

No. 1-11-1032

**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. 05 CR 18916
	)	
LEONARD GOLDBERG,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm the judgment of the trial court where defendant failed to address the *Krankel* inquiry for which the cause was remanded; we dismiss defendant's *Montgomery* claim where we have no jurisdiction to entertain that issue.

¶ 2 This case comes before us a second time after we remanded the matter to the trial court for it to conduct a preliminary inquiry into defendant's *pro se* claims of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). *People v. Goldberg*, No. 1-06-1335 (2008) (unpublished order pursuant to Supreme Court Rule 23). In the present appeal, defendant asserts that new facts came to light during the hearing on remand that require this court to re-examine its decision regarding a claim he made in his previous direct appeal, *i.e.*, that the trial court failed to conduct the balancing test set forth in *People v. Montgomery*, 47 Ill. 2d 510 (1971), before admitting his prior convictions.

¶ 3 The record reveals that defendant was charged with burglary after police arrested him on July 29, 2005, inside the basement of 5922 North Maplewood Avenue in Chicago. During defendant's bench trial, the court admitted his 1998 conviction for attempted burglary and 1994 conviction for burglary. Defendant was subsequently found guilty of burglary. At sentencing, defendant raised a *pro se* claim of ineffective assistance of trial counsel, which the trial court ignored. The court then sentenced defendant as a Class X offender to 90 months of imprisonment.

¶ 4 On direct appeal, defendant contended, in part, that the trial court erred by not balancing the probative value of admitting his prior convictions against their prejudicial effect as directed by *Montgomery*, and the trial court failed to inquire into his *pro se* posttrial allegations of ineffective assistance of counsel. This court affirmed defendant's conviction, but remanded the cause solely for a hearing on defendant's ineffective assistance of counsel claim. Specifically, this court "order[ed] the trial court to conduct [a preliminary] inquiry pursuant to *Krankel*, for the purpose of considering defendant's ineffective assistance of counsel claim." *Goldberg*, No. 1-06-1335, order at 14.

¶ 5 Before the cause was heard in the trial court, this court recalled its mandate. The trial court nevertheless held a preliminary inquiry on August 6, 2008. During the hearing, the court stated, "[defendant] does have a history of prior convictions for burglary that would affect his credibility." The court ultimately found that trial counsel adequately represented defendant. Due to the fact that this court had recalled its mandate prior to the *Krankel* hearing, the trial court did not have jurisdiction at that time to enter an order. On March 2, 2011, the appellate court filed an order based on an agreed motion for summary disposition in which we directed the clerk to docket this matter before the trial court and instructed the trial court to reinstate its previous findings of August 6, 2008, to allow for a final appealable order. *People v. Goldberg*, No. 1-10-0917 (dispositional order). On March 21, 2011, the trial court held that its findings at the August 6, 2008 hearing would stand. This appeal follows.

¶ 6 On appeal, defendant does not contest the trial court's findings that he was provided effective

assistance of counsel. Instead, he contends that new facts came to light during the *Krankel* hearing on remand that require this court to re-examine its decision on direct appeal regarding his *Montgomery* claim. Defendant specifically points to the trial court's statement on remand that his prior convictions had an impact on his credibility. Defendant asserts that this statement shows the trial court improperly took these convictions into consideration without evaluating whether their probative value outweighed their prejudicial effect. He thus requests that this court reverse his conviction and remand for a new trial.

¶ 7 Defendant's argument on appeal fails because the circuit court on remand did not have jurisdiction to reconsider his *Montgomery* claim. A trial court must obey the clear and unambiguous directions in a mandate issued by a reviewing court. *People ex rel. Daley v. Schreier*, 92 Ill. 2d 271, 276 (1982). When a reviewing court issues a mandate, the trial court is only vested with jurisdiction to take such action which conforms to the mandate, and any other order issued by the trial court is outside the scope of its authority and void for lack of jurisdiction. *Schreier*, 92 Ill. 2d at 276-77; *People v. Harrison*, 225 Ill. App. 3d 1059, 1060 (1992).

¶ 8 Here, this court entered a very specific mandate affirming defendant's convictions and remanding the cause to the trial court to "conduct [a preliminary] inquiry pursuant to *Krankel*, for the purpose of considering defendant's ineffective assistance of counsel claim." If the trial court issued any other order, it would be outside the scope of its authority and void for lack of jurisdiction. *Schreier*, 92 Ill. 2d at 276-77. The trial court in this case followed our mandate and only conducted a *Krankel* hearing.

¶ 9 Nevertheless, defendant requests that we now re-examine his *Montgomery* claim in light of the trial court's statement that defendant's prior convictions affected his credibility. We cannot address defendant's claim because it is outside the scope of our jurisdiction. The appellate court's jurisdiction is limited to the judgment specified in the notice of appeal. *People v. Carter*, 91 Ill. App. 3d 635, 638 (1990). "Illinois courts have held that a notice of appeal confers jurisdiction on

a court of review to consider only the judgments or parts thereof specified in the notice of appeal." *People v. Smith*, 228 Ill. 2d 95, 104 (2008). Moreover, pursuant to Supreme Court Rule 303(b)(2) (eff. June 4, 2008), generally, when an appeal is taken from a specific judgment, this court acquires no jurisdiction to review other judgments, or parts of judgments, not specified or inferred from the notice of appeal. *McGill v. Gaza*, 378 Ill. App. 3d 73, 75 (2007). Here, in light of our specific mandate on remand we cannot infer from the notice of appeal a challenge to the *Montgomery* claim that defendant now raises on appeal, further, we do not have jurisdiction to address that issue. Accordingly, defendant's appeal as to that issue is dismissed.

¶ 10 Although we have jurisdiction over the *Krankel* inquiry for which we remanded this cause, defendant makes no argument on that issue and accordingly we affirm the judgment of the circuit court on that issue.

¶ 11 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County in part and dismiss in part.

¶ 12 Affirmed in part; dismissed in part.