2015 IL App (1st) 133109-U

THIRD DIVISION
October 7, 2015

No. 1-13-3109

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 19890
	)	
STEVIE SLATER,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Defendant's comments during sentencing did not constitute a *pro se* posttrial claim of ineffective assistance of counsel requiring a *Krankel* hearing; the $25 court services fee properly assessed; defendant's convictions and sentences for two counts of aggravated battery of a peace officer affirmed.

¶ 2 Following a bench trial, defendant Stevie Slater was convicted of two counts of aggravated battery of a peace officer and sentenced as a Class X offender to concurrent terms of six years' imprisonment. On appeal, defendant contends that his case must be remanded for

further proceedings pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), because the trial court failed to conduct an inquiry into his posttrial claim of ineffective assistance of counsel. Defendant also contends that the $25 court services fee was erroneously assessed and must be vacated.

¶ 3 The record shows that immediately after defendant formally waived his right to a jury trial, the prosecutor informed the court that she had that day made a plea offer to defendant that was "less than the mandatory minimum as charged," and that defendant had rejected the offer. Defense counsel then stated "I have relayed that information to my client and he does reject the offer that the State gave to him."

¶ 4 University of Illinois at Chicago (UIC) police officer Russell Mankunas then testified that late on the night of October 3, 2012, he and his partner, Officer Cortez, responded to a call of a theft in progress, arrested defendant, and transported him to the UIC police department. Officer Mankunas escorted defendant into a holding cell, removed the handcuffs from him, told him to sit on the bed, and, as part of the search process, asked him to remove his shoes. The officer then asked defendant to remove the shoelaces from his shoes, and at that point, defendant lay on the bed on his stomach and refused to get up. Officer Mankunas then placed his hands on defendant's belt area and felt a hard object inside his pants below his belt.

¶ 5 Officer Mankunas testified that defendant suddenly pushed himself off the bed and lunged at the officer, slamming into Officer Mankunas' chest with defendant's left shoulder. Officer Mankunas grabbed defendant, and the two men fell to the ground with defendant face-down on his stomach and Officer Mankunas on top of him. Defendant kicked his legs and

elbowed the officer in the chest and rib area, trying to break free. Officer Mankunas ordered defendant to stop fighting and radioed for assistance. Officer Cortez and Sergeant Kehoe arrived immediately, but defendant disobeyed repeated orders to place his hands behind his back, and instead, placed his arms underneath his body and continued kicking his legs and jerking his body as the officers tried to pull his arms out from under him. The officers eventually gained control of defendant and handcuffed him. Immediately after the incident, Officer Mankunas received medical treatment for injuries to his neck and shoulder.

¶ 6 UIC police sergeant James Kehoe testified that about 12:28 a.m. on October 4, 2012, he was on duty at the police station when he received a radio call from Officer Mankunas requesting assistance in the lockup area. When he arrived at the cell, he saw defendant and Officer Mankunas struggling on the ground. Defendant was flailing his arms, kicking his legs, and rolling around on the ground while Officer Mankunas tried to handcuff him. Sergeant Kehoe knelt on the ground and tried to gain control of defendant's arms and legs, but defendant continued kicking, punching and throwing his elbows, striking the officers numerous times. The officers quickly gained control of defendant; however, Sergeant Kehoe sustained a partial tear to his rotator cuff and bicep tendon during the struggle. A video recording of the incident, which was partially obstructed, was admitted into evidence.

¶ 7 Defendant initially acknowledged that he had prior convictions for aggravated battery and residential burglary, then testified that he entered the cell at the police station and laid on the bench. When Officer Mankunas asked for his shoelaces, defendant handed him both of his shoes and again lay on the bench on his stomach because he was not feeling well. The officer stood

over defendant, then pushed him off the bench and tackled him to the ground, falling on top of him as he lay on the floor on his stomach. Officer Mankunas began yelling and hitting defendant, and several other officers ran into the cell. Defendant denied lunging at the officer, elbowing him, kicking him, or making any physical contact with him. Defendant testified that one of the officers twisted his feet and another hit him in the head, causing him to pass in and out of consciousness, which rendered him incapable of making physical contact with the officers. Defendant further testified that he was injured during the incident and taken to the hospital multiple times for medical treatment. He also testified that he never tried to resist the police in any way, and cooperated with all of their requests to the best of his ability.

¶ 8 The trial court found that the testimony of the police officers was credible, that the videotape corroborated their testimony, and that defendant's version of the incident was not credible. Accordingly, the court concluded that the State proved defendant guilty beyond a reasonable doubt of four of the six counts of aggravated battery of a peace officer, and not guilty of the two counts based on retaliation.

¶ 9 At sentencing, the parties agreed that defendant was subject to mandatory sentencing as a Class X offender based on his six prior felony convictions. Defense counsel pointed out that defendant was 51 years old, the father of six children, and had some military experience. Counsel also noted that defendant sustained injuries during the incident which required medical treatment, and that the officers were not significantly injured. In addition, counsel argued that defendant showed potential for rehabilitation, pointed out that defendant did not have any type of

substance abuse problem, and had sought professional help to address his depression on his own. Counsel asked the court to impose the minimum sentence of six years' imprisonment.

¶ 10 Defendant then exercised his right of allocution and essentially stated that he had done nothing wrong and fought with the officers because he knew he was right. Defendant also claimed that he had been beaten by police on several prior occasions and was afraid of the officers. He then stated:

> "So that's the only reason I put up the fight because I know I was right and that's what I get behind it. So nothing I can say, but you know, what I am saying. They still after it. Meanwhile I am locked up for something I did not do. If I would have did it, I would have manned up. I would of took the three and ran, you know what I am saying. I know what the case is, 6 and 30. I didn't know that, but it is what it is, you he [*sic*] what I am saying. Nothing I can do about it."

¶ 11 The trial court responded, "I heard the evidence in the case, and I stand by my findings of the facts." The court then sentenced defendant as a Class X offender to the minimum sentence of concurrent terms of six years' imprisonment on two counts of aggravated battery of a peace officer, merging the remaining two counts into those counts.

¶ 12 On appeal, defendant first contends that his case must be remanded for further proceedings pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), because the trial court failed to conduct an inquiry into his posttrial claim of ineffective assistance of counsel, raised during his allocution at the sentencing hearing. Defendant claims that his comments that he "would have took the three and ran," that the case was "6 and 30," and that he "didn't know that" indicated that

counsel failed to advise him of the minimum and maximum sentences he faced. He further claims that counsel's failure led him to reject the State's offer and proceed to trial, where he faced a minimum sentence that was three years more than the offer, and thus, counsel provided ineffective assistance during the plea negotiations. Defendant asserts that the trial court should have treated his comments as a *pro se* motion claiming ineffective assistance of counsel which required a *Krankel* hearing.

¶ 13 The State responds that the trial court was not required to conduct a *Krankel* inquiry because defendant never raised a claim of ineffective assistance of counsel. The State points out that defendant never complained about counsel's performance, but instead, claimed that he was innocent and that he would have accepted the State's offer had he committed the offense. The State also maintains that defendant's assertion that his comments indicated that he was unaware of the sentencing range when he rejected the plea, or that counsel did not advise him of the sentencing range, is refuted by the exchange immediately before trial where the prosecutor explained the plea offer made to defendant, and defense counsel stated that she relayed that information to defendant, and that he rejected the offer. The State then argues that this exchange shows that counsel discussed the offer with defendant and he knew that the offer was less than the mandatory minimum sentence.

¶ 14 Where defendant raises a *pro se* posttrial claim that trial counsel rendered ineffective assistance, the trial court should examine the factual basis of the claim to determine if it has any merit. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). Although the pleading requirements for raising such a *pro se* claim are relaxed, defendant must still meet the minimum requirements

necessary to trigger a preliminary inquiry by the trial court. *People v. Porter*, 2014 IL App (1st) 123396, ¶ 12. A bald claim that counsel was ineffective is insufficient, and instead, " 'defendant should raise specific claims with supporting facts before the trial court is required to consider the allegations.' " *Id*., quoting *People v. Walker*, 2011 IL App (1st) 072889-B, ¶ 34. A *pro se* claim of ineffective assistance of trial counsel need not take a specific form; however, the trial court is not expected to divine such a claim where it is not even arguably raised. *People v. Reed*, 197 Ill. App. 3d 610, 612-13 (1990). Where, as here, no inquiry was made into defendant's alleged ineffective assistance claim, our review is *de novo*. *Porter*, 2014 IL App (1st) 123396, ¶ 11.

¶ 15 In this case, defendant claims that his comments that he "would of took the three and ran," that "I know what the case is, 6 and 30," and that "I didn't know that," were succinct and clearly described all the elements of an ineffective assistance of counsel claim. However, when we read defendant's statement of allocution as a whole and consider his comments in context, we find no such claim. Defendant's statement was a declaration of his innocence. He acknowledged fighting with the officers, but claimed he did so because he knew he was right, he had done nothing wrong, and he feared the officers due to beatings he previously received from other officers. The crux of defendant's statement was that, if he had committed the offense, he would have taken responsibility for it, and would have accepted the State's plea offer of three years.

¶ 16 Nowhere in his statement, or at any other point during the proceedings, did defendant ever complain about counsel's performance, nor did he ever expressly state that he was claiming that his counsel was ineffective. Significantly, defendant never mentioned his attorney. Instead, he made rambling remarks about his innocence, prior police beatings, various injuries and

accidents, his familiarity with police procedures, and his refusal to plead guilty to an offense he did not commit.

¶ 17 Our supreme court has held that, under similar circumstances, when a defendant makes a rambling statement that may be amenable to more than one interpretation, his remarks are insufficient to require a *Krankel* inquiry. *People v. Taylor*, 237 Ill. 2d 68, 76-77 (2010). We find no significant difference in this case. Accordingly, we conclude that defendant did not raise a posttrial claim of ineffective assistance of counsel, and therefore, the trial court had no duty to conduct a *Krankel* hearing.

¶ 18 Defendant next contends that the assessment of the $25 court services fee pursuant to section 5-1103 of the Counties Code (55 ILCS 5/5-1103 (West 2012)) was erroneous because that fee only applies to defendants who are convicted of one of the offenses specifically enumerated in that statute, and he was not convicted of one of those offenses. The State responds that the fee applies to all criminal convictions.

¶ 19 Section 5-1103 states, in pertinent part:

> "In criminal, local ordinance, county ordinance, traffic and conservation cases, such fee shall be assessed against the defendant upon a plea of guilty, stipulation of facts or findings of guilty, resulting in a judgment of conviction, or order of supervision, or sentence of probation without entry of judgment pursuant to [certain enumerated criminal statutes]." 55 ILCS 5/5-1103 (West 2012).

In several prior cases, this court has rejected arguments similar to the one raised here by defendant, and held that under the statute, the $25 court services fee may be assessed upon any

judgment of conviction, and also for orders of supervision or probation made without entry of a judgment of conviction for the offenses enumerated in the statute. *People v. Kornegay,* 2014 IL App (1st) 122573, ¶ 53; *People v. Williams*, 2011 IL App (1st) 091667-B, ¶ 18; *People v. Adair*, 406 Ill. App. 3d 133, 144-45 (2010). We continue to adhere to our prior holdings and similarly reject defendant's argument in this case.

¶ 20 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.