2013 IL App (4th) 111137-U

NO. 4-11-1137

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 24, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
LAWERENCE L. OAKLEY,	)	No. 07CF1272
Defendant-Appellant.	)	
	)	Honorable
	)	Leslie J. Graves,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court was not required, posttrial, to revisit the defendant's pretrial claims of ineffective assistance of counsel.

¶ 2 In November 2007, the State charged defendant, Lawerence L. Oakley, by information with six counts of predatory criminal sexual assault of a child. 720 ILCS 5/12-14.1(a)(1) (West 2006). Prior to trial, in March 2009, defendant filed a *pro se* document entitled "Motion to Dismiss Counsel," stating, among other things, defense counsel refused to conduct an investigation into defendant's case. In April 2009, the trial court reviewed and denied defendant's motion.

¶ 3 In September 2011, a jury found defendant guilty of four counts of predatory criminal sexual assault of a child and one count of attempt (predatory criminal sexual assault of a child). In December 2011, the trial court sentenced defendant to consecutive sentences of 16

years in prison for each predatory criminal sexual assault of a child conviction and 10 years in prison for attempt (predatory criminal sexual assault of a child). Following his trial, defendant did not renew his pretrial claims concerning counsel's failure to investigate his case.

¶ 4 Defendant appeals, arguing his case should be remanded for a hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and its progeny.

¶ 5 We affirm.

¶ 6 I. BACKGROUND

¶ 7 In November 2007, the State charged defendant by information with four counts of predatory criminal sexual assault of a child against M.B., one count of predatory criminal sexual assault of a child against C.C., and one count of predatory criminal sexual assault of a child against E.B. 720 ILCS 5/12-14.1(a)(1) (West 2006).

¶ 8 In March 2009, defendant filed a *pro se* document entitled "Motion to Dismiss Counsel." The document alleged, among other things, his attorney, Craig Reiser, refused to investigate the circumstances of defendant's case to develop a defense. Specifically, defendant asserted (1) Reiser made statements in court about an "ongoing investigation" but "ha[d] made no such action that [was] visible to the defendant"; (2) defendant provided Reiser the names of potential witnesses, but Reiser had not contacted any of those witnesses; and (3) Reiser had not filed any motions on defendant's behalf.

¶ 9 During an April 2009 court appearance defendant addressed the court, explaining he "tried to file a motion with the Clerk to dismiss" Reiser from his case. Defendant stated Reiser did not "want to do any kind of investigation to support any kind of defense." The trial court noted the motion to dismiss counsel was on file. Upon reading the motion, the court denied

defendant's motion. The court provided Reiser the option of setting the motion for a hearing after Reiser had the opportunity to read the motion.

¶ 10 On September 22, 2011, four days before defendant's jury trial was scheduled to commence, Reiser filed a motion to continue, asserting defendant "recently told his counsel of an individual who potentially could be called as a witness in this matter." The motion further stated "the individual live[d] out of state" and although defense counsel had spoken with the individual's family, counsel had been unable to contact the individual recently.

¶ 11 At the hearing on the motion that day, Reiser explained defendant "recently" informed Reiser and cocounsel, Joseph Miller, he had learned new information involving an individual with whom Reiser had previously spoken. Reiser did not originally plan to call this individual as a witness, but based on the information defendant gave him, Reiser believed he needed to speak to the individual again "to investigate." When the court asked Reiser whether defendant possessed that information at the time of the previous hearing, Reiser responded, "Not that I know of, Your Honor."

¶ 12 Upon contacting the individual's family members that lived in Springfield, Illinois, Reiser learned the individual had moved to "a remote part of Michigan." When Reiser called the phone numbers the individual's family had provided, he was unable to reach the individual. Reiser stated he and Miller were "not trying to delay" defendant's trial, for which they had "spent a great deal of time recently" preparing, but both attorneys believed they needed to speak with the individual and "very likely bring this witness in to testify at trial."

¶ 13 The State objected to Reiser's motion, arguing defendant "met with his attorneys multiples times" but "magically" presented information about a new witness in just the last few

days leading up to trial. The State further asserted delaying defendant's trial would "have an extreme[ly] adverse effect" on the three minor victims. According to the State, defendant was "playing with these kids like he did for years."

¶ 14 The trial court denied defendant's motion, noting the "witness was known to the Defense before this matter ha[d] been set for a firm trial date for quite sometime [*sic*]" and defendant had never "been unable to communicate with his attorneys." The court further stated a delay would be harmful to the children involved in the case. The court provided that if Reiser and Miller were able to contact the potential witness, they could call the witness out of order.

¶ 15 The parties appeared before the trial court again on September 26, 2011. Before *voir dire* commenced, defendant stated he "personally object[ed]" to Reiser's actions at the September 22, 2011, hearing. Defendant "was shocked to be called into court" and "then appalled by the statements Mr. Reiser made to the Court alluding that [defendant] had purposely withheld information until the last possible moment." Defendant continued by stating "during a consultation" on the morning of the hearing, defendant "mildly stated" to Miller he did not believe "a certain potential witness" understood "the severity of the situation." Based on prior discussions he had with defense counsel about other potential witnesses, defendant "expected non-committal responses and inaction" from his attorneys but instead "was made the tool of a display of inexplicable legal machinations by Mr. Reiser."

¶ 16 According to defendant, before the day of the September 22, 2011, hearing, he was "fully prepared to proceed to trial despite [his] misgivings about Mr. Reiser." Defendant further stated as follows:

"I have never agreed with Mr. Reiser's decision to motion

this Court for a continuance. I repeat my assertions *** that I have felt intimidated into these legal actions by both Mr. Reiser's lack of investigation into my defense and by the fact that when I complained to him of harassments and threats while incarcerated and informed him about my mother contacting higher-ups in government about this harassment, Mr. Reiser informed me to be quiet and quit making waves or what happened to the clown would happen to me, alluding to the death of an inmate in 2007. I believe he also repeated this statement to my mother. Needless to say, I still feel intimidated by these actions."

¶ 17 Defendant stated he wanted the record to contain his "personal objections" to Reiser's actions on September 22, 2011, and asked the trial court what his "next correct course of action should be." The following exchange then took place:

"THE COURT: First of all, I am not going to give you any advice as to what your next course of action should be. Secondly, I was here during that exchange obviously as related to your potential witness, and in no way, shape or form did Mr. Reiser in any way give me the impression that you had held back evidence. It may have been insinuated to by the State, but your attorney in no way gave that impression.

In addition, I have been working with Mr. Reiser for over 10 years. I have known Mr. Miller for 30-plus years, and have

watched Mr. Miller in court for 20-plus years. You are as well represented as you can possibly be in this case. I don't believe your assertions about Mr. Reiser threatening you or saying those things because—

[DEFENDANT]: Your Honor—

THE COURT: It is my turn to speak—because I know his reputation in the community. I have also watched him on a regular basis for the last 10 years, so your statement is noted for the record, but if that is in any way, shape or form your way to try and delay this trial, it's not going to work."

¶ 18 Thereafter, defendant's trial commenced. Following the trial, the jury found defendant (1) not guilty of predatory criminal sexual assault of a child against E.B., (2) guilty of four counts of predatory criminal sexual assault of a child against M.B. and (3) guilty of attempt (predatory criminal sexual assault of a child) against C.C.

¶ 19 In December 2011, the trial court denied defendant's posttrial motion and sentenced defendant to 16 years in prison for each predatory criminal sexual assault of a child conviction and 10 years in prison for attempt (predatory criminal sexual assault of a child). The court ordered defendant's sentences to be served consecutively, with defendant to serve the sentences at 85%. Later that month, defendant filed a motion to reduce sentence, which the trial court denied following a December 2011 hearing.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 Defendant's sole contention on appeal is that his case should be remanded for a hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and its progeny. Defendant concedes the trial court was not required to address his pretrial ineffective-assistance-of-counsel claims prior to trial; however, defendant asserts the trial court should have revisited these claims after defendant's trial.

¶ 23 In *People v. Jocko*, 239 Ill. 2d 87, 940 N.E.2d 59 (2010), the supreme court considered the application of *Krankel* to a defendant's *pro se* prettrial claim of ineffective assistance of counsel. The supreme court concluded a circuit court is not required to conduct a pretrial inquiry into a defendant's *pro se* allegations of ineffective assistance of counsel where the defendant's allegations must be resolved under the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *Jocko*, 239 Ill. 2d at 92, 940 N.E.2d at 62. The supreme court reasoned that *Strickland* requires a defendant to demonstrate " 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' " *Jocko*, 239 Ill. 2d at 92, 940 N.E.2d at 62 (quoting *Strickland*, 466 U.S. at 694). Prior to trial, the outcome of the proceeding has not yet been determined; thus, a court cannot ascertain the effect of counsel's errors on that outcome. *Jocko*, 239 Ill. 2d at 93, 940 N.E.2d at 63.

¶ 24 The supreme court in *Jocko* noted that "[g]enerally a *pro se* defendant is not obligated to renew claims of ineffective assistance once they are made known to the circuit court *** and there is, of course, 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. Nonetheless, the supreme court concluded it could not

"fault the circuit court for not pursuing" the defendant's *pro se* claims further, as (1) one of the defendant's contentions was refuted by the record, and (2) the defendant asserted only that the circuit court failed to further inquire into the allegations set forth in his *pro se* motion and not that the allegations had merit. *Jocko*, 239 Ill. 2d at 93, 940 N.E.2d at 63. Moreover, the defendant made his claims in documents he sent to the circuit court clerk, but the circuit court, the defendant's attorney, and the State were all unaware of those documents. Jocko, 239 Ill. 2d at 93-94, 940 N.E.2d at 63.

¶ 25 Subsequent to *Jocko*, the Second District decided *People v. Washington*, 2012 IL App (2d) 101287, 970 N.E.2d 43. In *Washington*, the defendant filed a *pro se* pretrial motion claiming his counsel was ineffective because counsel (1) failed to hold the State to a 30-day deadline set forth in the Code of Criminal Procedure of 1963 (725 ILCS 5/109-3.1(6) (West 2008)), (2) failed to arrange for the defendant to be writted to court for a status hearing, and (3) had not shown the defendant any of the material the State produced in discovery. *Washington*, 2012 IL App (2d) 101287, ¶ 5, 970 N.E.2d 43. The trial court advised defense counsel and the State of the defendant's motion, and defense counsel requested a continuance to discuss the motion with the defendant. *Washington*, 2012 IL App (2d) 101287, ¶ 6, 970 N.E.2d 43. After the defendant stated he did not want any more continuances, counsel requested a trial date, and "[n]o further mention was made of defendant's motion." *Washington*, 2012 IL App (2d) 101287, ¶ 6, 970 N.E.2d 43.

¶ 26 The *Washington* court concluded the trial court was not required to revisit the defendant's pretrial motion after trial because the defendant's allegations were insufficient on their face. *Washington*, 2012 IL App (2d) 101287, ¶¶ 24-25, 970 N.E.2d 43. In reaching its

conclusion, the Second District made the following remarks:

> "[A] trial court's duties with respect to a pretrial *pro se* filing or oral representation claiming ineffective assistance of counsel are as follows. First, the court, at a minimum, must review the defendant's assertions to assess whether or not the court must consider the possible prejudicial effect on the outcome of the proceeding. Next, if the court determines that resolution of the defendant's claims does not require that it consider possible prejudice (*e.g.*, in situations where there is a potential conflict of interest or there has been a complete deprivation of counsel), then it must apply *Krankel* before trial. If the court determines that it must consider possible prejudice as to the outcome, then it is not obligated to apply *Krankel* before trial, although, at the end of trial, the court should address the defendant's previously raised ineffective-assistance claims by conducting a posttrial *Krankel* analysis." *Washington*, 2012 IL App (2d) 101287, ¶ 22, 970 N.E.2d 43.

¶ 27 Defendant contends both *Jocko* and *Washington* are inapposite because (1) defendant's claims were not insufficient on their face and (2) the trial court was aware of defendant's claims. Thus, defendant argues, the trial court was required to conduct a posttrial investigation into his ineffective-assistance-of-counsel claims.

¶ 28 Our review of the case law does not lead us to conclude the trial court was

required, posttrial, to address defendant's pretrial ineffective assistance claims. We agree with the procedure outlined in *Washington* regarding a trial court's responsibilities when confronted with a pretrial *pro se* filing claiming ineffective assistance of counsel.

¶ 29 In this case, it is a matter of record that the trial court read defendant's motion and then stated in defendant's presence that the motion was denied. The allegations in the motion required the trial court to consider the possible prejudicial effect on the outcome. Therefore, under *Washington*, the court was not required, pretrial, to take any further action. Moreover, since nothing occurred during the trial which would allow defendant to satisfy the prejudice prong of *Strickland*, the court was not required to revisit the pretrial *pro se* motion to dismiss counsel. First, defendant's assertion that Reiser's investigation was not "visible" to defendant does not allege deficient conduct. Second, with respect to defendant's claim Reiser failed to contact potential defense witnesses, we find illuminating the trial court's September 22 and September 26, 2011, hearings. On September 22, 2011, Reiser filed a motion to continue because defendant provided Reiser with new information about an individual. Reiser testified although he had already interviewed this individual, he nonetheless felt it necessary to conduct further investigation based on the information defendant provided. However, on September 26, 2011, defendant told the court he "never agreed with Mr. Reiser's decision to motion this Court for a continuance" and, "despite [his] misgivings" about Reiser, defendant was "fully prepared to proceed to trial" on September 22, 2011. During this same hearing defendant referenced discussions with counsel about potential witnesses and the fact that counsel had previously contacted a witness. Thus, although defendant's "motion to dismiss counsel" raised claims Reiser failed to adequately investigate his case, the record as it developed subsequent to

defendant's motion revealed Reiser had discussed witnesses with the defendant and made contact with witnesses. Additionally, defendant disagreed with Reiser's decision to ask for a continuance to investigate defendant's case further. Accordingly, the trial court did not err by failing to revisit defendant's pretrial claim defense counsel failed to investigate his case. In addition, during the trial, counsel demonstrated a command of the facts of the case and vigorously represented the defendant.

¶ 30 Finally, by defendant's trial date, defendant's claim that his counsel had "not filed any motions on" defendant's behalf was clearly refuted by the record. Prior to trial, defendant's attorneys filed and argued numerous motions, including (1) a motion to dismiss pursuant to section 109-3.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/109-3.1(6) (West 2008)) for failure to receive a preliminary examination within 30 days of being taken into custody; (2) a motion to suppress defendant's statement to police; and (3) a motion *in limine* to exclude other crimes evidence**.** Moreover, "[a]n attorney's decision to file or not to file a motion is regarded as a matter of trial strategy which must be given great deference." *People v. Bryant*, 128 Ill. 2d 448, 458, 539 N.E.2d 1221, 1226 (1989). Thus, we conclude a *Krankel* hearing was unnecessary with regard to defendant's allegation defense counsel failed to file motions.

¶ 31 In light of the foregoing, the trial court did not err by failing to revisit defendant's pretrial ineffective-assistance-of-counsel claims following defendant's trial.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the state its $50 statutory assessment against the defendant as costs of this appeal.

¶ 34 Affirmed.