

No. 1-12-2419

**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).

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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. 11 CR 18553
	)	
DWIGHT THOMAS,	)	Honorable
	)	William T. O' Brien,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Hall and Reyes concurred in the judgment.

**O R D E R**

¶ 1 **Held:** Judgment affirmed over defendant's argument the trial court failed to conduct an adequate *Krankel* inquiry; mittimus corrected.

¶ 2 Following a bench trial, defendant Dwight Thomas was convicted of aggravated battery and sentenced to an extended term of eight years' imprisonment. On appeal, defendant argues the trial court "should have recognized" the conflict between defendant and his trial counsel and, therefore, erred in failing to conduct a preliminary inquiry into his ineffective assistance claims pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). Defendant also requests that his mittimus

be corrected to reflect the correct period of mandatory supervised release (MSR). We affirm, finding defendant failed to sufficiently raise an issue of ineffectiveness of trial counsel which would have triggered the need for a *Krangel* inquiry, but order the mittimus to be corrected.

¶ 3 Defendant was charged with four counts of the aggravated battery of Eric Bauml. The allegations against defendant were that on September 17, 2011, near 3550 North Sheffield Avenue in Chicago, defendant struck Mr. Bauml on the head with a glass bottle and fractured an orbital bone of his skull.

¶ 4 At trial, the evidence showed that on September 17, 2011, Mr. Bauml was scheduled to meet his brother and sister-in-law, John and Claire Bauml (John and Claire) at Club 162, located at 3551 North Sheffield Avenue in Chicago. Mr. Bauml arrived at approximately 6 p.m. and waited outside the club for John and Claire to arrive. Defendant, approached Mr. Bauml and solicited money from him for a sports team. Mr. Bauml gave defendant five dollars. Defendant continued to bother Mr. Bauml until Mr. Bauml told defendant to leave him alone. At this point, John and Claire had arrived on the scene. When John and Claire were within approximately 15 feet of Mr. Bauml and defendant, defendant struck Mr. Bauml on the side of the head with a bottle, immediately rendering Mr. Bauml unconscious.

¶ 5 Mr. Bauml woke up in the hospital, and remained there for four days. He was treated for an orbital fracture, a severe concussion, and nerve damage.

¶ 6 John identified defendant in a photo array, on October 1, 2011; on October 25, 2011, he identified defendant in a lineup. On October 26, 2011, Claire identified defendant in a lineup.

¶ 7 At the close of the State's case, defendant presented, as a witness, his girlfriend Colleen Duffy. Ms. Duffy testified that in September 2011, she was pregnant with defendant's child. At

11 a.m. on September 17, 2011, defendant took Ms. Duffy to an ultrasound appointment. After leaving Ms. Duffy at her appointment, defendant went to a funeral for a person named "T-fly". Three hours later, defendant returned to pick up Ms. Duffy from her ultrasound appointment. Soon thereafter, defendant and Ms. Duffy travelled to the south side of Chicago where for the next couple of hours, they had lunch at a McDonald's restaurant, then met with a number of people who had attended the funeral for T-fly. Ms. Duffy maintained defendant was with her the entire time, and that they returned home at 9 p.m.

¶ 8 In rebuttal, the State called Detective Marszalec, who testified that he spoke with defendant on October 25, 2011. Defendant told the detective that in the morning hours of September 17, 2011, he went to a funeral for T-fly on the south side of Chicago. Defendant then went to the Wrigley Field area, around the fourth or fifth inning of the baseball game, to sell counterfeit sports-related items. After making \$200 from selling those items and before the baseball game ended, defendant returned to the south side. He did not tell the detective that he took Ms. Duffy for an ultrasound that morning, nor that he left her for a period of time and returned to pick her up.

¶ 9 At the close of evidence, the trial court found defendant guilty of aggravated battery. The trial court noted that Claire and John had testified consistently and they had observed defendant strike Mr. Bauml in the head with a bottle. Both Claire and John had identified defendant in lineups. The trial court also noted defendant's alibi was not a strong one, that Ms. Duffy was an interested party and, according to her testimony, defendant was not actually with her for a three-hour period. The trial court noted Ms. Duffy claimed defendant went to a funeral, but no obituary or program from the funeral was presented. The trial court also noted that defendant

had told the investigating detective that he was in the area of Wrigley Field selling counterfeit sports-related goods, thus placing himself at the scene.

¶ 10 Defendant moved for a new trial, arguing the evidence was insufficient to support his conviction, and that he had presented an alibi. The trial court denied the motion. In denying the motion, the trial court stated Ms. Duffy was incredible.

¶ 11 The case proceeded to a sentencing hearing. At the start of the sentencing hearing, a presentence investigation report (PSI) was presented to the trial court. The trial court asked the "Defense" whether there were any additions or corrections to the PSI, and trial counsel responded, "No, Judge." The PSI included a section entitled: "Defendant's version of the offense." That section included the following:

"I never got a chance to be fully represented. The only thing John told me was to take a plea otherwise I was going to the penitentiary anyway. He never tried to fight for me. He never showed the obituary or ultrasound to the judge. I never had a chance. I am not arguing with the judge. I never did this. My past came back to haunt me. [defense counsel] knows my daughter is sick and has a trach. But he only told me to take a plea. I don't feel like he represented me to the fullest. I should've used my money for an attorney because the PD's in Skokie don't do their job. It really [hurt] me because I am innocent. It is between me and God and I feel sorry for the man because he got hurt really bad. I wish they would've caught the guy who did this. I did not have dreadlocks like they said the person did. It's real sad that I didn't do this and I spent a lot of time in jail and I am here. I am not questioning the judge's ruling and I will have to pay for the crime. Why was I socializing if [sic] for my money if I got a job? I am twenty-seven

years old, why would I be passing out a flyer for basketball?"

¶ 12 At the sentencing hearing, defendant spoke in allocution, and stated in relevant part:

"THE DEFENDANT: Yes, your Honor

THE COURT: What is it, sir?

THE DEFENDANT: I'd like to say first of all I do feel sorry for what happened to the victim. But unfortunately, your Honor, all I can do is maintain my innocence. I know for a fact deep down in my heart that I didn't hit this guy.

And I would just never had [sic] a chance to put other evidence that I had out there. I tried to give them to my public defender, which I felt like I wasn't represented all the way, your Honor."

Defendant again claimed he did not hurt Mr. Bauml and asserted he wanted to go home and be with his children.

¶ 13 The trial court considered the evidence in aggravation and mitigation, including defendant's "extensive" criminal history. The trial court found defendant's statements regarding concern for the victim were disingenuous and, because of the nature of the attack, defendant was a danger to society. Finally, the trial court sentenced defendant to eight years' imprisonment.

¶ 14 The trial court then allowed defendant to speak again. Defendant complained he was not a threat to society, did not deserve eight years' imprisonment for his crime, cursed and said: "Get me out of here, man."

¶ 15 After defendant's motion to reduce sentence was denied, he filed this appeal.

¶ 16 On appeal, defendant does not challenge the sufficiency of the evidence to sustain his conviction. Rather, defendant argues the trial court should have recognized that a conflict

existed with his trial counsel and, therefore, erred in failing to conduct a preliminary factual inquiry into ineffectiveness of counsel required by *Krankel*. Defendant asks that his cause be remanded for the purpose of conducting such an inquiry.

¶ 17 Under *Krankel*, and its progeny, where a defendant makes a *pro se* posttrial allegation of ineffective assistance of counsel, the trial court should conduct an adequate inquiry into the factual basis of the claim. *People v. Moore*, 207 Ill. 2d 68, 79 (2003). If the court determines that the claim lacks merit, or pertains solely to trial strategy, the court need not appoint new counsel, and may deny defendant's motion. *Id.* at 78. If the court finds possible neglect of the case, new counsel should be appointed. *Id.*

¶ 18 Defendant failed to present any posttrial motion asserting a claim of ineffective assistance of trial counsel. *People v. Taylor*, 237 Ill. 2d 68, 77 (2010). Although the pleading requirements for raising a *pro se* claim of ineffectiveness of counsel are somewhat relaxed, a defendant must still meet the minimum requirements necessary to trigger a *Krankel* inquiry. *People v. Bobo*, 375 Ill. App. 3d 966, 985 (2007). "A bald allegation of ineffectiveness of counsel is insufficient; rather, the defendant should raise specific claims with supporting facts before the trial court is required to consider the allegations." *People v. Walker*, 2011 IL App (1st) 072889, ¶ 34 (citing *People v. Radford*, 359 Ill.App.3d 411, 418 (2005)); *People v. Cunningham*, 376 Ill. App. 3d 298, 304 (2007).

¶ 19 Defendant argues his conflict with trial counsel was brought to the trial court's attention by: (1) his attempts to speak to the trial court prior to trial; (2) his remarks in the PSI; and (3) his statements in allocution. We will consider each of these points to determine if a *Krankel* inquiry was necessary.

¶ 20 Defendant first maintains during pretrial proceedings, he attempted to bring to the trial court's attention the purported conflict between him and his trial attorney. Specifically, he points to two occasions where he was prevented from speaking to the trial court.

¶ 21 On February 23, 2012, during discovery proceedings, defendant stated: "Excuse me, your Honor," and the trial court responded: "Be quiet."

¶ 22 On June 7, 2012, while the parties were setting the case for a trial date, defendant stated: "Excuse me. Could I speak to the judge?" The trial court responded: "No."

¶ 23 Even if defendant's attempts to speak during pretrial proceedings could be seen, somehow, as demonstrating the existence of a conflict with trial counsel, pretrial claims of ineffective assistance of trial counsel do not require a *Krankel* inquiry. *People v. Jocko*, 239 Ill. 2d 87, 91 (2010). Until the proceedings have concluded, there is no way to determine if trial counsel's errors have affected the outcome and, therefore, there is no way of establishing prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984). *Jocko*, 239 Ill. 2d at 92. Accordingly, we find defendant's pretrial attempts to speak to the trial court did not require an inquiry under *Krankel*. *Id.*

¶ 24 Defendant also maintains his remarks in the PSI were sufficient for the trial court to *sua sponte* inquire into a conflict. In defendant's version of the incident section of the PSI report, defendant maintained he was innocent and wished he had obtained a private attorney. He complained his trial counsel did not represent him to the fullest, told him to take a plea because he was going to prison, never tried to fight for him, and never showed the obituary for T-fly or the ultrasound during the trial. Defendant further complained he should have hired a private attorney, and that he wished the real offender had been apprehended. Defendant, however, also

indicated he was not questioning the trial court's judgment, and that he was sorry for Mr. Bauml.

¶ 25 Complaints by a defendant about counsel contained only in a PSI report do not, by themselves, bring a claim of ineffective assistance of counsel to the trial court's attention such that further inquiry by the court is required. *People v. Harris*, 352 Ill. App. 3d 63, 71-72 (2004); see also *People v. Reed*, 197 Ill. App. 3d 610, 612-13 (1990) (where allegations of ineffective counsel are contained only in the PSI, a *Krankel* inquiry is not required). Defendant's version of the events contained in the PSI did not trigger a *Krankel* inquiry.

¶ 26 We now consider defendant's statements in allocution. At that time, defendant stated he "never had a chance to put other evidence that I had out there. I tried to give them to my public defender, which I felt like I wasn't represented all the way." Under similar circumstances, we have found that a *Krankel* inquiry was not warranted. See, e.g., *People v. Ward*, 371 Ill. App. 3d 382 (2007).

¶ 27 In *Ward*, the defendant made oral statements that there was evidence which had not been submitted at trial, including signed affidavits, and he blamed his trial counsel for not presenting the evidence. *Id.* at 394, 432. This court found such statements were inadequate to trigger a *Krankel* inquiry. *Id.* at 432. Further, we found it relevant that the circuit court did not prevent the defendant from a further "articulation of his grievances." *Id.* We recognize that in *People v. Remsik-Miller*, 2012 IL App (2d) 100921, the Second District disagreed with this court's decision in *Ward*, finding that even a bare claim of ineffectiveness of trial counsel warrants some degree of inquiry. This court, however, continues to follow our decision in *Ward*—that a defendant must meet a minimum requirement to trigger a *Krankel* inquiry by the trial court. See, e.g., *Walker*, 2011 IL App 072889, ¶ 34; see also *People v. Montgomery*, 373 Ill. App. 3d 1104, 1121

(2007) (Fourth District).

¶ 28 In this case, defendant's allocution remarks—that other unspecified evidence existed and that trial counsel did not fully represent him—did not bring to the trial court's attention a specific claim of ineffective assistance of trial counsel or facts which support that claim. Additionally, as in *Ward*, there is no evidence here that the trial court prevented defendant from further articulation of his complaints about trial counsel during allocution, or at any time posttrial. Indeed, after imposing sentence, the trial court gave defendant an additional opportunity to address the court. Defendant chose only to speak belligerently and curse. In seeking a reduction in the sentence, defendant made no presentation as to any inadequacy of counsel. Defendant's remarks in allocution did not suffice to require a *Krankel* inquiry.

¶ 29 We, thus, conclude defendant failed to sufficiently bring a claim of ineffective assistance to the attention of the trial court to trigger its duty to conduct a *Krankel* inquiry by his statement in allocution.

¶ 30 Additionally, defendant's general complaints about counsel—*e.g.*, the failure to present Ms. Duffy's ultrasound or T-fly's obituary—are related to trial strategy issues which are immune from ineffective assistance of trial counsel claims. *People v. Munson*, 206 Ill. 2d 104, 140 (2002). Mr. Bauml was attacked at 6 p.m. Ms. Duffy claims her ultrasound was performed between 11 a.m. and 2 p.m. Defendant went to T-fly's funeral after driving Ms. Duffy to her ultrasound. Defendant admitted to Detective Marszalec that he attended T-fly's funeral in the morning, then he went to the Wrigley Field area. Defendant did not tell the detective that he took Ms. Duffy to her ultrasound appointment. Accordingly, any decision of trial counsel not to present this evidence was clearly a matter of trial strategy and failure to present the evidence

would not have affected the outcome of defendant's trial. The trial court, thus, was not required to conduct any inquiry. *Ward*, 371 Ill. App. 3d at 431, 433.

¶ 31 We have considered *Moore*, *People v. Vargas*, 409 Ill. App. 3d 790 (2011), and *People v. Robinson*, 157 Ill. 2d 68 (1993), which are cited by defendant, and find those cases do not warrant a contrary result. In *Vargas*, trial counsel informed the trial court posttrial that the defendant wished to raise an issue regarding trial counsel's performance. *Id.* at 799. The defendant then informed the trial court that he asked trial counsel to perform certain tasks, which trial counsel refused to do. *Id.* at 800-01. The trial court did not investigate these claims. On review, this court found the record on appeal did not demonstrate the trial court was familiar with *Krankel*, nor that the allegations required further inquiry pursuant to *Krankel*. *Id.* at 802-03. Here, unlike *Vargas*, trial counsel did not tell the trial court defendant had claims of ineffectiveness. Defendant's statements in allocution were vague and insufficient to present a claim of ineffective assistance of trial counsel and a *Krankel* inquiry.

¶ 32 In *Moore*, the defendant filed a *pro se* motion that set forth specific ineffective assistance of trial counsel claims with supporting facts. There, the trial court's sole response was to appoint the defendant new counsel on appeal. *Moore*, 207 Ill. 2d at 77. In *Robinson*, the defendant specifically raised an ineffective assistance of trial counsel claim in his posttrial motion, and the trial court denied his motion, refusing to allow him to specify his complaints and present supporting evidence. *Robinson*, 157 Ill. 2d at 85-86. In *Moore*, and *Robinson*, unlike here, the defendants filed a posttrial motion where they identified specific ineffective assistance of trial counsel claims with supporting facts. *Walker*, 2011 IL App (1st) 072889, ¶¶ 33-34. Defendant's allegations in this case were supported only by generalities and vague allegations and the facts of

this case do not warrant a similar result.

¶ 33 Finally, defendant contends, the State concedes, and we agree that his mittimus should be corrected to reflect he is subject to a one-year term of MSR, and not a three-year term of MSR. Defendant was convicted of aggravated battery, a Class 3 felony and was, thus, sentenced as a Class 3 offender. As such, defendant is subject to a one-year term of MSR (720 ILCS 5/12-3.05(a)(1), (h) (West 2012); 730 ILCS 5/5-8-1(d)(3) (West 2012)), and we order the mittimus corrected to that effect. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 34 In light of the foregoing, we affirm the judgment of the circuit court of Cook County, and order the correction of the mittimus.

¶ 35 Affirmed; mittimus corrected.