

No. 1-13-0871

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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. 12 CR 8308
)	
ANTWOINE BELL,)	Honorable
)	Carol Howard,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

O R D E R

¶ 1 **Held:** We found the trial court was not obligated to conduct a preliminary *Krankel* inquiry where defendant did not raise a claim of ineffectiveness to trigger the inquiry and affirmed the judgment of the trial court.

¶ 2 Following a bench trial, defendant Antwoine Bell was convicted of delivery of a controlled substance and sentenced as a Class X offender to six years' imprisonment. On appeal, defendant requests that his cause be remanded to the trial court with instructions to conduct a preliminary *Krankel* inquiry as to ineffective assistance of trial counsel. We find the trial court was not required to conduct a *Krankel* inquiry and affirm.

¶ 3 Defendant was arrested on April 10, 2012, as a result of an undercover drug investigation. Defendant's arrest reports stated that prerecorded funds in the amount of \$20 (two \$10 bills), were recovered from defendant's pants pocket. Additionally, the police inventory reports listed the following recovered property: two tinfoil packets contained in a clear plastic sandwich bag each containing a white powder, two cell phones, and various personal items.

¶ 4 At trial, Chicago police officer Gerold Lee testified that on April 10, 2012, he was a surveillance officer for an undercover narcotics investigation, and that Chicago police officer Myles was a buy officer. At approximately 11:15 a.m., Officer Lee was in an unmarked vehicle parked about 300 feet from 5430 West Adams Street in Chicago where a group of men were loitering. From this vantage point, Officer Lee observed Officer Myles, who was also in an unmarked vehicle, approach the men. Defendant walked up to Officer Myles' vehicle and placed his hands inside the driver side window of the vehicle. After a few seconds, defendant walked away, and Officer Myles radioed that he had made a positive heroin purchase. Officer Myles described defendant as a short male, wearing a black knit cap, black jacket, blue jeans, and black shoes. Officer Myles reported to enforcement officers the direction which defendant was walking and, when defendant turned northbound on Lotus Avenue, Officer Lee lost sight of him for 30 seconds. Shortly thereafter, however, when defendant turned the corner walking north on Lotus Avenue, Officer Lee observed defendant being detained by enforcement officers. Officer Lee did not know whether there is a "pod" (police) camera near the area where the drug transaction took place. Officer Lee stated that defendant's height and weight made him "stick out."

¶ 5 Officer Myles testified that as the undercover narcotics buy officer, he had checked out

\$20 in prerecorded funds from the police department for this investigation. He was in a covert vehicle and in constant communication with his surveillance team when Officer Myles drove to 5431 West Adams Street in Chicago in an attempt to make an undercover narcotics purchase. Once there, Officer Myles observed defendant standing to one side of a group of men. The officer asked the men if they had "D," the street term for heroin. Defendant responded: "yeah," and approached the driver side of Officer Myles' vehicle. The officer asked defendant for two packets. Defendant retrieved a clear plastic bag containing tin foil packets from his right coat pocket, removed two of the packets, and handed them to the officer in exchange for the \$20 in prerecorded funds. The officer then drove away and contacted his surveillance team regarding the positive narcotics purchase, and provided them with a description of defendant and his last known location. Seven minutes later, the officer learned defendant was detained at 116 South Lotus Avenue. When he drove to that location, Officer Myles identified defendant as the person who sold him the narcotics. Officer Myles did not know whether there was a pod camera in the area he had initially observed defendant.

¶ 6 Chicago police officer Davila testified that, on the morning of April 10, 2012, he was part of the enforcement unit for this investigation. He and his partner, Chicago police sergeant Ortega, were in an unmarked vehicle and in constant communication with the rest of the team. At 11:15 a.m., Officer Davila received a communication from Officer Myles that he had made a positive narcotics purchase, and described the seller as a short and stocky black male, wearing a black knit cap, black "hoodie," blue jeans and black shoes. Officer Davila also received a description and location of the seller from the surveillance officer, who directed them to 116 South Lotus Avenue. There, they observed defendant, who matched the description of the seller,

and detained him. After Officer Myles positively identified him as the seller, defendant was transported to the police station where he was searched and found to have the prerecorded funds used in the narcotics purchase on his person. Officer Davila could not recall whether defendant had additional money on him, or if the prerecorded funds had been comingled with other money.

¶ 7 The parties stipulated that one of the two packets recovered from defendant tested positive for the presence of .2 grams of heroin. The total weight of both items was .4 grams.

¶ 8 Defendant testified that at 11 a.m. on April 10, 2012, he was in the area of 5431 West Adams in Chicago selling DVDs. He was talking to a group of men near that address and began to shoot dice with them for money which was in a pile on the ground. During the course of the dice game, the police arrived. When the officers got out of their vehicle, everyone but defendant ran away. Defendant took some of the money that was on the ground, placed it in his pocket, and stood up. The police then approached and searched him. Defendant denied giving Officer Myles, or anyone else, tinfoil packets. When the officers asked him why the other men had run away, defendant responded he did not know why, or perhaps because they were gambling. The officers asked for the names of the others, but defendant could tell them only their nicknames. The officers then asked defendant what he could do to "clear this situation up." Defendant asked what they meant, and the officers asked if he could supply them with information about guns or drug houses. Defendant told them that he could not.

¶ 9 Defendant stated that he had almost \$800 on his person from gambling and selling DVDs. According to defendant, the officers searched the area, and found three packets of cocaine under a porch located at 5431 West Adams Street. Defendant said there is a pod camera located on the corner of Adams Street and Lotus Avenue, and denied ever being at 116 South

Lotus Avenue. The officers took him into custody, and told him that he was going to be charged with possession of cocaine.

¶ 10 In rebuttal, Officer Davila testified that he observed defendant on Lotus Avenue five minutes after Officer Myles communicated there had been a positive narcotics purchase. When he approached defendant, he did not see anyone running away. Officer Davila denied searching under a porch or recovering cocaine in a search of the area. The State then presented certified copies of defendant's two prior convictions for possession of a controlled substance.

¶ 11 After the State rested in rebuttal, trial counsel asked for "one moment," and then made the following statements:

"[Trial Counsel]: Judge. Mr. Bell is indicating that there is an inventory slip that he has in his possession that's related to this case that was produced when he was arrested. I do not have that slip with me. I haven't seen it, but he is indicating he is in possession of it, and we potentially would maybe want to put that into evidence in our case."

Trial counsel surmised defendant was referring to an inventory receipt from the jail, as the arresting officers' reports had not indicated other money had been inventoried by them. The State objected and the trial court agreed that the jail inventory receipt did not relate to the State's rebuttal evidence. Trial counsel then argued the jail inventory receipt would have some bearing as to whether defendant had other funds on his person to corroborate his version of the events. The State replied the jail inventory receipt amounted to hearsay. The trial court believed the jail inventory receipt would be admissible if it were "here today," and could corroborate defendant's testimony, but denied defendant a continuance to produce the jail inventory receipt because the

trial date had been set for some time, and there had been ample opportunity to "get that inventory slip." The trial court concluded it would not delay the trial to have the witnesses recalled to rebut "any inferences that could be drawn from that inventory slip."

¶ 12 At the close of evidence, the trial court found Officer Myles to be a credible witness, finding defendant guilty of delivery of a controlled substance. Defendant was sentenced to six years' imprisonment and three years of mandatory supervised release.

¶ 13 Trial counsel filed a motion for a new trial. At the hearing on the motion for a new trial, trial counsel called the trial court's attention to the fact that the officers testified they did not recall if defendant had other money on his person along with the prerecorded funds at the time of his arrest, and that defendant had testified that the prerecorded money was part of cash he had picked up while playing dice. Trial counsel went on to say:

"[Trial Counsel]: Mr. Bell, Judge, has a receipt, which was not submitted into evidence, Judge, indicating that he had approximately \$306 on his person when he was arrested. I believe he testified that he had money. As I indicated, that was not submitted into evidence, but he wanted it brought to the Court's attention on his own behalf, Judge."

The trial court denied defendant's motion for new trial.

¶ 14 At the sentencing proceeding, defendant spoke in allocution, and stated:

"[Defendant]: I respect your verdict of guilty due to the nature – well, due to the regard of the evidence that was presented before you. I truly don't feel it was fair, because I think I've shown – at the time when we were coming to trial, I didn't think that my paper to my receipt for my money would be relevant to this case. The police stated that he don't recall me having no more than – no more currency on me than the 1505

[recorded] funds. The paper shows I had an excess of over 300. It shows the denomination of the bills. How could he not recall me having no more money on my person? I was shooting dice. This particular time I was not selling drugs. I have sold drugs in the past. I may have done a lot of the things what they say I've done, but I am not the person who they say I am. I have made mistakes in my life, and those mistakes placed me where I am standing today. I would like to ask for mercy from the Court since it is now time to get sentenced. Thank you."

The court sentenced defendant to six years' imprisonment and three years mandatory supervised release.

¶ 15 On appeal, defendant argues this court should remand the cause to the circuit court to conduct a preliminary *Krankel* inquiry as to his ineffective assistance of counsel claims. Defendant maintains the trial court was obligated to conduct a *Krankel* inquiry where his trial counsel informed the trial court of an inventory receipt which would have corroborated defendant's testimony as to why he had the prerecorded funds and defendant told the court he felt his trial was unfair because this evidence was not introduced.

¶ 16 Under the principles articulated in *People v. Krankel*, 102 Ill. 2d 181 (1984), the trial court is required to inquire into the factual basis of a defendant's *pro se* posttrial ineffective assistance of counsel claims. *People v. Moore*, 207 Ill. 2d 68, 77 (2003). No inquiry is required, however, when a defendant fails to identify relevant facts and only raises conclusory general allegations of ineffective assistance. *People v. Walker*, 2011 IL App (1st) 072889, ¶ 33.

¶ 17 Although the pleading requirements for raising a *pro se* claim of ineffectiveness of counsel are somewhat relaxed, a defendant must still meet the minimum requirements necessary

to trigger a Krankel inquiry. *People v. Bobo*, 375 Ill. App. 3d 966, 985 (2007). "A bald allegation of ineffectiveness of counsel is insufficient; rather, the defendant should raise specific claims with supporting facts before the trial court is required to consider the allegations." *People v. Walker*, 2011 IL App (1st) 072889, ¶ 34 (citing *People v. Radford*, 359 Ill. App. 3d 411, 418 (2005)); *People v. Cunningham*, 376 Ill. App. 3d 298, 304 (2007). Our supreme court has held that if the trial court makes no determination on the merits of a defendant's ineffectiveness claim, the standard of review is *de novo*. *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 25 (citing *Moore*, 207 Ill. 2d at 75).

¶ 18 Defendant failed to present any posttrial motion asserting a claim of ineffective assistance of trial counsel. *People v. Taylor*, 237 Ill. 2d 68, 77 (2010). Defendant maintains his conflict with trial counsel was brought to the trial court's attention by trial counsel's acknowledgment of his failure to investigate or secure the jail inventory receipt, the trial court's finding that counsel failed to adequately prepare for trial when it denied the defendant's motion for a continuance to secure it, and defendant's own statement at sentencing that he did not receive a fair trial because the jail inventory receipt was not presented.

¶ 19 First, we do not believe that trial counsel acknowledged his ineffectiveness or a failure to investigate the purported existence of the jail inventory receipt. At the close of the State's rebuttal case, trial counsel first stated that "we don't have anything in surrebuttal," but then asked the trial court for a moment. When the proceeding resumed, trial counsel told the trial court that defendant had a receipt showing he possessed cash at the time he was placed into custody, but trial counsel had neither seen nor had the receipt in court. Trial counsel stated the police reports showed that the only cash recovered was two \$10 bills in prerecorded funds. Trial counsel did

not state he was ineffective or derelict in failing to discover the receipt which defendant said was in his possession, but not in court.

¶ 20 Additionally, we do not believe the trial court, in denying a continuance to obtain the receipt, made an explicit finding that trial counsel was ineffective. The trial court, instead, weighed the various relevant factors in deciding whether to grant a continuance—the length of time between setting the trial date and trial; the fact the witnesses might need to be brought back to court; and the fact that the trial was in the very late stage in that the State had completed its rebuttal case. The trial court considered these factors and denied the continuance without finding or indicating trial counsel had been ineffective.

¶ 21 Defendant's statement in allocution expressed his belief that it was unfair that the receipt was not admitted into evidence. Defendant stated that he himself, at the time of trial, did not think the receipt would be relevant. Defendant did not, in any way, state he had any conflict with trial counsel as to the receipt or make any claim of ineffectiveness. He did state his belief that it was "unfair" that the receipt was not entered into evidence.

¶ 22 Under similar circumstances, we have found that a *Krankel* inquiry was not warranted. In *People v. Ward*, 371 Ill. App. 3d 382 (2007), the defendant made oral statements that there was evidence which had not been submitted at trial, including signed affidavits, and he blamed his trial counsel for not presenting the evidence. *Id.* at 394, 432. This court found such statements were inadequate to trigger a *Krankel* inquiry. *Id.* at 432. Further, we found it relevant that the circuit court did not prevent the defendant from a further "articulation of his grievances," or "dissuaded" the defendant from taking steps to bring an ineffectiveness claim. *Id.* We recognize that in *People v. Remsik–Miller*, 2012 IL App (2d) 100921, the Second District

disagreed with this court's decision in *Ward*, finding that even a bare claim of ineffectiveness of trial counsel warrants some degree of inquiry. This court, however, continues to follow our decision in *Ward*—that a defendant must meet a minimum requirement to trigger a *Krankel* inquiry by the trial court. See, e.g., *Walker*, 2011 IL App 072889, ¶ 34; see also *People v. Montgomery*, 373 Ill. App. 3d 1104, 1121 (2007) (Fourth District).

¶ 23 Here, the record clearly shows defendant failed to present any overt claim of ineffective assistance of counsel posttrial. *People v. Taylor*, 237 Ill. 2d 68, 76-77 (2010) (where court noted that "nowhere in defendant's statement at sentencing did he specifically complain about his attorney's performance, or expressly state he was claiming ineffectiveness of counsel."). Defendant, at no time, cast blame on trial counsel as to the jail inventory receipt. During the posttrial motion hearing, the trial court allowed trial counsel to fully present the issue as to the receipt "on behalf of defendant." Similarly, defendant was not prohibited, in any way, from speaking on the issue during allocution and, as discussed, after being given the freedom to speak, never complained about his representation.

¶ 24 As defendant failed to articulate a specific complaint against the competence of his trial counsel, no *Krankel* inquiry was required (*Walker*, 2011 IL App (1st) 072889, ¶ 37), and we find no cause for remand. *Ward*, 371 Ill. App. 3d at 433.

¶ 25 Defendant contends, nonetheless, that where there is a clear basis for an allegation of ineffective assistance of counsel in the record as a whole, he need not explicitly make such an allegation to warrant a *Krankel* inquiry. We find defendant's citation of *People v. Williams*, 224 Ill. App. 3d 517 (1992), *People v. Houston*, 226 Ill. 2d 135 (2007), and *People v. Willis*, 2013 IL App (1st) 110233, ¶ 62, are distinguishable.

¶ 26 In *Williams*, trial counsel filed an unsuccessful motion for a new trial, informing the trial court that there were two alibi witnesses who were not called in spite of his knowledge of them. *Williams*, 224 Ill. App. 3d at 521-23. On appeal, the defendant maintained the trial court erred in failing to conduct a *sua sponte Krankel* inquiry. *Id.* at 523.

¶ 27 On appeal, in considering the claim that a *Krankel* hearing was necessary, the *Williams* court first noted that the defendant had not made a written claim of ineffectiveness of counsel, but that the record showed that the trial court was aware of counsel's possible neglect in failing to call the witnesses. *Id.* at 524. The *Williams* court concluded that where there is a "clear basis" to raise an allegation of ineffectiveness of counsel, as there was in that case, a defendant's failure to raise the allegation did not result in a waiver of the ineffectiveness claim. *Id.* The matter was remanded for a preliminary inquiry into counsel's performance. *Id.*

¶ 28 The decision in *Williams* was explained in *People v. Gillespie*, 276 Ill. App. 3d 495 (1995), in this way: "*Williams* holds that when a defendant does not raise the issue of ineffectiveness of counsel in a post-trial motion and the record reveals strong evidence that counsel had acted incompetently, fundamental fairness demands that defendant be given the opportunity to present the issue to the trial court." *Id.* at 502. The *Gillespie* court also made clear that "[o]rdinarily, a trial court should not be placed in a position of having to 'second-guess' defense counsel strategy." *Id.* The *Gillespie* court found no obligation on the part of the trial court to *sua sponte* conduct a *Krankel* hearing where defense counsel "followed a sound trial strategy" and relied on the prosecutor's inability to prove its case. *Id.* at 503.

¶ 29 Here, there was no clear basis for an allegation of ineffectiveness as to the jail receipt. Unlike *Williams*, there is no indication trial counsel failed to present known alibi witnesses.

Trial counsel, at trial, challenged the officers' identification of defendant, questioned whether additional cash was found on defendant during his arrest, and presented defendant as a witness to deny wrong doing and explain his possession of the prerecorded funds. Thus, unlike in *Williams*, "the court was not presented with evidence of defense counsel neglecting to present witnesses or put on a defense." *People v. Steele*, 2014 IL App (1st) 121452 (citing *People v. Henney*, 334 Ill. App. 3d 175, 190 (2002)). There was no strong evidence of incompetence in this case. "Since a clear basis for an allegation of ineffectiveness of counsel does not exist, we cannot find that the trial court erred in failing to *sua sponte* examine whether defendant was provided with effective assistance of counsel." *Henney*, 334 Ill. App. 3d at 190.

¶ 30 Additionally, defendant's reliance on *Houston* is misplaced. *Houston* did not involve an issue of whether the court failed to conduct a *Krankel* inquiry into an ineffective assistance of counsel claim. Rather, the defendant there claimed that trial counsel was ineffective for waiving a court reporter during *voir dire*, and the reviewing court addressed the issue and remanded the cause for a hearing to reconstruct the *voir dire* record for a prejudice determination under *Strickland v. Washington*, 46 U.S. 668 (1984). *Houston*, 226 Ill. 2d at 140-53. *Houston* has no bearing on this case.

¶ 31 We also find *Willis* distinguishable. Trial counsel for the minor in *Willis* filed a motion for a new trial which included a claim alleging his own ineffective assistance for failing to have a witness present live testimony rather than by stipulation, but later struck the claim from the motion. *Willis*, 2013 IL App (1st) 110233, ¶ 62. This court found that the trial court erred by not conducting an inquiry into the claim of ineffectiveness which was struck. The circumstances gave rise to an indication of a conflict. *Willis*, 2013 IL App (1st) 110233, ¶ 73. Here, unlike

Willis, trial counsel did not raise his own ineffectiveness thereby creating the conflict of interest that existed there.

¶ 32 Defendant further argues the record suggests that the oversight by trial counsel regarding the jail inventory receipt was a broader pattern of trial counsel failing to provide effective assistance. Defendant, however, has not raised an ineffective assistance of counsel claim on appeal and, accordingly, we will not address his implicit claim thereof. Ill. S. Ct. Rule 341(h)(7) (eff. Feb. 6, 2013); *People v. Page*, 193 Ill. 2d 120, 146 (2000).

¶ 33 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 34 Affirmed.