SIXTH DIVISION
June 17, 2011

No. 1-09-1962

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	No. 07 CR 10589
	)	
DESHAWN COCROFT,	)	Honorable
	)	John J. Fleming,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CAHILL delivered the judgment of the court.
Presiding Justice Garcia and Justice R.E. Gordon concurred in the judgment.

O R D E R

Held: Defendant's convictions for two counts of predatory criminal sexual assault are affirmed over defendant's contentions that: the evidence was insufficient to establish digital penetration; the trial court erred by not conducting a preliminary inquiry into his pretrial *pro se* claim of ineffective assistance of counsel; the trial court abused its discretion in denying his request for a continuance after he elected to proceed *pro se*; and the trial court deprived him of his constitutional right to counsel.

After a jury trial defendant Deshawn Cocroft was found guilty of two counts of predatory criminal sexual assault and sentenced to consecutive terms of 25 and 20 years' imprisonment.

He argues on appeal that: (1) the State failed to prove him guilty beyond a reasonable doubt of one count of predatory criminal sexual assault because there was no evidence of digital penetration; (2) remand is required because the trial court failed to conduct an inquiry into his pretrial *pro se* claim of ineffective assistance of counsel; (3) the trial court abused its discretion in denying his request for a continuance after he elected to proceed *pro se*; and (4) the trial court deprived him of his constitutional right to counsel when it failed to appoint counsel to represent him during posttrial motion hearings and sentencing. We affirm.

Defendant was arrested on May 15, 2007, in connection with the sexual assault of 11-year-old S.H. that took place on January 26, 2003. Defendant was charged by grand jury indictment with four counts of predatory criminal sexual assault, six counts of criminal sexual assault, three counts of criminal sexual abuse and one count of aggravated criminal sexual abuse. The State nolle prosequied all but two counts of predatory criminal sexual assault. Count II alleged that defendant committed predatory criminal sexual assault by contacting S.H.'s vagina with his penis. Count IV alleged that defendant "committed an act of sexual penetration *** to wit: an intrusion in that [he] inserted his finger into [S.H.'s] vagina."

On June 4, 2007, the trial court appointed the office of the public defender to represent defendant. On July 18, 2007, the next court date, the State informed the court that it had tendered "some discovery" to defense counsel but that there was still discovery outstanding. The State also asked the court to order defendant to submit to buccal swab samples. Defense counsel objected to the samples and asked the court to set August 14, 2007, as the date for the completion of discovery. Defendant objected to that date and told the court that his family was "supposed to

be getting [him] a lawyer." Defendant then asked for a 45-day continuance. The court ordered defendant to submit to buccal swab samples, granted his request for a continuance and set August 31, 2007, as the date for discovery status.

On that date, the State asked the court for a continuance to complete discovery because of outstanding DNA evidence. Defense counsel proposed October 4, 2007, as the next status date. Defendant objected and asked for an "advance speedy trial by jury, today." The court admonished defendant that the decision to demand trial belonged to his attorney and that DNA evidence had not yet been completed in the case. Defendant asked the court if he could dismiss his attorney, proceed *pro se* and demand a speedy trial. The court responded in the affirmative. Defendant then dismissed his attorney, elected to proceed *pro se* and demanded a speedy trial. The court read the charges to defendant and admonished him about the pitfalls of self-representation. While the court was admonishing him, defendant said he would "hire a lawyer later." The court explained to defendant:

> "You have a lawyer. If you want to have another lawyer come in and file a substitution of lawyer for the public defender lawyer, they can file the motion and I will consider it depending how far along we are in the case and whether or not I find at that point a dilatory tactic.
>
> But once you demand trial and you represent yourself, we're going to go to trial. So you can't come in here, demand trial and then have a lawyer come in in a month and file an appearance and non-demand trial and then fire that lawyer and demand trial, okay?

So either you want to be represented by counsel, and I'll allow the public defender to represent you until your lawyer comes in, and then the discovery process can be completed, or you represent yourself."

Defendant then elected to represent himself. At the end of admonishments, the court granted defendant's request to proceed *pro se*. The State suggested and the court set September 17, 2007, as the next case status date.

On that date, defendant's private counsel filed his first appearance. Counsel withdrew defendant's demand for a speedy trial and explained to defendant in open court that he needed time to review the discovery material tendered by the State. Defendant agreed to counsel's representation. The court then admonished defendant:

"All right. Here's the deal. I spent like 10 minutes last week going over this with you, all right? [Counsel's] appearance has been allowed. I have allowed him to file his appearance today. You're withdrawing your demand for trial.

[Counsel] is going to look at it, talk to you and come back. You're not going to play the game. You're not going to fire the lawyer and ask time to get another lawyer.

So on the next court date, if [counsel] still wants to represent you and you still want him to represent you, then that's how the case is going to go. And at that point then, I won't talk to you. I'm not supposed to talk to you. I'll talk to your lawyer, okay?

And whether or not a demand for trial is entered, what motions are filed

> and how the case proceeds is all strategy. This is a decision that will be made by your lawyer. ***"

At the next court date, defense counsel asked the court to order a behavioral clinical examination for defendant to determine if he was fit to stand trial. The court granted counsel's request. On December 27, 2007, Doctor Nishad Nadkarni examined defendant and filed a report with the court that defendant was fit to stand trial. On March 11, 2008, Nadkarni filed a supplemental report with the court, finding that defendant was legally sane at the time of the offense.

On June 5, 2008, the State represented that it had completed discovery. On the next court date, defense counsel filed an answer to discovery and asked the court for a final status date of August 7, 2008. Counsel noted that defendant had been released from custody and that counsel had an opportunity to speak with him. The court continued the matter to August 7, 2008, and explained to defendant:

> "Your lawyer mentioned that you were asking him for police reports. He wanted me to explain to you by [s]upreme [c]ourt rule he can sit there and go over the information in the reports with you in preparing your defense, but he is prohibited from physically tendering the discovery to you."

On August 19, 2008, the State filed a motion under section 115-10(b)(1) of the Code of Criminal Procedure (Code) (725 ILCS 5/115-10(b)(1) (West 2006)), seeking to introduce into evidence statements made by the victim in the hospital shortly after the assault. The court scheduled a hearing on the motion for October 7, 2008. On that date, defense counsel told the

court that the State was not ready to argue the motion. Defense counsel also informed the court:

> "[T]here's a couple other matters that I should advise the Court of.
>
> I received a letter from the [Attorney Registration and Disciplinary Commission (ARDC)] on Tuesday telling me that [defendant] had contacted them, making inquiries of them as to my reputation, which I've never had any complaint beyond the letter and they've all been dismissed, so I told [defendant] that, because apparently he came across some information concerning a U.S. case where not my name was mentioned but a name similar to [mine] and he became very concerned and upset. Now, they provided him with a complaint form. A complaint form was never completed and never sent in. So I have no problem with representing him, your Honor. I don't think he has any problem with me representing him. If the Court wishes to inquire."

The court made no inquiry and set November 25, 2008, as the hearing date on the State's motion. After the hearing, a jury trial was set for January 26, 2009.

On that date, the State told the court it was not ready for trial because two of its witnesses had not been subpoenaed. Defense counsel noted it was willing to stipulate to DNA evidence. The court granted a continuance but admonished the parties to "get this thing moving."

When the case was recalled on March 23, 2009, defense counsel asked the court to note a "couple issues" for the record. Counsel told the court that:

> "[Defendant] has written the ARDC a letter asking them to investigate me for numerous things. I've responded to that letter, your Honor. And I just want to

> make that -- put that on the record. I don't believe any of the allegations in the letter that he wrote are in any way true and I've got no problem with proceeding with this matter."

Counsel also told the court that defendant no longer wished to stipulate to DNA evidence and demanded his own independent DNA test. Counsel further informed the court that because he did not give defendant the police reports, defendant refused to talk to him. The court admonished defendant:

> "Well, here's the thing. The case is set for trial. It's an '07-case. We have been through a lot of this time and time again. I'll go over it again.
>
> Police reports you don't get. I've explained that to you time and time again. *** So I'm not going to discuss that any further.
>
> Writing the letter to the ARDC. There's case law that's very clear that that does not disqualify your lawyer, okay? ***"

Defendant responded that he wanted to hire his own expert to conduct a DNA test. The court explained to defendant that he was free to hire his own expert, but that he would need to do so before trial. The judge noted that the case was almost two years old and that he would not unnecessarily delay trial. The court did not inquire about defendant's ARDC complaints.

The next day, when the case was recalled, the State responded it was ready for trial. Defendant then told the court that he was relieving his attorney and proceeding *pro se*. The court reminded defendant of the *pro se* admonishments. Defendant acknowledged that the court "explained it to him once before." The court then read the charges and potential sentences to

defendant. Defendant acknowledged understanding the charges and possible penalties. The following colloquy then took place:

"THE COURT: Now, you have the right to have a lawyer. You had a lawyer, okay? He's been representing you, okay? At this point we've gone through this on other occasions. Now it's on the eve of trial, and you're saying you don't want your lawyer and I've told you that the case is not going to be continued any more and you knew that, right?

THE DEFENDANT: Yep.

THE COURT: And so you know you're going to trial today?

THE DEFENDANT: Okay."

The court again admonished defendant about the pitfalls of self-representation. Defendant then asked for time to go over the discovery materials. The State noted that defense counsel went over the discovery with him. Defendant replied that counsel did not. The State also informed the court that because defendant did not stipulate to DNA evidence it had made arrangements to fly in witnesses from out of state in lieu of stipulations. The court accepted defendant's request to proceed *pro se* and ordered counsel to tender the discovery materials to defendant. The court then noted:

"I find this whole procedure today is dilatory and I went over this yesterday and told you that if the witnesses were available, we were going to trial today. And then this morning you're firing your lawyer and wanting a date to go over the discovery. So I just think that it is dilatory and I told you it was going to

> trial today. The case is an 07 case and it's been on this case since June of '07. We've been through this with you a couple times about whether or not you want to have [counsel] represent you and you've been admonished and I think it's now just a stalling tactic. First it started with you weren't going to stipulate to the DNA [evidence]. Now you're saying you want to represent yourself and you need a date. So, my ruling is it's dilatory. The case is set for trial and [counsel] has been dismissed. You're representing yourself. ***"

The case was passed for jury selection.

When the case was recalled, the court asked defendant if he was ready for trial. Defendant said he was not. He explained that he did not have time to go over his "discovery properly or obtain [his] witnesses." Defendant asked for more time to review his discovery and "do research at the law library." The court again noted that defendant's request was a dilatory tactic and explained "I *** admonished you that you're going to be held to the same standard [as a lawyer] and I would have held your lawyer to trial today[.]" The case then proceeded to jury selection. Defendant refused to participate in the jury selection process and said he would not participate at trial because the court did not give him enough time to review discovery. The court noted:

> "I already went through that, *** and I found that you're being dilatory. You just wanted a continuance [every time] things didn't go your way you would say you were going to represent yourself, then you went back to your lawyer. [Defense counsel] had put on the record on several [occasions] that he had gone

> over discovery with you. The [s]upreme [c]ourt rule didn't allow you to get the discovery. I'm sorry you didn't like that. I told you yesterday it was going to trial, so today you fired your lawyer and said you wanted a continuance. I think at this point you are following a path that you're just trying to inject error and hope the [a]ppellate [c]ourt reverses the case. So I'm making it clear for the record that over the course of this case we've had you examined for fitness, they found you fit. You know what you're doing and that it is my opinion, based on observing you and the history of the case, and the conversations with your attorney on the record that this is a calculated move by you to try and delay the case. And I'm not going to allow you to do it."

The case then proceeded to trial. Defendant refused to participate in the trial.

At trial, S.H. testified that on January 25, 2003, she was 11 years old and lived at 4053 West Cermak Road with Michelle Silas, Silas' seven-year-old daughter Q.M. and S.H.'s older sister Christel Catchings. In the late evening hours on that date, S.H.'s cousin John Roby and defendant arrived at the house. S.H. was sitting in the living room with Christel. Roby introduced defendant to S.H. and Christel and told them he was their cousin. After being introduced to defendant, S.H. went to the bathroom. Defendant entered the bathroom and exposed his penis to her. He then tried to grab her. S.H. left the bathroom and went to Silas' bedroom to watch television.

About an hour later, defendant entered Silas' bedroom and lay down next to S.H. who was lying on Silas' bed. Defendant then started to rub S.H.'s thigh over her jeans. S.H. left the

room and went to Q.M.'s bedroom. S.H. closed the bedroom door and lay down next to Q.M. Defendant entered the bedroom and lay down behind S.H. Defendant then "put his hand in [S.H.'s] pants and [her] panties and started rubbing it against his penis." S.H. said defendant "had his hands in [her] panties too" and "was rubbing where [her] butt was." S.H. asked Q.M. to tell the adults what defendant was doing. As Q.M. tried to get out of bed, defendant hit her in the lip. Shortly thereafter, Christel called out to S.H. and defendant and asked them to come out of the bedroom. S.H. and defendant then left the room. Christel told S.H. to go back in the room and close the door. S.H. went back inside the room.

About an hour later, defendant again entered the room. Defendant pulled S.H. to the "end of the bed" and pulled down her jeans and panties. He then placed his penis in her vagina. As he did so, he kissed and sucked on S.H.'s neck. Defendant then straightened his clothes and told S.H. he would give her money if she did not tell anyone what happened. Defendant also told S.H. that he would hurt her if she did tell someone. S.H. said defendant did not ejaculate.

After the assault, S.H. went to the living room and told Christel what had happened. Defendant and Roby then left the house and Silas called the police. When police arrived, S.H. was transported to Mount Sinai Hospital. S.H. recounted to the court her physical examination at the hospital. She said she told the doctor the truth about what happened on the evening in question.

Doctor Anthony Macasaet examined S.H. on the evening of the assault and testified as an expert in the field of emergency medicine. Macasaet said S.H. told him that "there was penile penetration without a condom" and "a finger inserted into her vagina." S.H. also told him that

there was a bite mark on the left side of her neck. Macasaet described the bite mark as a "hickey." He said the bite mark on S.H.'s neck was swabbed for saliva and sealed in an evidence kit. He also said that there was a disruption in S.H.'s hymen consistent with digital and/or penile penetration.

Heather Ralph testified as an expert in the field of forensic DNA analysis. Ralph said she analyzed and compared defendant's DNA with the samples of saliva collected from the bite mark on S.H.'s neck. Ralph concluded within a reasonable degree of scientific certainty that the DNA profiles matched.

Christel testified that on the evening in question she sat in the kitchen with defendant, Roby and Silas. At some point, S.H. entered the kitchen and told Christel that she was going to sleep. Christel told S.H. to go to Q.M.'s bedroom and close the door. Later, Christel noticed that defendant was no longer in the kitchen. When she called his name, he emerged from Q.M.'s room. Defendant said he was in Q.M.'s room because he was hot and it was the coolest room in the house. About fifteen minutes later, Christel again noticed defendant was not in the kitchen. When she called his name, defendant and S.H. emerged from Q.M.'s bedroom. Christel said S.H. seemed upset. S.H. told Christel that "[defendant] raped her."

Q.M. testified that on the evening in question she was in her bedroom with defendant and S.H. Q.M. said she saw defendant expose his penis and "put it in [S.H.'s] behind." She also said defendant "put his mouth on [S.H.'s] neck."

Silas testified that on the evening in question she was in her bedroom with Roby. She said she heard "a lot of commotion" and S.H. crying. Silas exited her room and asked S.H. what

had happened. S.H. told her that "[defendant] tried to have sex with [her]." Silas called the police. Defendant and Roby left before police arrived on the scene.

Chicago Police Officer Jennifer Jones testified that she was the first officer to respond to the scene of the assault. Jones said S.H. provided her with a detailed account of the assault before Jones transported her to the hospital.

George Vander Linde, a registered nurse, testified that he collected evidence in a sexual assault kit from the victim. Linde described the method of collecting and safeguarding the evidence.

The State then rested. Defendant did not present evidence at trial. The jury found defendant guilty of both counts of predatory criminal sexual assault.

After the jury was excused, defendant asked the court for "transcripts of all [the] proceedings." The court explained to defendant that he was not entitled to the transcripts until he was sentenced and filed his notice of appeal. Defendant told the court that he would "have a lawyer by then." The State and defendant then engaged in a lengthy discussion about defendant's decision to proceed *pro se* and the court's denial of his request for a continuance. The court explained that it denied defendant's request for a continuance because he "chose not to state any reasons why [he] needed a continuance other than to read the discovery which [he] already had and read." The court then continued the matter for a presentence investigation report.

When the case was recalled, on April 24, 2009, defendant informed the court that he had not retained an attorney and had not prepared or filed posttrial motions. Defendant told the court that he intended to retain counsel but that he needed to speak with his family about it. The court

continued the matter to May 8, 2009, noting the date of the jury verdict was March 27, 2009. The court also extended by two weeks defendant's time period for filing a motion for a new trial.

On May 8, 2009, defendant informed the court that he was still representing himself and that he was "not hiring an attorney yet." He then asked the court for transcripts of the trial proceedings to prepare his posttrial motions. The court again explained to defendant that he was not entitled to the transcripts and continued the matter to June 11, 2009, for defendant to prepare posttrial motions.

On that date, defendant informed the court that he had retained counsel to represent him during posttrial hearings and sentencing. The court passed the case to contact defendant's counsel. When the case was recalled, the court noted that defendant had not retained counsel and asked defendant how he wished to proceed. Defendant said that he wished to file a posttrial motion but that he had not prepared one because he was under the impression that his attorney was "going to do it." The court asked defendant if he would prepare a posttrial motion if given another continuance. Defendant responded "[w]hatever you're fixing to do today, go ahead and do it." After hearing the State's argument in aggravation, the court sentenced defendant to 25 years' imprisonment on count II and 20 years' imprisonment on count IV, to be served consecutively. After announcing sentence, the court noted:

> "Just for the record [defendant] insisted on going [*pro se*]. He did have the [p]ublic [d]efender at one time. He had [private counsel]. He wanted to go [*pro se*]. He said he was going to hire another lawyer. Since he fired the [p]ublic [d]efender, he never requested this court to appoint another lawyer for him. He

said he could represent himself. And he made those choices clearly and voluntarily every step of the way."

On appeal, defendant first contends that he was not proven guilty beyond a reasonable doubt of count IV of predatory criminal sexual assault. When a defendant challenges the sufficiency of the evidence to sustain a conviction, it is not the function of the reviewing court to retry the defendant. *People v. Evans*, 209 Ill. 2d 194, 209, 808 N.E.2d 939 (2004). The reviewing court must decide whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *Evans*, 209 Ill. 2d at 209. We will not reverse a conviction unless the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of the defendant's guilt. *Evans*, 209 Ill. 2d at 209.

To sustain defendant's conviction for predatory criminal sexual assault the State was required to show that he was "17 years of age or over and commit[ted] an act of sexual penetration with a victim who was under 13 years of age when the act was committed[.]" 720 ILCS 5/12-14.1(a)(1) (West 2006). Defendant was charged with two counts of predatory criminal sexual assault. Count IV of the indictment alleged that defendant "committed an act of sexual penetration *** to wit: an intrusion in that [he] inserted his finger into [S.H.'s] vagina."

Defendant argues that the evidence presented was insufficient to establish digital penetration. He claims Macasaet's testimony that S.H. told him that defendant inserted a finger into her vagina was conclusory and contradicted by S.H.'s testimony.

Viewed in the light most favorable to the prosecution, we find the evidence sufficient to

support a guilty verdict on count IV of predatory criminal sexual assault. S.H testified that defendant "put his hand in [her] pants and [her] panties and started rubbing it against his penis." S.H. said defendant "had his hands in [her] panties too." Although S.H. did not specifically say that defendant inserted his finger into her vagina, Macasaet testified that he examined S.H. on the evening of the assault and said S.H. told him that "there was penile penetration without a condom" and "a finger inserted into her vagina." Macasaet also said that there was a disruption in S.H.'s hymen consistent with digital and/or penile penetration. We believe this evidence and the reasonable inferences therefrom (*People v. Hall*, 114 Ill. 2d 376, 409, 499 N.E.2d 1335 (1986)), were sufficient to allow the trier of fact to infer that defendant inserted his finger into S.H.'s vagina. The evidence presented was not so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt.

In reaching this conclusion, we are unpersuaded by defendant's argument that Macasaet's testimony was incredible because in recounting what S.H. told him, he used terminology that was "not that of an eleven year old." Defendant claims that "though the statement was attributed to S.H., it was not a verbatim recitation of the explanation provided by S.H." and the statement was conclusory in nature. Defendant's argument addresses the function of the jury and not the reviewing court. *People v. Bull*, 185 Ill. 2d 179, 205, 705 N.E.2d 824 (1998). It is the function of the trier of fact to assess witness credibility, weigh evidence, draw reasonable inferences therefrom and resolve conflicts in the testimony. *Bull*, 185 Ill. 2d at 204-05.

We are also unpersuaded by defendant's argument that Macasaet's testimony was insufficient to establish guilt because it was not corroborated by other witnesses who testified on

behalf of the State. Defendant claims that the State's failure to corroborate Macasaet's testimony by questioning Jones and Linde about the specifics of the assault raises the inference that the absent testimony would have been damaging to the State. The State was not required to corroborate Macasaet's testimony because the testimony of a single witness, if credible, is sufficient to convict. See *People v. Smith*, 185 Ill. 2d 532, 541, 708 N.E.2d 365 (1999).

Defendant next contends that under *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and cases decided thereafter, the trial court was required to conduct a preliminary inquiry into his pretrial *pro se* claim of ineffective assistance of counsel. Defendant claims that the court's failure to do so requires remand for that purpose.

In *Krankel*, the defendant filed a *pro se* posttrial motion, claiming that his trial counsel was ineffective. The defendant was denied new counsel to assist him in the motion and our supreme court remanded the cause for a new hearing on the defendant's motion, with instructions for the trial court to appoint new counsel for the defendant. *Krankel*, 102 Ill. 2d at 189. *Krankel* adopted a procedure that encourages the circuit court to fully address a defendant's posttrial claims of ineffective assistance. Here, defendant argues that a similar procedure should apply to his pretrial claims of ineffective assistance.

This argument was rejected by our supreme court in *People v. Jocko*, 239 Ill. 2d 87, 940 N.E.2d 59 (2010). In *Jocko*, the court held that a circuit court is not obligated to address a *pro se* defendant's ineffective assistance claim before trial. *Jocko*, 239 Ill. 2d at 93. The *Jocko* court explained that because a defendant alleging ineffective assistance of counsel must demonstrate "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, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984)), there is no way for the circuit court to determine pretrial if counsel's errors have affected an outcome that has not yet occurred. *Jocko*, 239 Ill. 2d at 92-3.

There is however nothing to prevent the trial court from addressing a defendant's *pro se* claims of ineffective assistance at the conclusion of trial. Here, the trial court did not address defendant's claims at the end of trial and we find that it was not required to.

After *Krankel*, our supreme court in *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631 (2003), explained that new counsel need not be appointed in every case in which a defendant presents a *pro se* claim of ineffective assistance of counsel. If the claim is without merit or raises only matters of trial strategy, the court need not appoint new counsel. *Moore*, 207 Ill. 2d at 78. The sufficiency of the inquiry is the operative concern for the reviewing court and is a question of law that is reviewed *de novo*. *Moore*, 207 Ill. 2d at 75.

There are minimum requirements a defendant must meet to trigger a preliminary *Krankel* inquiry by the trial court. *People v. Ward*, 371 Ill. App. 3d 382, 431, 862 N.E.2d 1102 (2007). A bald allegation that counsel rendered inadequate representation is insufficient to trigger a *Krankel* inquiry by the trial court. *People v. Radford*, 359 Ill. App. 3d 411, 418, 835 N.E.2d 127 (2005). "[W]hen a defendant's *pro se* complaints of ineffective assistance are bald, ambiguous, and/or unsupported by specific facts, they come into conflict with the general rule that a defendant may not file *pro se* motions when represented by counsel." *Ward*, 371 Ill. App. 3d at 432, citing *People v. Rucker*, 346 Ill. App. 3d 873, 883, 803 N.E.2d 31 (2003).

Defendant argues that on several occasions during pretrial hearings he raised *pro se*

concerns about the effectiveness of his retained counsel. He maintains that the court was on notice that he sent two letters to the ARDC, inquiring about defense counsel's reputation and complaining about his performance. Defendant also maintains that the court was on notice that he was not speaking with counsel and that counsel did not review discovery materials with him.

We first note that defendant did not present his claim to the court in a written motion asking for the appointment of new counsel or asserting a claim of ineffective assistance of counsel. The case law is unclear whether a defendant must present his *pro se* ineffective assistance of counsel claim in a written motion to invoke a *Krankel* inquiry. See *Ward*, 371 Ill. App. 3d at 431, and cases cited therein. We may still dispose of defendant's claim because he did not raise a sufficient claim of ineffective assistance of counsel for the trial court to consider.

The record shows that defendant did not express to the court his concerns with counsel's performance. Rather, defense counsel informed the court that defendant had sent two letters to the ARDC inquiring about counsel's reputation and complaining about his performance. Counsel also informed the court that he had never had a complaint filed against him with the ARDC and that he responded to the letter. Although defendant was provided with complaint forms by the ARDC, he did not complete the forms and file a complaint against counsel. Even had he done so, the trial court would not have been required to conduct a *Krankel* inquiry. See *People v. Cunningham*, 376 Ill. App. 3d 298, 305, 875 N.E.2d 1136 (2007).

Also, defendant's statements that counsel was not speaking with him and that counsel did not review discovery materials with him were insufficient to present a colorable claim of ineffective assistance of counsel. *People v. Burks*, 343 Ill. App. 3d 765, 774, 799 N.E.2d 745

(2003). The record shows defendant was not speaking to counsel because counsel refused to tender to defendant police reports and other discovery materials. The court admonished defendant, on more than one occasion, that he was not entitled to those documents. The record also shows that, despite defendant's claim that counsel did not review discovery materials with him, counsel informed the court that he had an opportunity to speak with defendant.

Under these circumstances, defendant failed to raise a specific claim of deficient performance by his trial counsel or set out facts to support a claim of incompetence by his trial counsel. *Rucker*, 346 Ill. App. 3d at 883. We believe defendant did not present a colorable claim of ineffective assistance of counsel to trigger a *Krankel* inquiry required by *Moore* (*Rucker*, 346 Ill. App. 3d at 885) and that remand is unwarranted (*Burks*, 343 Ill. App. 3d at 777). See also *Ward*, 371 Ill. App. 3d at 433-34; *Radford*, 359 Ill. App. 3d at 418.

Defendant next contends that the trial court abused its discretion in denying his request for a continuance after he elected to proceed *pro se* because he presented good cause for the continuance; *i.e.*, he needed time to read the discovery materials, contact witnesses and conduct legal research. Defendant acknowledges that he failed to preserve this issue for review by not including it in a timely filed posttrial motion (See *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124 (1988)), but asserts we may review the issue for plain error.

Under the plain error exception to the waiver rule, a reviewing court may consider a forfeited error when the evidence is closely balanced or the error is so fundamental and of such magnitude that the accused was denied his right to a fair trial. *People v. Harvey*, 211 Ill. 2d 368, 387, 813 N.E.2d 181 (2004). The first step in plain error review is to determine whether error

occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403 (2007). Here, we find that it did not.

The granting or denial of a continuance is a matter resting in the sound discretion of the trial court, and a reviewing court will not interfere with that decision absent a clear abuse of discretion. *People v. Walker*, 232 Ill. 2d 113, 125, 902 N.E.2d 691 (2009). Whether there has been an abuse of discretion depends on the facts and circumstances in each case and there is no " 'mechanical test *** for determining the point at which the denial of a continuance *** to accelerate the judicial proceedings violates the substantive right of the accused to properly defend.' " *Walker*, 232 Ill. 2d at 125 (quoting *People v. Lott*, 66 Ill. 2d 290, 297, 362 N.E.2d 312 (1977)). The factors a court may consider in determining whether to grant a continuance request by a defendant in a criminal case include: the movant's diligence, the defendant's right to a speedy trial, the history of the case, the complexity of the matter, the seriousness of the charges, docket management, judicial economy and inconvenience to the parties and witnesses. *Walker*, 232 Ill. 2d at 125-26.

Here, we cannot say the trial court abused its discretion in denying defendant's request for a continuance on the eve of trial. The record shows the court's consideration of the factors set out above in denying defendant's request. The court noted the case was almost two years old, had implored the parties to "get this thing moving" and had cautioned defendant that it would not delay trial unnecessarily. The State informed the court that because of defendant's decision not to stipulate to DNA evidence arrangements had been made for expert witnesses to fly in from out of state in lieu of trial. Given the procedural history of the case and defendant's wavering to

proceed *pro se*, the court found defendant's tactics dilatory. After a lengthy exchange with the court, defendant acknowledged that he knew he was going to trial "today." The court explained to defendant that it had repeatedly admonished him about the pitfalls for self-representation and that he would be held to the same standards as a lawyer. The court noted that it "would have held [his] lawyer to trial today." We find no error in the trial court's exercise of discretion in denying defendant's continuance request.

Defendant finally contends that the trial court deprived him of his constitutional right to counsel when it failed to appoint counsel to represent him for posttrial motion hearings and sentencing. Defendant claims that he repeatedly expressed to the court his desire for counsel's assistance during this "new and critical stage of proceedings." He maintains that despite his wish to revoke his invocation of the right to self-representation, the court did not appoint counsel and thereby deprived him of his constitutional right to counsel. We find this argument contradicted by the record.

A defendant's waiver of the right to counsel carries through to all subsequent proceedings unless: (1) the defendant later requests counsel or (2) other circumstances suggest that the waiver is limited to a particular stage of proceedings. *People v. Baker*, 92 Ill. 2d 85, 91-92, 440 N.E.2d 856 (1982). Although defendant told the court that he would retain counsel before posttrial hearings and sentencing, he did not ask the court to appoint counsel. The court granted defendant numerous continuances to retain counsel and prepare posttrial motions. Defendant failed to do so. The court also extended by two weeks defendant's period for filing a motion for a new trial. After failing to retain counsel, defendant informed the court that he was not hiring an

attorney. On the next court date, defendant indicated that he had retained counsel and the case was passed for the court to contact defense counsel. When the case was recalled, the court noted that defendant had not retained counsel and asked him if he would prepare a posttrial motion if given another continuance. Defendant responded "[w]hatever you're fixing to do today, go ahead and do it." Under these circumstances, defendant waived his right to counsel. See *People v. Johnson*, 119 Ill. 2d 119, 147, 518 N.E.2d 100 (1987).

In reaching this conclusion, we have considered *People v. Palmer*, 382 Ill. App. 3d 1151, 889 N.E.2d 244 (2008), cited by defendant in support of his argument and find it distinguishable. Here, unlike *Palmer*, defendant did not ask the court to appoint counsel during posttrial proceedings. *Palmer*, 382 Ill. App. 3d at 1162.

We affirm the judgment of the trial court.

Affirmed.