

No. 1-12-2625

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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. 11 CR 1120
)	
TERNELL WILLIAMS,)	Honorable
)	James M. Obbish,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Judgment affirmed over defendant's contentions that the trial court violated his right to counsel of choice and failed to conduct a *Krankel* inquiry.
- ¶ 2 Following a bench trial, defendant Ternell Williams was convicted of possession of a stolen motor vehicle and sentenced to eight years' imprisonment. On appeal, he contends that the

trial court violated his right to counsel of choice, and simultaneously failed to inquire into the factual basis for his allegation of ineffective assistance of counsel.

¶ 3 Defendant was convicted on evidence showing that he was driving a vehicle that had been rented by his girlfriend from Enterprise Rent-a-Car. Defendant was not authorized to drive the car under the rental contract, and when Chicago police officers signaled him to stop for a seatbelt violation, he fled on foot but was soon apprehended. At that point, the officers learned that there was a warrant out for defendant's arrest, and that his driver's license had been suspended. After his arrest, he told police officers that he knew the car was stolen by another, but that he did not steal it.

¶ 4 Defendant's girlfriend testified to the rental arrangement that she had secured in Iowa and drove the car to Chicago for defendant's use. When she learned that defendant was incarcerated and that the car was stolen, she informed Enterprise in Iowa that the car had been stolen, but did not say that this occurred in Illinois. She made the same report to Burlington, Iowa, police.

¶ 5 Following the court's determination that defendant was proved guilty of possession of a stolen motor vehicle, the matter was continued for post-trial motions and sentencing to May 18, 2012. On that date, the State informed the court that defendant's privately retained counsel was coming from a hearing in Bridgeview and was having difficulty getting to court because the roads were being shut down due to the NATO conference. After being advised not to discuss the case, defendant engaged in the following colloquy with the court:

THE DEFENDANT: I don't want to talk about the case. I don't want to use counsel] any more. I wonder if you could assign me a public defender.

THE COURT: I can't just do that snapping my fingers. They would have to withdraw their appearance as your attorneys and then I'll, if you're eligible, then I can see about it. It's going to delay things. But I really don't know if I want to let them withdraw. You'll have to explain to me why I would want to do that. Right now you have attorneys. They were here for the trial. They should continue to represent you on any post trial motions and sentencing and then after that –

THE DEFENDANT: But that's the problem, they're not representing me.

THE COURT: I would beg to differ based on my observations of the trial. I do think they were representing you."

Defendant made no further response, nor claim to be indigent, and the court continued the case to June 6, 2012.

¶ 6 On that date, defendant appeared with his private counsel who informed the court that he was there on behalf of defendant and had filed a motion for a new trial. The State did not object to the late filing, and the matter was continued to July 17, 2012, on counsel's request for time to argue the motion and for sentencing. On that date, counsel again indicated that he was appearing on behalf of defendant, who was present, and raised no objection to his representation. After argument, the trial court denied his motion for a new trial.

¶ 7 At the sentencing stage of the proceeding, defense counsel informed the court that defendant had a larynx problem, and wanted him to speak in allocution on his behalf. Defendant indicated the same to the court, and after the parties presented evidence in aggravation and mitigation, counsel spoke on defendant's behalf. The court subsequently sentenced defendant, who was Class X mandatory, to eight years' imprisonment.

¶ 8 On appeal, defendant contends that he was denied his fundamental right to counsel of choice where the trial court refused to allow him to discharge his privately retained attorneys,

post-trial, in favor of court-appointed counsel. He further claims that the court erred in failing to inquire into the factual basis for his assertion of ineffective assistance before rejecting it outright as unfounded.

¶ 9 The sixth amendment guarantees an accused the right to assistance of counsel in all criminal prosecutions. *People v. Holmes*, 141 Ill. 2d 204, 217 (1990). This constitutional guarantee encompasses the right to effective representation, and the right to select and be represented by one's preferred attorney. *Holmes*, 141 Ill. 2d at 217. That said, we note that defendant has the right to be represented by *retained* counsel of his own choosing, but he does not have the right to choose *appointed* counsel. (Emphasis in original.) *People v. West*, 137 Ill. 2d 558, 588 (1990). In addition, the right to choose one's own counsel is not absolute, and is circumscribed in certain respects (*Holmes*, 141 Ill. 2d at 217), such as where the exercise of that claimed right would delay or impede the effective administration of justice (*West*, 137 Ill. 2d at 588). We review the trial court's decision regarding the substitution of counsel for an abuse of discretion. *People v. Wanke*, 303 Ill. App. 3d 772, 782 (1999), citing *People v. Howey*, 128 Ill. 2d 1, 49 (1997).

¶ 10 Defendant contends that a *de novo* standard of review applies, relying on *People v. Abernathy*, 399 Ill. App. 3d 420, 426-27 (2010), where the Second District invoked that standard in reviewing the issue of right to counsel under the particular circumstances in that case. We find, for the reasons to follow, that *Abernathy* is factually distinguishable from the case at bar and uncontrolling.

¶ 11 In *Abernathy*, defendant was represented by privately retained counsel, who informed the court, prior to the completion of post-trial proceedings and while a second case was pending, that defendant wanted to discharge him and hire another attorney. *Abernathy*, 399 Ill. App. 3d at 422, 425. The court stated that counsel would have to stay on the case until a new attorney was hired, and defendant stated that he did not know if his family had funds available, however. *Abernathy*, 399 Ill. App. 3d at 422. The case was twice continued and counsel did not appear. *Abernathy*, 399 Ill. App. 3d at 423. On the second court date, the State informed the court that defendant wanted a public defender appointed. *Abernathy*, 399 Ill. App. 3d at 423. Defendant told the court that he had terminated his private counsel, but the court informed him that it would continue to keep private counsel on the case, which was then continued. *Abernathy*, 399 Ill. App. 3d at 423. When the case was next called, the State informed the court that defendant completed a certificate of assets, and private counsel told the court that defendant wanted to terminate his services immediately, and have a public defender appointed; defendant also explained to the court that he could not afford to hire another attorney, but the court refused to appoint counsel for defendant. *Abernathy*, 399 Ill. App. 3d at 423-25. Defense counsel also informed the court that defendant had disagreements with him regarding his trial strategies, but the court still refused to appoint counsel for him. *Abernathy*, 399 Ill. App. 3d at 424-25.

¶ 12 After sentencing and before the second case, the court allowed counsel to withdraw and appointed counsel for purposes of appeal and the second case. *Abernathy*, 399 Ill. App. 3d at 425. On appeal, the reviewing court concluded that the trial court should have allowed defendant to show whether he was indigent and appointed counsel if that were the case, and

found that its failure to do so violated defendant's fundamental right to counsel. *Abernathy*, 399 Ill. App. 3d at 431. The reviewing court then reversed the denial of defendant's post-trial motion and remanded the case for new post-trial and sentencing proceedings, a determination on whether defendant was indigent, and if so, to appoint counsel. *Abernathy*, 399 Ill. App. 3d at 428, 431-32.

¶ 13 In this case, defendant was in court for post-trial proceedings where the State explained that defendant's counsel was delayed or unable to get to the courthouse due to the road closure occasioned by the NATO conference. At that point, defendant told the court that he no longer wanted to be represented by private counsel, and when the court asked why, defendant merely stated that counsel was not representing him and that he wanted a public defender. The court explained the procedural complexities in his representation and the necessity for him to explain why the court should allow his attorneys to withdraw. Defendant made no further response and the cause was continued.

¶ 14 When the case resumed on a subsequent court date, defendant appeared with the same counsel, raised no objection to his representation or announcement of same. He also did not claim that he was seeking new counsel or was indigent, and proceeded to sentencing with him and asked that counsel speak for him in allocution.

¶ 15 The circumstances of this case stand in stark contrast to those in *Abernathy*, and do not require the same result. Rather, as pointed out by the State, the situation here is more akin to that in *People v. Smalley*, 178 Ill. App. 3d 314, 315-20 (1988), where defendant's subsequent conduct showed his acquiescence in counsel's continued representation of him.

¶ 16 In *Smalley*, defendant was represented by privately retained counsel who became very ill, and had to lie down during a court proceeding. The trial court expressed its concerns over the attorney's continued representation and offered defendant the choice of either taking a continuance to secure another attorney or proceed with the case; defendant elected to continue with the same attorney. *Smalley*, 178 Ill. App. 3d at 316. The attorney's son subsequently appeared and informed the court that his father was unable to continue representing defendant, that he was appearing in his stead on defendant's behalf, and that he would review the transcript and present closing argument with defendant's concurrence. *Smalley*, 178 Ill. App. 3d at 316-17. On appeal, defendant maintained that his constitutional right to representation by counsel of his own choice was violated when the trial court permitted an attorney not of his choosing to substitute for his incapacitated attorney. *Smalley*, 178 Ill. App. 3d at 314-15, 317-18. This court found that defendant clearly acquiesced in counsel's representation when he failed to object to the new representation, and in fact, noted, at sentencing, that he agreed with "everything my lawyer said." *Smalley*, 178 Ill. App. 3d at 320-21.

¶ 17 Here, similar to *Smalley*, defendant acquiesced in counsel's representation where he did not terminate counsel's services following the initial continuance, and then appeared with him in court without objecting during the proceedings that followed. The records shows that he remained silent when counsel indicated to the court that he was appearing on defendant's behalf, and did not object when counsel filed and argued a post-trial motion. Then, at sentencing, defendant requested his counsel to speak in allocution for him because of his throat issue. Under the circumstances revealed in this record, we find no abuse of discretion by the trial court

regarding defendant's cursory request for the appointment of counsel (*Wanke*, 303 Ill. App. 3d at 782), and that defendant's acquiescence to counsel's representation of him constituted an exercise of his right to be represented by counsel of his choice (*Smalley*, 178 Ill. App. 3d at 320-21).

¶ 18 Defendant, however, further maintains that the court erred in failing to conduct a *Krankel* inquiry into the factual allegations underlying his complaint about his attorneys' representation. Defendant maintains that his contention that he was not being represented alleged a claim of ineffective assistance of counsel.

¶ 19 Under the principles articulated in *People v. Krankel*, 102 Ill. 2d 181 (1984), the trial court is required to inquire into a defendant's post-trial, *pro se* claim of ineffective assistance of counsel. Appointment of new counsel is not automatically required when defendant presents such a *pro se* claim; rather, the trial court must first conduct an inquiry into the factual basis for it. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into defendant's *pro se* allegations (*Moore*, 207 Ill. 2d at 78); a question of law that we review *de novo* (*People v. Tolefree*, 2011 IL App (1st) 100689, ¶25, citing *Moore*, 207 Ill. 2d at 75).

¶ 20 The State maintains that where, as here, defendant has private counsel, the trial court is not required to conduct an inquiry, citing *People v. Pecoraro*, 144 Ill. 2d 1 (1991). Defendant responds that *Pecoraro* did not hold that the trial court is never required to make a *Krankel* inquiry when defendant is represented by private counsel.

¶ 21 The question of whether *Krankel* applies to a defendant who is represented by private counsel is currently unsettled. *Pecoraro*, 144 Ill. 2d at 14-15; *People v. Johnson*, 227 Ill. App.

3d 800, 810 (1992). However, we need not resolve this issue because we find no error by the court in this case.

¶ 22 Regardless of whether defendant was represented by privately retained or appointed counsel, we find that a preliminary inquiry was not required in this case as defendant failed to sufficiently raise an ineffective assistance of counsel claim. *People v. Taylor*, 237 Ill. 2d 68, 77 (2010). Defendant did not present a specific claim of ineffective assistance of trial counsel to the court (*Taylor*, 237 Ill. 2d at 76), but rather, simply complained, in counsel's absence, that "they're not representing me." After initially explaining the complexities involved in his request, the court expressed its disagreement with defendant's assertion and continued the case. In the proceedings which followed, defendant made no further representations regarding counsel's shortcomings, took no action to discharge his attorneys in the interim, and acquiesced in their representation of him during post-trial motions and sentencing. Under these circumstances, we find that his single bald assertion that counsel was not representing him was insufficient to be considered as an acceptable invocation of *Krankel* (*People v. Ward*, 371 Ill. App. 3d 382, 432 (2007)), and, accordingly, that the trial court did not err in failing to inquire further.

¶ 23 In reaching this conclusion, we have examined *People v. Remsik-Miller*, 2012 IL App (2d) 100921, ¶16, cited by defendant, and find it unpersuasive. In that case, the Second District disagreed with this court's decision in *Ward*, finding that even a bare claim of ineffectiveness warrants some degree of inquiry. See also *People v. Pence*, 387 Ill. App. 3d 989, 995 (2009) (Second District). We find no reason to depart from our reasoning in *Ward* that there are minimum requirements a defendant must meet to trigger a *Krankel* inquiry by the trial court

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(Accord *People v. Montgomery*, 373 Ill. App. 3d 1104, 1120-21 (2007) (Fourth District)), and that defendant did not make that minimal showing in this case.

¶ 24 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.