

No. 1-11-1372

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 14145
)	
RONZELL ROBINSON,)	Honorable
)	Carol A. Kipperman,
Defendant-Appellant.)	Judge Presiding.
)	

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

Held: The trial court was not required to conduct a *Krankel* inquiry where defendant's only claim of ineffective assistance of counsel was contained in the presentence investigation report. Further, the mittimus should be amended to reflect the correct number of days of pre-sentence credit.

¶ 1 Defendant Ronzell Robinson was charged with two counts of aggravated battery with a

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firearm and two counts of aggravated discharge of a firearm. Following a bench trial, defendant was convicted of one count of aggravated battery with a firearm and one count of aggravated discharge of a firearm and sentenced to eighteen years in prison. On appeal, defendant contends that the trial court erred by not conducting a *Krankel* inquiry when he alleged ineffective assistance of counsel in his presentence investigation report (PSI report). Defendant also argues that his mittimus should be amended to reflect 632 days' credit for time served. For the reasons that follow, we affirm the judgment of the trial court, but amend the mittimus.

¶ 2

BACKGROUND

¶ 3 The charges against defendant arose out of events occurring on June 30, 2009, at a gas station located at 6129 West North Avenue in Oak Park. At trial, Oscar Rush, Lamar Cesar, and Detective Patrick Foley of the Oak Park Police Department testified on behalf of the State.

¶ 4 Rush testified that he was working at Home Depot on June 30, 2009, and that he had arranged to meet Cesar and Cesar's girlfriend, Alexandra Mason, in the parking lot after his shift ended at 10:00 p.m. Cesar testified that he and Mason were waiting for Rush in Mason's car in the Home Depot parking lot when he saw a green car park nose-to-nose in front of Rush's car.

¶ 5 As Rush exited the store, Cesar witnessed the green car circle the parking lot and approach Rush. According to Rush, the driver of the car was defendant. Rush stated that defendant drove up beside him and rolled down the window. Defendant asked Rush "are we good, are we cool." Rush informed defendant that he did not understand the question, whereupon defendant drove away.

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¶ 6 After defendant left, Rush approached Cesar and Mason who were still waiting in their car. Rush explained to Cesar that the driver of the green car was defendant and that defendant was dating Rush's former girlfriend, Michelle Mitchell. Cesar had never met defendant prior to that evening. Rush then entered his own car and drove to a gas station as Cesar and Mason followed.

¶ 7 Rush testified that after filling up gas, he was driving out of the gas station followed by Cesar and Mason, but as he was exiting, he noticed defendant's car pulling in. Rush and defendant made eye contact and Rush decided to turn back into the gas station to confront defendant about coming to Home Depot and following him to the gas station. Cesar and Mason also drove back to the gas station. According to Rush, both he and defendant exited their cars and stood about 10 feet apart from one another. The two of them began arguing and after about five to six minutes, Cesar got out and stood in front of his car. Defendant told Cesar to get back into the car and Cesar refused. According to Cesar, Rush then said to Cesar "let's go" and called defendant a coward. Cesar testified that defendant then pulled out a gun, pointed it at him, and began shooting. Cesar began to run away from his car in order to avoid the risk of Mason being shot. Defendant fired three shots and Cesar suffered a graze wound on his right hip.

¶ 8 Rush testified that defendant then pointed the gun at him, took two or three steps towards him, and fired two shots. Rush ran to his car and attempted to drive off. As he was looking for his keys, defendant approached the passenger side of Rush's car. Rush testified that defendant was standing about five feet from him when he saw a flash from the passenger window. Rush

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then ran out of his car and witnessed defendant run first towards the vacuums and then to his car and drive away.

¶ 9 Cesar went on to testify that after defendant left the gas station, Rush, Mason, and himself went to Rush's house where Mason called 911. Later, Cesar identified defendant as the shooter in both a photo and physical line-up presented by Detective Foley.

¶ 10 On direct examination, Detective Foley testified that he was assigned to conduct a follow-up investigation of the incident and to interview the defendant. After reading defendant his Miranda rights, Detective Foley and Detective Taylor, also of the Oak Park Police Department, interviewed defendant for about 20 to 30 minutes. Defendant gave his account of the incident, after which Detective Foley asked whether he wanted to reduce his statement to writing. Defendant agreed and Detective Foley typed up a statement. Detective Foley then presented the statement to defendant who read the statement aloud and admitted it was a true summary of events, but refused to sign it.

¶ 11 According to the statement, which was read into evidence at trial, defendant received a number of text messages from Rush on the day of the incident. Defendant went to Home Depot to speak to Rush, and after their conversation, he believed matters were settled between them. However, after defendant left Home Depot, Rush called defendant and asked him to meet at a gas station on North Avenue. When defendant arrived, he believe he would be fighting only with Rush, but he saw another individual exit a white car. At that point, defendant believed he would be "jumped" so he retrieved the gun he had borrowed in anticipation of a run-in with Rush. Defendant remembered shooting the gun twice as Rush and the other individual ran.

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¶ 12 The stipulated testimony of evidence technician Gartner, for the State, revealed that one bullet casing was recovered at the scene from the floor area of the right front passenger seat of Rush's car.

¶ 13 Defendant presented the stipulated testimony of Detective Taylor, who interviewed Rush in connection with the investigation. According to Detective Taylor, Rush told him that defendant sent Rush several text messages telling Rush to leave him and Rush's ex-girlfriend alone. Rush also informed Detective Taylor that defendant called him asking if Rush wanted to handle the situation now, to which Rush responded that he was at a gas station. Finally, Rush stated that when Cesar exited his car at the gas station, defendant said "oh, there's two of you, you're going to jump me."

¶ 14 After hearing closing arguments, the court found defendant guilty of aggravated battery with a firearm as to Cesar and aggravated discharge of a firearm as to Rush. Prior to sentencing, a PSI report was prepared in which defendant made the following statement:

"I wish I could have had more proof, more witnesses on my behalf. I never intended to hurt anybody. I was just defending myself. I wish I would have had a more effective counsel. There were motions we could have put before the court that could have helped my case."

At sentencing, defendant was given an opportunity to address the court. Defense counsel informed the court that defendant was nervous. Counsel then told defendant "Just take a deep breath," after which defendant said: "I ask you to have mercy on me, your Honor. I never intended for any of this to happen."

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¶ 15 Ultimately, defendant was sentenced to 18 years imprisonment and credited 624 days for time served. The motion to reconsider sentence was denied and the court agreed to stay the mittimus for one week. Defendant timely filed this appeal.

¶ 16 ANALYSIS

¶ 17 The primary issue before this court is whether defendant sufficiently put the trial court on notice of his claim of ineffective assistance of counsel such that a factual inquiry into the allegations was required pursuant to *People v. Krankel*, 102 Ill. 2d 181, 189 (1984), where his ineffective assistance claim was made in a PSI report rather than by way of a written or oral motion. As this presents a question of law, our review is *de novo*. *People v. Taylor*, 237 Ill. 2d 68, 75 (2010).

¶ 18 *People v. Harris*, 352 Ill. App. 3d 63, 71 (2004), presented us with an identical issue. There, the defendant made the following statement during a presentence investigation interview:

"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.* at 71.

The defendant failed to make these complaints to the court in a written or oral motion, despite having the opportunity to address the court prior to sentencing. *Id.* at 72. Thus, we concluded that the statement contained in the defendant's PSI report "was insufficient to raise a claim of ineffective assistance to the trial court and did not warrant a *Krankel*-type inquiry." *Id.*, see also *People v. Reed*, 197 Ill. App. 3d 610, 612 (1990) (no *Krankel* inquiry required where the

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defendant's allegations of ineffective assistance were raised only in PSI report).

¶ 19 Similarly, in the case *sub judice*, defendant's allegations pertaining to the ineffectiveness of his counsel are contained only in his PSI report. When given the opportunity to address the court during sentencing, defendant failed to raise any complaints about his representation or otherwise direct the court's attention to his PSI report. Instead, he only asked the court for mercy in imposing his sentence. Following *Harris*, defendant's ineffective assistance claims made in his PSI report, standing alone, do not trigger an obligation on the part of the trial court to conduct a factual inquiry into the basis of the allegations.

¶ 20 Defendant acknowledges the holding in *Harris*, but argues that *People v. Jocko*, 239 Ill. 2d 87 (2010), established a new standard under which to determine if a *Krankel* inquiry is warranted. In *Jocko*, the defendant sent a handwritten letter to the office of the clerk of the circuit court of Cook County prior to his trial which included allegations of ineffective assistance. *Id.* at 93-94. Because neither the parties nor the court were aware of the letter, our supreme court held that it was insufficient to trigger a *Krankel* inquiry at the conclusion of trial, reasoning "we cannot criticize the circuit court for failing to take action on defendant's concerns when there is no indication that the court was ever made aware of them." *Id.* at 94.

¶ 21 We disagree with defendant that the "made aware" language used in *Jocko* created a new standard to apply in determining when a trial court must conduct a *Krankel* inquiry. Instead, we hold that *Jocko* reiterated, rather than redefined, the standard established by *Krankel* and its progeny. Significantly, as a basis for finding that the circuit court was not "made aware" of the documents alleging ineffective assistance, the supreme court in *Jocko* pointed out that "no

mention was made of them at any point in the proceedings by the defendant or anyone else.”

Jocko, 239 Ill. 2d at 93-94 (emphasis added). This language reinforces the well settled principle that a defendant must affirmatively make known to the court his ineffective assistance claims before a court is required to take action on them.

¶ 22 More importantly, our supreme court has continued to use the language “bring to the court's attention” in ruling on *Krankel* claims in post-*Jocko* cases. See, e.g., *People v. Patrick*, 2011 IL 111666, ¶ 29 (“[u]nder the common law procedure [established by *Krankel*], a *pro se* defendant is not required to file a written motion, but must only bring the claim to the trial court’s attention.”) Ultimately, then, the determinative inquiry as to the sufficiency of a posttrial assertion of ineffective assistance remains whether the defendant affirmatively took steps to present his claim to the trial court by way of written or oral motion.

¶ 23 Alternatively, defendant cites the content of his claim as evidence that a *Krankel* inquiry was required, arguing that his claim is materially distinguishable from the claims found insufficient in *Reed* and *Harris*. Specifically, in *Reed*, the “summary and impressions” section of defendant’s PSI report indicated that defendant felt “he was poorly represented at his trial and said he plans to file an Appeal.” *Reed*, 197 Ill. App. 3d at 612; see also *Harris*, 352 Ill. App. 3d at 71 (defendant stated in presentence investigation interview that counsel prevented him from calling witnesses).

¶ 24 Defendant characterizes the claim in *Reed* as an opinion and the claim in *Harris* as a grievance, and contrasts his own claim, asserting that it was a clear and cognizable ineffective assistance of counsel claim. However, neither *Reed* nor *Harris* addressed the substance of the

defendant's claim in concluding that there was no need for a *Krankel* inquiry. The court in *Reed* briefly mentioned that the defendant lacked support for his allegations, but its decision turned on the defendant's failure to address the court when given the opportunity. *Reed*, 197 Ill. App. 3d at 612. Similarly, the court in *Harris* did not consider the content of the defendant's ineffective assistance claim, but instead noted the defendant neither raised the claim to the court by way of written motion nor requested new counsel when he was given the opportunity to orally address the court at his sentencing hearing. *Harris*, 352 Ill. App. 3d at 72. Accordingly, in this case, the substance of defendant's claim plays no part in our holding that a *Krankel* inquiry was not warranted.

¶ 25 Finally, defendant argues, and the State concedes, that we should order the trial court to amend his mittimus to reflect a pre-sentence credit of 632 days, rather than the 624 days credited at sentencing. The record reflects that defendant was taken into custody on July 1, 2009, and remained in custody until he was sentenced on March 22, 2011. The trial court then granted a stay of the mittimus for one week until March 29, 2011, but defendant was ultimately re-admitted into the Illinois Department of Corrections on March 25, 2011. Therefore, defendant was in custody prior to sentencing for a total of 632 days. Pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we order the clerk of the trial court to correct the mittimus to reflect 632 days of credit, which is the correct number of days defendant spent in presentencing custody.

¶ 26

CONCLUSION

¶ 27 For the reasons stated, we affirm the judgment of the trial court and correct the mittimus.

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¶ 28 Judgment affirmed; mittimus corrected.