2015 IL App (1st) 131221-U

FIFTH DIVISION
May 8, 2015

No. 1-13-1221

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. 11 CR 21347
	)	
EDWARD CARREON,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

O R D E R

¶ 1 ***Held:*** The trial court's judgment denying defendant's *pro se* posttrial motions for new trial alleging ineffective assistance of counsel was not manifestly erroneous and an adequate *Krankel* inquiry (*People v. Krankel*, 102 Ill. 2d 181 (1984)) into the factual basis of defendant's claims was conducted.

¶ 2 Following a bench trial, defendant, Edward Carreon, was convicted of two counts of predatory criminal sexual abuse and two counts of aggravated criminal sexual abuse. His sentence included two consecutive 10-year sentences for the predatory criminal sexual abuse and

two concurrent 5-year sentences for the aggravated criminal sexual abuse to run consecutively with the 10-year sentences, for a total of 25 years' imprisonment. On appeal, defendant argues that the trial court's misapprehension of the facts led to its failure to conduct an adequate *Krankel* inquiry (*People v. Krankel*, 102 Ill. 2d 181 (1984)) into whether defense counsel was ineffective for failing to obtain the lowest possible sentence through plea bargaining. We affirm.

¶ 3 Plea bargaining was mentioned three times throughout the proceedings. The first occurred on May 31, 2012, during a pretrial status conference. Defendant stated "a deal [was] cut between the State's Attorney and [his] cousin in which the agreement was one year." The trial court responded:

> "THE COURT: Mr. Carreon, you have a lawyer. Talk to your lawyer about a so called plea agreement. I'm not involved with that.
>
> * * *
>
> THE COURT: Mr. Carreon, if there was any so called deal, it's hard to believe there would have been, but if there was, talk to your lawyer about that issue and he can talk to the State."

¶ 4 The second reference was also during a pretrial status conference on July 10, 2012, during which the trial court admonished defendant for attempting to contact the victim's family. Defendant stated he contacted the family because his defense counsel was "telling [him] plea agreements," to which the court responded:

"THE COURT: Mr. Carreon, we're done talking for now. Okay? I just gave advice to you about letters from the jail. *** As far as the case is concerned, you have a lawyer right next to you. Talk about the case if you want to talk about the case."

¶ 5 The last mention was again during a pretrial status conference on October 7, 2012, when the State informed the trial court that its offer of a plea bargain was rejected by defendant. The trial court stated:

"THE COURT: All I was asking now is State made an offer at one point about a possible resolution without going to trial on a plea. And that was rejected. So what's left to do?

DEFENDANT: Go to trial. I love her. I don't understand this. I understand she's a minor –

* * *

STATE'S ATTORNEY: And, your Honor, for the record all offers are revoked.

THE COURT: All right. Mr. Carreon, whatever they offered to you before you understand it's not there [anymore] from the State?

DEFENDANT: I'll go away. I don't care.

THE COURT: I'm just asking if you understand the offer is not there anymore.

DEFENDANT: I understand.

THE COURT: I'm not saying you should accept them or not. I'm just saying that they're not there anymore. Do you understand that?

DEFENDANT: Yes, I understand that, sir."

¶ 6 The evidence at trial showed defendant had sexual intercourse on multiple occasions with the victim, M.H., including three incidents of sexual contact with the victim while she was 12 years old and two incidents shortly after she turned 13. After one such incident on November 29, 2011, defendant was apprehended by Chicago police and the victim was transported to a hospital where a sexual assault examination was performed. The physician observed the victim had a bloody discharge and perivulvar irritation. The biological samples collected during the sexual assault examination revealed traces of semen that were matched by forensic analysts to the defendant and the parties stipulated to this fact during trial.

¶ 7 Defendant was interviewed twice while at the police station after being taken into custody – once by the detective and again by the assistant State's Attorney with the detective present. Both the detective and the assistant State's Attorney testified that defendant admitted having sexual intercourse with the victim during both interviews and also admitted to forming an emotional attachment to her. Defendant's testimony at trial corroborated the admissions he made during the custodial interviews and the victim's testimony regarding her sexual relationship with defendant.

¶ 8 The trial court found defendant guilty of two counts of predatory criminal sexual abuse for engaging in a sexual relationship with someone under the age of 13, finding the first sexual encounter did not constitute sexual abuse because no penetration occurred. The trial court also found defendant guilty of two counts of aggravated criminal sexual abuse for the two instances of sexual contact with the victim after she turned 13, finding that defendant engaged in unlawful sexual intercourse with someone who was 13 years old when defendant was over the age of 17

and greater than 5 years older than the victim, and sentenced defendant to an aggregate term of 25 years in prison.

¶ 9 Defendant filed two *pro se* posttrial motions for new trial alleging ineffective assistance of counsel. The first, filed at the conclusion of the trial on March 5, 2013, alleged that defense counsel was ineffective for failing to investigate and raise a consent defense because the sexual contact between defendant and the victim was consensual. It also states, in relevant part, "[t]hat defendant was informed by appointed counsel that he was equipped with the necessary resources required to investigate all of the circumstances involved in [his] case, and usually their first order of business was to effect the least possible sentence possible through plea bargaining." The second motion, filed after the sentencing hearing on March 25, 2013, alleged ineffectiveness based upon defense counsel's failure to address the victim's inconsistent statements at trial regarding her consent to sexual intercourse with defendant, but did not mention plea bargaining.

¶ 10 During the trial court's *Krankel* inquiry into defendant's ineffectiveness claims, it made the following statement with regards to plea bargaining:

> "THE COURT: Never any issue before me whatsoever about plea bargain, nor any suggest[ion] where I would agree to a sentence if there was a plea bargain. So that issue is academic. He doesn't have a right to plea bargain. If there was a discussion, it would have been a discussion. So there wasn't any apparently."

The trial court also addressed defendant's contentions regarding defense counsel's failure to present a consent defense and defendant was given multiple opportunities to address any additional claims he wished to raise.

¶ 11 At the conclusion of the trial court's inquiry, it denied both *pro se* posttrial motions and declined to appoint substitute counsel to litigate defendant's claims of ineffectiveness. On appeal, defendant contends the trial court's *Krankel* inquiry regarding his defense counsel's failure during plea bargaining was inadequate due to the court's misapprehension of the facts, and requests that this court remand his case back to the trial court to conduct a limited inquiry into this matter.

¶ 12 The Illinois Supreme Court, through *Krankel* and its progeny, provided guidance to trial courts when handling *pro se* posttrial allegations of ineffective assistance of counsel. See *Krankel*, 102 Ill. 2d at 189; see also *Moore*, 207 Ill. 2d at 77-82; *People v. Chapman*, 194 Ill. 2d 186, 227-31 (2000); *People v. Nitz*, 143 Ill. 2d 82, 134 (1991). A trial court is not automatically required to appoint new counsel any time a defendant claims ineffective assistance of counsel. *Moore*, 207 Ill. 2d at 77. Rather, the trial court should first conduct an inquiry into the factual basis of defendant's claim, now commonly known as a "*Krankel* inquiry." *Id*. at 77-78; *People v. Vargas*, 409 Ill. App. 3d 790, 801 (2011).

¶ 13 In order to trigger a *Krankel* inquiry, a *pro se* defendant is not required to do more than bring his claim to the attention of the trial court. *Moore*, 207 Ill. 2d at 79. However, even with the relaxed pleading requirements, a bald allegation of ineffective assistance is insufficient; the defendant must allege specific claims with supporting facts before the trial court must consider his assertions. *People v. Ward*, 371 Ill. App. 3d 382, 431 (2007); *People v. Radford*, 359 Ill. App. 3d 411, 418 (2005).

¶ 14 Once the trial court is compelled to inquire, it must conduct an adequate inquiry into the basis of defendant's claims. *Moore*, 207 Ill. 2d at 78 ("the operative concern for the reviewing

court is whether the trial court conducted an adequate inquiry into defendant's *pro se* [ineffectiveness claims]"). An adequate *Krankel* inquiry requires "some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation" when "assessing what further action, if any, is warranted on a defendant's claim." *Id*. The trial court may base its evaluation of defendant's claim on: (1) defense counsel's answers and explanations regarding the facts and circumstances of defendant's allegations, (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." *Id.* at 78-79.

¶ 15 If the trial court determines the defendant's *pro se* claim lacks merit or concerns a matter of trial strategy, the court is not required to appoint new counsel and may deny the defendant's motion. *Id.* at 78. "A claim lacks merit if it is conclusory, misleading, or legally immaterial or does not bring to the trial court's attention a colorable claim of ineffective assistance of counsel." *People v. McLaurin*, 2012 IL App (1st) 102943, ¶ 40. If, however, the allegations of the defendant's claim "show possible neglect of the case," then new counsel should be appointed to represent defendant on the *pro se* posttrial motion. *Moore*, 207 Ill. 2d at 78.

¶ 16 First, we must resolve the parties' dispute regarding the applicable standard of review. Defendant urges this court to review the inquiry *de novo,* on the basis that the trial court failed to conduct a *Krankel* inquiry regarding plea bargaining. The State argues an adequate *Krankel* inquiry was conducted, and this court should review the trial court's judgment for manifest error.

¶ 17 Our supreme court has held that "if the trial court made no determination on the merits, then our standard of review is *de novo*." *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 25 (citing *Moore*, 207 Ill. 2d at 75). If the trial court has reached a determination on the merits, however, we will reverse only if the trial court's action was manifestly erroneous. *Tolefree*, 2011 IL App (1st) 100689, ¶ 25. A "manifest error" is one that is "clearly plain, evident, and indisputable." *Id.*

¶ 18 The parties do not dispute that a *Krankel* inquiry was conducted. Defendant asserts, rather, that because the trial court did not reach defendant's plea bargaining claim during its inquiry, that a decision was not made on the merits of this issue and requires *de novo* review. This argument, however, conflates the question of whether an inquiry was conducted with whether the inquiry was adequate. At best, defendant's argument challenges the adequacy of the trial court's inquiry, not the existence of the inquiry itself. Therefore, because the record clearly establishes that a *Krankel* inquiry was conducted, the only question before us is the adequacy of this inquiry – which we review for manifest error.

¶ 19 Defendant contends that, although the trial court may conduct an adequate inquiry by relying on its own knowledge of defense counsel's performance during trial, it cannot meet this obligation if the trial court's recollection is contrary to the facts of the case. In support of this contention, defendant refers to the trial court's statement during the *Krankel* inquiry that there was "[n]ever any issue before [it] whatsoever about plea bargain," and that plea bargaining was not a discussion. Defendant argues that because of this alleged misapprehension, the trial court failed to ask any questions regarding defendant's contention that his attorney was ineffective

during the plea bargaining process. Although defendant believes this statement is contrary to the record and constitutes a misapprehension of the facts, we disagree.

¶ 20 While the trial court's statement may be vague, we cannot find it affirmatively demonstrates a misapprehension of the facts. To the contrary, the record shows the trial court was never asked to consider accepting a plea agreement reached by the parties, nor was it involved in any negotiation process between defendant and the State, which factually supports the trial court's statement that there was "never any issue before [it] whatsoever about plea bargain, nor any suggest[ion] where I would agree to a sentence if there was a plea bargain." The trial court, in fact, advised defendant to discuss plea negotiations with defense counsel multiple times before it was advised a plea bargain was ultimately revoked. Therefore, because a plea agreement was never before the court as a formal matter, we find the trial court's statement during the *Krankel* inquiry is factually supported by the record and was not a misapprehension.

¶ 21 Moreover, defendant's statement in his posttrial motion with regards to plea bargaining was insufficient to allege a colorable claim of ineffective assistance of counsel. While defendant correctly asserts that an attorney's failure to disclose a plea offer may give rise to an ineffective assistance claim (*People v. Trujillo*, 2012 IL App (1st) 103212, ¶ 9) defendant's statement in his *pro se* motion "[t]hat defendant was informed by appointed counsel that he was equipped with the necessary resources required to investigate all of the circumstances involved in [his] case, and usually their first order of business was to effect the least possible sentence possible through plea bargaining" does not clearly allege his attorney failed to communicate such an offer. Therefore, because no cognizable claim was made, nor were any facts to support this assertion

included in defendant's written motion, the trial court was not required to inquire further into this matter. See *Ward*, 371 Ill. App. 3d at 429-30 (defendant must meet pleading requirements to trigger *Krankel* inquiry); see also *People v. Taylor*, 237 Ill. 2d 68, 77 (2010) (defendant must allege specific facts to support his claim of ineffective assistance of counsel in order to inform the court he is complaining about his attorney's performance); but see *People v. Giles*, 261 Ill. App. 3d 833, 848 (1994) (defendant alleged five specific instances in his letter where trial counsel erred, sufficiently meeting pleading requirements).

¶ 22 To the extent that defendant's vague written statement could have been interpreted to allege a cognizable claim, defendant failed to raise this claim with the trial court when he had the opportunity. The *Krankel* inquiry covered several pages of the record, in which defendant was asked at least five times with open-ended questions if there was anything he would like to add or explain regarding his ineffectiveness claim. Defendant, therefore, had multiple opportunities to clearly articulate what appellate counsel now speculates was meant by defendant's reference to plea bargaining in his written posttrial motion. However, because defendant failed to bring this matter to the trial court's attention, he cannot now argue on appeal that the trial court erred by its refusal to inquire into this allegation. See *People v. Rucker*, 346 Ill. 3d 873, 884 (2003) (the trial court did not err by refusing to consider defendant's ineffective assistance claim where defendant never brought his post-sentencing motion to the trial court's attention). Instead, defendant continuously referred to defense counsel's failure to present a consent defense, and was properly advised by the trial court that consent was immaterial because it was not a legal defense to the crimes with which defendant was charged.

¶ 23 In conclusion, we find the trial court did not commit manifest error by denying defendant's posttrial motions for new trial alleging ineffective assistance of counsel and declining to appoint substitute counsel to litigate defendant's ineffectiveness claims. Furthermore, we find that the trial court conducted an adequate inquiry into defendant's properly pleaded ineffective assistance of counsel claims and decline to remand the cause to conduct a new inquiry concerning whether defendant's trial counsel was ineffective for failing to obtain the lowest possible sentence through plea bargaining.

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.