

No. 1-13-1309

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 11 CR 4555
)	
MICHAEL BOLDEN,)	Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justices LAMPKIN and ROCHFORD concurred in the judgment.

O R D E R

¶ 1 *Held:* The trial court conducted no inquiry regarding defendant's *pro se* posttrial motion alleging ineffective assistance of counsel, requiring a remand for the limited purpose of a preliminary investigation pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984).

¶ 2 Following a jury trial, defendant Michael Bolden was found guilty of murder during which he personally discharged a firearm, and sentenced to natural life in prison as a habitual criminal offender pursuant to section 5-4.5-95 of the Unified Code of Corrections (the Code) (730 ILCS 5/5-4.5-95 (West 2010)). On appeal, defendant contends that the trial court erred

when it failed to conduct any inquiry into his *pro se* posttrial motion alleging that his trial counsel was ineffective, and that the cause must therefore be remanded for compliance with *People v. Krankel*, 102 Ill. 2d 181 (1984). We affirm, but remand for a *Krankel* inquiry.

¶ 3 Defendant's arrest and prosecution arose from the January 2011 shooting death of the victim Michael Robinson. The evidence at defendant's trial established, through a surveillance video and the testimony of, *inter alia*, defendant, his cousin Emerson Watson and Watson's girlfriend Lorraine Pickens, that defendant shot the victim after he called defendant a "snitch."

¶ 4 Specifically, Watson and Pickens testified that they drove defendant to have his taxes prepared. Watson drove the car and defendant sat in the back seat behind him. After defendant's taxes were complete, the group got back into Watson's car and Watson began to drive defendant home. However, Watson stopped so that defendant could go to a liquor store. Watson and defendant went inside while Pickens stayed in the car.

¶ 5 Watson testified that as they left the store, defendant said "loose squares," which was a way to ask if anyone was selling loose cigarettes. The victim responded and defendant then bought some cigarettes. When they got back to the car, defendant reached inside under the driver's seat and pulled out a weapon. Watson described it as "sort of a rifle." Defendant told Watson not to leave and that if he left, defendant was going to turn around and "fire the car up." Pickens testified that as defendant pulled out the gun he told her to "shut the f*** up" and that they had better not leave without him or he would "fire the f*** car up."

¶ 6 Watson "sort of" followed defendant to see what defendant was going to do, but lost sight of defendant when defendant turned the corner. He turned around so that he and Pickens could leave. He then heard a gunshot and defendant came running around the corner. When Pickens

saw defendant coming back holding a gun, she ran away. Watson got into the car and drove off with defendant. Although defendant then told Watson to go through a red light, Watson refused, so defendant got out of the car. He took the gun. The next day, defendant phoned Watson and told him to "be cool" and that everything was going to be "all right." Defendant also told Watson to tell Pickens to keep her mouth shut. Watson and Pickens subsequently retained an attorney, and spoke with police.

¶ 7 Defendant testified that he did not have a gun when he got into Watson's car. As he walked into the liquor store, he saw the victim standing outside. The victim accused him of being a "snitch." When defendant left the store, he purchased cigarettes from the victim. Then the victim "talked about" why he called defendant a snitch. Defendant went to Watson's car and got the gun he had seen when he got into the car. Defendant denied telling Pickens to shut up and Watson not to leave. Now armed, defendant went back to talk to the victim to "resolve" the matter "before it got out of hand." He knew that if he left, things would "escalate." When he turned the corner, the person with the victim yelled that defendant had a gun and the victim grabbed at his "lower coat." Defendant responded by shooting the gun. The victim then fell over.

¶ 8 At trial, defendant explained that he was afraid for his life because he had seen the victim with guns on "several occasion" and that the victim was known to carry guns. He did not mean to kill the victim; rather, he wanted to fire a "warning shot." Defendant had previously seen the victim in an "altercation" in a pool hall during which he saw the victim "pistol-whip" a man. The victim had also previously asked defendant if he knew anyone who had nine-millimeter shells. When defendant asked why, the victim lifted up his jacket to show a gun.

¶ 9 The jury ultimately found defendant guilty of first degree murder. The jury also found that defendant personally discharged a firearm during the offense of first degree murder which proximately caused the death another person.

¶ 10 At defendant's March 28, 2013 sentencing hearing, the trial court heard evidence in aggravation and mitigation. Prior to imposing sentence, the court asked defendant if he wished to address the court. Defendant declined. The court then imposed a sentence of natural life in prison pursuant to the habitual criminal statute (see 730 ILCS 5/5-4.5-95 (West 2010)).

¶ 11 Also on March 28, 2013, defendant filed a *pro se* motion for a new trial alleging ineffective assistance of counsel based upon, *inter alia*, defense counsel's failure "to interview any of the witnesses" before trial and to "call certain State witnesses" at trial. The motion was stamped "received" on March 28, 2013, and "filed" on April 2, 2013. At an April 9, 2013 hearing, the trial court denied defense counsel's motion to reconsider sentence. There is no indication in the record that defendant was present at this hearing.

¶ 12 Defendant's sole issue on appeal is that the trial court erred by failing to conduct a preliminary inquiry into his *pro se* posttrial claims of ineffective assistance of counsel as required by *People v. Krankel*, 102 Ill. 2d 181 (1984), and requests that the cause be remanded for that purpose. He makes no mention of his conviction or sentence of natural life in prison. Rather, defendant argues that although he filed a written *pro se* motion listing several complaints about defense counsel, the trial court never mentioned the motion and did not inquire into his claims.

¶ 13 The State responds that a *Krankel* inquiry was not required because defendant failed to bring his allegations to the attention of the trial court. Specifically, the State argues that there is

no mention of this motion by either defendant or the trial court at defendant's sentencing hearing and the motion is not noted on the "half-sheet." The State further argues that defendant's conclusory claims were insufficient to trigger an initial inquiry.

¶ 14 Pursuant to *Krankel* and its progeny, when a defendant makes a *pro se* posttrial allegation of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. *People v. Moore*, 207 Ill. 2d 68, 78-79 (2003). The main concern for a reviewing court is "whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *Id.* at 78. The court may not ignore a defendant's claims. *People v. Vargas*, 409 Ill. App. 3d 790, 801 (2011). If the trial court fails to conduct the necessary preliminary examination, the cause must be remanded for the limited purpose of allowing the trial court to conduct the required preliminary investigation. *Id.* at 81.

¶ 15 Here, defendant's *pro se* motion was stamped "received" on March 28, 2013, and "filed" on April 2, 2013 and the State admits there was no discussion on the record regarding this *pro se* motion at the April 9, 2013 hearing at which the trial court denied defense counsel's motion to reconsider sentence and there is no indication as to defendant's presence.

¶ 16 The State, however, urges us to follow *People v. Zirko*, 2012 IL App (1st) 092158, ¶¶ 69-72, and *People v. Allen*, 409 Ill. App. 3d 1058, 1077 (2011), both of which held that the defendant failed to timely raise his *pro se* ineffective assistance of trial counsel claim before the trial court and, thus, forfeited the *Krankel* issue. In both of those cases, the trial court was unaware of the defendant's *pro se* ineffective assistance of trial counsel claims. However, in those cases, the record showed that the defendants actually appeared before the court and had the

opportunity to raise their *pro se* motions before the trial court. That does not appear to have occurred in this case.

¶ 17 Here, defendant's *pro se* motion was "received" on the same day that sentence was imposed, but not "filed" until several days later. It is unclear from the record whether the motion was presented to the clerk before or after the sentencing hearing. In any event, the *pro se* motion was not stamped "filed" until after defendant's sentencing hearing and it does not appear that defendant attended the only hearing conducted after his *pro se* motion was filed. Based upon the record before this court, defendant brought his *pro se* posttrial claim of ineffective assistance of counsel to the attention of the trial court as best he could under the circumstances. Because it appears that defendant was not present at the final hearing and the trial court did not conduct any inquiry into the basis of defendant's *pro se* motion, we must remand the matter for the limited purpose of allowing the trial court to conduct the required preliminary investigation. *Moore*, 207 Ill. 2d at 81. If the trial court determines that defendant's ineffective assistance of counsel claim lacks merit, the court may then deny the motion and leave defendant's conviction and sentence standing. *Id.* In that event, defendant retains the right to appeal his ineffective assistance of counsel claim. *Id.* at 81-82. See also *Krankel*, 102 Ill. 2d at 189.

¶ 18 Accordingly, we affirm the judgment of the circuit court of Cook County, but remand the cause for further proceedings consistent with this order.

¶ 19 Affirmed and remanded with directions.