2019 IL App (4th) 170319-U

NOS. 4-17-0319, 4-17-0321 cons.

FILED
May 23, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DERRICK D. JENKINS, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of McLean County Nos. 16DT702 16CM1656 Honorable William A. Yoder, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Turner and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court remanded for further proceedings, finding defendant is entitled to a preliminary *Krankel* hearing.

¶ 2 In March 2017, a jury found defendant, Derrick D. Jenkins, guilty of driving under the influence of alcohol (DUI) and obstructing a peace officer. The trial court sentenced him to 150 days in jail.

¶ 3 On appeal, defendant argues (1) the trial court erred in failing to conduct a preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), on his posttrial complaint about counsel's performance and (2) his conviction for obstructing a peace officer should be vacated. We remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In October 2016, defendant received a citation and complaint for DUI (case No.

16-DT-702) (625 ILCS 5/11-501(a)(2) (West 2016)). The State charged him by information with obstructing a peace officer (case No. 16-CM-1656) (720 ILCS 5/31-1(a) (West 2016)), alleging he knowingly obstructed the performance of Bloomington police officer Brandt Parsley of an authorized act within his official capacity, being the custodial transportation of defendant, in that defendant physically refused to enter a police vehicle for his transportation after being directed to do so by Parsley, and he knew Parsley was a peace officer. Defendant was also charged with improper lane usage (case No. 16-TR-19088) (625 ILCS 5/11-709(a) (West 2016)).

¶ 6 At defendant's March 2017 jury trial, Bloomington police officer Bryce Janssen testified he and Officer Parsley were searching for an armed robbery suspect at approximately 10:20 p.m. on October 10, 2016, when they "heard a loud crash." As they walked toward the crash scene, Janssen observed a Chevrolet Malibu that had struck a blue van. Defendant stood near the Malibu, and he admitted being the driver and the only occupant of the vehicle. Janssen left to retrieve his squad car and returned to write the accident report. Parsley later arrested defendant for DUI. After defendant was processed for the DUI at the police department, Janssen and Parsley attempted to place him in Parsley's squad car to take him to jail. Defendant "refused to get into the car." Janssen testified as follows:

> "Officer Parsley asked [defendant] to get in the car and he said he wasn't getting in the car. And at one point in time, he even leaned his body outside of the vehicle. I'm not 100 percent positive, I believe he had his foot in the vehicle and he refused to get his other foot in the vehicle. And based off of his unwillingness to get in the vehicle, I told Officer Parsley we should put him in my vehicle."

Janssen also stated defendant was transported in his squad car because defendant was "unwilling to cooperate with our commands and[,] *** with him being belligerent," for "officer safety reasons."

¶ 7 After hearing the crash, Officer Parsley testified he made contact with defendant, who was smoking a cigarette and talking on his phone. Parsley conversed with defendant and "began to smell an odor of an alcoholic beverage" coming from him. Defendant also admitted consuming cannabis earlier in the day. After observing defendant's red and watery eyes, Parsley conducted field sobriety tests and eventually took him to the police station. While filling out the DUI paperwork, defendant yelled and screamed at Parsley and engaged in "very erratic" behavior. After completing the paperwork, Parsley walked defendant to the squad car and attempted to place him inside. Because Parsley's vehicle did not have "a divide or a cage in the back," he and Janssen attempted to place defendant in the passenger seat. Defendant refused, and the officers decided to place him in Janssen's car, which had a Plexiglas divider. In describing defendant's refusal, Parsley stated defendant "put his back against the top portion of the car," which prevented the officers from pushing him into the car.

¶ 8 Defendant testified he was a passenger in his vehicle driven by Ladika Tolise on the night of the incident. As they neared downtown Bloomington, the strut on defendant's vehicle broke and "the car just dropped." They exited the vehicle, and defendant started to call for roadside assistance. Tolise "walked off" because "[he] was in a bit of a rush." Defendant stated he "didn't feel the need" to tell police that Tolise had been driving. As Parsley performed field sobriety tests, defendant felt like he "was being controlled" and that the officers were "building a case" against him. Defendant believed his need to use the restroom affected his ability to perform the tests.

¶ 9 Following closing arguments, the jury found defendant guilty on all three charges. On March 15, 2017, the McLean County circuit clerk filed a letter sent by defendant to Judge Yoder. The letter stated, in part, as follows:

> "I would like an appeal to be filed on my behalf. I honestly felt prosecuted by my public defender. She lied to me about having a statement from my witness. She convinced me to take the stand. I don't feel like she picked out a jury of my peers. I don't feel like she represented me to the best of her abilities. She told me I didn't give her evidence that I know, for a fact, I did. So, I beg of your honor to please grant me an appeal due to the fact of improper councel [*sic*]. Please and thank you."

A photocopy of an envelope is stapled to the letter, and the envelope contains a handwritten note stating: "3/15/17 KMS correspondence sealed by Judge Yoder." A corresponding docket entry indicates defendant's letter was "to be sealed in [the] court file" and copies sent to the prosecutor and public defender.

¶ 10 At the April 2017 sentencing hearing, defendant did not make a statement in allocution. After considering the statutory factors in aggravation and mitigation and the recommendations from counsel, the trial court sentenced defendant to concurrent terms of 150 days in jail for the DUI and obstruction convictions. The court imposed court costs on the improper-lane-usage conviction. Defendant appealed his convictions for DUI (case No. 4-17-0319) and obstructing a peace officer (case No. 4-17-0321), and this court consolidated the cases.

¶ 11 II. ANALYSIS

¶ 12 Defendant argues this case should be remanded with directions that the trial court adequately address his *pro se* posttrial allegations of ineffective assistance of counsel. We agree, and the State concedes remand is necessary.

¶ 13 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.

¶ 14 "[A] *pro se* defendant is not required to do any more than bring his or her claim to the trial court's attention." *Moore*, 207 Ill. 2d at 79, 797 N.E.2d at 638. 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." *People v. Ayres*, 2017 IL 120071, ¶ 18, 88 N.E.3d 732; see also *People v. Jindra*, 2018 IL App (2d) 160225, ¶ 14, __ N.E.3d _ (stating "the complaint must be clear" to trigger a *Krankel* inquiry); *People v. Thomas*, 2017 IL App (4th) 150815, ¶ 26, 93 N.E.3d 664 (noting "[c]ourts have found a defendant is entitled to a

Krankel inquiry when the defendant makes an explicit or 'clear' complaint of trial counsel's performance or ineffective assistance of counsel"). "[T]he primary purpose of the preliminary inquiry is to give the defendant an opportunity to flesh out his claim of ineffective assistance so the court can determine whether appointment of new counsel is necessary." *Ayres*, 2017 IL 120071, ¶ 20, 88 N.E.3d 732.

¶ 15 On appeal, "[t]he 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.

¶ 16 In *People v. Lobdell*, 2017 IL App (3d) 150074, ¶ 15, 83 N.E.3d 502, the defendant, following his conviction but before sentencing, wrote a letter to the trial court stating his arrest was in violation of his constitutional rights because officers did not have a warrant. He also stated " 'why [my attorney] never mentioned this during trial I do not know, that[']s why I am mentioning it now your honor.' " *Lobdell*, 2017 IL App (3d) 150074, ¶ 15, 83 N.E.3d 502. The defendant also read the letter at sentencing. *Lobdell*, 2017 IL App (3d) 150074, ¶ 16, 83 N.E.3d 502.

¶ 17 On appeal, the Third District considered whether the trial court erred in failing to conduct a preliminary inquiry to examine the defendant's claim of ineffective assistance of counsel. *Lobdell*, 2017 IL App (3d) 150074, ¶ 34, 83 N.E.3d 502. The court noted "a claim does not need to be supported by facts or specific examples as 'the primary purpose of the preliminary inquiry is to give the defendant an opportunity to flesh out his claim of ineffective assistance so the court can determine whether appointment of new counsel is necessary.' "

Lobdell, 2017 IL App (3d) 150074, ¶ 36, 83 N.E.3d 502 (quoting *Ayres*, 2017 IL 120071, ¶ 20, 88 N.E.3d 732). Based on his letter, the court found the defendant raised a clear claim of ineffective assistance and concluded the trial court failed to conduct a preliminary *Krankel* inquiry. *Lobdell*, 2017 IL App (3d) 150074, ¶ 37, 83 N.E.3d 502.

¶ 18 In the case *sub judice*, defendant sent a letter to the trial court prior to sentencing that raised concerns about counsel's representation. Defendant claimed he "felt prosecuted" by the public defender and alleged she lied about having a statement from his witness, convinced him to take the witness stand, did not pick a jury of his peers, denied the fact that he gave her evidence, and did not represent him to the best of her abilities. Defendant asked the court to grant an appeal "due to the fact of improper councel [*sic*]." The court directed copies to be given to the prosecutor and defense counsel.

¶ 19 As the State's brief notes, but for an indication in the record the trial court had seen and was aware of the contents of the letter, there was no obligation to address this issue on defendant's behalf once he chose not to raise it at his sentencing hearing. See *People v. Zirko*, 2012 IL App (1st) 092158, ¶ 70, 976 N.E.2d 361; *People v. Allen*, 409 Ill. App. 3d 1058, 1077, 950 N.E.2d 1164, 1182 (2011). In fact, it is reasonable to question why it becomes the responsibility of the trial court to remind a defendant of his claims only recently made by way of a letter sent directly to the court, especially in light of the fact both counsel for defendant and the State received a copy of the letter and neither chose to raise it. But for the obvious postconviction claim to be made later, the normal application of forfeiture should preclude the need to address defendant's claims. A defendant may have many reasons for choosing not to raise the issues mentioned in a previous letter, and we should honor his choice. It is equally true

the State could have foreclosed this issue on appeal and need for remand by simply raising it at sentencing.

¶ 20 Notwithstanding the foregoing, and in light of the case law, we find remand is required. Although defendant did not explicitly state he was raising a claim of ineffective assistance of counsel in his posttrial letter, the accusations were clearly complaints about counsel's performance during his jury trial. See *People v. Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 17, 966 N.E.2d 1069 (finding the defendant's comment at the hearing on her *pro se* motion to reconsider her sentence that trial counsel did not represent her " 'to his fullest ability during [her] trial' " triggered a *Krankel* inquiry because it was an implicit claim of ineffective assistance). As the State concedes, defendant's letter was a sufficiently clear allegation of ineffective assistance of counsel requiring an initial inquiry under *Krankel*. Because the trial court failed to conduct an inquiry into defendant's claims, the matter must be remanded. *People v. Bell*, 2018 IL App (4th) 151016, ¶ 36, 100 N.E.3d 177. We note we are not remanding this cause for a full evidentiary hearing. *Moore*, 207 Ill. 2d at 81, 797 N.E.2d at 639. Instead, "we remand the cause for the limited purpose of allowing the trial court to conduct the required preliminary investigation" to determine if a full evidentiary hearing is warranted. *Moore*, 207 Ill. 2d at 81, 797 N.E.2d at 640. As remand for a preliminary *Krankel* inquiry is required, we decline to address defendant's remaining issue in regard to his conviction for obstructing a peace officer. *Bell*, 2018 IL App (4th) 151016, ¶ 37, 100 N.E.3d 177. "Depending on the result of the preliminary *Krankel* inquiry, defendant's other claims may become moot." *Bell*, 2018 IL App (4th) 151016, ¶ 37, 100 N.E.3d 177.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we remand for the trial court to conduct an inquiry into defendant's *pro se* posttrial claim of ineffective assistance of counsel.

¶ 23 Remanded with directions.