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2012 IL App (3d) 110047-U

Order filed June 19, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court
	) of the 12th Judicial Circuit,
Plaintiff-Appellee,	) Will County, Illinois,
	)
v.	) Appeal No. 3-11-0047
	) Circuit No. 05-CF-751
IGNACIO JACOBO,	)
	) Honorable
Defendant-Appellant.	) Richard C. Schoenstedt,
	) Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Schmidt and Justice Carter concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court conducted an adequate inquiry into defendant's claims of ineffective assistance of counsel.
- ¶ 2 Defendant, Ignacio Jacobo, was convicted of four counts of first degree murder (720 ILCS 5/9-1(a)(2), (a)(3) (West 2004)) and one count of aggravated arson (720 ILCS 5/20-1.1(a)(1) (West 2004)). Two of defendant's first degree murder convictions and his aggravated arson conviction were vacated on appeal, and the cause was remanded for a hearing on

defendant's posttrial claim of ineffective assistance of counsel. *People v. Jacobo*, No. 3-08-0088 (2009) (unpublished order under Supreme Court Rule 23). Following a hearing in the trial court, defendant's claims were denied. Defendant appeals, arguing that the trial court did not conduct an adequate inquiry into his allegations. We affirm.

¶ 3

### FACTS

¶ 4 A jury found defendant guilty of four counts of first degree murder (720 ILCS 5/9-1(a)(2), (a)(3) (West 2004)) and one count of aggravated arson (720 ILCS 5/20-1.1(a)(1) (West 2004)).

Prior to sentencing, defendant wrote a statement in allocution which was read to the court by trial counsel. The statement included the following: "I also like to note for the record I feel my conviction is unconstitutional for my counsel not representing me appropriately. Therefore[,] I had an ineffective assistance of counsel." The trial court sentenced defendant and took no action with regard to his claim of ineffective assistance of counsel.

¶ 5 On appeal, we vacated two of defendant's first degree murder convictions and his aggravated arson conviction and remanded the cause to the trial court for a hearing on defendant's posttrial claim of ineffective assistance of counsel.

¶ 6 Thereafter, the trial court held a hearing to address defendant's allegations. At the hearing, the court noted that it had defendant's documentation with regards to the issues. The court asked defendant if he was standing on the points he made in writing or if he would like to elaborate on the issues in court. Defendant chose to argue some of the points, beginning with a claim that trial counsel failed to request a continuance in order to discuss with him a supplemental police report that was filed on the eve of trial.

¶ 7 The court asked trial counsel to comment on defendant's allegation. Counsel noted that

he had no independent recollection of the report; however, if he had received a report with new information he would have investigated it. Counsel stated that any report he may have received on the eve of trial was likely a supplemental report that did not add or detract from the already established facts. The court then asked defendant to respond to trial counsel's statements. Defendant stated that the report had something to do with one of the witnesses but did not elaborate on its contents. The trial court asked if either party would like to add anything with regards to that issue. Thereafter, the court continued with the rest of the hearing on defendant's other allegations.

¶ 8 At the conclusion of the hearing, the trial court noted that it had examined all of defendant's claims relating to ineffective assistance of counsel. The court concluded that defendant's allegations were without merit. Defendant appeals.

¶ 9 ANALYSIS

¶ 10 Defendant argues that the trial court did not conduct an adequate inquiry into his posttrial allegations of ineffective assistance of counsel. When a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. *People v. Moore*, 207 Ill. 2d 68 (2003). If the court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the motion. *Id.* However, if the allegations show possible neglect of the case, new counsel should be appointed. *Id.* The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel. *Id.* To do so, it may be adequate for the court to ask questions of trial counsel or conduct a brief discussion with the defendant. *Id.* The court may also base its

evaluation of the allegations on its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face. *Id.*

¶ 11 In this case, defendant argues that the court precipitously denied his allegations of ineffective assistance. Defendant focuses on his claim that counsel failed to request a continuance in order to discuss with defendant a police report that was filed on the eve of trial. We find no error. Upon remand, the trial court held a hearing where it allowed defendant to state and defend all of his claims of ineffective assistance of counsel, including his claim regarding the report. Defendant did not establish that his claim regarding the report had merit. The court asked questions of both defendant and trial counsel and noted that it had considered all of defendant's allegations before it found that defendant's claims lacked merit.

¶ 12 Defendant cites a number of cases in support of his claim. See, e.g., *People v. Moore*, 207 Ill. 2d 68 (2003); *People v. Robinson*, 157 Ill. 2d 68 (1993). However, the facts of those cases are distinguishable in that the trial courts there failed to conduct any inquiry into defendant's allegations. As already noted, here the record established that the trial court allowed defendant to be heard in open court and considered all of his allegations before finding that they had no merit. Therefore, we conclude that the court's inquiry was adequate and remand is not necessary.

¶ 13 **CONCLUSION**

¶ 14 The judgment of the circuit court of Will County is affirmed.

¶ 15 Affirmed.