

No. 1-10-2416

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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 19042
	)	
JOHN LANE,	)	The Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.

Presiding Justice Quinn and Justice Connors concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial court did not violate *People v. Krankel*, 102 Ill. 2d 181, 187-89 (1984), and *People v. Jocko*, 239 Ill. 2d 87 (2010), by failing to grant defendant's *pro se* pretrial request for a different assistant public defender, because *Jocko* held that the trial court is not required to address the defendant's *pro se* pretrial complaints either prior to the trial or at the conclusion of the trial. Furthermore, defendant's complaints that counsel failed to call a witness to testify and failed to introduce evidence concerned trial strategy and were not grounds for a post-trial *Krankel* inquiry.

¶ 2 Following a bench trial, defendant John Lane was found guilty of domestic battery, and was sentenced to a three-year prison term. On appeal, citing *People v. Krankel*, 102 Ill. 2d 181, 187-89 (1984), and *People v. Jocko*, 239 Ill. 2d 87 (2010), defendant contends that the cause should be remanded for consideration of his *pro se* pretrial claims of ineffective assistance of trial counsel.

¶ 3 The trial took place on June 24, 2010. The evidence established that defendant and his wife had gotten married in March 2001. On January 13, 2002, they got into an argument, and defendant slapped her on the face and bent back her arms and wrist. On January 24, 2005, defendant's wife was at her father-in-law's residence, when defendant chased her with a steak knife while threatening, "I'm going to f\_ \_ \_ this bitch up."

¶ 4 On September 26, 2009, the date of the present offense, defendant had been gone for two days, and then caught his wife rummaging through his pants pockets. She testified that she was looking for her car keys. Defendant grabbed his pants and said, "give me my shit," and condoms fell out. Defendant then repeatedly hit his wife hard with his fist, maybe five or six times, for approximately 10 or 12 minutes. She told him that she was going to call the police if he did not stop. He replied, "By the time the police get here, you'll be a dead bitch."

¶ 5 Defendant stopped when their 11-year-old son entered the room. Defendant's wife then went to her car to call the police. Defendant followed her and pounded hard on the driver's window. She was going to drive away to get away from him and to call the police, but he jumped on the hood. She then drove approximately four blocks while he was on the hood of the car. She stopped when she saw a squad car. The police officers did not see any injuries on her.

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¶ 6 During closing arguments, defense counsel argued that defendant's wife was not a credible witness, and that she was angry with defendant because he had been gone for two days and he had condoms in his pants pockets.

¶ 7 During pretrial proceedings, defendant complained about defense counsel. On January 20, 2010, defendant told the court:

"I'm not getting along with my public defender. I tried to talk to him and we're not seeing eye to eye on this, not at all. So I want to know if there's any way I can change public defenders. I mean he's calling me a liar, he don't seem like he believe me--."

¶ 8 The court told defendant that it did not have the power or authority to change defendant's public defender, that the Public Defender of Cook County assigned public defenders to cases, and that if defendant wished to explore changing his attorney, he should address his concern to the Public Defender of Cook County.

¶ 9 On March 16, 2010, defendant stated that he wanted to file a complaint because he was not getting anywhere with defense counsel. The court asked what defendant meant. Defendant responded that defense counsel had not filed any of the complaints that defendant had requested and that he had a witness, his 12-year-old son, but that defense counsel would not speak to the boy. Defense counsel then stated that he had spoken with the witness. Defendant also said that he asked defense counsel to ask whether his wife had taken any pictures and if she had any hospital records. Defendant said that defense counsel told him that none of it was any good and that it would not help his case.

¶ 10 The court responded that defense counsel did not have to file anything at that time because he did not yet have all of the State's evidence. The court told defendant that, based on what defendant had said, the court had no reason to believe that defense counsel was not doing his job. According to the court, an effective lawyer would wait until he obtained all of the evidence and nothing that defendant had said indicated to the court that defense counsel was ineffective.

¶ 11 On May 4, 2010, the court told defendant that defense counsel was filing his answer to discovery, that the answer said that the State could not prove defendant guilty beyond a reasonable doubt, and that all of the witnesses had been identified in the police reports and other documents that lawyers trade back and forth. The court asked defendant whether he agreed with that answer, and defendant answered, "Yes, sir."

¶ 12 On appeal, defendant argues that the trial court violated *Krankel* and *Jocko*. He argues that the trial court did not inquire into the substance of his complaints against defense counsel, that the bench trial did not resolve the complaints or render them moot, and that the court's failure to revisit the complaints later in the proceedings was attributable to a misapprehension of the law that new counsel could not be appointed. Defendant argues further that he was not required to assert the complaints again after the trial, given that the trial court had told him to address his complaints to the chief public defender rather than the court. He maintains that, unlike *Jocko* (where the complaints were sent to the clerk of the court), the trial court was aware of his complaints. He requests that the cause be remanded for further inquiry pursuant to *Krankel*.

¶ 13 The State responds that defendant was not entitled to post-trial consideration of his pretrial claims of ineffective assistance of counsel because the court considered, and rejected, the pretrial claims prior to the trial, defendant then abandoned the claims, and there was no post-trial claim. The State maintains that the trial court considered all of defendant's complaints about defense counsel, even though, under *Jocko*, the court was not required to do so. The State observes that the trial court did not misapprehend the law, but rather informed defendant that he did not have the right to choose his assistant public defender. The State maintains that defendant was not entitled to post-trial review of a pretrial claim of ineffective assistance of counsel that was fully considered and abandoned after the trial.

¶ 14 Defendant replies that he complained that defense counsel did not call his son as a witness and did not explain why. Defendant maintains that he should not be penalized for failing to renew his complaint after the trial because the trial court repeatedly had told him to address his concerns to the public defender's office. Defendant states that he did not request a particular public defender; rather, that he asked to change his public defender.

¶ 15 Where a defendant makes a colorable *pro se* allegation that he received ineffective assistance of counsel, the court should appoint new counsel before holding a hearing on the allegation. *Krankel*, 102 Ill. 2d at 189. The trial court needs to inquire into the defendant's allegation, either by talking to defense counsel or defendant (*People v. Moore*, 207 Ill. 2d 68, 78 (2003)) or by relying on its knowledge of counsel's performance and the insufficiency of the allegations (*People v. Milton*, 354 Ill. App. 3d 283, 292 (2004)). If the trial court determines that the claim lacks merit or involves only trial strategy, the court is not required to appoint new

counsel and can deny the motion. *Moore*, 207 Ill. 2d at 78; *People v. Vargas*, 409 Ill. App. 3d 790, 801 (2011). A *Krankel* inquiry is not required where the defendant's allegations concern only "unassailable" matters of trial strategy, such as which witnesses to call and which evidence to present. *People v. Ward*, 371 Ill. App. 3d 382, 433 (2007). The court needs to appoint new counsel only where there is possible neglect of the case. *Moore*, 207 Ill. 2d at 78. The issue on review is the adequacy of the *Krankel* inquiry made by the trial court (*Moore*, 207 Ill. 2d at 78), so we shall review the matter *de novo* (*Moore*, 207 Ill. 2d at 75; *Vargas*, 409 Ill. App. 3d at 801), but see *People v. McCarter*, 385 Ill. App. 3d 919, 941 (2008) (applying a more deferential standard of review for manifest error).

¶ 16 In *Jocko*, 239 Ill. 2d at 93-94, the Illinois Supreme Court ruled that the circuit court is not obligated to address a *pro se* defendant's pretrial claims of ineffective assistance of counsel. The circuit court cannot resolve the defendant's complaints prior to the trial because it is not possible to determine prior to the trial if defense counsel's errors affected the outcome of the trial. See *id.* at 93. Therefore, the court could not address defendant's complaints prior to the trial. *Id.* at 92-93. The defendant is not obligated to renew his complaints about counsel once he communicates them to the court, and nothing would prevent the circuit court from addressing a complaint at the conclusion of a trial that was previously asserted by the defendant. *Id.* However, the court does not necessarily have to address the defendant's pretrial *pro se* complaints at the conclusion of the trial. *Id.* If the record refutes the complaints, if the defendant fails to claim that the complaints are meritorious, or if the court was unaware of the complaints, the court need not address the complaints. *Id.* at 93-94; see also *People v. Walker*, 2011 IL App (1st), 72889B, ¶ 37.

¶ 17 In this case, the trial court was not required to conduct an inquiry into defendant's pretrial *pro se* complaints about counsel, but it did. There were extensive interchanges between defendant and the trial court, and between counsel and the trial court, which disclosed that defendant was complaining about his public defender and which witnesses and other evidence to present. The court questioned defendant directly about his allegations and the reasons he was dissatisfied with counsel. See *People v. Chapman*, 194 Ill. 2d 186, 230 (2000). The court discussed defendant's allegations with counsel and gave defendant the opportunity to explain his allegations. Furthermore, counsel said that he spoke with defendant's son. Defendant has not shown how defense counsel's decisions not to call defendant's 12-year-old son as a witness and not to use the victim's medical records and photographs were not trial strategy. See *People v. Tolefree*, 2011 IL App (1<sup>st</sup>), 100689, ¶ 34. Those decisions were strategic or tactical decisions which did not warrant the appointment of new counsel. See *Ward*, 371 Ill. App. 3d at 433. Defense counsel's trial strategy was to argue that defendant's wife was not a credible witness because she was not really searching defendant's pants for her car keys, she was angry at defendant for disappearing for two days and then returning with his pockets full of condoms, and she had no injuries that were visible to the police officers. Counsel could very well have determined that the child's testimony and the victim's photographs and medical records would corroborate rather than impeach the victim's credibility.

¶ 18 In response to defendant's request for a different assistant public defender, the court advised defendant to contact the chief public defender. The court also observed counsel's performance in this case, believed counsel to be qualified to represent this defendant, and

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believed that other counsel would not do anything differently. Thus, defendant received the benefit of the trial court's inquiry into his pretrial complaints about counsel, which was more than what is required under *Jocko*.

¶ 19 We have also considered, and rejected, all of defendant's arguments on appeal.

¶ 20 The judgment of the circuit court is affirmed.

¶ 21 Affirmed.