

NOTICE

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2016 IL App (4th) 150494-U

NO. 4-15-0494

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
JOHN WILLIE JOLLY,)	No. 10CF239
Defendant-Appellant.)	
)	Honorable
)	Robert L. Freitag,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err by not appointing defendant counsel to investigate his claim of ineffective assistance of counsel.

¶ 2 On May 26, 2015, after conducting a hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), the trial court declined to appoint counsel to defendant John Willie Jolly to pursue his *pro se* claim he received ineffective assistance of counsel during his trial. Defendant appeals, arguing the court erred because defendant showed a possibility his counsel neglected his case. We affirm.

¶ 3 I. BACKGROUND

¶ 4 As this case has been before this court and our supreme court, and because the parties are familiar with the facts, we will not address the facts covered in our prior orders and

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Carla Bender

4th District Appellate
Court, IL

our supreme court's opinion unless necessary to decide this appeal. Instead, we only address what happened following our supreme court's decision.

¶ 5 On May 15, 2015, the trial court held a hearing after the supreme court reversed this court's opinion in *People v. Jolly*, 2013 IL App (4th) 120981, 999 N.E.2d 735, and remanded this case to the trial court for a new *Krankel* inquiry before a different judge without the State's participation. *People v. Jolly*, 2014 IL 117142, ¶ 46, 25 N.E.3d 1127. The trial court told defendant the following for the record:

"So we're here today *** to give you the opportunity to explain to this Court, and of course, I'm not familiar with your case. I was not the judge who heard your trial or any of the post trial hearings or motions, but we're here today to give you an opportunity to explain to the Court whatever it is you wish to try to point out regarding the allegations you have made concerning your trial counsel's performance, okay? So what I'm going to do, there were two motions that were filed in your case by you that raise these issues that are the subject of our hearing. The first one was entitled motion to reduce sentence. It was filed on October twenty-fifth of 2010. The second one was a motion to amend the motion to reduce sentence. That was filed on November twenty-third of 2010."

The court provided defendant with copies of his motions.

¶ 6 The trial court then gave defendant the opportunity to explain his allegations of ineffectiveness. Defendant told the court, "Due to counsel's disorganization, unpreparedness,

and deficient performance, the Defendant was deprived of a fair trial and received a negative outcome, which would have never occurred if the Defendant would have received effective counsel." Defendant addressed many complaints he had about his trial counsel's representation. Defendant never mentioned he might have entered a guilty plea had his counsel not been ineffective. The court also questioned defendant's trial counsel about defendant's allegations.

¶ 7 On May 26, 2015, the trial court entered a written order, refusing to appoint new counsel for defendant. The order stated, in part:

"[T]he court having conducted the inquiry and considered the written allegations of defendant contained within his two post-trial motions, the oral statements of the defendant and the responses from trial counsel at the inquiry held on 15 May 2015, and the record of the trial held herein in July 2010, DOES HEREBY FIND AND ORDER:

That the various allegations of the defendant regarding the alleged ineffectiveness of his trial counsel lack merit, or are refuted by the record, or relate solely to matters of trial strategy. The court therefore finds that there is no factual basis to the allegations sufficient to warrant appointment of new counsel to further investigate and present the allegations."

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 When a defendant makes a posttrial claim of ineffective assistance of counsel, the trial court must conduct a *Krankel* inquiry. *Jolly*, 2014 IL 117142, ¶ 29, 25 N.E.3d 1127.

During that preliminary inquiry, the trial court may question defense counsel regarding the defendant's claims and/or discuss the claims with the defendant. *Id.* ¶ 30. The court may also consider its personal knowledge of defense counsel's performance during the trial. *Id.* Because the trial court judge here was not present at defendant's trial, the court could not take this last factor into consideration.

¶ 11 We will only disturb a trial court's decision not to appoint counsel if the court's decision was manifestly erroneous. *People v. McCarter*, 385 Ill. App. 3d 919, 941, 897 N.E.2d 265, 285 (2008). Under this standard, we will reverse the court's ruling if the ruling is plainly, evidently, and indisputably erroneous. *People v. McLaurin*, 2012 IL App (1st) 102943, ¶ 41, 982 N.E.2d 832.

¶ 12 If a trial court determines a defendant's claim is meritless or concerns a matter of trial strategy, the court need not appoint new counsel to assist a defendant in developing his claim. *People v. Nitz*, 143 Ill. 2d 82, 134, 572 N.E.2d 895, 919 (1991). However, if the court finds trial counsel possibly neglected the case, new counsel should be appointed. *Id.*

¶ 13 Because the trial court had to determine whether defendant's claim of ineffective assistance of counsel had merit, it is important to consider the standard for establishing ineffective assistance of counsel. To establish ineffective assistance of counsel, a defendant must show both (1) his counsel's performance was constitutionally deficient and (2) he was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668 (1984).

¶ 14 Defendant makes no argument regarding the procedural nature of the *Krankel* hearing. According to his brief, the trial court erred by not appointing counsel to investigate his claim of ineffective assistance of counsel because he showed a probability his trial counsel

neglected his case by failing to give adequate advice concerning the advisability of pleading guilty.

¶ 15 We first note this argument was not raised during the *Krankel* hearing in May 2015. Defendant did not tell the trial court he might have entered a guilty plea had his counsel told him this was advisable. Further, defendant did not make this argument in either his October 2010 *pro se* motion to reduce his sentence or his November 2010 *pro se* motion to amend his motion to reduce his sentence.

¶ 16 Defendant made a brief remark regarding a plea at the September 2012 *Krankel* hearing. However, during the same hearing, defendant stated he told his trial counsel he did not want to plead guilty. According to defendant, "From the first moment when I said I wanted to go to trial on this, that's what I wanted."

¶ 17 We do not see how this brief reference preserved this issue for our review in this appeal. We find this issue forfeited. Defendant cannot complain on appeal the trial court's decision not to appoint counsel was manifestly erroneous based on a claim of ineffectiveness he did not present to the court.

¶ 18 Regardless of forfeiture, his claim has no merit as he cannot establish he was prejudiced. At the September 2012 hearing, defendant noted the State was offering a plea of 16 years' imprisonment. Defendant stated during the same hearing he refused the deal and wanted to go to trial, and the trial court only sentenced him to 16 years. Defendant does not explain how he could have been prejudiced by this chain of events. If anything, defendant benefitted from what occurred because he was able to go to trial and still receive the same sentence offered by the State.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we affirm the trial court's decision not to appoint counsel to represent defendant. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 21 Affirmed.