2018 IL App (1st) 150826-U

No. 1-15-0826

Order filed May 22, 2018

Second Division

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 20580
	)	
EDWARD CHALMERS,	)	Honorable
	)	Mary C. Roberts,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: Court conducted adequate *Krankel* inquiry. Extended-term sentence for delivery of a lookalike substance improper, reduced to maximum unextended sentence.

¶ 2 Following a bench trial, defendant Edward Chalmers was convicted of possession of a controlled substance (one gram or more, but less than 15 grams, of heroin) with intent to deliver (PCSI) and delivery of a lookalike substance and sentenced to concurrent prison terms of six years. On appeal, Chalmers contends that the court conducted an inadequate *Krankel* inquiry into

his posttrial claims of ineffective assistance of counsel. Chalmers also contends, and the State agrees, that an extended-term sentence of six years for delivery of a lookalike substance was erroneous so that sentence should be reduced to five years, the maximum unextended term. We grant the latter relief and otherwise affirm.

¶ 3 Chalmers was charged with two counts of PCSI for possessing with the intent to deliver (1) one gram or more, but less than 15 grams, of heroin, and (2) less than one gram of cocaine. He was also charged with delivery of a lookalike substance by delivering a substance he represented to be cocaine.

¶ 4 In November 2013, with Chalmers present in court, defense counsel told the court that she had shown Chalmers the charges against him, then waived formal reading of the charges and entered a not-guilty plea. A bond hearing was held in the same proceeding, and the State recited in part that Chalmers "had eleven bags of suspect cocaine and four bags of suspect heroin, both of which came back positive for those narcotics, and a misdemeanor amount of cannabis." The court noted that Chalmers also faced a charge of delivery of a lookalike substance.

¶ 5 In a January 2014 proceeding with Chalmers present, the court noted that Chalmers faced felony charges of "class 1, 2, and a 3" and the State clarified that he faced "[t]wo possessions with intent and also delivery of a lookalike."

¶ 6 In November 2014, defense counsel told the court that she had discussed the case with Chalmers "a number of times" and "investigated any witness he supplied to us." She noted that Chalmers was originally charged with possession of cannabis, but the State later dismissed the cannabis charge and pursued the heroin, cocaine and lookalike substance charges. She told the court that, although she had "explained how the trial would go and what evidence I perceive the

State would be presenting a trial," Chalmers claimed not to understand and so was not ready for trial. Chalmers told the court that he intended to hire new counsel, and the court reminded him that he had been saying the same thing since November 2013. The court denied another continuance and set the trial for December 2014. On the scheduled trial date, a State witness was temporarily unavailable and the case was continued to January 2015.

¶ 7 Just before trial, the court admonished Chalmers regarding the State's plea offer of two years' imprisonment for a Class 3 felony of possession of a controlled substance.[1] The State told the court that, if convicted, Chalmers was subject to Class X sentencing with a minimum six-year sentence. The court admonished Chalmers that he faced three charges of felony Classes 1, 2, and 3 and would face mandatory Class X sentencing with a minimum sentence of six years if convicted at trial. Chalmers chose to proceed to trial.

¶ 8 The evidence at trial established through eyewitness testimony that Chalmers engaged in two hand-to-hand transactions after which police recovered various plastic bags of substances, which later tested positive for heroin, cocaine and cannabis. One bag recovered from one of Chalmers's buyers, suspected to contain cocaine, was determined not to contain a controlled substance. The court found Chalmers guilty on all charges.

¶ 9 During trial, defense counsel cross-examined the testifying officers. She elicited that the surveillance officer could not (i) hear any conversation between Chalmers and either of his customers, (ii) discern which denominations of cash Chalmers received, or (iii) see the actual objects from Chalmers's sleeve pass from him to either buyer. Counsel also elicited that the

[1] Chalmers had another case pending, which the State said was also subject to Class X offender sentencing and on which the State offered a consecutive three years' imprisonment. The court admonished him regarding that case and plea offer simultaneously with its admonishments herein.

police did not detain the second buyer and that no fingerprints or DNA samples were recovered from a bag dropped by Chalmers. Finally, counsel raised various hearsay objections to testimony presented by the State. In her closing argument, counsel argued the matters she elicited on cross-examination gave rise to reasonable doubt.

¶ 10 Counsel filed and amended a posttrial motion, arguing at length that the evidence was insufficient to convict Chalmers, again emphasizing the matters explored during cross-examination. The court found the motion "well-reasoned," but denied it given the court's ability to draw reasonable inferences from the evidence.

¶ 11 The presentencing investigation report (PSI) revealed that Chalmers had various felony convictions, with sentences ranging from one year of probation to three years' imprisonment.

¶ 12 At sentencing, the court noted that the delivery of a lookalike substance charge was not the same class as the PCSI charges. The State argued in part that Chalmers was subject to sentencing as a mandatory Class X offender based on two prior Class 2 felony offenses. Defense counsel argued for the minimum Class X sentence of six years.

¶ 13 When the court asked Chalmers if he wanted to speak, Chalmers claimed "I had no knowledge [of] this case because this case was a marijuana case. *** I never even knew of these charges. *** I did not have a fair trial, Your Honor. The counselor basically defrauded me. I was not prepared for the case nor aware of the nature of this case. *** My counselor never advised me of the rules. *** I was always told by my counselor what I can't do and never told what I could do to help me other than take prison time. *** I was never offered no probation because prison time is not helping me at all. I have an addiction. I really need help." At no point did Chalmers say that counsel was unprepared, only that Chalmers himself was unprepared.

¶ 14 The court reminded Chalmers that he had obtained multiple continuances to hire new counsel but did not. The court noted the State's guilty-plea offer to a reduced charge and that the court gave the plea-offer admonishments because counsel was concerned about him "understanding the gravity of the situation" he faced with Class X sentencing of 6 to 30 years. "Her advocacy has been above and beyond in this court's eyes. Every single time you have appeared in front of this court, she has been advocating on your behalf. *** I just want the record to be clear that you have known every step of the way what you were in for because this court advised you of what you were in for, so don't put it on your attorney."

¶ 15 Chalmers claimed that "I only did what I was told by" defense counsel, who denied the accusation. Counsel and the court agreed that if Chalmers had followed counsel's advice, he would have accepted the State's plea offer. When asked if he had anything else, Chalmers told the court he wanted to appeal. The court advised Chalmers that he had to be sentenced first and asked again if Chalmers had anything further. He replied "No, ma'am." The court then sentenced Chalmers to concurrent six-year prison terms for PCSI of heroin and delivery of a lookalike substance, with PCSI of cocaine merged into the other PCSI count. Chalmers's postsentence motion was denied.

¶ 16 Chalmers first contends that the trial court conducted an inadequate *Krankel* inquiry into his posttrial claims of ineffective assistance of counsel. In particular, he argues that he had "complaints *** about trial counsel's performance at trial", a "claim that counsel did not effectively assist him in preparing for or conducting the trial," and a "complaint that counsel did not prepare for trial" that the court did not address or inquire into.

¶ 17 When a defendant raises a *pro se* posttrial claim of ineffective assistance of trial counsel, whether in writing or orally, the trial court must conduct an inquiry – commonly called a *Krankel* hearing – to determine whether to appoint new counsel to argue the defendant's ineffectiveness claims. *People v. Ayres*, 2017 IL 120071, ¶ 11, citing *People v. Krankel*, 102 Ill. 2d 181 (1984). The trial court need not appoint new counsel automatically but must conduct an inquiry into the underlying factual basis of the defendant's claim that is sufficient to determine if any factual basis exists for the claim. *Id.* The court may examine the defendant, may examine trial counsel, and may make its determination based on its knowledge of counsel's performance and the insufficiency of the defendant's allegations. *Id.*, ¶ 12. On appeal, this court's concern is whether the trial court conducted an adequate inquiry into the defendant's ineffectiveness allegations. *Id.*, ¶ 13. We review *de novo* the legal question of whether the trial court conducted an adequate preliminary *Krankel* inquiry. *People v. Jolly*, 2014 IL 117142, ¶ 28.

¶ 18 Chalmers complained at length that he was unaware of the "nature" of this case and believed he was facing a cannabis case. The court's response to this claim, far from being "irrelevant" and "unresponsive" as Chalmers contends, was directly responsive: the court noted that it had admonished Chalmers before trial that he faced either Class X sentencing of 6 to 30 years if he went to trial or the State's offer of 2 years. Moreover, the record shows that Chalmers was made aware that he faced two PCSI counts and delivery of a lookalike substance, rather than a mere cannabis charge as he claimed. We consider it key that Chalmers never complained that counsel was unprepared, though he was given the opportunity to do so. Instead, he said repeatedly that he himself was unprepared, and made it clear that the heart of his lack of preparedness was his professed unawareness of the nature of this case. The court properly found

that Chalmers was in fact aware of the nature of this case because the court had made him aware. As stated above, a proper *Krankel* inquiry can consist of the court's own observations of counsel's performance and awareness that the defendant's claim is meritless. Thus, the trial court's finding that "[e]very single time you have appeared in front of this court, [counsel] has been advocating on your behalf" is properly responsive to and dispositive of Chalmers's claim that counsel "defrauded" him and deprived him of a fair trial. The finding is supported by the fact that counsel cross-examined the State's witnesses and used the evidence gleaned from that cross-examination in closing argument and the posttrial motion. We conclude that the court held an adequate *Krankel* inquiry.

¶ 19 Chalmers also contends on appeal, and the State agrees, that an extended-term sentence of six years for delivery of a lookalike substance was erroneous and his sentence should be reduced to the maximum unextended term of five years. We agree. Delivery of a lookalike substance is a Class 3 felony, ineligible for mandatory Class X sentencing. 720 ILCS 570/404(b); 730 ILCS 5/ 5-4.5-95(b) (West 2014). The sentencing range for a Class 3 felony is 2 to 5 years, or up to 10 years if extended. 730 ILCS 5/5-4.5-40(a) (West 2014). The court gave no reason other than mandatory Class X sentencing for imposing a six-year sentence, nor did it acknowledge that the six-year sentence was an extended term as to delivery of a lookalike substance. We therefore reduce Chalmers's sentence for delivery of a lookalike substance to five years.

¶ 20 Affirmed as modified.