

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).

2013 IL App (4th) 120571-U
NO. 4-12-0571
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
September 13, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
RODNEY L. BROWNLEE,)	No. 11CF1258
Defendant-Appellant.)	
)	Honorable
)	Lisa Holder White,
)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court vacated the trial court's denial of defendant's motion to vacate judgment and the circuit clerk's imposition of certain fines. The appellate court also remanded the cause with directions that the court (1) comply with the supreme court's guidance in *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and its progeny and (2) impose certain mandatory fines.
- ¶ 2 In December 2011, a jury convicted defendant, Rodney L. Brownlee, of domestic battery with a prior domestic battery conviction (720 ILCS 5/12-3.2(a)(1) (West 2010)). In March 2012, defendant *pro se* filed a posttrial motion to vacate judgment, alleging ineffective assistance of trial counsel. At a May 2012 hearing, the trial court conducted a hearing pursuant to the supreme court's guidance in *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and denied defendant's motion. Later that month, the court sentenced defendant to three years in prison with 126 days' credit for time served in pretrial confinement.

¶ 3 Defendant appeals, arguing that (1) the trial court erred by denying his *pro se* posttrial motion to vacate judgment without conducting an adequate *Krankel* hearing, (2) the imposition of a \$10 anti-crime fee was void, and (3) he is entitled to credit against certain fines imposed. For the reasons that follow, we vacate and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 In September 2011, the State charged defendant with domestic battery with a prior domestic battery conviction, alleging that he struck the victim, a family member, in the eye causing injury. Following a December 2011 trial, a jury convicted defendant of that charge.

¶ 6 In March 2012, defendant *pro se* filed a posttrial motion to vacate judgment, alleging ineffective assistance of trial counsel, in that his counsel failed to (1) "[e]nter medical examination records of [the] victim to refute [the] victim[']s claims of being punched," (2) "[i]mpeach [the] victim[']s testimony due to numerous inconsist[e]nt statements made to police and during testimony," (3) present a defense that was "based on statements given by [d]efendant to counsel prior to [t]rial," and (4) allow the jury to deliberate with a letter that the victim had written to the defendant "even after the presiding judge ask[ed] defense counsel if he would like to send [the letter] back[,]" and defendant asked counsel to do so. (Assistant public defender Ashley Sanders represented defendant at his December 2011 jury trial. After defendant filed his motion to vacate judgment, the Macon County Public Defender, Rodney S. Forbes, appeared occasionally on defendant's behalf.)

¶ 7 At a May 4, 2012, hearing on defendant's motion to vacate judgment, the following occurred:

"THE COURT: *** The People of the State of Illinois

versus *** Brownlee. Show the People present ***. The defendant is present by counsel, *** Forbes. Is [defendant] still in custody?

[FORBES]: He is, Your Honor.

THE COURT: We'll show [counsel's] representation [that] the defendant is in custody and this is one where you did file a Motion for Leave to Reinstate Bond and then we had the issue of the correspondence that [defendant] had filed.

[FORBES]: I have a copy of the correspondence if you'd like.

THE COURT: Okay. We'll show the appearance and then we'll show finding by the Court appointment of additional counsel is not necessary regarding [d]efendant's Motion to Vacate Judgment, and just put a period there. Motion to Vacate Judgment, and then for the record, the Court wants to state, briefly, some things regarding the motion, itself."

(The record shows that Sanders was also present when the court rejected defendant's motion to vacate judgment.)

¶ 8 The trial court then rejected defendant's medical records claim, recalling "extensive cross-examination regarding medication the alleged victim was taking[.]" and that defendant's trial counsel had impeached the victim regarding the effects of that medication. With regard to defendant's statements regarding his defense, the court opined that his trial counsel had

"made the proper strategic decisions." After stating its rationale for rejecting defendant's other ineffective-assistance-of-trial-counsel claims, the court provided the following explanation for defendant's absence: "[Defendant is] not present today because, of course, the [c]ourt has the right to just do a review of that correspondence that he filed and then make a decision as to whether or not additional counsel should be appointed." The court also noted defendant's bond hearing that was scheduled for later that same day. When the court conducted that bond hearing, defendant and Sanders appeared, and the court informed defendant about its denial of his motion to vacate judgment.

¶ 9 Later that same month, the trial court sentenced defendant as previously stated.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 A. The Trial Court's *Krankel* Analysis

¶ 13 1. *A Krankel Analysis and the Standard of Review*

¶ 14 In *People v. McLaurin*, 2012 IL App (1st) 102943, ¶¶ 39-40, 982 N.E.2d 832, the appellate court outlined the following process concerning a *pro se* litigant's posttrial claims of ineffective assistance of counsel:

"Through *** *Krankel* *** and its progeny, the Illinois Supreme Court has provided the trial courts with a clear blueprint for the handling of posttrial *pro se* claims of ineffective assistance of counsel. [Citations.] A trial court is not automatically required to appoint new counsel anytime a defendant claims ineffective assistance of counsel. [Citation.] Instead, the trial court must first

conduct an inquiry to examine the factual basis underlying a defendant's claim. [Citation.] The inquiry that the trial court conducts has evolved into what is now known as a *Krankel* inquiry. [Citation.]

This court's review of a defendant's claim of error necessarily turns on the adequacy of the trial court's inquiry. [Citations.] If the trial court determines that the defendant's claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. [Citation.] A claim lacks merit if it is conclusory, misleading, or legally immaterial or does not bring to the trial court's attention a colorable claim of ineffective assistance of counsel. [Citation.] However, if a defendant's claims indicate that trial counsel neglected the defendant's case, the trial court must appoint new counsel. [Citation.] During a *Krankel* inquiry, 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. [Citation.] A trial court may base its decision in a *Krankel* inquiry on: (1) the trial counsel's answers and explanations; (2) a brief discussion between the trial court and the defendant; or (3) its

knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face." (Internal quotations omitted.)

The adequacy of the trial court's inquiry into a *pro se* ineffective-assistance-of-counsel claim presents a question of law that this court reviews *de novo*. *People v. Strickland*, 363 Ill. App. 3d 598, 606, 843 N.E.2d 897, 903-04 (2006).

¶ 15 *2. Defendant's Krankel Claim*

¶ 16 Defendant argues that the trial court erred by denying his *pro se* posttrial motion to vacate judgment without conducting an adequate *Krankel* hearing. We agree.

¶ 17 Defendant bases his argument on the adequacy of the trial court's inquiry, given his absence from the May 2012 hearing. Specifically, defendant contends that the court misconstrued one of his allegations, which he could have clarified if he was at the hearing. Defendant explains that his claim that Sanders failed to enter medical examination records to refute the victim's assertion that he punched the victim refers to documentation created after the victim arrived at the hospital. Defendant posits that the court rejected his claim based on its misinterpretation that he was concerned with medication the victim was taking and the possible side effects of that medication.

¶ 18 Defendant also claims that "[t]he trial court erred when its inquiry was limited to discussing [defendant's] motion with defense counsel." The record reveals that at the May 2012 hearing on defendant's motion to vacate judgment, (1) the court never addressed Sanders about defendant's motion despite her presence at that hearing, and (2) Forbes' comments were confined to acknowledging defendant's posttrial motion at the outset of that hearing.

¶ 19 As this court recently stated in *People v. Mays*, 2012 IL App (4th) 090840, ¶ 58, 980 N.E.2d 166:

"The trial court must do whatever common sense suggests is necessary to an adequate investigation. Essentially, the investigation has two steps, in this order: (1) understanding the defendant's claims and (2) evaluating them for potential merit. Until the court takes the first step, the court is in no position to attempt the second step. Certain of the defendant's claims might be vague, conclusory, and enigmatic. In the wording of the claims, it might be unclear exactly what the defendant means. Probably there is no better person to ask than the defendant. Likewise, if the factual basis of a claim is unclear—if the defendant could be relying on facts that are outside the record—the defendant again is probably the best person from whom to seek clarification."

¶ 20 In this case, the trial court denied defendant's *pro se* motion to vacate judgment, opining that defendant's presence at that hearing was not required. As a consequence, the court could not ask defendant any clarifying questions. Even if defendant's written ineffective-assistance-of-counsel claims were devoid of merit, however, the court should have afforded defendant the opportunity to provide further support for his claims. See *People v. Robinson*, 157 Ill. 2d 68, 86, 623 N.E.2d 352, 361 (1993) ("While defendant's claims may be without merit, the trial court should have afforded the defendant the opportunity to specify and support his complaints"). Here, the court did not permit defendant to clarify his concerns although defendant

was in custody and scheduled to appear before the court that same day on a different matter.

¶ 21 We also note that in rejecting defendant's general claim that Sanders did not consider pretrial statements he made to her in crafting his defense—statements defendant did not elaborate on in his written motion—the trial court did not pose any question to Sanders in an attempt to examine the factual matters underlying defendant's claim. Instead, the court simply noted that Sanders "made the proper strategic decisions."

¶ 22 Accordingly, because we conclude that the trial court's *Krankel* inquiry on defendant's motion to vacate judgment was not adequate, we vacate that decision and remand for further proceedings.

¶ 23 B. The Trial Court's Imposition of Certain Fines and Fees

¶ 24 1. *Defendant's "Anti-Crime Fund" Fine Claim*

¶ 25 Defendant next argues that the imposition of a \$10 "Anti-Crime Fund" fine is void. The State concedes the fine was improperly imposed and after reviewing the matter, we accept the State's concession.

¶ 26 We first note that although the parties concede that a \$10 "Anti-Crime Fund" fee was imposed on defendant, neither party cites to the record, indicating the circumstances under which the "Anti-Crime Fund" fee was imposed. Regardless, in this case, defendant was sentenced to three years in prison, which renders the \$10 "Anti-Crime Fund" fine inapplicable. See *People v. O'Laughlin*, 2012 IL App (4th) 110018, ¶ 16, 979 N.E.2d 1023 (the \$10 "Anti-Crime Fund" fine (730 ILCS 5/5-6-3(b)(12), (13), 5-6-3.1(c)(12), (13) (West 2010)) is not applicable when a defendant is sentenced to prison).

¶ 27 Accordingly, we vacate the imposition of a \$10 "Anti-Crime Fund" fine.

¶ 28

2. Defendant's Remaining Fee and Fines

¶ 29 As we have previously stated, at defendant's May 2012 sentencing hearing, the trial court sentenced defendant to three years in prison with 126 days' credit for time defendant served in pretrial custody. In so doing, the court imposed a \$200 domestic violence fine (730 ILCS 5/5-9-1.5 (West 2010)) and a \$10 domestic battery fine (730 ILCS 5/5-9-1.6 (West 2010)). The court then noted that defendant was entitled to "an incarceration credit" of \$210 for those two fines. The court then assessed defendant "a [\$50] trial per diem fee for two days of trial in this matter" and a \$2,000 public defender fee that was to be satisfied by the bond defendant posted. This was the extent of the fines and fees imposed by the court at sentencing.

¶ 30 Sometime after sentencing, the circuit clerk imposed other fines and fees against defendant in addition to those imposed by the trial court. A supplement to the record on appeal lists all the charges levied against defendant, as follows: (1) "Clerk" \$405 (705 ILCS 105/27.1a(w)(1)(A), (F) (West 2010)); (2) "Clerk Op Add-Ons" \$1.25 (625 ILCS 5/16-104d (West 2010)); (3) "Automation" \$15 (705 ILCS 105/27.3a(1) (West 2010)); (4) "Document Storage" \$15 (705 ILCS 105/27.3c(a) (West 2010)); (5) "State Police Ops" \$15 (705 ILCS 105/27.3a(1.5), (5) (West 2010)); (6) "State's Atty" \$80 (55 ILCS 5/4-2002(a) (West 2010)); (7) "Court" \$50 (55 ILCS 5/5-1101(c) (West 2010)); (8) "Judicial Security" \$15 (55 ILCS 5/5-1103 (West 2010)); (9) "Youth Diversion" \$5 (55 ILCS 5/5-1101(e) (West 2010)); (10) "Child Advocacy Fee" \$14.25 (55 ILCS 5/5-1101(f-5) (West 2010)); (11) "Nonstandard" \$9.50 (55 ILCS 5/5-1101(d-5) (West 2010)); (12) "Sheriff" \$256 (55 ILCS 5/4-5001 (West 2010)); (13) "Medical Costs" \$10 (730 ILCS 125/17 (West 2010)); and (14) "Public Defender" \$2,000 (725 ILCS 5/113-3.1 (West 2010)). The total amount of the fines and fees imposed were calculated at

\$2,940. Although the supplemental listing clearly reflected the \$2,000 public defender fee and \$50 court costs imposed by the court, it did not list the \$200 domestic violence or \$10 domestic battery fines. In addition, the supplemental listing showed payment in full for 13 of the 14 aforementioned charges and a \$351 balance for the public defender fee despite the fact that defendant had posted a \$2,500 cash bond.

¶ 31 In this case, defendant argues that he is entitled to credit against certain fines the trial court imposed pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963, which permits a \$5 credit for each day defendant served in pretrial confinement to be credited toward fines imposed (725 ILCS 5/110-14 (West 2010)). Specifically, defendant contends that he is entitled to credit against his (1) \$200 domestic violence fine, (2) \$14.25 child advocacy fee fine, (3) \$5 youth diversion fee, (4) \$10 medical costs fee, (5) \$15 state police operations fine, and (6) \$9.50 nonstandard (mental health court) fine. In response, the State concedes that defendant is entitled to the credit he requests except for his medical cost fees, which is statutorily prohibited. See 730 ILCS 125/17 (West 2010) ("The fee shall not be considered a part of the fine for purposes of any reduction of the fine"). Given the record in this case, we decline to accept the State's concession.

¶ 32 Here, the record reveals that aside from the \$200 domestic violence fine and a \$10 domestic battery fine imposed by the trial court, the defendant's remaining fines were void. See *People v. Alghadi*, 2011 IL App (4th) 100012, ¶ 20, 960 N.E.2d 612 ("[A]ny fines imposed by the circuit clerk's office are void from their inception"). Although we can reimpose mandatory fines pursuant to our authority granted by Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we conclude that the prudent course on this record is to remand to permit the court to

enter a second supplemental order imposing the other mandatory fines and fees applicable to defendant's case and ensure that the circuit clerk's record of defendant's financial obligations is consistent with the court's orders.

¶ 33

III. CONCLUSION

¶ 34 For the reasons stated, we vacate (1) the trial court's denial of defendant's motion to vacate judgment; (2) the \$10 "Anti-Crime Fund" fine imposed, and (3) certain mandatory fines imposed by the Macon County circuit clerk, and remand for further proceedings consistent with the guidance contained herein.

¶ 35 Vacated; cause remanded with directions.