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2014 IL App (4th) 130390-U

NO. 4-13-0390

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 25, 2014
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
NATHANIEL JACKSON III,)	No. 12CF312
Defendant-Appellant.)	
)	Honorable
)	Jennifer H. Bauknecht,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court vacated the trial court's denial of defendant's motion to withdraw his guilty plea and remanded the case for a preliminary inquiry into defendant's ineffective-assistance-of-counsel claim where the trial court failed to address the claim during postplea proceedings.

¶ 2 In April 2013, defendant, Nathaniel Jackson III, filed a motion to withdraw his guilty plea alleging, in part, his attorney provided ineffective assistance of counsel. Later that month, the trial court denied defendant's motion without conducting a preliminary inquiry into or making any findings regarding defendant's ineffective-assistance-of-counsel claim.

¶ 3 Defendant appeals, asserting the trial court erred by failing to conduct an inquiry into his allegation of ineffective assistance of counsel pursuant to *People v. Moore*, 207 Ill. 2d 68, 797 N.E.2d 631 (2003), and *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). For

the following reasons, we vacate the court's denial of defendant's motion to withdraw his guilty plea and remand this case for further proceedings.

¶ 4

I. BACKGROUND

¶ 5

On November 19, 2012, the State charged defendant by information with two drug-related offenses in violation of section 402(c) of the Illinois Controlled Substances Act (720 ILCS 570/402(c) (West 2012)). Count I alleged defendant committed unlawful possession of a controlled substance (cocaine), a Class 4 felony. Count II alleged defendant committed unlawful possession of a controlled substance containing less than 15 grams of a substance containing heroin, also a Class 4 felony. Later that month, the trial court appointed an attorney to represent defendant.

¶ 6

On March 8, 2013, defendant entered a plea of guilty to count II, at which time the State dismissed count I. Pursuant to a negotiated disposition, defendant received a sentence of 24 months' probation, with the conditions that he (1) pay all fines and costs within 12 months, and (2) serve 180 days in the county jail, with credit for time previously served. Before accepting the plea agreement, the trial court outlined the terms of the plea agreement and asked whether defendant understood. Defendant answered, "yes." The court admonished defendant that by pleading guilty, he was giving up the right to (1) plead not guilty, (2) a trial by judge or jury, (3) a speedy trial, (4) confront and cross-examine the State's witnesses, (5) present evidence on his own behalf, and (6) subpoena witnesses to testify. The court asked if defendant had any questions about the rights he would be giving up if he persisted in pleading guilty. Defendant replied, "no." The court then outlined the possible penalties for a Class 4 felony, explaining that defendant could face those penalties if he failed to successfully complete probation. When asked

whether he had any questions about the range of penalties for the offense, defendant answered, "[n]o, Your Honor." The following exchange then occurred:

"THE COURT: Has anyone forced you to plead guilty to the charges today?"

DEFENDANT: No.

THE COURT: Other than the terms of this plea agreement, has anyone promised you anything?

DEFENDANT: No.

THE COURT: Have you had a full opportunity to discuss this decision with [defense counsel]?

DEFENDANT: Yes, I have.

THE COURT: Knowing the charges you are pleading guilty to, the rights that you are waiving, and the penalties you are facing, do you still wish to go forward and plead guilty?

DEFENDANT: Yes."

¶ 7 The State then provided a factual basis for the plea agreement. The State indicated it would have called Officer Allen Doran of the City of Pontiac police department to testify that, in November 2012, he conducted a traffic stop on defendant's vehicle. During the course of the traffic stop, Officer Doran found in defendant's possession less than 15 grams of a substance that later tested positive for heroin. After hearing the factual basis, the trial court asked defendant whether he was pleading guilty or not guilty to the charge. Defendant responded, "[g]uilty." The court then accepted defendant's plea of guilty as knowingly and voluntarily made. When the court admonished defendant about his right to appeal, defendant

asked questions about the process for filing an appeal, though he did not expressly state an intention to do so.

¶ 8 On March 20, 2013, defense counsel filed a motion to withdraw defendant's guilty plea, asserting defendant claimed to be innocent. On April 5, 2013, defendant filed a *pro se* motion to withdraw his guilty plea, arguing (1) his attorney provided "insufficient" counsel, (2) he was innocent of the charges, (3) the traffic stop was a pretext for searching the defendant's vehicle for drugs, and (4) the traffic stop resulted from illegal racial profiling. He also attached a letter stating (1) he did not believe his attorney intended to file a motion to withdraw his guilty plea, (2) his attorney had hidden information from him, and (3) his attorney refused to "work with" him to prepare for trial in a timely manner. On that same date, defense counsel filed an amended motion to withdraw defendant's guilty plea, restating the allegations set forth in defendant's *pro se* motion.

¶ 9 On April 24, 2013, the hearing on defendant's motion to withdraw his guilty plea commenced. Neither party presented evidence. Following arguments presented by the State and defense counsel, the trial court made the following findings:

"Nothing in the motion or the affidavit indicates that the plea was entered on [a] misapprehension of facts or law nor has there been anything specific regarding guilt of the [d]efendant. I have not had anything presented to me through the motion that would indicate some manifest injustice under the facts involved in this case.

I recall when the plea was taken, and actually I've got the transcript in my file in any event. But the [d]efendant did ask questions concerning the withdrawal of his plea when the appeal

admonitions were given but didn't indicate at that time any confusion or misunderstanding as to the facts or as to the law. He didn't at that point say that he wasn't guilty. He simply inquired as to the specifics of the appeal rights that he has.

So I don't think there's anything to suggest that there's been a manifest injustice in this case. There's nothing to suggest that there was a misapprehension of facts or the law or otherwise that there is any doubt of the [d]efendant's guilt, the Court having previously found the [d]efendant knowingly and voluntarily entered that plea."

After making these findings, the court denied defendant's motion to withdraw his guilty plea.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant asserts the trial court erred by failing to conduct an inquiry into his claim of ineffective assistance of counsel pursuant to *Moore*, 207 Ill. 2d 68, 797 N.E.2d 631 and *Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045. Defendant does not appeal the other grounds upon which the court based its ruling and we will therefore not address them.

¶ 13 In this case, the transcript from the hearing on the motion to withdraw guilty plea contains no evidence that the trial court conducted inquiries into or made findings regarding defendant's ineffective-assistance-of-counsel claims. Where the court fails to conduct an inquiry into a defendant's ineffective-assistance claims, we utilize a *de novo* standard of review. *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 25, 960 N.E.2d 27 (citing *Moore*, 207 Ill. 2d at 75, 797 N.E.2d at 636).

¶ 14 When a defendant presents a claim of ineffective assistance of counsel, it is the trial court's duty to examine the basis for the defendant's claim. *Moore*, 207 Ill. 2d at 77-78, 797 N.E.2d at 637. To raise an ineffective-assistance-of-counsel claim, "a *pro se* defendant is not required to do any more than bring his or her claim to the trial court's attention." *Id.* at 79, 797 N.E.2d at 638. However, we note the court is not required to conduct an inquiry where the defendant "fails to identify relevant facts and raises only general, conclusory allegations of ineffective assistance of counsel." *People v. Walker*, 2011 IL App (1st) 072889-B, ¶ 33, 957 N.E.2d 531. When the court considers the defendant's allegations, the court may (1) discuss the allegations with the defendant, (2) ask defense counsel to answer questions or explain the facts and circumstances related to the defendant's claim, or (3) base its evaluation on its personal knowledge of defense counsel's courtroom performance or the facial insufficiencies of the defendant's claim. *Moore*, 207 Ill. 2d at 78-79, 797 N.E.2d at 638.

¶ 15 Defendant asserts the trial court erred by failing to conduct any inquiry into or make any findings regarding his ineffective-assistance-of-counsel claim. In response, the State argues defendant waived his ineffective-assistance-of-counsel claim by (1) pleading guilty, and (2) failing to demonstrate his plea was not knowingly or voluntarily made. The State contends defendant's failure to object to the factual basis at the time of his plea precluded him from filing a postplea motion alleging his counsel was ineffective for failing to challenge the legality of the traffic stop. However, in asserting this argument, the State overlooks the distinct arguments contained in defendant's motion to withdraw his plea. While it is correct defendant requested to withdraw his plea based on his innocence and the illegality of the traffic stop, he additionally argued his counsel withheld information and failed to provide timely representation. Though not artfully presented, those statements imply defendant did not knowingly enter into the plea

agreement, which constitutes potential grounds for vacating his guilty plea. See *People v. Marshall*, 381 Ill. App. 3d 724, 732, 886 N.E.2d 1106, 1113 (2008). Thus, we conclude defendant did not waive or forfeit his ineffective-assistance-of-counsel claim by entering into the plea agreement.

¶ 16 Alternatively, the State asserts the trial court adequately complied with the requirements for determining whether defendant is entitled to a *Krankel* hearing. In support, the State argues defense counsel adopted defendant's *pro se* motion and argued the motion on defendant's behalf, thus bringing the issue to the court's attention. While that may be true, the State overlooks that our primary consideration is whether the court conducted an adequate inquiry into defendant's ineffective-assistance-of-counsel claims. See *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 638.

¶ 17 In the present case, the trial court conducted no inquiry into and made no finding regarding defendant's ineffective-assistance-of-counsel claims. Absent from the record before us is any exchange between the court and counsel or the defendant eliciting facts and circumstances which serve as the basis for defendant's ineffective-assistance-of-counsel claim. We cannot infer, as the State suggests, that the court must have based its reasoning on its knowledge of defense counsel's court performance where no evidence in the record supports that assertion. Defendant did not allege his attorney committed any misconduct or mistakes during courtroom appearances; rather, he alleged defense counsel's lack of candor and unwillingness to "work with" him caused him to plead guilty. Therefore, the court could not base its evaluation of defendant's claims solely on defense counsel's courtroom performance, but would instead be required to engage in further inquiry. Thus, "it is simply not possible to conclude that the trial court's failure to conduct an inquiry into those allegations was harmless beyond a reasonable

doubt." *Id.* at 81, 797 N.E.2d at 639. Though defendant's claims may not have been meritorious, the court should have afforded him an opportunity to explain and provide support for his claim. *Id.* at 80, 797 N.E.2d at 639 (citing *People v. Robinson*, 157 Ill. 2d 68, 86, 623 N.E.2d 352, 361 (1993)).

¶ 18 Accordingly, we remand this case for the limited purpose of allowing the trial court to conduct the required preliminary investigation. In doing so, we note different counsel is not required to be appointed for defendant for the purpose of the trial court conducting its initial inquiry. If, upon conducting the initial inquiry, the court determines defendant's claim of ineffectiveness lacks merit, the court may deny the motion and order defendant's plea to stand. See *Id.* at 81, 797 N.E.2d at 640. However, if the court's initial inquiry reveals defendant's case has possibly been neglected, different counsel should be appointed to represent defendant at the hearing on his motion to withdraw his guilty plea. *People v. Chapman*, 194 Ill. 2d 186, 230, 743 N.E.2d 48, 74 (2000). In reaching this holding, we offer no opinion regarding the merits of defendant's claim.

¶ 19 III. CONCLUSION

¶ 20 For the foregoing reasons, we vacate the trial court's denial of defendant's motion to withdraw his guilty plea with respect to his ineffective-assistance-of-counsel claims only and remand this case for a preliminary inquiry into those claims pursuant to *Moore*, 207 Ill. 2d 68, 797 N.E.2d 631, and *Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045.

¶ 21 Vacated; cause remanded with directions.