2016 IL App (1st) 141384-U

SIXTH DIVISION
Order Filed: January 22, 2016

No. 1-14-1384

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 13 CR 7661
	)	
RONNELL PAYNE,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant was not entitled to a *Krankel* hearing, where the record establishes that he never sufficiently alleged a claim of ineffective assistance of trial counsel.

¶ 2 Following a bench trial, the defendant, Ronnell Payne, was found guilty of possession of a controlled substance with intent to deliver (720 ILCS 570/401(d) (West 2012)), and sentenced as a Class X offender to six years' imprisonment. On appeal, he requests that this case be remanded because of the circuit court's failure to conduct a proper inquiry under *People v.*

Krankel, 102 Ill. 2d 181, 187-89 (1984), to determine the basis for his claim of ineffective assistance of trial counsel. For the reasons that follow, we affirm.

¶ 3 The defendant was charged along with a co-defendant, Demecco Tartt, for engaging in the sale of narcotics in the area of Ohio and Trumbull in Chicago. At trial, Officer Diblich testified that, on the evening of March 17, 2013, he and a team of officers were conducting surveillance in an area that was known to be a narcotics "hot spot." Officer Diblich observed a man, later identified as the defendant, shouting the word "blows," which was street terminology for heroin, to passersby. Tartt was also in the area and was never more than 10 to 20 feet away from the defendant. According to Officer Diblich, the defendant and Tartt were conversing with one another and walking back and forth between Ohio and Trumbull and the entrance to an alley just west of Trumbull. Adjacent to the alley was an abandoned house with a rear covered porch that was accessible through an open doorway. At one point, a car pulled up next to the defendant, and the driver held up four fingers. The defendant looked towards Tartt, held up four fingers, and accepted currency from the driver. Officer Diblich then saw Tartt walk into the doorway of the covered porch. Tartt reemerged, walked over to the car, and tendered "items" to the driver. Officer Diblich stated that he could see the items but could not specifically identify what they were. The driver then drove away.

¶ 4 Officer Diblich testified that he observed two additional transactions involving the defendant and Tartt which transpired in a manner nearly identical to the first. With regard to the second transaction, he saw the defendant converse with the driver of a car, after which Tartt went to the same location in the doorway of the back porch of the abandoned house. The third transaction happened in a very similar fashion, although Officer Diblich could not recall if it involved a person on foot or in a car.

¶ 5 Following the third transaction, Officer Diblich called for back-up officers and then went to the location of his partner, Officer Belcik, who was conducting surveillance of the same transactions from a different vantage point. Officers Diblich and Belcik proceeded to the back door area of the abandoned house where they had seen Tartt go during the three transactions. There, they discovered three baggies containing a substance later confirmed to be heroin. The defendant was subsequently arrested. While in custody, he stated that he was selling drugs to provide for his girlfriend.

¶ 6 Officer Belcik testified that, from his surveillance location, he was able to clearly see Tartt when he walked into the doorway of the covered porch during each of the three transactions. According to Officer Belcik, just inside the doorway was a ledge from which Tartt would retrieve a small item. Officers Belcik and Diblich subsequently determined that the "items" were baggies containing heroin.

¶ 7 After the State rested its case, the defendant moved for a directed finding, which the circuit court denied. The defense rested without presenting any evidence or testimony, and the court subsequently found the defendant guilty.

¶ 8 Defense counsel filed a motion to reconsider and for a new trial. The motion raised several general issues, but contained no allegation of ineffective assistance of counsel. A hearing was held on the motion, during which defense counsel argued that the State had failed to prove the defendant's guilt beyond a reasonable doubt. The court denied the motion and the matter proceeded to a sentencing hearing. Before the court pronounced sentence, the following colloquy occurred:

"THE COURT: Mr. Payne, do you have anything to say?

THE DEFENDANT: No, ma'am.

THE COURT: I read your PSI. I was so hoping you would have something to say.

THE DEFENDANT: It is just these charges. It is not true. Basically the case—it is a lot of things that went with this case that really didn't happen towards this case when I went to trial because I had witnesses and everything. When Chris [Nathan] was here he had my notes with my witnesses and everything, so I don't know what happened with that. None of this really never happened, period. I never even did this.

Yes, I have a background. Yes I have. I admit my background. Them [*sic*] is not convictions. That is something I took time for. This is my first time going to trial and being found guilty on anything. I can admit my guilt, but this is one that—.

THE COURT: How old are you now?

THE DEFENDANT: I am 29, ma'am.

DEFENSE COUNSEL: Just for clarification, your Honor, I have Mr. Nathan's file. Mr. Nathan was the original Public Defender, so I have everything that he had in his file."

The court then inquired whether the defendant was "done with" his gang activity, to which he replied affirmatively.

¶ 9 After considering the defendant's educational and social background and factors in aggravation and mitigation, the circuit court sentenced the defendant to six years' imprisonment. The instant appeal followed.

¶ 10 As his sole assignment of error, the defendant contends the circuit court erred in failing to conduct an inquiry as required under *People v. Krankel,* 102 Ill. 2d 181 (1984), with regard to his

pro se claim of ineffective assistance of counsel. Accordingly, he seeks a remand of this cause so that such an inquiry can be undertaken. We disagree.

¶ 11 In *Krankel*, the supreme court established the action to be taken by the court when a defendant asserts a *pro se* posttrial claim of ineffective assistance of counsel. The court should first examine the factual basis underlying the defendant's claim. *People v. Taylor*, 237 Ill. 2d 68, 75 (2010). If the court determines the claim lacks merit or is addressed only to matters of trial strategy, new counsel need not be appointed, and the *pro se* motion may be denied. *Id.* If, however, the defendant's allegations reveal possible neglect of the case, new counsel should be appointed to argue the claim of ineffective assistance. *Id.;* see also *Krankel*, 102 Ill. 2d 181.

¶ 12 In order for *Krankel* to be applicable, however, the defendant must have sufficiently alleged a claim of ineffective assistance. See *Taylor*, 237 Ill. 2d at 75-76; *People v. Washington*, 2015 IL App (1st) 131023 ¶ 11. In a *pro se* case, the pleading requirements for such a claim are "somewhat relaxed," and an oral motion may suffice. *Washington*, 2015 IL App (1st) 131023 ¶ 11. Nonetheless, the defendant must still meet the minimal pleading standards necessary to advance his claim before the court. *Id.* Bald or ambiguous assertions of ineffective assistance (see *Taylor*, 237 Ill. 2d at 77), or allegations that are unsupported by any specific facts alerting the court to the nature of counsel's deficiency, are held to be insufficient. *Id; People v. Ward*, 371 Ill. App. 3d 382, 432-33 (2007). The question of whether a defendant has sufficiently alleged ineffective assistance of counsel is one of law and, therefore, subject to a *de novo* standard of review. *Taylor*, 237 Ill. 2d at 75.

¶ 13 In support of the contention that he alleged a *pro se* claim for ineffective assistance of his trial counsel, the defendant relies upon the following portion of his statement in allocution: "[I]t is a lot of things that went with this case that really didn't happen towards this case when I went

to trial because I had witnesses and everything. When Chris was here he had my notes with my witnesses and everything, so I don't know what happened with that. None of this really never happened, period. I never even did this."

¶ 14 We initially point out that there is nothing in the defendant's statement criticizing the performance of either of his attorneys or expressly alleging ineffective assistance of counsel. See *Taylor*, 237 Ill. 2d at 75; see also *Ward*, 371 Ill. App. 3d at 432. Further, although he claims to have provided "witnesses" to his original attorney, he stops short of asserting that the attorney failed to investigate or contact these witnesses. In addition, the defendant never identifies the alleged witnesses, nor does he suggest what knowledge or information they may have possessed or even that they could have helped in his defense. See *People v. Reed*, 361 Ill. App. 3d 995 (2005) (merely alleging failure to subpoena witnesses insufficient to warrant remand where no indication alleged as to what they witnessed). After his new counsel clarified that she had been given the witness list from the defendant's original attorney, the defendant made no further comment alluding to any inaction or deficiency on the part of either attorney. In short, the defendant's allocutory statement contains nothing "specifically informing the court that defendant is complaining about his attorney's performance." *Taylor*, 237 Ill. 2d at 77; cf. *People v. Finley*, 222 Ill. App. 3d 571, 576 (1991). As such, it falls far short of constituting a claim of ineffective assistance of counsel so as to trigger an inquiry by the court under *Krankel*. *Taylor*, 237 Ill. 2d at 77; see also *Ward*, 371 Ill. App. 3d at 432 (defendant's assertion that he "had signed affidavits and a lot of other things that was not submitted" held to be insufficient); *People v. Radford*, 359 Ill. App. 3d 411, 416-17 (rejecting as inadequate defendant's remark that if trial counsel "did a halfway good job" then he would be home with his family). For the foregoing reasons, we find no basis for remanding this case.

¶ 15 The judgment of the circuit court is affirmed.

¶ 16 Affirmed.