

2012 IL App (1st) 110521-U

FIFTH DIVISION
September 7, 2012

No. 1-11-0521

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. 10 CR 16560
)	
DARIUS KELLY,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Epstein and Taylor concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment entered on defendant's conviction of aggravated battery affirmed over his claim that the trial court failed to conduct a sufficient inquiry into his *pro se* post-trial allegation of ineffective assistance of counsel.
- ¶ 2 Following a bench trial, defendant Darius Kelly was found guilty of aggravated battery, then sentenced to 42 months' imprisonment. On appeal, defendant contends that the trial court failed to conduct a sufficient inquiry into his *pro se* post-trial allegation of ineffective assistance of counsel, pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984).

¶ 3 The evidence adduced at defendant's trial established, in relevant part, that about 6 a.m. on July 3, 2010, Todd Stallworth was walking home near 8406 South Peoria Street when he was attacked by defendant and his companion. Stallworth later received stitches to his eye and was diagnosed with three fractured bones in his face and two in his ankle. When defendant was subsequently taken into custody for a domestic battery, he told police that he had seen Stallworth on the street, demanded money that he was owed, and started beating him.

¶ 4 The trial court found defendant not guilty of robbery, but guilty of aggravated battery. At sentencing, the following colloquy occurred between defendant, the court, and the assistant State's Attorney (ASA):

"THE COURT: Darius, anything you want to say before I sentence you?

THE DEFENDANT: I feel this Public Defender is not in my best interest. He is highly intoxicated. He has been intoxicated several times since he has been representing me. He smells like alcohol right now at this present moment.

THE COURT: Well, let me explain my own observation. I work with him every day. He is a really good lawyer. If there is a way to help you, he will find it, mitigate down some losses. I have no issue with his representation. I know he is not intoxicated.

THE DEFENDANT: I smell it all over him.

THE COURT: Let me tell you something. The reason you are standing here is not because it is your lawyer's fault, it is because you are getting violent. Twice as a juvenile you got found delinquent for violent offenses, was put on probation first. You are a drug dealer, put on probation for that. Now, you are back here again hurting somebody else. You just want to be tough. I agree that there were some circumstances surrounding this case, not exactly robbery, but

something else, but it was violent. You hurt somebody badly, and all you can talk about is it is your lawyer's fault.

* * *

MS. PETERSON [ASA]: I have had conversations with [defense counsel] this morning, and none of the representations made by his client are apparent in any way to me.

THE COURT: Thank you for that.

Notice of Appeal filed. State Appellate Defender is appointed. I will also indicate that the colloquy we had about [defense counsel's] representation, I will consider that in the nature of a Krankel hearing. I have heard his complaint. I have made my own observations. [Defense counsel] did present mitigation today, which I find to be strong enough, along with the Prosecutor's representations to satisfy any Krankel issues."

The trial court ultimately sentenced defendant to 42 months' imprisonment.

¶ 5 In this appeal from that judgment, defendant contends that the trial court failed to conduct a sufficient inquiry into his allegation of ineffective assistance of counsel pursuant to *Krankel*. He claims that the trial court limited its inquiry to counsel's performance at the sentencing hearing and should have inquired into the factual basis for his ineffective assistance of counsel allegation. The State responds that the court conducted an adequate inquiry into defendant's claim.

¶ 6 The supreme court's decision in *Krankel* has led to the rule that where defendant raises a *pro se* post-trial claim of ineffective assistance of counsel, the trial court should examine the factual basis of his claim. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). If the court determines that the claim lacks merit or pertains solely to trial strategy, the court need not appoint new

counsel and may deny defendant's motion. *Moore*, 207 Ill. 2d at 78. If the court finds possible neglect of the case, however, new counsel should be appointed. *Moore*, 207 Ill. 2d at 78.

¶ 7 The operative concern for the reviewing court is whether the trial court adequately inquired into defendant's *pro se* allegation of ineffective assistance of counsel. *Moore*, 207 Ill. 2d at 78. In conducting such an inquiry, the trial court may question trial counsel, question defendant, and/or rely on its own knowledge of trial counsel's performance at trial. *People v. Strickland*, 363 Ill. App. 3d 598, 606 (2006). The issue of whether the trial court adequately inquired into defendant's *pro se* ineffective assistance of counsel allegation is a question of law which we review *de novo*. *Strickland*, 363 Ill. App. 3d at 606.

¶ 8 In this case, defendant asserted at the sentencing hearing that trial counsel had not acted in his "best interest" because he was "intoxicated several times" during his representation, and smelled like alcohol at that very moment. The trial court responded that it works with counsel on a daily basis, that counsel is a "really good lawyer," and if there was a way to help him, counsel will find it and "mitigate down some losses." The court concluded that it found no issue with counsel's representation, and that it knew "he is not intoxicated." Defendant persisted, however, and stated, "I smell it all over him," leading the trial court to advise defendant that he could not blame his attorney for the consequences of his own violent actions and citing his criminal history. The court then noted that it had made its own observations of counsel, and found that "any Krankel issues" were resolved by the ASA's observation that counsel was not intoxicated that day, and the fact that defense counsel had presented "strong enough" mitigation evidence during the sentencing hearing.

¶ 9 It is thus clear from the record that the trial court allowed defendant to present his *pro se* ineffective assistance of counsel claim, *i.e.*, that counsel was intoxicated during his representation, then relied on its own observations of counsel at trial and sentencing in finding

that claim to be without merit. *Strickland*, 363 Ill. App. 3d at 607. Under similar circumstances, the trial court's inquiry into defendant's allegation of ineffective assistance of counsel was found to be adequate (*Strickland*, 363 Ill. App. 3d at 607), and we reach that same conclusion here.

¶ 10 In doing so, we note that defendant claims that the trial court improperly confined its inquiry to counsel's performance at the sentencing hearing and failed to inquire into other instances during the representation when counsel was allegedly intoxicated. However, the record makes clear that the trial court's observations of counsel, on which it based its conclusion, pertained to both trial and sentencing where the court noted that it works with counsel daily and chastised defendant for blaming his conviction on counsel rather than on his own violent behavior. We therefore find this claim to be without merit.

¶ 11 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 12 Affirmed.