

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (4th) 140313-U

NO. 4-14-0313

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 1, 2015

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
TAVARIS HUNT,)	No. 12CF1868
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court remanded the cause with directions for the trial court to conduct a preliminary examination under *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984).

¶ 2 In December 2012, defendant, Tavaris Hunt, pleaded guilty to the offense of aggravated domestic battery and was sentenced to probation. In January 2014, the State filed a petition to revoke defendant's probation, which the trial court granted in February 2014. In March 2014, the court resentenced defendant to seven years in prison.

¶ 3 On appeal, defendant argues the trial court failed to conduct an inquiry into his claim of ineffective assistance of counsel. We remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In November 2012, the State charged defendant by information with six counts of domestic battery with a prior domestic battery conviction (counts I through VI) (720 ILCS 5/12-

3.2(a)(1) (West 2010)) and one count of aggravated domestic battery (count VII) (720 ILCS 5/12-3.3(a-5) (West 2010)). All seven counts related to a series of incidents occurring on September 27, 2012.

¶ 6 In December 2012, defendant pleaded guilty to count VII. In exchange for the plea, the State dismissed the remaining charges and recommended defendant serve 48 months of probation. The trial court accepted the guilty plea and sentenced defendant to the 48-month probationary period.

¶ 7 In January 2014, the State filed a petition to revoke defendant's probation, alleging he violated the conditions of his probation when he consumed alcohol and committed the offenses of domestic battery and resisting a peace officer. In February 2014, defendant agreed to admit the allegations in the State's petition. Following a factual basis, the trial court revoked defendant's probation.

¶ 8 In March 2014, the trial court conducted the resentencing hearing. The State asked for the maximum sentence. Defense counsel, George Vargas, asked for a lesser sentence. After finding defendant to be "incredibly dangerous given his record," the court resentedenced him to seven years in prison. On the same day, defense counsel filed a motion to reconsider sentence.

¶ 9 While awaiting a hearing on the motion to reconsider, defendant filed a letter with the trial court, claiming therein that trial counsel was ineffective for failing to give him proper legal advice throughout the proceedings. He alleged counsel "used my ignorance of the law to get me to plea [*sic*] when the evidence against me could be suppressed." Because of "ineffective counseling, illegal evidence, breach of [his] constitutional rights, and unreasonable punishment, [defendant requested] a lighter sentence and/or a completely new trail [*sic*]."

¶ 10 In April 2014, the trial court conducted a hearing on the motion to reconsider the

sentence. Defendant did not appear. The court noted there were "some *pro se* filings" by defendant and asked defense counsel, Jamie Propps, if she wanted to add anything to the motion. Counsel indicated she did not. Thereafter, the court denied the motion to reconsider. This appeal followed.

¶ 11

II. ANALYSIS

¶ 12 Defendant argues the trial court erred in failing to conduct an inquiry into his claim of ineffective assistance of counsel as required by *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984). We agree.

¶ 13 When confronted with a defendant's posttrial allegations of ineffective assistance of counsel, our supreme court set out the procedural steps to follow in *People v. Moore*, 207 Ill. 2d 68, 797 N.E.2d 631 (2003) (noting the rule that had developed since *Krankel*).

"New counsel is not automatically required in every case in which a defendant presents a *pro se* posttrial motion alleging ineffective assistance of counsel. Rather, when 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." *Moore*, 207 Ill. 2d at 77-78, 797 N.E.2d at 637.

¶ 14 In the case *sub judice*, defendant filed a letter with the trial court complaining counsel was ineffective for failing to give him proper legal advice throughout the proceedings.

The court indicated it received defendant's "*pro se* filings" but did not question defendant or trial counsel, neither of whom appeared at the hearing, to ascertain the factual basis underlying the claim. The court did not mention on the record whether the allegations in the letter were insufficient or state its belief as to counsel's performance during the prior proceedings. Thus, the court failed to conduct an adequate inquiry under *Krankel* and its progeny.

¶ 15 The State, however, argues any error committed by the trial court was harmless beyond a reasonable doubt. Our supreme court has noted "[a] trial court's failure to appoint new counsel to argue a defendant's *pro se* posttrial motion claiming ineffective assistance of counsel can be harmless beyond a reasonable doubt." *Moore*, 207 Ill. 2d at 80, 797 N.E.2d at 639. However, to so find, the supreme court stated the trial court must produce a record demonstrating the meritless nature of the defendant's claims. *Moore*, 207 Ill. 2d at 80-81, 797 N.E.2d at 639. Without such a record, "it is simply not possible to conclude that the trial court's failure to conduct an inquiry into those allegations was harmless beyond a reasonable doubt." *Moore*, 207 Ill. 2d at 81, 797 N.E.2d at 639.

¶ 16 Here, the trial court failed to conduct the necessary preliminary examination as to the factual basis of defendant's ineffective-assistance-of-counsel claim. Thus, the cause must be remanded "for the limited purpose of allowing the trial court to conduct the required preliminary investigation." *Moore*, 207 Ill. 2d at 81, 797 N.E.2d at 640. "If the court determines the allegations show possible neglect of the case, the court should appoint new counsel to represent defendant in a hearing regarding his ineffective-assistance-of-counsel claim." *People v. Raney*, 2014 IL App (4th) 130551, ¶ 56, 8 N.E.3d 633. If, however, the court determines the defendant's claims are spurious or involve matters of trial strategy, "the court may then deny the motion and leave standing defendant's convictions and sentences." *Moore*, 207 Ill. 2d at 81, 797 N.E.2d at

640.

¶ 17

III. CONCLUSION

¶ 18

For the reasons stated, we remand the cause with directions to conduct an initial *Krankel* inquiry.

¶ 19

Remanded with directions.