

Raymond of Murphysboro was visiting with friends in the backyard of a house located on the corner of Beverage and Cherry Streets in Carbondale, when his girlfriend called him on his cell phone. Raymond later recalled that he and his girlfriend "were working on [their] relationship" at the time, so "for the sake of privacy," he had walked to where he had parked his car so that he could talk to her there. While Raymond stood by his car talking to his girlfriend, the defendant and Lydell Neal approached him from an adjacent alley, and Raymond saw that the defendant, who was 16 at the time, "had a pistol in his hand." Raymond abruptly ended his phone call, and demanding money, the defendant "placed the gun against the side of [Raymond's] chest." When Raymond advised that he did not have any money, Neal took Raymond's phone, and the defendant "started backing away." Raymond then asked if he could have his phone back, but the defendant and Neal turned around and began "heading back west on Cherry Street." Feeling "pissed off," Raymond started following them and then yelled for his friends, who were still in the backyard. In response, the defendant pointed the pistol in Raymond's direction and fired a bullet "over [Raymond's] head." Interpreting the defendant's act as the firing of a "warning shot," Raymond abandoned his pursuit and returned to the house, where he was advised that someone had already called 9-1-1. The police quickly responded, and acting on information provided by one of Raymond's friends, who from a distance was "following the suspects and *** giving *** updates as to their location" via cell phone, the defendant and Neal were apprehended a few blocks away. Raymond's cell phone was found along the route by which the defendant and Neal had fled, and a Colt .45-caliber semiautomatic pistol was found "approximately 25 feet away" from where they were stopped and arrested. Ballistics testing later matched the pistol to a spent shell casing that was found at the crime scene.

¶5 On September 1, 2009, the State filed an amended information charging the defendant with armed robbery (720 ILCS 5/18-2(a)(3) (West 2008)) and aggravated discharge of a

firearm (720 ILCS 5/24-1.2(a)(2) (West 2008)). Pursuant to the automatic transfer statute, the trial court subsequently moved the cause from the juvenile court to the criminal court. See 705 ILCS 405/5-130(1)(a) (West 2008) (mandating that "any minor who at the time of an offense was at least 15 years of age and who is charged with *** armed robbery when the armed robbery was committed with a firearm" must be "prosecuted under the criminal laws of this State"). In December 2009, a Jackson County jury found the defendant guilty as charged and specifically found that he had "personally discharged a firearm" during the course of the armed robbery. Thereafter, the defendant sent a series of letters to the trial court claiming, *inter alia*, that the State had a "personal vendetta against [his] family" and that Raymond "had a friend on the jury" who was "not removed from the jury." Indicating that because he was innocent, he "felt like" his trial attorney should have been able to obtain an acquittal, the defendant also complained that he had not been "properly represented" by his trial attorney. The defendant's motion for a new trial, which his trial attorney subsequently prepared and filed, alleged that the State's evidence was insufficient to support his conviction and that his attorney had "provided ineffective assistance of counsel."

¶ 6 In January 2010, the trial court vacated the defendant's aggravated-discharge-of-a-firearm conviction and sentenced him to serve the minimum six-year term of imprisonment on his conviction for armed robbery. See 720 ILCS 5/18-2(a)(3), (b) (West 2008); 730 ILCS 5/5-8-1(a)(3) (West 2008). By statute, the trial court then added 20 years to the 6-year term, for a total sentence of 26 years. See 720 ILCS 5/18-2(b) (West 2008) ("A violation of subsection (a)(3) is a Class X felony for which 20 years shall be added to the term of imprisonment imposed by the court."). Prior to imposing sentence, the defendant's ineffective-assistance-of-counsel claim was briefly discussed before the trial court denied the defendant's motion for a new trial. In February 2010, the defendant filed a timely notice of appeal.

¶ 7

ANALYSIS

¶ 8 The defendant maintains that the automatic transfer statute is unconstitutional, that the trial court failed to conduct an adequate inquiry into his posttrial assertions that he had been denied the effective assistance of counsel, and that he is entitled to an additional day of credit towards his sentence. We will address each of the defendant's arguments in turn.

¶ 9

The Automatic Transfer Statute

¶ 10 The defendant's first argument on appeal is that the automatic transfer statute is unconstitutional. Acknowledging that "the Illinois Supreme Court has previously decided that the automatic transfer provision at issue here comports with constitutional requirements" (see *People v. J.S.*, 103 Ill. 2d 395, 399, 402-07 (1984) (rejecting the defendants' claims that the automatic transfer statute "is arbitrary and discriminatory and that it deprives them of procedural and substantive due process and equal protection of the laws"); see also *In re D.T.*, 141 Ill. App. 3d 1036, 1045 (1986) ("Although the *J.S.* court's analysis addressed alleged violations of the Federal Constitution, we find the rationale equally applicable to the State Constitution ***.")), the defendant suggests that the supreme court's underlying "rationale" must be "revisited" in light of the United States Supreme Court's decisions in *Roper v. Simmons*, 543 U.S. 551 (2005), and *Graham v. Florida*, __U.S.__, 130 S. Ct. 2011 (2010). Again relying on *Roper* and *Graham*, the defendant further argues that the automatic transfer statute violates the eighth amendment to the United States Constitution (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). We disagree.

¶ 11 Recently, in *People v. Salas*, 2011 IL App (1st) 091880, ¶¶ 52-80, the First District Appellate Court thoroughly addressed and rejected the very arguments that the defendant raises in the present appeal. Having reviewed the court's decision in *Salas*, we find that it is well-taken, and we accordingly adopt its reasoning. See *People v. Ligon*, 239 Ill. 2d 94, 118

(2010).

¶ 12 Ineffective Assistance of Counsel

¶ 13 The defendant next contends that the trial court erred in failing to conduct an adequate inquiry into his posttrial assertions that he had been denied the effective assistance of counsel. In response, the State counters that under the relevant circumstances, the trial court proceeded appropriately. We agree with the State.

¶ 14 It is well settled that "[i]t would be inappropriate for trial counsel to argue a motion that is predicated on allegations of counsel's own incompetence." *People v. Moore*, 207 Ill. 2d 68, 79 (2003). Under *People v. Krankel*, 102 Ill. 2d 181 (1984), and its progeny, however, "[a] trial court is not automatically required to appoint new counsel anytime a defendant claims ineffective assistance of counsel." *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 21. "Instead, the trial court must first conduct an inquiry to examine the factual basis underlying a defendant's claim." *Id.* "If the trial court conducts a preliminary investigation of the defendant's allegations and determines them to be spurious or pertaining only to trial tactics, no new counsel should be appointed to represent the defendant." *People v. Nitz*, 143 Ill. 2d 82, 134 (1991). "If, however, the defendant's allegations of incompetence indicate that trial counsel neglected the defendant's case, the court should appoint new counsel to argue defendant's claims of ineffective assistance of counsel." *Id.* at 134-35.

"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. [Citation.] During this evaluation, some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted on a defendant's claim. Trial counsel may

simply answer questions and explain the facts and circumstances surrounding the defendant's allegations." *Moore*, 207 Ill. 2d at 78.

¶ 15 Here, as previously noted, in his letters to the trial court, the defendant complained that he had not been "properly represented" by his trial attorney because his attorney should have been able to obtain an acquittal. In his motion for a new trial, the defendant subsequently made a general allegation that his attorney had "provided ineffective assistance of counsel." At the defendant's sentencing hearing, when the defendant's motion for a new trial was discussed, the following exchange occurred:

"THE COURT: The Court did review the written motion[.] *** [A]ny additional argument to the written motion, [defense counsel]?"

[Defense counsel]: On the second ground regarding the ineffective assistance of counsel, that was based on [the defendant's] letter to the Court. I thought that I had a responsibility to bring that up, based on that, the contents of that letter. And I've talked to him about that *** and his position is one of actual innocence and he thinks I was ineffective in that if he was innocent, he couldn't have been proven guilty.

THE COURT: Well, certainly the trier of fact, being the jury, had made that determination. The Court will make its determination that the motion for [a] new trial is denied."

¶ 16 "The trial court is presumed to know the law and apply it properly" (*People v. Baugh*, 358 Ill. App. 3d 718, 730 (2005)), and the preceding colloquy demonstrates that there was an "interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation" (*Moore*, 207 Ill. 2d at 78) sufficient to assess whether it was necessary to appoint new counsel to argue trial counsel's ineffectiveness. Aware that it was the "jury's function to determine the accused's guilt or

innocence" (*People v. Banks*, 161 Ill. 2d 119, 135 (1994)), the trial court properly determined that the defendant's claim of ineffective assistance of counsel was spurious and that there was no need to appoint new counsel to argue trial counsel's ineffectiveness.

¶ 17 On appeal, referencing his letters to the trial court, the defendant asserts that the court also had an obligation to inquire into whether his trial attorney had been ineffective for allowing Raymond's alleged "friend" to remain on the jury. As the State counters, however, this assertion is without merit for several reasons.

¶ 18 First of all, assuming *arguendo* that the trial court was obligated to review the defendant's *ex parte* correspondence for ineffective-assistance-of-counsel claims (see *People v. Radford*, 359 Ill. App. 3d 411, 417 (2005) (holding that the defendant's *ex parte* letter to the trial court, in which the defendant complained about his trial attorney's performance, did not constitute a proper posttrial motion alleging ineffective assistance of counsel for purposes of *Krankel*); but see *Moore*, 207 Ill. 2d at 79 (holding that to warrant an initial inquiry into an ineffective-assistance-of-counsel allegation, "a *pro se* defendant is not required to do any more than bring his or her claim to the trial court's attention")), because the defendant was represented by counsel during his posttrial proceedings, his allegations had to be "specific claims with supporting facts" (*Radford*, 359 Ill. App. 3d at 418). Additionally, "counsel's actions during jury selection are generally considered a matter of trial strategy" (*People v. Manning*, 241 Ill. 2d 319, 333 (2011)), and a defendant claiming that trial counsel was ineffective for failing to remove a biased juror must demonstrate actual prejudice (*id.* at 330-33).

¶ 19 Here, the defendant's claim that Raymond had a "friend" on the jury was one of several complaints lodged in the defendant's letters to the court, but only his allegation that his trial attorney should have obtained an acquittal was couched in terms of ineffective

assistance of counsel. As the State notes on appeal, "The defendant did not argue his counsel was ineffective for failing to strike the juror, only that the juror should have been removed." Moreover, the defendant's letters did not allege that the juror's presence on the jury resulted in actual prejudice. Lastly, even if the defendant's juror complaint had been properly framed as an ineffective-assistance-of-counsel claim, the defendant's assertion that Raymond had a friend on the jury is belied by the record.

¶ 20 During *voir dire*, the juror in question indicated that he knew Raymond as "an acquaintance" through mutual friends, but he did not know Raymond "on a personal basis" and could not say whether he was Raymond's "friend or his enemy either one." The juror further indicated that although he had "heard some secondhand accounts of what happened," he had not "formed any opinion based on those accounts," and in any event, his "knowledge of Mr. Raymond" would not "affect [his] ability to be a fair and impartial juror in this case." Obviously, during *voir dire*, it is not objectively unreasonable to not seek to remove a juror whose "responses did not specifically reveal any identifiable bias or prejudice against [the] defendant" (*People v. Wilson*, 303 Ill. App. 3d 1035, 1045 (1999)), and under the circumstances, we agree with the State's assessment that even if the defendant's juror complaint "is construed to be an allegation of ineffective assistance for failing to strike the juror, the [allegation] is facially insufficient and rebutted by the record."

¶ 21 Sentence Credit

¶ 22 A defendant is entitled to credit against his sentence for time spent in custody on his charged offenses. 730 ILCS 5/5-8-7(b) (West 2008). "A defendant held in custody for any part of the day should be given credit against his sentence for that day." *People v. Smith*, 258 Ill. App. 3d 261, 267 (1994).

¶ 23 Here, the defendant correctly notes that although he was taken into custody on August

5, 2009, and sentenced on January 29, 2010, he was only credited for 177 days spent in custody, when he should have been credited for 178. The State concedes that the defendant is entitled to an additional day of credit, and we accordingly order that the defendant's mittimus be amended to reflect credit for 178 days spent in custody prior to sentencing. *People v. Starnes*, 374 Ill. App. 3d 132, 144 (2007).

¶ 24

CONCLUSION

¶ 25 For the foregoing reasons, we affirm the defendant's conviction and order that his mittimus be amended to reflect an additional day of sentence credit.

¶ 26 Affirmed; mittimus ordered corrected.