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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. 08 CR 10621
)	
GREG COLEMAN,)	Honorable
)	Maura Slattery Boyle,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's first-degree murder and armed robbery convictions were affirmed over defendant's arguments that the trial court erred in its consideration of his posttrial claims of ineffective counsel.

¶ 2 Defendant, Greg Coleman, was convicted of first-degree murder and armed robbery following a bench trial. On appeal, defendant argues that the trial court erred by failing to inquire into the factual basis of his posttrial allegations of ineffective assistance of counsel and, thus, requests that we remand the matter to the trial court for a proper inquiry. Alternatively, defendant argues his claims should be remanded for the appointment of new counsel, because he demonstrated possible neglect of trial counsel. We affirm.

¶ 3 At trial, Zedrick Collins testified that at about 3 a.m. on October 27, 2007, he left Joyce Smith's second-floor apartment at 2701 South Dearborn Street in Chicago. As Mr. Collins was about to exit the lobby of the building, defendant confronted him with a gun, told him not to move, and

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took his cash and marijuana. During the robbery, Mr. Collins looked up and saw Ms. Smith standing at the top of the stairs. Marvel Berry then entered the lobby and defendant turned the gun on Mr. Berry. When defendant attempted to go through Mr. Berry's pockets, Mr. Berry flinched, and defendant shot him. Mr. Collins ran back upstairs to Ms. Smith's apartment and then heard another gunshot. Mr. Collins has known defendant for many years and later identified defendant in a photo array as the person who shot Mr. Berry.

¶ 4 Harold Milon testified that he and Mr. Berry were together on October 27, 2007, at 3 a.m. near the building at 2701 South Dearborn Street. Mr. Berry entered the building first. When Mr. Milon entered shortly thereafter, he observed who he "thought" was defendant in a "gray hoodie" carrying a revolver. Mr. Milon ran to a nearby building and observed someone in a "black hoodie" coming around the corner. Mr. Milon told a large group standing in front of a building at 2730 South State Street that Mr. Berry was being robbed but was not sure who the robber was. As the group ran to the scene, Mr. Milon saw two men—one in a "gray hoodie," the other in a "black hoodie"—running in a nearby field. Someone in the group shot at the two men, and the man in the "gray hoodie" fired back, hitting Mr. Milon in the foot. Mr. Milon was impeached with his written statement to police where he positively identified defendant as the offender who was wearing a "gray hoodie."

¶ 5 Joyce Smith testified defendant was her granddaughter's half-brother, Mr. Milon was her grandson, and Mr. Collins was like a grandchild to her. Ms. Smith testified that when she exited her apartment on October 27, 2007, at about 3 a.m., she saw an unidentified man pointing a gun at Mr. Collins at the bottom of the stairs. Ms. Smith ran inside her apartment and called 911. After making the 911 call, Ms. Smith exited her apartment, looked down the stairs, and saw Mr. Berry standing against the wall. After Ms. Smith again returned to her apartment, she heard gunshots. Ms. Smith was impeached with her prior written statement in which she identified defendant as the gunman.

¶ 6 The State presented evidence regarding the autopsy of Mr. Berry. Mr. Berry suffered two gunshot wounds and two fired bullets were recovered from his body. Additionally, forensic testing

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demonstrated that the two bullets were fired from the same firearm.

¶ 7 The State admitted into evidence photographs of the entry door to 2701 South Dearborn Street (People's exhibit 11); the outside lighting (People's exhibit 12); the lobby and its lighting (People's exhibit 13 and 14); and the stairwell to the lobby (People's exhibit 15). Mr. Collins, during his testimony, marked on People's exhibit 15 where he was standing at the bottom of the stairs, and where Ms. Smith would have stood.

¶ 8 On March 1, 2011, following closing arguments, the trial court found defendant guilty of the first degree murder of Mr. Berry and the armed robbery of Mr. Collins.

¶ 9 At an April 1, 2011, proceeding, trial counsel obtained leave to file a motion for a new trial and informed the trial court that defendant had "his own motion that he wants to file." Defendant's *pro se* motion was in "letter" form. Defendant informed the trial court that he was raising claims of ineffectiveness of counsel, including a claim that trial counsel failed to produce photographs of the scene which would have contradicted the testimony of the State's witnesses. The trial court stated:

"THE COURT: You know what I have got real good records on this. *** I asked you about were you ready. I asked about witnesses. I asked you how you wanted to proceed and you told me and I have it verbatim in the transcript you were ready, you talked to [trial counsel], you were happy. I go over this. Because I know invariably when a decision comes down and its not to the defendant's liking the first thing they try and say, they come back on a post conviction matter [as] ineffective assistance of counsel."

The trial court told defendant to discuss his *pro se* motion with trial counsel and determine whether he wished to now represent himself as to the motion for a new trial and continued the case to May 19, 2011.

¶ 10 On May 19, 2011, the trial court denied the motion for a new trial presented by trial counsel, and then sought to proceed to a sentencing hearing. Defendant, however, interrupted and indicated he wished to "file for ineffective counsel." The trial court responded as follows:

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"THE COURT: There is a time and a place for everything. You will have your opportunity to do that in accordance with the rules.

I went over this with you at the very beginning of the trial, and I have the transcript to further prove that.

You indicated you were ready for trial. You indicated that you talked to [trial counsel] about possible witnesses and how to proceed. You indicated that you were very happy with her representation.

The trial went on, the witnesses were presented, the Court made its ruling.

I'm going to continue right now to the - - Your motion for a new trial is denied. I'm going to continue it for sentencing. You can put that in your appeal. Okay."

During allocution, defendant again stated he wished to bring a motion as to ineffective assistance of trial counsel. Throughout the rest of the proceedings, defendant told the trial court about the alleged deficiencies in his representation. He complained that trial counsel did not obtain photographs and camera footage of the scene and failed to present certain points in closing argument. The trial court considered his claims and said that defendant had stated in court before trial that he was happy with his representation and their decisions as to how to proceed. The court specifically stated:

"THE COURT: *** I don't want [anyone coming out of here thinking] that it was just Zedrick Collins because it wasn't. It was a combination of me observing the witnesses, what they had to say, what they didn't say, how they said it, what the officers had to say in this case that I believe the State has proven you guilty beyond a reasonable doubt of this event.

* * *

I'd like to add, I asked you several times, not even on the last court date but before that, were you ready, is this how you wanted to proceed, you said yes. Were you happy with

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your representation. I made that all abundantly clear and we went through that and you indicated yes.

And, I mean, you will have your opportunity to present those on appeal. I'm not trying to in any way dissuade you from that. I'm just saying that we went over various things."

¶ 11 The trial court imposed a sentence of 45 years' imprisonment for the murder, which included a 25-year mandatory enhancement for personally discharging a firearm causing death, and a consecutive prison term of 21 years for the armed robbery. After defendant was sentenced, the trial court accepted his *pro se* motion as to ineffectiveness of counsel, and continued the matter to June 13, 2011.

¶ 12 The common law record includes a letter from defendant to the clerk of the circuit court of Cook County dated May 16, 2011, and another handwritten document dated May 19, 2011. These documents, which are not file-stamped, set forth defendant's objections to trial counsel's representation and requested new counsel be appointed to present his motion for a new trial. The record also includes a *pro se* motion "for ineffectiveness of counsel" stamped as received by the office of the clerk of the circuit court on May 20, 2011. The motion contended trial counsel was ineffective for failing to: proceed on a motion to suppress; properly present and cross-examine witnesses; object when necessary; investigate the crime scene; interview witnesses; argue certain facts in closing argument; retrieve camera footage from the crime scene; and provide the trial court with a clear understanding of the discrepancies in the testimony of the witnesses.

¶ 13 On June 13, 2011, trial counsel presented her motion to reconsider defendant's sentence, which the court denied.

¶ 14 On that same date, the trial court then gave defendant an opportunity to present and argue his ineffective assistance of trial counsel claims. The proceedings included the following colloquy between defendant and the trial court:

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"THE DEFENDANT: The pictures that [were not] presented at trial.

THE COURT: Yes.

THE DEFENDANT: Supposed to have been presented on cross-examination on the witnesses for the simple fact that Joyce Smith lives on the [F]ederal side and the murder happened on the State Street entrance. I have read it in the discovery and it's impossible for you to see anything happen on the State Street entrance facing the Federal side and it's possible for you to see from the top of the stairs to the wall. So how could they see one another [then?] So that's impossible. ***

* * *

THE DEFENDANT: And [] Zedrick said I went in both [] [Mr. Berry's] pockets in his statement. I asked my lawyer can you get his - - Marvell Berry possession. She was like I can't give those things. That's at the morgue.

* * *

THE DEFENDANT: I asked my lawyer *** can she get all of the possessions that Marvel Berry he had on him to show that I didn't rob them or nothing like that and that this was a lie. ***

THE COURT: Let's deal with the basic simple fact of two things. First of all, Joyce Smith and [Mr. Milon] recanted absolutely everything that they ever saw and heard. *** Now, the only person that did indicate that they saw you out there and identified you as there is Mr. Zedrick Collins. *** So that while you are questioning the pictures and whether or not those are being shown that's a trial strategy on that one. *** In order to indicate that there is ineffective assistance of counsel you have to meet a minimum prong here. You have to show that this attorney in some way acted so unreasonable, so beyond the scope that anybody could see that it was plain error. Now, there are trial strategies and who he is called and

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questioned and those are trial strategies. ***

* * *

THE DEFENDANT: This murder happened at 3:00 in the morning. *** I was 16, 17 when this murder took place. My mother doesn't allow me out at that time. ***

* * *

THE COURT: What you are arguing right now is evidence as opposed to ineffective assistance of counsel. *** What I'm not seeing at this point is how you are even obtaining the first level of ineffective assistance of counsel and that you haven't even raised anything. ***

* * *

DEFENDANT: *** Me and my lawyer we talked about certain things that's supposed to have been presented in front of a judge. I asked her what do you think about a bench trial. She was like we have an outstanding judge. I am like I want to go with a bench trial. ***

* * *

DEFENDANT: And then we supposed to have the camera footage from right there to show that what happened. Then she supposed to presented pictures and all that stuff and she told me this is for closing arguments. Right after closing arguments you told me guilty. ***

THE COURT: *** You talked with her about your trial strategy. You talked to her about witnesses. You talked to her how you wanted to proceed. *** Now, and anything that [trial counsel] did I found that she cross-examined, she went after witnesses, she [went] after them about their statement, what was indicated originally in the station prior - - right after the murder to how they testified now and the

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inconclusiveness and the distance away and the lighting conditions. Nothing that you have presented to this court at this moment rises to the level even to the first prong to prove that she in [any way] acted ineffectively. The decisions that you are questioning for lack of a better term is buyer remorse or Monday morning quarterbacking. *** I mean she did everything that she was supposed to do in the court's view. *** And the things that you are questioning are trial strategy. ***"

After the hearing, the trial court denied defendant's ineffectiveness of counsel motion. Defendant timely appealed.

¶ 15 On appeal, defendant first argues the trial court failed to examine the underlying factual basis of his *pro se* posttrial ineffective assistance of trial counsel claims. Defendant, thus, requests a remand for that purpose pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984) and *People v. Moore*, 207 Ill. 2d 68 (2003).

¶ 16 Our supreme court, beginning with its decision in *Krankel*, has instructed that when a defendant presents a *pro se* posttrial claim of ineffectiveness of counsel, the trial court should examine the factual basis of the claim. *Id.* at 77-78. To accomplish this, the trial court may confer with counsel regarding the facts surrounding the allegations, or hold a brief discussion with the defendant. *People v. Milton*, 354 Ill. App. 3d 283, 292 (2004). The trial court may also evaluate the defendant's claims based on its knowledge of trial counsel's performance at trial, or the insufficiency of the defendant's allegations on their face. *Id.* In addition, "[w]here the trial court's probe into a defendant's allegations reveals [those claims to be] 'conclusory, misleading, or legally immaterial' or do 'not bring to the trial court's attention a colorable claim of ineffective assistance of counsel,' the trial court may be excused from further inquiry." *People v. Burks*, 343 Ill. App. 3d 765, 774 (2003) (quoting *People v. Johnson*, 159 Ill. 2d 97, 126 (1994)).

¶ 17 After the inquiry, the trial court need not appoint new counsel if it concludes that the ineffectiveness claim lacks merit or pertains purely to matters of trial strategy, but should appoint

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new counsel if the defendant's allegations reveal "possible neglect." *Moore*, 207 Ill. 2d at 78; *Krankel*, 102 Ill. 2d at 187-89. If appointed, new counsel would represent defendant on his claims of ineffectiveness, and independently investigate those claims. *Id.*

¶ 18 We must first consider the parties' dispute as to the applicable standard of review. Defendant, citing *Moore*, maintains the trial court's decision not to appoint new trial counsel should be reviewed *de novo*. *Moore*, 207 Ill. 2d at 75. The State contends the standard of review is whether the trial court's decision was manifestly erroneous. The standard of review, if the trial court does not make a determination on the merits of an ineffectiveness of counsel motion, is *de novo*. *Id.* However, where the trial court makes a determination on the merits, this court will reverse only if the trial court's actions were manifestly erroneous. *People v. McCarter*, 385 Ill. App. 3d 919, 941 (2008); *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 25. " 'Manifest error' is error that is clearly plain, evident and indisputable.' " *Tolefree*, 2011 IL App (1st) 100689, ¶ 25 (citing *People v. Morgan*, 212 Ill. 2d 148, 155 (2004)). Because the trial court here reached a determination on the merits of defendant's ineffective assistance of trial counsel claims, we will reverse the decision only if the trial court's action was manifestly erroneous.

¶ 19 We must now consider whether the trial court conducted an adequate inquiry into defendant's *pro se* allegations. *Moore*, 207 Ill. 2d at 78. Defendant, at the different posttrial court hearings, asserted his claims that his trial counsel was ineffective. On each occasion, the trial court discussed with defendant his points of dissatisfaction with trial counsel. At the June 13, 2011, hearing on his motion, defendant was allowed to fully present his arguments as to his ineffective assistance claims. The trial court considered his objections and engaged defendant in a lengthy discussion. The exchange between defendant and the court on that date spanned over 10 pages of the report of proceedings. The record of the hearing demonstrates that the trial court had reviewed defendant's written submissions as to ineffective representation and carefully listened to defendant's oral presentment. Based on its knowledge of trial counsel's performance and the trial proceedings, the

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trial court found defendant's claims to be nonmeritorious. *Milton*, 354 Ill. App. 3d at 292. The trial court found trial counsel's performance was not inadequate, and specifically concluded that she "did everything that she was supposed to do." The trial court found defendant's ineffectiveness claims, went to matters of trial strategy, and involved issues as to the sufficiency of the evidence. Our review of the record leads to our conclusions that the trial court conducted a proper and sufficient inquiry under *Krankel* and did not commit manifest error in its inquiry.

¶ 20 In reaching these conclusions, we reject defendant's argument that the trial court failed to examine the underlying factual basis of his claim that trial counsel was inadequate for failing to cross examine Ms. Smith with photographs of the building and obtain camera footage from the scene. In his *pro se* motion, defendant alleged, generally, that if trial counsel had presented photographs of the scene and camera footage of and near the scene, this evidence would have given him an "alibi defense." Before the trial court, at the various posttrial proceedings however, defendant argued that this evidence would have served to impeach the State's witnesses. Defendant raised a claim that the photographs of the building would have impeached Ms. Smith as to her ability to observe the lobby from the location of her apartment. Defendant argued that footage from a nearby camera would have shown "what happened." Contrary to defendant's contention, the trial court did evaluate his claim regarding trial counsel's decision not to use photographs of the scene and camera footage to impeach Ms. Smith and Mr. Milton, and concluded that trial counsel's decision was a matter of trial strategy. We note that the trial court had the opportunity to view the photograph of the scene which were admitted at trial and could assess defendant's claims on the basis of those exhibits. The trial court noted that trial counsel had effectively cross-examined the State's witnesses including as to their ability to observe. The trial court found that it was a matter of trial strategy for trial counsel to decide whether to impeach Ms. Smith and Mr. Milton further with photographs or camera footage when these witnesses at trial had recanted their prior statements identifying defendant as the offender. In addition, as the State puts forth in its brief, any camera footage would not have provided

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him with an alibi. At best, such evidence would have shown he was not in the camera footage or frames. However, it would not have definitively placed him somewhere other than the scene of the crime. See *People v. Mullins*, 242 Ill. 2d 1, 24 fn. 6 (2011) (quoting Black's Law Dictionary 84 (9th ed. 2009)) ("An alibi is '[a] defense based on the physical impossibility of a defendant's guilt by placing the defendant in a location other than the scene of the crime at the relevant time.'").

¶ 21 We also find defendant's reliance on *People v. Barnes*, 364 Ill. App. 3d 888 (2006), misplaced. In *Barnes*, the trial court failed to inquire into the defendant's ineffective assistance of counsel claims, which included that he requested but did not receive transcripts or information about alleged alibi witnesses. *Id.* at 899. We specifically held that the trial court's "brief conclusory review"—that the defendant's arguments were a matter of trial strategy—did not satisfy the requirement for factual assessment as described by *Moore*. *Id.* Here, in contrast to *Barnes*, the trial court was informed as to the basis of defendant's claims of ineffectiveness, and those claims were only rejected after an in-depth analysis.

¶ 22 Alternatively, defendant argues that even if the trial court made an adequate inquiry into his *pro se* allegations pursuant to *Krankel*, the trial court erred in failing to appoint new counsel as he made a sufficient showing of neglect.

¶ 23 As discussed above, new trial counsel should be appointed only where the allegations of ineffectiveness show possible neglect of the case. *People v. Washington*, 184 Ill. App. 3d 703, 711 (1989). The trial court found defendant's complaints fell under the parameters of trial strategy, and challenges to the sufficiency of the evidence. The trial court then denied defendant's motion as being without merit. We conclude the trial court did not manifestly err in so finding. See *People v. Chapman*, 147 Ill. 2d 173, 230-31 (2000) (holding that the trial court did not err in failing to appoint new trial counsel for defendant where his ineffective assistance of trial counsel claims were based on matters reserved by trial strategy, while the rest of his claims were entirely lacking in merit). As there was no showing of possible neglect by trial counsel in the case at bar, the trial court did not

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commit manifest error in failing to appoint new counsel.

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 25 Affirmed.