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2014 IL App (3d) 120206-U

Order filed January 21, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
Plaintiff-Appellee,)	Hancock County, Illinois,
)	
v.)	Appeal No. 3-12-0206
)	Circuit No. 09-CF-56
)	
ROBERT L. JOHNSON,)	Honorable
)	David F. Stoverink,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The trial court erred when it failed to investigate counsel's potential conflict of interest when new information was brought to light at the hearing on defendant's motion to dismiss the indictment. (2) The cause is remanded to determine whether defendant is entitled to additional presentence custody credit for time he spent in custody on the instant offense in Iowa, and also to modify defendant's mittimus as directed herein.
- ¶ 2 Following a stipulated bench trial, defendant, Robert L. Johnson, was found guilty of possession of a deadly substance (720 ILCS 5/20.5-6 (West 2008)), and was sentenced to 13 years' imprisonment. On appeal, defendant argues that: (1) the trial court erred when it failed to

inquire into whether a conflict of interest arose when defense counsel argued the motion to dismiss defendant's indictment; (2) the cause should be remanded to determine whether defendant is entitled to presentence custody credit for time spent in custody in Iowa on the instant offense; and (3) certain fines and fees should be modified. We reverse and remand for further proceedings.

¶ 3

FACTS

¶ 4 Defendant was charged by information with possession of a deadly substance (720 ILCS 5/20.5-6 (West 2008)) (count I), unlawful possession or storage of anhydrous ammonia (720 ILCS 646/25(a)(1) (West 2008)) (count II), and unlawful possession or storage of anhydrous ammonia in an unauthorized container (720 ILCS 646/25(c)(1) (West 2008)) (count III). On October 24, 2009, defendant was arrested for the instant offenses and posted bond on October 26, 2009. On October 29, 2009, Kameron Miller was appointed to represent defendant.

¶ 5 On September 13, 2010, defendant failed to appear at a pretrial conference, due to his incarceration in Iowa, and a warrant was issued for defendant's arrest. Defendant was subsequently arrested in Iowa. According to defendant, he was arrested in Iowa on the Illinois warrant. Defendant was later sentenced to a term of imprisonment in the Iowa Department of Corrections (Iowa DOC) on Iowa charges. On March 15, 2011, while incarcerated in Iowa, defendant sent a request to the records department, requesting information on how to start paperwork for his detainer from Hancock County, Illinois. The records department informed defendant that no detainer had been lodged, but told defendant to send his request to the county attorney in Hancock County. On March 16, 2011, defendant sent another request to the records department, asking if any detainers had been filed against him. The records department

responded that no detainers had been filed against defendant at that time.

¶ 6 On August 10, 2011, the Iowa DOC sent a letter to the Hancock County sheriff's office, notifying them that a detainer had been filed against defendant on behalf of Hancock County, but it did not specify when the detainer had been filed. The letter notified Hancock County that defendant's expected release date was September 9, 2011. On that date, defendant was released from the Iowa DOC, and Hancock County took custody of defendant pursuant to the outstanding arrest warrant issued on September 13, 2010.

¶ 7 On September 12, 2011, defendant filed a motion for substitution of counsel, alleging counsel was not working in defendant's best interests, did not communicate with him while he was incarcerated in Iowa, and failed to prevent an arrest warrant when defendant failed to appear in court due to his incarceration in Iowa.

¶ 8 On September 30, 2011, the trial court held a hearing on the motion. Defendant informed the court that Miller had failed to respond to his communications and also failed to ensure defendant understood what was going on with his case. Defendant noted that he was arrested in Iowa on a warrant issued in Illinois on September 13, 2010, and was held in Iowa for misdemeanor charges that were pending there. He was incarcerated in county jail in Iowa for approximately five months and in the Iowa DOC for approximately five months. While in custody, defendant tried to have his Illinois charges taken care of, but a detainer was never filed against him while he was incarcerated. Defendant tried to file paperwork for a speedy trial so that Illinois would take custody of defendant and try him on the pending charges, instead of waiting until he discharged his sentence in Iowa. Defendant tried contacting Miller numerous times regarding this, but Miller failed to respond.

¶ 9 Miller informed the court that defendant's case had been pending for a while, but when it started, he "told the defendant what was what. We tried to make arrangements for him to help out things. That failed." When defendant was incarcerated in Iowa, Miller stated that there was not much to communicate about, "except for getting him to a trial [in Illinois], but he hasn't wanted that and that's basically it."

¶ 10 The trial court responded that Miller had limited ability to have defendant brought to Illinois, noting that Miller was not licensed in Iowa and was only representing defendant on the Hancock County case. The court also noted that Miller had no authority to extradite defendant. The court denied defendant's motion, but noted that Miller's representation could be reviewed again if defendant had additional concerns. The court believed that Miller's communication with defendant would improve since he was being held in Hancock County instead of Iowa.

¶ 11 On October 31, 2011, Miller filed a motion to dismiss the charges against defendant. Miller alleged that the State had failed to try defendant within 180 days of his request for final disposition of his untried charges pursuant to the Agreement on Detainers (Agreement) (730 ILCS 5/3-8-9 (West 2008)). The court held a hearing on November 10, 2011. Defendant testified that on March 15, 2011, while incarcerated in the Iowa DOC, he received an information sheet from the prison. This sheet informed defendant that if an out-of-state detainer was for untried charges, and qualified under the Agreement, central records and his attorney would assist with the paperwork. Defendant was informed that he had to waive extradition and that his attorney could provide him with the form. Central records staff would complete all the paperwork for defendant and would send it out certified mail. Upon receipt of the paperwork, the other state had 180 days to act.

¶ 12 Based on this information sheet, defendant sent a request to the records department on March 15, and 16, 2011, inquiring about how to start the paperwork for a speedy trial. Defendant was informed that no detainers had been filed against him. It was not until August 10, 2011, that defendant learned Illinois had an active warrant for his arrest. Defendant admitted that after March 16, 2011, he took no further action because he was told nothing was pending in Illinois. Defendant did not file anything with the Hancock County court or with the State's Attorney's office, but stated that he was not informed that he had to do this. The only other action defendant took was to contact Miller.

¶ 13 Miller then argued that Iowa authorities gave defendant incorrect information regarding what procedures were required to obtain relief under the Agreement. The State responded that defendant did not comply with the requirements of the Agreement, noting that Miller could have filed the proper detainer paperwork for defendant. Miller responded that the Agreement provided only that defendant should initiate the speedy trial paperwork.

¶ 14 The trial court denied defendant's motion. The court found that defendant did not comply with the procedures required by the Agreement, noting that defendant was required to send written notice of his place of imprisonment and a request for final disposition to the prosecuting officer and appropriate court. The court stated that although defendant was misinformed about whether he had a detainer filed against him and what he needed to file, defendant still had not met his burden of proving a *prima facie* case for dismissal. Defendant was told by Iowa authorities to contact the county attorney in Hancock County, but failed to do so. Further, in the information sheet provided by the Iowa DOC, defendant was told he had to waive extradition; however, there had been no showing that extradition had been waived.

¶ 15 On March 9, 2012, the case proceeded to a fully negotiated stipulated bench trial. The parties stipulated to the facts in relation to count I, and in exchange, counts II and III were dismissed. Defendant stipulated that the facts presented were sufficient to convict. The court found defendant guilty of possession of a deadly substance (720 ILCS 5/20.5-6 (West 2008)). Defendant was sentenced to the parties' agreed term of 13 years' imprisonment and was assessed various fines and fees totaling \$555. Defendant also received 186 days' presentence custody credit for time he spent in custody in Illinois from October 24 to October 26, 2009, and from September 9, 2011, to March 9, 2012. Defendant appeals.

¶ 16 ANALYSIS

¶ 17 On appeal, defendant argues that: (1) the cause should be remanded to the trial court for a *Krankel* hearing; (2) the cause should be remanded to determine the amount of sentencing credit he should receive while he was in custody in Iowa; and (3) certain other fines and fees need to be vacated or modified.

¶ 18 I. Rule 605(c) Admonitions

¶ 19 The State, however, initially contends that defendant's appeal should be dismissed and the cause remanded for postguilty plea admonitions in compliance with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001). The State admits that defendant did not raise this issue on appeal, but claims that because defendant's stipulated bench trial was tantamount to a guilty plea, Rule 605(c) admonitions were mandatory. See Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001) (requiring a defendant who enters a negotiated guilty plea to be admonished of the procedural steps required under Rule 604(d) to take an appeal).

¶ 20 We agree that defendant's stipulated bench trial was tantamount to a guilty plea; however,

we disagree with the State's argument that Rule 605(c) admonitions were required.

¶ 21 The need for guilty plea admonitions in stipulated bench trials was discussed in *People v. Horton*, 143 Ill. 2d 11 (1991). There, the supreme court held that when a defendant stipulates that the evidence is sufficient to convict, the proceeding is tantamount to a guilty plea. The court held that in such proceedings, a defendant must receive Illinois Supreme Court Rule 402 admonitions. *Id.*; see also Ill. S. Ct. R. 402 (eff. July 1, 1997) (providing that certain admonitions must be given "[i]n hearings on pleas of guilty, or in any case in which the defense offers to stipulate that the evidence is sufficient to convict." The court did not, however, address the need for Rule 605 admonitions).

¶ 22 The State cites *People v. Thompson*, 404 Ill. App. 3d 265 (2010), for the proposition that when a stipulated bench trial is tantamount to a guilty plea, the supreme court rules pertaining to guilty pleas must be followed, including Rule 605(c). We find defendant's reliance on *Thompson* misplaced. This court in *Thompson* determined that defendant's proceeding was not tantamount to a guilty plea, and thus the statement that Rule 605(c) admonitions were required for such proceedings was *dicta*. See *id.* Furthermore, this court cited to *Horton* for the proposition that the supreme court rules pertaining to guilty pleas applied; however, *Horton* held only that Rule 402 admonitions were mandatory. See *Horton*, 143 Ill. 2d 11; *Thompson*, 404 Ill. App. 3d 265. While a stipulation of guilt is similar to a guilty plea, it is not merely a mislabeled guilty plea. *People v. Bond*, 257 Ill. App. 3d 746 (1994). Therefore, we conclude that unlike Rule 402, the trial court was not required to admonish defendant pursuant to Rule 605(c). See Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001) (referring only to admonitions given after a judgment and sentence was entered on a negotiated plea of guilty). As such, we will address the issues raised by defendant.

¶ 23

II. *Krankel* Hearing

¶ 24 Defendant first argues that the cause should be remanded to the trial court for a *Krankel* hearing because the court failed to inquire into whether Miller labored under a potential conflict of interest during the hearing on defendant's motion to dismiss the indictment. Defendant acknowledges that the court held a hearing on his motion to substitute counsel on September 30, 2011. Defendant, however, argues that it was not until November 10, 2011, at the hearing on his motion to dismiss the indictment, that the court became aware of counsel's possible neglect of defendant's case by failing to file a speedy trial demand. Therefore, defendant argues that the trial court erred when it failed to inquire into whether a potential conflict of interest arose when Miller argued defendant's motion to dismiss the indictment.

¶ 25 Pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), when a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court must conduct some type of inquiry into the factual basis of defendant's claim. *People v. Moore*, 207 Ill. 2d 68 (2003). If a preliminary investigation into the allegations shows possible neglect of the case, the trial court should appoint new counsel to argue defendant's ineffective assistance claims. *Id.*

¶ 26 A court may be required to make a pretrial *Krankel* inquiry in instances where: (1) a potential conflict of interest exists; or (2) there has been a complete deprivation of counsel. *People v. Jocko*, 239 Ill. 2d 87 (2010). If a potential conflict of interest is brought to the trial court's attention at an early stage, the court has a duty to either appoint separate counsel or take adequate steps to ascertain whether the risk of conflict was too remote to warrant separate counsel. *People v. Hardin*, 217 Ill. 2d 289 (2005).

¶ 27 The threshold question of whether the trial court was required to conduct a *Krankel*

inquiry is a question of law, which we review *de novo*. See *People v. Remsik-Miller*, 2012 IL App (2d) 100921. Generally, a *pro se* defendant is not required to do any more than bring his claim to the trial court's attention, and is also not obligated to renew claims of ineffective assistance once they are made known to the court. *Jocko*, 239 Ill. 2d 87; *Moore*, 207 Ill. 2d 68. Additionally, where there is a clear basis for an allegation of ineffectiveness of counsel, a defendant's failure to explicitly make such an allegation does not result in waiver of a *Krankel* problem. *People v. Williams*, 224 Ill. App. 3d 517 (1992).

¶ 28 In the instant case, defendant argued Miller's deficient performance at the hearing on his motion to substitute counsel on September 30, 2011. Defendant informed the court that he tried to have his Illinois charges taken care of while he was in custody in Iowa, but noted that a detainer was never filed against him. Defendant tried contacting Miller regarding his speedy trial paperwork, but to no avail. The trial court ultimately denied defendant's motion, noting that Miller had no authority to extradite defendant.

¶ 29 Pursuant to Article III of the Agreement, when a state is seeking to bring charges against a prisoner in another state's custody, it must file a detainer. 730 ILCS 5/3-8-9(a) (art. III) (West 2008); *People v. Davis*, 356 Ill. App. 3d 940 (2005). A detainer is a request by the state that the institution in which the prisoner is housed hold the prisoner for the requesting state or notify the state when the prisoner's release is imminent. *Davis*, 356 Ill. App. 3d 940. Only after a prisoner has entered into a term of imprisonment in a party state, and a detainer has been lodged against him, may a prisoner file a request for final disposition of all charges against him in any other party state. 730 ILCS 5/3-8-9(a) (art. III) (West 2008); *Davis*, 356 Ill. App. 3d 940. The prisoner must make this request for final disposition and submit written notice of his place of

imprisonment to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction. 730 ILCS 5/3-8-9(a) (art. III) (a) (West 2008). Upon such a request by a prisoner, the state with the untried charges must bring the prisoner to trial within 180 days. 730 ILCS 5/3-8-9(a) (art. III) (West 2008); *Davis*, 356 Ill. App. 3d 940.

¶ 30 According to defendant's testimony at the hearing to substitute counsel, no detainer had been filed against him; therefore, the Agreement was inapplicable to defendant and he or Miller could not have filed a valid request for a speedy trial under this statute. See *Davis*, 356 Ill. App. 3d 940. Consequently, at the time of the hearing, defendant's claim that Miller was ineffective for failing to assist him with his speedy trial demand was meritless.

¶ 31 It was not until November 10, 2011, at the hearing on the motion to dismiss defendant's indictment, that the trial court was presented with evidence that a detainer had been lodged against defendant, but the date it was filed was unknown. There was also evidence presented that as of March 15, 2011, defendant was incarcerated in the Iowa DOC. Based on this testimony, it appeared that the Agreement did apply to defendant, and thus defendant's prior claim that Miller was potentially ineffective for failing to file a proper speedy trial demand may have had merit. See *People v. Jackson*, 235 Ill. App. 3d 732 (1992) (finding counsel's performance deficient when he attempted to file a speedy trial demand, but did so incorrectly).

¶ 32 Based on this new evidence, defendant argues that the trial court should have inquired into whether Miller labored under a potential conflict of interest in representing defendant on his motion to dismiss, as he would be unlikely to argue his own ineffectiveness. See *People v. Janes*, 168 Ill. 2d 382 (1995) (stating that it would be unreasonable to expect counsel to argue his own ineffectiveness). We agree.

¶ 33 Although defendant did not renew his initial claim of Miller's ineffectiveness at the hearing on his motion to dismiss, the trial court was aware that defendant previously alleged counsel's ineffectiveness regarding this issue. Furthermore, at the hearing, the State argued that Miller should have filed the proper speedy trial paperwork for defendant, but failed to do so. Miller responded that only defendant had a duty to file such paperwork under the Agreement. We find Miller's argument supportive of the fact that it is unreasonable to expect counsel to argue his own ineffectiveness. Additionally, the State's argument regarding Miller's potential ineffectiveness brought the potential conflict before the court.

¶ 34 Defendant's prior claim of Miller's ineffectiveness and information revealed at the hearing on the motion to dismiss established that Miller had a potential conflict of interest in arguing the motion. Although we do not have enough information to determine whether counsel's potential conflict was sufficient to appoint new counsel, given the appearance of a conflict, it was enough to require the court to conduct a preliminary inquiry. Therefore, we remand the cause to allow the trial court an opportunity to conduct a preliminary *Krankel* inquiry into Miller's potential conflict of interest.

¶ 35 III. Out-of-State Custody Credit

¶ 36 Defendant next argues that the case should be remanded to determine the number of days he was held in custody in Iowa for the instant offense in order to determine the appropriate amount of presentence custody credit he is entitled to.

¶ 37 The record in this case indicates that police arrested defendant in Iowa on an Illinois warrant. Defendant was thereafter incarcerated in the Iowa DOC on misdemeanor charges in that state and was released from custody on September 9, 2011. On that date, Hancock County

officials took defendant into custody, and he was tried for the instant offense.

¶ 38 A defendant is entitled to sentencing credit for time spent detained in another state, so long as the confinement in the other jurisdiction was a result of the offense for which defendant was sentenced. *People v. Elder*, 392 Ill. App. 3d 133 (2009). A defendant is not entitled to credit for time spent in custody while incarcerated in another state as a result of a crime committed there, even if a detainer is served on defendant in that state. *People v. Gardner*, 172 Ill. App. 3d 763 (1988).

¶ 39 In the instant case, the record indicates that defendant was arrested in Iowa on an Illinois warrant for the instant offense and later incarcerated on Iowa charges. The record, however, does not indicate when defendant was arrested on the Illinois warrant or when defendant began serving his sentence for the Iowa charges. Therefore, we remand for the trial court to make this determination and award defendant the appropriate sentencing credit for the time he spent in custody in Iowa for the instant offense. See *Elder*, 392 Ill. App. 3d 133.

¶ 40 IV. Fines and Fees

¶ 41 Lastly, defendant argues that his custody credit and certain fines and fees imposed by the trial court must be adjusted or vacated.

¶ 42 With regard to defendant's presentence custody credit, the trial court awarded defendant 186 days of credit for the time he spent in custody in Illinois. The parties agree, however, that defendant is only entitled to 185 days, because the date of sentencing should not count as a day of presentence custody. See *People v. Williams*, 239 Ill. 2d 503 (2011). We agree and instruct the trial court to modify defendant's mittimus accordingly.

¶ 43 Defendant next argues that this court should vacate his \$25 State Police Services Fund

fine and \$100 Trauma Center Fund fine because the fines were imposed incorrectly. We agree. The \$25 State Police Services Fund fee was not authorized in the instant case, because this fine did not take effect until 2010 and would not apply to an offense committed in 2009. See 730 ILCS 5/5-9-1.1-5 (West Supp. 2009); see *People v. Devine*, 2012 IL App (4th) 101028 (finding that the imposition of fines that do not become effective until after a defendant commits an offense violates *ex post facto* principles). Additionally, the \$100 Trauma Center Fund fine was also not authorized in the instant case, because the statute relates only to certain enumerated offenses that do not apply to defendant's conviction. See 730 ILCS 5/5-9-1.10 (West 2008). Therefore, we agree that each fine should be vacated, and direct the trial court to modify the mittimus accordingly.

¶ 44 Defendant also requests a \$5-per-day credit against his \$5 teen court fine, \$5 child advocacy center fine, and \$10 State Police Operations Assistance Fund fine for the time he spent in custody before sentencing. See 725 ILCS 5/110-14(a) (West 2008). Defendant was incarcerated for 185 days prior to sentencing, but received 186 days of credit. The parties agree that defendant should have only received 185 days. Thus, defendant is entitled to up to \$925 in credit against his fines. See *People v. Cameron*, 2012 IL App (3d) 110020; *People v. Millsap*, 2012 IL App (4th) 110668. Therefore, we direct the trial court to modify defendant's mittimus to reflect a credit of \$20 against his fines.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, the judgment of the circuit court of Hancock County is reversed, and the cause is remanded with directions.

¶ 47 Reversed and remanded with directions.