SECOND DIVISION
October 15, 2019

Nos. 1-18-0888 & 1-18-2441 (consolidated)

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 16 CR 60103
	)	
MARLON MADISON,	)	The Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Pucinski and Coghlan concurred in the judgment.

ORDER

HELD: Trial court conducted adequate preliminary *Krankel* inquiry into defendant's *pro se* claims of ineffective assistance of counsel where court used all appropriate methods of inquiry and found no merit to claims.

¶ 1 Following a bench trial, defendant-appellant Marlon Madison (defendant) was convicted of robbery and aggravated unlawful restraint and was sentenced to 18 years in prison. He

appeals, contending that the trial court did not conduct adequate inquiry of his *pro se* posttrial claims of ineffective assistance of counsel. He asks that we remand the matter for a preliminary inquiry consistent with *People v. Krankel*, 102 Ill. 2d 181 (1984). For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 Defendant was charged, in part, with armed robbery and aggravated unlawful restraint in relation to an incident that occurred on April 17, 2016 on the 100 block of North Kedzie Avenue in Chicago. Briefly, the victim, David Carter, testified that he was selling loose cigarettes out of his car in this area and that he had approximately $600 in bills and coins in his pockets and in his car, along with his wallet and cell phone. At one point, when he was near his trunk, a vehicle pulled up and two men got out. Carter identified defendant as having exited the driver's side; he could not identify the other man, who exited the passenger side. Carter testified that defendant and the other man approached him, and the other man produced a gun. As this man held Carter at gunpoint, defendant took Carter's money from his pockets, as well as his wallet and cell phone; defendant then took a crow bar from Carter's trunk, pried open the glove compartment and took money from it. As Carter testified, he narrated a published video of the scene that had been captured on a surveillance camera. Carter further testified that, as defendant and the other man walked back to their car to leave, police arrived. Carter told police defendant and the other man had just robbed him. Carter later accompanied police to a nearby alley where he identified defendant.

¶ 4 Officer Michael Hudson testified that he was patrolling the area with his partner when they received a robbery-in-progress call on Kedzie Avenue. When they arrived, officer Hudson saw a vehicle with two occupants driving away from the scene; he and his partner

pursued it. At one point, they lost sight of the vehicle for approximately three to five seconds as it turned into an alley. However, officer Hudson regained sight of it, whereupon he saw defendant climbing a fence. Officer Hudson exited his police vehicle and gave chase on foot, during which he saw defendant reach into his pockets and drop money, both bills and coins, purposefully out onto the ground. Officer Hudson apprehended defendant and, upon a search of his person, recovered $537.97. Officer Hudson further testified that other officers arrived on the scene along with Carter, who identified defendant as one of the men who robbed him.

¶ 5 Defendant rested his case without presenting any witnesses or evidence. Following closing argument, the trial court concluded that the State had failed to prove beyond a reasonable doubt that a gun was used during the incident. Accordingly, the court found defendant guilty of the lesser included offense of robbery as well as aggravated unlawful restraint, the latter of which merged into the former.

¶ 6 Defense counsel subsequently filed a posttrial motion for a new trial, and an amended motion for a new trial. Before these could be heard, defendant sought leave to file a written *pro se* motion requesting a *Krankel* hearing. The trial court examined the motion and found that it contained several allegations beyond ineffective assistance of counsel. The court continued the matter and instructed defendant to tailor his motion accordingly. Defendant later presented a new *pro se* motion requesting a *Krankel* hearing. In it, he asserted ineffective assistance of counsel for: failing to investigate and interview two "on-scene" witnesses (a "Ms. Hattie" and a "Mr. Ricky Davis"), who defendant claimed would have contradicted the victim's testimony that he did not know people were picking up money from the street; failing to conduct pretrial investigation, including visiting the scene; failing to impeach the victim regarding his testimony that police returned to him all the money taken

from him; failing to inform him that he could be convicted of the lesser included offense of robbery; failing to prepare a defense for robbery; filing a deficient motion for a new trial; and failing to present "exculpatory evidence" at trial that was in counsel's possession.

¶ 7 At a hearing, the trial court examined defendant's motion and addressed it, with defense counsel present. The court inquired specifically about his allegations of ineffective assistance with respect to the lesser included offense of robbery. The court asked defendant what he would have liked counsel to have done, and defendant stated he wanted counsel to "object strongly because [he] felt it was brought untimely," *i.e.*, at the end of trial. The trial court explained extensively to defendant via a lengthy dialog with him that a lesser included offense charge would "never be brought prior to [the commencement of] a bench trial." The court also inquired specifically about defendant's allegation of ineffective assistance with respect to pretrial motions that were not filed and the motion for a new trial he claimed was deficient. The court asked defendant what pretrial motions he thought defense counsel should have filed. Defendant referred the court only to the original motion for a new trial. The court then asked defense counsel about this motion, and defense counsel clarified for the court that he initially filed a "boilerplate" motion for a new trial but then amended it, so what defendant was arguing in this regard was no longer applicable.

¶ 8 At the close of this hearing, the trial court denied defendant's *pro se* motion for a *Krankel* hearing. The court made clear for the record that it had "reviewed the trial," as well as "counsel's behavior and his actions as [defendant's] counsel." It further explained that it had reviewed defendant's motion and found that what he "set forth in this motion for a *Krankel* hearing falls short of what's required for a hearing."

¶ 9 Following this, the trial court allowed defense counsel to withdraw and appointed new counsel for defendant. Defendant's new counsel filed a motion for a new trial, asserting that the trial court had failed to assess the credibility of the State's witnesses and that the State had failed to prove beyond a reasonable doubt that a threat of force had occurred. At a hearing on this motion, defendant told the trial court that new counsel had not raised all the arguments he believed should be raised, including that original defense counsel had not called a particular detective to testify. The trial court addressed this with new counsel, who told the court that she had reviewed defendant's *Krankel* motion and the transcript of the hearings, along with having spoken with defendant and consulting the evidence presented at trial. She stated that, from all this, she had "incorporated what [she] thought appropriate in [her] motion." The trial court then conducted one further exchange with defendant, who again cited "bad faith" upon a detective who did not testify (and whose testimony was thus not included in this cause), as well as "inconsistent statements" given by the victim which counsel had already argued in her motion. After this consultation and further review of the record, the trial court denied the motion for new trial. The court sentenced defendant to 18 years in prison, pursuant to his Class X status based on prior offenses.

¶ 10 ANALYSIS

¶ 11 On appeal, defendant's sole contention is that his cause should be remanded for a "first-stage *Krankel* inquiry." He insists that the trial court did not conduct an adequate inquiry into his *pro se* claims of ineffective assistance of counsel because it did not address with him in open court each and every one of the allegations he made in his motion. He further insists that his new counsel's assertion that she would not be advancing any of his *Krankel* claims in her posttrial motion for a new trial was "not an adequate substitute" for a *Krankel* inquiry.

¶ 12 *Krankel* and its progeny, of course, direct trial courts with respect to the handling of a defendant's posttrial *pro se* claims of ineffective assistance of trial counsel. See *Krankel*, 102 Ill. 2d at 187-89; accord *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶¶ 35, 36, quoting *People v. Patrick*, 2011 IL 111666, ¶ 39, and *People v. Ayres*, 2017 IL 120071, ¶ 13 (*Krankel* hearing " 'serves the narrow purpose of allowing the trial court to decide whether to appoint independent counsel to argue a defendant's *pro se* posttrial ineffective assistance claims' " in order to " 'facilitate the trial court's full consideration of a defendant's *pro se* claim and thereby potentially limit issues on appeal' "); see also *People v. Milton*, 354 Ill. App. 3d 283, 292 (2004). First and foremost, for consideration of such a claim to take place, the defendant must raise sufficient allegations of ineffective assistance, which are to include "supporting facts and specific claims." *Milton*, 354 Ill. App. 3d at 292; see *People v. King*, 2017 IL App (1st) 142297, ¶ 15, quoting *People v. Washington*, 2015 IL App (1st) 131023, ¶ 11 (although pleading requirements for this are " 'somewhat relaxed,' " the defendant must still satisfy minimum requirements, which include more than just " 'mere awareness' " of complaints made by him to trial court). Critically, a defendant's assertions of ineffective assistance which are bald, ambiguous or unsupported by specific facts are not sufficient to trigger any sort of *Krankel* inquiry by the trial court. See *Milton*, 354 Ill. App. 3d at 292.

¶ 13 If the defendant does raise supported claims, the trial court is then to examine the underlying circumstances presented and the factual basis of those claims. *Milton*, 354 Ill. App. 3d at 292. However, the trial court is not automatically required to appoint new counsel in every case where a defendant raises a *pro se* claim of ineffective assistance. See *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). It is only when the defendant's allegations show "possible neglect" of the case on the part of counsel that the court must appoint new counsel

and conduct a separate hearing on ineffectiveness. *Moore*, 207 Ill. 2d at 78; accord *Bridgeforth*, 2017 IL App (1st) 143637, ¶ 37; see also *People v. Vargas*, 409 Ill. App. 3d 790, 801 (2011) (this has become known as a "*Krankel* inquiry"). But, if the trial court determines that the claim either lacks merit or pertains only to matters of trial strategy, then the court does not need to appoint new counsel and may deny the defendant's *pro se* motion on its own accord. See *Moore*, 207 Ill. 2d at 78; accord *Milton*, 354 Ill. App. 3d at 292. A claim lacks merit if it is conclusory, misleading or legally immaterial, or does not bring to the trial court's attention a colorable claim of ineffective assistance of counsel. See *People v. Burks*, 343 Ill. App. 3d 765, 774 (2003).

¶ 14 The key concern for us as a reviewing court is to determine whether the trial court conducted an "adequate inquiry" into the defendant's *pro se* allegations of ineffective assistance. *Moore*, 207 Ill. 2d at 78, citing *People v. Johnson*, 159 Ill. 2d 97, 125 (1994). During the trial court's evaluation, some sort of interchange between it and the defense regarding the facts and circumstances surrounding the allegedly ineffective representation "is permissible and usually necessary in assessing what further action, if any, is warranted on a defendant's claim." *Moore*, 207 Ill. 2d at 78 (simply allowing trial counsel to withdraw and appointing new counsel, alone and without further inquiry, does not satisfy *Krankel* requirements). As directed by our state supreme court, the trial court can conduct this interchange in one of three ways: the court may ask counsel about the facts and circumstances related to the defendant's allegations; the court may have a brief discussion with the defendant himself; or the court may rely on its own knowledge of counsel's performance at trial and "the insufficiency of the defendant's allegations on their face."

Moore, 207 Ill. 2d at 78-79; see *Milton*, 354 Ill. App. 3d at 292; accord *Bridgeforth*, 2017 IL App (1st) 143637, ¶ 38.

¶ 15 With respect to the applicable standard of review (which the parties here dispute), that, too, is well settled. If the trial court has made no determination on the merits of the defendant's *pro se* motion, then the standard of review is *de novo*. See *Moore*, 207 Ill. 2d at 75. If, however, the trial court did reach a determination on the merits of the defendant's claims, then we, as the reviewing court, may only reverse that determination if we find that the trial court's actions were manifestly erroneous. See *People v. McCarter*, 385 Ill. App. 3d 919, 941 (2008). "Manifest error" is error that is plain, evident and indisputable. See *People v. Morgan*, 212 Ill. 2d 148, 155 (2004). Additionally upon review, even if a reviewing court were to find that a trial court erred in some respect regarding *Krankel*, it will not reverse if it finds that the error was harmless. See *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 23, citing *Moore*, 207 Ill. 2d at 80. This is because, as our state supreme court has declared, a trial court's failure to appoint new counsel to argue a defendant's *pro se* posttrial motion asserting ineffective assistance " 'can be harmless beyond a reasonable doubt.' " *Tolefree*, 2011 IL App (1st) 100689, ¶ 23 (quoting *Moore*, 207 Ill. 2d at 80). Thus, as long as the record of the defendant's claims made in the trial court is sufficient for the appellate court to evaluate the trial court's ruling, harmless error analysis may be employed.

¶ 16 In the instant cause, because the trial court reached a determination that defendant's claims of defense counsel's ineffectiveness lacked merit, and because within that process it made enough of a record concerning defendant's claims of ineffective assistance for us to

evaluate the trial court's ruling, we proceed pursuant to a manifestly erroneous standard of review[1] and may also incorporate a harmless error analysis.

¶ 17 First and foremost, as the record clearly indicates, we hold that, contrary to defendant's contention, the trial court in this cause conducted a more than adequate inquiry into the facts and circumstances presented before it pursuant to *Krankel*.

¶ 18 Following his conviction for the lesser included offense of robbery, defendant filed a *pro se* motion claiming ineffective assistance of counsel. According to his motion, and as the parties (and we) agree on appeal, defendant cited seven instances, including failing to interview two "on-scene" witnesses who defendant claimed would have contradicted the victim's testimony; failing to conduct pretrial investigation, including visiting the scene; failing to impeach the victim regarding a portion of his testimony; failing to inform him that he could be convicted of the lesser included offense of robbery; failing to prepare a defense for robbery; filing a deficient motion for a new trial; and failing to present "exculpatory evidence" at trial that was in counsel's possession.

¶ 19 Upon being presented with this motion, the trial court, after allowing defendant to tailor it so it resembled a proper *Krankel* inquiry request, held a hearing, with defendant and defense counsel present. The court addressed defendant specifically with respect to his allegations regarding his lesser included offense conviction, and the pretrial motions and adequacy of the motion for a new trial. With respect to the former claim, the trial court engaged in a lengthy dialog with defendant and allowed him to express his concerns that the lesser included offense charge of robbery was "brought untimely," namely, he did not feel it was raised by the State in a fair manner since it was raised at the end, rather than at the beginning, of his

[1] As noted, the parties dispute the applicable standard of review, with defendant advocating for *de novo* review, and the State citing manifest error review. As we have pointed out in response, the applicable standard is clear. However, under either standard, defendant's claims here cannot stand.

bench trial. Defendant felt that defense counsel had not prepared an adequate defense and that counsel was ineffective in not strenuously objecting to the lesser included charge of robbery. After the court clarified with defendant his concerns, it explained to him at length the legal process in this respect and how lesser included charges are brought against a defendant in his situation. It further detailed the differences in defendant's expectations and the law, and summarized for defendant how his claim could not amount to ineffective assistance of his defense counsel.

¶ 20 The trial court then addressed defendant's allegation regarding pretrial motions and the motion for a new trial, which he claimed were deficient. Again, the court entered into an exchange with defendant and asked him specifically what pretrial motions he thought defense counsel should have filed. At this point, defendant directed the court's attention only to the original motion for a new trial his counsel had filed. The court then addressed defendant's concerns with defense counsel. The exchange the court had with counsel clarified, just as the record shows, that defense counsel initially filed a boilerplate motion for a new trial which included a paragraph that referred to a pretrial motion, although no pretrial motion had been filed in the cause. Defense counsel explained that he amended the motion to strike that paragraph, so defendant's concerns in that regard had been resolved.

¶ 21 At the close of the hearing, the trial court made clear for the record that it had "reviewed the trial," as well as "counsel's behavior and his actions as [defendant's] counsel." It further explained that it had reviewed defendant's motion and found that what he had "set forth in this motion for a *Krankel* hearing falls short of what's required for a hearing."

¶ 22 That this hearing comprised an adequate preliminary *Krankel* inquiry into defendant's claims of ineffective assistance of trial counsel is clear from the record. There is no plain,

evident or indisputable error on the part of the trial court. As we have discussed, there is no one "right" way for how a preliminary *Krankel* inquiry may be conducted. Rather, a trial court may use one, or more, of three methods: discussing the allegations with defendant, questioning defense counsel about the allegations, or relying on its own knowledge of counsel's performance at trial. In this cause, the record shows that the trial court employed, in fact, all three methods. Defendant claimed several instances of ineffective assistance. With respect to two of them, the trial court specifically discussed them with defendant, affording him the opportunity to make his *pro se* concerns clear. Then, with respect to one of these two claims, the trial court additionally questioned defense counsel, so as to ensure it understood his explanation. Finally, with respect to the remainder of defendant's claims of ineffectiveness, the trial court relied on its own knowledge of counsel's performance at trial in evaluating them. It stated for the record that it had not only reviewed defendant's motion, but also the trial and defense counsel's behavior and actions during it. Again, this was a bench trial; the trial court heard all the witnesses testify, had been presented with all the relevant evidence submitted, and had observed defense counsel first-hand. Clearly, the trial court used its own knowledge of the trial and its prior observations of defense counsel's performance to evaluate defendant's claims, as it had every right to do.

¶ 23 Thus, only after employing all three methods of evaluating defendant's claims, as is proper during a preliminary *Krankel* inquiry, did the trial court deny defendant's *pro se* posttrial motion. The trial court's finding that there was no merit to defendant's motion was properly responsive to and dispositive of defendant's claims of ineffectiveness here. Accordingly, we find no manifest error in this regard.

¶ 24 To the extent defendant asserts that the trial court's inquiry was inadequate because it did not question him regarding the basis of each and every one of his seven claims of ineffective assistance raised in his *pro se* motion on record during the hearing, which is essentially his main argument on appeal, we disagree. Additionally, *People v. McLaurin*, 2012 IL App (1st) 102943, upon which he relies for such a proposition, does not, contrary to his insistence, stand for this and is otherwise wholly distinguishable from the instant cause.

¶ 25 First, and as we have already discussed at length herein, the purpose of a preliminary *Krankel* inquiry is to create a record and potentially limit issues on appeal, and the trial court's goal in reaching this purpose is to ascertain the underlying factual basis of the defendant's claims of ineffective assistance and give him the chance to explain and support those claims. See *Ayres*, 2017 IL 120071, ¶¶ 13, 24. And, as we have pointed out multiple times, the method a trial court may employ to achieve this goal is a flexible one; it can choose to speak with the defendant, it can choose to question defense counsel, or it can rely on its own knowledge of what occurred at trial. See *Moore*, 207 Ill. 2d at 78. Thus, there is no requirement that the trial court must orally review every single claim contained in the defendant's *pro se* motion, line by line, and memorialize this for the record.[2] See *Ayres*, 2017 IL 120071, ¶¶ 13, 24. Rather, the trial court must simply "afford" defendant an opportunity to explain and support his claims of ineffective assistance. See *Ayres*, 2017 IL 120071, ¶¶ 13, 24. While some may consider the address of each claim individually to be a better practice than denying all claims outright after an inquiry, *Krankel* and its progeny do not mandate this—only that the proper inquiry take place. See *Patrick*, 2011 IL 111666, ¶ 41.

[2] Nor is there a requirement that the trial court must use all three (as opposed to simply one or two) of the methods prescribed. See *Ayres*, 2017 IL 120071, ¶¶ 13, 24

¶ 26 Here, as we have described, the record demonstrates that the court gave defendant more than one opportunity to articulate all of his claims. He filed an initial *pro se* posttrial motion; the court examined it and allowed him to refile it so it met *Krankel* requirements. He filed a second such motion, and the trial court held a hearing and engaged him in discussion about his claims. Defendant followed the trial court's lead in addressing two of his claims, about which the court wanted more information. However, after that, defendant chose not to orally argue his other claims, and the trial court did not specifically question him on them, as it chose instead to rely on its own knowledge of the prior proceedings after reading about his claims in his posttrial motion. The trial court, with the same judge who presided over his bench trial, found no basis to support defendant's claims after having reviewed his motion for ineffective assistance, having allowed him to supplement that motion, having given him the opportunity to speak at a hearing, having questioned defense counsel, and having told the parties it was relying on its knowledge of the trial and counsel's behavior, since it had presided. We presume the trial court knew and followed the law unless the record affirmatively demonstrates otherwise. See *People v. Lewis*, 2015 IL App (1st) 122411, ¶¶ 82-83 (this is true in within the context of *Krankel* and its requirements). Defendant here has wholly failed to rebut that presumption. See *Johnson*, 159 Ill. 2d at 126 (allegations of ineffective assistance that are conclusory, misleading, legally immaterial or do not identify a colorable claim of ineffective assistance do not require further inquiry by the trial court).

¶ 27 Moreover, *McLaurin* does not promulgate the position that a trial court is required to question a defendant regarding the basis of each and every one of his ineffectiveness claims for the record during a *Krankel* inquiry. Defendant is correct that the reviewing court in *McLaurin* issued a remand to conduct a preliminary *Krankel* inquiry. However, in that case,

unlike the instant one, it was obvious that the inquiry performed by the trial court was woefully incomplete.

¶ 28 That is, in *McLaurin*, the State and the defense were both interested in the testimony of a potential defense witness whose testimony would dispute that either defendant or the State's principal eyewitness had been at the scene of a gang shooting. See *McLaurin*, 2012 IL App (1st) 102943, ¶ 6. Defense counsel, however, was unable to locate that witness, citing no excuse other than his workload. See *McLaurin*, 2012 IL App (1st) 102943, ¶ 6. The trial court agreed to a continuance, stating that defense counsel had not used "due diligence." *McLaurin*, 2012 IL App (1st) 102943, ¶ 6. The witness, however, never testified, and the cause ended in a mistrial. See *McLaurin*, 2012 IL App (1st) 102943, ¶ 7. At a second trial, the witness again did not testify, neither party nor the trial court discussed his whereabouts or any efforts to locate him, and the defendant was found guilty. In a posttrial motion, the defendant raised a claim of ineffective assistance, citing defense counsel's failure to secure the witness' testimony. See *McLaurin*, 2012 IL App (1st) 102943, ¶ 34. The trial court, without ever discussing with defendant or defense counsel the efforts made to secure the witness for the second trial, ultimately ruled this did not amount to ineffectiveness because the witness was out of state and could not be subpoenaed. See *McLaurin*, 2012 IL App (1st) 102943, ¶ 34. On review, we remanded, finding that the trial court had not conducted a proper preliminary *Krankel* inquiry. In addition to our conclusion that the trial court ignored the Witness Attendance Act (which allows the subpoena of an out-of-state witness), we noted that the parties and the trial court had known since the first trial that this witness was crucial to the defense. See *McLaurin*, 2012 IL App (1st) 102943, ¶¶ 50-51. Yet, while the trial court had instructed defense counsel to conduct an investigation into the witness, it never,

after the second trial, inquired into that investigation; in fact, the trial court did not mention this at all. See *McLaurin*, 2012 IL App (1st) 102943, ¶ 52. Because of this, and because there was "not enough in the record" to evaluate the defendant's claim of ineffective assistance, remand was required. See *McLaurin*, 2012 IL App (1st) 102943, ¶ 53.

¶ 29 The instant cause is distinguishable. In *McLaurin*, the trial court's inquiry was incomplete. The trial court had been critical of defense counsel's efforts to locate an important witness before the first trial and discussed this with him, later asking defense counsel to investigate this witness. However, the court never addressed this again, leaving unanswered, in response to the defendant's posttrial motion, whether defense counsel made any more, or different, effort to locate the witness for the second trial. Precisely because evidence of any such effort *de hors* the record, the trial court was required during its *Krankel* inquiry to ask defense counsel, but never did. In contrast, the instant cause does not turn on any evidence outside the record. Rather, the trial court here inquired of defendant and defense counsel what it needed in order to evaluate two of defendant's ineffective assistance claims, and then relied on its personal knowledge of the trial and defense counsel's actions to evaluate the remaining claims, as it had the right to do. This court's *Krankel* inquiry was adequate and complete in light of defendant's allegations of ineffectiveness.

¶ 30 Defendant makes an additional claim, citing *People v. Reed*, 2018 IL App (1st) 160609, that the trial court's appointment of new counsel did not alleviate the court's error here. We fail to see how this would otherwise require remand based on the different facts presented in the instant cause. Defendant is correct that in *Reed*, remand was required to conduct a proper *Krankel* inquiry. This was because, similar to *McLaurin*, the trial court's inquiry was inadequate. Following trial in *Reed*, the defendant filed a *pro se* motion claiming ineffective

assistance of counsel on seven grounds, but instead of addressing these claims in any way, the trial court simply allowed trial counsel to withdraw and allowed new counsel to appear. See *Reed*, 2018 IL App (1st) 160609, ¶¶ 30-31. This new counsel filed an amended motion for a new trial, and with respect to the defendant's ineffective assistance claims, cited only a generic catch-all allegation that he was denied effective counsel; new counsel never evaluated nor argued any of the defendant's claims within the context of *Krankel*. See *Reed*, 2018 IL App (1st) 160609, ¶ 31. Additionally, during the hearing on the amended motion for a new trial, neither new defense counsel nor the trial court made any mention of any of the defendant's ineffectiveness claims. See *Reed*, 2018 IL App (1st) 160609, ¶ 31. The *Reed* court felt remand was necessary because the generic statement in the motion about ineffectiveness was insufficient to address the defendant's claims and because the trial court did not conduct any sort of inquiry pursuant to any method outlined in *Krankel*. See *Reed*, 2018 IL App (1st) 160609, ¶¶ 51-52.

¶ 31 While it is true that simply allowing trial counsel to withdraw and appointing new posttrial defense counsel, without more, does not satisfy *Krankel* procedure (See *Reed*, 2018 IL App (1st) 160609, ¶ 51), that is not at all what occurred in the instant cause. Unlike *Reed*,[3] our record is clear that, before allowing defense counsel to withdraw, the trial court herein held a posttrial hearing during which it heard argument on defendant's *pro se* posttrial motion alleging ineffective counsel and during which it employed not one, but all, of the methods of inquiry promulgated by *Krankel* to completely address his motion. It determined that the claims lacked merit, and it denied the motion. It was only after denying the motion, *i.e.*, after the *Krankel* hearing, that the trial court allowed defense counsel to withdraw and

[3] We would also note that *Reed*, unlike the instant cause, proceeded via a *de novo* standard of review, since there was no indication in that record that the trial court there ever ruled on the merits of the defendant's ineffective counsel claim. See *Reed*, 2018 IL App (1st) 160609, ¶ 50.

appointed new counsel, in an effort to assist defendant in filing a motion for a new trial. This new counsel did so and, upon later inquiry, confirmed for the trial court that, after consulting with defendant and reviewing his trial, his *Krankel* motion and the transcript of that hearing, she believed any further ineffectiveness claims were meritless. Based on the record before us, the trial court conducted an adequate and complete *Krankel* inquiry and was not required to do anything more than it did here.

¶ 32 Finally, even if it could be assumed that the trial court committed some error here with respect to *Krankel*, which we have found that it did not, any such error would be harmless in light of the circumstances presented. We have already discussed that harmless error may be employed in the instant cause. See *Tolefree*, 2011 IL App (1st) 100689, ¶ 23, citing *Moore*, 207 Ill. 2d at 80. Briefly, to prove ineffective assistance of counsel, the defendant must demonstrate both that his trial counsel's performance was deficient and that this deficient performance substantially prejudiced him. See *Strickland v. Washington*, 466 U.S. 668, 686-87 (1984); *People v. Enis*, 194 Ill. 2d 361, 376 (2000) (trial counsel's deficient performance must have rendered the result of the trial unreliable or fundamentally unfair–more than a simple showing that counsel's alleged error had some conceivable effect on the proceedings). Matters of trial strategy or claims that lack merit, as well as simple errors of judgment or mistakes in trial strategy, do not render defense counsel's representation ineffective and cannot overcome the strong presumption that counsel preformed competently. See *People v. Steidl*, 142 Ill. 2d 204, 240 (1991); accord *People v. West*, 187 Ill. 2d 418, 432 (1999), and *People v. Reid*, 179 Ill. 2d 297, 310 (1997).

¶ 33 Examining the remaining claims defendant asserts the trial court ignored and did not specifically address during its *Krankel* inquiry, we find that none of them present a colorable

claim of ineffectiveness. For example, defendant asserts that trial counsel was ineffective for failing to call two witnesses who were at the scene of the robbery, a Ms. Hattie and a Mr. Ricky Davis. He states that these witnesses would testify they and others were pocketing money falling to the ground from the victim's car, thereby contradicting the victim's testimony that he did not know what people were picking up off the ground. However, the decision whether to call a witness at trial is a matter of trial strategy and generally immune from claims of ineffective assistance of counsel. See *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 79, citing *People v. Smith*, 195 Ill. 2d 179, 188 (2000). Defendant here is not asserting that defense counsel did not know about Hattie or Davis as witnesses, but only that he did not call them to testify. This was a matter of trial strategy. Moreover, we fail to see how their testimony would have aided defendant in any way. That they were picking up money from the street that fell from the victim's car, or whether the victim knew this was happening, has nothing to do with the robbery; it does not rebut that defendant was present at the scene and that he unlawfully took money (in small denominations of bills and coins) from the victim, some of which may have fallen to the ground. In short, their testimony, even if it were as defendant says, was legally irrelevant.

¶ 34 Defendant's next claim of ineffectiveness in his *pro se* posttrial motion was that trial counsel failed to present "exculpatory evidence" he allegedly had in his possession. Just as the decision to call a witness at trial, the decision concerning what evidence to present on a defendant's behalf ultimately rests with defense counsel and is immune from claims of ineffective assistance. See *Wilborn*, 2011 IL App (1st) 092802, ¶ 79, citing *Smith*, 195 Ill. 2d at 188. Not only is that true in the instant cause, but we must also note that defendant never mentioned within his motion, at the hearing on that motion, or even now in his appellate

brief, what this "exculpatory evidence" is or was. Without any specificity, we cannot expect the trial court to treat this as a viable claim of ineffective assistance of counsel. See *Milton*, 354 Ill. App. 3d at 292 (a defendant's assertions of ineffective assistance which are bald, ambiguous or unsupported by specific facts are not sufficient to trigger any sort of *Krankel* inquiry by the trial court).

¶ 35 Defendant's remaining allegations of ineffective counsel are vague and generic. These include counsel's failure to conduct pretrial investigation or file pretrial motions, failure to "impeach" the victim with prior inconsistent statements, and failure to inform him that he could be found guilty of the lesser included offense of robbery and preparing a defense to that crime. None of these present a colorable claim of ineffective counsel. The record shows that the trial court specifically asked defendant at the hearing on his *pro se* motion about counsel's pretrial activities, and defendant declined to speak of them and instead referred the court to the motion for a new trial. Likewise, defendant's claim of impeachment has to do with the victim's alleged statement that he received all his money back from police, even though defendant was caught with less than the $600 the victim said he lost. Again, this has nothing to do with whether the crime of robbery was perpetrated by defendant upon the victim. And, the trial court explained, explicitly, to defendant during the hearing on his motion that in a bench trial, lesser included offenses are not presented or charged "beforehand;" regardless of a defense counsel's actions, a trial court in a bench trial may find a defendant guilty of the lesser included offense of robbery even though he is only formally charged with armed robbery, based on the evidence presented. See, *e.g.*, *People v. Johnson*, 304 Ill. App. 3d 599, 602 (1999). Again, without more, the trial court here was not required to investigate further into these generic allegations, and error in not doing so, if any could be

found, would be harmless. See *Milton*, 354 Ill. App. 3d at 292; *Tolefree*, 2011 IL App (1st) 100689, ¶ 23, citing *Moore*, 207 Ill. 2d at 80.

¶ 36 CONCLUSION

¶ 37 Ultimately, based upon our thorough review of the record, we hold that the trial court in the instant cause conducted a proper and adequate preliminary *Krankel* inquiry into defendant's posttrial *pro se* claims of ineffective assistance of counsel. Accordingly, we affirm the judgment of the trial court.

¶ 38 Affirmed.