2015 IL App (1st) 132467-U

FOURTH DIVISION
May 28, 2015

No. 1-13-2467



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 12 CR 7415 |
| | ) | |
| JERAUN MCRAE, | ) | Honorable |
| | ) | Dennis J. Porter, |
| Defendant-Appellant. | ) | Judge Presiding. |

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JUSTICE COBBS delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

**O R D E R**

¶1 Held: Trial counsel was not ineffective for failing to challenge search warrant where a motion to quash the warrant would not have been meritorious. Trial court did not commit reversible error under *People v. Krankel*, 102 Ill. 2d 181, 189 (1984), where it discussed defendant's claims of ineffective assistance of counsel with both defendant and trial counsel and the underlying claim was without merit.

¶ 2 Following a bench trial, defendant Jeraun McRae was found guilty of three counts of unlawful use or possession of a weapon by a felon ("UUWF") and not guilty of possession of a

controlled substance. The trial court sentenced him to two concurrent six-year terms of incarceration. On appeal, defendant contends that his trial counsel was ineffective for failing to challenge the search warrant for lack of probable cause. He also contends that the trial court failed to conduct an adequate hearing under *People v. Krankel*, 102 Ill. 2d 181, 189 (1984), where it did not explicitly address defendant's claim that trial counsel had failed to attack the search warrant. Defendant finally contends that he should receive a presentence incarceration credit against the "State Police Operations Assistance Fee" assessed against him. We affirm and correct the fines and fees order.

¶ 3 Defendant was charged by indictment with three counts of UUWF and one count of possession of a controlled substance. The charges arose from a search conducted pursuant to a warrant on March 12, 2012. Cook County sheriff's police investigator Roger Comer completed a complaint for that search warrant on March 9, 2012. Comer averred he and other officers met with a confidential informant in order to perform a controlled purchase of narcotics from an individual known as "Face." After the officers searched the informant and found that he held no money or contraband, they gave him a prerecorded $20 bill and watched him enter an apartment complex in Chicago. Subsequently, Comer ordered the informant to show him the specific apartment he had entered. The informant pointed to an apartment marked 102. He told Comer that he had knocked on the door and a man he knew as "Face" opened the door. Face was 5 feet 10 inches tall, had a dark complexion, and weighed 180 pounds. The informant asked to purchase crack cocaine. Face gave the informant a small plastic baggy containing several "clear knotted wraps of a rock like substance" in exchange for the $20 bill. Face told the informant,

"Come back anytime. You will like it." After the informant finished telling Comer what had occurred, he gave Comer the plastic baggy. Its contents field tested positive for narcotics. Subsequently, Comer and the informant completed a second controlled buy from Face which was substantially similar to the first. The informant informed Comer that he had known Face for two years and had purchased cocaine from him several times over the past year. Comer averred that the informant had provided information in the past that led to several arrests and the recovery of narcotics. The informant did not appear before the magistrate.

¶ 4 The magistrate found probable cause and issued a search warrant authorizing the search of Face and apartment 102. On March 12, 2012, the search was conducted and defendant was arrested.

¶ 5 In July 2013, defendant indicated to the trial court that he wished to dismiss his appointed counsel and proceed *pro se*. He stated that his counsel was "failing to communicate" and indicated that he could "take [his] case in [his] own hands." Defendant filed a *pro se* motion to dismiss under subsection 114-1(a)(10) of the Code of Criminal Procedure (725 ILCS 5/114-1(a)(10) (West 2012)). He argued that he was not named in the search warrant, does not use the name "Face", and does not match the description given in the warrant. The trial court dismissed the motion stating that defendant did not raise a "ground for dismissal." Defendant also filed a *pro se* motion for a bill of particulars, but asked the trial court to reappoint counsel before it ruled on the motion. The motion was never litigated.

¶ 6 At trial, Comer testified that he executed a search warrant on apartment 102 at 5200 South Harper Avenue in Chicago, on the morning of March 12, 2012. Comer and eight other

officers forced entry to the apartment and found defendant inside. An officer handcuffed defendant, searched him, and found nothing. A man and a woman were also present in the main room; officers secured the couple. Comer and another officer entered and searched an adjacent bedroom. They found a locked safe and the safe's key. While searching the safe, the officers found a handgun, separate ammunition for the handgun, ammunition for a different weapon, defendant's birth certificate, his state ID, and several items and documents bearing defendant's name. Defendant stated that the gun was not his, but he "was holding it for a friend." Comer also found suspected crack cocaine in a small baggy on the floor beneath a window.

¶ 7 The parties stipulated that defendant had a previous felony conviction. They also stipulated that, if called, a forensic scientist would opine that the plastic bag found contained 0.2 gram of cocaine.

¶ 8 Defendant rested without presenting evidence.

¶ 9 The trial court found defendant guilty of the three counts of UUWF, and not guilty of possession of a controlled substance.

¶ 10 Defendant filed a *pro se* written motion for new trial presenting at least a dozen claims that his counsel was ineffective, including a claim that defense counsel did not challenge the search warrant as lacking probable cause. In addressing the motion, the trial court asked both defendant and defense counsel to discuss the claims raised. Defendant alleged that counsel had failed to present various evidence that defendant believed proved his innocence. He stated that counsel had failed to introduce a record of his class attendance for the University of Phoenix, which he asserted showed he was not present in the apartment when the confidential informant

supposedly made drug purchases. The court responded that it knew nothing about the search warrant. Defendant stated that the warrant's:

> "probable cause came from the source of information making these two controlled purchases of cocaine which was never presented to you for you to make a decision on. *** That goes to show that I was in the apartment three, four days afterwards on the 12th, you know, I just so happened to be in this apartment where a search warrant was executed."

Defense counsel responded that he had impeached the arresting officer as to whether defendant's name was on the warrant and that he believed that further inquiry into the warrant at trial would have been prejudicial to defendant's case. The trial court found that defendant was represented in "a professional manner" and declined to appoint another attorney to represent defendant.

¶ 11 The trial court merged the first and third counts of UUWF and sentenced defendant to two concurrent six-year terms of imprisonment. It also assessed $204 in fines, fees, and costs against defendant, including a $15 State Police Operations Assistance Fee. The court offset $50 worth of defendant's fines based on his 476 days in custody prior to sentencing. Defendant appeals.

¶ 12 Defendant first contends that trial counsel was ineffective for failing to challenge the search warrant and suppress the evidence recovered. He argues that counsel's representation was deficient because a motion to quash the search warrant was meritorious and would have been granted because it was supported by the account of an unreliable informant. He notes that the confidential informant never appeared before the magistrate, the officers did not observe the

controlled buys, and that the informant's tip was undetailed. He also argues that the alleged deficient representation prejudiced him because if a motion to quash the warrant were granted, the primary evidence against defendant would have been suppressed, and there would have been insufficient proof to support a conviction.

¶ 13 The State responds that defense counsel was not ineffective because a motion to quash the search warrant would have been frivolous. It argues that defendant has no standing to contest the search warrant where he has repeatedly and affirmatively disavowed any expectation of privacy in the apartment. It also argues that the complaint for the search warrant amply supported a finding of probable cause.

¶ 14 We review a claim of ineffective assistance of counsel *de novo*. *People v. Hale*, 2013 IL 113140, ¶ 15. Such a claim is evaluated under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Ramsey*, 239 Ill. 2d 342, 433 (2010). Under the test, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness and a reasonable probability exists that the result of the proceeding would have been different without counsel's deficient representation. *Ramsey*, 239 Ill. 2d at 433. When an ineffectiveness claim is based on the failure to file a suppression motion, the defendant must demonstrate that a suppression motion would have been meritorious and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed. *People v. Henderson*, 2013 IL 114040, ¶ 12.

¶ 15 Before applying the *Strickland* test, we must clarify the substantive question before this court. Defendant appears to argue solely that the search warrant was facially invalid because it

lacked probable cause where its sole source of information was an unreliable, anonymous informant. Both parties' briefs reference numerous, tangential issues including defendant's standing to challenge the search and the applicability of the good faith exemption. We note that these extraneous issues are not entirely evident from the record on direct appeal and are likely better suited for postconviction relief where a complete record can be made. See *People v. Kunze*, 193 Ill. App. 3d 708, 725-26 (1990). To the extent that we address defendant's claims, it is based on the question of whether the warrant was facially invalid.

¶ 16 The reviewing court need only ensure that the magistrate had a substantial basis for concluding that probable cause existed. *People v. Wead*, 363 Ill. App. 3d 121, 135 (2005). The existence of probable cause is governed not by technical rules, but rather by commonsense considerations. *Id.* at 136, citing *People v. Mitchell*, 45 Ill. 2d 148, 153-54 (1970). Probable cause for a search warrant requires that the entirety of the facts and circumstances within an affiant's knowledge " 'was sufficient to warrant a person of reasonable caution to believe that the law was violated and evidence of it is on the premises to be searched.' " *People v. McCarty*, 223 Ill. 2d 109, 153 (2006), quoting *People v. Griffin*, 178 Ill. 2d 65, 77 (1997). In analyzing the totality of the circumstances, a reviewing court must also weigh the reliability of an affiant to the warrant. See *People v. Smith*, 372 Ill. App. 3d 179, 184 (2007). Factors to be considered include whether the informant described the basis of his personal observations, the details of his statements, police corroboration, and whether the statements are against the informant's interest. See *Id.* at 184-85. No single factor is dispositive. *Id.*

¶ 17 In the present case, the confidential informant did not appear before the magistrate, and

thus we must determine if there were adequate indicia of his or her reliability. The informant explained that his knowledge was based on two years of knowing Face, a year of buying drugs from him, and the interactions with Face during the controlled buys. The informant's statements to Comer were detailed. He gave a name and described the approximate height, weight, and complexion type of the individual he interacted with. He was able to identify a specific apartment within the apartment complex. He told Comer what he had specifically said and what Face had said during the transactions. The informant's story was corroborated by the fact that police officers watched him enter the apartment complex and received and tested narcotics from the informant after the controlled buy. The informant's statements were against his interest where he indicated that he had purchased narcotics from Face in the past. Moreover, the informant had previously provided reliable information to police officers. Even though the informant did not appear before the magistrate, he gave detailed information based on his personal experience that was corroborated by the police officers. Therefore, we find that the search warrant complaint contained sufficient indicia of informant's reliability so that a person of reasonable caution could believe that the law was violated and narcotics were present in the apartment to be searched.

¶ 18 Defendant analogizes his case to *People v. Damian*, 299 Ill. App. 3d 489 (1998). In *Damian*, a police officer conducted a single controlled-buy of narcotics with an informant six weeks prior to filing a complaint for a search warrant. *Id.* at 492. In the complaint, the informant only vaguely stated that the defendant had drugs. *Id.* The informant did not speak with the police officer during those six weeks, missed a scheduled meeting with the officer, and did not appear before the magistrate. *Id.* at 493. The trial court, and this court on appeal, held that the warrant

lacked probable cause, focusing on the unexplained six week gap and the informant's vague allegations. *Id.* at 492. We find *Damian* inapposite to the current facts. *Damian* focused on the staleness of the warrant. Moreover, the *Damian* informant made only a vague assertion of drugs and acted unreliably by failing to keep in contact with the police officers. *Id.* at 493. In the present case, the informant's statements contained sufficient indicators of reliability to support a finding of probable cause.

¶ 19 Because the warrant was supported by probable cause, defendant cannot show that a motion to quash the search warrant and suppress evidence would have been meritorious. See *Henderson*, 2013 IL 114040, ¶ 12. Consequently, we find trial counsel did not render objectively deficient performance in failing to file a meritless motion. *People v. Patterson*, 217 Ill. 2d 407, 438 (2005). Similarly, a futile motion to quash the warrant would have failed, and therefore, defendant faced no prejudice due to trial counsel's actions. See *People v. Meyer*, 402 Ill. App. 3d 1089, 1095 (2010).

¶ 20 Defendant next contends that the trial court erred when it failed to investigate and conduct an adequate *Krankel* hearing into defendant's claim that trial counsel was ineffective for failing to file a motion to quash the warrant. He notes that while the trial court did question both him and trial counsel about his allegations of ineffective assistance, it did not specifically address his claim that counsel failed to challenge the warrant. The State responds that the trial court conducted an adequate *Krankel* hearing.

¶ 21 Under *Krankel*, posttrial *pro se* claims of ineffective assistance of counsel require a trial court to conduct an inquiry to examine the factual basis underlying a defendant's claim. *People v.*

*Moore*, 207 Ill. 2d 68, 77-78 (2003). A trial court then bases its *Krankel* decision on: (1) discussion with trial counsel; (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. If the claim lacks merit, the court may deny the *pro se* motion without appointing new counsel. *Id.* at 78. Even if a trial court errs in conducting a *Krankel* hearing, a reviewing court will not reverse if that error was harmless. *Id.* at 80.

¶ 22 Thus, there are three potential questions before a reviewing court when a defendant raises an appeal under *Krankel*. First, the court determines whether the trial court held any inquiry. See *id.* at 77-78. If the trial court held an inquiry, the reviewing court then determines whether that inquiry was adequate. See *id.* These first two questions are reviewed *de novo*. See *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 25; *People v. Vargas*, 409 Ill. App. 3d 790, 801 (2011). If the reviewing court finds an inquiry was adequate, it then reviews the trial court's ultimate determination of whether the claim has merit, and reverses only if the decision is manifestly erroneous. See *Tolefree*, 2011 IL App (1st) 100689, ¶ 25. As defendant challenges the adequacy of his *Krankel* hearing, we apply the *de novo* standard.

¶ 23 Having thoroughly reviewed the record, we find that the trial court conducted an adequate *Krankel* hearing. It considered defendant's written motion and allowed defendant to speak at length and argue his claims. It also sought trial counsel's response to defendant's allegations. Moreover, even if we were to find that the trial court had conducted an inadequate hearing, any such error would be harmless beyond a reasonable doubt. As already discussed,

defendant's underlying substantive claim that trial counsel was ineffective for failing to challenge the warrant is without merit.

¶ 24 Defendant finally contends that he should receive $15 of presentence incarceration credit toards the State Police Operations Assistance Fee, as it is in actuality a fine. The State concedes this issue and we accept its concession. Although named a fee, the State Police Operations Assistance Fee is actually a fine. *People v. Millsap*, 2012 IL App (4th) 110668, ¶31. Therefore defendant's presentence incarceration credit should offset the fine. 725 ILCS 5/110-14(a) (West 2012). We correct the fines and fees orders to show a total amount owed of $139. See *People v. Collier*, 387 Ill. App. 3d 630, 641 (2008) (noting mittimus may be corrected without remand.)

¶ 25 For the foregoing reasons, we find defense counsel was not ineffective where a challenge to the search warrant based upon the confidential informant's reliability would have been without merit and a failure to file the futile challenge did not prejudice defendant. Similarly, any error by the trial court in conducting a *Krankel* hearing was harmless where the underlying claim of ineffective assistance of counsel was without merit. We also find defendant's fines and fees order to be in error. Accordingly, we order the circuit court clerk to correct defendant's fines and fees order to reflect $15 of credit toward defendant's State Police Operation Assistance fine and a total owed of $139, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 26 Affirmed; fines and fees order corrected.