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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-1168
)	
LIRIM LUZAJ,)	Honorable
)	Robert G. Kleeman,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court's alleged failure to conduct a *Krankel* inquiry was moot, as defendant already had new counsel to present a claim of ineffective assistance of trial counsel, and in any event the court inquired into that claim and properly denied it; (2) defendant raised no claim of ineffective assistance of new counsel so as to trigger a duty to conduct a *Krankel* inquiry; (3) new counsel was not ineffective for failing to properly present the claim of ineffective assistance of trial counsel, as the court nevertheless considered it and properly denied it.

¶ 2 Following a bench trial, defendant, Lirim Luzaj, was found guilty of possession of cannabis with the intent to deliver and sentenced to 18 years' imprisonment. The trial court denied defendant's motion for reconsideration of his sentence, and defendant timely appealed.

On appeal, defendant argues: (1) that the trial court erred in failing to inquire into defendant's alleged *pro se* claim of ineffective assistance of trial counsel, pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984); (2) that the trial court erred in failing to inquire into a claim of ineffective assistance of postsentencing counsel, pursuant to *Krankel*; and (3) in the alternative, that he received the ineffective assistance of postsentencing counsel. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was indicted on four counts of cannabis trafficking (720 ILCS 550/5.1(a) (West 2010)), two counts of conspiracy to commit cannabis trafficking (720 ILCS 5/8-2(a), 550/5.1(a) (West 2010)), and two counts of possession of cannabis with the intent to deliver (720 ILCS 550/5(g) (West 2010)). Following a bench trial at which defendant was represented by private counsel, defendant was found guilty of one count of possession of cannabis with the intent to deliver and not guilty of the other counts. (One count of cannabis trafficking had previously been nol-prossed.) No posttrial motions were filed.

¶ 5 On October 28, 2011, following a sentencing hearing, the trial court sentenced defendant to 18 years' imprisonment. On November 22, 2011, a new attorney entered an appearance on behalf of defendant. The new attorney moved for reconsideration of defendant's sentence and asked for additional time to review the record and file an amended motion. Thereafter, on December 21, 2011, the attorneys who had represented defendant at trial were granted leave to withdraw. On July 31, 2012, new counsel filed an amended motion for reconsideration of defendant's sentence, arguing, *inter alia*, that defendant's sentence was grossly disproportionate to the sentences imposed on several codefendants who had pleaded guilty to charges stemming from the same investigation.

¶ 6 At the hearing on defendant’s motion for reconsideration of his sentence, the parties stipulated that the State had offered defendant during plea negotiations a sentence of 12 years, to be served at 50%, in exchange for defendant’s guilty plea to cannabis trafficking. During the course of defendant’s testimony at the hearing, defendant was asked by new counsel whether he was aware that, prior to trial, the State had conveyed a plea offer to trial counsel. Defendant responded, “No, nobody told me.” Defendant further testified that he recalled being interviewed by the probation department about the charges and telling the interviewer that he had done nothing wrong.

¶ 7 The trial court denied defendant’s motion for reconsideration of his sentence. In so doing, the court stated as follows concerning the State’s plea offer:

“The defense in this case has implied in their testimony that an offer was conveyed.

I don’t see that raised in the allegation. Even if it was conveyed, that’s not the subject of a motion to reconsider.

*** I don’t think it’s properly before me.

Perhaps it has relevance in terms of this *Lafler* [*v. Cooper*, 566 U.S. ___, ___, 132 S. Ct. 1376, 1384 (2012),] analysis, but it’s not a basis—the fact that an offer may have been conveyed or not conveyed, would not be a basis for me to reconsider the sentence.

And beyond that, I observed the Defendant testify. I don’t believe him. I noted what [the State] noted, that the Defendant testified—asserted [during] his pre-sentence investigation that he did nothing wrong.

I observed him while he testified. I don’t find him to be credible, and I don’t think it’s relevant for this motion.”

Defendant timely appealed.

¶ 8

II. ANALYSIS

¶ 9 Defendant argues that, by his testimony at the hearing on his motion for reconsideration of his sentence, he raised a *pro se* claim of ineffective assistance of trial counsel based on counsel's failure to communicate the State's plea offer to him. He argues further that the court then became aware of a claim of ineffective assistance of postsentencing counsel, based on counsel's failure to properly raise the issue of trial counsel's ineffectiveness. According to defendant, the court erred in failing to inquire into the factual basis of defendant's claim against trial counsel, and he asks that we remand the cause for the requisite hearing. In the alternative, he argues that he received ineffective assistance of postsentencing counsel for failing to properly present defendant's ineffective-assistance-of-trial-counsel claim.

¶ 10 When a defendant brings a *pro se* posttrial claim that trial counsel was ineffective, the trial court must inquire adequately into the claim and, under certain circumstances, must appoint new counsel to argue the claim. *Krankel*, 102 Ill. 2d at 187-89; *People v. Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9. To trigger the court's duty to conduct an inquiry, "a *pro se* defendant is not required to do any more than bring his or her claim to the trial court's attention." *People v. Moore*, 207 Ill. 2d 68, 79 (2003). New counsel is not automatically required merely because the defendant presents a *pro se* posttrial claim that his counsel was ineffective. *Id.* at 77; *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9. Instead, the trial court must first examine the factual basis of the claim. *Moore*, 207 Ill. 2d at 77-78; *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9; *People v. Pence*, 387 Ill. App. 3d 989, 994 (2009). "The ultimate purpose of a trial court's initial inquiry into a defendant's ineffective assistance claim is to determine whether new counsel should be appointed." *People v. Cunningham*, 376 Ill. App. 3d 298, 304 (2007). A trial court may conduct a preliminary examination by: (1) questioning trial counsel about the facts and circumstances

surrounding the defendant's allegations; (2) requesting more specific information from the defendant; or (3) relying 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. If, after a preliminary investigation into the allegations, the court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the claim. *Id.* at 78. If the defendant's allegations show possible neglect of the case, the court should appoint new counsel to argue the defendant's claim. *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9; *Pence*, 387 Ill. App. 3d at 994. "If the court fails to conduct the necessary preliminary examination as to the factual basis of the defendant's allegations, the case must be remanded for the limited purpose of allowing the court to do so." *Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9.

¶ 11 Defendant maintains that the trial court erred in failing to inquire into the factual basis of his alleged *pro se* claim of ineffective assistance of trial counsel. However, we note that trial counsel had withdrawn and new counsel had been appointed to represent defendant at the hearing on his motion for reconsideration of his sentence. As noted above, "[t]he ultimate purpose of a trial court's initial inquiry into a defendant's ineffective assistance claim is to determine whether new counsel should be appointed." *Cunningham*, 376 Ill. App. 3d at 304. Assuming that defendant's testimony at the hearing—that trial counsel did not communicate the plea offer to him—amounted to a *pro se* ineffectiveness claim, defendant had already obtained what a *Krankel* inquiry would have afforded him—new counsel to represent him on his claim. Thus, any argument that the court erred in failing to conduct an inquiry as to defendant's alleged ineffectiveness claim against trial counsel is moot. See *id.* at 304-06.

¶ 12 In any event, the record makes clear that the trial court considered defendant's claim and found that it lacked merit. In considering a *pro se* claim of ineffectiveness, a trial court may base its evaluation "on its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face." *Moore*, 207 Ill. 2d at 79. After noting that trial counsel's alleged failure to convey the State's offer to defendant would not be a basis for reconsideration of the sentence, the trial court stated:

"And beyond that, I observed the Defendant testify. *I don't believe him*. I noted what [the State] noted, that the Defendant testified—asserted his pre-sentence investigation that he did nothing wrong.

I observed him while he testified. *I don't find him to be credible*, and I don't think it's relevant for this motion." (Emphases added.)

From these comments, it is clear that the trial court determined that any allegation of ineffectiveness was insufficient to warrant appointment of new counsel. Although the court did not expressly indicate that it was conducting an inquiry under *Krankel*, there is no requirement that the court do so. See *People v. Dean*, 2012 IL App (2d) 110505, ¶ 15.

¶ 13 The question then becomes whether the trial court had a duty to inquire into the factual basis of any claim of ineffective assistance of postsentencing counsel. Although defendant does not request that we remand for a *Krankel* hearing on his alleged claim as to postsentencing counsel's ineffectiveness, he nevertheless maintains that such a hearing should have been conducted. According to defendant, the claim "was sufficiently communicated to the trial court when the trial court found that postsentencing counsel had failed to effectively raise the issue." We disagree. The record does not contain any allegation by defendant of ineffectiveness of postsentencing counsel. The mere fact that the trial court recognized that postsentencing counsel

did not raise a claim of ineffective assistance of trial counsel did not trigger a duty to determine whether this gave rise to a claim of ineffectiveness of postsentencing counsel, particularly in light of the trial court's determination that the underlying ineffectiveness claim against trial counsel was without merit.

¶ 14 In the alternative, defendant argues that postsentencing counsel was ineffective for failing to present defendant's ineffectiveness claim against trial counsel in a written motion below. A claim of ineffective assistance of counsel requires a defendant to establish that (1) his attorney's performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). A defendant must meet both prongs of the *Strickland* test to prevail on an ineffective-assistance claim. *People v. Colon*, 225 Ill. 2d 125, 135 (2007). Defendant argues that, "[i]f postsentencing counsel had sufficiently raised the issue and had properly presented the issue in a written motion, there was a reasonable probability that the court below would have had a hearing on the issue." However, this argument overlooks the fact that, as noted above, although the court found that the issue was not properly before it, the court nevertheless addressed and rejected the claim of ineffectiveness, based on its finding that defendant was not credible. Therefore, we find that defendant has failed to satisfy the prejudice prong of *Strickland*.

¶ 15

III. CONCLUSION

¶ 16 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed.

¶ 17 Affirmed.