2015 IL App (4th) 130885-U

NO. 4-13-0885

FILED
October 13, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
JAMES E. COONS, JR,	)	No. 13CF19
Defendant-Appellant.	)	
	)	Honorable
	)	Alesia A. McMillen,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court failed to conduct the necessary *Krankel* inquiry into defendant's *pro se* posttrial ineffective-assistance-of-counsel claims.

(2) Defendant's convictions for predatory criminal sexual assault and attempt (predatory criminal sexual assault) were not based on the same physical act and no violation of the one-act, one-crime rule occurred.

¶ 2 Following a jury trial, defendant, James E. Coons, Jr., was found guilty of predatory criminal sexual assault (720 ILCS 5/12-14.1(a)(1) (West 2004) (renumbered as 720 ILCS 5/11-1.40(a)(1) effective July 1, 2011)) (count I); attempt (predatory criminal sexual assault) (720 ILCS 5/8-4, 12-14.1(a)(1) (West 2004)) (count II); aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2004) (renumbered as 720 ILCS 5/11-1.60 effective July 1, 2011)) (count III); and sexual exploitation of a child (720 ILCS 5/11-9.1(a)(1) (West 2004)) (count IV).

The trial court sentenced him to concurrent prison terms of 12 years on count I, 8 years on count II, 6 years on count III, and 364 days in jail on count IV. Defendant appeals, arguing (1) the court improperly failed to inquire into his posttrial claims of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984) and (2) his conviction for attempt (predatory criminal sexual assault) must be vacated under the one-act, one-crime rule because it was based on the same physical act as his conviction for predatory criminal sexual assault. We affirm and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 The record shows defendant and his wife, Kathy Coons, ran a home day care for over 20 years. In January 2013, the State charged defendant with sexually assaulting and abusing one of the day care attendees, A.A.P (born August 23, 1994). On May 31, 2013, the State filed a second amended information in the case. It charged defendant as follows:

> "COUNT 1: That on or about the 1st day of May, 2005, *** [defendant] committed the offense of PREDATORY CRIMINAL SEXUAL ASSAULT in that said defendant, who was 17 years of age or older, committed an act of sexual penetration with A.A.P., who was under 13 years of age when the act was committed, in that said defendant placed his penis in contact with the vagina of A.A.P. ***.
>
> COUNT 2: That on or about the 1st of May, 2005, *** [defendant] committed the offense of ATTEMPT (PREDATORY CRIMINAL SEXUAL ASAULT) in that said defendant, with the

intent to commit the offense of Predatory Criminal Sexual Assault, *** performed a substantial step toward the commission of that offense, in that said defendant, who was 17 years of age or older[,] removed the clothing of A.A.P. and moved towards her placing his unclothed penis in contact with the vagina of A.A.P., a child under the age of 13 years[.]

COUNT 3: That on or about the 1st day of April, 2005, *** [defendant] committed the offense of AGGRAVATED CRIMINAL SEXUAL ABUSE in that said defendant, who was 17 years of age or older, committed an act of sexual conduct with A.A.P., who was under 13 years of age when the act was committed, in that said defendant touched the hips and thighs of A.A.P. for the purpose of sexual arousal of the defendant[.]

COUNT 4: That on or about the 1st of April, 2005, *** [defendant] committed the offense of SEXUAL EXPLOITATION OF A CHILD, in that said defendant, while in the presence of A.A.P., a person under 17 years of age, engaged in a sexual act with the knowledge that A.A.P. would view his acts in that he masturbated and ejaculated in her presence[.]"

¶ 5 Prior to defendant's trial, the State filed four motions *in limine*. It sought court orders (1) allowing it to present the testimony of A.A.P.'s older sister, J.F.O., regarding an incident of uncharged sexual conduct between defendant and J.F.O.; (2) prohibiting defendant from

introducing testimony of children who attended his day care but reported they were never sexually abused by defendant; (3) prohibiting defendant from introducing evidence of, or making reference to, defendant's lack of criminal convictions or arrests; and (4) prohibiting defendant from introducing evidence, or making reference to, the possible penalties for the charges pending against him. Following a hearing, the trial court granted the State's first two motions *in limine* over defendant's objections. The State's third and fourth motions were granted without objection by defendant.

¶ 6 On August 19 and 20, 2013, the trial court conducted defendant's jury trial. The State presented the testimony of A.A.P., A.A.P.'s mother and sister, an investigator for the Quincy police department, and an employee with the Illinois Department of Children and Family Services. Defendant called two friends, his wife, and a former day care attendee to testify on his behalf. At the conclusion of the trial, the jury found defendant guilty of each charged offense.

¶ 7 On September 13, 2013, defendant filed a *pro se* "Motion For An Appeal." He complained that he "was not represented to the best" by his appointed counsel, Brett Jansen. Defendant asserted he was not allowed to call his own witnesses, Jansen would not "fight" for him or his case, Jansen did not do what defendant asked him to do or say, Jansen violated his constitutional rights, Jansen made him look 100% guilty, Jansen told him he could not take the plea deal offered by the State, Jansen promised him he would win the jury trial, and Jansen overlooked a report from defendant that "[t]he Quincy Police Dept. set [*sic*] out side [*sic*] the courtroom and told each other what to say." Defendant also alleged that the prosecuting attorney and trial judge violated his constitutional rights and complained that the judge was "joking around" with the jury. At the conclusion of his motion, defendant asked "for a [*sic*] appeal" based on vio-

lations of his constitutional rights, because the judge and prosecuting attorney were biased, and based on Jansen "not representing [him] 100% to his best abilaty [*sic*]."

¶ 8 On September 30, 2013, the trial court conducted defendant's sentencing hearing. The parties presented arguments and sentence recommendations to the court. Defendant also made a statement to the court, asserting his innocence and his belief that he "was wrongly taken care of" in connection with his case. He complained that he "didn't get a chance to bring [his] witnesses in" and "[e]very time a witness was suppose [*sic*] to come up, somebody submitted a thing to stop it."

¶ 9 In rendering its decision, the trial court addressed defendant's complaints, stating as follows:

> "I know of no witnesses what [*sic*] were prevented from coming in and testifying on either party's behalf. Now, I don't know what took case [*sic*] in other motions earlier, but during the trial there was no prohibition of any witness testifying."

Ultimately, the court sentenced defendant to concurrent prison terms of 12 years for predatory criminal sexual assault, 8 years for attempt (predatory criminal sexual assault), 6 years for aggravated criminal sexual abuse, and 364 days in jail for sexual exploitation of a child.

¶ 10 The trial court also admonished defendant regarding his appeal rights. The court noted that defendant had previously filed a *pro se* "notice of appeal, motion for appeal" and advised him that his rights on appeal still applied but did not begin until after his sentencing hearing was concluded. Defendant's counsel informed the court that defendant wanted "to go ahead and have that [*pro se*] motion become a notice [of appeal]."

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 A. *Krankel* Inquiry

¶ 14 On appeal, defendant first argues the trial court improperly failed to conduct an inquiry into his *pro se* posttrial ineffective-assistance-of-counsel claims pursuant to *Krankel*. He contends he filed a *pro se* posttrial motion raising such claims but the trial court failed to make any inquiry into the factual basis underlying his claims. Defendant asks that the matter be remanded to the trial court for an adequate *Krankel* inquiry.

¶ 15 "The common law procedure developed in *Krankel* and subsequent cases is intended to promote consideration of *pro se* ineffective assistance claims in the trial court and to limit issues on appeal." *People v. Patrick*, 2011 IL 111666, ¶ 41, 960 N.E.2d 1114. "[W]hen a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim." *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637 (2003). When the trial court finds that a claim lacks merit or pertains only to matters of trial strategy, the appointment of new counsel is unnecessary and the defendant's claim may be denied. *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 637. "However, if the allegations show possible neglect of the case, new counsel should be appointed." *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 637.

¶ 16 "[A] *pro se* defendant is not required to do any more than bring his or her claim to the trial court's attention." *Moore*, 207 Ill. 2d at 79, 797 N.E.2d at 638. On review, the operative concern "is 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, 797 N.E.2d at 638. "A

court can conduct such an inquiry in one or more of the following three ways: (1) questioning the trial counsel, (2) questioning the defendant, and (3) relying on its own knowledge of the trial counsel's performance in the trial." *People v. Peacock*, 359 Ill. App. 3d 326, 339, 833 N.E.2d 396, 407 (2005). Whether the trial court conducted a proper *Krankel* inquiry presents a legal question and is subject to *de novo* review. *People v. Jolly*, 2014 IL 117142, ¶ 28, 25 N.E.3d 1127.

¶ 17 Here, following his jury trial, defendant filed a *pro se* "Motion For An Appeal" in which he raised several complaints about his appointed counsel's performance. However, the record fails to reflect the trial court conducted any inquiry into the factual basis for defendant's claims. On appeal, the State argues a *Krankel* inquiry was unwarranted under the circumstances presented because defendant's *pro se* motion was subject to more than one interpretation and was not clearly an ineffective-assistance-of-counsel claim. It cites this court's decision in *People v. Whitaker*, 2012 IL App (4th) 110334, 974 N.E.2d 445, to support its position.

¶ 18 In *Whitaker*, 2012 IL App (4th) 110334, ¶ 21, 974 N.E.2d 445, we held the contents of a letter the defendant sent to the trial court "did not sufficiently raise an ineffective-assistance-of-counsel claim that required the trial court to conduct a *Krankel* hearing." There, the defendant's letter to the court raised specific complaints about his attorney's performance but did not request new counsel and only expressly asked that the defendant be allowed "to be present at the 'pre-trial.' " *Whitaker*, 2012 IL App (4th) 110334, ¶ 21, 974 N.E.2d 445. We identified the issue presented as "whether [the] defendant's request for relief other than new counsel ma[de] a *Krankel* inquiry unwarranted." Relying on the supreme court's decision in *People v. Taylor*, 237 Ill. 2d 68, 927 N.E.2d 1172 (2010), we stated as follows:

> "[The] [d]efendant's complaints [in his letter] appear to be an explanation of why he sought to contact the judge directly to obtain a writ so he could be present at a March 2, 2010, 'pre-trial.' As in *Taylor*, defendant's letter is subject to more than one interpretation and is not clearly an ineffective-assistance-of-counsel claim. To find defendant's letter was an ineffective-assistance-of-counsel claim would require the trial court to divine defendant's intent since defendant had only requested to be present at the 'pre-trial.' " *Whitaker*, 2012 IL App (4th) 110334, ¶ 21, 974 N.E.2d 445.

¶ 19 In *Taylor*, 237 Ill. 2d at 77, 927 N.E.2d at 1177, the supreme court found a defendant's statement at sentencing was insufficient to constitute a *pro se* claim of ineffective assistance of counsel and warrant a *Krankel* inquiry. In so holding, the court initially noted "that nowhere in [the] defendant's statement at sentencing did he specifically complain about his attorney's performance, or expressly state he was claiming ineffective assistance of counsel." *Taylor*, 237 Ill. 2d at 76, 927 N.E.2d at 1176. Importantly, it distinguished the case before it from other cases where the defendants had sent correspondence to the trial court which "expressly complained about counsel's performance." *Taylor*, 237 Ill. 2d at 76, 927 N.E.2d at 1176. The court further stated as follows:

> "As the State correctly notes, there is nothing in [the] defendant's statement specifically informing the court that [the] defendant is complaining about his attorney's performance. Indeed, [the] defendant does not mention his attorney. In addition, because of the

> rambling nature of [the] defendant's statement, it is amenable to more than one interpretation. For example, according to the State, [the] 'defendant's statement merely shows regret at not accepting the more advantageous plea deal before trial, and not that he rejected the offer based upon a material misunderstanding of what sentence he faced.' [Citation.] If [the] defendant's statement in the case at bar were deemed sufficient to require a *Krankel* inquiry, few statements would be insufficient." *Taylor*, 237 Ill. 2d at 77, 927 N.E.2d at 1177.

¶ 20 We find the present case distinguishable from the cases relied upon by the State. First, unlike in *Taylor*, defendant's *pro se* posttrial motion in the instant case contained numerous express complaints about his counsel's performance. As defendant points out in his reply brief, his motion contained five numbered paragraphs and all but one paragraph contained complaints about his attorney. Further, unlike in *Taylor*, where the defendant's comments were subject to an interpretation that did not implicate his counsel's ineffectiveness, defendant's comments in this case were clearly complaints about the representation he received from Jansen.

¶ 21 Second, the present case is also distinguishable from *Whitaker*. Specifically, the nature and content of defendant's *pro se* "Motion For An Appeal" differs significantly from the defendant's correspondence to the trial court in *Whitaker*, which we found appeared "to be an explanation of why [the defendant] sought to contact the judge directly to obtain a writ so he could be present" in court. *Whitaker*, 2012 IL App (4th) 110334, ¶ 21, 974 N.E.2d 445. Here, defendant filed his *pro se* posttrial motion and requested an appeal—relief that was unavailable

to him at that point in the proceedings—based, in part, on his contention that his attorney's representation was deficient. Although defendant did not expressly request the appointment of new counsel, he clearly and expressly complained about his counsel's performance and sought relief based on those complaints. Based on the facts presented, we find a *Krankel* inquiry was warranted.

¶ 22 Next, to the extent the State argues on appeal that inquiry into defendant's claims was unwarranted because his allegations were "vague and unclear," we disagree. Recently, in *People v. Mays*, 2012 IL App (4th) 090840, ¶ 58, 980 N.E.2d 166, we stated that a *Krankel* inquiry has two steps: "(1) understanding the defendant's claims and (2) evaluating them for potential merit." Further, we noted as follows:

> "Certain of the defendant's claims might be vague, conclusory, and enigmatic. In the wording of the claims, it might be unclear exactly what the defendant means. Probably there is no better person to ask than the defendant. Likewise, if the factual basis of a claim is unclear—if the defendant could be relying on facts that are outside the record—the defendant again is probably the best person from whom to seek clarification." *Mays*, 2012 IL App (4th) 090840, ¶ 58, 980 N.E.2d 166.

Thus, to the extent defendant's allegations of ineffective assistance of counsel were unclear, the appropriate course here, according to *Mays*, was for the trial court to obtain any clarification from defendant.

¶ 23 Finally, on appeal, the State argues defendant has forfeited the ineffective-

assistance-of-counsel claims contained in his posttrial motion by failing to raise those claims with the trial court when he appeared at his sentencing. Initially, we note we rejected a similar argument in *Peacock*, 359 Ill. App. 3d at 340, 833 N.E.2d at 407-08, wherein we stated as follows:

> "The State argues that because the trial court asked defendant if he had anything to say before sentencing and because defendant never mentioned his *pro se* motion for a new trial, he has forfeited the *Krankel* issue. We disagree. To trigger a *Krankel* inquiry, 'a *pro se* defendant is not required to do any more than bring his or her claim to the trial court's attention.' [Citation.] Defendant did so in his letter to the trial court. [Citation.] Contrary to the State's argument, the court never gave defendant an opportunity to flesh out the factual bases of his posttrial motion. Rather, the court gave him an opportunity to make a statement in allocution ('anything *** you think that the [c]ourt should know before you are sentenced'). A statement in allocution presupposes that there will be no new trial. In his letter, defendant requested a new trial."

¶ 24 The State relies on this court's more recent decision in *People v. Allen*, 409 Ill. App. 3d 1058, 1077, 950 N.E.2d 1164, 1182 (2011), where we held the defendant forfeited his posttrial ineffective-assistance-of-counsel claims by failing to raise them before the trial court in subsequent appearances before the court with defense counsel. In so holding, we relied on the Second District's decision in *People v. Lewis*, 165 Ill. App. 3d 97, 109, 518 N.E.2d 741, 749

(1988), where posttrial ineffective-assistance claims were also deemed forfeited where it appeared from the record "that the trial judge, defendant's counsel, and the State were all unaware of [the] defendant's letter [to the court complaining of his counsel's performance] as no mention was made of it, and defendant did not himself refer to it in the post-trial proceedings."

¶ 25 Similarly, in *People v. Jocko*, 239 Ill. 2d 87, 93-94, 940 N.E.2d 59, 63 (2010), the supreme court refused to "criticize the circuit court for failing to take action on [the] defendant's [ineffective assistance] concerns when there [was] no indication that the court was ever made aware of them." The court noted that it appeared "from the record that the circuit court, defendant's counsel, and the State were all unaware of *** documents [containing the defendant's ineffective-assistance claims] as no mention was made of them at any point in the proceedings by defendant or anyone else." *Jocko*, 239 Ill. 2d at 93-94, 940 N.E.2d at 63. See also *People v. Sperow*, 170 Ill. App. 3d 800, 813, 525 N.E.2d 223, 232 (1988) (finding waiver where, "[a]s in *Lewis*, the defendant *** failed to make specific written allegations of ineffective assistance of counsel and did not raise the issue before the court during hearing on his post-trial motion").

¶ 26 Again, we find the present case distinguishable from the case authority relied upon by the State. Notably, the record reflects defendant's *pro se* posttrial motion, which contained complaints about his counsel's performance, had been brought to the attention of the trial court. Specifically, the court referenced the *pro se* motion at defendant's sentencing hearing. Under these circumstances, defendant did not forfeit his posttrial ineffective-assistance-of-counsel claims. We therefore remand this case to the trial court so that it may conduct the inquiry required by *Krankel*.

¶ 27 B. One-Act, One-Crime Rule

¶ 28 On appeal, defendant also argues his convictions for predatory criminal sexual assault and attempt (predatory criminal sexual assault) violate the one-act, one-crime rule. He maintains both convictions cannot stand as each one is based on the same physical act, *i.e.*, contact between defendant's penis and A.A.P.'s vagina on May 1, 2005.

¶ 29 Pursuant to the one-act, one-crime rule, "a criminal defendant may not be convicted of multiple offenses when those offenses are all based on precisely the same physical act." *People v. Stull*, 2014 IL App (4th) 120704, ¶ 42, 5 N.E.3d 328 (citing *People v. King*, 66 Ill. 2d 551, 566, 363 N.E.2d 838, 844 (1977)).

> "Under *King*, a court first determines whether a defendant's conduct consisted of separate acts or a single physical act. Multiple convictions are improper if they are based on precisely the same physical act. [Citations.] If the court determines that the defendant committed multiple acts, the court then goes on to determine whether any of the offenses are lesser included offenses. [Citations.] If so, then, under *King*, multiple convictions are improper; if not, then multiple convictions may be entered." *People v. Rodriguez*, 169 Ill. 2d 183, 186, 661 N.E.2d 305, 305-07 (1996).

Whether a violation of the one-act, one-crime rule has occurred is subject to *de novo* review. *Stull*, 2014 IL App (4th) 120704, ¶ 43, 5 N.E.3d 328.

¶ 30 Initially, defendant acknowledges he failed to raise this issue with the trial court. However, he maintains this court may review his claim under the plain-error doctrine.

> "The plain-error doctrine *** permits a reviewing court to

> consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1058 (2010).

"[A]n alleged one-act, one-crime violation and the potential for a surplus conviction and sentence affects the integrity of the judicial process, thus satisfying the second prong of the plain error rule." *People v. Harvey*, 211 Ill. 2d 368, 389, 813 N.E.2d 181, 194 (2004). As a result, we consider whether any error occurred based on a violation of the one-act, one-crime rule.

¶ 31 As stated, defendant argues on appeal that the charges against him in counts I and II of the charging instrument were based on a single physical act. He maintains it is improper to permit the State to obtain multiple convictions against him when the State's clear intent—as evidenced by its charging instrument—was to portray defendant's conduct as a single physical act. Defendant cites *People v. Crespo*, 203 Ill. 2d 335, 788 N.E.2d 1117 (2001), for the proposition that "[i]f the State charges the defendant with the commission of a single criminal act, and presents a case against the defendant based on the commission of a single act, it cannot on appeal change its position and claim that it presented proof of multiple acts."

¶ 32 In *Crespo*, 203 Ill. 2d at 337, 788 N.E.2d at 1118, the defendant was convicted and sentenced based on one count of aggravated battery and one count of armed violence in con-

nection with the stabbing of a single victim. Evidence at the defendant's trial showed he stabbed the victim "three times in rapid succession, once in the right arm, and twice in the left thigh." *Crespo*, 203 Ill. 2d at 338, 788 N.E.2d at 1119. On review, the defendant argued his aggravated battery conviction had to be vacated "because the aggravated battery charge stemmed from the same physical act which formed the basis of the armed violence charge." *Crespo*, 203 Ill. 2d at 340, 788 N.E.2d at 1120. Ultimately, the court agreed that both convictions could not stand and reversed the defendant's aggravated battery conviction. *Crespo*, 203 Ill. 2d at 346, 788 N.E.2d at 1123.

¶ 33 In reaching its decision, the supreme court found that, although "each of [the victim's] stab wounds could support a separate offense," such was "not the theory under which the State charged [the] defendant, nor [did] it conform to the way the State presented and argued the case to the jury." *Crespo*, 203 Ill. 2d at 342, 788 N.E.2d at 1121. The court specifically looked to the indictment in the case, which it found failed to "differentiate between the separate stab wounds" and made no "attempt to apportion [the] offenses among the various stab wounds." *Crespo*, 203 Ill. 2d at 343, 788 N.E.2d at 1121. It held that "to apportion the crimes among the various stab wounds for the first time on appeal would be profoundly unfair." *Crespo*, 203 Ill. 2d at 343, 788 N.E.2d at 1122. Additionally, the court also looked to the State's closing argument, finding "the State's theory at trial, as shown by its argument to the jury, amply support[ed] the conclusion that the intent of the prosecution was to portray [the] defendant's conduct as a single attack." *Crespo*, 203 Ill. 2d at 343-44, 788 N.E.2d at 1122.

¶ 34 Here, we find the record clearly demonstrates that the State's theory of the case was not to charge defendant with the same conduct under different theories of criminal liability

but to charge him based upon multiple acts of sexual misconduct directed toward A.A.P. over a period of years, when she was between the ages of 7 and 12. The State charged defendant with committing the offenses at issue, predatory criminal sexual assault and attempt (predatory criminal sexual assault), "on or about the 1st day of May, 2005." In its opening statement, the State argued its evidence would show defendant sexually abused A.A.P continuously for approximately five years, from 2001 to 2006, when A.A.P. was 7 years old until the age of 12. It maintained the jury would "not hear specific dates of the sexual abuse incidents because this was an ongoing course of conduct by the defendant and not confined to one, two, three[,] or four days."

¶ 35 At trial, the State presented evidence showing A.A.P. and her two older siblings attended day care in defendant's home for several years. A.A.P. testified she was born on August 23, 1994, and was 18 years old at the time of trial. She began attending day care in defendant's home at a very young age. A.A.P. recalled that, when she was around seven or eight years old, defendant began acting inappropriately with her. She described defendant as initially being "just a little handsy." Eventually, however, defendant would show her "pornos and stuff" while the two were alone in his garage. A.A.P. testified defendant would also have her sit on his garage workbench while she was unclothed from the waist down. He would hold onto her thighs and try to pull her forward to touch his penis to her vagina while she would "scoot back to get away from him." She asserted that "[m]ost times" defendant touched her with his penis but specifically recalled one occasion when he partially penetrated her. A.A.P. stated she bled and it hurt so she pushed herself away. She further testified that she observed defendant touch himself and ejaculate on the floor of his garage. A.A.P. stated defendant ejaculated on the garage floor "[a]lmost every time it happened."

¶ 36 A.A.P. generally attended day care Mondays through Fridays. She estimated that she was alone with defendant in his garage at least two times a week and stated that 80% of the time he would have her remove her pants or he would remove them for her. She testified defendant's inappropriate behavior continued until she left day care when she was 12 years old.

¶ 37 In its closing argument to the jury, the State argued that "in deliberating on the predatory criminal sexual assault count that *** most logical incident, the specific incident that [A.A.P.] gave specific information on was the one occasion where [defendant] penetrated her to the extent that she felt pain and there was bleeding in her underwear—blood in her underwear afterwards." Additionally, the State argued the attempt (predatory criminal sexual assault) charge "refer[ed] to all those times when [defendant] put [A.A.P.] on the table or workbench and had her get on the table, pulled her pants down, but she moved herself back to keep him from putting his penis in her."

¶ 38 The circumstances presented by this case are distinguishable from those presented by *Crespo*. In this instance, the record clearly shows the State's theory of the case and its intention was to bring multiple charges against defendant based on multiple sexual acts that occurred over a five-year period. The record does not support defendant's assertion that he was charged and convicted "based on the same physical act on the same date." Defendant's convictions for predatory criminal sexual assault and attempt (predatory criminal sexual assault) did not violate the one-act, one-crime rule.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the trial court's judgment but remand this case to the trial court for the purpose of conducting the inquiry required by *Krankel* into defendant's *pro*

se posttrial ineffective-assistance-of-counsel claims. As part of our judgment we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 41 Affirmed; cause remanded with directions.