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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10-CF-2054
	)	
DEANA LAWRENCE,	)	Honorable
	)	John J. Kinsella,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Schostok concurred in the judgment.

**ORDER**

*Held:* (1) Because the record demonstrated that defendant did not raise a claim of ineffective assistance of counsel in her *pro se* motion to withdraw her guilty plea, the trial court had no duty to inquire into the factual basis for any such claim; (2) defense counsel was not ineffective for failing to present additional evidence on defendant's motion to withdraw her plea, as defendant failed to show how the introduction of such evidence would have changed the outcome; (3) because defendant was indigent, we vacated a \$40 filing fee for her motion to withdraw her plea.

¶ 1 Defendant, Deana Lawrence, appeals from the trial court's denial of her motion to withdraw her plea of guilty to theft by deception (720 ILCS 5/16-1(a)(2) (West 2010)). The issues on appeal are: (1) whether defendant's motion contained allegations of ineffective assistance of counsel

sufficient to trigger the court's duty under *People v. Krankel*, 102 Ill. 2d 181 (1984), to inquire into the factual basis of the claim; (2) whether defendant received ineffective assistance of counsel; and (3) whether the \$40 processing charge imposed by the clerk upon defendant's filing of her *pro se* motion should be vacated. For the reasons that follow, we affirm as modified.

¶ 2 Defendant was charged with one count of theft by deception (720 ILCS 5/16-1(a)(2) (West 2010)), a Class 2 felony (720 ILCS 5/16-1(b)(5) (West 2010)). The indictment alleged:

“[D]efendant knowingly obtained by deception control over property of the Social Security Administration, being United States Currency, having a total value exceeding \$10,000.00, but not exceeding \$100,000.00, intending to deprive the Social Security Administration permanently of the use or benefit of such property, in that she obtained funds on behalf of her daughter by falsely claiming she had residential custody of the daughter[.]”

¶ 3 The parties appeared before the court on December 29, 2010, for a hearing on defendant's request to be released from custody on a personal recognizance bond. Defendant presented medical and mental health records in support of her motion. Defendant testified that she “can't get [narcotics] in the jail.” She stated that she needed narcotics for back pain and “anxiety slash bipolar.” The trial court ruled that bond would stand but agreed to continue the hearing to allow defendant to bring in medical personnel from the jail to testify on her behalf. At that point, defendant indicated to defense counsel her desire to accept the State's plea offer. The court recessed the proceedings to allow defendant time to speak with her counsel.

¶ 4 Following the recess, defense counsel informed the court that defendant wished to plead guilty. The following colloquy occurred:

“THE COURT: Okay. Let me ask you, [defendant], since we had the earlier hearing concerning your bail situation. And your attorney promptly advised that you wish to accept the offer.

Do you understand that it’s my obligation, I take my obligation seriously, to make sure as best I can that anyone pleading guilty to an offense before me is doing so freely and voluntarily, and the product of some reasoned thought and consideration, and not based upon one dimensional thinking such as I want to get out of jail, and, therefore, I’m just going to plead guilty to this offense. If someone pleads guilty, they are pleading guilty because they are, in fact, guilty or because they reasonably believe that if the matter were to proceed to trial they would be found guilty.

If that’s not the case with you, then I’m not going to accept your plea of guilty. Are you pleading guilty because you are guilty, or that you believe the State would likely convict you were the matter to proceed to trial?

THE DEFENDANT: Your Honor, I know I’m not guilty, so I’m not going to, you know, accept that. But I believe though if the State would take it to trial, I would be found guilty because of the evidence that they have and the evidence that we haven’t been able to get in my defense. So because of the fact I believe that I would be found guilty, I feel why waste the State’s time. And I’ve thought about this for a good month, your Honor. And this is what I want to do.

THE COURT: All right. Well, you appear to be forthright in that belief, and I think what you’ve described is a reasonable position. Often people believe and maintain their own innocence, but the fact is they must assess with the advice of their attorney the evidence

against them and make a rational assessment and decision and accept or not accept an offer that's been made, based on all those considerations including the likelihood of being convicted as well as all the other factors that go into what the sentence might be.”

¶5 Thereafter, the State presented the factual basis for the plea. According to the State, evidence would show that, in November 1997, defendant applied for disability income from the Social Security Administration (SSA) on behalf of her disabled daughter, who was born in 1996. In April 1998, the SSA approved the application and began making payments to defendant. Defendant had signed documents acknowledging that she would accept the payments on behalf of her daughter and use the money for her daughter's care. Defendant had also agreed to notify the SSA if her daughter left her care or custody. Evidence would further show that, on March 24, 2004, defendant's daughter was removed from defendant's care and custody and began living with her father. Evidence would also show that defendant nevertheless continued to inform the SSA that she had custody of her daughter and continued to receive SSA payments on her daughter's behalf. Defendant's daughter's father would testify that he was unaware, until 2008, of defendant's receiving SSA payments and that he had never received money from defendant. Defendant was interviewed by an SSA agent and she told the agent that she had control of her daughter, despite court records to the contrary, and she admitted to “borrowing” \$4,000 from her daughter, with her daughter's consent. Defendant claimed to have saved some of the money she collected for her daughter, but a review of defendant's bank statements showed that \$13,688, which defendant collected while her daughter was not in her custody, was not in any of defendant's accounts, and records did not indicate that the money was used for her daughter's care.

¶ 6 The court found that the facts recited by the State were sufficient to support the charge of theft by deception and that defendant knowingly and voluntarily pleaded guilty. The court sentenced defendant, as agreed to by the State, to 24 months' probation with the condition that defendant pay \$13,688 restitution to the SSA and serve 180 days in the county jail with credit for time served, allowing defendant to be released that day.

¶ 7 On January 31, 2011, defendant filed a motion to withdraw her plea, alleging as follows: “(1) New evidence has come to my attention[;] (2) Misrepresentation given by the State[;] (3) I wasn't in my right mind[;] (4) Base[d] on what I know now I would not of [*sic*] been represented correctly[;] (5) The foundation of the discovery.” On that same day, she appeared *pro se* before the trial court and told the court that she wanted to “overturn [her] plea of guilty.” Defendant told the court that she “got a court date of March 11th.” When the court asked why the date was set so far in the future, defendant responded that she had “to get some evidence from the Social Security Administration and they told [her] it would be approximately like four weeks before they can get [it to her].” The court reappointed the public defender's office (which had already closed defendant's file) and ordered that the matter be set for February 14, 2011.

¶ 8 On February 14, 2011, defense counsel appeared before the court along with defendant. Defense counsel told the court that he had reviewed the *pro se* motion and that, while he had had some concern with paragraph number four, he “had [defendant] explain that to [him] right now, and she's not alleging that [he was] ineffective.” He stated that he intended to file an amended motion but that he needed time to sit down with defendant so that she could explain her *pro se* claims to him. The matter was set for a hearing in March.

¶ 9 On March 18, 2011, defense counsel appeared with defendant and presented an amended motion to withdraw the plea. Counsel indicated that, in preparing the motion, he had discussed with defendant the allegations she had raised in her *pro se* motion. He explained to the court that the motion alleged that new evidence had come to defendant's attention to support her theory that it was "okay [for her] to receive money, despite the fact that there were documents signed saying that she can't if she does not have actual physical custody." He also argued that, with respect to defendant's mental status on the day of her plea, defendant had had a seizure and bitten her jaw before going to court. The State argued that the motion was untimely under Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), which required that it be filed within 30 days after defendant was sentenced—*i.e.*, by January 28, 2011. Defendant conceded that the motion was untimely. The court agreed with the parties, but it considered the motion on its merits and denied it. The court stated that it was "quite comfortable that the defendant was of sound mind and entered a plea knowing and voluntarily. And that is based upon an extensive inquiry by the Court at the time of the plea."

¶ 10 Defendant appealed. We remanded, because the trial court's admonishments did not strictly comply with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001). *People v. Lawrence*, No. 2-11-0290 (2011) (unpublished order under Supreme Court Rule 23).

¶ 11 On remand, defendant filed an amended motion to withdraw her plea. At the hearing, defense counsel told the court that "it is the exact same motion as you heard the first time. There are just two changes." Attached to the motion was a document from the SSA indicating that defendant was in the SSA office on September 12, 2003, March 29, 2004, and March 31, 2004, and records from the jail showing certain medications provided to defendant. The court noted that "in essence the defendant is alleging that there is some either mitigating evidence or exculpatory evidence based

upon her own self-described comments made to her by somebody with Social Security. And then she questions her fitness to enter the plea[.]” Defendant testified that, while in jail, she was not getting her “narcotics.” She told the court that she was “on narcotics for pain in [her] back because she [had a] herniated disc and also a narcotic for anxiety.” She stated that, when she does not get her medicine, she “can’t act right.” She claimed, “[t]hat’s why I feel I pleaded guilty when I shouldn’t have.” She also stated that she “couldn’t have been cashing checks on her daughter’s bank account because [her] daughter’s bank account [was] a savings [account].”

¶ 12 The court denied the motion, stating:

“I don’t know how much more I could have done to assure that the plea was being entered freely and voluntarily. While she may not have been treated medically in a way that she thinks is appropriate by the jail, there was no indication ever or manifestation that she was rendered unfit or unable to make a knowing, free and voluntary plea as she did in this case. And it was as I feared at the time of the plea, a matter that she is simply now changing her mind, her circumstance having changed, that she now wants a trial.

There is no basis to grant a motion to withdraw a plea simply because the person has now decided that they want to avail themselves of an opportunity to try the case.”

¶ 13 Defendant timely appealed. The record includes a “Bill of Costs,” dated November 22, 2011, indicating that \$935 was assessed against defendant. The costs include a \$40 charge for the filing of a *pro se* motion to withdraw the guilty plea.

¶ 14 Defendant first argues that “the court erred by failing to inquire into [defendant’s] *pro se* claim of ineffective assistance of counsel” as required under *Krankel*. We disagree.

¶ 15 When a defendant brings a *pro se* posttrial claim that trial counsel was ineffective, the trial court must inquire adequately into the claim and, under certain circumstances, must appoint new counsel to argue the claim. *Krankel*, 102 Ill. 2d at 187-89; see *People v. Taylor*, 237 Ill. 2d 68, 75 (2010); *People v. Pence*, 387 Ill. App. 3d 989, 994 (2009). New counsel is not automatically required merely because the defendant presents a *pro se* posttrial claim that his counsel was ineffective. *People v. Moore*, 207 Ill. 2d 68, 77 (2003). The trial court must first examine the factual basis of the claim. The supreme court has listed three ways in which a trial court may conduct its examination: (1) the court may ask trial counsel about the facts and circumstances related to the defendant's allegations; (2) the court may ask the defendant for more specific information; and (3) the court may rely on its knowledge of counsel's performance at trial and "the insufficiency of the defendant's allegations on their face." *Id.* at 78-79. If the defendant's allegations show possible neglect of the case, the court should appoint new counsel to argue the defendant's claim of ineffective assistance. *Taylor*, 237 Ill. 2d at 75; *Pence*, 387 Ill. App. 3d at 994. However, if the court concludes that the defendant's claim lacks merit or pertains only to matters of trial strategy, the court may deny the claim. *Taylor*, 237 Ill. 2d at 75; *Pence*, 387 Ill. App. 3d at 994. If the court fails to conduct the necessary preliminary examination as to the factual basis of the defendant's allegations, the case must be remanded for the limited purpose of allowing the court to do so. *People v. Serio*, 357 Ill. App. 3d 806, 819 (2005). The threshold question of whether the defendant's motion constituted a *pro se* claim of ineffective assistance sufficient to trigger the court's duty to inquire into the factual basis of the claim is a question of law; thus, our review is *de novo*. See *Taylor*, 237 Ill. 2d at 75.

¶ 16 Defendant argues that her *pro se* motion “unequivocally questioned whether she had been denied effective assistance.” Defendant’s motion alleged as follows: “(1) New evidence has come to my attention[;] (2) Misrepresentation given by the State[;] (3) I wasn’t in my right mind[;] (4) Base[d] on what I know now I would not of [*sic*] been represented correctly[;] (5) The foundation of the discovery.” According to defendant, “the plain language of [allegation number four] should have alerted the trial court that the *Krankel* procedures were required.” In addition, defendant points to allegation number five, which questioned the “foundation of the discovery.” We disagree with defendant’s argument that these allegations were sufficient to warrant a *Krankel* inquiry.

¶ 17 First, allegation number four reads: “Base[d] on what I know now I would not of [*sic*] been represented correctly.” Looking at this statement in the context of the proceedings, the meaning becomes clear. During the preplea colloquy between the court and defendant on December 29, 2010, defendant stated that she believed she would be found guilty on the State’s evidence at trial, noting the absence of “evidence that we haven’t been able to get in my defense” from the SSA. Later, when defendant presented her *pro se* motion, she told the court that she had “to get some evidence from the Social Security Administration and they told [her] it would be approximately like four weeks before they can get [it to her].” When the court reappointed defense counsel to represent defendant, defense counsel explained to the court that, while he initially had some concern with respect to defendant’s *pro se* allegation number four, defendant told him that she was not alleging that he was ineffective but was instead alleging that she would not have pleaded guilty had she been aware at that time of the existence of certain exculpatory evidence. Thus, although defendant now argues that new counsel should have been appointed because “[i]t was unreasonable to expect [defense counsel] to argue his own ineffectiveness,” the record shows that allegation number four did not raise a claim

of ineffectiveness. In addition, allegation number five, which reads simply, “[t]he foundation of the discovery,” in no way alerted the trial court to any claim of ineffectiveness. Thus, the *pro se* motion did not raise a claim of ineffectiveness warranting a *Krankel* inquiry. It is clear that the *pro se* motion arose not from defendant’s dissatisfaction with defense counsel’s representation but from her newfound belief that the evidence against her was not sufficient for a finding of guilt at trial.

¶ 18 Aside from the *Krankel* claim, defendant also seems to be raising a general allegation that defense counsel “did not provide the necessary assistance” in the postplea proceedings. Defendant claims that defense counsel failed to make any effort to obtain affidavits from the SSA and failed to gather and present evidence concerning defendant’s medical issues. A claim of ineffective assistance of counsel requires a defendant to establish that (1) his attorney’s performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). A defendant must meet both prongs of the *Strickland* test to prevail on an ineffective-assistance claim. *People v. Colon*, 225 Ill. 2d 125, 135 (2007). Here, defendant has failed to satisfy the prejudice prong. Defendant fails to argue how the result of the proceeding would have been different had counsel obtained affidavits from anyone at the SSA. Regardless of what anyone at the SSA supposedly told her, defendant does not deny that she accepted \$13,699 from the SSA on behalf of her daughter who did not reside with her. Defendant also fails to argue how putting any additional medical evidence before the court would have changed the outcome of her motion to withdraw her plea. When defendant entered her plea, the court had before it evidence of defendant’s medical issues. Nevertheless, in denying defendant’s motion to withdraw her plea, the court specifically noted that “[w]hile [defendant] may not have been treated

medically in a way that she thinks is appropriate by the jail, there was no indication ever or manifestation that she was rendered unfit or unable to make a knowing, free and voluntary plea as she did in this case. And it was as I feared at the time of the plea, a matter that she is simply now changing her mind, her circumstances having changed, that she now wants a trial.” Accordingly, based on the foregoing, defendant’s ineffectiveness claim must fail.

¶ 19 Last, defendant contends that the \$40 fee charged by the clerk of the circuit court for filing her *pro se* motion to withdraw her guilty plea should be vacated because she was indigent. Illinois Supreme Court Rule 298(b) (eff. Nov. 1, 2003) provides that, if an application to sue or defend as an indigent person is allowed, the court shall enter an order permitting the applicant to sue or defend without payment of fees, costs, or charges. Here, defendant filed her *pro se* motion to withdraw her guilty plea on January 31, 2011, and a \$40 filing fee was assessed. The court allowed defendant to proceed as a pauper and reappointed the public defender that same day. Accordingly, the State agrees that the \$40 fee assessed for the filing of her *pro se* motion should be vacated.

¶ 20 In light of the foregoing, the judgment of the circuit court of Du Page County is affirmed as modified.

¶ 21 Affirmed as modified.