

NOTICE

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FILED

October 27, 2017
Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 150628-U

No. 4-15-0628

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
TORRE L. WILSON,)	No. 14CF856
Defendant-Appellant.)	
)	Honorable
)	Thomas E. Griffith Jr.,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Holder White concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court remanded for the trial court to conduct an inquiry into defendant’s *pro se* posttrial claim of ineffective assistance of counsel.
- ¶ 2 In January 2015, a jury found defendant, Torre L. Wilson, guilty of aggravated domestic battery (720 ILCS 5/12-3.3(a)(1) (West 2012)) and resisting a peace officer (720 ILCS 5/31-1 (West 2012)). In March 2015, the trial court sentenced defendant, respectively, to six years’ imprisonment and 30 days’ incarceration. In May 2015, defendant filed a *pro se* posttrial motion for a reduction of his sentence, alleging he was provided ineffective assistance by his trial counsel. At a July 2015 hearing, the court dismissed defendant’s *pro se* motion without inquiring into his complaints about his counsel’s performance.

¶ 3 Defendant appeals, arguing this court should (1) remand the matter because the trial court failed to conduct an inquiry into his *pro se* posttrial claim of ineffective assistance of counsel; (2) reverse his conviction because the State invaded the purview of the jury by improperly defining great bodily harm during its closing argument and telling the jury it could not determine what constitutes great bodily harm; (3) vacate fines improperly imposed by the circuit clerk; (4) reduce the circuit clerk fee to comport with its statutory limitations; (5) apply his \$95 *per diem* credit to the properly assessed fines; and (6) refund or apply to other outstanding court costs any bond money used to pay for those assessments vacated or reduced by this court.

¶ 4 Under *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984), and its progeny, we remand the matter for the trial court to conduct an inquiry into defendant's *pro se* posttrial claim of ineffective assistance of counsel. As a result, we do not reach defendant's other claims.

¶ 5 I. BACKGROUND

¶ 6 A. Information

¶ 7 In July 2014, the State charged defendant by information with aggravated domestic battery (720 ILCS 5/12-3.3(a)(1) (West 2012)) and resisting a peace officer (720 ILCS 5/31-1 (West 2012)).

¶ 8 B. Jury Trial

¶ 9 In January 2015, the trial court held a jury trial *in absentia*. The following is a summary of the evidence presented by the State. Defendant did not present any evidence.

¶ 10 Heather Vanisavath testified, in March 2014, she lived with defendant and their two children in a single family home. At that time, Vanisavath and defendant had been in a seven-year dating relationship. On March 27, 2014, around 11 p.m., Vanisavath returned home from work. Around 1 a.m., defendant entered the bathroom where Vanisavath was bathing and requested her cell phone. Vanisavath gave defendant her cell phone, and then he left. Defendant returned to the bathroom and asked Vanisavath for her Facebook password. Vanisavath refused to give defendant her password. Defendant became angered and a verbal altercation transpired. The verbal altercation transformed into a physical altercation, with defendant striking Vanisavath on her back multiple times with a shower curtain rod. The physical altercation moved out of the bathroom and into the living room. In the living room, defendant struck Vanisavath in her face between 5 and 10 times with his hand because she continued to refuse to give him her password. In an attempt to protect herself, Vanisavath struck defendant in his mouth with her right hand and threw a bottle at him. Vanisavath eventually returned to the bathroom. She exited the home through the bathroom window in fear of defendant. Vanisavath went to a neighbor's home and called her mother. She described to her mother what had occurred, and Vanisavath's mother called the police.

¶ 11 Around 1:23 a.m., Officers Justin Ziller and Aaron Carr responded to Vanisavath's and defendant's home. The officers were wearing police uniforms and driving marked patrol vehicles. Upon arriving, the officers heard a noise coming from the rear of the home. The officers proceeded to the rear of the home, where they observed a man picking himself off the ground from under a window and then take off running. The man continued to flee even after the officers announced they were police officers. The officers eventually lost sight

of the man. After later learning defendant's name and reviewing a photograph of defendant, Officer Carr identified the man he observed outside the window as defendant.

¶ 12 Officer Ziller conducted an interview with Vanisavath, who appeared upset, bruised, bloody, and in pain. He noted she did not appear intoxicated. Photographs were taken of Vanisavath's injuries. The photographs were admitted into evidence and published to the jury. Ami Simmons, Vanisavath's mother, confirmed the photographs accurately depicted her daughter's appearance when she arrived at the home. Vanisavath testified her injuries consisted of a laceration on both ears, a laceration on her hand, bruising of the arm, bruising of her middle finger, bruising of her back, bruising of her left shoulder, and a mark on her forehead. Vanisavath was transported to a hospital by ambulance.

¶ 13 Jeffrey Denny, a physician assistant, testified, at approximately 2:41 a.m., Vanisavath was admitted at the hospital. Vanisavath did not appear clinically intoxicated. She was oriented and had the capacity to make decisions. Vanisavath indicated she had been assaulted, having been struck multiple times with fists and a shower curtain rod. Denny testified Vanisavath's injuries included lacerations to the ears and the right hand and bruising of the head, back, and arms. Vanisavath sustained a full thickness laceration to her left ear, which Denny described as a laceration going through both the skin and the cartilage. Denny indicated Vanisavath's injuries were consistent with being struck by fists and a curtain rod. Denny performed suture repair to Vanisavath's left ear, right ear, and right hand. Vanisavath was also given medication for her pain. An officer took photographs of Vanisavath's injuries while she was at the hospital. The photographs were admitted into evidence and published to the jury. At 6 a.m., Vanisavath was discharged from the hospital.

¶ 14 Vanisavath testified she experienced pain from the injuries for several weeks and had permanent scarring on both ears. She acknowledge she (1) smoked cannabis prior to work, (2) consumed a pint of gin after returning home from work, and (3) maintained contact with defendant after the incident. Vanisavath also acknowledged she was testifying only because she received a subpoena.

¶ 15 Following closing arguments, the jury found defendant guilty of aggravated domestic battery and resisting a peace officer.

¶ 16 C. Sentencing

¶ 17 In March 2015, the trial court held a sentencing hearing. Defendant appeared in custody with his counsel. The court sentenced defendant to six years' imprisonment for aggravated domestic battery and 30 days' incarceration for resisting a police officer.

¶ 18 D. Motion To Reconsider Sentence

¶ 19 In April 2015, defendant, through counsel, filed a timely motion to reconsider his sentence, arguing the sentence imposed for aggravated domestic battery was excessive.

¶ 20 E. *Pro Se* Motion for Reduction of Sentence

¶ 21 In May 2015, defendant filed a *pro se* motion for a reduction of his sentence. In his motion, defendant argued a reduction in his sentence was appropriate because:

“A. My lawyer was ineffective assistance of counsel. (1) I never had a chance to go over my discovery material. (2) He never put motions in on my behalf due to inadequate evidence, creating attorney client breakdown of communication.

B. He never submitted the statement of the witness as she (Ms. Vanisavath) had filed an affidavit on [December 22, 2014,] saying that she recanted her statement of quote ‘I do not feel comfortable with humiliating myself on the stand because [I] lied[.]’

C. Violation of the defendant[’]s (Mr. Wilson) 6th amendment right to a fair trial by a [*sic*] impartial jury, to the right of an adequate review of all and any evidence against the accused.

D. Failed to file a motion for dismissal of the case of 14-CF-856 due to the victim stating that there had not been a crime that was committed against (Ms. Vanisavath) in the first place[.]

E. Attached to the motion is exhibit (A) of Ms. Vanisavath[’s] alleged victim statement of evidence recantment of her statement.”

Defendant attached to his motion a copy of a notarized document addressed to the assistant State’s Attorney prosecuting his case. The document was dated December 22, 2014, and signed by “Heather Vanisavath.”

¶ 22 F. Hearing on Defendant’s Posttrial Motions

¶ 23 In July 2015, the trial court held a hearing on defendant’s posttrial motions. The court (1) dismissed defendant’s *pro se* motion for a reduction of his sentence, concluding it was untimely; and (2) denied defendant’s motion to reconsider his sentence, concluding the sentence

imposed was appropriate. The court did not conduct an inquiry into defendant's complaints about his counsel's performance.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, defendant argues this court should (1) remand the matter because the trial court failed to conduct an inquiry into his *pro se* posttrial claim of ineffective assistance of counsel; (2) reverse his conviction because the State invaded the purview of the jury by improperly defining great bodily harm during its closing argument and telling the jury it could not determine what constitutes great bodily harm; (3) vacate fines improperly imposed by the circuit clerk; (4) reduce the circuit clerk fee to comport with its statutory limitations; (5) apply his \$95 *per diem* credit to the properly assessed fines; and (6) refund or apply to other outstanding court costs any bond money used to pay for those assessments vacated or reduced by this court.

¶ 27 Under *Krankel* and its progeny, when a defendant raises a *pro se* posttrial claim of ineffective assistance, the trial court must conduct an inquiry into the factual basis of the defendant's claim to determine whether new counsel should be appointed to assist the defendant. See *Krankel*, 102 Ill. 2d at 189, 464 N.E.2d at 1049; *People v. Johnson*, 159 Ill. 2d 97, 126, 636 N.E.2d 485, 498 (1994); *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637 (2003). In conducting its inquiry, the court may (1) ask defense counsel to "answer questions and explain the facts and circumstances" relating to the claim, (2) briefly discuss the claim with the defendant, or (3) evaluate the claim based on "its knowledge of defense counsel's performance at trial" as well as "the insufficiency of the defendant's allegations on their face." *Moore*, 207 Ill.

2d at 78-79, 797 N.E.2d at 638. Where the court’s inquiry discloses a “possible neglect of the case,” it should appoint new counsel to independently investigate and represent the defendant at a separate hearing. *Id.* at 78, 797 N.E.2d at 637. If, on the other hand, the court determines the claim “lacks merit or pertains only to matters of trial strategy,” the court may deny the claim without appointing new counsel. *Id.* at 77-78, 797 N.E.2d at 637.

¶ 28 Here, it is undisputed the trial court did not conduct an inquiry into defendant’s complaints about his counsel’s performance. Therefore, the only question—a question of law subject to *de novo* review—is whether the allegations in defendant’s *pro se* posttrial motion were sufficient to trigger the court’s duty to conduct such an inquiry. *People v. Taylor*, 237 Ill. 2d 68, 75-76, 927 N.E.2d 1172, 1176 (2010). The State concedes the allegations were sufficient. In his *pro se* posttrial motion, defendant explicitly alleged he received “ineffective assistance of counsel.” He also provided a detailed description of the grounds of the alleged deficient performance. We accept the State’s concession and find the allegations in defendant’s *pro se* posttrial motion were sufficient to trigger the court’s duty to conduct a preliminary *Krankel* inquiry. See *Moore*, 207 Ill. 2d at 79, 797 N.E.2d at 638 (“[A] *pro se* defendant is not required to do any more than bring his or her claim to the trial court’s attention.”); *People v. Ayres*, 2017 IL 120071, ¶ 18 (finding an express allegation of ineffective assistance of counsel made in a *pro se* posttrial motion triggers a trial court’s duty to conduct a preliminary *Krankel* inquiry). Because the court failed to conduct an inquiry into defendant’s claim of ineffective assistance of counsel, the matter must be remanded. See *Moore*, 207 Ill. 2d at 81, 797 N.E.2d at 639 (explaining the failure to conduct a preliminary *Krankel* inquiry precludes appellate review of defendant’s claim).

¶ 29 As the matter must be remanded to allow the trial court to conduct a preliminary *Krankel* inquiry, we decline to address defendant's other claims on appeal. See *Ayres*, 2017 IL 120071, ¶ 13 (“[T]he goal of any *Krankel* proceeding is to facilitate the trial court's full consideration of a defendant's *pro se* claim and thereby potentially limit issues on appeal.”). Depending on the result of the preliminary *Krankel* inquiry, defendant's other claims may become moot. Additionally, on remand, defendant can raise any issues with the assessments imposed and the credit received. We direct appellate counsel to provide copies of their briefs to the trial attorneys and trial court in this case.

¶ 30 III. CONCLUSION

¶ 31 We remand for the trial court to conduct an inquiry into defendant's *pro se* posttrial claim of ineffective assistance of counsel.

¶ 32 Remanded with directions.