

No. 1-13-0074

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 10 CR 2945
)	
ERNEST OATIS,)	
)	Honorable
Defendant-Appellant.)	James B. Linn,
)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's *Krankel* hearing failed to address one of the defendant's claims of ineffective assistance of counsel which finds some support in the record. The denial of the defendant's *pro se* motion was reversed and the matter remanded for a new *Krankel* hearing.
- ¶ 2 Following a bench trial, the defendant, Ernest Oatis, was convicted of two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2008)) and sentenced to two consecutive 15 year terms of imprisonment. On appeal, the defendant argues that the trial court erred in denying his *pro se* post-trial motion alleging ineffective assistance of

counsel because it failed to appoint substitute counsel and failed to hold a full hearing. For the reasons which follow, we reverse and remand with directions.

¶ 3 The defendant was charged by indictment with 20 counts of sexually assaulting his seven-year-old granddaughter, M.O., on December 24 and 25, 2009. The indictment consisted of two counts of predatory criminal sexual assault of a child, six counts of criminal sexual assault, six counts of aggravated criminal sexual assault, and six counts of criminal sexual abuse. Following a bench trial, the defendant was found guilty of all counts. The trial court merged the offenses into two counts of predatory criminal sexual assault of a child.

¶ 4 The defendant filed a *pro se* post-trial motion for a new trial alleging ineffective assistance of counsel and requesting the appointment of new counsel to represent him at the hearing on the motion. In his *pro se* motion, the defendant alleged, *inter alia*, that his court-appointed trial counsel: (1) agreed to trial continuances which prejudiced him; (2) failed to visit him while he was incarcerated or conference with him concerning his case; (3) refused to conduct any meaningful investigation or contact witnesses whose testimony would have been exculpatory; (4) failed to impeach prosecution witnesses even though he was provided with information with which to do so; and (5) called two police officers whose testimony "tended to bolster the prosecution's case." On October 22, 2012, the defendant's *pro se* motion came before the trial court along with a motion for a new trial filed by the assistant public defender who represented the defendant at trial. At that hearing, the court inquired of the defendant and his defense counsel concerning the allegations of ineffective assistance. The following colloquy took place:

"THE COURT: Mr. Oatis, tell me what you see as the problem with [defense counsel].

DEFENDANT: First of all, he lied to me. He told me that the police wrote him a letter stating that, you know, my charges from the testimony, what the victim and the witness had. Then he said he was going to impeach the statement of the witness and the victim, which he failed to do.

THE COURT: Impeach them by saying what?

DEFENDANT: He wasn't impeaching them, your Honor.

THE COURT: How do you think he should have impeached the witnesses? In what way?

DEFENDANT: On their statements. He told me that they had been contradicting they selves and they been lying.

THE COURT: He said the police wrote him a letter?

DEFENDANT: Right, July 2nd when he came back there to talk to me.

THE COURT: [Defense counsel].

DEFENSE COUNSEL: Judge, I never told Mr. Oatis that the police ever wrote a letter. I am in receipt of his complaints to the Court.

Per review of my notes, the first point is, I never visited him in jail. 03/22 of 2012, I went with [M.P.] Another note that I had in my file, June 7th, 2011.

With regard to the second point, I didn't conduct any investigation, didn't contact any witnesses, two were called. His

twin sister, Earnestine Oatis, and nephew Macki Johnson, were also called.

Did not impeach prosecution witnesses. We attempted to do that with Detective Gladney. Specifically, as an example, with regard to drinking by the stepfather. Our motion for verdict at the close of all the evidence supports that.

THE COURT: Anything you want to respond to that?

DEFENDANT: No, Your Honor.

THE COURT: I presided over the trial. I find that Mr. Oatis was very aggressively, assertively and unquestionably competently represented by [defense counsel].

The case is a very difficult case obviously, and he was convicted. I did find the evidence showed him guilty beyond a reasonable doubt. I don't find that that was the fault of the lawyer, that somehow the lawyer did something wrong.

I am not sure about a letter. I never heard of a police [officer] writing a letter to a defense lawyer in the middle of a trial. That sounds highly unlikely.

There may have been some misunderstanding. Perhaps you are talking about police reports that may have had some statements by the witnesses that may not have been totally consistent with their testimony, and that was brought out. That did happen. There was some impeachment of witnesses in that regard.

I don't find that what happened here was his lawyer's fault.

The relief requested *pro se* under *Krankel* is denied."

¶ 5 Following the denial of the defendant's *pro se* motion, the trial court addressed the post-trial motion filed by the defendant's trial counsel. Counsel rested on the written motion, and the motion was denied. After entertaining argument in aggravation and mitigation, the court sentenced the defendant to two consecutive 15 year terms of imprisonment. Thereafter, the defendant filed a motion to reconsider his sentence. That motion was denied, and this appeal followed.

¶ 6 The defendant argues that the trial court erred in denying his *pro se* post-trial motion alleging ineffective assistance of counsel without appointing substitute counsel and without holding a full hearing. He claims that he showed "possible neglect of his case on the part of his trial attorney for eliciting damaging testimony from two police officers "establishing elements of the charged offenses." He does not predicate his claim of error on any other allegation of ineffective assistance set forth in his post-trial motion. The defendant requests that we reverse the denial of his *pro se* post-trial motion and remand this cause with directions that the trial court appoint new counsel to represent him on the claim of ineffective assistance and to hold a full hearing on his claim.

¶ 7 The State argues that the trial court conducted an adequate *Krankel* hearing and that defense counsel's decision to call the two police officers as witnesses was a "viable trial strategy" and, therefore, the defendant's claim of ineffective assistance based thereon must fail. Accordingly, the State argues that the denial of the defendant's *pro se* post-trial motion should be affirmed.

¶ 8 "When a defendant presents a *pro se* post-trial claim of ineffective assistance of counsel, the trial court may, under certain circumstances, appoint new counsel to assist the defendant in presenting his claim." *People v. Bull*, 185 Ill. 2d 179, 210 (1998). The trial court should examine the factual basis for the defendant's claim, and if, after that examination, the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, new counsel need not be appointed and the *pro se* motion can be denied. *Id.* If, however, the defendant's allegations show "possible neglect" on the part of the defendant's trial attorney, the court should appoint new counsel to assist the defendant in presenting his claim. *Id.* Our operative concern on review is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel. *Id.*; *People v. Johnson*, 159 Ill. 2d 97, 125 (1994). A trial court's finding that it is unnecessary to appoint new counsel to represent a defendant claiming ineffective assistance of his trial counsel will not be disturbed on review unless it is manifestly erroneous. *People v. Woodson*, 220 Ill. App. 3d 865, 877 (1991).

¶ 9 We have examined the transcript of the hearing conducted by the trial court on the defendant's *pro se* post-trial motion, the complete text of which is set forth above. Although the court inquired into the specifics of several of the defendant's claims of ineffective assistance, no inquiry was made concerning his allegation that his trial counsel rendered ineffective assistance by calling two police officers as witnesses and eliciting testimony from them that "tended to bolster the prosecution's case."

¶ 10 The State asserts that defense counsel's decision to call the two police officers as witnesses was a matter of trial strategy. Accordingly, it argues that that the trial court's denial of the defendant's *pro se* post-trial motion without appointing new counsel to assist him was not manifestly erroneous. The defendant argues that, even if defense counsel's decision to call the

two police officers as witnesses was strategic, eliciting testimony from the officers that supported an element of the State's case was not a reasonable trial strategy.

¶ 11 There is a strong presumption that counsel's conduct falls within the wide range of professional assistance, that is to say that the challenged action might be considered sound trial strategy. *People v. Pecoraro*, 175 Ill. 2d 294, 319-20 (1997). However, not every action of defense counsel in eliciting testimony is necessarily sound trial strategy. Evidence introduced by defense counsel which prejudices a defendant's case with no legitimate tactical purpose is hardly sound trial tactic and can form the basis of a finding of ineffective assistance. See *People v. Orta*, 361 Ill. App. 3d 342, 347-49 (2005).

¶ 12 Count II of the indictment alleged that the defendant committed the offense of predatory criminal assault of a child when he "was seventeen years of age or over and committed an act of sexual penetration upon [M.O.], to-wit contact between Earnest [*sic*] Oatis's tongue and [M.O.'s] vagina, and [M.O.] was under thirteen years of age when the act of sexual penetration was committed." As noted earlier, the defendant's *pro se* motion alleged that his trial counsel rendered ineffective assistance by calling two police officers as witnesses and eliciting testimony from them that "tended to bolster the prosecution's case." Our reading of the transcript reveals that defense counsel asked both of the officers whether M.O had told them that the defendant had licked her vagina with his tongue, and both officers testified that she had.

¶ 13 During the hearing on the defendant's *pro se* motion, the trial court never addressed the defendant's claim of ineffective assistance predicated upon his counsel having elicited testimony from the officers that supported the factual allegations underlying the charge of predatory criminal sexual assault of a child set forth in count II of the indictment. Defense counsel was never asked to state the strategic purpose for eliciting such testimony. And, contrary to the

assertion in the State's brief, the trial court never made a specific determination that defense counsel's actions in this regard were based on sound trial strategy.

¶ 14 We believe that an adequate inquiry into the defendant's *pro se* claim of ineffective assistance based upon trial counsel having elicited testimony from the two officers which was arguably prejudicial to the defendant's case should have included a specific inquiry into the strategic purpose behind defense counsel's questioning of the officers as to whether M.O. told them that the defendant had licked her vagina with his tongue. Consequently, we reverse the denial of the defendant's *pro se* motion and remand this case to the trial court with directions to conduct an inquiry into this specific allegation in the defendant's motion. If the court determines that the claim pertains only to sound trial strategy, new counsel need not be appointed and the defendant's *pro se* motion denied. However, if after considering the specific allegation, the court determines that the allegation shows "possible neglect" on the part of defense counsel, the court should appoint new counsel to assist the defendant in presenting his motion for a new trial based ineffective assistance of trial counsel.

¶ 15 Reversed and remanded with directions.