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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of McHenry County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 07-CF-354
	)	
DANIEL T. CHARNESKI,	)	Honorable
	)	Sharon L. Prather,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Presiding Justice Burke and Justice Jorgensen concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* (1) Defendant did not file a *pro se* posttrial motion triggering a duty to inquire under *Krankel*: the filing was a notice of appeal, in substance as well as by title; (2) defendant's duplicative document-storage, court-automation, circuit-clerk, court-security, "court," and State Police Operations Assistance Fund fees would be vacated, however, his per-conviction State's Attorney's fees, Violent Crime Victims Assistance Fund fines, and drug and mental health court fines are affirmed; defendant's \$45 in Violent Crime Victims Assistance Fund fines are vacated but two separate fines totaling \$16 are reimposed; defendant was entitled to full credit against various fines, to reflect the 419 days he spent in presentencing custody.
- ¶ 2 Defendant, Daniel T. Charneski, was found guilty of armed robbery (720 ILCS 5/18-2(a)(1) (West 2006)) and aggravated battery (720 ILCS 5/12-4(a) (West 2006)) and was sentenced to 14

years in prison on the armed robbery conviction and 4 years in prison on the aggravated battery conviction, to be served concurrently. On appeal, defendant argues that the trial court erred when it failed to make any inquiry into defendant's *pro se* allegations of ineffective assistance of counsel. Defendant asks us to remand the case for the requisite inquiry. Defendant also argues that certain assessments were erroneously imposed twice and that he is entitled to \$5-per-day credit against his fines for each of the 419 days he spent in presentencing custody. For the reasons that follow, we affirm defendant's convictions, vacate some of the fees and fines imposed, award defendant credit for time spent in presentencing custody, and reduce defendant's Violent Crime Victim's Assistance Fund fines.

¶ 3

#### I. BACKGROUND

¶ 4 On July 21, 2011, following a jury trial, defendant was found guilty of armed robbery (720 ILCS 5/18-2(a)(1) (West 2006)) and aggravated battery (720 ILCS 5/12-4(a) (West 2006)). On October 26, 2011, defendant filed an amended motion for a new trial, which the trial court denied. On that same date, following a sentencing hearing, defendant was sentenced to 14 years on the armed robbery conviction and 4 years on the aggravated battery conviction, to be served concurrently.

¶ 5 On November 10, 2011, defense counsel advised the court that he wished to file a notice of appeal and a motion for the appointment of the appellate defender. The court granted the motion. The court further noted that it had received from defendant a *pro se* notice of appeal, which it would place in the court file. The proceedings then ended.

¶ 6 Defendant's *pro se* notice of appeal, dated October 26, 2011, is an eight-page handwritten document. At the top of the page, defendant wrote "Notice of Appeal" and set forth his name, the case number, the date of final judgment, his sentence, and his attorney's name. He then wrote:

“This is my notice of appeal[.] I am appealing my case for numerous reasons and wrongdoings done unto me by the Courts of McHenry County, Illinois, 22nd Judicial Circuit. There was [sic] numerous errors and wrong doings [sic] done to me through all stages of my court experience, Pre-trial, trial & post trial. I was wrongfully found guilty of Armed Robbery \*\*\* and Aggravated Battery \*\*\* due to numerous errors and wrong doings [sic] that will be explained later in this letter. But first I must state that I am indigent and will need an appellate public defender appointed to represent me through out [sic] the appellate process. I am appealing descions [sic] and errors made pre-trial, errors and wrong doings [sic] regarding and occurring during trial, and errors post trial, as well as the sentence imposed unto me. I am now going to list any and all reasons I feel I was wrong or that the court erred. But please understand I am not a lawyer and if I fail to mention something that comes up in the transcripts upon review that I didn’t know I could use in an appeal I hope there [sic] not waived.”

¶ 7 Over the course of the next seven pages, defendant listed his allegations of error. These allegations included allegations that his trial counsel was ineffective. Specifically, he claimed that his first attorney was ineffective during the suppression hearing. He claimed that his subsequent attorney failed to fight for him at trial, allowed the trial judge to be changed, allowed the indictment to be amended, failed to meet with him, failed to build a proper defense, failed to impeach witnesses who had lied on the stand, failed to argue against “bogus” hearsay objections, and failed to point out key facts during closing argument. Defendant also listed several errors committed by the judge and the State. Defendant further asserted that the evidence was insufficient and that the sentence was excessive. Finally, he claimed that the court received new evidence before sentencing that

established his innocence. Defendant concluded by stating: “If I failed to mention anything I hope its not waived!!”

¶ 8

## II. ANALYSIS

¶ 9 On appeal, defendant first argues that the trial court erred when if failed to make any inquiry into defendant’s *pro se* allegations of ineffective assistance of counsel. Defendant asks us to remand the case for the requisite inquiry.

¶ 10 When a defendant brings a *pro se* posttrial claim that trial counsel was ineffective, the trial court must inquire adequately into the claim and, under certain circumstances, must appoint new counsel to argue the claim. *People v. Krankel*, 102 Ill. 2d 181, 187-89 (1984); *People v. Taylor*, 237 Ill. 2d 68, 75 (2010); *People v. Pence*, 387 Ill. App. 3d 989, 994 (2009). New counsel is not automatically required merely because the defendant presents a *pro se* posttrial claim that his counsel was ineffective. *People v. Moore*, 207 Ill. 2d 68, 77 (2003). The trial court must first examine the factual basis of the claim. *Id.* at 77-78. If the defendant’s allegations show possible neglect of the case, the court should appoint new counsel to argue the claim. *Taylor*, 237 Ill. 2d at 75; *Pence*, 387 Ill. App. 3d at 994. However, if the court concludes that the claim lacks merit or pertains only to matters of trial strategy, the court may deny the claim. *Taylor*, 237 Ill. 2d at 75; *Pence*, 387 Ill. App. 3d at 994. If the court fails to conduct the necessary preliminary examination as to the factual basis of the defendant’s allegations, the case must be remanded for the limited purpose of allowing the court to do so. *People v. Serio*, 357 Ill. App. 3d 806, 819 (2005). The threshold question of whether the defendant’s allegations constituted a *pro se* claim of ineffective assistance sufficient to trigger the court’s duty to inquire into the factual basis of the claim is a question of law; thus, our review is *de novo*. See *Taylor*, 237 Ill. 2d at 75.

¶ 11 Defendant argues that his “Notice of Appeal” was sufficient to trigger the court’s duty to inquire under *Krankel* into his *pro se* claims of ineffective assistance of counsel. He claims that, notwithstanding the title of the document he filed, the substance of the “motion” warranted inquiry. See *People v. Helgesen*, 347 Ill. App. 3d 672, 677 (2004) (substance, not title, controls identity). We disagree. Defendant not only entitled his document “Notice of Appeal” but also made clear in the opening paragraph that his intent in filing the document was to appeal, to have appellate counsel appointed, and to preserve the issues he wished to argue on appeal. He listed numerous issues, aside from those concerning counsel. He stated: “I am not a lawyer and if I fail to mention something that comes up in the transcripts upon review that I didn’t know I could use in an appeal I hope there [*sic*] not waived.” He concluded by stating: “If I failed to mention anything I hope its [*sic*] not waived!!” Given that defendant included his ineffectiveness claims in a document clearly labeled “Notice of Appeal,” along with numerous other issues that he sought to preserve and a request for the appointment of appellate counsel, we find that the court properly treated the document as a notice of appeal and not a posttrial motion subject to inquiry under *Krankel*.

¶ 12 Defendant next contends that numerous fines and fees imposed on his conviction of count II (aggravated battery) must be vacated, because they were erroneously imposed on each conviction. Specifically, defendant challenges the \$15 court document storage fee, \$15 court automation fee, \$100 circuit clerk fee, \$25 court security fee, \$50 “court fee,” \$30 State’s Attorney’s fee, \$20 Violent Crime Victims Assistance Fund fine, \$5 drug court fine, and \$10 mental health court fine. In response, the State challenges defendant’s argument as to only the State’s Attorney’s fee, the drug court fine, and the mental health court fine. According to the State, those charges may be assessed per conviction.

¶ 13 Based on *People v. Martino*, 2012 IL App (2d) 101244, it is clear that some of the charges were improperly assessed twice and must be vacated. See *id.* ¶¶ 30, 32-35, 37-38 (vacating all but one assessment for document storage, court automation, circuit clerk, and court security). However, we agree with the State that the State’s Attorney’s fee, the Violent Crime Victims Assistance Fund fine, the drug court fine, and the mental health court fine may be assessed for each conviction. See *id.* ¶¶ 46-50. Accordingly, we vacate the \$15 document storage fee, \$15 court automation fee, \$100 circuit clerk fee, \$25 court security fee, and \$50 court fee<sup>1</sup> that were imposed on count II; and we find that the \$30 State’s Attorney’s fee, \$20 Violent Crime Victims Assistance Fund fine (although in the wrong amount, which is addressed below), \$5 drug court fine, and \$10 mental health court fine were properly imposed on each count.

¶ 14 In addition, although not argued by defendant, we also find that the \$15 State Police Operations Assistance Fund fee was improperly imposed twice.<sup>2</sup> Section 27.3a(1.5) of the Clerks of Courts Act (Act) (705 ILCS 105/27.3a(1.5) (West 2010)) provides for the imposition of a fee equal to the amount of the court automation fee in each “case upon a judgment of guilty.” The fees collected are to be deposited into the State Police Operations Assistance Fund. 705 ILCS 105/27.3a(5) (West 2010). The language of the Act authorizes the imposition of this fee in each *case*, not on each conviction. Thus, the trial court was authorized to impose only a single State Police Operations Assistance Fund fee in this case, and the duplicate fee imposed on count II must

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<sup>1</sup>The basis of the \$50 court fee is not clear. However, as the State does not challenge the defendant’s argument that it was erroneously imposed on each conviction, we will vacate it.

<sup>2</sup>Although defendant did not challenge the imposition of this fee, we address it so that we can properly determine the credit to which he is entitled. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31.

be vacated. See *Martino*, 2012 IL App (2d) 101244, ¶ 38 (where the statute referred to cases rather than convictions, only one fee per case could be imposed). Accordingly, we vacate the \$15 State Police Operations Assistance Fund fee.

¶ 15 Defendant next argues that he is entitled to a \$5-per-day credit against his fines for each of the 419 days he spent in presentencing custody. Section 110-14(a) of the Code of Criminal Procedure of 1963 provides:

“Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of \$5 for each day so incarcerated upon application of the defendant. However, in no case shall the amount so allowed or credited exceed the amount of the fine.” 725 ILCS 5/110-14(a) (West 2010).

Although defendant did not apply for the credit in the trial court, because the credit is mandatory, he is permitted to make the request for the first time on appeal. *People v. Woodard*, 175 Ill. 2d 435, 457 (1997).

¶ 16 Defendant seeks credit against the following fines: (1) two \$20 Violent Crime Victims Assistance Fund fines; (2) two \$30 juvenile expungement fines; (3) two \$13 Children’s Advocacy Center fines; (4) two \$15 State Police Operations Assistance Fund fines; (5) two \$5 drug court fines; (6) two \$10 mental health court fines; and (7) one \$5 Violent Crime Victims Assistance Fund fine. The State agrees that defendant is entitled to a credit, but disagrees that the Violent Crime Victims Assistance Fund charges and the State Police Operations Fund fines are subject to the credit. The State is correct that the Violent Crime Victims Assistance Fund charges are not subject to the \$5-per-day credit. See 725 ILCS 240/10(b), (c) (West 2010); *Martino*, 2012 IL App (2d) 101244, ¶ 22. However, the State Police Operations fine is subject to the credit. See *Millsap*, 2012 IL App (4th) 110668, ¶ 31.

¶ 17 We also find that defendant was erroneously assessed \$45 in charges for the Violent Crime Victims Assistance Fund. Where other fines are imposed, the statute authorizes the imposition of “an additional penalty of \$4 for each \$40, or fraction thereof, of fine imposed.” 725 ILCS 240/10(b) (West 2010). Under *Martino*, the trial court may assess this fine upon each conviction, but the proper amount to be assessed must be determined for each count. *Martino*, 2012 IL App (2d) 101244, ¶ 54. Defendant was assessed five other fines on each count: (1) a \$30 juvenile expungement fine; (2) a \$13 Children’s Advocacy Center fine; (3) a \$15 State Police Operations Assistance Fund fine; (4) a \$5 drug court fine; and (5) a \$10 mental health court fine. As defendant was assessed \$73 in fines on each count, the proper Violent Crime Victims Assistance Fund fine is \$8 for each count, not the \$20 imposed by the trial court. We reduce those fines and vacate the additional \$5 fine.

¶ 18 In sum, we vacate one \$15 document storage fee, one \$15 court automation fee, one \$100 circuit clerk fee, one \$25 court security fee, one \$50 court fee, and one \$15 State Police Operations Assistance Fund fee (resulting in a reduction of \$220). We vacate the \$45 in Violent Crime Victims Assistance Fund fines and reimpose two fines totaling \$16 (resulting in a reduction of \$29). And we grant defendant full credit against his \$60 juvenile expungement fines, \$26 Children’s Advocacy Center fines, \$10 drug court fines, \$20 mental health court fines, and \$15 State Police Operations Assistance Fund fines (resulting in a reduction of \$131). Given that defendant’s assessments have been fully satisfied, he is entitled to a refund in the amount of \$380. We remand for that refund.

### III. CONCLUSION

¶ 19 For the reasons stated, the judgment of the circuit court of McHenry County is affirmed as modified in part and vacated in part, and the cause is remanded.

¶ 20 Affirmed as modified in part and vacated in part; cause remanded.