2018 IL App (4th) 150898-U

NO. 4-15-0898

FILED
March 26, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
TYHEIM J. JOHNSON,	)	No. 14CF767
Defendant-Appellant.	)	
	)	Honorable
	)	Timothy J. Steadman,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed in part, reversed in part, and remanded with directions, finding (1) the trial court did not err in conducting a preliminary *Krankel* inquiry but (2) *Krankel* counsel was ineffective in failing to raise defendant's claim of trial counsel's ineffectiveness.

¶ 2 In March 2015, the trial court found defendant, Tyheim J. Johnson, guilty of aggravated discharge of a firearm and unlawful use or possession of a weapon by a felon. Thereafter, the court sentenced him to a total of 13 years in prison. In October 2015, defense counsel filed a first amended motion to reconsider the sentence, which the court denied.

¶ 3 On appeal, defendant argues (1) the trial court denied him a proper hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), (2) his posttrial counsel was ineffective, and (3) this court should vacate fines improperly imposed by the circuit clerk. We affirm in part, reverse in part, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In July 2014, the State charged defendant by information with single counts of aggravated discharge of a firearm (count I) (720 ILCS 5/24-1.2(a)(2) (West 2014)) and unlawful possession of a weapon by a felon (count II) (720 ILCS 5/24-1.1(a) (West 2014)). Defendant pleaded not guilty.

¶ 6 Defendant waived his right to a jury trial, and his bench trial commenced in March 2015. At the trial, defendant appeared with attorney Charles Lukis. Steven Baylor testified he was living on North Oakland Avenue in Decatur on June 21, 2014, when he heard what he thought were fireworks. He then saw "two cars come flying by," and "they were weaving in and out of the traffic on Oakland Avenue shooting at each other." Baylor stated one vehicle was a silver Pontiac, and the other was a small silver truck.

¶ 7 Decatur police officer Josh Davis testified he responded to a report of shots being fired at approximately 5 p.m. on June 21, 2014. He located a shell casing in the roadway at 1600 North Oakland Avenue. Decatur police officer Adam Siefman testified he observed bullet damage to several residences in the area.

¶ 8 Appearing in custody, Kameron Farrington testified he had felony convictions for manufacture/delivery of a controlled substance, delivery of a controlled substance, and obstructing justice. He acknowledged receiving immunity for his testimony, and he stated he was driving a gray Pontiac on the day in question. His friend and his cousin were with him in the car. While they were stopped in the middle lane at a red light, a pickup truck pulled up on the driver's side. Shots were fired from the truck, which pulled away. Farrington followed the truck, rolled down his passenger window, and "opened fire back." He stated he "let ten shots go" and only stopped because he "ran out of bullets."

¶ 9 Decatur police detective Ben Massey testified he listened to audio recordings of jail calls as part of his investigation. During one call made at 6:37 p.m. on June 21, 2014, defendant told the incarcerated caller that "we're just ridin [*sic*] around." Four minutes later, defendant engaged in another phone call and stated "we caught Kam and them *** at the light on Oakland and Grand but that mother fucker pulled off too fast."

¶ 10 Defendant testified he received a phone call from his friend Terry Wells on June 21, 2014, and Wells stated he "had an altercation with the Kameron Farrington guy." Wells stated he had been shot at, and a passenger in Wells' car fired back. Defendant said the statements he made in the jail calls were him "just being stupid, trying to seem tough to [his] cousin." Defendant denied involvement in the shooting.

¶ 11 Following closing arguments, the trial court found defendant guilty on both counts. In May 2015, the court conducted a sentencing hearing. In his statement of allocution, defendant apologized to the court and his family and pleaded for a "fair sentence." He assured the court any sentence would be "used constructively" so he could become a "more productive person to the community and [his] family."

¶ 12 The State recommended a prison sentence of 15 years on count I and 14 years on count II. The trial court asked the prosecutor if she was "in agreement that Count I is 85 percent sentence," and she responded in the affirmative. Defense counsel asked for a sentence of impact incarceration.

¶ 13 The trial court admonished defendant as to his right to appeal. Defendant interrupted, asking how he could "do this with ineffective counsel" and how he "can go about this by [himself]?" The court indicated it would take up defendant's questions "in just a minute." After the court finished the admonitions, the following exchange occurred:

"THE COURT: As far as any complaints you may have about your attorney, we're going to proceed today with your case. You have 30 days to put in writing what your complaints might be. Make sure you file that with the circuit clerk's office within 30 days.

* * *

Do you understand?

THE DEFENDANT: Yeah.

THE COURT: I can't rule on that today, because I don't know what your complaints are. You still have 30 days to file your complaints about your attorney. They have to be in writing so the Court understands specifically what you—what you're complaining about."

Defendant indicated he understood. Thereafter, the court sentenced defendant to 13 years in prison on count I and a concurrent term of 10 years in prison on count II.

¶ 14 On June 3, 2015, defendant filed a *pro se* motion to reconsider his sentence. Defendant stated he received a 13-year sentence, but he was never made aware he would have to serve 85% of that sentence. Defendant claimed his trial attorney "reassured" him his sentence would be served at 50% and, if he had known that fact earlier, he "may have plead [*sic*] to a lesser charge or sentence." Defendant filed an identical *pro se* motion to reconsider his sentence on June 18, 2015.

¶ 15 On June 22, 2015, the trial court conducted a hearing on defendant's motion. Attorney Lukis noted the motion "makes some kind of allegations along the lines of ineffective

assistance of counsel," and thus Lukis expressed a need to withdraw as counsel. The court continued the hearing. On June 26, 2015, defendant filed another *pro se* motion for a reduction of his sentence, claiming his attorney was ineffective for failing to inform him of the possibility of an 85% sentence. Lukis filed a motion to withdraw on August 5, 2015.

¶ 16 On August 6, 2015, the trial judge conducted a hearing on defendant's June 26 motion. After defendant stated he wanted a different lawyer, the judge stated "I don't think we have much choice considering the allegations he's made. I don't think Mr. Lukis can proceed." The judge allowed the motion to withdraw and directed the State to notify Rodney Forbes of his appointment as counsel.

¶ 17 Forbes filed a first amended motion to reconsider the sentence on October 6, 2015. Along with attaching defendant's June 18, 2015, motion to reconsider to the amended motion, counsel argued defendant's sentences were excessive. On October 27, 2015, the trial court conducted a hearing on the motion. Defendant testified he had tried to address the court at the sentencing hearing when it was noted he would have to serve 85% of his sentence. When asked why he thought the court should reconsider his sentence, defendant stated as follows:

> "I feel like the—I should be—my sentence should be reconsidered and the sentence is excessive because in criminal procedure due process of law provides that the Court's duty is to admonish and inform the accused of the offenses charged and the maximum penalties faced. In this matter, the—I was never made aware of the fact that my charge carried 85-percent eligibility.
>
> Therefore the rules of fundamental fairness should be applied in this case seeing that neither the Court nor my counsel

informed me as to my maximum sentence and eligibilities hindering me from making an intelligent decision as to not take this offense to trial or to take a plea agreement. Furthermore, I'm contending that due process of law is a safeguards [*sic*] to protect the rights of an accused at every stage of his criminal proceeding, and in this case I wasn't awarded the protection of law, which is to be fair.

So because of these issues of the error, I'm requesting that relief in the form of my sentence being reconsidered and reduced to the fashion where it is to be served at 50 percent. My impression throughout the entirety of my legal proceedings due to the Court and my counsel's error of informing me of the possible penalties."

¶ 18 When asked if his statement in allocution would have been different if his sentence would have been served at 50%, defendant stated as follows:

"I would have—if I thought it was at 50 percent, I would have said something, like, I don't know, maybe whenever I come home after this—really just saying basically the same thing, but just more along the lines of for sure, for sure, when I come home that I'll be a better person, and I'll be able—because I know at 50 percent, I would have been able to get my drug treatment, my schooling, and everything. I would have—probably been more along the line—and really it was kind of like along the lines of

what I had already said, but it would have been more in detail because I didn't know that it was at 85 percent in the first place, but it would have been more."

¶ 19 When asked if he had anything else to say in support of his motion to reconsider his sentence, defendant stated as follows:

"What—what does—I would just like to ask what does the letter of allocution have to do with it? Because my—when—the letter of allocution was only written once my lawyer came to see me for sentence and told me that Mr. Forbes usually—I mean, not Forbes—Mr. Steadman usually takes it light on people who say sorry or admit what—admit their case or just write these type of letters or say something before the Court. And that's the best thing that I came up with. I probably would have came up with a little more if it would've got me 50 percent or if it would have been 50 percent."

¶ 20 On cross-examination, defendant indicated he decided to take his case to trial after talking with his attorney. He stated he received one offer from the State, but he was "under the impression that [his] entire case was 50 percent."

¶ 21 In his argument, Forbes was under the impression, based on the *pro se* motion and statements at the hearing, that "the defendant would argue that he would have made a better statement of allocution had he been informed that this sentence was to be served at 50 percent rather than 85 percent." Forbes argued the misinformation "may have affected the way that the

Court received the defendant's statement." Forbes also argued the sentence was excessive. At the conclusion of his argument, the following exchange occurred:

> "[FORBES]: As far as the evidence or statements concerning the plea agreement that may have been made or may not have been made, we did not prepare for that. Your Honor, this was just simply a Motion to Reconsider Sentence.
>
> I was just looking at those issues concerning the reconsideration of sentence not motions to vacate a trial or anything like that. This is something new that's come up during this Motion to Reconsider Sentence. I think that probably would be better suited for a motion to vacate trial or something like that. But we're not arguing that his sentence should be reduced in any way as a result of—
>
> THE DEFENDANT: But I do want my sentence—I do want to argue that my sentence should be reduced because of these issues. And I would also, like, ask what does my letter of allocution have to do with the Court not informing me of my eligibilities and giving me the chance to make a decision whether to take a trial or to ask for a plea agreement on the Count II or some type of agreement like 97 percent of all cases go to plea agreements instead of me going to trial."

The trial court told defendant it was not his time to argue, and Forbes continued as follows:

"So I'm just arguing those matters that were brought to the Court's attention at sentencing. The error that the defendant claims is that he was instructed that this was a 50-percent sentence instead of an 85-percent sentence that affected his ability to make an accurate statement of allocution at sentencing, and we're also asking arguing [*sic*] that his sentence is excessive.

But, you know, at this point I'm not in a position to argue that some plea agreement was not enforced or anything of that matter because I'm not aware of that, [Y]our Honor. This is something new that's come up during the sentencing hearing, Your Honor."

Thereafter, defendant made the following statement to the court:

"THE DEFENDANT: Your Honor, how—can—can I ask how can we argue that my sentence is excessive and then not ask for it to be reduced? That's all I want. How can you—how—how can my lawyer—I asked him to make these arguments, and he's telling me the same thing he wrote in his letter, like, he doesn't have any—like it's not relevant to him and this is the things that I want argued.

He's saying, like, he doesn't want it argue [*sic*]—I mean, he's saying it's excessive, but it's not to be reduced we don't want to reduce it or just to reconsider the sentence. That's—it did—not only did the errors happen in my sentencing, it happened in my

whole legal proceedings. I was never informed of the sentencing eligibilities. That's—that's why I filed this motion."

¶ 22 The trial court concluded by stating as follows:

"Well, let me—I want to think about this, but let me say this: First of all, this wasn't a plea of guilty. If a person pleads guilty, the judge has to tell him or her all the possible sentences. And actually although not required by law, the judge should also tell the individual whether if it is a prison sentence, it's an 85-percent sentence, or day-for-day, or 75-percent sentence. But Mr. Johnson didn't plead guilty. Mr. Johnson went to trial.

The Court knew full well that it was an 85-percent sentence. I'm sure the state's attorney knew that. I would be shocked if Mr. Lukis didn't know that and disappointed if he didn't tell Mr. Johnson that. But in any event, the Court certainly knew it was 85 percent. When the Court arrived at its sentence that was factored in. Now having said that, as far as anything new today, as I understand it, somehow there's been among other arguments that Mr. Johnson's allocution statement would have been different had he known it was 85 percent or words to that effect.

He's had another say today. He said what he wanted to say. He supplemented his right to allocution and that will be factored in by the Court. So, again, I do want to think about it. I will issue a decision."

¶ 23 On October 27, 2015, the trial court entered the following docket entry:

> "The Court finds there have been no changes in the law or newly discovered evidence that was not available at the sentence hearing held 5/27/15. Further, that the Court properly considered factors in aggravation and mitigation in arriving at the sentence imposed. The First Amended Motion to Reconsider Sentence is denied."

This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 A. *Krankel* Hearing

¶ 26 Defendant argues he was denied a proper *Krankel* hearing. We disagree.

¶ 27 When confronted with a defendant's posttrial allegations of ineffective assistance of counsel, our supreme court set out the procedural steps to follow in *People v. Moore*, 207 Ill. 2d 68, 797 N.E.2d 631 (2003) (noting the rule that had developed since *Krankel*).

> "New counsel is not automatically required in every case in which a defendant presents a *pro se* posttrial motion alleging ineffective assistance of counsel. Rather, when a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. However, if the allegations show possible neglect of the case, new counsel should

be appointed." *Moore*, 207 Ill. 2d at 77-78, 797 N.E.2d at 637.

¶ 28 "The purpose of the preliminary inquiry is to ascertain the underlying factual basis for the ineffective assistance claim and to afford a defendant an opportunity to explain and support his claim." *People v. Ayres*, 2017 IL 120071, ¶ 24, 88 N.E.3d 732. A court can conduct an inquiry into allegations counsel was ineffective by doing one or more of the following: "(1) questioning the trial counsel, (2) questioning the defendant, and (3) relying on its own knowledge of the trial counsel's performance in the trial." *People v. Peacock*, 359 Ill. App. 3d 326, 339, 833 N.E.2d 396, 407 (2005). A defendant's "clear claim asserting ineffective assistance of counsel, either orally or in writing, *** is sufficient to trigger the trial court's duty to conduct a *Krankel* inquiry." *Ayres*, 2017 IL 120071, ¶ 18, 88 N.E.3d 732. "The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *Moore*, 207 Ill. 2d at 78, 797 N.E.2d at 638. "The issue of whether the circuit court properly conducted a preliminary *Krankel* inquiry presents a legal question that we review *de novo*." *People v. Jolly*, 2014 IL 117142, ¶ 28, 25 N.E.3d 1127.

¶ 29 In this case, defendant first raised the issue of ineffective assistance of counsel at his sentencing hearing. The trial court told defendant he had 30 days to put his complaints about his attorney in writing. Defendant filed a *pro se* motion to reconsider his sentence, claiming his attorney told him he would serve his sentence at 50%. At the hearing on the motion, Lukis expressed a need to withdraw as counsel. Thereafter, defendant filed another *pro se* motion to reduce his sentence, claiming counsel was ineffective for failing to inform him of the possibility of an 85% sentence. At the August 2015 hearing, the court saw little choice but to allow Lukis to withdraw. The court then appointed new counsel.

¶ 30 In *People v. McGath*, 2017 IL App (4th) 150608, ¶ 47, 83 N.E.3d 671, this court noted what *Krankel* requires when a defendant raises a *pro se* posttrial claim of ineffective assistance of counsel. The court also stated, as follows:

> "We reiterate that a *Krankel* hearing is a term of art to describe the hearing the court must conduct when a defendant *pro se* has raised a posttrial claim regarding his counsel's ineffective assistance. In that hearing, the court needs to determine whether the defendant's allegations 'show possible neglect of the case.' [Citation.] If so, the court should appoint new counsel for the defendant. [Citation.] It should be remembered that this is the *only* issue to be resolved by a *Krankel* hearing. If the court determines that new counsel need be appointed, then (depending upon what that new counsel may file) the court may later need to conduct a hearing on a claim that defendant's trial counsel was ineffective. If the court determines that new counsel need not be appointed, then the court should proceed to address the normal posttrial matters." (Emphasis in original.) *McGath*, 2017 IL App (4th) 150608, ¶ 51, 83 N.E.3d 671.

Thus, the sole point of the preliminary *Krankel* inquiry is to determine whether new counsel should be appointed to "independently evaluate the defendant's claim and avoid the conflict of interest that trial counsel would experience if counsel had to justify his or her actions contrary to the client's petition." *People v. Chapman*, 194 Ill. 2d 186, 230, 743 N.E.2d 48, 74 (2000).

¶ 31 Here, defendant raised a *pro se* posttrial allegation that counsel had been ineffective. Given the allegation, the trial court allowed counsel to withdraw and appointed new counsel. Thus, the required *Krankel* inquiry was satisfied. Accordingly, defendant's request on appeal that we should remand the case to the trial court to conduct a preliminary *Krankel* inquiry is without merit.

¶ 32 B. Assistance of Posttrial Counsel on Defendant's *Krankel* Claim

¶ 33 Defendant argues posttrial counsel was ineffective where newly appointed counsel abandoned a meritorious claim, which prevented the claim from being subjected to adversarial testing. We agree.

¶ 34 Courts have noted the *Krankel* inquiry involves two distinct stages. *People v. Downs*, 2017 IL App (2d) 121156-C, ¶ 43, 83 N.E.3d 584; *People v. Flemming*, 2015 IL App (1st) 111925-B, ¶¶ 81-82, 31 N.E.3d 935. First, as noted, the trial court examines the factual bases of the defendant's *pro se* claims of ineffective assistance of trial counsel and, if the facts indicate possible neglect on trial counsel's part, the court appoints new counsel. *Downs*, 2017 IL App (2d) 121156-C, ¶ 43, 83 N.E.3d 584. "Following the appointment of new counsel (*i.e.*, *Krankel* counsel), the matter proceeds to the second stage of the *Krankel* inquiry. [Citation.] The second stage consists of an adversarial and evidentiary hearing on the defendant's claims, and during this hearing the defendant is represented by *Krankel* counsel." *Downs*, 2017 IL App (2d) 121156-C, ¶ 43, 83 N.E.3d 584. "The obligation to represent the defendant requires *Krankel* counsel to independently evaluate the defendant's *pro se* allegations of ineffective assistance of trial counsel and present those with merit to the trial court during the second-stage adversarial hearing." *Downs*, 2017 IL App (2d) 121156-C, ¶ 49, 83 N.E.3d 584.

¶ 35 A defendant's claim of ineffective assistance of counsel is analyzed under the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Veach*, 2017 IL 120649, ¶ 29, 89 N.E.3d 366. Posttrial counsel can be found to be ineffective for failing to raise trial counsel's deficiencies. *People v. Moore*, 307 Ill. App. 3d 107, 114, 716 N.E.2d 851, 856 (1999); see also *People v. Cherry*, 2016 IL 118728, ¶¶ 23-33, 63 N.E.3d 871 (applying the *Strickland* analysis to a claim of ineffective assistance of *Krankel* counsel).

¶ 36 To prevail on a claim of ineffective assistance of counsel, "a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant." *People v. Petrenko*, 237 Ill. 2d 490, 496, 931 N.E.2d 1198, 1203 (2010). To establish deficient performance, the defendant must show "counsel's performance 'fell below an objective standard of reasonableness.' " *People v. Valdez*, 2016 IL 119860, ¶ 14, 67 N.E.3d 233 (quoting *Strickland*, 466 U.S. at 688). Prejudice is established when a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Evans*, 209 Ill. 2d 194, 219-20, 808 N.E.2d 939, 953 (2004) (citing *Strickland*, 466 U.S. at 694). A defendant must satisfy both prongs of the *Strickland* standard, and the failure to satisfy either prong precludes a finding of ineffective assistance of counsel. *People v. Clendenin*, 238 Ill. 2d 302, 317-18, 939 N.E.2d 310, 319 (2010).

¶ 37 In the case *sub judice*, defendant filed several *pro se* posttrial motions concerning his sentence. In his June 3, 2015, motion to reconsider his sentence, defendant stated he was never made aware of the possibility of having to serve 85% of his sentence. He claimed his trial counsel "reassured" him his sentence would be served at 50%. He only became aware of the 85% requirement at sentencing and, had he known that fact earlier, he "may have plead [*sic*] to a lesser charge or sentence." Defendant filed an identical motion on June 18, 2015. On June 26,

2015, defendant filed another *pro se* motion to reconsider his sentence, alleging trial counsel had been ineffective for failing to inform him of the possibility of serving 85% of his sentence. Once again, defendant alleged counsel "reassured" him the sentence would be 4 to 15 years in prison at 50%. If not for the "misguidance" of counsel, defendant "would have attempted to plea [*sic*] to a lesser charge with lesser sentencing eligibilities before trial."

¶ 38 Newly appointed *Krankel* counsel Rodney Forbes filed a first amended motion to reconsider the sentence on October 6, 2015, claiming defendant's sentences were excessive. Counsel also attached a copy of defendant's June 18, 2015, motion and noted defendant continued to assert the allegations and arguments contained therein.

¶ 39 At the hearing on the first amended motion to reconsider his sentence, defendant testified he had tried to address the trial court at the sentencing hearing when it was noted he would have to serve 85% of his sentence. When asked why he thought the court should reconsider his sentence, defendant stated as follows:

> "I feel like the—I should be—my sentence should be reconsidered and the sentence is excessive because in criminal procedure due process of law provides that the Court's duty is to admonish and inform the accused of the offenses charged and the maximum penalties faced. In this matter, the—I was never made aware of the fact that my charge carried 85-percent eligibility.
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> Therefore the rules of fundamental fairness should be applied in this case seeing that neither the Court nor my counsel informed me as to my maximum sentence and eligibilities hindering me from making an intelligent decision as to not take

this offense to trial or to take a plea agreement. Furthermore, I'm contending that due process of law is a safeguards [*sic*] to protect the rights of an accused at every stage of his criminal proceeding, and in this case I wasn't awarded the protection of law, which is to be fair.

So because of these issues of the error, I'm requesting that relief in the form of my sentence being reconsidered and reduced to the fashion where it is to be served at 50 percent. My impression throughout the entirety of my legal proceedings due to the Court and my counsel's error of informing me of the possible penalties."

¶ 40 When asked if his statement in allocution would have been different if his sentence would have been served at 50%, defendant stated as follows:

"I would have—if I thought it was at 50 percent, I would have said something, like, I don't know, maybe whenever I come home after this—really just saying basically the same thing, but just more along the lines of for sure, for sure, when I come home that I'll be a better person, and I'll be able—because I know at 50 percent, I would have been able to get my drug treatment, my schooling, and everything. I would have—probably been more along the line—and really it was kind of like along the lines of what I had already said, but it would have been more in detail

because I didn't know that it was at 85 percent in the first place, but it would have been more."

¶ 41 When asked if he had anything else to say in support of his motion to reconsider his sentence, defendant stated as follows:

> "What—what does—I would just like to ask what does the letter of allocution have to do with it? Because my—when—the letter of allocution was only written once my lawyer came to see me for sentence and told me that Mr. Forbes usually—I mean, not Forbes—Mr. Steadman usually takes it light on people who say sorry or admit what—admit their case or just write these type of letters or say something before the Court. And that's the best thing that I came up with. I probably would have came up with a little more if it would've got me 50 percent or if it would have been 50 percent."

¶ 42 On cross-examination, defendant indicated he decided to take his case to trial after talking with his attorney. He stated he received one offer from the State, but he was "under the impression that [his] entire case was 50 percent."

¶ 43 In his argument, Forbes was under the impression, based on the *pro se* motion and statements at the hearing, that "the defendant would argue that he would have made a better statement of allocution had he been informed that this sentence was to be served at 50 percent rather than 85 percent." Forbes argued the misinformation "may have affected the way that the Court received the defendant's statement." Forbes also argued the sentence was excessive. At the conclusion of his argument, the following exchange occurred:

"[FORBES]: As far as the evidence or statements concerning the plea agreement that may have been made or may not have been made, we did not prepare for that. Your Honor, this was just simply a Motion to Reconsider Sentence.

I was just looking at those issues concerning the reconsideration of sentence not motions to vacate a trial or anything like that. This is something new that's come up during this Motion to Reconsider Sentence. I think that probably would be better suited for a motion to vacate trial or something like that. But we're not arguing that his sentence should be reduced in any way as a result of—

THE DEFENDANT: But I do want my sentence—I do want to argue that my sentence should be reduced because of these issues. And I would also, like, ask what does my letter of allocution have to do with the Court not informing me of my eligibilities and giving me the chance to make a decision whether to take a trial or to ask for a plea agreement on the Count II or some type of agreement like 97 percent of all cases go to plea agreements instead of me going to trial."

The trial court told defendant it was not his time to argue, and Forbes continued as follows:

"So this is a Motion to Reconsider Sentence and the issues that are properly brought to the Court on motions to reconsider sentence are those things that happened at the sentencing hearing.

It's not a time to present new evidence. So I'm just arguing those matters that were brought to the Court's attention at sentencing. The error that the defendant claims is that he was instructed that this was a 50-percent sentence instead of an 85-percent sentence that affected his ability to make an accurate statement of allocution at sentencing, and we're also asking arguing [*sic*] that his sentence is excessive.

But, you know, at this point I'm not in a position to argue that some plea agreement was not enforced or anything of that matter because I'm not aware of that, [Y]our Honor. This is something new that's come up during the sentencing hearing, Your Honor."

Thereafter, defendant made the following statement to the court:

"THE DEFENDANT: Your Honor, how—can—can I ask how can we argue that my sentence is excessive and then not ask for it to be reduced? That's all I want. How can you—how—how can my lawyer—I asked him to make these arguments, and he's telling me the same thing he wrote in his letter, like, he doesn't have any—like it's not relevant to him and this is the things that I want argued.

He's saying, like, he doesn't want it argue [*sic*]—I mean, he's saying it's excessive, but it's not to be reduced we don't want to reduce it or just to reconsider the sentence. That's—it did—not

only did the errors happen in my sentencing, it happened in my whole legal proceedings. I was never informed of the sentencing eligibilities. That's—that's why I filed this motion."

The court concluded by stating as follows:

"Well, let me—I want to think about this, but let me say this: First of all, this wasn't a plea of guilty. If a person pleads guilty, the judge has to tell him or her all the possible sentences. And actually although not required by law, the judge should also tell the individual whether if it is a prison sentence, it's an 85-percent sentence, or day-for-day, or 75-percent sentence. But Mr. Johnson didn't plead guilty. Mr. Johnson went to trial.

The Court knew full well that it was an 85-percent sentence. I'm sure the state's attorney knew that. I would be shocked if Mr. Lukis didn't know that and disappointed if he didn't tell Mr. Johnson that. But in any event, the Court certainly knew it was 85 percent. When the Court arrived at its sentence that was factored in. Now having said that, as far as anything new today, as I understand it, somehow there's been among other arguments that Mr. Johnson's allocution statement would have been different had he known it was 85 percent or words to that effect.

He's had another say today. He said what he wanted to say. He supplemented his right to allocution and that will be

factored in by the Court. So, again, I do want to think about it. I will issue a decision."

¶ 44 "[C]riminal defendants require effective counsel during plea negotiations." *Missouri v. Frye*, 566 U.S. 134, 144 (2012).

> " 'A criminal defendant has the constitutional right to be *reasonably* informed with respect to the direct consequences of accepting or rejecting a plea offer.' (Emphasis in original.) This right to effective assistance of counsel extends to the decision to reject a plea offer, even if the defendant subsequently receives a fair trial. [Citation.]" *People v. Hale*, 2013 IL 113140, ¶ 16, 996 N.E.2d 607.

¶ 45 A trial court is not obligated to inform a defendant of the application of the truth-in-sentencing provisions, as that amounts to a collateral consequence of a guilty plea. *People v. Carr*, 407 Ill. App. 3d 513, 516, 944 N.E.2d 859, 862 (2011); see also *People v. Frison*, 365 Ill. App. 3d 932, 934, 851 N.E.2d 890, 892-93 (2006) (stating collateral consequences "provide no basis for reversal"). Likewise, counsel's failure to advise a defendant of a collateral consequence does not amount to ineffective assistance. *People v. Thomas*, 2017 IL App (4th) 150815, ¶ 16; *cf. People v Correa*, 108 Ill. 2d 541, 550-53, 485 N.E.2d 307, 310-12 (1985) (holding that a defense counsel's affirmative misadvice concerning a collateral consequence of a plea constituted ineffective assistance of counsel). However, when counsel erroneously advises a defendant he would only serve 50%, instead of 85%, of his sentence, our supreme court has noted "there is no objectively reasonable justification for counsel's erroneous advice on this

straightforward and readily verifiable sentencing information." *People v. Brown*, 2017 IL 121681, ¶ 27.

¶ 46 Here, the trial court found defendant guilty of the offense of aggravated discharge of a firearm, which required defendant to serve 85% of his sentence. 730 ILCS 5/3-6-3(2)(iv) (West 2014). Defendant alleged trial counsel "reassured" him he would serve his sentence at 50%. Unfortunately, *Krankel* counsel failed to flesh out defendant's claim at the hearing, stating instead he "did not prepare" for evidence concerning any plea agreement and he was not in a position to argue since the issue was "something new that's come up during the sentencing hearing." While defendant received a proper preliminary *Krankel* hearing—one where the trial court appointed him a new attorney—he did not receive a second-stage hearing on his underlying claim of trial counsel's ineffectiveness. As *Krankel* counsel's performance was deficient and defendant's claim went unaddressed, we find *Krankel* counsel was ineffective. See *Downs*, 2017 IL App (2d) 121156-C, ¶ 92, 83 N.E.3d 584 (finding "*Krankel* counsel failed to subject trial counsel's conduct to any meaningful adversarial testing and thus effectively deprived him of counsel during a critical stage of the proceedings, such that we may presume the existence of prejudice without requiring defendant to demonstrate it").

¶ 47 Accordingly, we remand for a hearing on defendant's claim of trial counsel's alleged ineffectiveness. The trial court shall appoint new counsel to represent defendant on his claim and allow counsel the opportunity to file a new motion. See *Downs*, 2017 IL App (2d) 121156-C, ¶ 94, 83 N.E.3d 584. We make no determination as to the merits of defendant's claim.

¶ 48 C. Fines and Fees

¶ 49 Because of the need to remand for further proceedings, we need not address the fines improperly imposed by the circuit clerk.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we affirm in part, reverse in part, and remand with directions. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 52 Affirmed in part and reversed in part; cause remanded with directions.