SECOND DIVISION
August 26, 2014

No. 1-11-2818

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. 08 CR 1804
	)	
WILLIAM SANCHEZ,	)	Honorable
	)	Domenica A. Stephenson,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Harris and Justice Simon concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Trial court's denial of defendant's *pro se* post-trial motion alleging ineffective assistance of counsel without appointing new counsel was not manifestly erroneous; defendant's conviction and sentence for first degree murder affirmed.

¶ 2 Following a jury trial, defendant William Sanchez was convicted of first degree murder and sentenced to 60 years' imprisonment, a term which included a 25-year firearm enhancement. On appeal, defendant contends that he made a preliminary showing that his trial counsel neglected his case, and, as a result, his cause must be remanded for the appointment of new

counsel to assist him with his *pro se* claim of ineffective assistance of counsel.

¶ 3 The charges in this case arose from the gang-related, fatal shooting of Joseph Perez during the early evening hours of November 1, 2007, on the northwest side of Chicago. At trial, Marco Garcia testified that he had known the victim since fourth grade and attended Steinmetz High School with him. Garcia acknowledged that he was currently incarcerated for possession of a stolen motor vehicle and attempted aggravated battery convictions. He also acknowledged that he was formerly a member of the Milwaukee Kings gang with Nicholas Van Pelt, Adam Lebron, Enrique Ruiz, Anthony Martinez, and the victim, and that he "hung out" with the gang at Riis Park on Fullerton and Austin Avenues. In the summer of 2007, Garcia met defendant, who was nicknamed "Shorty," and who became the leader of the Milwaukee Kings gang faction.

¶ 4 On October 31, 2007, Garcia and the victim went to Riis Park where they were met by defendant and Lebron. Lebron handed Garcia a .45 caliber handgun, and Garcia and the victim walked around the park protecting their area from other gangs while passing the gun back and forth. Defendant told them to wait for a 9 millimeter handgun to arrive at the park, but Garcia and the victim had different plans, and Garcia told this to defendant. Although they were ordered to stay at the park until the other gun arrived, they left when defendant left to use the washroom.

¶ 5 During cross-examination, Garcia stated that he and the victim had discussed breaking away from the Milwaukee Kings gang and forming their own gang, and also discussed this possibility with fellow gang member Lebron. They said that they were going to go on their own and be the "renegades," and did not care what defendant said. Garcia did not want defendant as his leader because he was giving everyone "violations."

¶ 6 Anthony Martinez testified that he was a member of the Milwaukee Kings. On November 1, 2007, he met defendant at Ruiz' house, then left with him in a blue SUV. They drove by an alley near Lebron's house, and saw the victim, Jordan, Lebron, and Van Pelt in the alley. Martinez and Ruiz drove off in the blue SUV, while defendant left with Van Pelt and the victim in a green Chrysler. They all drove to Garcia's house, then picked up Giovanni Amador, who entered the green Chrysler, drove to an alley near Fullerton and Marmora Avenues, where they exited their cars, and where the victim was supposed to get "violated," *i.e.*, beaten up for a certain amount of time because there was a missing gun. However, after Martinez heard six gunshots, and saw defendant standing over the victim and shooting him, then telling everyone to leave, he drove off in the blue SUV with Martinez and Ruiz. Shortly thereafter, defendant called Van Pelt and Amador, and told them that he knew who was present and that if he got caught, they were "going to get dealt with."

¶ 7 Martinez was shown a DVD from a Chicago police camera. Martinez testified that it showed both the blue SUV and the green Chrysler being driven into the alley in question with defendant, the victim, Van Pelt and Amador in the green Chrysler, and Martinez and Ruiz in the blue SUV.

¶ 8 Maria Torres testified that she dated defendant in November 2007, and owned a blue SUV which she allowed him to use. On November 1, 2007, defendant picked her up from work at 6 p.m., and when she got in the car, she noticed a smell of bleach. Defendant told her to drive because the "police is too hot outside," and when they arrived at her home, defendant immediately washed his hands. Defendant had never previously done that after driving her home, and he left within five minutes. After that day, she spoke to him a couple of times over

the telephone, but eventually stopped talking to him, and learned that he was charged with first degree murder.

¶ 9 While defendant was incarcerated, he wrote Torres a letter stating that he knew for a fact that he picked her up from work at 5:37 p.m. on the day in question, and that beforehand he was at her house but was told by her mother to pick her up. He asked her to sign an affidavit and not to mention in it that there was bleach on his hands. Torres stated that defendant did not hang out with her mom on November 1, 2007.

¶ 10 Nicholas Van Pelt acknowledged that he was convicted of possession of a stolen motor vehicle, that he was a friend of the victim, and a member of the Milwaukee Kings. At 5:11 p.m. on November 1, 2007, he was in his girlfriend's green Chrysler with defendant, the victim, and Amador while other gang members were in the blue SUV. They drove to an alley between Marmora and Mason Avenues to discipline the victim because they believed that he had taken the .45 caliber handgun. While in the alley, Van Pelt heard gunshots, and fled. When he turned around, he saw the victim on the ground, and defendant pointing his gun in the direction of the victim and shooting. Van Pelt heard about eight gunshots, and then they all left. Defendant subsequently called and told Van Pelt and Amador not to say anything about what happened.

¶ 11 Enrique Ruiz testified that at 5:11 p.m. on November 1, 2007, he drove to an alley near Fullerton and Marmora Avenues with defendant, Amador, Van Pelt, Martinez, and the victim. While they were standing in the alley talking, Ruiz saw defendant pull out a gun, point it at the victim's head and shoot him eight times. The victim dropped to the ground, and defendant ordered everyone to get back in their vehicles, and told them not to say anything, or they would be "dealt with."

¶ 12 When the case commenced on the following day, defense counsel advised the court that defendant had brought to their attention, in relevant part, that the deputies sitting behind him carry shackles with them as they bring him to and from the courtroom. The State responded that although defendant is brought out in shackles because he was charged with an aggravated battery for an incident during his incarceration, at no time have they been in front of the jury. Defense counsel responded that their client brought this issue to their attention and that in the course of the trial "there are things that we're focusing on, and I think it's one of the things that just escaped me."

¶ 13 Counsel explained that when defendant is brought out, the noise from the chains is loud. The court noted, however, that defendant is always unshackled when the jurors come out, then noted from different vantage points in the jury box, that it could see things on the floor, but could not distinguish as to whether there were shackles or handcuffs. The court concluded that there was no evidence suggesting that defendant was in custody, especially where the court and one of the defense attorneys were between defendant and the sheriffs.

¶ 14 The court then asked the sheriffs to remove the shackles from the floor, but found that defendant was not prejudiced by their presence. The court also asked defense counsel if it was correct that the jury never saw defendant shackled; they responded, "[t]hat is my recollection," and that they were just trying to be "preventative."

¶ 15 The trial resumed, and forensic evidence was presented that the victim died as a result of 10 gunshot wounds. Chicago police detective William Burke testified that he investigated this murder, and viewed a police pod camera from the corner of Fullerton and Marmora Avenues. He viewed photographs taken from this camera at 5:11 p.m. on November 1, 2007, which

showed two vehicles, a blue SUV and a green Chrysler, turn into the nearby alley. The blue SUV was owned by Torres who was associated with defendant, and the green Chrysler was registered to a person associated with Van Pelt.

¶ 16 The State then rested its case-in-chief, and defense counsel informed the court that they did not plan on calling any witnesses. The court asked defendant if he had discussed this with counsel, and he indicated that he did. When defendant was asked if he agreed with not calling any witnesses, he stated, "[y]es."

¶ 17 Following deliberations, the jury found defendant guilty of first degree murder. Counsel then filed a motion for a new trial, and at the proceeding on this motion, defendant maintained that he was receiving ineffective assistance of counsel, and wanted to hire private counsel. The court advised defendant that if he was seeking a *Krankel* hearing, he needed to write down his complaints regarding counsel. The court granted defendant a four-week continuance for status, and an additional week for a *Krankel* hearing.

¶ 18 Defendant subsequently filed a *pro se* motion alleging ineffective assistance of counsel. He claimed, in relevant part, that his attorneys were ineffective for failing to subpoena and investigate Adam Lebron, who would have testified that Nicolas Van Pelt desired to "eradicate[]" defendant from the Milwaukee Kings gang, and that he tried to convince Van Pelt not to branch out and kill defendant. Lebron would have further testified that he knew that the victim was trying to kill defendant, and that October 31, 2007, was the date set for "them" to commit treason against defendant. Lebron would have further testified that he, the victim, Robert Doe, and Garcia all conspired to "eradicate" defendant as their chief. He further alleged that his attorneys were ineffective for failing to place the shackles out of the jury's sight so that

the jurors would not be prejudiced against him.

¶ 19 At the *Krankel* hearing, defendant informed the court that he had asked his attorneys to subpoena and investigate Lebron, who told police that at the time of the shooting he was at work. He claimed that if Lebron had been investigated, he would have testified that a conspiracy existed among the State's witnesses to eradicate him from the Milwaukee Kings gang due to his disciplining gang members. When the court asked defendant how he knew Lebron would testify to such, defendant told the court that he was in prison with Lebron and Lebron said he would sign an affidavit regarding the reason why people testified against him. When the court asked defendant if he was "just speculating" as to what Lebron would testify to, he responded, "[y]es. I am speculating on what he would have testified to." He further stated that Lebron knew that other gang members planned to assassinate him. When the court told defendant that he must know for a fact what Lebron would testify to, defendant stated that he did, and that he had an affidavit with him, but then noted that he did not have the affidavit.

¶ 20 Defendant further claimed that his attorneys were ineffective for failing to mention his concern over being shackled in plain view of the jurors. He maintained that he brought this to their attention at the beginning of trial and on the second day of trial, but they did not tell the court about it until the third day of trial. The court noted that defendant was never escorted out of the courtroom in the presence of the jury.

¶ 21 In response, counsel pointed out that Lebron was on the State's witnesses list, and that they reviewed his grand jury testimony and his statements to the police. They explained that Lebron did not state that defendant was not present during the incident, and did not see him that day, but that he heard the shots fired and fled. Their decision not to call Lebron was based on

trial strategy because he had nothing to add and "would potentially open the door" to incriminating evidence. Counsel further informed the court that defendant gave them the name of Anthony Martinez as the person who knew of a conspiracy against him, but when they interviewed Martinez, he provided information that was inconsistent with what defendant had told them. Counsel told the court that they brought the issue of the shackles to the court's attention the same day defendant told them about it. The State then noted that the court indicated from its different vantage points in the jury box that it could not see the shackles, and the court agreed.

¶ 22 During the proceeding, defendant jumped out of his seat, swore at the court, and had to be carried out by two sheriffs. The court held him in direct contempt of court, and continued the matter. After a hearing, the court denied his request to remain unshackled throughout the remainder of the proceedings, and continued the *Krankel* hearing for a ruling.

¶ 23 The court subsequently denied defendant's *pro se* motion without appointing new counsel, concluding that defendant did not receive ineffective assistance of counsel. In reaching that conclusion, the court found that Lebron's proposed testimony was speculation and hearsay, and would have been cumulative to the testimony presented at trial, and that the decision not to call Lebron was based on trial strategy where his testimony would potentially open the door to incriminating evidence. The court also noted that defendant had agreed with his trial attorneys' decision not to call any witnesses. The court further noted that as soon as defendant told his attorneys about the shackles, they brought it to the court's attention, and that defendant was never escorted to the courtroom in the jury's presence. The court thus determined that defendant's claims lacked merit, or involved matters pertaining to trial strategy, and were either unsupported

conclusions or spurious.

¶ 24 On appeal, defendant contends that he made a preliminary showing that his trial attorneys neglected his case. He, therefore, maintains that his cause must be remanded for the appointment of new counsel to assist him in his *pro se* claim of ineffective assistance of counsel.

¶ 25 New counsel is not automatically required in every case where defendant brings a *pro se* motion alleging ineffective assistance of trial counsel. *People v. Taylor*, 237 Ill. 2d 68, 75 (2010). When a defendant presents a *pro se* post-trial claim of ineffective assistance of counsel, the trial court should first examine the factual basis for defendant's claim, *i.e.*, conduct a *Krankel* hearing. *Taylor*, 237 Ill. 2d at 75. If the court determines that the claim lacks merit or pertains only to matters of trial strategy, new counsel need not be appointed and the court may deny the *pro se* motion. *People v. Chapman*, 194 Ill. 2d 186, 230 (2000). If, however, the *pro se* allegations show possible neglect of the case, new counsel should be appointed. *Taylor*, 237 Ill. 2d at 75. The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the *pro se* allegations of ineffective assistance of counsel (*People v. Moore*, 207 Ill. 2d 68, 78 (2003)); and, in this case, where the trial court made a determination on the merits of defendant's claim, we review the conduct of the trial court under the manifestly erroneous standard (*People v. Walker*, 2011 IL App (1st) 072889-B, ¶33; *People v. Dixon*, 366 Ill. App. 3d 848, 852 (2006); *People v. Young*, 341 Ill. App. 3d 379, 382 (2003)).

¶ 26 Defendant first maintains that his trial attorneys were ineffective for failing to interview and call Lebron as a witness where he would have provided evidence showing that the State's witnesses conspired to "eradicate" him. The record shows, however, that counsel investigated the issue of whether other gang members conspired against him, and during their cross-

examination of Garcia, brought out the potential conspiracy when Garcia testified that he, the victim, and Lebron discussed "screw[ing]" defendant and forming their own gang. Thus, the testimony from Lebron to this effect would have been cumulative, and defendant's claim that counsel was ineffective for failing to investigate and interview Lebron, in context, does not warrant appointment of counsel with respect to his *pro se* post-trial motion. *People v. Nitz*, 143 Ill. 2d 82, 134 (1991); *People v. Hayes*, 2011 IL App (1st) 100127, ¶42.

¶ 27 Moreover, defense counsel informed the court that the decision not to call Lebron was a matter of trial strategy where, after reading his grand jury testimony and his statements to police, they determined that he had nothing to add, and would potentially open the door to incriminating evidence because he did not indicate that defendant was not present during the shooting. These circumstances clearly pertain to matters of trial strategy, which do not require the appointment of new counsel. *Moore*, 207 Ill. 2d at 78; *People v. Ward*, 371 Ill. App. 3d 382, 433 (2007).

¶ 28 Defendant, nonetheless, contends that his counsel could not have made a strategic decision not to interview Lebron since they had not contacted him, citing *People v. Truly*, 230 Ill. App. 3d 948, 953-54 (1992). In *Truly*, counsel made no contact with the witnesses *and* did not know what the content of their testimony might be. (Emphasis added.) *Truly*, 230 Ill. App. 3d at 954. Here, by contrast, defense counsel did not interview Lebron, but they were aware of his statements to police and his grand jury testimony and determined that his potential testimony would not be helpful, and would open the door to potentially incriminating evidence. *Truly* is thus readily distinguishable from the case at bar.

¶ 29 In addition, defendant's claim that he wanted his counsel to interview and call Lebron is contradicted by the record which shows that he informed the court that he agreed with the

decision of his counsel not to call any witnesses. Counsel also told the court that defendant told them another witness, Martinez, knew of the conspiracy, not Lebron, and when they interviewed Martinez, his information was inconsistent with what defendant had told them on the subject.

¶ 30 Defendant further maintains that his trial attorneys were ineffective for failing to make a timely request that his shackles be removed from the plain view of the jury on the first day of trial. We observe, however, that defense counsel informed the court at the *Krankel* hearing that they brought this matter to the attention of the court on the same day defendant advised them of it. Contrary to defendant's contention, his counsel did not admit that defendant brought the issue of the shackles to their attention on the first day of trial, that they forgot about it until the third day of trial and then advised the court of this issue.

¶ 31 Furthermore, the court specifically noted that defendant was brought in and out of the courtroom outside the presence of the jury. The court also went into the jury box, and from various viewing areas determined that it could see there was something on the floor by the sheriffs, but could not tell if it was shackles or handcuffs. In any event, it is clear that the presence of the shackles in the courtroom to this extent did not contribute to defendant's guilt or prejudice him in any way where the evidence against him was overwhelming in that three eyewitnesses testified to seeing him shoot the victim multiple times. *People v. Robinson*, 375 Ill. App. 3d 320, 333-34 (2007).

¶ 32 In passing, we observe that even if the shackles were visible to the jury, there was no error in having them in the courtroom where defendant was not wearing them, and had committed an aggravated battery while incarcerated, prompting the need for the shackles in the first place. See generally *Deck v. Missouri*, 544 U.S. 622, 633 (2005) (security concerns may

call for shackling even if visible to the jury). It is the wearing of restraints in the jury's presence that can lead to prejudice, and, here, there was no indication that defendant was wearing shackles while in the jury's presence. *People v. Tedrick*, 377 Ill. App. 3d 926, 928, 929-30 (2007); *People v. Beaty*, 377 Ill. App. 3d 861, 887 (2007); see also *People v. Urdiales*, 225 Ill. 2d 354, 415-19 (2007) (no error found where defendant was not seen by the jury wearing shackles, and the trial court made findings sufficient to justify the use of physical restraints). In fact, defense counsel conceded to the trial court that the jury never once saw defendant shackled, and that they were just taking "preventative" measures.

¶ 33 For these reasons, we conclude that the trial court's denial of defendant's *pro se*, post-trial motion alleging ineffective assistance of trial counsel without appointing new counsel, was not manifestly erroneous, and we, accordingly, affirm the judgment of the circuit court of Cook County to that effect.

¶ 34 Affirmed.