2015 IL App (1st) 130013-U

FOURTH DIVISION
January 29, 2015

No. 1-13-0013

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 16983
	)	
BRODERICK HOLLINS,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Howse and Cobbs concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Judgment entered on defendant's convictions affirmed over his claims that the trial court failed to conduct an adequate *Krankel* inquiry and appoint new post-trial counsel.

¶ 2 Following a bench trial, defendant Broderick Hollins was found guilty of attempted intentional homicide of an unborn child, aggravated battery of a pregnant woman, aggravated battery of a handicapped person, home invasion, and robbery, then sentenced to 26 years in prison. On appeal, defendant contends that remand is required because the trial court failed to

appoint new post-trial counsel, or adequately inquire into his *pro se* post-trial claims of ineffective assistance of his two assistant public defenders (APD) pursuant to *People v. Krankel,* 102 Ill. 2d 181 (1984).

¶ 3 The record shows that the incident leading to defendant's arrest in this case took place on August 23, 2009, on the south side of Chicago. Three men, at defendant's behest, invaded the home of Lakeshia Davidson, who was eight months pregnant at the time, and her mother, Stephanie Stelly, and brutally beat the women before fleeing the scene. A.S., a juvenile, was arrested a few blocks from the victims' home and tried separately. Defendant, and former co-defendants, Benyusuf Hicks and Darryl Floyd, who are not parties to this appeal, were arrested later and charged together in connection with the incident.

¶ 4 On October 26, 2009, APD Bruce Mosbacher filed an appearance on behalf of defendant, and the case proceeded as a joint bench trial with co-defendants Hicks and Floyd. At a pre-trial status hearing on July 27, 2010, the court inquired if the case would proceed as a joint trial, or if any of the co-defendants intended to file a motion for severance. APD Mosbacher indicated that "there [was] a statement made by one of the co-defendants which [he] would be concerned about[,]" and the court advised the parties to file any motions before the next court date. On August 24, 2010, defendant filed a motion for severance based on incriminating statements, asserting that both Floyd and Hicks had "made written and oral statements that implicate[d]" him, and that they would invoke their privilege against self-incrimination and refuse to take the witness stand in their defense.

¶ 5 The record further shows that Floyd and Hicks pleaded guilty on February 8, 2011, and on September 1, 2011, respectively, and that APD Mosbacher retired in September 2011. APD Naomi Bank replaced him as defense counsel for the remainder of the proceedings.

¶ 6 On May 23, 2012, defendant waived his right to a jury trial and requested a bench trial. Lakeshia Davidson testified therein that she was defendant's ex-girlfriend, and at the time of the incident, she and her six-year-old son, fathered by defendant, lived on the south side of Chicago with her mother, Stelly. She and defendant continued to see each other after breaking up in 2008, and in February 2009, Davidson informed defendant that she was pregnant with his baby. Shortly thereafter, Davidson began to date another man, and defendant and Davidson stopped seeing each other; however, defendant continued to visit their son pursuant to a court order.

¶ 7 About 9:30 p.m. on August 23, 2009, defendant drove to Davidson's residence to drop off their son after spending the weekend with him. Davidson, who was eight months pregnant at the time, saw A.C., a young man she had known for a few months, sitting inside defendant's car. Defendant left after briefly conversing with Davidson, and she put her son to bed.

¶ 8 About 9:45 p.m., someone rang the doorbell, and Stelly, who was watching television in the living room, answered the door, and called out for Davidson. The individual at the door, later identified as Hicks, told the women that Davidson's car windows were "busted out," so Davidson went to her bedroom to get dressed. When she returned to the living room, Hicks was on the couch, choking Stelly, and Davidson immediately hit him and tried to get him off her mother. Stelly was paralyzed on one side from a previous, unrelated, gunshot wound. Hicks then turned around and punched Davidson, and she fell to the ground. Stelly attempted to reach for the phone, but Hicks punched her in the face and took it from her. Hicks then let two other men into the house, one with a doo-rag on his face who went into the bedroom where Davidson's son was sleeping, and another who kept his head down and went into the other bedroom.

¶ 9 Hicks continued to beat Stelly and forcefully duct-taped her mouth and her hands behind her back, and when Davidson attacked him again, Hicks called for help. One of the men, later

identified as Floyd, came into the living room and knocked Davidson to the ground and started punching and kicking her in the stomach. She attempted to cover her belly to protect her child, and told the men she would be quiet. As Davidson lay balled up in a corner, Floyd walked over to her with a white bottle and a lighter and told her that "if [she doesn't] shut the fuck up, he was going to fucking kill [her]." At that time, Davidson saw flashing police lights outside, and the three men ran to the back of the house and fled through a back window. The cell phones of both women were missing, and Davidson had injuries on her right eye and her chest. She also experienced contractions the next day, however, her baby was eventually born healthy. Stelly was taken to the hospital by ambulance and treated for her injuries.

¶ 10 Stelly's testimony was substantially consistent with that provided by Davidson. A.C. testified that he was 16 years old at the time of the incident, that he had known defendant for several years and considered him to be his mentor. At some point in July, 2009, defendant told A.C., Floyd, and Hicks, that he was upset with Davidson because she was pregnant with her new boyfriend's baby, and that the boyfriend was spending time with his son. Defendant told them that his plan was for Floyd and Hicks to duct tape Davidson, beat her and stomp on her stomach, and force her to drink lighter fluid, so that she would lose the baby.

¶ 11 On August 23, 2009, A.C. and defendant dropped defendant's son off at Davidson's house, then picked up Floyd and Hicks, who brought a bottle of lighter fluid from his house. Defendant then bought duct tape from Walgreens with his credit card, and gave it to Hicks. Defendant instructed them on the plan, which involved knocking on Davidson's door and telling her that her car was broken into, then rushing inside, where Hicks and Floyd would tape her, beat her, and make sure that she drank the lighter fluid, while A.C. would make sure that defendant's son was safe.

¶ 12 Defendant dropped the trio off about three blocks from Davidson's house, and they decided to meet in the area afterwards. Hicks knocked on the door of Davidson's house, as A.C. and Floyd hid nearby. A.C. saw Hicks rush into the house, and then signal the other two men to come inside. A.C. and Floyd covered their faces with their t-shirts and entered the house. A.C. saw that Davidson was on the floor, and Hicks was forcing Stelly down on the couch. A.C. walked to the bedroom where Davidson's son was sleeping, closed the door and stood outside of it observing the living room. He saw Hicks and Floyd beating Davidson, stomping on her stomach and forcefully trying to tape her, and he also saw Floyd trying to open the bottle of lighter fluid. The women were screaming, and at that point, Hicks yelled that the police were coming, so the trio ran to the back of the house, and escaped through a window. A.C. ran towards the area where defendant was supposed to pick them up, but he was apprehended by police behind Davidson's house.

¶ 13 On November 13, 2009, A.C. admitted his participation in the home invasion, then pleaded guilty in juvenile court and received probation. Chicago police officer Aziz Abdelmajeid testified that a search of the area near Davidson's house revealed two cell phones and a white container of fuel injector fluid.

¶ 14 Following the arguments of counsel, the trial court found defendant guilty of attempted intentional homicide of an unborn child, home invasion, aggravated battery of a handicapped person, robbery, and aggravated battery of a pregnant woman. The court then sentenced him to 26 years in prison, and three years of mandatory supervised release.

¶ 15 On October 15, 2012, defense counsel filed a motion to reconsider sentence. Defendant also filed a *pro se* post-trial motion asking the court to reconsider his sentence, and alleged, *inter alia*, that he was innocent, that A.C. lied at trial, and that he gave APD Mosbacher an affidavit

notarized by Floyd and Hicks, which counsel Bank did not know about, and that counsel refused to put Floyd on the stand.

¶ 16 At the hearing on the motion to reconsider sentence, the court found that defendant's claims regarding his sentence were meritless, but noted that defendant had made allegations of ineffective assistance of counsel in his *pro se* motion, including an allegation that defendant gave APD Bank's predecessor "affidavits to some effect or another" by Floyd and Hicks. The court then allowed defendant to explain his letter. Defendant stated that "both [Hicks and Floyd] wrote affidavits on my behalf, but I trusted Bruce Mosebacher [*sic*], and he didn't present it to Naomi[.]" Defendant also stated that "[A.C.] told the officer that they made me do this, talking about Hicks and Floyd. That's what Hicks and Floyd wrote down." Defendant further argued that "things may have turned out differently" if APD Bank had called Floyd and Hicks as defense witnesses, because they would have testified that "it was [A.C.] that did this" and that "they told Mosebacher [*sic*], but it was never mentioned."

¶ 17 Counsel Bank explained that she was never presented with any affidavits, and that she had reviewed the file and documents and "[didn't] understand what [defendant was] talking about with regard to affidavits." She also stated that the decision to call or not to call any witnesses were strategic decisions based on her assessment of the case. The court asked the State whether either Floyd or Hicks had given a statement to the police following his arrest, and determined that Floyd and A.C., both of whom had pled guilty, had provided handwritten statements that implicated themselves and defendant in the incident, and there was no written statement from Hicks, who had also pled guilty.

¶ 18 The court then addressed defendant as follows:

"Mr. Hollins, your lawyer is not aware of any so-called

> affidavits from Hicks or Floyd, but even assuming there were, * * * at least Floyd, when he was arrested, gave a statement implicating himself in the crime, implicating you also. So if he gives a statement to the police implicating himself, also implicating you, the affidavit really means nothing because * * * the State can ask him on [c]ross didn't he tell the police that Hollins was involved also, didn't Hollins set up the entire circumstance? So any lawyer aware of those statements, even if she was aware of the affidavits, which she said she wasn't, would say I'm not going to call those guys. If I call them, they'll implicate Broderick Hollins on cross-examination. No lawyer would call a witness to do that. * * * So those affidavits from codefendants in your case, if there were any, Benyusef Hicks and Darryl Floyd, are really nowheresville [*sic*]. They wouldn't help your case at all. * * * [W]ith statements at least that Floyd gave implicating himself, Hicks, you and [A.C.], there is no way in the world any lawyer would call Floyd to testify under those circumstances."

¶ 19 The court added that whether or not Hicks made a statement implicating defendant, "he still would be an accomplice who pled guilty" and therefore defense counsel's decision not to call Floyd or Hicks was sound trial strategy. The court observed that A.C.'s testimony was corroborated by other circumstances in the case, especially that A.C. and the co-defendants had "no motive whatsoever" to commit the crime, but defendant did. The court then dismissed defendant's remaining claims, and denied his motion to reconsider sentence.

¶ 20 In this appeal from that judgment, defendant does not challenge the sufficiency of the evidence to sustain his convictions, or the length of his sentence. Rather, he presents a *Krankel* claim, contending that the trial court's failure to appoint new post-trial counsel to consider his claims of ineffective assistance of counsel was manifestly erroneous; or, alternatively, that the trial court failed to adequately inquire into his *pro se* allegations.

¶ 21 Under *Krankel,* and its progeny, where a defendant makes a *pro se* post-trial allegation of ineffective assistance of counsel, the trial court must conduct an adequate inquiry into the factual basis of the claim. *People v. Moore,* 207 Ill. 2d 68, 79 (2003). A trial court's method of inquiry at the *Krankel* hearing is "somewhat flexible" (*People v. Fields*, 2013 IL App (2d) 120945, ¶ 40), and the court may base its decision on: "(1) the trial counsel's answers and explanations; (2) a 'brief discussion between the trial court and the defendant'; or (3) 'its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face'" (*People v. Tolefree,* 2011 IL App (1st) 100689, at ¶ 22, quoting *Moore,* 207 Ill. 2d at 78-79). If, following an inquiry, the court finds possible neglect of the case, new counsel should be appointed; however, if the court determines that the claim lacks merit, or pertains solely to trial strategy, it need not appoint counsel and may deny defendant's motion. *Moore,* 207 Ill. 2d at 78. On the other hand, if a trial court fails to conduct an inquiry or make a ruling, the reviewing court may remand for the limited purpose of allowing the trial court to do so. *Id.* at 81.

¶ 22 We initially consider defendant's argument regarding the adequacy of the court's *Krankel* inquiry into his ineffective counsel claim. Contrary to defendant's assertion, the record clearly shows that the trial court conducted a preliminary inquiry into his claims that comported with the guidelines set forth in *Moore*. The court immediately took notice of defendant's *pro se* allegations, and asked defendant to explain them. The court then elicited defense counsel's

version of events, and assessed the sufficiency of defendant's allegations on their face, and in light of its knowledge of counsel's performance at trial. *Moore*, 207 Ill. 2d at 78-79.

¶ 23 Notwithstanding, defendant contends that the inquiry was inadequate because the court only examined APD Bank's conduct, and not that of APD Mosbacher, who was first assigned to his case. The record shows, however, that the court thoroughly inquired into the alleged affidavits, which were at the heart of both APD Bank's and APD Mosbacher's relevant conduct, and the dispositions entered in the cases of defendant's former co-defendants. Although the primary focus of the hearing was on Bank, his trial counsel, the court inquired into defendant's claim that he gave APD Mosbacher an affidavit from two of his former co-defendants, which he failed to tender to his successor counsel. APD Bank denied any knowledge of any exculpatory affidavits. The court then observed that defendant's former co-defendants had pleaded guilty to the charges arising from the incident, and opined that any affidavit from them would not help defendant's case, from which it is evident that the court found no neglect of the case requiring the appointment of new counsel.

¶ 24 As to APD Bank's conduct, defendant argued that "things may have turned out differently" if APD Bank had called Floyd and Hicks as defense witnesses, because they would have testified that "it was [A.C.] that did this." Defense counsel pointed out that all her decisions regarding witnesses were based on trial strategy. Following further inquiry with defendant and defense counsel, the court noted that even if the alleged affidavits existed, no attorney would have called either Floyd or Hicks to testify, because Floyd pled guilty and made a written statement implicating defendant, Hicks also pled guilty and was an accomplice in the crime, and, therefore their testimony would have been impeached on cross-examination. The court's conclusion regarding the entire matter shows that it adequately considered and assessed

defendant's allegations and found them to be without merit. We find no manifest error in that determination or cause for reversal. *Tolefree*, 2011 IL App (1st) 100689, ¶ 25.

¶ 25 Defendant further contends, however, that APD Bank failed to conduct a reasonable investigation into potential exculpatory witnesses, because APD Mosbacher did not give her the alleged exculpatory affidavits. Although defendant is correct that failure to conduct a reasonable investigation or present available witnesses to corroborate a defense has been found to be ineffective assistance (*People v. Morris*, 335 Ill. App. 3d 70, 79 (2002)), we reject his characterization of the alleged affidavits as exculpatory, and Floyd and Hicks as exculpatory witnesses. There is no evidence in the record, beyond defendant's conclusory allegation, that either Floyd or Hicks made exculpatory affidavits, or that defendant gave such affidavits to APD Mosbacher. Instead, the record shows that both men pleaded guilty prior to defendant's bench trial, and at least one, and possibly both former co-defendants made statements implicating defendant in the crime. The record also shows that APD Mosbacher was aware of these statements prior to his retirement, and he raised the issue of a possible incriminating statement by one of the co-defendants at a pre-trial hearing, and again in the motion for severance of defendants, where he asserted that both Floyd and Hicks had "made written and oral statements that implicate[d] the defendant." Since neither Floyd nor Hicks would have been called to testify under these circumstances, defendant failed to show "possible neglect" of an available defense by either APD Bank or APD Mosbacher.

¶ 26 Defendant also contends that trial court "speculated" that defense counsel's decision not to call Floyd or Hicks to testify constituted trial strategy and its finding to that effect was not supported by the record. We disagree. APD Bank clearly stated during the *Krankel* hearing that any decision regarding whether or not to call a witness was based on trial strategy. These

decisions are generally immune from claims of ineffective assistance of counsel (*People v. West*, 187 Ill. 2d 418, 432 (1999)), and, accordingly, we find that the court's decision was not manifestly erroneous. *Moore,* 207 Ill. 2d at 78.

¶ 27 Lastly, we find no merit in defendant's assertion that the propriety of the *Krankel* inquiry was called into question because the State "played a role" in it. The record shows that the trial court asked the State whether either or both of the former co-defendants had made incriminating statements to the police in order to assess defendant's ineffective assistance claim. The State pointed out that while Floyd and A.C. had made written incriminating statements, Hicks had not done so. This exchange merely offered the court "concrete and easily verifiable *facts* at the hearing" (emphasis in original) (*Fields*, 2013 IL App (2d) 120945, ¶ 40), and we, therefore, find no impropriety in the exchange.

¶ 28 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.