THIRD DIVISION
May 11, 2016

No. 1-14-2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 9354
	)	
MICHAEL WHITE,	)	Honorable
	)	Michael B. McHale,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held*: (1) We affirm defendant's conviction for armed robbery where the evidence showed that defendant robbed the victim at knifepoint; (2) defendant's 44-year prison term is not excessive because the record establishes that the trial court considered all appropriate factors; and (3) defendant's attempts to file *pro se* motions did not trigger the trial court's duty to conduct a *Krankel* inquiry.

¶ 2 Following a bench trial, defendant Michael White was convicted of armed robbery and sentenced to an extended term of 44 years' imprisonment. On appeal, defendant contends that (1) the State failed to prove his guilt beyond a reasonable doubt where the State's witnesses were not credible; (2) his sentence constitutes an abuse of discretion because the trial court improperly

weighed mitigating evidence, and incorrectly considered defendant's use of a knife to be a factor in aggravation, even though it was a factor inherent in the charged offense; and (3) remand for a *Krankel* inquiry is necessary where the trial court failed to consider defendant's claim for potential ineffective assistance of counsel. We affirm.

¶ 3 Defendant was charged with one count of armed robbery while armed with a dangerous weapon other than a firearm. The trial court appointed the public defender to represent defendant, but during pretrial proceedings, defendant stated that he wished to proceed *pro se*. The trial court admonished defendant and granted his request. Defendant filed several *pro se* motions, which the court denied. Defendant then requested appointed counsel, and the court reappointed the public defender.

¶ 4 At trial, Rosa Camarillo, the victim, testified that on February 25, 2010, she was working behind the counter at her clothing store in Chicago. Shortly before noon, defendant entered the store and stood in front of her. Camarillo could see his face and had never seen him before. Defendant asked Camarillo questions, but she did not speak English and told him she did not understand. Defendant walked around the counter and held a five-inch blade to her left side, between her hip and waist, and told her to open the cash register. Camarillo complied and defendant used his other hand to place money in his jacket pocket. He took about $875 and ran out the front door.

¶ 5 The incident happened quickly and left Camarillo "in shock." She spoke with a police officer that day, but did not recall who called 911. A man from next door, who had tried to run after defendant, acted as her interpreter. Camarillo told the officer that defendant pointed a knife at her, but did not tell him that defendant held the blade against her left side. She denied telling

the officer that defendant took $450, and did not recall stating that defendant had a scar on his face. About two months later, police contacted Camarillo and she went to a police station to view a lineup. Officers told her "to see if [she could] identify one of the men in there who maybe was responsible for the assault." She identified defendant in the lineup, and also identified him in court.

¶ 6 Detective Otero testified that while investigating a series of armed robberies, he spoke with defendant, who was already in custody. Another detective was present during the interview. Otero recited the *Miranda* rights from a card, and defendant stated that he understood each right and wished to speak. Defendant stated that he recalled the present offense because he had "just received a 5 day notice for his rent which was due." According to Otero:

> "[Defendant] remembered entering the business establishment, [and] as he did so he took out a box cutter and informed the lady to open up the cash register. And he claimed *** the victim did open up the cash register. He stated that he grabbed the money, about $203, and he then exited and ran away.
>
> ***
>
> He said he used some of [the money] to pay the rent."

¶ 7 On cross-examination, Otero testified that he never used a written *Miranda* waiver when taking statements from suspects, and could only take a handwritten statement "when the State's Attorney comes out." He could not take a video statement from robbery suspects. After Otero interviewed defendant, a State's Attorney arrived but defendant requested a lawyer and declined to speak further.

¶ 8 The court denied defendant's motion for directed finding. The defense then entered a stipulation between the parties that, if called to testify, Officer Jesionowski would testify that he spoke with Camarillo on the date of the incident, with a man acting as interpreter. Afterwards, Jesionowski prepared an incident report indicating that Camarillo had lost an estimated $450, and that the offender had pulled a knife from his pocket and pointed it at her. The report did not mention that defendant had a scar on his face.[1]

¶ 9 The court found defendant guilty of armed robbery. In its findings, the court stated that Camarillo had sufficient time and opportunity to "clearly" observe defendant's face, and had testified with "specific detail" regarding defendant's conduct and the blade. The court acknowledged "minor impeachment" regarding the amount of money that Camarillo had reported stolen, but stated that "her lack of memory on that point [was not] significant in any way." According to the court, the different figures could be explained by Camarillo's shock following the robbery and her lack of opportunity to completely account for what was stolen. The court also found that Camarillo's statements regarding whether defendant pointed the knife at her or held it at her side were not "significant impeachment," as the court could reasonably infer that "probably both things happened," and moreover, Camarillo had communicated with Jesionowski through an interpreter. The court found that Otero "was absolutely unimpeached and very clear on the statement that defendant gave to him."

¶ 10 The presentence investigation report (PSI) indicated that defendant, age 45 at sentencing, had prior convictions for possession of a controlled substance (two convictions in 2002), armed

[1] Defense counsel raised the issue of the scar during closing argument. In response, the court stated that "[t]here appears to be some slight marking on the right side of [defendant's] face to the right of his eye, partially on the cheek, but it's not significantly visible to this court."

robbery (three convictions in 2002), possession of a stolen vehicle (two convictions in 1994), theft (1993 and 1988), and robbery (1987). Defendant also had three charges for armed robbery and one charge for attempted armed robbery pending at the time of sentencing. According to the PSI, defendant had been "emotionally and physically abused" by his stepfather, graduated from high school, and had held an entry-level job in the air force. He worked as a laborer prior to the present offense, and was married without children. His wife engaged in substance abuse and he did not know her location. Defendant began drinking alcohol at age 15, and used marijuana once a month from age 15 to 42. He used heroin twice a week for three months at age 32, and used cocaine every day from age 32 to 33. Defendant received drug treatment in 2007. He suffered from depression and took a sleep medication due to anxiety.

¶ 11 At sentencing, the State requested a prison term "well above the minimum," arguing that defendant persisted in criminal behavior despite his "long background with serious crimes and *** serious sentences." In mitigation, defense counsel argued that defendant's drug use and need for rent money could explain the present offense, and noted that no evidence indicated that defendant had injured either Camarillo or the victims of his prior crimes. Counsel also observed that defendant had sought drug treatment, graduated from high school, and had periods of employment. Counsel acknowledged that defendant had an "extensive" criminal history, but requested a "reasonable sentence." In allocution, defendant stated that he had made "bad decisions" but was not a "bad person." During the four years that his case was pending, defendant stated that he told other inmates to change their conduct in order to avoid his situation.

¶ 12 The court sentenced defendant to an extended term of 44 years' imprisonment as a Class X offender, stating:

"All right. I have considered the factors in mitigation and aggravation. *** You've made a series of bad decisions and of more of a concern dangerous decisions, and you've been doing that for 25 years. And you've been unable, it seems, to control yourself with respect to these dangerous decisions that you continue to make.

You know I understand there may be some *** physical abuse in your past and drug use on your part *** but they're only somewhat mitigating by way of an explanation.

You ultimately are responsible to get a grip on those things and to address them and not continue with this violent behavior that's been going on for two-and-a-half decades.

[The APD] raises a good point that there were no injuries in this case, but anytime when there's an armed robbery, I believe you're a half a step away from committing a murder when you have a weapon, be it a gun or a box cutter, or whatever it is."

The court reviewed defendant's criminal history, observing that the present offense was his eleventh felony conviction. The court described defendant as a "serious danger to the community," and stated:

"*** [A]t this point, Mr. White, I have to consider, although I've considered the mitigating factors, I have to consider the danger you present to the community, and this long history of unending violent crime is of grave concern to me. I think the community will be better served if you spend a substantial amount of time and get out when you're older and, hopefully, a wiser man. I do encourage you to continue to use your experience to help others and point out how they should not go down the same road that you have.

> So you still [have] some good to do left, if you choose to, Mr. White, but giving you anything close to the minimum or even mid range I think would deprecate the seriousness of your criminal history and the violent nature of it."

¶ 13 The court denied defendant's motion to reconsider sentence.

¶ 14 Defendant raises three issues on appeal. First, he contends that the State failed to prove his guilt beyond a reasonable doubt where neither of the State's witnesses testified credibly. Defendant argues that Camarillo was impeached where she testified that $875 was stolen, but the police report and preliminary complaint indicated the amount stolen was $450.[2] Defendant also observes that Camarillo did not recall who called 911, and suggests that her memory may have been "impaired" due to "weapon focus" and the fact that the offender was a stranger of a different race.[3] Moreover, defendant notes that the State did not corroborate Camarillo's testimony with physical evidence, surveillance footage, or the testimony of the neighbor who chased after the offender. Defendant further argues that Otero's testimony was unconvincing where he neither asked defendant to sign a *Miranda* waiver nor recorded his confession, and the other detective who was present did not testify. Defendant notes that the amount of money mentioned in his confession differed from the amount reported stolen, and argues that the statement regarding a "rent due notice" does not implicate him in the present offense. Additionally, defendant submits that his refusal to speak with the State's Attorney raises doubts regarding the propriety of his earlier confession.

[2] The preliminary complaint is included in the record on appeal but was not introduced at trial.
[3] The trial evidence did not mention the race of defendant or the victim.

¶ 15 The standard of review on a challenge to the sufficiency of the evidence is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Belknap*, 2014 IL 117094, ¶ 67. The reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact on questions involving conflicts in the testimony, the credibility of witnesses, or the weight of the evidence. *People v. Brown*, 2013 IL 114196, ¶ 48. To sustain a conviction, "[i]t is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *People v. Hall*, 194 Ill. 2d 305, 330 (2000). A defendant's conviction will be reversed only if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 16 To sustain a conviction for armed robbery, the State was required to show that defendant took property from the person or presence of another, by the use of force or by threatening the imminent use of force, while armed with a dangerous weapon other than a firearm. 720 ILCS 5/18-1(a), 18-2(a)(1) (West 2010). On appeal, defendant does not contest the elements of the offense but challenges the credibility of the witnesses whose testimony supported his conviction.

¶ 17 Minor inconsistencies between witnesses' testimony or within one witness' testimony do not automatically create a reasonable doubt of guilt. *People v. Gill*, 264 Ill. App. 3d 451, 458 (1992) (citing *People v. Adams*, 109 Ill. 2d 102, 115 (1985)). The trier of fact must judge how flaws in part of a witness' testimony, including inconsistencies with prior statements, affect the credibility of the whole. *People v. Cunningham*, 212 Ill. 2d 274, 283 (2004); *People v. Strother*, 53 Ill. 2d 95, 100-01 (1972). The trier of fact may accept or reject all or part of a witness'

testimony (*People v. McCarter,* 2011 IL App (1st) 092864, ¶ 22), and "is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009).

¶ 18 In this case, we cannot say the trial court erred in finding the witnesses' testimony sufficient to sustain defendant's conviction. As to the facts most pertinent to the State's case, Camarillo testified that she saw defendant's face when he stood in front of her in the store, and that he held a five-inch blade to her left side, between her hip and waist. Defendant told her to open the cash register. She complied, and defendant took a sum of money before running out the front door. That day, Camarillo spoke with a police officer, and she later identified defendant in a physical lineup and in court. Camarillo's trial testimony generally reflected the account that she provided to Officer Jesionowski, and the trial court was not obligated to reject her testimony due to contradictions regarding the amount of money that was stolen or the manner in which defendant wielded the blade.

¶ 19 The court discussed both discrepancies in its findings, and concluded that they represented "minor," "insignificant" impeachment that did not detract from Camarillo's ability to positively identify defendant. *People v. Foley*, 206 Ill. App. 3d 709, 715 (1990) ("If minor inconsistencies or discrepancies exist in the complainant's testimony but do not detract from the reasonableness of her story as a whole, the complainant's testimony may be found clear and convincing."). Moreover, in view of Camarillo's positive identification testimony, the lack of physical evidence does not raise a reasonable doubt of defendant's guilt. *People v. Reed*, 396 Ill. App. 3d 636, 649 (2009) ("The lack of physical evidence in a case does not raise a reasonable

doubt where an eyewitness has positively identified the defendant as the perpetrator of the crime.").

¶ 20 Defendant's challenge to Detective Otero's testimony also fails. While defendant submits that the lack of a written *Miranda* waiver, absence of a memorialized confession, and his refusal to speak with a State's Attorney all cast doubt on the propriety of his confession to Otero, a trier of fact need not accept explanations of the evidence that are compatible with the innocence of the accused. *Siguenza-Brito*, 235 Ill. 2d at 229. Moreover, the credibility of a confession is weighed by the trier of fact, who may accept all, part, or none of the confession. *People v. Pecoraro*, 144 Ill. 2d 1, 11 (1991). In this case, the trial court found that Otero's testimony regarding defendant's confession "was absolutely unimpeached," and we will not disturb this finding on review.

¶ 21 We note that defendant improperly attempts to rely on multiple studies and articles to show that Camarillo's ability to identify the offender may have been impaired by her focus on the knife, and that Otero's account of defendant's confession may be unreliable in view of other instances in which police officers have testified falsely. Such sources do not qualify as relevant authority on appeal and will not be considered because they were not presented to the court below and were not part of the record on appeal. See, *e.g.*, *Vulcan Materials Co. v. Bee Construction*, 96 Ill. 2d 159, 166 (1983); *People v. Magee*, 374 Ill. App. 3d 1024, 1029-30 (2007); *People v. Heaton*, 266 Ill. App. 3d 469, 476-77 (1994); *People v. Mehlberg*, 249 Ill. App. 3d 499, 531-32 (1993).

¶ 22 Defendant next contends that the trial court abused its discretion in sentencing him to 44 years' imprisonment. Defendant argues that his sentence is excessive where he did not hurt Camarillo or the victims of his prior offenses, and the trial court did not appropriately consider

mitigating evidence, including his history of abuse, drug use, education, employment, and rehabilitative potential. Additionally, defendant argues that the trial court incorrectly considered the use of a knife to be a factor in aggravation, even though it was a factor inherent in the offense of armed robbery.

¶ 23 The reviewing court considers a trial court's sentencing decision under an abuse-of-discretion standard of review. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). The trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference because the trial judge, having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant's credibility, demeanor, moral character, mentality, social environment, habits, and age. *Id.*

¶ 24 A sentence should reflect both the seriousness of the offense and the objective of restoring the defendant to useful citizenship. Ill. Const. 1970, art. I, § 11; *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27. The trial court is presumed to consider all relevant factors and any mitigation evidence presented (*People v. Jackson*, 2014 IL App (1st) 123258, ¶ 48), but has no obligation to recite and assign a value to each factor (*People v. Perkins*, 408 Ill. App. 3d 752, 763 (2011)). Rather, a defendant "must make an affirmative showing that the sentencing court did not consider the relevant factors." *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. A reviewing court will not substitute its judgment for that of the trial court merely because it would have weighed the factors differently. *Alexander*, 239 Ill. 2d at 213.

¶ 25 A sentence within the statutory range is presumed proper. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46. Armed robbery is a Class X felony with a sentencing range of 6 to 30 years. 720 ILCS 5/18-2(a)(1), (b) (West 2010); 730 ILCS 5/5-4.5-25(a) (West 2010). However, a Class

X felony is punishable by an extended term of 30 to 60 years where, within the past 10 years, excluding time spent in custody, the defendant was previously convicted of the same or similar class felony or greater class felony. 730 ILCS 5/5-4.5-25(a) (West 2010); 730 ILCS 5/5-5-3.2(b)(1) (West Supp. 2009); 730 ILCS 5/5-8-2(a) (West 2008).

¶ 26 We find no abuse of discretion in defendant's sentence. The 44-year prison term for armed robbery is presumed proper, as it falls well within the statutory range for an extended-term Class X sentence and is not disproportionate to defendant's fourth armed robbery conviction and eleventh felony conviction overall. See *People v. Garcia*, 241 Ill. 2d 416, 421-22 (2011) (goal of extended term sentencing is to impose harsher sentences on repeat offenders resistant to correction). The court stated that it had considered the mitigating factors, with specific reference to defendant's history of abuse and drug use, and acknowledged that defendant "still [had] some good to do left." However, the court also stated that it had to "consider the danger [defendant presented] to the community," and observed that a lesser sentence "would deprecate the seriousness of [defendant's] criminal history and the violent nature of it." *People v. Kelley*, 2015 IL App (1st) 132782, ¶ 94 (the seriousness of an offense, and not mitigating evidence, is the most important factor in sentencing). In this case, where the court weighed the mitigating factors, including defendant's rehabilitative potential, against the seriousness of the present offense, defendant's criminal record, and the danger he posed to the community, we find no abuse of discretion in the sentence imposed.

¶ 27 Defendant further argues that the trial court improperly considered the use of a knife to be a factor in aggravation, even though it was a factor inherent in the offense of armed robbery. It is inappropriate for a court to consider in aggravation a factor that is inherent in the offense.

People v. Bowen, 2015 IL App (1st) 132046, ¶ 50. However, defendant bears the burden of affirmatively establishing that his sentence was based on improper considerations, and the reviewing court will "consider the record as a whole rather than focusing on isolated statements by the trial court. *Id*. ¶¶ 49-50. We review this issue *de novo*. *Id*. ¶ 49.

¶ 28 To support his claim of sentencing error, defendant directs us to the following statement made by the trial court during sentencing:

> "[The APD] raises a good point that there were no injuries in this case, but anytime when there's an armed robbery, I believe you're a half a step away from committing a murder when you have a weapon, be it a gun or a box cutter, or whatever it is."

Viewed in context, this comment does not indicate that the court improperly considered defendant's use of a knife to be a factor in aggravation. To the contrary, defense counsel had argued that the fact defendant did not injure the victim represented a factor in mitigation, and in response, the court emphasized that armed robbery is a serious offense regardless of whether the victim is actually injured. See *People v. Andrews*, 2013 IL App (1st) 121623, ¶ 15 ("the trial court is not required to refrain from any mention of the factors which constitute elements of an offense, and the mere reference to the existence of such a factor is not reversible error"). Moreover, the court's response was brief and occurred as part of a longer explanation of the actual factors in mitigation and aggravation. Consequently, defendant's sentence was not based on an incorrect consideration, and his claim of error lacks merit.

¶ 29 Defendant next contends that the trial court erred in failing to construe his two attempts to file *pro se* motions as representing a claim for possible ineffective assistance of counsel.

Defendant submits that his case should be remanded for a preliminary inquiry into defense counsel's performance, pursuant to *People v. Krankel*, 102 Ill. 2d 181, 189 (1984). In response, the State argues that remand for a *Krankel* inquiry is inappropriate where defendant never raised a claim of ineffective assistance.

¶ 30 In *Krankel*, our 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. *Id*. 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*.

¶ 31 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. The defendant must "raise specific claims with supporting facts before the trial court is required to consider the allegations." *People v. Walker*, 2011 IL App (1st) 072889-B, ¶ 34. Bald or ambiguous assertions of ineffective assistance, or allegations that are unsupported by any specific facts alerting the court to the nature of counsel's deficiency, are insufficient. See *Taylor*, 237 Ill. 2d at 77 (*Krankel* hearing not warranted where record "fails to demonstrate a 'clear basis' for any allegation of ineffective assistance" and "nothing in defendant's statement specifically inform[s] the court that defendant is complaining about his attorney's performance"). Likewise, mere awareness by a trial court that defendant has complained of counsel's representation imposes no duty on the trial court to *sua sponte* investigate defendant's complaint. *People v. Cunningham*, 376 Ill. App. 3d

298, 304 (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.

¶ 32 Turning to the present case, we set forth the two instances where defendant attempted to file the *pro se* motions that he now cites as the basis for his *Krankel* claim. The first instance happened during pretrial proceedings. The following colloquy occurred when defendant attempted to file a *pro se* motion:

> "THE COURT: You are not representing yourself. If your attorney thinks it's a wise idea—
>
> DEFENDANT: [She] says she doesn't think it's a good idea.
>
> THE COURT: Anything to say about that?
>
> ASSISTANT PUBLIC DEFENDER (APD): I did indicate to Mr. White the issue had been dealt with at a motion and I did point out in the transcript of a previous hearing [the] ruling.
>
> THE COURT: We are not going to relitigate something."

Defendant's second attempt to file a *pro se* motion happened prior to sentencing, when the following colloquy occurred:

> THE WITNESS: Supplemental motion. I have two additional points.
>
> THE COURT: Whoa, whoa, whoa, wait a minute. I don't—[APD], are you asking that anything else be filed on this matter?
>
> APD: No, I've not, I'm not aware of—
>
> THE COURT: Okay. You're represented by an attorney.

APD: —what Mr. White intends to file. I'm finding this out right now at the same time you are.

* * *

THE COURT: *** [Y]ou are represented by an attorney. This court doesn't accept pro-se motions unless you're representing yourself, which you are currently not. So that request to file those is denied."

¶ 33 We have reviewed the record and find that defendant's two attempts to file *pro se* motions, despite being represented by counsel, cannot reasonably be construed as setting forth a claim that counsel was ineffective. Although a *pro se* claim of ineffective assistance need not take a specific form, the trial court is not expected "to divine such a claim where it is not even arguably raised." *People v. Reed,* 197 Ill. App. 3d 610, 612 (1990). The record establishes that defendant neither raised a specific claim of ineffective assistance, nor supported such a claim with relevant facts. *Walker,* 2011 IL App (1st) 072889-B, ¶ 34. Consequently, the trial court was not required to conduct a *Krankel* inquiry, and remand is unwarranted.

¶ 34 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 35 Affirmed.