2015 IL App (2d) 131227-U
No. 2-13-1227
Order filed October 15, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Winnebago County.
Plaintiff-Appellee,	)	
v.	)	No. 11-CF-2297
ANTHONY ADAMAITIS,	)	Honorable Patrick L. Heaslip,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Because the trial court failed to inquire under *Krankel* into defendant's claims of ineffective assistance of counsel, we remanded for that inquiry; (2) we vacated defendant's successive (and thus unauthorized) DNA analysis fee.

¶ 2 Defendant, Anthony Adamaitis, appeals from his convictions of aggravated driving while his license was revoked (625 ILCS 5/6-303(d-4) (West 2010)) and aggravated assault (720 ILCS 5/12-2(a)(1) (West 2010)). Defendant argues: (1) the trial court erred by failing to inquire, under *People v. Krankel*, 102 Ill. 2d 181 (1984), into his *pro se* claims of ineffective assistance of

counsel; and (2) the trial court erred in imposing a $250 DNA analysis fee, because the fee had already been imposed in a prior case. For the reasons that follow, we vacate the fee and remand.

¶ 3 I. BACKGROUND

¶ 4 On May 29, 2013, following a jury trial, defendant was found guilty of aggravated driving while his license was revoked (625 ILCS 5/6-303(d-4) (West 2010)) and aggravated assault (720 ILCS 5/12-2(a)(1) (West 2010)).

¶ 5 On June 7, 2013, at the first posttrial court date, the following transpired:

"THE DEFENDANT: Is there any way I can state anything for the record?

[DEFENSE COUNSEL]: If you'd like to say something to the Judge, I would advise against it.

THE COURT: What do you—what—did you talk to your attorney?

THE DEFENDANT: Yes, I have. But I just wanted it known for the record that two months ago before we went to trial my lawyer told me to my face that he believed I was guilty and—

THE COURT: [Defendant], that's enough please.

THE DEFENDANT: —he believed that—

THE COURT: That's enough. Thank you.

THE DEFENDANT: He said he would admit that—

THE COURT: Thank you. It doesn't matter to me, sir. It doesn't matter at this point. Thank you. Good luck to you."

¶ 6 Subsequently, defendant filed a motion for a new trial, which the trial court denied.

¶ 7 Later, defendant filed a *pro se* motion to dismiss his conviction. In the motion, defendant argued, *inter alia*, that his counsel was ineffective for failing to file a motion to dismiss based on

a violation of defendant's right to a speedy trial. The State brought the *pro se* motion to the trial court's attention at the outset of defendant's sentencing hearing. The court advised defendant: "If you have an attorney, you need to submit your pleadings through that attorney. If you want to do things on your own, then I'll vacate the appointment of your attorney and you can do them on your own." Defense counsel told the court that he had looked at the motion and that he would not be adopting it. He further stated: "I have instructed [defendant] that if he wishes to file any appeals that the appropriate time to do that would be after any and all sentencing has been completed through the help of his appellate defender." The trial court responded: "Defendant's *pro se* motion to dismiss conviction is heard and denied."

¶ 8 Following the sentencing hearing, the trial court imposed a sentence of four years in prison for aggravated driving while his license was revoked, concurrent with a term of 157 days in jail for aggravated assault. The court also imposed a $250 DNA analysis fee.

¶ 9 Defendant moved for reconsideration of his sentence. The trial court denied the motion, and defendant timely appealed.

¶ 10 II. ANALYSIS

¶ 11 Defendant first argues that the trial court erred by failing to inquire into his *pro se* claims of ineffective assistance of counsel. 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. To trigger the court's duty to inquire, "a *pro se* defendant is not required to do any more than bring his or her claim to the trial court's attention." *People v. Moore*, 207 Ill. 2d 68, 79 (2003). Verbal allegations are sufficient to trigger the court's duty to inquire. *People v. Pence*, 387 Ill. App. 3d 989, 995-96 (2009).

¶ 12 New counsel is not automatically required merely because the defendant presents a *pro se* posttrial claim that his counsel was ineffective. *Moore*, 207 Ill. 2d at 77; *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9. Instead, the trial court must first examine the factual basis of the claim. *Moore*, 207 Ill. 2d at 77-78; *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9; *Pence*, 387 Ill. App. 3d at 994. When the court considers the defendant's allegations, the court may (1) discuss the allegations with the defendant, (2) ask defense counsel to answer questions or explain the facts and circumstances related to the defendant's claim, or (3) base its evaluation on its personal knowledge of defense counsel's courtroom performance or the facial insufficiencies of the defendant's claim. *Moore*, 207 Ill. 2d at 78-79. If the defendant's allegations show possible neglect of the case, the court should appoint new counsel to argue the defendant's claim. *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9; *Pence*, 387 Ill. App. 3d at 994. 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. *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9; *Pence*, 387 Ill. App. 3d at 994. In reviewing the posttrial proceedings on the defendant's *pro se* motion, our primary objective is to determine "whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *Moore*, 207 Ill 2d at 78. "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.

¶ 13 Here, there is no question that the trial court failed to conduct *any* inquiry into the factual basis of defendant's *pro se* claims of ineffectiveness. When defendant attempted to bring his claims to the court's attention at the first posttrial status call, the court completely cut him off. When defendant later filed a *pro se* motion to dismiss his conviction, wherein he also alleged a

claim of ineffectiveness, the trial court again failed to inquire into the claim's factual basis and instead immediately dismissed the motion. Indeed, the record does not show whether the trial court even read defendant's *pro se* posttrial motion, and the State concedes that the motion was dismissed without any determination on the merits.

¶ 14 Nevertheless, the State argues that a remand is not warranted, because the trial court's failure to inquire into the factual basis is essentially harmless error. In *Moore*, the supreme court acknowledged that, where the trial court produced a record that demonstrated the meritless nature of the defendant's claims, the court's failure to appoint new counsel to argue the claims can be harmless beyond a reasonable doubt. *Moore*, 207 Ill. 2d at 80. The State asserts that here "defendant has only raised claims pertaining to the failure of his trial counsel to move to dismiss his cause based on a speedy trial violation." To be sure, in the motion, defendant argued only that his counsel was ineffective for failing to move to dismiss the case based on a violation of defendant's right to a speedy trial. According to the State, because the record "clearly defeats" any claim that there was a speedy-trial violation, counsel cannot be deemed ineffective for failing to move to dismiss on this basis. However, as defendant points out, although we know the basis for the claim asserted in the written motion, we do not know that the written motion is coextensive with whatever ineffectiveness claims defendant was attempting to articulate on June 7. Indeed, before the trial court cut off defendant in flagrant violation of *Krankel*, defendant seemed to be articulating something that had nothing to do with a speedy trial. The State does not even mention the verbal exchange. Therefore, because the record does not necessarily reveal the basis for defendant's claim or claims of ineffectiveness, we cannot deem the trial court's error harmless.

¶ 15 Defendant also contends that the DNA analysis fee should be vacated because he already provided DNA for analysis in a previous case. The State confesses error, and we agree. Under section 5-4-3(a) of the Unified Code of Corrections (Code) (730 ILCS 5/5-4-3(a) (West 2012)), any person convicted of a felony in Illinois must submit a DNA sample to the Department of State Police (DSP), to be analyzed and catalogued in a database. The person providing the sample must pay a $250 fee. 730 ILCS 5/5-4-3(j) (West 2012). However, the fee may be assessed only once against an individual, and therefore it may not be assessed against a defendant whose DNA is already in the database per section 5-4-3(a) of the Code. *People v. Marshall*, 242 Ill. 2d 285, 296-97 (2011). Here, defendant has submitted a report from the DSP showing that, in 2004, in connection with a conviction, defendant's DNA was collected and entered into the database. We take judicial notice of the report (see *People v. Grayer*, 403 Ill. App. 3d 797, 799 (2010), *abrogated on other grounds*, *Marshall*, 242 Ill. 2d at 302), and we vacate the DNA fee.

¶ 16 III. CONCLUSION

¶ 17 For the reasons stated, we vacate the DNA analysis fee and remand for the limited purpose of allowing the trial court to inquire into the factual basis of defendant's ineffective-assistance claims. If defendant's allegations show possible neglect of the case, the court should appoint new counsel to argue defendant's claims of ineffective assistance. However, if the court concludes that defendant's claims lack merit or pertain only to matters of trial strategy, the court may deny the claims.

¶ 18 Vacated in part and remanded.