

**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).

SIXTH DIVISION  
December 14, 2012

---

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 14631
	)	
ANDREA THOMPSON,	)	The Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge Presiding.

---

PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.  
Justices Hall and Robert E. Gordon concurred in the judgment.

O R D E R

¶ 1 HELD: A Krankel hearing was not required where defendant failed to raise a colorable claim for ineffective assistance of counsel. Defendant's unlawful use of a weapon by a felon conviction did not violate her second amendment rights.

¶ 2 Following a bench trial, defendant, Andrea Thompson, was convicted of unlawful use or possession of a firearm by a felon and sentenced to 24 months of mental health probation. On appeal, defendant contends the trial court erred in failing to conduct a hearing pursuant to

1-11-1077

Krankel to determine the effectiveness of her counsel. Defendant additionally contends section 24.1-1(a) of the Criminal Code (720 ILCS 5/24.1-1(a) (West 2010)) unconstitutionally violates her second amendment rights. Based on the following, we affirm.

¶ 3

#### FACTS

¶ 4 At trial, Officer Robert Stegmiller testified that, on August 3, 2010, at approximately 9 p.m., he was in an unmarked police vehicle near 43rd Avenue and Langley Avenue in Chicago, Illinois. Sergeant Lopez and Officer Villarreal were in the car with Stegmiller, while another car trailed directly behind carrying Officers Mariano and Hardy. According to Officer Stegmiller, he observed at least five individuals standing in front of 4334 S. Langley Avenue, which was a known meeting place for members of the Black P-Stone gang. As his vehicle approached the address, Officer Stegmiller observed one black male wearing dark clothing climb the stairs of the porch while holding a large stainless steel revolver. Officer Stegmiller then saw the male hand the gun to a woman later identified as defendant, who was standing inside the residence next to an open window. According to Officer Stegmiller, he had an unobstructed view of defendant as she accepted the handgun, adding that the area was well-lit by artificial lighting and his car lights. Stegmiller testified that he then observed defendant walk toward the rear of the apartment while the male fled the area.

¶ 5 At that point, Officer Stegmiller exited his vehicle and entered the open front door of 4334 S. Langley Avenue. Officer Villarreal did the same. Upon entering the residence, Officer Stegmiller observed defendant exit the rear bedroom. According to Officer Stegmiller, Officer Villarreal then detained defendant while Stegmiller entered the rear bedroom. Officer Stegmiller

1-11-1077

observed male clothing in the room and, on the floor of the closet, found the revolver defendant had obtained from the male on the front porch. Officer Stegmiller recovered the weapon, which was loaded with six live rounds of ammunition. Defendant was placed under arrest and transported to the police station.

¶ 6 Defendant testified on her own behalf. According to defendant, on August 3, 2010, she was ill and resting in her bedroom when she heard a knock on the bedroom door. Defendant shared the residence with her mother and nephew. After getting dressed, defendant answered the bedroom door. Once in the hallway, defendant was directed to the front porch where officers questioned whether she knew any of the individuals standing outside the residence. Defendant responded in the positive. At that point, a detective approached the officer questioning defendant and alerted him that a gun was found inside. Defendant testified that the gun had been found in her nephew's bedroom. Defendant observed her nephew standing in the kitchen in handcuffs while crying. However, according to defendant, the police did not arrest defendant's nephew because they did not want to "ruin his life." Defendant was arrested and taken to the police station. The following morning, defendant was transported to the hospital where she remained for 6 days.

¶ 7 The trial court found defendant guilty of unlawful use or possession of a weapon by a felon, noting that the case centered on credibility and that the court found Officer Stegmiller to be very credible. After the verdict was announced, defendant said, "This is crazy. Don't believe nothing." The following colloquy ensued:

1-11-1077

"THE COURT: No, ma'am, you may not speak out in court. You may not speak out in court.

DEFENDANT: He lied on me. You won't even listen to my witnesses. I don't have nothing to hide.

THE COURT: Did you hear what I just said, Ms. Williams?

DEFENDANT: This is crazy. My name is Thompson.

THE COURT: Ms. Thompson-Lindsay.

DEFENDANT: Yeah.

THE COURT: I'm sorry for mispronouncing your name, but listen to me, you cannot speak in court—

DEFENDANT: When can I have a say?

THE COURT: —except when you're on the witness stand. You cannot do what you are doing now. You can be faced with a six month sentence for contempt of court.

Now, I say to you right now, do not say another word."

¶ 8 The court then recessed. Defendant's subsequent motion for a new trial was denied, and the case proceeded to sentencing. Following arguments in aggravation and mitigation, the trial court provided defendant with an opportunity to make a statement, at which time defendant said:

"I apologize for disrupting your courtroom last time. I just want to say I just want a chance. I've never had a chance when it comes to my mental health. That's why I always blow it, and I know it. I know what knowing my condition is,

1-11-1077

but that's why I always blow it, because I never had a chance with that. And I just don't think penitentiary again will do it. I really don't. I'm sincere in what I ask you. I just ask you to please take me into consideration for the mental health."

The trial court sentenced defendant to 24 months of mental health probation. This timely appeal followed.

¶ 9 DECISION

¶ 10 I. Krankel

¶ 11 Defendant initially contends the trial court erred in failing to conduct a Krankel hearing after she raised an allegation of possible ineffective assistance of counsel.

¶ 12 In a line of cases beginning with *People v. Krankel*, 102 Ill. 2d 181 (1984), the supreme court has established guidelines to be followed in determining whether new counsel should be appointed where a defendant raises a pro se motion alleging ineffective assistance of counsel.

Case law provides that new counsel is not automatically required in every case where a defendant raises such a motion; rather, the trial court should first examine the factual basis for the defendant's pro se claim. *People v. Taylor*, 237 Ill. 2d 68, 75 (2010). "However, no inquiry by the trial court is required when a defendant fails to identify relevant facts and raises only general, conclusory allegations of ineffective assistance of counsel." *People v. Walker*, 2011 IL App (1st) 072889, ¶33. We apply de novo review where, like in this case, the trial court makes no determination of the merits of the defendant's alleged claim. *Id.*

¶ 13 Defendant argues that she was silenced by the trial judge when she began to make "what was necessarily a post-trial protest against trial counsel." The record demonstrates that defendant

1-11-1077

said "[t]his is crazy. Don't believe nothing" after the trial court announced its finding of guilt. The trial court responded by instructing defendant to cease speaking, to which defendant said, "He lied on me. You won't even listen to my witnesses. I don't have nothing to hide. \*\*\*. This is crazy." The trial court then advised defendant that she may speak only when on the witness stand and the court recessed. Later, at defendant's sentencing hearing, defendant was given an opportunity to make a statement in allocution during which she apologized for disrupting the courtroom on the last court date and implored the trial court to address her mental health issues with its sentence. No mention was made of her attorney, witnesses, or anything "crazy" that happened during trial.

¶ 14 While we recognize that "a pro se defendant is not required to do any more than bring his or her claim to the trial court's attention" (*People v. Moore*, 207 Ill. 2d 68, 79 (2003)), our courts have advised that a defendant must satisfy some minimum requirements in order to trigger a preliminary inquiry by the trial court. *Walker*, 072889, ¶34. "A defendant's allegations that are conclusory, misleading or legally immaterial, or do not identify a colorable claim of ineffective assistance of counsel would not require further inquiry by a trial court." *Id.*

¶ 15 In this case, defendant failed to identify a colorable claim of ineffective assistance. In fact, defendant never made any claim against her attorney. Defendant simply made the vague and conclusory statements that "he lied on me," "you won't even listen to my witnesses," and "this is crazy." Because the statements were so vague, it is unclear against whom or to whom the statements were made. We have no way to tell who "he" is—it could be Officer Stegmiller, and we have no way to tell who "you" is—it could be defense counsel, the trial court, or anyone in the

1-11-1077

courtroom for that matter. Moreover, when given an opportunity to make any statement at her sentencing hearing, defendant made absolutely no complaint about her trial or her attorney. We, therefore, conclude defendant failed to raise an allegation of ineffective assistance of counsel sufficient to trigger a preliminary Krankel inquiry. See Taylor, 237 Ill. 2d at 76 ("nowhere in defendant's statement at sentencing did he specifically complain about his attorney's performance, or expressly state he was claiming ineffective assistance of counsel").

¶ 16 We acknowledge the split in authority regarding whether Krankel applies to defendants represented by private counsel. Compare *People v. McGee*, 345 Ill. App. 3d 693, 699-700 (2003) and Taylor, 237 Ill. 2d at 81 (J. Burke, specially concurring). We, however, need not resolve that question where we have determined defendant failed to raise a sufficient allegation of ineffective assistance, regardless of whether counsel was appointed or privately retained.

¶ 17 II. Second Amendment

¶ 18 Defendant next contends the unlawful possession of a weapon by a felon statute is unconstitutional as applied to her because it restricts her ability to possess a weapon in her home for self-defense despite the fact that her prior convictions were for nonviolent felonies.

¶ 19 The unlawful use of a weapon by a felon (UUWF) statute prohibits the possession of firearms by a person previously convicted of a felony. 720 ILCS 5/24.1.1(a) (West 2010). Recently, this court has upheld the constitutionality of the UUWF statute both when the weapon was possessed outside the home (see, e.g., *People v. Davis*, 408 Ill. App. 3d 747 (2011)) and when the weapon was recovered from inside the home (see, e.g., *People v. Robinson*, 2011 IL App (1st) 100078). Relying on the now familiar holding in *District of Columbia v. Heller*, 554

1-11-1077

U.S. 570 (2008), this court has held that the second amendment does not protect an individual's right to possess a weapon for self-defense outside of the home. *Davis*, 408 Ill. App. 3d at 750. Moreover, in holding that the second amendment additionally does not protect a convicted felon's right to possess a weapon for self-defense inside the home, this court has relied on language in both *Heller* and *McDonald v. City of Chicago*, 561 U.S. \_\_\_\_ (2010), indicating that certain classes of people, namely, felons, are disqualified from the exercise of their second amendment rights. *Robinson*, 100078, ¶¶22, 23 (citing *Heller*, 554 U.S. at 626; *McDonald*, 561 U.S. at \_\_\_\_); see *People v. Ross*, 407 Ill. App. 3d 931, 939 (2011) ("[o]ur United States Supreme Court has never indicated that a felon can possess a firearm in a home or outside of a home).

¶ 20 Turning to the case before us, defendant's contention is not subject to review where she failed to raise her challenge in the trial court and, therefore, the trial court did not conduct an evidentiary hearing or make any factual findings regarding defendant's possession of the handgun for purposes of self defense. The supreme court has provided that:

"A court is not capable of making an 'as applied' determination of unconstitutionality when there has been no evidentiary hearing and no findings of fact. [Citation.] Without an evidentiary record, any finding that a statute is unconstitutional 'as applied' is premature. [Citation.] Nor would it be appropriate for this court, *sua sponte*, to consider whether the statute has been constitutionally applied since we, as a reviewing court, are not arbiters of the facts." *In re the Parentage of John M.*, 212 Ill. 2d 253, 268 (2004).

1-11-1077

There are no facts in the record to suggest defendant obtained the weapon for self defense.

¶ 21 Moreover, even assuming, *arguendo*, that the trial court had conducted the requisite evidentiary hearing and made sufficient factual determinations on the matter of self defense, defendant's as applied challenge fails where the UUWF statute does not provide any exceptions for persons convicted of nonviolent felonies (720 ILCS 5/24-1.1(a) (West 2010)) and no such exception was recognized by the Supreme Court in *Heller* and *McDonald*. *People v. Spencer*, 2012 IL App (1st) 102094, ¶32.

¶ 22

#### CONCLUSION

¶ 23 We find defendant did not raise a colorable allegation of ineffective assistance and, therefore, the trial court did not err in failing to conduct a *Krankel* hearing. We further find defendant's second amendment rights were not violated. We, therefore, affirm the judgment of the trial court.

¶ 24 Affirmed.