

2013 IL App (1st) 111177-U
No. 1-11-1177

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SIXTH DIVISION
March 15, 2013

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Plaintiff-Appellee,)	Appeal from the
)	Circuit Court of
v.)	Cook County.
)	
CENTANUS GREEN,)	No. 10 CR 17909
)	
Defendant-Appellant.)	The Honorable
)	William J. Kunkle,
)	Judge Presiding.
)	

JUSTICE HALL delivered the judgment of the court.
Justice Gordon and Reyes concurred in the judgment.

ORDER

¶ 1 *HELD*: Trial court complied with *People v. Krankel*, 102 Ill. 2d 181, 187-89 (1984), by adequately inquiring into defendant's allegations of ineffective assistance of counsel. Furthermore, defendant's complaint that counsel failed to call a material witness to testify concerned trial strategy and was not a ground for a post-trial *Krankel* inquiry, and defendant's complaint that counsel failed to obtain transcripts prior to filing a post-trial motion was not supported by any showing of prejudice. Various fines and fees were vacated.

¶ 2 Following a bench trial, defendant Centanus Green was found guilty of theft and, based on his criminal background, was sentenced to a six-year Class X prison term. He was also assessed \$610 in fines, fees, and costs. On appeal, citing *People v. Krankel*, 102 Ill. 2d 181, 187-89 (1984), defendant contends that the cause should be remanded for consideration of his *pro se* post-trial claims of ineffective assistance of trial counsel. Defendant also challenges some of the assessed fines, fees, and costs. The State challenges the *Krankel* issue, but agrees that the fines, fees, and costs that defendant challenges must be vacated.

¶ 3 During pretrial proceedings on December 30, 2010, defendant told the court that he did not want defense counsel for his attorney. The court asked why not and stated that defense counsel was "one of the best we got here." Defendant replied, "He don't talk to me." The court told defendant, "When it's important he will talk to you." Defense counsel stated that he had reviewed everything with defendant.

¶ 4 The State's trial evidence established that on September 24, 2010, defendant and a codefendant, Eric Jones, removed metal grates that surrounded City of Chicago trees in the area of 7845 South Racine Avenue. Defendant confessed to a Chicago police detective that he was a scrapper, that he planned to sell the metal grates for scrap at a scrap yard, and that he had a very

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expensive drug habit. Defendant told another officer that he needed the money. The value of the stolen metal grates was \$2,000. Chicago police recovered the stolen metal grates from a van in which defendant and codefendant were traveling. Police had curbed the van based on a complaint.

¶ 5 Defendant testified on his own behalf that Chicago police arrested him while he stood at a bus stop 30 seconds after codefendant arrived in a van and asked him if he wanted a ride. Defendant denied that he had ever taken any metal grates and he denied that he had made any statements to the police.

¶ 6 The court found that the testimony of the police officers was "consistent, credible and believable" and unimpeached except by defendant, whose testimony was "not *** particularly believable," and instead was biased and self-interested, and impeached by the evidence of the three prior convictions.

¶ 7 On March 25, 2011, defendant filed a *pro se* post-trial motion making the following allegations on information and belief against defense counsel. Defendant was denied due process of law because defense counsel failed to subpoena "the witness to material fact," despite defendant's requests. Defense counsel also failed to order a transcript from the official court reporter prior to filing a motion for a new trial, thereby depriving defendant of the opportunity to search the record and preserve all errors for appeal. Ineffective assistance was another possible error.

¶ 8 During post-trial proceedings on March 25, 2011, defendant stated that he wanted

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to "post a Motion for a New Trial, hearsay." Defense counsel argued the separate motion that he had filed. The court then indicated that it had found the police testimony to be more credible and that it had not found defendant's testimony to be credible. The court observed that defense counsel's motion encompassed defendant's hearsay claim, and the court denied defense counsel's motion for a new trial. Defendant then informed the court that he had his own *pro se* motion, and the court said, "Let me see it. I'll read it." Defendant asked for a date, the 29th, and the court responded, "Quiet, sir. By appointed attorney is heard and denied. Motion Defendant New Trial filed pro se by defendant heard and denied."

¶ 9 In the *pro se* post-trial motion, defendant alleged that trial counsel was ineffective, refused to call a material witness, and failed to obtain a transcript to prepare the post-trial motion. Defendant alleged that ineffective assistance was a possible error.

¶ 10 On appeal, defendant contends first that the trial court violated *Krankel*. He argues that the trial court did not inquire into the substance of his post-trial complaints against defense counsel, namely, that defense counsel was ineffective, failed to call a material witness, and failed to obtain a transcript before filing a post-trial motion. Defendant argues that the trial court was obligated to inquire into even "somewhat vague" allegations and that the court's reading of the motion and dismissing it within seconds of receiving it was not tantamount to conducting an inquiry. Defendant maintains that the record does not show that the trial court relied on its knowledge of counsel's performance, but that if the trial court did so, it was erroneous because the allegations of ineffective assistance concern matters *dehors* the record

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which the court did not know, namely, the identity of the witness, the substance of the witness's testimony, whether the witness was ever contacted, which transcripts defendant wanted, or whether they would show that defendant did not receive his *Miranda* (*Miranda v. Arizona*, 384 U.S. 436, 479 (1966)) warnings and that counsel should have filed a motion to suppress.

Defendant requests that the cause be remanded for further inquiry pursuant to *Krankel*.

Defendant argues that the error is not harmless because the court did not know the identity of the material witness whom defendant wished to call to testify, and the nature of the error is unknown.

¶ 11 The State responds that the trial court sufficiently inquired into defendant's allegations of ineffective assistance of trial counsel. The State alternatively argues that, even if the trial court did not adequately inquire into defendant's allegations of ineffective assistance of counsel, the error was harmless because defendant's motion did not support the allegation. The State maintains that defendant's allegation of possible ineffective assistance is "inadequate on its face."

¶ 12 Where a defendant makes a colorable *pro se* allegation that he received ineffective assistance of counsel, the court should appoint new counsel before holding a hearing on the allegation. *Krankel*, 102 Ill. 2d at 189. The trial court needs to inquire into the defendant's allegation, either by talking to defense counsel or defendant (*People v. Moore*, 207 Ill. 2d 68, 78 (2003)) or by relying on its knowledge of counsel's performance and the insufficiency of the allegations (*People v. Milton*, 354 Ill. App. 3d 283, 292 (2004)). If the trial court determines that

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the claim lacks merit or involves only trial strategy, the court is not required to appoint new counsel and can deny the motion. *Moore*, 207 Ill. 2d at 78; *People v. Vargas*, 409 Ill. App. 3d 790, 801 (2011). A *Krankel* inquiry is not required where the defendant's allegations concern only "unassailable" matters of trial strategy, such as which witnesses to call and which evidence to present. *People v. Ward*, 371 Ill. App. 3d 382, 433 (2007). The court needs to appoint new counsel only where there is possible neglect of the case. *Moore*, 207 Ill. 2d at 78. The issue on review is the adequacy of the *Krankel* inquiry made by the trial court (*Moore*, 207 Ill. 2d at 78), so we shall review the matter *de novo* (*Moore*, 207 Ill. 2d at 75; *Vargas*, 409 Ill. App. 3d at 801), but see *People v. McCarter*, 385 Ill. App. 3d 919, 941 (2008) (applying a more deferential standard of review for manifest error).

¶ 13 In this case, the trial court did respond to defendant's *Krankel* claims. The trial court asked to see defendant's motion and said that it would read the motion *instanter*. The court then read and considered defendant's motion before expressly denying it. Defendant failed to name the witness and failed to discuss the connection of the witness to the case. Defendant has not shown how defense counsel's decision not to call the unidentified witness was not trial strategy. See *People v. Tolefree*, 2011 IL App (1st), 100689, ¶ 34 (involving a failure to conduct cross-examination). That was a strategic or tactical decision which did not warrant the appointment of new counsel. See *Ward*, 371 Ill. App. 3d at 433. A showing of prejudice is required for an allegation that counsel failed to secure transcripts. See *In re W.L.W.*, 299 Ill. App. 3d 881, 885-86 (1998). There is no proof here that counsel's failure to obtain transcripts

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prejudiced defendant. Nor is there any indication that counsel's failure to file a motion to suppress prejudiced defendant in any way. Chicago police detective Rita Schergen testified that defendant waived his rights, decided to speak with her, confessed to the crime, and told her that he had a very expensive drug habit and that he was going to exchange the metal grates for cash. Chicago police officer Derrick Armstrong testified that he did not ask defendant any questions and that defendant volunteered that he needed the money. The trial court explicitly stated that it believed the testimony of the police officers. Counsel filed a motion for a new trial and preserved defendant's right to an appeal. Even though counsel did not file a motion to suppress, the trial court explicitly believed the testimony of the officers, which showed that a motion to suppress would not have been successful because defendant waived his constitutional rights and voluntarily spoke with Armstrong and Schergen. Thus, the trial court properly denied defendant's *Krankel* motion because the allegation about the unnamed, missing material witness concerned trial strategy, the allegation about the missing transcript did not show possible neglect of the case, and there is no reasonable probability that a motion to suppress would have succeeded. The trial court believed the officers' testimony; furthermore, counsel filed a post-trial motion and preserved defendant's appellate rights. We conclude that the court sufficiently inquired into the *Krankel* motion and properly denied it.

¶ 14 The cases cited by defendant do not warrant a contrary conclusion. For example, in *Moore*, 207 Ill. 2d at 79, the record did not show whether the trial court read the defendant's *pro se* post-trial motion. The trial court in *Moore* misapprehended the law, was unaware of the

Krankel rule, held no inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel, erroneously believed that the defendant's request for trial counsel other than the public defender could be resolved by the appointment of new *appellate* counsel, and "did not consider defendant's motion at all." *Moore*, 207 Ill. 2d at 75, 79-80. Therefore, remandment was required for the limited purpose of a preliminary investigation into the defendant's *pro se* post-trial claim of ineffective assistance of counsel. *Moore*, 207 Ill. 2d at 81. In *Vargas*, 409 Ill. App. 3d at 800, 802, the trial court made "utterly no" inquiry into the defendant's vague allegations that counsel failed to obtain "records and information." The matter was remanded for a *Krankel* inquiry. In *People v. Barnes*, 364 Ill. App. 3d 888, 898-900 (2006), remandment was required for a preliminary inquiry into the defendant's ineffective assistance claims because the trial court failed to inquire into the defendant's claims that he requested but did not receive transcripts, information about alleged alibi witnesses, and the extent to which trial counsel was aware of the alleged witnesses and took action. In *People v. Peacock*, 359 Ill. App. 3d 326, 339-40 (2005), the trial court failed to inquire into the defendant's letter. We have considered, and rejected, all of defendant's arguments on appeal.

¶ 15 Finally, defendant contends that the \$610 in fines, fees, and costs that the trial court assessed should be reduced by \$235 to \$375. The State agrees.

¶ 16 Defendant is currently registered in the DNA databank. Therefore, the \$200 DNA analysis fee (730 ILCS 5/5-4-3(j) (West 2010)) should be vacated because it applies to defendants who are not currently registered in the DNA databank (*People v. Marshall*, 242 Ill. 2d

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285, 301-02 (2011)).

¶ 17 Defendant also is entitled to \$35 in presentence custody credit (725 ILCS 5/110-14(a) (West 2010)) for the \$30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (2010)) and the \$5 youth diversion peer court fine (55 ILCS 5/5-1101(e) (West 2010)). See *People v. Jones*, 223 Ill. 2d 569, 581-82 (2006); *People v. Price*, 375 Ill. App. 3d 684, 702 (2007).

¶ 18 The judgment of the circuit court is affirmed in part and the \$610 in fines, fees, and costs are decreased by \$235 to \$375.

¶ 19 Affirmed in part and modified in part.