NOTICE
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2015 IL App (4th) 130905-U

NO. 4-13-0905

FILED
November 23, 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.	)	Macon County
GARY W. BROWN,	)	No. 10CF1857
Defendant-Appellant.	)	
	)	Honorable
	)	Timothy J. Steadman,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Pope and Justice Steigmann concurred in the judgment.

ORDER

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

¶ 2 Defendant, Gary W. Brown, pleaded guilty to aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2010)) and, pursuant to his negotiated plea agreement with the State, was sentenced to 15 years in prison. He appeals, arguing the trial court failed to conduct any inquiry into his *pro se* postplea claims of ineffective assistance of counsel pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). The State concedes the issue. We accept the State's concession and remand to the trial court for the limited purpose of inquiring into defendant's *pro se* ineffective-assistance-of-counsel claims.

¶ 3 I. BACKGROUND

¶ 4 In December 2010, the State charged defendant with two counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2010)) (counts I and II); one count of aggravated battery (720 ILCS 5/12-4(b)(8) (West 2010)) (count III); and one count of burglary (720 ILCS 5/19-1(a) (West 2010)) (count IV). In connection with count I, the State alleged "defendant, while displaying a dangerous weapon, a hammer with rubber ends, knowingly committed a criminal sexual assault [(720 ILCS 5/12-13(a)(1) (West 2010))], against [the victim, T.T.], in that he placed [his] sex organ in the sex organ of [T.T.]" In count II, the State alleged defendant committed those same actions against T.T. a second time. In August 2011, the State also filed a petition to have defendant declared a sexually dangerous person under the Sexually Dangerous Persons Act (725 ILCS 205/0.01 to 12 (West 2010)).

¶ 5 In April 2013, defendant pleaded guilty to aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2010)) as alleged in count I of the charges against him. In exchange for defendant's plea, the parties agreed defendant would receive a 15-year prison sentence and the State would dismiss the remaining charges against him (counts II, III, and IV) and its petition to have defendant declared a sexually dangerous person. The trial court provided admonishments to defendant that included the applicable sentencing range for the offense, which the court identified as 6 to 60 years due to defendant's prior criminal history. The court also informed defendant that there would "be a Mandatory Supervised Release [(MSR)], or parole term, of an indeterminate 3 years to natural life."

¶ 6 The State provided a factual basis, stating its evidence would show that on December 18, 2010, the following occurred:

"[Defendant and T.T.] had occasion to be speaking with each other

> for a period of time after which the defendant indicated he—uh—wanted to have sexual intercourse with her. [T.T.] would indicate she refused that; she struggled to get away from the defendant. He—um—ended up with her in a—in a vehicle. [Defendant] struck her on the head with a hammer. This incapacitated her to the point where she did not lose consciousness, but she was in a great deal of pain. The defendant then engaged in an act of sexual intercourse with her in the van."

The State asserted its evidence would also show that forensic testing on samples taken from T.T.'s vaginal area were a deoxyribonucleic acid (DNA) match to standards taken from defendant. Further, a hammer consistent with the description given by T.T. was found in the van defendant had been using at the time of the offense. Finally, the State asserted an examination of T.T. revealed a laceration on her head that was consistent with being struck by an object and a number of scuff marks and scratches that were consistent with a struggle.

¶ 7 Defendant expressed that he understood the possible penalties as well as the rights he would be giving up upon pleading guilty. He denied having any questions about the charges against him, his rights, or possible sentences. Ultimately, the trial court accepted defendant's plea, finding it was knowingly and voluntarily made. Pursuant to the parties' plea agreement, the court sentenced defendant to 15 years in prison.

¶ 8 On May 17, 2013, defendant filed a *pro se* motion to withdraw his guilty plea and vacate his sentence. He first claimed "ineffective assistance of counsel," asserting his attorney told him he "would be found guilty and would receive a life sentence if this goes to trial" and

there was "no doubt that [defendant] would be convicted." Defendant alleged he felt "helpless" and that he "had no alternative but to plea [*sic*] guilty." He further asserted he was not aware and did not fully understand what he was pleading to, stating as follows:

> "[T]his defendant was not aware that I could do more time in the Department of Corrections after the sentence handed down by the courts due to evaluations of being a sexually dangerous person. [Defense counsel] told this defendant that after my sentence this would be over and done with other than [MSR] and registration. I would not voluntary [*sic*] and knowingly plead guilty if I has [*sic*] been informed by counselor [*sic*] or been even aware of this."

Finally, defendant maintained he did not fully understand the trial court's instruction regarding the applicable MSR term and did not fully understand that he could receive a term of three years to life.

¶ 9 In May 2013, defense counsel filed a motion on defendant's behalf to withdraw his plea and vacate his sentence. The motion stated that shortly after defendant pleaded guilty, a newspaper article quoted an assistant State's Attorney as saying defendant " 'may spend considerably more time in prison, when he is evaluated as a sexually violent person within the Department of Corrections.' " Defendant asserted he had been unaware of such a possibility and would not have maintained his plea of guilty had he known.

¶ 10 In October 2013, defense counsel filed a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013) and amended by interlineation his motion to withdraw defendant's guilty plea and vacate his sentence. Specifically, he added the allegation that defendant

"did not understand the 'indeterminate' MSR of 3 years to Life."

¶ 11 The same day, the trial court conducted a hearing on the matter. Defendant testified that at the time he pleaded guilty, he did not understand that his MSR term would be for an indeterminate length of time from three years to life. He maintained he did not understand the word "indeterminate" and would not have agreed to plead guilty had he known "parole could be for life." Defendant further asserted he read a newspaper article in which the assistant State's Attorney prosecuting his case asserted he "would probably be evaluated again as a sexually dangerous or a sexually violent person, which would prolong [his] stay in the department." Defendant testified he did not understand "the possibility of being found to be sexually violent" and, if he had, he would not have maintained his plea of guilty.

¶ 12 On cross-examination, defendant testified he did not ask the judge what "indeterminate" meant because "[i]t didn't cross his mind." He also acknowledged that he had a discussion with his attorney about the possibility that he could be held as a sexually violent person; however, defendant maintained that he did not understand what his attorney was saying. In particular, he testified he did not understand that his confinement could be prolonged.

¶ 13 Following the parties' arguments, the trial court denied defendant's motion to withdraw his plea and vacate his sentence.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Defendant appeals, arguing the trial court failed to conduct a *Krankel* inquiry into his *pro se* ineffective-assistance-of-counsel claims. The State concedes the issue and agrees that the matter should be remanded so that the trial court can conduct an inquiry into defendant's *pro*

se claims.

¶ 17 A *Krankel* inquiry "is triggered when a defendant raises a *pro se* posttrial claim of ineffective assistance of trial counsel." *People v. Jolly*, 2014 IL 117142, ¶ 29, 25 N.E.3d 1127. Pursuant to *Krankel*, a trial court should follow the following procedure:

> "[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. If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. However, if the allegations show possible neglect of the case, new counsel should be appointed." *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637 (2003).

¶ 18 "[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, "[t]he 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 77-78, 797 N.E.2d at 637-38. "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 an appropriate *Krankel* inquiry presents a legal question and is subject to *de novo* review. *Jolly*, 2014 IL 117142, ¶ 28, 25 N.E.3d 1127.

¶ 19 Here, shortly following the guilty plea proceedings, defendant filed a *pro se* motion to withdraw his plea and vacate his sentence. In his motion, he expressly claimed that he received "ineffective assistance of counsel" and raised specific complaints about his counsel's performance. The record fails to reflect the trial court ever made any inquiry into defendant's claims. Defendant's counsel also filed a motion to withdraw defendant's plea and vacate his sentence. However, defendant's *pro se* ineffective-assistance claims were not incorporated into the motion. As a result, we accept the State's concession and remand to the trial court for the limited purpose of inquiring into defendant's ineffective-assistance-of-counsel claims.

¶ 20 Additionally, we note that although the State concedes the sole issue raised by defendant on appeal, it goes on to identify and then dispute other "potential" issues "with the validity of the judgment and the fully negotiated guilty plea," which it asserts "defendant might decide to raise" in the future. However, "[a]s a general rule, a court of review will not decide moot or abstract questions or render advisory opinions." *People v. Campa*, 217 Ill. 2d 243, 269, 840 N.E.2d 1157, 1173 (2005). "Courts of review also ordinarily will not consider issues where they are not essential to the disposition of the cause or where the result will not be affected regardless of how the issues are decided." *Barth v. Reagan*, 139 Ill. 2d 399, 419, 564 N.E.2d 1196, 1205 (1990).

¶ 21 On appeal, defendant raised a single issue for review, *i.e.*, whether the trial court erred by failing to inquire into his *pro se* ineffective-assistance claims. None of the "potential" issues discussed and discredited by the State in its brief were raised by defendant and argued either in the underlying proceedings or on appeal. We can only speculate as to whether defendant will attempt to raise such claims in the future. As a result, in the instant appeal, we decline to

address the merits of these additional "potential" issues.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we remand the cause with directions that the trial court conduct an inquiry into defendant's *pro se* ineffective-assistance-of-counsel claims.

¶ 24 Remanded with directions.