2015 IL App (4th) 130996-U

NO. 4-13-0996

FILED
October 26, 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.	)	Champaign County
QWANTRELL L. AYRES,	)	No. 12CF1666
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err by not inquiring into the *pro* se posttrial motion filed by defendant, who was represented by counsel, as the words "ineffective assistance of counsel" were alone insufficient to trigger an inquiry.

¶ 2 Defendant, Qwantrell L. Ayres, argues the trial court erred when it failed to writ him to court for the hearing on his motion to reconsider his sentence when defendant also filed a *pro se* motion raising a claim of ineffective assistance of counsel. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In April 2013, defendant pleaded guilty to aggravated battery (720 ILCS 5/12-3.05(c) (West 2012)). Defendant was sentenced to 12 months' conditional discharge, which barred him from leaving Illinois without court consent. In July 2013, the State petitioned to revoke defendant's conditional discharge. The State alleged defendant left Illinois without court

permission, thereby committing the offense of obstructing justice. Later that month, defendant admitted violating a condition of his conditional discharge.

¶ 5 In September 2013, the trial court held a resentencing hearing. Brian McClellan, an attorney, testified he had an ongoing attorney-client relationship with defendant. Defendant called McClellan and told him he was the subject of an investigation of a shooting. McClellan told him, "you need to get the hell out of Dodge." Based on previous conversations with defendant's mother, Alisha Jones, McClellan believed defendant had places within the state he could go. McClellan admitted it was possible he, upon learning defendant was still in town, called Jones and told her to tell defendant to leave town. Jones also testified. She contradicted McClellan's testimony. Jones stated she told McClellan the only place defendant had to go was in Indianapolis. The trial court resentenced defendant to seven years' imprisonment.

¶ 6 Trial counsel filed a motion to reconsider the sentence. Defendant also mailed a notice of appeal and a *pro se* motion to withdraw his guilty plea and vacate his sentence. On a preprinted form, defendant wrote "ineffective assistance of counsel" as the basis for his motion. No factual allegations were made. Defendant's *pro se* motion was file stamped with the date September 30, 2013.

¶ 7 On November 4, 2013, a hearing was held on counsel's motion to reconsider the sentence. Defendant was not present for the hearing. The trial court did not consider or address defendant's *pro se* motion to withdraw his plea and denied the motion to reconsider.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 New counsel and a hearing are not required in each case a defendant presents a

pro se posttrial motion claiming ineffective assistance of counsel. *People v. Moore*, 207 Ill. 2d 68, 77, 797 N.E.2d 631, 637 (2003). When presented with such a claim, the trial court should examine the factual basis of the claim. *Id.* at 77-78, 797 N.E.2d at 637. New counsel need not be appointed if the trial court finds the claim lacks merit or pertains only to trial-strategy matters. *Id.* at 78, 797 N.E.2d at 637. If, however, the allegations show counsel neglected the case, the court should appoint new counsel to argue the ineffective-assistance claims for defendant. *People v. Munson*, 171 Ill. 2d 158, 199-200, 662 N.E.2d 1265, 1283 (1996). A formal motion is not required; a *pro se* defendant need do nothing 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 appeal, the question for this court is whether the trial court conducted an adequate inquiry into the *pro se* allegations. *Id.* at 78, 797 N.E.2d at 638. Our review is *de novo*. See *People v. Taylor*, 237 Ill. 2d 68, 75, 927 N.E.2d 1172, 1176 (2010).

¶ 11 Defendant acknowledges a split among the appellate districts over the threshold requirements for an allegation of ineffective assistance to necessitate a trial court's inquiry. Defendant urges this court to follow the cases from the Second District that show "even a bare claim of ineffectiveness warrants some degree of inquiry under *Moore*." *People v. Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 16, 966 N.E.2d 1069; see also *People v. Bolton*, 382 Ill. App. 3d 714, 721, 888 N.E.2d 672, 677 (2008) ("[I]f a defendant merely states, 'trial counsel is ineffective,' a court should at least ask 'how' and give the defendant a chance to elaborate."). In *Remsik-Miller*, for example, the statement triggering an inquiry occurred when the defendant, during a hearing on her *pro se* motion for reconsideration of her sentence, commented she did not believe her counsel "represented her 'to his fullest ability during [her] trial.' " *Remsik-Miller*,

2012 IL App (2d) 100921, ¶ 8, 966 N.E.2d 1069. The Second District held this lone comment necessitated further inquiry by the trial court, even when the allegation did not appear in her posttrial motion. *Id.* ¶ 17, 966 N.E.2d 1069 ("[D]efendant's comment that her attorney did not represent her 'to his fullest ability during [her] trial' made clear that she was raising a claim of ineffectiveness and, thus, the court should have inquired further.").

¶ 12 In contrast, the State points to cases from the First District, including *People v. Radford*, 359 Ill. App. 3d 411, 418, 835 N.E.2d 127, 133 (2005), in which the reviewing court concluded bald allegations of ineffectiveness are insufficient to trigger further inquiry under *Moore*. In *Radford*, for example, the First District found the following allegation insufficient to prompt an inquiry under *Moore*: " 'if my witness was called and my lawyer would have did [*sic*] a halfway good job [, then] I would be at home with my family'." *Id.* at 416, 835 N.E.2d at 132. The *Radford* court reached this conclusion upon citing case law showing defendants, who are represented by counsel, may file *pro se* claims of ineffectiveness only if they support those claims with allegations of fact. *Id.* at 418, 835 N.E.2d at 133 (citing *People v. Milton*, 354 Ill. App. 3d 283, 292, 820 N.E.2d 1074, 1081 (2004)).

¶ 13 This court, in *People v. Montgomery*, 373 Ill. App. 3d 1104, 1121, 872 N.E.2d 403, 417 (2007), expressly agreed with the approach taken by the First District. After trial and before sentencing, the defendant in *Montgomery* wrote a letter to the trial court asking the court to appoint a new public defender for the posttrial motions. *Id.* at 1119-20, 872 N.E.2d at 416. The defendant asserted he had not seen or heard from counsel for almost 30 days, believed counsel did not represent him as well as he could, and asserted numerous other errors existed. *Id.* at 1120, 872 N.E.2d at 416. In multiple *pro se* posttrial motions, the defendant further

complained his counsel filed no motions and " 'there was bad investigation in my case'." *Id.* This court concluded "defendant's rambling *pro se* motions and his letter" reflected "the unhappy position in which he found himself, not *** any serious statement of 'possible neglect of the case.' " *Id.* at 1120-21, 872 N.E.2d at 417 (quoting *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 637). We agreed with the First District's conclusion " 'there are still minimum requirements a defendant must meet in order to trigger a preliminary inquiry by the circuit court'." *Id.* at 1121, 872 N.E.2d at 417 (quoting *People v. Ward*, 371 Ill. App. 3d 382, 431, 862 N.E.2d 1102, 1147 (2007)).

¶ 14 In this case, the allegations of ineffective assistance are more minimal than those found insufficient in *Montgomery*. Following our own precedent, we find the simple four-word allegation of "ineffective assistance of counsel" does not meet the minimum requirements necessary to trigger an inquiry under *Moore*. The trial court did not err by failing to writ defendant to the hearing on counsel's posttrial motion.

¶ 15 III. CONCLUSION

¶ 16 We affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 17 Affirmed.