2015 IL App (1st) 132603-U

FIRST DIVISION
JUNE 30, 2015

No. 1-13-2603

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. 12 CR 18495
	)	
DESHAWN WHITE,	)	Honorable
	)	Steven J. Goebel,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

¶ 1 ***Held:*** The trial court did not err in failing to conduct a *Krankel* inquiry as to defendant's *pro se* motion containing a claim of ineffective assistance of trial counsel where defendant failed to bring his claim to the attention of the court.

¶ 2 Following a bench trial, defendant Deshawn[1] White was convicted of delivery of a controlled substance and was sentenced to seven years in prison. On appeal, defendant contends this case must be remanded for a preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d

[1] Defendant's personal name is spelled "Deshawn" on his notice of appeal and is so docketed in our court; elsewhere in the record it appears as "Deshaun," "Dashawn" or "Dashaun."

181, 189 (1984), where he submitted a *pro se* posttrial motion alleging, *inter alia*, claims of ineffective assistance of trial counsel and the trial court failed to make any inquiry into the factual basis for those claims. We affirm.

¶ 3 At defendant's bench trial on one count of Class 2 delivery of a controlled substance (heroin), the court heard testimony from a police officer and another witness that they observed defendant transact the sale of several baggies of heroin. The court found defendant guilty as charged. On June 24, 2013, defendant's trial counsel filed a motion for new trial, which was denied on the same date. The cause was continued to July 29 for sentencing.

¶ 4 In the interim following the court's guilty finding, defendant prepared a written *pro se* "Motion to Reconsider" motion alleging, *inter alia*, that his trial counsel: failed to file any pretrial motions; failed to investigate and/or call potential witnesses or to move for a continuance to secure potential witnesses; failed to challenge defendant's arrest, which was without probable cause and without a warrant; and proceeded to trial with a substitute judge. None of the alleged instances of ineffective assistance of trial counsel was accompanied by any factual detail. The motion, which was not accompanied by notice or proof of service, was stamped "received" by the clerk's office on July 11, 2013. A court clerk's Notification of Motion form indicated defendant's name, case number, judge, date of receipt, and date to be heard ("7-29-13"). A box on the form for "Motion to reconsider or reduce sentence" was checked, as was a box labeled "File in courtroom." The clerk's memorandum of orders, or "half sheet," contains no reference to defendant's *pro se* motion.

¶ 5 On July 29, 2013, defendant appeared in court and asked about obtaining transcripts but did not inquire about his motion. As defendant's counsel was not present, the case was held over until the next day. On July 30, the trial court conducted a hearing in aggravation and mitigation of sentence and then sentenced defendant to seven years in prison. Before imposing sentence, the court asked defendant if he had anything to say. Defendant replied, "No, sir." Defendant made no reference to or inquiry about his motion to reconsider. Neither the trial court nor the assistant State's Attorney nor defense counsel made any reference to the *pro se* motion on either court date. On August 1, defendant's notice of appeal was filed in the clerk's office.

¶ 6 Defendant's sole claim on appeal is that the trial court erred in failing to conduct a *Krankel* inquiry to determine the factual basis for his *pro se* claims that his trial counsel was ineffective. Defendant has presented no argument that any of the claims was meritorious. The State responds that defendant forfeited his claims of ineffective assistance of counsel where he failed to make his claims known to the trial court, and that defendant's conclusory claims were meritless.

¶ 7 When a defendant raises a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should conduct an adequate inquiry to determine the factual basis for defendant's claim. *Krankel,* 102 Ill. 2d at 189; *People v. Moore*, 207 Ill. 2d 68, 77-78, 79 (2003). To trigger such an inquiry, 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. While the pleading requirements for raising a *pro se* claim of ineffectiveness of counsel are somewhat relaxed, a defendant must still meet the minimum requirements necessary to trigger a *Krankel* inquiry. *People v. Walker*, 2011 IL App (1st)

072889-B, ¶ 34. A *pro se* complaint of ineffective assistance of counsel must be more than "bald, ambiguous, and/or unsupported by specific facts." *People v. Ward*, 371 Ill. App. 3d 382, 432 (2007). No *Krankel* inquiry is mandated where the allegations of ineffective assistance of counsel are merely conclusory on their face and the defendant never brings the motion to the court's attention, has no proof of service upon the State and provides no detail to the court when afforded the opportunity to do so. *People v. Bolton*, 382 Ill. App. 3d 714, 720 (2008); *People v. Walker*, 403 Ill. App. 3d 68, 79 (2010).

¶ 8 The State contends that defendant's posttrial *pro se* claim of ineffective assistance of counsel was forfeited because he failed to sufficiently notify the trial court, the State, or his own counsel of his *pro se* motion. The State urges us to follow *People v. Zirko*, 2012 IL App (1st) 092158. In *Zirko*, as in the instant case, after conviction but before sentencing, the defendant sent to the court a *pro se* motion alleging ineffective assistance of counsel. The motion was stamped "Received" by the clerk of the court but was not stamped "Filed." The record indicated the court never ruled on the defendant's *pro se* motion. On appeal, this court noted there was no evidence in the record to suggest that the trial court was ever aware of the defendant's *pro se* motion and that only the defendant knew he had filed such a motion. The defendant never informed the court of his motion during a lengthy hearing which presented an opportunity to be heard. This court concluded the trial court was not required to conduct a *Krankel* inquiry because the defendant did not bring his motion to the attention of the trial court. *Id.* at ¶ 72.

¶ 9 Our holding in *Zirko* found persuasive the reasoning in *People v. Allen*, 409 Ill. App. 3d 1058 (2011) and *People v. Lewis*, 165 Ill. App. 3d 97 (1988). In each case, the defendant sent a

letter to the trial court claiming the incompetence of his trial attorney. In *Allen*, at his sentencing hearing and at a hearing on his motion to reconsider sentence, the defendant failed to bring the court's attention to his claims of ineffective counsel and therefore forfeited his claims. *Allen*, 409 Ill. App. 3d at 1077. In *Lewis*, the appellate court noted: "It would also appear, from the record, that the trial judge, defendant's counsel, and the State were all unaware of defendant's letter as no mention was made of it, and defendant did not himself refer to it in the post-trial proceedings." *Lewis*, 165 Ill. App. 3d at 109. The appellate court concluded that defendant did not pursue the matter contained in his letter and that, under the circumstances, he waived the issue of ineffective assistance of counsel. *Id.* Defendant contends this court should follow the holding in *People v. Peacock*, 359 Ill. App. 3d 326, 340 (2005), where the appellate court held that a defendant did not forfeit his *pro se* claims of ineffective assistance of counsel when he failed to mention them during his sentencing hearing. In *Zirko*, however, we declined to follow *Peacock* and found the reasoning in other case law, including *Allen*, to be persuasive. *Zirko*, 2012 IL App (1st) 092158, ¶ 73.

¶ 10 In the instant case, there is no indication in the record that either the trial judge, the State, or defendant's attorney was aware of the existence of defendant's *pro se* motion. When defendant appeared in court on July 29 and again on July 30, 2013, he had an opportunity to bring his claim to the attention of the trial court, but he did not do so. When offered an opportunity to speak at his sentencing hearing, defendant specifically answered in the negative when asked if he wished to speak. It was defendant's duty to bring his posttrial *pro se* claim of ineffective assistance of counsel to the trial court's attention. *People v. Patrick*, 2011 IL 111666, ¶ 29. We agree with the

State that the record indicates the court was never made aware of defendant's *pro se* motion and, as a consequence, his claim was forfeited.

¶ 11 Defendant contends he did all he was required to do to bring his *pro se* motion to the court's attention. Citing *Moore*, 207 Ill. 2d at 79, he asserts all he was required to do was to file his written *pro se* motion. He claims he did so where he caused the motion to be file-stamped and docketed. Defendant misapprehends the record, which reveals that his motion was stamped "Received" but not stamped "Filed." A "Filed" stamp is *prima facie* evidence that a document was filed with the proper officer at the time noted. *Riley v. Jones Brothers Construction Co.*, 198 Ill. App. 3d 82, 829 (1990). Even if defendant's motion had been stamped "Filed," the mere filing of the motion with the clerk's office may not have been enough to put the motion before the court. *People v. Shines*, 2015 IL App (1st) 121070, ¶ 30. The record suggests that defendant's motion, though sent to the clerk's office, was never filed. The trial court is not required to hold an initial *Krankel* inquiry unless the defendant brings the filing to the attention of the court. *People v. Rucker*, 346 Ill. App. 3d 873, 885 (2004).

¶ 12 Defendant also claims that his *pro se* motion was docketed for a hearing. What defendant characterizes as a "docketing" of the motion here was merely a clerk's hand-written entry of the next court date on the clerk's Notification of Motion form. In *People v. Brooks*, 221 Ill. 2d 381 (2006), the supreme court interpreted the verb "docket" as it is used in the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2002)), to mean more than that the clerk of the court received a document. *Id.* at 391. "The plain meaning of the word connotes that the cause is entered on the court's official docket for further proceedings." *Id.* Here, the *pro se* motion was

not entered on the "half sheet," which indicates it was awaiting further proceedings. There is no evidence the motion was put into the court's file, as the file was noted to be in the courtroom when the clerk's office received the motion. Thus, the record fails to indicate defendant's motion was docketed for a hearing before the trial court.

¶ 13 Even if the trial court had been aware of defendant's *pro se* motion, no *Krankel* inquiry was warranted. "A bald allegation of ineffective assistance is insufficient; rather, the defendant should raise specific claims with supporting facts before the trial court is required to consider the allegations." *Walker*, 2011 IL App (1st) 072889-B, ¶ 34, citing *People v. Radford*, 359 Ill. App. 3d 411, 418 (2005). In this case, if the court had known about defendant's motion, the court would have found the *pro se* motion to contain merely a list of conclusory allegations, devoid of any factual detail, that was necessary to alert the court to defendant's claim of ineffective assistance of counsel. As the *pro se* motion would have failed to bring to the trial court's attention a specific claim of ineffective assistance sufficient to trigger the court's duty to conduct a *Krankel* inquiry, cause does not exist for us to remand this case for a hearing. *People v. Porter*, 2014 IL App (1st) 123396, ¶ 15.

¶ 14 For the reasons stated, we affirm the trial court's judgment.

¶ 15 Affirmed.