

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).

2012 IL App (4th) 110033-U

Filed 7/19/12

NO. 4-11-0033

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
JOHN WILLIE JOLLY,	)	No. 10CF239
Defendant-Appellant.	)	
	)	Honorable
	)	Scott Drazewski
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.  
Justices Steigmann and Cook concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court erred in not making preliminary inquiries pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), into defendant's *pro se* allegations he received ineffective assistance from his trial counsel.

¶ 2 In October 2010, defendant filed a *pro se* motion he titled "Motion to Reduce Sentence." Included in the motion were allegations his trial attorney, Harvey Welch, provided ineffective assistance of counsel. Defendant argues the trial court erred in not making preliminary inquiries pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), into defendant's allegations of ineffective assistance of counsel. We remand this cause for further hearing.

¶ 3 I. BACKGROUND

¶ 4 In July 2010, defendant was convicted of unlawful delivery of a controlled

substance. A posttrial motion was not filed on defendant's behalf. On September 27, 2010, the trial court sentenced defendant to 16 years' imprisonment with 3 years' mandatory supervised release.

¶ 5 On October 25, 2010, defendant filed a *pro se* motion to reduce sentence. In that motion to reduce sentence, defendant made allegations his trial counsel provided ineffective assistance. On November 19, 2010, attorney Ronald Lewis, the first assistant public defender for McLean County, informed the trial court via letter:

"I am now counsel for the Defendant as Harvey Welch is no longer a Public Defender contract attorney. As a result of the Defendant's *pro se* motion relating to sentencing matters, I am requesting a transcript of the September 27, 2010[,] sentencing hearing. The Defendant remains in custody and continues to be indigent. I am asking the court to order the preparation of the transcript at no cost to the defense, due to Defendant's indigent status."

On November 23, 2010, defendant, *pro se*, filed a motion to amend his motion to reduce his sentence. In this motion, defendant alleged additional reasons why his trial counsel was ineffective.

¶ 6 On December 17, 2010, the trial court held a hearing on defendant's *pro se* motions. Attorney Ronald Lewis, an assistant public defender, appeared on defendant's behalf. Attorney Lewis informed the court defendant previously had been represented by Attorney Harvey Welch through sentencing. Lewis stated Welch was no longer a contract public defender

so Lewis had been appointed to the case for the purpose of handling the motion to reduce sentence. Lewis stated:

"It is my intent, your Honor, to adopt the defendant's Motion to Reduce Sentence that was filed *pro se* on October 25th of 2010, and I understand he has recently filed a motion to amend that. I have had a brief chance to skim through that. I have that as a supplement to the original, your Honor.

I fully recognize that some of those items in there are arguments that would have been dealt with at the prior trial, other items that were either trial issues or things that would have been handled by Mr. Welch, or they are items that are maybe more appropriate for post-conviction act proceeding or so forth, but were not part of the Motion to Reduce Sentence, [for] which I am here.

As far as the Motion to Reduce Sentence, your Honor, the defendant was sentenced to 16 years in the Department of Corrections and I have received a copy of the sentencing hearing transcript. I have been through that. It's understood the court had the Pre-Sentence Investigation Report, some items of testimony, a lengthy statement in allocution from the defendant, and from what I can argue from the defendant's motion, your Honor, is simply this.

We would indicate that the—well, the defendant, in his

motion, although he indicates that he has some objection to some of the evidence that the court heard, even if the court appropriately considered that, your Honor, I would also indicate that it would be the defendant's contention that the court gave too much weight to that evidence, but, really, all that, your Honor, comes under my umbrella argument of the—that the court entered a sentence that was excessive and not consistent with one of the Illinois Constitutional principles of returning the defendant to useful citizenship."

After the State presented its argument, the trial court stated:

"All right. The matter does come before this \*\*\* court, that being on a Motion to Reconsider Sentence. I also would concur with what Mr. Lewis has represented, but although there are other issues that are raised within the defendant's *pro se* motions relative to allegations of ineffective assistance of counsel, that either those allegations were not timely filed, two, the Appellate Court could choose to address those based upon a plain error review should they so desire, and, three, that if Mr. Jolly wishes to do so, he may do so within the context of a post-conviction petition, but not in a Motion to Reconsider."

The court went on to deny the motion to reconsider sentence.

¶ 7 This appeal followed.

¶ 8

## II. ANALYSIS

¶ 9 Defendant argues the trial court erred in failing to make the preliminary inquiries required by *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), into his *pro se* ineffective assistance allegations. According to defendant, the "court erred in refusing to consider the non-sentencing complaints on the grounds that they were not timely raised."

¶ 10 In *Krankel*, 102 Ill. 2d at 188-89, 464 N.E.2d at 1048-49, the defendant filed a *pro se* motion for a new trial alleging ineffective assistance of trial counsel. The trial court denied his request for new counsel to assist him in arguing his motion. *Krankel*, 102 Ill. 2d at 189, 464 N.E.2d at 1049. The supreme court, on the recommendation of both parties on appeal, remanded the case for a new hearing on the motion, at which the defendant was entitled to new counsel. *Krankel*, 102 Ill. 2d at 189, 464 N.E.2d at 1049. Our supreme court has since stated "the operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the *pro se* defendant's allegations of ineffective assistance of counsel." *People v. Johnson*, 159 Ill. 2d 97, 125, 636 N.E.2d 485, 497 (1994).

¶ 11 In this case, the trial court made no inquiries into defendant's *pro se* allegations of ineffective assistance of counsel. Instead, the court found these allegations untimely. Citing *People v. Patrick*, 2011 IL 111666, 960 N.E.2d 1114 (2011), the State concedes the court erred in finding defendant's allegations regarding the effectiveness of his trial counsel were untimely and should be raised in a postconviction petition. We agree with the State's concession on this point.

¶ 12 However, the State argues the trial court's error is harmless beyond a reasonable doubt because the record shows each ineffectiveness claim is without merit. According to the State:

"In [*People v. Moore*, 207 Ill. 2d 68, 797 N.E.2d 631 (2003),] and *Patrick*, the trial courts' failure to conduct an inquiry into the factual bases of the allegations of ineffectiveness resulted in an inadequate record to determine whether defendant's claims indicated possible neglect. In contrast, the record here sufficiently demonstrates the meritless nature of defendant's claims."

This argument runs contrary to our supreme court's opinion in *Moore*.

¶ 13 In *Moore*, the supreme court stated "[a] trial court's failure to appoint new counsel to argue a defendant's *pro se* posttrial motion claiming ineffective assistance of counsel can be harmless beyond a reasonable doubt." *Moore*, 207 Ill. 2d at 80, 797 N.E.2d at 639. However, in *Moore*, the supreme court found it was not possible to determine the trial court's failure to conduct an inquiry into the defendant's *pro se* allegations was harmless beyond a reasonable doubt because no record was made with regard to those allegations. *Moore*, 207 Ill. 2d at 81, 797 N.E.2d at 639. The same is true in this case. The trial court in the case *sub judice* did not inquire into defendant's *pro se* allegations because it believed they were untimely. However, as the State concedes, the court was wrong on that point.

¶ 14 Because the law requires the trial court to conduct some type of inquiry into the underlying factual basis of a defendant's *pro se* claims of ineffective assistance of counsel, we must remand the cause to the trial court for that limited purpose. Pursuant to *Moore*, we are not remanding this case for a full evidentiary hearing. *Moore*, 207 Ill. 2d at 81, 797 N.E.2d at 639. Instead, "we remand the cause for the limited purpose of allowing the trial court to conduct the required preliminary investigation" to determine if a full evidentiary hearing is required. See

*Moore*, 207 Ill. 2d at 81, 797 N.E.2d at 640.

¶ 15

### III. CONCLUSION

¶ 16 For the reasons stated, we remand this cause for further proceedings consistent with this order.

¶ 17 Remanded.