

2012 IL App (1st) 101828-U

FIRST DIVISION
January 23, 2011

No. 1-10-1828

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 13523
)	
CORNELIUS MOSLEY,)	The Honorable
)	Mary Colleen Roberts,
Defendant-Appellant.)	Judge Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in failing to inquire into defendant's claims of ineffective assistance of counsel where his claims were facially deficient; the trial court's judgment is affirmed.
- ¶ 2 Following a bench trial, defendant Cornelius Mosley was convicted of burglary and possession of burglary tools and sentenced to two concurrent three-year terms of imprisonment.

On appeal, he solely contends that the trial court erred in failing to inquire into his allegations of ineffective assistance of trial counsel. We affirm.

¶ 3 At trial, security guard Michael Fisher testified that he was employed by Digby Security and Detective Agency. At 6:25 a.m. on July 13, 2009, Fisher was working as a security guard at a closed hospital, *i.e.*, Michael Reese Hospital, located at 3001 South Cottage Grove in Chicago. As Fisher drove by the hospital, he noticed one of the boarded up windows was down, and saw people pushing piping and black electrical cable out of the windows and onto the ground. He saw three black males, including defendant, exit from the windows. The three men picked up the items that they had dropped on the ground and started walking away. Fisher followed them in his vehicle, and two of the men saw him in his marked car. They dropped the items they were carrying, walked quickly toward their vehicle, and drove away. Defendant, however, continued walking towards Fisher's vehicle. Fisher exited his car and confronted defendant, who was still holding the cable and piping. Pursuant to Fisher's orders, defendant dropped the items he was carrying, along with his backpack, which contained a hacksaw, wrench, and flashlight. Fisher called the police and saw them arrest defendant.

¶ 4 The incident report that Fisher completed made no mention of a window, failed to indicate that hands were coming out of a window, and did not state that defendant crawled out of a window. Moreover, the parties stipulated that Fisher did not indicate that he saw hands coming out of a window when he testified at the preliminary hearing.

¶ 5 Detective Joyce Jones testified that at about 10:55 a.m. on July 13, 2009, she read defendant his *Miranda* rights and then had a conversation with him regarding the burglary that occurred earlier that day. Defendant stated that he took a board off of the door to enter the

building in question, and then took wires and piping from the building.

¶ 6 Defendant testified that at 6:45 a.m. on July 13, 2009, he was alone on the grass of the hospital picking up scrap that was on the ground. After picking up a couple of pieces, Fisher told him to drop them and leave. Defendant complied, but then returned to the scene to retrieve his backpack, which had a wrench, hacksaw, and items that belonged to his children. When he returned, Fisher had his backpack and refused to return it to him. According to defendant, he never went into the hospital, cut any piping or wires, or told Detective Jones that he took a board off of the door and went inside of the hospital.

¶ 7 On cross-examination, the following colloquy occurred between the assistant State's Attorney and defendant:

"Q. So, Mr. Mosley, you heard Mr. Fisher tell the police that he saw you come out the window?

A. I heard him, he lied. That's why I was hoping he could have got a picture to prove that he was lying. There was never no [sic] window there. That building is a solid big wall.

Q. So Mr. Fisher lied as did the detective?

A. Absolutely. I got a piece of paper there from the Department of Building and Zoning to prove that he was lying. I was trying to prove -- get that from the Department of Building and Zoning, the blueprint of the building because it got [sic] the address. I got it from the transcript to prove that he was lying. There's never no [sic] window there. It's nothing but a solid brick

wall.

Q. Where would that be? Where are there no windows in that building, where you said you came out of?

A. Yeah, there's no window there at all, none, it's a solid brick wall. And I got the papers, if you want to see it, I got the address of the papers, the place, right over there on -- in my legal stuff over there (indicating)."

¶ 8 Following closing arguments, the trial court found defendant guilty of burglary and possession of burglary tools. At sentencing, defendant stated in allocution:

"The only reason I took it to trial, period, for the very simple fact I wasn't guilty. And I kept trying, and Ms. Dillon will tell you, I kept asking the first time the[y] assign me her as my attorney to go to the building and take a picture because the man, Mr. Fisher kept saying was [*sic*] a window there.

There was never a window there, ma'am. And the police officer when he arrest -- I asked the police officer go look and see. I never even made it to the building. All I did was made it to the property, ma'am. That was it. And I had no fingerprints. I mean I had no gloves --

THE COURT: Can I stop you for a minute? We're passed

that point.

DEFENDANT: I know, but I'm just saying --

THE COURT: You already told me this story."

¶ 9 On appeal, defendant contends that the trial court erred in failing to conduct an inquiry into his allegations of ineffective assistance of counsel and requests that his cause be remanded for an inquiry into his allegations, pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984).

Defendant specifically alleges that he testified on cross-examination, and stated in allocution, that counsel was ineffective for failing to present evidence that no window existed at the scene.

¶ 10 In *Krankel*, 102 Ill. 2d at 187-89, the supreme court remanded the cause for a hearing on defendant's *pro se* posttrial motion alleging ineffective assistance because the trial court failed to appoint new counsel to represent defendant on the motion. Following *Krankel*, the supreme court held that the appointment of new counsel is not automatically required when defendant presents such a motion; but rather, the trial court must first conduct an inquiry into the factual basis for defendant's claim. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003).

¶ 11 The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into defendant's *pro se* allegations. *Moore*, 207 Ill. 2d at 78. To accomplish this, the trial court may converse with counsel regarding the facts surrounding the allegations or hold a brief discussion with defendant. *People v. Milton*, 354 Ill. App. 3d 283, 292 (2004). The trial court may also evaluate defendant's claims based on its knowledge of counsel's performance at trial or the insufficiency of defendant's allegations on their face. *Milton*, 354 Ill. App. 3d at 292. In addition, where the trial court's probe reveals that defendant's claims are "'conclusory, misleading, or legally immaterial' or do 'not bring to the trial court's attention a colorable claim of

ineffective assistance of counsel,' the trial court may be excused from further inquiry." *People v. Burks*, 343 Ill. App. 3d 765, 774 (2003), quoting *People v. Johnson*, 159 Ill. 2d 97, 126 (1994).

¶ 12 Here, unlike *Krankel*, defendant's allegations were oral, and not made in a motion.

Nevertheless, we believe that defendant adequately set out his claims of ineffective assistance of counsel. The record shows that when defendant delivered his statements in allocution, he specifically maintained that counsel failed to present evidence showing that no window existed where Fisher allegedly saw him exit the hospital. See *People v. Ford*, 368 Ill. App. 3d 271, 276-77 (2006) (holding that oral allegations of ineffective assistance of counsel are sufficient).

¶ 13 However, the record also shows that defendant's allegations were legally immaterial and failed to bring a colorable claim of ineffective assistance of counsel. Defendant's purported claim of ineffectiveness based on counsel's failure to present evidence that no window existed near where he exited the building is facially deficient because, regardless of his mode of access or egress, he admitted to Officer Jones that he removed a board from a door of the hospital, entered the hospital, and took piping and wires from the hospital. See *Ford*, 368 Ill. App. 3d at 276 (finding no cause to remand for a *Krankel* hearing where the defendant's allegations were facially insufficient). Moreover, defense counsel impeached Fisher, when he testified at trial about the existence of a window, through other means. Here, the sentencing judge also presided at defendant's trial and was well aware of defendant's position through his testimony denying the existence of a window, asserting Fisher lied about it, and claiming a blueprint of the building would support his point. As the supreme court held in *Moore*, "the trial court can base its evaluation of the defendant's *pro se* allegations of ineffective assistance on its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their

1-10-1828

face." *Moore*, 207 Ill. 2d at 79. We find that the instant circumstance is just such a case.

¶ 14 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 15 Affirmed.