2012 IL App (1st) 103746-U
(Consolidated with 11-0138, 11-0139, 11-0140, 11-0141 and 11-3630)

FIRST DIVISION
DATE: NOVEMBER 28, 2012

No. 1-10-3746

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. 09 MC1 440434
	)	
REFUGIO DELGADO,	)	Honorable
	)	James Patrick Murphy,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Karnezis and Rochford concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgments entered on defendant's convictions for violating an order of protection affirmed over his allegation that the court failed to conduct a *Krankel* inquiry into his post-trial claim.

¶ 2 Following a hearing in October 2010, defendant Refugio Delgado was found guilty of violating his supervision by violating an order of protection in four cases (Appeal Nos. 1-10-3746; 1-11-0138; 1-11-0140; 1-11-0141) and sentenced to 200 days in jail. Following a November 2010 bench trial, defendant was convicted of violating an order of protection in two cases (Appeal Nos. 1-11-0139 and 1-11-3630) and sentenced to 300 days in jail. All of

defendant's sentences were ordered to be served concurrently. On appeal from these six cases, which have been consolidated for review, defendant contends that the trial court erred by not conducting a *Krankel* inquiry into certain statements he made in allocution, which he characterizes as a claim of ineffective assistance of counsel. See *People v. Krankel*, 102 Ill. 2d 181 (1984). We disagree, and affirm.

¶ 3 The record shows that defendant was convicted of four counts of violating supervision because he repeatedly called his wife, Petra Villarreal, from whom he was separated, on August 25, 2010, in violation of an already existing order of protection. The record also shows that defendant was convicted of two counts of violating the order of protection in that he harassed Villarreal by calling her on June 30, July 1, and August 26, 2010.

¶ 4 The evidence from the October 2010 hearing and the November 2010 bench trial showed that Villarreal testified that on the evening of August 25, 2010, she received about 10 to 14 calls from defendant. Villarreal answered a few of the calls and told defendant to leave her alone. Villarreal's boyfriend, Derris Myles, testified that he answered one of the calls on August 26, told defendant to leave them alone, but did not threaten anyone. Defendant testified that he spoke with Myles on the phone on August 26, and Myles threatened him, Villarreal, and his daughter Maria. Defendant called the police to prevent Villarreal and Maria from being harmed by Myles. Police arrived at Villarreal's residence and asked her if she was safe because there was a call that someone in the building was being raped. When Villarreal stepped outside, she saw defendant. Villarreal also testified that between June 30 and July 1, 2010, she received 15 to 20 calls from defendant.

¶ 5 The statements which form the basis of defendant's *Krankel* claim were made at the sentencing hearing, and are emphasized in the quote below. The trial court asked defendant if he had anything to say and defendant responded:

"Yes, your honor. I have plenty to say. Your Honor, the night of October 31st to November 1st, I was accosted in the holding area where I am at by the nephew of the person that my wife has been giving rights to. I have been harassed by him and his fellow gang members. I sustained a head injury and injuries to my ribs. I had crack ribs and I went to the medical unit yesterday to get X-rays. I am on medication. I am asking for a mistrial because *a lot of evidence was not presented over my objection. On the 25th I was with my friend that can be proved watching the White Sox game*. So I don't know where all these alleged phone calls are coming from when I was dropped off shortly before I tried to communicate with --

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Your Honor, again there is a lot of evidence that I wanted to present. I request again a mistrial again for the reason because of the injuries I sustained. I was not able to speak in length with my attorney prior to this hearing to discuss all the evidence I wanted presented. I think there is a lot of witnesses that need to be heard from that are going to clearly contradict my wife's testimony, and the testimony of the person that killed a friend of mine. Anything -- as far as the alleged phone call or whatever, the Judge has not been able to set anything specific content in that recording that will be a hostile to any practicing Catholic. I think that is very pertinent that my wife's philosophy has said if I repeat something so many

times she won't believe me. She can make herself cry at all. Unfortunately I cannot do that your Honor. Her testimony is just incredible to me. I did not know that she reference this person as her boyfriend until the last time I was in court here. There is news to me. Again, there is ample evidence. Again, I ask -- At the previous session with you, your Honor, you said that you were going to allow me to have access to all of the divorce proceedings which would give me very very strong evidence of the things I would argue for. That has been denied to me. I have requested access to the law library. I have been incarcerated 10 consecutive weeks. I have only been allowed to go twice even though State law requires at least once a week. Every single instance of my arrest is under question. I am requesting the official police reports, every single one, and the first one. For example, I was arrested for praying, not in front of my house, but a house and *** a half away, and the State law clearly identified a violation of order of protection -- I need to do this. I need to do this. I am sorry. That was clearly a false arrest. They had cited me with battery which is very important because at the beginning if battery is cited, even if it is struck later with no basis for it, then that puts an idea in the Judge that this person may be dangerous. So I didn't know that that was one of the things that I was charged for until I received a letter from one of the representatives from my wife as far as her having full ownership of the house or trying to sell the house that I had

> already bequeath to our oldest daughter.
>
> One of the other times that I was arrested, she had claimed that I had violated the order of fact when, in fact, she was violating the order of protection by living in our residence. The record will show that Judge Fernandez said that if she lived in it -- that there was no order of protection. So, in fact, there is no order of protection from 8836. Those papers I was never given anything saying that there was a change of address. There is no proof of that with the address that was on the original order of protection was 8629 Escanaba. My wife testified I was knocking on her door. That is possibly. Where she lives, the testimony from my daughter is there is a building on the front and a building in the second. She is describing it as a single-family unit. It is a multiple unit. I know the owner of where she is supposed to be living at. That is the future father and mother-in-law of my daughter. I am sorry to denounce her in my statement, but again I sustained a serious head injury November 1st at the hand of the nephew of the person that my wife is driving around and two other gang members. It is documented. It is on video, and I want to tell the truth. I want the other information. I am asking for a mistrial, your Honor."

¶ 6 At no time during the course of this lengthy statement did defendant claim that defense counsel was ineffective. Following defendant's statement, the trial court indicated that it had listened to the evidence, considered the facts in aggravation and mitigation, and the arguments of the attorneys. The trial court then sentenced defendant to 300 days in jail on each of the two

counts of violation of the order of protection, to be served concurrently with his 200-day sentence for violating supervision.

¶ 7 On appeal, defendant contends that the trial court erred by not conducting a *Krankel* inquiry based on his statements that evidence was not presented, *i.e.*, that there were several witnesses that would have contradicted Villarreal's testimony. The State responds that the trial court's duty to conduct an inquiry under *Krankel* was not triggered where defendant's oral motion "did not allege with any semblance of specificity problems that he may have had with his attorney" and "never complained about the representation he received." The State further responds that a *Krankel* inquiry was not warranted where defendant was represented by private counsel, citing *People v. Pecoraro*, 144 Ill. 2d 1 (1991). Defendant's claim presents a question of law, which we review *de novo*. *People v. Taylor*, 237 Ill. 2d 68, 75 (2010).

¶ 8 The supreme court's decision in *Krankel* has led to the rule that where defendant raises a *pro se* post-trial claim of ineffective assistance of counsel, the trial court should examine the factual basis of his claim. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). If the court determines that the claim lacks merit or pertains solely to trial strategy, the court need not appoint new counsel and may deny defendant's motion. *Moore*, 207 Ill. 2d at 78. If the court finds possible neglect of the case, however, new counsel should be appointed. *Moore*, 207 Ill. 2d at 78.

¶ 9 In this case, the record shows that after defendant was found guilty, he orally requested a mistrial based on his claims that a substantial amount of evidence was not presented on his behalf, and he was unable to speak at length to his attorney due to injuries he sustained. He specifically claimed that several unidentified witnesses, including a friend he was with on August 25, 2010, would have contradicted Villarreal's testimony.

¶ 10 Although the pleading requirements for a *pro se* allegation of ineffective assistance of counsel are somewhat relaxed, defendant still must satisfy minimum requirements in order to

trigger a *Krankel* inquiry by the trial court. *People v. Bobo*, 375 Ill. App. 3d 966, 985 (2007). Here, defendant never expressly claimed that counsel was ineffective, nor did he seek to replace his private counsel who continued to represent him through sentencing. As the State correctly points out, defendant's allocution consisted of an "uninterrupted deluge of topics ranging from his persecution for being a practicing Catholic, to his alleged injuries at the hands of his ex-wife's boyfriend's nephew." Moreover, at no time did defendant claim his complaints were his counsel's fault or the result of his attorney's neglect. If defendant's rambling statements were deemed sufficient to require a *Krankel* hearing, few statements would be insufficient. See *Taylor*, 237 Ill. 2d at 77. Defendant's statements thus did not sufficiently raise a claim of ineffective assistance of counsel. Under similar circumstances, the supreme court has found that application of *Krankel* was not warranted. See *Pecoraro*, 144 Ill. 2d at 15; *People v. Shaw*, 351 Ill. App. 3d 1087, 1092 (2004).

¶ 11 In *Taylor*, 237 Ill. 2d at 73-74, the defendant stated in allocution that if he knew about the possible penalties he would be subject to after trial, he would not have rejected the State's plea offer. The supreme court found that the defendant's statement at sentencing was insufficient to require a *Krankel* inquiry where he never specifically informed the court that he was complaining about his attorney's performance, and that it was therefore unnecessary to reach defendant's argument regarding the viability of *Pecoraro*. *Taylor*, 237 Ill. 2d at 77. We reach the same conclusion here with regard to defendant's statement to the court.

¶ 12 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 13 Affirmed.