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2014 IL App (3d) 120678-U

Order filed February 5, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-12-0678
v.	)	Circuit No. 11-CF-110
	)	
DAVID KING, JR.,	)	Honorable
	)	Daniel J. Rozak,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Justices McDade and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court did not err in conducting a preliminary investigation into defendant's postplea claims of ineffective assistance of counsel without appointing new counsel.

¶ 2 Defendant, David King, Jr., pled guilty to aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2010)) and was sentenced to 17 years' imprisonment. On appeal, defendant argues that the trial court violated Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013) when it did not appoint counsel to represent him on his postplea motion to withdraw his guilty plea. We affirm.

¶ 3

## FACTS

¶ 4 Defendant was charged by indictment with armed robbery (720 ILCS 5/18-2(a)(2) (West 2010)), aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2010)), and two counts of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2010)). Thereafter, the trial court appointed the public defender's office to represent defendant.

¶ 5 On March 26, 2012, defendant appeared before the court with public defender Michael Renzi. Defendant entered a guilty plea to one count of aggravated battery with a firearm in exchange for the dismissal of the remaining charges and a sentence of 17 years' imprisonment.

¶ 6 On April 23, 2012, defendant filed a letter with the court asking to withdraw his guilty plea because he had received ineffective assistance of counsel. At a subsequent hearing, defendant appeared with Renzi; however, the report of proceedings cover sheet for the hearing stated that defendant appeared *pro se*. Defendant argued that Renzi should have filed a motion to suppress evidence. At the conclusion of defendant's argument, the trial court continued the hearing. At a subsequent hearing on defendant's motion, the report of proceedings cover page indicated that defendant was again represented by Renzi. Renzi responded to defendant's arguments, noting that he had considered filing a motion to suppress evidence, but he was concerned that if the motion was filed, the State would withdraw its plea offer. Renzi felt that the plea offer was a wiser course of action than proceeding to trial with the possibility that two codefendants would testify against defendant and defendant would receive a minimum sentence of 37 years' imprisonment. The trial court found that Renzi was not ineffective and denied defendant's motion to withdraw his plea. Defendant appeals.

¶ 7

## ANALYSIS

¶ 8 On appeal, defendant argues that the trial court should have appointed counsel to represent him on his postplea motion because Rule 604(d) guaranteed his right to counsel once

he moved to withdraw his guilty plea. Compliance with a supreme court rule presents a question of law that we review *de novo*. *People v. Dismuke*, 355 Ill. App. 3d 606 (2005).

¶ 9 Rule 604(d) provides that after a defendant files a motion to withdraw his guilty plea, the trial court "shall then determine whether the defendant is represented by counsel, and if the defendant is indigent and desires counsel, the trial court shall appoint counsel." Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013). In the instant case, defendant sent an *ex parte* letter to the court seeking to withdraw his guilty plea. The trial court treated the letter as a motion to withdraw the guilty plea and set the matter for a hearing. At the first hearing on the matter, defendant appeared with defense counsel. Although the report of proceedings stated that defendant was *pro se*, the record does not indicate that defense counsel had withdrawn his representation. At the second hearing, counsel appeared and was identified as defendant's attorney. Contrary to defendant's assertions, Rule 604(d) admonitions and appointment of counsel were unnecessary because defendant was already represented by Renzi.

¶ 10 After the filing of defendant's motion to withdraw his guilty plea, the trial court conducted a preliminary investigation into defendant's claims of ineffective assistance. See *People v. Krankel*, 102 Ill. 2d 181 (1984). A trial court is not required to appoint new counsel when a defendant files a *pro se* posttrial motion alleging ineffective assistance of counsel, but the court is required to conduct a preliminary inquiry to determine if the defendant's allegations warrant appointment of new counsel. *People v. Allen*, 391 Ill. App. 3d 412 (2009); *People v. Dean*, 2012 IL App (2d) 110505 (applying the *Krankel* rule in the context of a motion to withdraw a guilty plea). During the inquiry, the court allowed defendant to argue that defense counsel was ineffective and provided Renzi with an opportunity to respond. Ultimately, the court determined that new counsel was not warranted because Renzi was effective in securing a sentence that was lower than the minimum term defendant could have received if he had gone to

trial. We note that Renzi was not ineffective for deciding not to pursue a motion to suppress evidence, as the decision was strategic. See *Allen*, 391 Ill. App. 3d 412 (after a preliminary inquiry, a trial court may deny a defendant's posttrial motion alleging ineffective assistance without appointing new counsel if it determines the claim is meritless or concerns a matter of trial strategy). Therefore, the trial court did not err in denying defendant's motion to withdraw his guilty plea based on a claim of ineffective assistance of counsel.

¶ 11

#### CONCLUSION

¶ 12 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 13 Affirmed.