

No. 1-11-2604

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 19132
	)	
ANTHONY BROWN,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* The ruling of the trial court is affirmed because defense counsel was not ineffective for failing to file a motion to suppress evidence; and the trial court inquired into all of defendant's *pro se* claims of ineffective assistance of counsel and did not err by failing to appoint new counsel. Defendant's mittimus is corrected to reflect the correct number of days of presentence credit for the time he has been in custody.

¶ 2 This appeal arises from a July 12, 2011 judgment entered by the circuit court of Cook County which found defendant-appellant Anthony Brown (Brown) guilty of possession of a controlled substance with intent to deliver. On appeal, Brown argues that: (1) defense counsel was ineffective for failing to file a motion to suppress evidence because police conducted a

warrantless search of Brown's garage and of a plastic bag found inside the paneling of the garage; (2) the trial court erred by failing to inquire into his claims and to appoint new counsel where Brown made a *pro se* claim of ineffective assistance of counsel; and (3) the trial court erred by giving Brown 304 days of presentence custody credit where he was in custody for 323 days before he was sentenced. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3

### BACKGROUND

¶ 4 On September 30, 2010, Brown was arrested and charged with possession of a controlled substance with intent to deliver pursuant to 720 ILCS 570/401(c)(1) (West 2010). On January 25, 2011, Brown's defense counsel filed a motion to suppress physical evidence based on his argument that its admission would violate his Fourth Amendment rights. On that same day, a hearing was held on Brown's motion to suppress evidence in which counsel requested a continuance to February 24, 2011 based on counsel's difficulty in subpoenaing a witness. On February 24, 2011, a hearing was held on the motion to suppress evidence in which counsel requested that the motion to suppress evidence be withdrawn and requested a jury trial. On July 11, 2011, the State and Brown proceeded to a jury trial in the circuit court of Cook County.

¶ 5 At trial on July 11, 2011, Officer Daniel Honda (Officer Honda), Officer Frank Sarabia (Officer Sarabia), and Officer Todd Olsen (Officer Olsen) testified. Officer Honda testified that on September 30, 2010 at approximately 6:30 p.m., he received an anonymous telephone call during which he was informed that narcotics were being sold underneath the train tracks near 4128 West 21st Street in Chicago, Illinois. The elevated tracks bisect an alley lined with a series of garages on either side with surrounding two-flat buildings. In response to the call, Officer Honda went to that area with his partner, Officer Thomas Beyna (Officer Beyna), to conduct

narcotics surveillance. Officer Honda was the surveillance officer and kept in constant radio communication with Officer Beyna.

¶ 6 Officer Honda testified that he was about 50 feet from Brown and observed Brown in the alley wearing a black “do-rag” with a brown leather baseball hat over it, a red shirt with a black sweater over his shirt, and blue jeans. Officer Honda testified that he witnessed two alleged drug transactions occur in a similar manner to which he testified at trial. Officer Honda testified that he saw an unknown individual and Brown meet in the alley and have a conversation. The individual gave Brown money. Brown put the money in the pocket of his sweater. Brown walked from the alley to the side of the garage behind 4128 West 21st Street; reached underneath the loose wooden siding of the garage, and retrieved a “fairly big” knotted black plastic bag. Brown untied the bag, removed an unknown item from the bag, placed the bag back into the siding of the garage, and walked back to the alley. Brown gave the unknown item to the individual, who accepted the item and left the alley. Approximately 10 minutes later, Officer Honda saw the second transaction conducted in the same way. Officer Honda did not stop the unknown individuals from purchasing the alleged narcotics because he did not want to compromise the surveillance.

¶ 7 Officer Honda testified that he had the opportunity to view Brown from various angles. Based on his eight years as a police officer, his experience conducting hundreds of narcotics surveillances, and the similarity of the exchanges, Officer Honda believed Brown was engaged in narcotics transactions. Officer Honda radioed Officer Beyna and provided a physical description of Brown and what he had observed. Officer Honda instructed Officer Beyna to detain Brown. Officer Beyna radioed Officers Sarabia and Olsen for backup. Officers Sarabia and Olsen were dressed in civilian clothing and were driving an unmarked vehicle. Officer

Honda ended his surveillance, got into Officer Beyna's car and, after losing sight of Brown for a few minutes, arrived in the alley where the officers announced their presence.

¶ 8 Officer Honda testified that the four police officers then detained Brown in the same spot where Officer Honda had observed the transactions being conducted. Officer Honda indicated to Officer Sarabia that the alleged drugs were under the siding of the nearby garage. Officer Sarabia then retrieved the knotted black plastic bag from the side of the garage. Officer Sarabia testified that the black plastic bag contained 48 clear plastic Ziploc bags, each containing two capsules of suspect heroin. Officer Honda testified that he recovered \$198 from the pocket of Brown's sweater.

¶ 9 Officer Honda testified that Brown was placed into custody and transported to the police station. At the police station, Officer Olsen testified that he performed a search of Brown's person. Officer Sarabia retained custody, control, and care of the black plastic bag. Officer Sarabia testified that he placed the black plastic bag into a green City of Chicago narcotics envelope and gave it to Officer Olsen for inventory. Officer Olsen testified that he inventoried the black plastic bag by entering the information into an Etrack system. He then placed the bag into a large Chicago Police Department evidence bag that was heat-sealed shut. The evidence was placed into the narcotics vault and was processed by the crime lab.

¶ 10 Paula Szum (Szum), a forensic drug chemist, testified that she analyzed the narcotics recovered by weighing the capsules with the powder and conducting a preliminary color test to determine the presence of a controlled substance. She performed two color tests where the results were positive for the presence of a narcotic. Following a gas chromatography test, Szum testified that she confirmed the powder tested positive for heroin.

¶ 11 Neil Gibbons (Gibbons), Cook County Correctional Officer, also testified at trial. Gibbons worked at the Cook County Jail clothing room, where he inventoried inmates' clothing. Gibbons inventoried Brown's clothing and provided a receipt that indicated that Brown had one red shirt, jeans, and a black jacket. Gibbons testified that he did not look in Brown's clothing bag. Brown did not testify at trial. On July 12, 2011, the jury found Brown guilty of possession of a controlled substance with intent to deliver.

¶ 12 At sentencing, on August 19, 2011, Brown presented a *pro se* motion alleging ineffective assistance of counsel and the trial court conducted a hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984) (*Krankel* hearing). In his motion, Brown argued that his defense counsel did not discuss any type of strategy or defense with him and failed to challenge the State on "their questioning [Brown] selling some drugs to two people that wasn't [sic] even presented at trial." Additionally, Brown argued that his defense counsel did not attempt to get Harold Wallace (Wallace), to testify at trial as a witness. Brown stated that Wallace lived in the back of Brown's house and would have proved that police officers never had Brown under surveillance and that officers held him for hours until they found drugs and put them in Brown's possession. Brown also complained that counsel never presented evidence of a 9-1-1 event query, which would have indicated that Brown was arrested at 4:45 p.m. but was not taken to jail until 7:45 p.m.

¶ 13 Defense counsel responded to a portion of Brown's complaints stating that his investigator could not locate Wallace. Wallace did not return counsel's telephone calls or respond to the cards left on his front door. Defense counsel sent the investigator to photograph the scene and angles in the alley so he could potentially impeach the police officers as to their ability to observe the area. Defense counsel also stated that he had originally filed a motion to

suppress evidence. However, based on trial strategy and the lack of witnesses, he decided it was best for Brown to go to trial.

¶ 14 Additionally, the trial court acknowledged the 9-1-1 event query and noted that it was not a 9-1-1 situation but, rather, a surveillance situation. The trial court stated that that it did not find any fault with defense counsel's work.

¶ 15 The trial court dismissed Brown's *pro se* motion for ineffective assistance of counsel on the ground that there was no evidence to support the motion. On August 19, 2011, Brown was sentenced to nine years and six months in prison and was given 304 days of presentence custody credit. On that same day, Brown filed a timely notice of appeal. Therefore, this court has jurisdiction to consider Brown's arguments on appeal pursuant to Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013) and Rule 606 (eff. Feb. 6 2013).

¶ 16 ANALYSIS

¶ 17 We determine the following issues on appeal: (1) whether defense counsel was ineffective for failing to file a motion to suppress the evidence retrieved by Officer Sarabia on the ground that it violated Brown's Fourth Amendment rights; (2) whether the trial court erred in failing to appoint new counsel after Brown filed his *pro se* claim of ineffective assistance of counsel and the attendant allegations; and (3) whether the trial court erred in calculating Brown's presentence custody credit.

¶ 18 We first determine whether Brown's defense counsel was ineffective for failing to file a motion to suppress the evidence retrieved by Officer Sarabia.

¶ 19 Brown argues that defense counsel was ineffective for failing to file a motion to suppress evidence because Officer Sarabia reached underneath the siding of Brown's garage, a constitutionally protected area, to obtain the black plastic bag without a warrant. Specifically,

Brown argues that Officer Sarabia's search violated Brown's Fourth Amendment right to have his "houses" and "effects" free from unlawful searches. Brown argues that the garage falls within the curtilage of his home and is entitled to Fourth Amendment protection. Additionally, Brown argues that defense counsel should have argued that the black bag was Brown's "effects," and, as such, Officer Sarabia's handling and opening of the bag without a warrant also constituted a physical intrusion on a constitutionally protected area.

¶ 20 Brown also contends that he had a reasonable expectation of privacy in the contents of the garage and the black bag containing the heroin. Brown argues that because the garage was part of the curtilage of the home at 4128 West 21st Street, Brown had a reasonable and legitimate expectation of privacy in the contents of the garage. Brown also argues that he had a legitimate expectation of privacy in the black bag because the bag was hidden from view behind the garage panel siding. Further, Brown contends that the bag itself was "black," and "knotted," which suggested a subjective intent to keep its contents private. Based on the foregoing arguments, Brown claims that there is a reasonable probability that a motion to suppress evidence would have been successful. Brown argues that if the motion was successful, the evidence would have been suppressed and the outcome of the trial would have been different.

¶ 21 In response, the State argues that there were no sufficient facts in the record to show that Brown had a proprietary interest in the garage. Also, the State asserts that there was no evidence of its condition, structure, or use that would allow Brown to have a reasonable expectation of privacy in the garage. The State contends there was no evidence at trial that the police entered the home at 4128 West 21st Street or the garage behind that home. Additionally, the State argues that there was no evidence that the garage falls within the curtilage of the home at 4128 West 21st Street because the front of the garage faces a wide public alley, which is dissected

overhead by the train tracks; and because Brown did not take steps to protect the area from observation of public view. As such, the State argues, Brown was openly committing a crime in a public place and his act of placing the heroin behind a loose board outside the garage does not allow him to hide behind the Fourth Amendment.

¶ 22 Furthermore, the State argues that Brown's reasonable expectation of privacy is not one which society would recognize as reasonable in that he put the heroin behind a panel on the outside of the garage. The State argues there is no societal interest in protecting the privacy of activities undertaken in open areas. Thus, the State asserts that the motion to suppress evidence would have had no reasonable likelihood of succeeding based on the circumstances and facts surrounding Brown's arrest; and that the police officers had probable cause to arrest Brown and search the immediate and specific area where Brown was seen engaging in the transactions.

¶ 23 A defendant's claim of ineffective assistance of counsel is evaluated under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). In order for a defendant to prevail on a claim of ineffective assistance of counsel, the defendant must show that: (1) counsel's performance was deficient; and (2) counsel's deficient performance prejudiced the defendant. *Strickland*, 466 U.S. at 687. Counsel's performance is deficient when it falls below an objective standard of reasonableness. *Id.* at 688. In order for the defendant to be prejudiced by counsel's performance, the defendant must show that counsel's errors were so serious that the defendant was denied a fair trial. *Id.* at 687. The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 694.

¶ 24 Counsel's failure to file a motion to suppress [evidence] does not establish incompetent representation when that motion would be futile; as it is a matter of trial strategy to file such a

motion, counsel's decision will be accorded great deference. *People v. Pacheco*, 281 Ill. App. 3d 179, 183 (1996). Such decisions by counsel are thus not ordinarily challengeable on review as ineffective-assistance claims. *Id.* To establish the prejudice prong of *Strickland* in the context of a motion to suppress [evidence], a defendant must show that a reasonable probability exists both that the motion would have been granted and that the outcome of the trial would have been different had the evidence been suppressed. *People v. Nunez*, 325 Ill. App. 3d 35, 42 (2001).

¶ 25 A search conducted without a warrant is *per se* unreasonable unless it is a search conducted pursuant to consent, a search incident to arrest, or a search predicated upon probable cause where there are exigent circumstances which make it impractical to obtain a warrant. *People v. Lundy*, 334 Ill. App. 3d 819, 832 (2002). Probable cause to arrest exists when circumstances within the arresting officer's knowledge are sufficient to warrant a man of reasonable caution to believe an offense has been committed and that the individual arrested has committed it. *People v. Rucker*, 346 Ill. App. 3d 873, 886 (2004). It depends on the totality of the circumstances known to the officer at the time of the arrest, including the officer's factual knowledge and his prior law enforcement expertise. *Id.* It also requires a case-specific analysis; and is governed by commonsense, practical considerations and not by technical legal rules. *Id.* A warrantless search incident to arrest is valid, provided that the search is contemporaneous with the arrest, is conducted to prevent the arrestee's seizure of a weapon or his destruction of evidence, and is limited to the area within the arrestee's immediate control. *Lundy*, 334 Ill. App. 3d at 832. A search conducted immediately prior to a valid arrest is considered contemporaneous with that arrest. *People v. Little*, 322 Ill. App. 3d 607, 612 (2001). Moreover, once an officer has probable cause to believe that items are contraband, the items are subject to seizure even in the absence of a warrant. *People v. Hill*, 169 Ill. App. 3d 901, 909 (1988).

¶ 26 Moreover, a reasonable expectation of privacy exists if (1) the defendant exhibited an actual expectation of privacy in the object of the challenged search; and (2) society is willing to recognize that expectation as reasonable. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring). Thus, a man's home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the "plain view" of outsiders are not "protected" because no intention to keep them to himself has been exhibited. *Id.* Conversations in the open would not be protected against being overheard, because the expectation of privacy under the circumstances, would be unreasonable. *Id.*

¶ 27 In this case, Brown argues that Officer Sarabia's search of the garage siding panel and the black plastic bag violated Brown's Fourth Amendment rights because the search was performed without a warrant, and because Brown had a reasonable expectation of privacy in the contents of the garage and the black bag. We do not agree. Based upon the facts and circumstances of this case and the resulting arrest, it is clear that the officers had probable cause to arrest Brown and search the immediate and specific area where Brown was arrested. The facts as accepted by the jury shows that Officer Honda responded to a call from an informant notifying him of drug transactions occurring underneath the train tracks in a public alley near 4128 West 21st Street. In response to this call, Officer Honda set up narcotics surveillance approximately 50 feet away from Brown's location. Officer Honda observed Brown engage in two hand-to-hand narcotics transactions in which Officer Honda observed currency being exchanged. Officer Honda also saw Brown go to the side of the garage, reach under a loose wooden panel, and retrieve a knotted black plastic bag. Officer Honda observed Brown untie the bag, remove an item from it, and then walk back to the alley and hand the item to the individual who had given him cash. Based on Officer Honda's observation and his experience as a police officer, Officer Honda and his

surveillance team had probable cause to believe that Brown had committed a narcotics offense. As such, the police officers were justified in detaining Brown and searching the immediate area from which he had been observed by Officer Honda to have retrieved narcotics. See, *People v. Bascom*, 286 Ill. App. 3d 124, 127 (1997) (“When officers are working in concert, probable cause can be established from all the information collectively received by the police officers even if that information is not specifically known to the officer who makes the arrest”); *People v. Crowell*, 94 Ill. App. 3d 48, 50 (1981) (where court held that officers can rely on the knowledge of commanding officers or fellow officers.).

¶ 28 The facts of this case are no different from many cases in Illinois in which a police officer has observed the defendant engage in clear and conspicuous criminal activity that amounts to probable cause to arrest the defendant and search the immediate area. For example, in *People v. Rucker*, 346 Ill. App. 3d 873, 877 (2003), the defendant was charged by information with possession of a controlled substance with intent to deliver. During the narcotics surveillance, the police officer was approximately 70 to 100 feet away from the defendant. *Id.* The police officer testified that he saw the defendant engage in conversation with an individual, and accept currency from the individual. *Id.* at 878. The defendant then reached into his right jacket pocket, withdrew an item, and gave it to the individual, who then departed. *Id.* The police officer saw two similar transactions with other individuals who approached the defendant. *Id.* After observing these transactions, the officer radioed his enforcement team with a description of the defendant and his location in order to detain the defendant. *Id.* At the surveillance officer’s request, another police officer checked the contents of the defendant’s right jacket pocket and found three capsules of cocaine and \$130. *Id.*

¶ 29 On appeal, the defendant argued that trial counsel was ineffective for failing to file a motion to quash the arrest and suppress evidence. *Id.* at 885. This court held that, under the totality of circumstances, there was probable cause to arrest the defendant and, therefore, a motion to quash the arrest and suppress evidence would have been futile. *Id.* at 889. This court determined that the police officer observed four different transactions in which he saw the defendant accept money from four different individuals in exchange for something that he removed from his jacket pocket. *Id.* at 888. The number of transactions alone makes it “unlikely that the transactions were innocent exchanges such as paying off a bet, splitting the cost of dinner or even a simple shake of hands.” *Id.* (citing *People v. Moore*, 286 Ill. App. 3d 649, 653 (1997)).

¶ 30 The case at bar is analogous to *Rucker*. Here, the police officers had probable cause to arrest Brown and search the immediate area where Officer Honda saw the two transactions occur. In both transactions, Officer Honda saw currency being exchanged for the items retrieved from the black plastic bag under the panel of the garage. The fact that the narcotics were not found on Brown’s person and, instead, found in the black plastic bag retrieved from the panel of the garage, is irrelevant to Brown’s guilt. The drug transaction and the retrieval of the black plastic bag from the garage panel occurred in plain view of Officer Honda, in a public alley. As such, Brown cannot assert that his Fourth Amendment rights have been violated or that he had a reasonable expectation of privacy in the exposed panel of the garage which faced a public alley, or the black plastic bag stashed in that location. See also *Lundy*, 334 Ill. App. 3d at 822; *People v. McNeal*, 175 Ill. 2d 335, 347 (1997).

¶ 31 We note that Brown cites to multiple cases in order to support his argument that his Fourth Amendment rights were violated and that he had a reasonable expectation of privacy in

the garage and in the black plastic bag. For example, Brown cites *People v. Payton*, 317 Ill. App. 3d 909 (2000) as being analogous to this case. We find *Payton* to be inapposite to this for several reasons. First, in this case, the garage in question where the heroin was stored was in a large public alley with several detached garages, rather than defendant's house porch or curtilage surrounding the two-flat house on 4128 West 21st Street. Second, Officer Honda saw Brown engage in two similar drug transactions in the alley behind 4128 West 21st Street. Officer Honda also saw Brown retrieve the black plastic bag containing the heroin from the panel of the garage on both occasions. Based on Officer Honda's prior law enforcement experiences, his direct observation of Brown's activity, and the totality of the circumstances, it is clear that Officer Honda and Officer Sarabia had probable cause to arrest Brown and search the garage panel for the black plastic bag. On the other hand, in *Payton*, the officers did not see the defendant engage in any drug transactions nor smell cannabis or burning food prior to opening the lid of a family barbeque grill on the defendant's front porch. *Id.* at 911, 913. As such, it is clear that the police officers in the case at bar had probable cause to search the panel of the garage and the plastic black bag without a warrant because the drug transactions were carried out in plain view of Officer Honda. Moreover, Brown does not have a reasonable expectation of privacy in the loose panel of the garage nor the black plastic bag hidden there as he carried out the drug transactions in a public alley adjacent to train tracks, in plain view of passers-by.

¶ 32 Accordingly, we find that the police officers had probable cause to arrest Brown and search the immediate area, including the garage and black plastic bag, based on the totality of circumstances, specifically, Officer Honda's prior law enforcement experience as well as his observation of Brown's activity. As such, no reasonable probability exists that the motion to suppress evidence would have been granted and that the outcome of the trial would have been

different had the evidence been suppressed. Therefore, we hold that counsel was not ineffective in failing to file a motion to suppress evidence.

¶ 33 Next, we determine whether the trial court erred in failing to appoint new counsel for Brown's *pro se* claims of ineffective assistance of counsel and failing to address all of Brown's allegations.

¶ 34 Brown argues that the trial court erred in failing to inquire into his claims and appoint new counsel pursuant to his *pro se* claims of ineffective assistance of counsel. Specifically, Brown argues that the trial court failed to conduct an adequate inquiry into Brown's *pro se* claims of ineffective assistance of counsel as required by *People v. Krankel*, 102 Ill. 2d 181 (1984), where Brown's claims showed "possible neglect" of his case. Brown claims that: (1) defense counsel's failure to subpoena witnesses who would testify that the officers put the drugs in Brown's possession amounted to ineffective assistance of counsel; and (2) defense counsel failed to present any evidence of a 9-1-1 event query, which could have shown the length of time between his arrest and when he was jailed. Brown argues that this court should remand for proper inquiry into those claims.

¶ 35 The State argues that the trial court conducted an adequate inquiry into all of Brown's claims and, based on the trial court's personal knowledge and observation of counsel's performance at trial, found that Brown's allegations did not support a claim of ineffective assistance of counsel. As such, the State contends that Brown's claims did not warrant the appointment of new counsel.

¶ 36 New counsel is not automatically required in every case in which a defendant presents a *pro se* posttrial motion alleging ineffective assistance of counsel. *People v. Moore*, 207 Ill. 2d 68, 77 (2003). Rather, when a defendant presents a *pro se* posttrial claim of ineffective

assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. *Id.* at 78. If the trial court determines that the 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. *Id.* However, if the allegations show possible neglect of the case, new counsel should be appointed. *Id.*

¶ 37 The operative focus for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel. *Id.* During the trial court's inquiry, some interchange between the trial court and counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and often necessary in assessing what action, if any, is warranted by the court. *Id.* Counsel may be called upon to answer questions and explain certain facts and circumstances to the court. *Id.* A brief discussion between the trial court and the defendant may also be had and may be sufficient. *Id.* Also, the trial court can base its evaluation of the defendant's *pro se* allegations of ineffective assistance of counsel on its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations. *Id.* at 79.

¶ 38 We agree with the State's analysis of this issue. In this case, there is nothing in the record to show that the trial court erred in the *Krankel* hearing which it conducted on Brown's *pro se* posttrial motion based on ineffective assistance of counsel. For example, the trial court inquired regarding the witnesses who Brown claimed that counsel failed to subpoena. The trial court gave counsel an opportunity to respond to Brown's allegations regarding the witnesses. Counsel informed the court that he sent an investigator to find the witnesses. The investigator left cards on the witnesses' doors, but the witnesses did not respond nor cooperate in any way. Further, he requested a continuance on the motion to suppress evidence in order to locate

witnesses; however, he withdrew the motion because the witnesses would not cooperate. Based on trial strategy and the lack of witnesses, counsel stated that he decided it was best for Brown to go to trial. Additionally, counsel explained that he photographed the alley for the purpose of potential impeachment of the police officers' ability to survey the area. Regarding the 9-1-1 issue, the trial court explained to Brown that the case at bar was “not a 9-1-1 situation. This was a surveillance [situation].” As such, the trial court explained that Brown’s complaint of defense counsel’s decision not to use the “9-1-1 query” at trial was irrelevant. The trial court found Brown's allegation of ineffective assistance of counsel to be baseless.

¶ 39 We do not find any error in the trial court’s finding following the *Krankel* hearing. As such, this court will not remand this case for further inquiry because Brown’s claims lack merit. Given the facts and circumstances, we hold that the trial court conducted an adequate inquiry into all of Brown’s allegations and properly concluded that appointment of new counsel based on Brown’s allegation of ineffective assistance of counsel, was unwarranted.

¶ 40 Finally we determine whether the trial court erred in calculating Brown’s presentence custody credit against his sentence.

¶ 41 Brown and the State agree that Brown’s mittimus should be corrected to show that he served 323 days in custody between his arrest date and his sentencing date instead of the 304 days for which he was given credit. As such, we order the clerk of the circuit court to correct the mittimus to reflect 323 days of presentence credit.

¶ 42 For the foregoing reasons we affirm the judgment of the circuit court of Cook County and order Brown’s mittimus to be corrected to reflect 323 days of presentence credit.

¶ 43 Affirmed; mittimus corrected.