2015 IL App (2d) 130573-U
No. 2-13-0573
Order filed July 1, 2015
Modified upon granting motion to clarify July 8, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 09-CF-1505
MICHAEL DELANEY,	)	Honorable Daniel Guerin,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Schostok and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved the aggravating factor that defendant committed the murder in a cold, calculated, and premeditated manner, but the cause must be remanded for a *Krankel* inquiry because the trial court failed to investigate defendant's allegations of ineffective assistance of counsel.

¶ 2 In the direct appeal of his first-degree murder conviction, defendant, Michael Delaney, raises two issues. The first is whether the State proved beyond a reasonable doubt that "the murder was committed in a cold, calculated and premeditated manner pursuant to a preconceived plan, scheme or design to take a human life by unlawful means, and the conduct of the defendant

created a reasonable expectation that the death of a human being would result therefrom." 720 ILCS 5/9-1(b)(11) (West 2008). The second is whether the trial court erred in failing to investigate his posttrial assertions of ineffective assistance of counsel. We hold that the State proved the cold, calculated, and premeditated aggravating factor. However, we also conclude that the cause must be remanded for an inquiry under *People v. Krankel*, 102 Ill. 2d (1984), based on defendant's assertion that trial counsel rendered ineffective assistance and the court's failure to investigate those allegations.

¶ 3 I. BACKGROUND

¶ 4 Edita Pranckute met defendant in November 2008. They began a dating relationship in early 2009, moved in together in April 2009, and broke up on June 17, 2009, after Edita revealed that she had begun dating Jonathan Nkhoma (John). Two days later, defendant fatally stabbed John's friend, Michael Scalzo, in the parking lot of the home that Edita and defendant had shared.

¶ 5 Edita testified that she and defendant lived in an apartment at 720 Crescent Street in Wheaton. On June 17, 2009, after several weeks of arguing, Edita and defendant mutually agreed to end their relationship. Edita told defendant that she had begun dating John, one of defendant's friends. Defendant told Edita that he was seeing someone new also. Edita described the situation as "very civil."

¶ 6 Defendant allowed Edita to keep her things in the apartment until she settled in somewhere. Edita spent the rest of the day at the home of her next door neighbor, Ryan Busic. John arrived at Ryan's apartment after work, and John and Edita spent the night at Ryan's apartment, with defendant next door. During the evening, Edita heard noises outside Ryan's

apartment, and each time she opened the door, she found a bag of her belongings sitting in the hallway.

¶ 7 John went to work the next morning, and Edita stayed in Ryan's apartment and watched television with him. Several times, defendant knocked on Ryan's door and asked Edita to return various items. In the afternoon, Edita went to defendant's apartment to calm him because he seemed to be getting angry. Edita spent an hour with defendant, but he just grew angrier. Edita returned to Ryan's apartment, and John arrived soon thereafter. Ryan's girlfriend, Carrie Fernandes, was also there.

¶ 8 Edita testified that defendant began "constantly" knocking on the door asking for things like cigarettes and beer. Each time he knocked, he would enter Ryan's apartment briefly. The last time defendant entered, he angrily told Edita, "I will kill you bitch. I will kill you first, and then I will kill John." Carrie told defendant to leave and not come back. Defendant left. Because of defendant's threats, Carrie asked John and Edita to find somewhere else to spend the night. A short time later, Bill Murphy, a friend of John and Ryan, came to Ryan's apartment. Bill testified that he lived in apartment 101 at 720 Crescent Street and was acquainted with defendant. Bill allowed Edita and John to spend the night at his apartment.

¶ 9 Edita further testified that, around 5:30 a.m. on June 19, 2009, John left Bill's apartment to drive Edita's car to work. John returned a short time later, and he and Edita went outside to inspect Edita's car. Edita saw that three tires were slashed, and near the fourth tire was a broken blade from a steak knife. Edita believed the blade was from a knife from the apartment she had shared with defendant.

¶ 10 John got a ride to work from his boss, and Edita spent the day in Bill's apartment. Around noon, Edita heard a loud knock. Bill looked through the peephole and saw defendant.

Bill testified that, because defendant had been knocking "aggressively" and Bill's arm was in a sling due to a broken collar bone, he believed he could not defend himself. Bill crept from the door and told Edita to stay quiet. Bill later left for a doctor's appointment, and Edita stayed in the apartment.

¶ 11 Around 5 p.m., John returned from work and he and Edita ordered a pizza. Bill returned to his apartment a short time later, but left at 5:45 p.m. to visit his friend Michael, the victim. Edita remained in Bill's apartment.

¶ 12 The apartment building at 720 Crescent Street shares a common parking lot with the apartment building at 804 Crescent Street. Toward the rear of the parking lot are several single-car garages, including Michael's garage.

¶ 13 John and Bill both testified that they often hung out in Michael's garage while he worked on bikes or cars. When Bill arrived at Michael's garage, another friend, Fred Slaughter, was also there. Bill told Michael about the situation among John, Edita, and defendant. John arrived, and while the men were hanging out and talking, defendant walked over and asked for a beer. Michael told defendant that he did not have a beer for him. Defendant then asked for a cigarette and Michael again demurred. Defendant then looked at John and asked him for "daps," meaning bumping fists in greeting. Bill heard John say, "I don't have anything for you." Bill recalled that defendant responded by saying something like, "I can see this isn't my crowd here, don't trip. I've always got something on my hip." John recalled that defendant angrily said "Well, I take it nobody wants me here."

¶ 14 Bill and John testified that defendant left the garage and called John a "bitch." John stood from his chair, put down his beer, and he and defendant began "exchanging words." Defendant pulled out a knife and said, "John I'm going to kill you." John testified that he saw

the knife handle, which had been hidden behind defendant's back, under his shirt. John asked defendant to put down the knife and fight with "the weapons God gave you, your hands." Defendant turned and yelled at John as he walked across the parking lot toward the entrance of 720 Crescent Street. Bill heard defendant yell, "I'm going to kill you motherfuckers," and then defendant entered the building.

¶ 15 Troy Beavers and Paul Neumann testified that on June 19, 2009, they were hanging out with Eric Jackson in Paul's apartment at 804 Crescent Street. Paul lived in the apartment next door to Michael. Around 6 p.m., they heard arguing and yelling outside. Troy recognized Michael's voice. The men went outside and saw John and defendant arguing. Paul recalled hearing defendant say he had a gun and would kill John.

¶ 16 When defendant entered 720 Crescent Street, Troy, Paul, and Eric joined Michael, Bill John, and Fred in the garage. From 6:30 p.m. to 7:30 p.m., the group talked in the garage. Periodically, defendant would step outside, talk angrily, yell, and gesture at the group. Paul recalled defendant saying things like, "fuck you motherfuckers, I'm going to kill somebody, I'm going to kill you." Defendant did not direct his threats to any one person, but to the group in general.

¶ 17 Edita testified that after John left, she was sitting in Bill's apartment and heard a "prolonged scraping" on the door. Edita remained quiet and did not go to the door. About 7 p.m., Edita heard someone pounding on the door at the same time someone else was buzzing Bill's apartment from the vestibule. Edita did not answer the door or the buzzer. She heard defendant "screaming" in the hallway and running up the stairs.

¶ 18 John testified that, about 7 p.m., he went to check on Edita in Bill's apartment. When John arrived at the entrance to 720 Crescent Street, he encountered defendant, who asked John if

they could talk. John said he did not want to talk, and defendant replied "John, nobody wants to talk to you. Get out of here." Defendant brandished a steak knife, and John left.

¶ 19 John returned to the group in the garage and described what had just happened. The group decided that Edita should be moved to Michael's apartment. The group walked toward Bill's apartment, and Michael carried a baseball bat. Troy, Bill, and John noticed blood smeared on the wall and handrail of the vestibule. On the door to Bill's apartment were the carved words "will kill." Troy noticed wood shavings on the carpet, and Bill and John testified that the words were not on the door earlier that evening. The men escorted Edita to Michael's apartment and returned to the garage.

¶ 20 Defendant stepped out of the 720 Crescent Street building again, and Michael said he would "rectify" or "try to diffuse" the situation. Bill, Troy, and Paul testified that Michael walked "calmly" over to defendant. Troy saw Michael extend his hand for a handshake, and Paul heard Michael tell defendant to take his dispute with John someplace else because it did not involve the rest of the group. Troy and Paul saw Michael turn toward the garage, and defendant turned toward his building. Troy heard defendant say "What the fuck did you say?" Defendant then charged at Michael, who was walking away.

¶ 21 Michael turned around, defendant punched him in the face, and Michael punched defendant twice. Defendant pulled Michael's shirt over his head and hit him in the chest and ribs. Michael and defendant separated, and defendant ran past the door to 720 Crescent Street. The group ran to Michael and saw that he had been stabbed in the side. The police were called, and defendant was arrested in a nearby yard a few minutes later.

¶ 22 Michael was transported to a hospital, where he died a few hours later. A forensic pathologist testified that Michael suffered six stab wounds: three to the left side of his chest, one to his abdomen, and two to his back.

¶ 23 Wheaton police officer Jason Scott testified that he transported and booked defendant. Defendant asked to call his "fiancé," and the telephone call was recorded on video, which was played for the jury. Defendant left a message stating, "Uh, Edita, this is Mike. Hey you go ahead and have everything in that apartment. I ain't coming home for a long, long time, if I come home again. Alright, I love you, and I hope you come see me."

¶ 24 At the close of the State's case-in-chief, defense counsel moved for a directed verdict on the murder charges and the "cold, calculated and premeditated" aggravating factor. The State argued that the murder started in the days before the stabbing, when defendant was angry about Edita leaving him, and that every time defendant came outside and threatened the group, he was threatening Michael, who was part of the group. The State argued that defendant, in a premeditated manner, would kill anyone who got in his way, including Michael. The trial court denied defendant's motion for a directed verdict.

¶ 25 Defendant testified in his own defense, generally denying the allegations that he threw Edita's clothes in the hallway, slashed her tires, brandished a knife, threatened anyone, or carved "will kill" in the door. Defendant admitted that, around 8:30 p.m. on the date of the incident, he exited his apartment to smoke a cigarette. He grabbed his key and wallet off the kitchen counter, and he also grabbed a knife. Defendant explained that everything was sitting together on the counter, and he just grabbed everything at once, not intending to pick up the knife. Defendant did not realize he was carrying the knife until he was outside.

¶ 26 Defendant testified that, when Michael saw defendant, he jumped from his seat and started yelling obscenities at defendant. Michael and John ran from the garage toward defendant. Defendant dropped his key and wallet and was very afraid. Michael struck defendant and yelled "What the fuck is your problem, what's going on with you?" Defendant did not hear everything that was said, because he fell back and partially lost consciousness when Michael struck him repeatedly in the head. Defendant began fighting back.

¶ 27 According to defendant, John pulled Michael away twice, momentarily. It did not occur to defendant to run away because he was "incoherent" and not "in a thinking capacity." Michael attacked defendant a third time, and when John pulled Michael away again, John yelled "he's been stabbed!" Defendant did not realize that he had stabbed Michael. Defendant ran away because he had lost his key and was afraid. Defendant claimed he was just defending himself and denied any animosity toward Michael or any intent to injure or kill him.

¶ 28 The jury was instructed on self-defense, second-degree murder, and the cold, calculated and premeditated aggravating factor. The jury found defendant guilty of first degree murder and that he committed the offense in a cold, calculated and premeditated manner. Defendant filed a motion for a new trial, which was denied.

¶ 29 At the sentencing hearing, defendant made several complaints about his attorney, which will be discussed below. The court then imposed a 55-year prison term. Defendant filed a motion to reconsider the sentence, and he made additional assertions about counsel's ineffectiveness. The motion to reconsider was denied, and this timely appeal followed.

¶ 30 II. ANALYSIS

¶ 31 The jury found defendant guilty of first degree murder (see 720 ILCS 5/9-1(a)(1) (West 2008)) and that "the murder was perpetrated in a cold, calculated and premeditated manner

pursuant to a preconceived plan, scheme or design to take a human life by unlawful means, and the conduct of the defendant created a reasonable expectation that the death of a human being would result therefrom" (see 720 ILCS 5/9-1(b)(11) (West 2008)). On appeal, defendant argues that he is entitled to a new sentencing hearing "[b]ecause the sole factor presented to qualify [him] for a maximum sentence of natural life imprisonment was not proven beyond a reasonable doubt." The State responds that (1) the aggravating factor was proved beyond a reasonable doubt and (2) even if it was not, defendant need not be resentenced because his 55-year prison term is within the non-extended range of 20 to 60 years and the record lacks any indication that the court relied on the aggravating factor in sentencing. We agree with the State on both points.

¶ 32 Defendant also argues that the trial court failed to conduct an adequate inquiry into his posttrial allegation of ineffective assistance of counsel, and therefore, he is entitled that inquiry under *Krankel*. We agree with defendant that a remand is necessary for a proper *Krankel* inquiry.

¶ 33 A. Cold, Calculated, and Premeditated

¶ 34 First degree murder (see 720 ILCS 5/9-1(a)(1) (West 2008)) is ordinarily punishable by 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-20(a)(1) (West Supp. 2009). A defendant is eligible for an extended term of 60-100 years (730 ILCS 5/5-4.5-20(a)(2), 5-8-2 (West Supp. 2009)) or natural life (730 ILCS 5/5-8-1(a)(1)(b) (West Supp. 2009)) if he commits the murder with one of the aggravating factors set forth in section 9-1(b) of the Criminal Code of 1961 (720 ILCS 5/9-1(b) (West 2008)). In this case, the jury found defendant guilty of committing the murder in a "cold, calculated, and premeditated manner" as set forth in section 9-1(b)(11) of the Criminal Code. 720 ILCS 5/9-1(b)(11) (West 2008).

¶ 35 Defendant challenges the sufficiency of the evidence supporting the "cold, calculated, and premeditated" aggravating factor. When considering a challenge to a criminal conviction based upon the sufficiency of the evidence, a reviewing court does not retry the defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Rather, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (Emphasis in original.) *People v. Bishop*, 218 Ill. 2d 232, 249 (2006); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). This standard applies in all criminal cases, regardless of the nature of the evidence. *Cunningham*, 212 Ill. 2d at 279. Testimony may be found insufficient to sustain the conviction, but only where the record compels the conclusion that no reasonable person could accept the evidence beyond a reasonable doubt. *Cunningham*, 212 Ill. 2d at 280.

¶ 36 Our duty is to carefully examine the evidence while giving due consideration to the fact that the court and jury saw and heard the witnesses. As the fact finder, the jury assesses the credibility of witnesses, weighs the evidence, decides what inferences it supports, and settles any conflicts in it. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). The testimony of a single witness, if it is positive and the witness is credible, is sufficient to convict. *Smith*, 185 Ill. 2d at 541. While the credibility of a witness is within the province of the trier of fact, and the finding of the jury on such matters is entitled to great weight, the jury's determination is not conclusive. We will reverse a conviction only where the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of defendant's guilt. *Smith*, 185 Ill. 2d at 542.

¶ 37 Defendant and the State agree that the only available precedent involving the cold, calculated, and premeditated aggravating factor is death penalty cases. The parties also agree that those cases are illustrative, but the State argues that "this court should not be bound by the death penalty cases, as a term of years in prison, even if it is a potentially extended term, is still far less harsh punishment than a death sentence." The State concludes that the case law in this area focuses on the Eighth Amendment prohibition against cruel and unusual punishment, and therefore, "the need to draw such a drastic distinction in using the aggravating factor has lessened, if only slightly." We do not quarrel with the notion that a prison term of any length is less harsh than the death penalty. However, the State simply suggests that, because defendant's prison term is less severe than death, the prosecution was burdened by a lesser standard in proving that defendant acted in a cold, calculated, and premeditated manner. The State offers no basis in law for applying such a "sliding scale" to the evidence supporting the proof of an aggravating factor, depending on the severity of the potential punishment.

¶ 38 In enacting section 9-1(b)(11) of the Criminal Code, the legislature did not define the "cold, calculated, and premeditated" aggravating factor differently depending on the potential sentence. We reject the State's implication that the quantum of proof necessary to prove the cold, calculated, and premeditated factor is somehow diminished where the accused faces an extended prison term or natural life imprisonment instead of the death penalty. Thus, the death penalty cases that analyze the sufficiency of the evidence supporting the aggravating factor guide our review here. That said, a review of the evidence supporting a criminal conviction is unique to the facts of each case.

¶ 39 The terms "cold" and "calculated and premeditated" as used in section 9-1(b)(11) of the Criminal Code provide a meaningful basis for distinguishing the few cases in which the death

penalty is imposed from the many cases in which it is not. *People v. Williams*, 193 Ill. 2d 1, 36, (2000). For a murder to be cold, it must be "not motivated by mercy or the emotion of the moment." The defendant must " 'kill without feeling or sympathy.' " *People v. Brown*, 169 Ill. 2d 132, 166 (1996).

¶ 40 For a murder to be calculated and premeditated pursuant to a preconceived plan, scheme, or design to take a human life, it must have been "deliberated or reflected upon for an extended period of time." *Williams*, 193 Ill. 2d at 37. Words such as "premeditated" and "design" import forethought, careful reflection, or a deliberately arranged purpose; concepts that focus on the essential element of time. *Williams*, 193 Ill. 2d at 31. A preconceived plan, scheme, or design is one that is "thought out well in advance of the crime." *Williams*, 193 Ill. 2d at 31.

¶ 41 In this case, the jury could have found beyond a reasonable doubt that defendant committed the murder in a cold, calculated, and premeditated manner pursuant to a preconceived plan, scheme, or design to take a human life by unlawful means. Defendant argues that the murder was not "cold" or "calculated" because the jury heard testimony that defendant acted with "overwhelming and uncontrollable emotion, in the heat of the moment." We disagree. The jury could conclude that the murder was cold or without feeling or sympathy, as there was evidence that the victim attempted to make peace with defendant, who then fabricated a reason to attack with a knife after the victim began walking back to the garage.

¶ 42 In *People v. Williams*, 173 Ill. 2d 48 (1996), the supreme court upheld a death penalty eligibility finding under section 9-1(b)(11) where the defendant contemplated the murder of his ex-fiancée a day before shooting her. The day before the murder, the defendant had attacked his ex-fiancée and her new boyfriend with a butcher knife and threatened to kill them if he saw them together again. The next day, the defendant shot his ex-fiancée after seeing her with her new

boyfriend at the mall. This case is remarkably similar to *Williams* in that each involves a defendant acting on romantic jealousy that built up over two days before the murder. Both defendants' actions were driven by strong emotions, but the killings also were without feeling or sympathy.

¶ 43 Defendant also argues that there is insufficient evidence of extended deliberation over a substantial period of time. He contends that the quantitative length of time between developing the intent and committing the act was not substantial (see *Williams*, 193 Ill. 2d. at 37), and the qualitative amount of reflection and deliberation did not involve an adequate level of planning and detail (see *People v. Brown*, 169 Ill. 2d 132 (1996)). We disagree.

¶ 44 Ample evidence supports the jury's finding that the murder was deliberated or reflected upon for an extended period of time and had been planned out well in advance. Two days before the murder, defendant and Edita ended their relationship, which had become increasingly tumultuous. The next day, as defendant grew angrier, he threatened to kill Edita and her new boyfriend. The jury could infer from the evidence that, within the next few hours, defendant slashed Edita's tires. On the date of the murder, Edita and John associated themselves with a group of friends, including the victim, who resided in the two apartment buildings. A few hours before the murder, defendant threatened to kill the group in the garage. There is further evidence that, later that evening, defendant carved "will kill" into the door of the apartment where Edita was residing. Defendant repeatedly exited his apartment building to taunt and goad the group in the garage. The last time defendant exited his apartment building to heckle the group, he armed himself with a knife. The victim walked to defendant to "diffuse" the situation, and defendant attacked him as he walked away. A rational trier of fact could reasonably infer from this evidence that defendant carried out a plan, deliberated over two days, to murder someone among

the group of friends in the apartment complex in retaliation for defendant's failed relationship. By luring the victim over to him, defendant was attempting to fabricate an excuse that he was acting in self defense.

¶ 45 In *People v. Haynes*, 174 Ill. 2d 204 (1996), the supreme court upheld a finding of death penalty eligibility under section 9-1(b)(11) where the defendant, over a period of days, contemplated the murder of a cosmetic surgeon. The defendant had decided to act out against perpetrators of " 'fake Aryan cosmetics' " *Haynes*, 174 Ill. 2d at 255. The defendant did not have a particular victim in mind; he selected a cosmetic surgeon from a phone book, and a few days before the crime, made an appointment with the doctor under a false name. *Haynes*, 174 Ill. 2d at 255. The defendant shot the doctor during his appointment. *Haynes*, 174 Ill. 2d at 255. Conceding that he threatened Edita and John repeatedly before the offense, defendant argues that, because he never threatened Michael specifically, he formed the intent to kill him, at most, minutes before the stabbing. However, *Haynes* instructs that a murder may be considered calculated and premeditated without proof that the defendant planned to murder a specific victim, only that he deliberated and carried out his plan to kill someone. In *Haynes*, the victim was a cosmetic surgeon chosen from a phone book, and here the victim was one of the group of friends who hung out in the apartment complex.

¶ 46 In *People v. Brown*, 169 Ill. 2d 132 (1996), the supreme court upheld a finding of death penalty eligibility under section 9-1(b)(11) where the defendant devised a plan to murder a rival gang member several hours in advance. Three hours prior to the killing, the defendant had obtained a rental car and his accomplice had obtained a gun. *Brown*, 169 Ill. 2d at 166. Compared to this case, *Brown* involved even less time between developing the intent and committing the crime, although the defendant in *Brown* took additional steps to carry out his

plan. Regardless, both involved obtaining a weapon in anticipation of encountering and killing a victim identified only by those with whom he associated.

¶ 47 The evidence supporting the finding of the cold, calculated, and premeditated aggravating factor is close, but our duty is not to retry defendant. Perhaps a *de novo* review of the evidence would lead to a different result, but on this question of fact, we defer to the jury, who had the opportunity to assess the witnesses' credibility, weigh the evidence, and draw reasonable inferences from that evidence. Examining the trial evidence in the light most favorable to the State, we conclude that a rational trier of fact could have found the essential elements of the cold, calculated, and premeditated aggravating factor beyond a reasonable doubt. See *People v. Jordan*, 218 Ill. 2d 255, 270 (2006).

¶ 48 Alternatively, the State argues that a new sentencing hearing is unnecessary because the trial court imposed the 55-year term without relying on the jury's "cold, calculated, and premeditated" finding. We agree. Reliance on an improper factor in aggravation does not necessarily require a remand where the weight on the factor is so insignificant that it did not lead to a greater sentence. *People v. Cotton*, 393 Ill. App. 3d 237, 266 (2009). In considering whether a mistaken belief influenced the trial court's sentencing decision, the reviewing court looks to whether the trial court's comments show that the court relied on the mistaken belief or used the mistaken belief as a reference point in fashioning the sentence. *Cotton*, 393 Ill. App. 3d at 266.

¶ 49 In this case, the trial judge commented that he considered the facts and circumstances of the offense, the presentence report, the relevant statutes, the evidence presented at the hearing in aggravation and mitigation, the relevant case law, the physician's reports, and defendant's statement. The judge then went into each of those factors in detail. At one point, the judge

commented on the sentencing range by saying "[T]wenty years is the minimum. Natural life is – may be the maximum. It's permissive natural life sentence, not mandatory." Thereafter, the judge never mentioned a natural life sentence, an extended term, or the jury's finding that the murder was committed in a cold, calculated, and premeditated manner. The record shows the trial court based its sentence on defendant's conduct in stabbing the victim and running away to leave him to die. The court also detailed defendant's repetitive and escalating history of criminal violence in finding that defendant lacked rehabilitative potential. The transcript of the trial court's findings in aggravation and mitigation is more than 17 pages long; but the court referred to natural life imprisonment only once, at the beginning, saying it "may" be a "permissive" sentence. When viewed in the context of a long recitation of findings, the court's passing reference is strong evidence that the jury's finding of the aggravating factor did not influence the sentencing decision. Even if the cold, calculated, and premeditated nature of the offense was not proved beyond a reasonable doubt, such that defendant was not eligible for a natural life term, nothing in the court's comments indicate that the aggravating factor was relied upon in sentencing.

¶ 50 B. Ineffective Assistance of Counsel

¶ 51 On appeal, defendant argues that the trial court improperly disregarded his posttrial allegation of ineffective assistance of counsel. We agree. At the sentencing hearing, the trial court gave defendant the chance to make a statement in allocution. Defendant offered his condolences to Michael's family and reiterated that the stabbing was accidental. Defendant also told the court that his attorney had failed to investigate the case, call particular witnesses, and present evidence that would have supported his defense. Specifically, defendant alleged that he drew and gave to his attorney a diagram of where Michael and John were sitting in the garage

and the location of Troy and his girlfriend. Defendant explained that the diagram was important because the police disturbed the crime scene by pulling everything from the garage and moving the chairs. Defendant also asserted that he gave his attorney "a letter showing what was going on" among John, Edita, and defendant. Defendant said the letter showed that his relationship with Edita ended amicably. Defendant argued that the diagram and letter should have been shown to the jury. Defendant also said that he informed his attorney that the police searched his apartment without a warrant.

¶ 52 Finally, defendant restated his denial that he carved anything into Bill's door. He explained that Bill and a neighbor named Jennifer had multiple altercations. Bill allegedly had spent two days in jail for breaking bottles on Jennifer's door, and another time Bill called the police after Jennifer threw something at his door. Defendant argued that the evidence of these altercations should have been presented at trial.

¶ 53 At the hearing on the motion to reconsider sentence, defendant made additional allegations of ineffective assistance. When the court asked whether he was willing to reimburse the public defender's office $5,000 for representing him, defendant responded "No, I am not, Judge, because I feel, your Honor, that there was no investigation done by the public defender's office on this case. And *** [trial counsel] withheld evidence that would have cleared a lot of this up."

¶ 54 When a defendant brings a *pro se* posttrial claim that trial counsel was ineffective, the trial court must inquire adequately into the claim and, under certain circumstances, must appoint new counsel to argue the claim. *Krankel*, 102 Ill. 2d at 187-89; *People v. Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9. The trial court is not automatically required to appoint new counsel to assist the defendant; rather, the court should first examine the factual basis of the defendant's

claim. *People v. Moore*, 207 Ill. 2d 68, 77-79 (2003); *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9. The supreme court has listed three ways in which a trial court may conduct its examination: (1) the court may ask trial counsel about the facts and circumstances related to the defendant's allegations; (2) the court may ask the defendant for more specific information; and (3) the court may rely on its knowledge of counsel's performance at trial and "the insufficiency of the defendant's allegations on their face." *Moore*, 207 Ill. 2d at 78-79 (2003); *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9.

¶ 55 If the defendant's allegations show possible neglect of the case, the court should appoint new counsel to argue the defendant's claim of ineffective assistance. *People v. Taylor*, 237 Ill. 2d 68, 75 (2010). However, if the court concludes that the defendant's claim lacks merit or pertains only to matters of trial strategy, the court may deny the claim. *Taylor*, 237 Ill. 2d at 75. If the court fails to conduct the necessary preliminary examination as to the factual basis of the defendant's allegations, the case must be remanded for the limited purpose of allowing the court to do so. *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9. The threshold question of whether the defendant's statement constituted a *pro se* claim of ineffective assistance sufficient to trigger the court's duty to inquire into the factual basis of the claim is a question of law; thus, our review is *de novo*. *Taylor*, 237 Ill. 2d at 75.

¶ 56 In this case, the trial court did not examine the bases of defendant's claims when they were brought to its attention during the hearings for sentencing and for reconsideration of the sentence. At the former, the court proceeded to sentencing by explaining the relevant sentencing factors and imposing a 55-year term, and at the latter, the court proceeded to consider the amount defendant owed the public defender's office. The court should have paused to examine the factual bases of defendant's claims in the manner described above; and if any of the claims

indicated that trial counsel neglected the case, defendant should have been appointed new counsel who would undertake an independent evaluation of his claims and present the matters to the court from a detached, yet adversarial, position. See *People v. Jackson*, 131 Ill. App. 3d 128, 139 (1985). The court did not make any inquiry into defendant's allegations regarding trial counsel's omissions, *Krankel* required such an inquiry, and the court's failure to make one compels us to remand the cause.

¶ 57 The State argues that a remand for a *Krankel* inquiry is unnecessary because defendant's claims related to trial strategy, were rebutted by the record, or were conclusory, immaterial, or not colorable. We considered and rejected a similar argument in *Remsik-Miller*, where we observed that *Moore* requires the trial court to conduct "some type of inquiry" into the factual basis of the defendant's claim, and even if the claim arguably lacks merit as stated, the court must afford the defendant the opportunity to specify and support his complaints. *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 17 (citing *Moore*, 207 Ill. 2d at 79-80). Despite the First District Appellate Court's precedent to the contrary, we decline to depart from our holding in *Remsik-Miller*, and we hold that a remand is necessary here.

¶ 58 III. CONCLUSION

¶ 59 For the reasons stated, we affirm defendant's murder conviction and sentence, but we remand the cause under *Krankel* for an inquiry into his allegations of ineffective assistance of trial counsel.

¶ 60 Affirmed and remanded.