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2014 IL App (4th) 120692-U

NO. 4-12-0692

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 6, 2014
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
CHARLES J. BROWN,)	No. 11CF1658
Defendant-Appellant.)	
)	Honorable
)	Harry E. Clem,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Appleton and Justice Holder White concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) Defendant's conviction and sentence for home invasion based on count II is vacated as he was convicted of two counts of home invasion based upon a single entry into the dwelling of another in violation of the one-act, one-crime doctrine.
- (2) The trial court committed no error in failing to revisit defendant's *pro se*, pretrial ineffective-assistance-of-counsel claims after trial.
- ¶ 2 A jury found defendant, Charles J. Brown, guilty of two counts of home invasion while armed with a firearm (720 ILCS 5/12-11(a)(3) (West 2010)) and the trial court sentenced him to two, concurrent 35-year prison terms. Defendant appeals, arguing (1) his two convictions for home invasion violate the one-act, one-crime doctrine as they were both based on a single entry into the dwelling of another and one must be vacated, and (2) remand for a hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), is required because he

made *pro se*, pretrial ineffective-assistance-of-counsel claims and the court failed to revisit those claims following his trial. We affirm in part, vacate in part, and remand with directions.

¶ 3

I. BACKGROUND

¶ 4

On October 7, 2011, the State charged defendant with two counts of home invasion (720 ILCS 5/12-11(a)(3) (West 2010)), alleging he, knowingly and without authority, entered the dwelling of another while armed with a firearm and threatened individuals in the home while demanding money or other property. The only difference between the charges was the identity of the individuals threatened by defendant. Further, the charges were based on allegations that, on September 26, 2011, while armed with a firearm, defendant and another individual entered the home of Lillie S., located on West Eureka Street in Champaign, Illinois, at a time when she and her three children were present inside the home and began making various demands. Testimony at trial revealed that, Lillie's boyfriend, Dejwan Green, subsequently entered the residence and began shooting at the intruders, who then fled the home. Later, police officers learned defendant and another individual, Mario Dorsey, had separately been taken to a local hospital for gunshot wounds.

¶ 5

On January 24, 2012, defendant filed a motion to suppress statements he made to police on October 3 and 5, 2011, while hospitalized and receiving treatment for multiple gunshot wounds. The record reflects defendant reported to police that he was shot following a dice game at the Eureka Street residence by an individual who became upset about losing money. Defendant asserted he jumped out a bedroom window, crawled to the street, and called his son to pick him up and take him to the hospital. In his motion to suppress, defendant alleged his statements were made during custodial police interrogations but without the benefit of *Miranda*

warnings (see *Miranda v. Arizona*, 384 U.S. 436 (1966)). He also asserted his statements were involuntary because they were made while he was hospitalized, recovering from surgery, and under the influence of medication.

¶ 6 On March 15, 2012, the trial court conducted a hearing on defendant's motion. The State presented the testimony of Donald Shepard, a detective with the Champaign police department, who stated he spoke with defendant in the hospital on October 3 and 5, 2011. According to Shepard, defendant provided similar statements on both dates but Shepard recorded only defendant's second statement. Shepard acknowledged that when he spoke with defendant on October 3, defendant was in his hospital bed recovering from his injuries. He noted defendant had undergone surgery, was intubated, and appeared to be in some pain. However, Shepard denied that he noticed anything unusual about defendant and asserted defendant spoke coherently, recognized him from previous contacts, provided details that matched information defendant's girlfriend had previously reported to police, telephoned his girlfriend so that she could contact defendant's son for Shepard, and seemed "very aware" of what was going on around him. Defendant did not appear drowsy nor did he have slurred speech. Further, Shepard denied that he noticed anything that caused him to believe defendant was under the effects of medication or drugs.

¶ 7 Regarding his October 5 conversation with defendant, Shepard again denied that defendant appeared to be under the influence of medication or drugs that affected his ability to communicate. He testified defendant was not sleepy and did not fall asleep during their conversation. Additionally, Shepard stated he spoke with hospital personnel before talking with defendant on both October 3 and 5, and he was never informed defendant was in not in a

condition to be interviewed.

¶ 8 On cross-examination, Shepard acknowledged that he did not know what sort of medications defendant was on but stated, prior to his October 3 interview with defendant, he asked medical personnel if defendant was coherent and able to be interviewed and was informed that defendant was coherent and Sheppard could speak with him. Shepard acknowledged that he did not ask medical personnel about any medications defendant might be taking or the effect they could have on his cognitive abilities.

¶ 9 Defendant testified on his own behalf, stating that, while in the hospital, he received painkillers and medication to help him sleep. During his hospital stay, he was hooked up to various machines and tubes, was on a lot of medication, and was in pain and not feeling well. Defendant testified he did not remember the first time Shepard spoke with him in the hospital. He did remember Shepard coming to his hospital room on October 5, but he stated he was feeling sleepy and told Shepard he did not want to speak with him. Defendant recalled being "in and out" of consciousness.

¶ 10 Following the parties' arguments, the trial court found Shepard's testimony more credible than that of defendant. It denied defendant's motion to suppress.

¶ 11 On March 19, 2012, a *pro se* letter from defendant was filed, stating he wanted to "enter a motion for a change of counsel" and alleging his attorney was not representing him to the best of his ability. Specifically, defendant complained his defense counsel (1) had not asked for a bond reduction as requested by defendant, (2) took five months to file a motion defendant requested he file, and (3) failed to "file certain case laws" or "read certain things" to the court in connection with defendant's motion to suppress.

¶ 12 On March 23, 2012, the trial court conducted a hearing in defendant's case during which it addressed defendant's *pro se* motion. Initially, upon inquiry by the court, defendant's counsel stated he did not believe he had reached an impasse with defendant or that he was professionally unable to continue as his attorney. The following colloquy then occurred between the court and defendant:

"THE COURT: Do you wish to represent yourself, sir?

[DEFENDANT]: No, your Honor. I would like for you to give me another Public Defender if that's possible.

THE COURT: You don't get to choose your attorney, sir. You have options. You can retain counsel, you or your family. You can have appointed counsel, and we have appointed an attorney to represent you, or you can represent yourself which I certainly wouldn't advise given the nature of the charge against you but I would suggest to you that you cooperate with [defense counsel] and get ready for trial so that he can represent you effectively.

[DEFENDANT]: I have, your Honor, but like the case laws and the motions that I've been asking him to file he haven't filed them or—

THE COURT: Well he's not allowed to file something, sir, unless he believes that there is a basis in law and fact to support the motion. Otherwise he's precluded by the rules of

professional conduct that apply to lawyers from filing such a document.

[DEFENDANT]: Yes, your Honor.

THE COURT: Simply because you want him to file it doesn't necessarily mean that he can.

[DEFENDANT]: I understand that, your Honor, but I do research just like he's supposed to do research and it still is not being filed. Just—just for instance I asked him to file a motion to suppress the evidence. Why am I up under 21 to 45 when there was no weapons found? And I mean it's just a couple of case laws that I had gave him just like my last motion here.

THE COURT: You're under the impression, sir, that because no weapon was found you cannot be prosecuted for these offenses?

[DEFENDANT]: No, your Honor. That's not what—what I'm saying.

THE COURT: Well that's what you just said.

[DEFENDANT]: I'm saying being charged with. I asked him to suppress the evidence of the charges. I asked him—in our last motion hearing, I asked him to read the case law to you to where it upholds me for the medication that I was up under. He didn't read that to you. I mean—

THE COURT: The Court has already ruled on that matter, sir.

[DEFENDANT]: Yes, your Honor.

THE COURT: Representations heard. The Court finds no basis for removal of Defendant's appointed counsel. Motion is denied."

¶ 13 In May 2012, defendant's jury trial was conducted. At the conclusion of trial, the jury found defendant guilty of both counts of home invasion. On May 11, 2012, defendant filed a motion for acquittal or in the alternative a motion for a new trial. On June 25, 2012, the trial court denied defendant's posttrial motion and sentenced him to concurrent, 35-year prison terms. On June 26, 2012, defendant filed a motion to reconsider his sentence. On July 23, 2012, the court also denied that motion.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant first argues his two home-invasion convictions violate the one-act, one-crime doctrine because both are based on a single entry into the dwelling of another. He suggests this court remand the matter to the trial court so that the less serious charge may be vacated. The State concedes error but contends remand is unnecessary where both home-invasion counts were identical except for the individual threatened. It maintains this court may vacate count II on its own without remand. We accept the State's concession and agree remand is unnecessary.

¶ 17 Pursuant to the one act, one crime doctrine, "a defendant may not be convicted of

multiple offenses that are based upon precisely the same single physical act." *People v. Johnson*, 237 Ill. 2d 81, 97, 927 N.E.2d 1179, 1189 (2010). A single entry into the dwelling of another will support only a single conviction for home invasion no matter the number of occupants inside the dwelling. *People v. Cole*, 172 Ill. 2d 85, 102, 665 N.E.2d 1275, 1283 (1996). Here, the State alleged only a single entry into the home and, as a result, both of defendant's home-invasion convictions may not stand.

¶ 18 Generally, "under the one-act, one-crime doctrine, sentence should be imposed on the more serious offense and the less serious offense should be vacated." *People v. Artis*, 232 Ill. 2d 156, 170, 902 N.E.2d 677, 686 (2009). "[W]hen it cannot be determined which of two or more convictions based on a single physical act is the more serious offense, the cause will be remanded to the trial court for that determination." *Artis*, 232 Ill. 2d at 177, 902 N.E.2d at 690. However, under the circumstances presented, we find remand is unnecessary since both of defendant's convictions were for the same offense, both charges referenced the same statutory subsection, and defendant received identical concurrent sentences for each conviction. See *People v. Price*, 221 Ill. 2d 182, 195, 850 N.E.2d 199, 206 (2006) (holding remand was unnecessary where one-act, one-crime principles required vacation of multiple theft convictions since both the statutory penalty and the concurrent sentences imposed were identical). Accordingly, we accept the State's suggestion and vacate defendant's conviction and sentence in connection with count II.

¶ 19 On appeal, defendant also argues the trial court erred in failing to revisit his *pro se*, pretrial ineffective-assistance-of-counsel claims after his trial. He contends the court made no real inquiry into his *pro se* claims prior to trial and was obligated to address his complaints

after trial. Defendant requests this court remand the matter for an appropriate *Krankel* hearing to inquire into defendant's claim that his attorney neglected his case by failing to present case law or medical testimony at the hearing on his motion to suppress evidence.

¶ 20 A defendant's *pro se* ineffective-assistance-of-counsel claims are governed by the procedures set forth in *Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045, and refined in subsequent cases. *People v. Patrick*, 2011 IL 111666, ¶ 29, 960 N.E.2d 1114.

"[W]hen a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. If the trial 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 *pro se* motion. However, if the allegations show possible neglect of the case, new counsel should be appointed. [Citations.] The new counsel would then represent the defendant at the hearing on the defendant's *pro se* claim of ineffective assistance." *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637 (2003).

¶ 21 In *People v. Jocko*, 239 Ill. 2d 87, 93, 940 N.E.2d 59, 63 (2010), the supreme court held a trial court is not obligated to address a defendant's *pro se* ineffective-assistance-of-counsel claims prior to trial. The court noted that the problem with addressing most ineffective-assistance claims before trial is that the outcome of the proceeding has not yet been determined and, as a result, "there is no way to determine if counsel's errors have affected an outcome that has not yet occurred." *Jocko*, 239 Ill. 2d at 93, 940 N.E.2d at 63.

¶ 22 The supreme court also noted that a *pro se* defendant is generally not obligated to renew ineffective-assistance claims once they have been made known to the trial court and there was "nothing to prevent a circuit court from addressing, at the conclusion of trial, a *pro se* claim of ineffective assistance that was previously raised by the defendant." *Jocko*, 239 Ill. 2d at 93, 940 N.E.2d at 63. However, in that case, the supreme court found no fault in the trial court's failure to address the defendant's pretrial ineffective-assistance claims after trial. *Jocko*, 239 Ill. 2d at 93, 940 N.E.2d at 63. Specifically, the court noted (1) the defendant's claims were refuted by the record, (2) the defendant failed to argue on appeal that his claims were meritorious, and (3) there was no indication from the record that the court was ever made aware of the defendant's concerns. *Jocko*, 239 Ill. 2d at 93-94, 940 N.E.2d at 63.

¶ 23 In this case, we find the trial court committed no error in failing to revisit defendant's pretrial ineffective-assistance claims after trial. Initially, although defendant argues the court made no real inquiry into his claims prior to trial, the record actually reflects the court addressed and rejected defendant's *pro se* claims. To support his position, defendant notes the court did not question defense counsel except to ask whether counsel and defendant had reached an impasse and counsel believed he could no longer represent defendant. However, when inquiring into a defendant's *pro se* claims, the trial court may (1) make inquiries of defense counsel "regarding the facts and circumstances surrounding the allegedly ineffective representation," (2) have a brief discussion with the defendant, or (2) base its evaluation of the defendant's allegations on its knowledge of defense counsel's performance and the insufficiency of the defendant's allegations on their face. *Moore*, 207 Ill. 2d at 78-79, 797 N.E.2d at 638.

¶ 24 An adequate inquiry into a defendant's *pro se* claims does not always require that

the trial court question a defendant's counsel. In this instance, the court questioned defendant regarding his claims and rejected them, finding no basis for removal of appointed counsel. We note the trial court also presided over the hearing on defendant's motion to suppress and, thus, had knowledge of defense counsel's performance during those proceedings. Further, before the court, defendant complained only that his counsel did not file "the case laws and the motions" defendant asked him to file. When questioned further, defendant asserted he asked counsel to file a motion to suppress evidence and "read the case law" to the court. The record reflects no error by the court in rejecting these claims as defense counsel did, in fact, file a motion to suppress evidence on defendant's behalf. Additionally, although defense counsel did not "read the case law" to the trial court during the hearing, he did cite case law to support each of the arguments raised in the motion to suppress.

¶ 25 Further, we find defendant's claims on appeal suffer from the same infirmities as the defendant's claims in *Jocko*. On appeal, defendant argues the trial court improperly failed to revisit claims that defense counsel neglected his case by failing to present case law and medical testimony at the hearing on defendant's motion to suppress. First, defendant never previously raised any issue regarding his counsel's failure to present medical testimony at the suppression hearing. As stated in *Jocko*, the trial court cannot be expected to address or revisit claims of which it has not previously been made aware. *Jocko*, 239 Ill. 2d at 93-94, 940 N.E.2d at 63.

¶ 26 Second, defendant argues the trial court erred in failing to revisit his claim that defense counsel failed to read or present certain case law at the hearing on his motion to suppress. However, on appeal, defendant does not set forth what case law defense counsel should have but failed to present. As a result, he has failed to effectively argue or demonstrate

that he raised a meritorious claim before the trial court.

¶ 27 Third, the record refutes defendant's overall contention that defense counsel neglected his case. Defendant's ineffective-assistance claims centered on his counsel's performance in connection with the motion to suppress his statements to police and, in particular, his claim that his statements were involuntary because he was under the influence of medication. However, the record shows defense counsel presented defendant's argument to the court in connection with the motion to suppress, cited case law in the motion to support defendant's position, and presented argument and evidence on defendant's behalf with respect to that claim at the hearing before the trial court.

¶ 28 Under the circumstances presented, the trial court committed no error in rejecting defendant's ineffective-assistance claims prior to trial. It also committed no error in failing to revisit those claims after trial.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we vacate defendant's conviction and sentence for home invasion in connection with count II but otherwise affirm the trial court's judgment. We remand for issuance of an amended sentencing judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 31 Affirmed in part, vacated in part, and cause remanded with directions.