2015 IL App (4th) 140951-U

NO. 4-14-0951

FILED
December 4, 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.	)	McLean County
CHARLES JAMES ANDERSON,	)	No. 12-CF-817
Defendant-Appellant.	)	
	)	Honorable
	)	John C. Costigan,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's denial of defendant's *pro se* motion to withdraw his guilty plea, rejecting defendant's claim that the trial court did not conduct a sufficient *Krankel* hearing.

¶ 2 In September 2012, the State charged defendant with residential burglary (720 ILCS 5/19-3(a) (West 2010)). The indictment mistakenly described the offense as a Class X felony, when it actually was a Class 1 felony for which defendant was subject to Class X sentencing because of his criminal history. In March 2013, defendant pleaded guilty to residential burglary pursuant to an open guilty plea. The court later sentenced defendant to 13 years in prison. On direct appeal, this court remanded for the filing of an Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013) certificate.

¶ 3 On remand, counsel filed a Rule 604(d) certificate. Thereafter, defendant *pro se* filed a motion to (1) proceed *pro se* and (2) withdraw his guilty plea and vacate his sentence.

The motion to withdraw his guilty plea asserted that trial counsel was ineffective. At a subsequent hearing, the trial court granted defendant's motion to proceed *pro se*. The court then considered and denied defendant's *pro se* motion to withdraw his plea.

¶ 4 On appeal, defendant argues that the trial court erred by failing to conduct an adequate hearing, as required by *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and its progeny. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In September 2012, the State charged defendant by indictment with residential burglary. The indictment mistakenly described the offense as a Class X felony. At a November 2012 pretrial hearing, defendant stated that he wished to proceed *pro se* and argued that the indictment was misleading because residential burglary was actually a Class 1 felony for which defendant was *subject to* Class X sentencing because of his prior criminal history. The trial court clarified, as follows:

> "Residential burglary is a Class 1 felony as noted under the statute. *** That can be changed on the face of the indictment. That is not fatal to the indictment. It is what it is. They are alleging, however, you're subject to Class X sentencing based on your prior record. If you were not eligible for Class X sentencing, the sentencing judge couldn't give you a Class X sentence. That would be invalid. They're just making that allegation at this point."

Defendant decided to retain his appointed counsel.

¶ 7 In March 2013, defendant pleaded guilty to residential burglary pursuant to an open guilty plea. Prior to accepting defendant's guilty plea, the trial court admonished him that

he was charged with a Class X felony, for which the court could impose a sentence of 6 to 30 years in prison.

¶ 8 At the July 2013 sentencing hearing, the State moved to amend the indictment. The following exchange occurred:

> "[THE STATE]: Before we begin though, defense counsel has brought up this issue that we have dealt with before about the indictment claiming it's a Class X felony. I think we have been over this before. It's a Class X, and that the sentencing is Class X because of his prior records. I don't know if the court would prefer if I just amended it on its face to a Class 1 felony or if we just leave it the way it is. I don't want to give any reason for an appeal, but on the other hand I believe that it isn't necessarily erroneous the way it's written.
>
> [THE COURT]: Let me make sure I understand what you're saying, because I don't remember specifically what was raised at the last hearing. It's charged as a Class 1 felony and he's subject to Class X sentencing pursuant to his prior record, am I correct on that?
>
> [DEFENSE COUNSEL]: Residential burglary is a Class [1]. The indictment itself says Class X felony.
>
> [THE COURT]: Any objection to the amendment of the indictment Ms. Roth?
>
> [DEFENSE COUNSEL]: No[,] Your Honor.

[THE COURT]: All right. On its face the indictment will be amended to show a Class 1 felony. And he's subject to Class X sentencing[.]"

At the conclusion of the sentencing hearing, the court sentenced defendant to 13 years in prison. Defendant filed a motion to reconsider the sentence, which the court denied at a September 2013 hearing.

¶ 9 Defendant appealed and in January 2014, this court remanded for the filing of a 604(d) certificate and further postplea proceedings, if necessary. *People v. Anderson*, No. 4-13-0874, (Jan. 31, 2014) (dispositional order for summary remand).

¶ 10 On remand in July 2014, defendant filed a Rule 604(d) certificate, along with a motion to withdraw his guilty plea and a motion to reconsider the sentence. In September 2014, defendant filed a motion to proceed *pro se* and to withdraw his guilty plea and vacate his sentence. Defendant alleged that he was denied his sixth-amendment right to counsel because he was not "represented adequately in this matter before the court" and counsel had not "presented certain constitutional issues in my case." The only specific claim that defendant raised was that counsel was ineffective for failing to object when the State amended his indictment.

¶ 11 At the September 2014 hearing, the trial court first addressed defendant's motion to proceed *pro se*. The court granted that motion and allowed defense counsel to withdraw. Thereafter, defendant, proceeding *pro se*, argued that he should be allowed to withdraw his guilty plea because (1) he was improperly admonished that residential burglary was a Class X felony and (2) the State improperly amended the indictment after defendant pleaded guilty. Defendant did not frame his arguments as claims of ineffective assistance of counsel.

¶ 12 The trial court and defendant then engaged in a lengthy exchange concerning de-

fendant's arguments. At one point, defendant stated, "There's something else I wanted to say about this, but I didn't write it in my motion." The court responded, "All right. Go ahead." Defendant then argued further that the State improperly amended the indictment. The court explained to defendant that the mistake in the indictment was not problematic because defendant was admonished as to the correct sentencing range. The court then asked defendant, "Any other points you wish to make on your motion to withdraw your guilty plea?" Defendant responded, "No." The court thereafter denied defendant's motion to withdraw his plea.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Defendant argues that the trial court erred by failing to conduct an adequate *Krankel* hearing. We disagree.

¶ 16 When a defendant files a *pro se* posttrial motion claiming ineffective assistance of counsel, the trial court must make an inquiry into the defendant's claim to determine whether new counsel should be appointed. See *Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045. The following rule has developed governing these *Krankel* hearings:

> "New counsel is not automatically required in every case where a defendant brings such a motion. Instead, the trial court should first examine the factual basis of the defendant's claim. If the court determines the claim lacks merit or pertains only to matters of trial strategy, new counsel need not be appointed and the *pro se* motion may be denied. However, if the defendant's allegations show possible neglect of the case, new counsel should be appointed to argue the defendant's claim of ineffective assistance." *People v. Taylor*,

237 Ill. 2d 68, 75, 927 N.E.2d 1172, 1175-76 (2010).

¶ 17 The trial court "can base its evaluation of the defendant's *pro se* allegations of ineffective assistance on its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face." *People v. Moore*, 207 Ill. 2d 68, 79, 797 N.E.2d 631, 638 (2003). "A brief discussion between the trial court and the defendant may be sufficient" to inquire into defendant's allegations. *Id.* at 78, 797 N.E.2d at 638. The issue of whether a trial court properly conducted a preliminary *Krankel* inquiry presents a legal question that we review *de novo*. *People v. Jolly*, 2014 IL 117142, ¶ 28, 25 N.E.3d 1127.

¶ 18 In this case, defendant concedes that the trial court's inquiry into his specific claim that counsel was ineffective for failing to object when the State amended the indictment satisfied the *Krankel* requirements. We accept defendant's concession. Defendant, however, contends that the court failed to adequately inquire into *additional* claims of ineffective assistance that defendant did not specifically raise. Defendant argues on appeal that his claims that he was not "represented adequately in this matter before the court" and that counsel had not "presented certain constitutional issues in my case" were not fully addressed by the court.

¶ 19 We reject defendant's contention and conclude that the trial court's inquiry was sufficient. The court engaged defendant in an extensive exchange about defendant's contentions relating to the indictment. When defendant stated that he wished to make an argument not raised in his written motion, the court responded, "All right. Go ahead." After which, defendant continued arguing about the indictment. After defendant had finished arguing, the court asked, "Any other points you wish to make on your motion to withdraw your guilty plea?" Defendant replied, "No."

¶ 20 We conclude that the trial court's questioning of defendant was sufficient to in-

quire into his claims of ineffective assistance of counsel. In addition, we note that although defendant argues that the court failed to inquire into possible additional claims of ineffective assistance, defendant does not raise any of those supposed claims in this appeal.

¶ 21 III. CONCLUSION

¶ 22 For the foregoing reasons, 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.

¶ 23 Affirmed.