just before 3 a.m. on the morning in question, he went to the gas station in response to a dispatch call. He inspected the main entrance doors and noticed damage to the door frame around the lock. Specifically, he stated that the door frame was bent near the lock. Around 4:30 a.m., the gas station's owner, Joykutty "Joey" Skariah, came to the gas station and met with Sergeant Duffy. Skariah and Sergeant Duffy watched a surveillance video from earlier that morning. Sergeant Duffy testified that he could see a man on the video, but he could not see the man's face. It appeared on the video that the man was attempting to pry open the gas station door with some sort of tool.

¶ 7 Skariah testified that he worked until 5:30 p.m. on February 19, 2009, and that the station remained open until midnight. There was no damage to the station's doors when he left work. At approximately 4:30 a.m. on February 20, 2009, he received a call from the police to meet them at the gas station. When he arrived, he noticed some damage to the gas station's doors. He stated that he reviewed the gas station's security surveillance video with the police and then gave the police a copy of the video. In court, the State published the surveillance video.

¶ 8 The video depicts the gas station parking lot and front doors. At approximately 2:52 a.m. on the video, a car pulls into the gas station. The driver, a man, gets out, walks up to the doors, and appears to try to manipulate or open them. He then walks back to the car, gets something out of the passenger side, and returns to the doors. After trying to manipulate or open the doors again, he returns to the car and drives away at 2:54 a.m.

¶ 9 Following closing arguments, the trial court found defendant guilty of attempted burglary.

¶ 10 The trial court ordered that a PSI be conducted. The PSI report indicates that defendant made the following statement to the probation department interviewer:

"My PD told me that there was no way I would be convicted cause when he saw the video, [he] said [he] couldn't tell who it was. The Officer said he was certain it was me cause he didn't take his eyes off me from the time the car on the video was pulled over. My attorney should have told me that. I was blacked out, I was using, after a month and a half relapse. I'm just hoping the Judge will let me continue to stay in treatment, Sheridan or Southwest."

¶ 11 At the sentencing hearing, the trial court asked defendant whether he wanted to say anything. In response, defendant apologized to the court, his family, and the victim for the

shame and pain he had caused them. Defendant also thanked the court for putting him in "the program" and asked that the court allow him to continue to get treatment. The trial court replied, "All right. I saw that in the presentence investigation that you requested it." The trial court then reviewed defendant's criminal history, noted he had graduated from college, and sentenced him to five years' imprisonment and ordered that he receive drug treatment. Defendant timely filed this appeal.

¶ 12 On appeal, defendant contends that his PSI report brought an allegation of ineffective assistance of counsel to the trial court's attention, and that therefore, the trial court was obligated under *People v. Krankel*, 102 Ill. 2d 181 (1984), to conduct an inquiry into the factual basis of the allegation. Defendant asserts that although his statement in the PSI report does not include the words "ineffective assistance of counsel," the only reasonable interpretation of his complaint is that counsel failed to give him all of the information necessary to make a knowing and intelligent decision whether to plead guilty or insist on going to trial. Defendant argues that the trial court's failure to conduct a *Krankel* inquiry requires remand.

¶ 13 Whether the trial court should have conducted a preliminary investigation into defendant's claim is a question of law that we review *de novo*. *People v. Moore*, 207 Ill. 2d 68, 75 (2003).

¶ 14 Our resolution of the instant case is dictated by this court's decision in *People v. Harris*, 352 Ill. App. 3d 63 (2004). In *Harris*, the defendant made a complaint about his trial counsel during his PSI interview. *Id.* at 71. Specifically, the defendant made the following allegation:

"When I went to court, my P.D. didn't tell me we were going to trial, she said it was for a Motion. Well, it was trial and I didn't get to call any of [*sic*] witnesses (my grandmother, my uncle and a cousin) who were there that day and saw everything. I'm going to appeal this." *Id.*

¶ 15 The *Harris* court found that the defendant's statement, contained only in the PSI report, did not by itself bring a claim of ineffectiveness to the court's attention so as to require further inquiry under *Krankel*. *Id.* The *Harris* court noted that the defendant never raised the issue to the trial court by way of a written motion and did not repeat the allegation or request new counsel when he was given the opportunity to orally address the court at his sentencing hearing. *Id.* at 72. In these circumstances, this court in *Harris* concluded that the defendant's statement in the PSI report was insufficient to warrant a *Krankel*-type inquiry. *Harris*, 352 Ill. App. 3d at 72.

¶ 16 In the instant case, as in *Harris*, defendant's only allegation concerning trial counsel's performance appears in the PSI report. Defendant did not raise a claim of ineffectiveness in a written motion, and did not make any complaint about his attorney at the sentencing hearing, even though he did take advantage of his opportunity to address the court orally at that time. Following *Harris*, we conclude that defendant's statement in the PSI report only is insufficient to raise a claim of ineffective assistance of counsel to the trial court so as to trigger an obligation to conduct an inquiry into the factual basis of the allegation.

¶ 17 In his reply brief, defendant distinguishes *Harris* from his own case by arguing that in *Harris*, there was no indication whether the trial court actually read the PSI report or was otherwise aware of the defendant's claim, whereas in his own case, the trial court specifically indicated that it had read the PSI report. Defendant's argument, however, is not persuasive. Illinois law provides that if the parties do not agree to the imposition of a specific sentence, a written PSI report must be presented to and considered by the trial court before a defendant is sentenced for a felony. 730 ILCS 5/5-3-1 (West 2010). This requirement is set forth in section 5-3-1 entitled "Presentence Investigation" of the Uniform Code of Corrections. *Id.* Because a PSI report was completed in *Harris*, we presume that the trial court read and considered that report as it was required to do pursuant to section 5-3-1. *People v. Youngbey*, 82 Ill. 2d 556, 565

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(1980); *People v. Douglas*, 296 Ill. App. 3d 192, 199 (1998). Thus, contrary to defendant's claim, *Harris* is not distinguishable from the instant case. Accordingly, here, the holding in *Harris* is controlling, and we decline defendant's invitation to depart from its precedential authority.

¶ 18 For the reasons explained above, we affirm the judgment of the trial court.

¶ 19 Affirmed.