2016 IL App (3d) 140307-U

Order filed March 31, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-14-0307
v.	)	Circuit No. 12-CF-1165
	)	
ALLEN BROWN,	)	Honorable
	)	Kevin Lyons,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: Because defendant's comments during his statement in allocution did not constitute a claim of ineffective assistance of counsel, the trial court did not err in failing to conduct a preliminary *Krankel* inquiry.

¶ 2 Defendant, Allen Brown, argues on appeal that this cause should be remanded for a preliminary *Krankel* inquiry because he made a claim of ineffective assistance of counsel during his statement in allocution at sentencing. We affirm.

¶ 3 FACTS

¶ 4 Defendant was charged by indictment with armed robbery (720 ILCS 5/18-2(a)(2) (West 2010)), aggravated robbery (720 ILCS 5/18-5(a) (West 2010)), and unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)).

¶ 5 A jury trial was held. Prior to selecting the jury, the trial court asked defendant if the State had made him an offer. Defendant confirmed that the State had made an offer, which he had declined. The trial court then asked the State what the possible sentencing range would be on each of the charges. The following exchange occurred:

"THE COURT: Are they consecutive at all?

[THE STATE]: No.

THE COURT: There is not a factual basis that would allow a consecutive sentence of one count with another?

[THE STATE]: Well, there is always the discretionary that the Court can find–

THE COURT: No mandatory.

[THE STATE]: Yeah. It's not mandatory."

¶ 6 The evidence at trial showed that defendant walked into a gas station, pointed a gun at the cashier, and told her to give him the money. The cashier testified that she recognized defendant because he was a friend of her boyfriend and came to the gas station regularly. The jury found defendant guilty of all three charges.

¶ 7 At the sentencing hearing, the State requested the aggravated robbery verdict be merged with the armed robbery verdict such that no judgment would be entered on the aggravated robbery verdict. The State asked that the court impose upper-range sentences on the verdicts of

armed robbery and unlawful possession of a weapon by a felon. The State further requested that the trial court enter consecutive sentences. The State argued that based on the nature and circumstances of the offense and defendant's criminal history, consecutive sentences were necessary to protect the public.

¶ 8 Defense counsel argued:

> "I'm not quite as certain as [the State] that these matters could run consecutively, and I believe that factually they should not additionally since they effectively are a single action I believe and a single activity of such a nature as to deprive the Court of the ability to impose consecutive sentences."

¶ 9 During his statement in allocution, defendant stated:

> "And what I don't understand is nobody ever told me anything about consecutive before the trial or now is my first time hearing consecutive. Now, maybe if I would have heard consecutive on the cop-out that they offered me with the 30 years, if somebody would have said, well, hey, they are going to give you a 30-year sentence and you take that or they are going to run it consecutive, if you found guilty they will run everything this way, that way, maybe I would have went toward the 30 years. You never know. But this is my first time hearing consecutive, and I feel that–I feel that–I just feel that, man, things–I don't know how to say I, but I just feel that it's personal."

¶ 10 The trial court noted the circumstances of the crime and defendant's extensive criminal history. The court stated to defendant: "I find that this offense, your character and nature and past demonstrate that you are a danger to the public." The trial court sentenced defendant to 42

years' imprisonment for armed robbery and 23 years' imprisonment for unlawful possession of a weapon by a felon, to run consecutively.

¶ 11 ANALYSIS

¶ 12 On appeal, defendant argues the trial court erred in failing to conduct a preliminary *Krankel* inquiry because he raised an indirect claim of ineffective assistance of counsel during his statement in allocution. Because we find defendant's statement in allocution did not raise a claim of ineffective assistance of counsel, we hold that the trial court had no duty to conduct a *Krankel* inquiry.

¶ 13 A *pro se* claim of ineffective assistance of counsel is governed by the procedures initially advanced by our supreme court in *People v. Krankel*, 102 Ill. 2d 181 (1984), and further developed in subsequent cases. *People v. Patrick*, 2011 IL 111666, ¶ 29. *Pro se* claims of ineffective assistance of counsel may rise from guilty plea proceedings as well as counsel's performance at trial. *Id.* "[A] *pro se* defendant is not required to file a written motion, but must only bring the claim to the trial court's attention." *Id*. When a defendant makes a *pro se* allegation of ineffective assistance of counsel, the trial court must examine the factual basis of the defendant's claim and appoint new counsel if the *pro se* allegations show "possible neglect of the case." *People v. Moore*, 207 Ill. 2d 68, 78 (2003). The threshold question of whether defendant sufficiently raised a claim of ineffective assistance of counsel so as to warrant a *Krankel* inquiry is a question of law, which we review *de novo*. *People v. Taylor*, 237 Ill. 2d 68, 75 (2010).

¶ 14 We find our supreme court's decision in *Taylor* to control the outcome of this case. The defendant in *Taylor* made the following statement in allocution at his sentencing hearing:

" 'Excuse me, I'm sorry, your Honor, but I had no idea. I had no idea what I was facing. I know it was my responsibility, but I had no idea what I was facing for this type of situation.

Considering what my family is going through right now, I wouldn't [have taken] that chance. The offer that was made to me, I would [have] jumped into it with both feet if I knew I was facing this type of situation.

*** I had no idea that if—I had no idea that, Mr. Taylor, if you don't take the three years and you get found guilty, you're going to [get] six to 30, not that you could *** get six to 30. That you probably—that you would get six to 30.

[There's] no way on God's earth[ ] I would [have taken] that chance knowing the situation, knowing me, and the situation with my family.' " *Id.* at 73-74.

¶ 15 The *Taylor* court held that the above statement did not constitute a *pro se* claim of ineffective assistance of counsel sufficient to trigger the trial court's duty to conduct a *Krankel* inquiry. *Id.* at 76-77. The court reasoned:

"[T]here [was] nothing in defendant's statement specifically informing the court that defendant [was] complaining about his attorney's performance. Indeed, defendant [did] not mention his attorney. In addition, because of the rambling nature of defendant's statement, it is amenable to more than one interpretation. *** If defendant's statement in the case at bar were deemed sufficient to require a *Krankel* inquiry, few statements would be insufficient." *Id.* at 77.

¶ 16 The circumstances in *Taylor* are directly analogous to facts in the instance case. In this case, like in *Taylor*, defendant did not mention his attorney in his statement in allocution nor did

he make a specific claim of ineffective assistance of counsel. Defendant's statement was also of a rambling nature in that he references the matter may be "personal," and also states "[y]ou never know" and "maybe" when discussing whether he would have ultimately pled guilty. As such, like in *Taylor*, the trial court had no duty to conduct a preliminary *Krankel* inquiry.

¶ 17 We reject defendant's attempt to distinguish *Taylor* on the basis that, in the instant case, defendant "indirectly mentioned his attorney" by stating, "if *somebody* would have said, well, hey, they are going to give you a 30-year sentence and you take that or they going to run it consecutive *** maybe I would have went toward the 30 years." (Emphasis added.) Defendant contends the word "somebody" was an indirect reference to his attorney because his attorney was the only person who had a duty to provide him with advice as to whether he should accept the plea offer. It is true that defendant's attorney had a duty to provide him with advice regarding the plea offer. *People v. Hale*, 2013 IL 113140, ¶ 16. However, the mere existence of this duty does not change the fact that defendant failed to explicitly claim his attorney was ineffective. Here, the trial court was not obligated to conduct a *Krankel* inquiry where defendant did not make any direct reference to the court about defense counsel's advice, or lack thereof, during defendant's statement in allocution.

¶ 18 CONCLUSION

¶ 19 The judgment of the circuit court of Peoria County is affirmed.

¶ 20 Affirmed.