No. 124352

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Appellate Court
)	of Illinois, Fourth District
Plaintiff-Appellant,)	No. 4-17-0605
)	
)	There on appeal from the Circuit Court
v.)	of the Sixth Judicial Circuit,
)	Macon County, Illinois
)	No. 12-CF-897
)	
RYAN M. RODDIS,)	The Honorable
)	Thomas E. Griffith,
Defendant-Appellee.)	Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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POINTS AND AUTHORITIES

NATURE OF THE CASE

The People appeal from the appellate court's judgment holding that during a preliminary *Krankel* inquiry, a trial court "does not — and cannot — reach the merits of an ineffective assistance claim." *People v. Roddis*, 2018 IL App (4th) 170605, ¶ 47. No issue is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether the appellate court erred by holding, in contravention of more than two decades of precedent from this Court, that trial courts may not consider the merits of a *Krankel* claim at the preliminary inquiry stage.

2. Whether the trial court correctly denied defendant's *Krankel* claim.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612. This Court allowed the People's petition for leave to appeal on March 20, 2019.

STATEMENT OF FACTS

A. Defendant's Bench Trial

In 2012, the People charged defendant with aggravated domestic battery of his girlfriend, Meghan Collins. C26.[1] Defendant, initially represented by Phillip Tibbs, waived his right to a jury; six months before trial, defendant fired Tibbs and retained Baku Patel. C48, 63.

[1] The common law record and report of proceedings are cited as "C_" and "R__," and defendant's brief in the appellate court below is cited as "Def. App. Br. __."

Several months before trial began, defendant was separately charged with multiple counts of threatening and harassing Collins, and offering her money, all with the intent to deter her from testifying in the domestic battery case. C55-57. Those charges arose after Collins brought to the People's attention certain text messages from defendant, and they remained pending throughout defendant's domestic battery trial. R169-71.

At trial, Collins testified that on the date of the battery, defendant was living in her apartment, along with their three-year-old daughter. R82, 86. Collins and defendant got into an argument, and she told him to leave. R83. Defendant became angry and picked up a pillow to throw it outside, and Collins pushed it out of his hands. *Id*. Defendant then pushed Collins's head against the corner of the apartment's open steel door, resulting in a large gash to her head. R83-84, 89, 98. Collins ran upstairs and called the police; ultimately, she was taken to the hospital, where staples were used to close a two-inch laceration on her head. R84.

On cross-examination, Collins testified that since the incident, she had been communicating with defendant via text messages, phone, and email, and in those communications she told defendant that she believed that he did not intend to (1) hit her head against the door or (2) cause her any injury. R94-95, 102. Collins further testified on cross-examination that her statement to police that defendant struck her multiple times was untrue because defendant only pushed her head once. R93-94. Collins also admitted

that she had a pending charge for filing a false report in an unrelated case. R96.

The responding police officer testified that Collins had stated that defendant pushed her head into the door and punched her in the head. R111. There was blood on the side of Collins's head, face, and torso. R104, 112. Defendant told the officer that he attempted to throw a seat cushion out the door, but the cushion accidentally hit Collins and knocked her head into the door. R106, 111. Defendant later told police that he threw the cushion at Collins "to get her to shut up." R106, 112. On cross-examination, the officer testified that when police arrived, defendant was sitting on the couch, waiting for them; he cooperated and was taken into custody without incident. R109-110.

An emergency room physician testified that (1) she treated Collins for a "gaping" two-inch laceration to the head, (2) the laceration required three staples to close, and (3) Collins reported that the injury was caused by someone grabbing her head and hitting it against a door. R115-16.

Defendant testified that Collins wanted him to leave the apartment and began throwing his things out the door. R122. In response, he decided to throw a couch outside and began by picking up a cushion and tossing it out the door. *Id.* Collins then "jumped in front of the cushion" and hit her head against the door, which was moving at the same time. R122-23, 129. Defendant claimed that he did not intend to hit Collins with the cushion and

he never pushed her head into the door. R123-24. He waited for police and spoke to them because he believed that he had done nothing wrong. R124-25. Defendant further testified that after the incident, Collins contacted him "all the time" by text message to tell him that she would testify against him unless he gave her money. R126. Defendant also testified that in her text messages and emails, Collins said that she believed the incident was an accident. R127. None of the text messages or emails that defendant and Collins testified about were introduced into evidence at trial.

During closing argument for the defense, Patel argued that the People failed to prove that defendant had knowingly caused great bodily harm because Collins admitted that her injury was the result of an accident, which admission was consistent with defendant's version of events. R144-47. Patel further argued that, unlike Collins's account, defendant's version of events had never changed, and that defendant waited for police and cooperated with them. R143-47. Patel also pointed out that Collins testified that she maintained contact with defendant and "admits letting him know that he didn't mean for this to happen." R146.

The trial court found defendant guilty of aggravated domestic battery. R151-53. The court observed that defendant's version of events "simply doesn't make sense." R151. The court "[did] not believe that one could possibly receive that degree of injury by simply throwing the pillow out the door and somebody wandering in the path." R151-52. The court

acknowledged that both Collins and defendant believed that defendant did not intend to cause any injury. R152. However, a battery did occur and that defendant knowingly caused great bodily harm was proved "based on the severity of the cut" to Collins's head. R153.

At the sentencing hearing, an investigator for the Macon County State's Attorney's Office testified that, before trial, Collins had received text messages from defendant in which he (1) offered Collins money to change her statement or fail to appear at trial; (2) proposed several versions of how she should testify at trial; (3) threatened to commit suicide if convicted and that his suicide would be her fault; and (4) included a picture of a masked man holding a knife and said "I'm going to come and knock on your back door." R169-71. The text messages were introduced into evidence over defendant's objection. R173. A sheriff's deputy testified that before trial, he saw a cell phone video in which defendant threatened to kill Collins. R166-67.

Defendant's mother testified that before trial, Collins sent defendant text messages saying, in part, that she knew that the injury was an accident, and that she would speak with defense counsel for "1k," which purportedly meant one thousand dollars; those texts were admitted into evidence. R189-93. Lastly, the People established that although defendant was only thirty years old, he had seven prior felony convictions, including an aggravated battery conviction (for which he received nine and one-half years in prison) in which he broke a man's wrist, ribs, and eye socket, causing bone chips to

push on the victim's brain, and another battery conviction committed almost immediately after he was released from prison on the prior conviction. R176, 198-99, 202-05, 212.

At the conclusion of the hearing, the court sentenced defendant to six years in prison plus four years of mandatory supervised release. R214.

Defendant subsequently filed a pro se "Motion for Reduction of Sentence" that argued that his sentence should be reduced because, among other reasons, (1) Collins's head injury could have been "self-inflicted;" (2) the injury occurred because she "accidentally fell down into the door;" and (3) she was mentally ill and suffered from "jealousy" because defendant had "mov[ed] on" from their relationship. C99-110. The pro se motion also alleged that defense counsel erred in certain respects, including by failing to introduce at trial the text messages that Collins had sent defendant. C104. Attached to the motion were printouts of text messages sent by Collins in the months leading up to trial, including messages that read:

- "I'm done playin I'm ready to talk to ur lawyer 1k ill go there now"
- "u think i want my baby daddy locked up your crazy af!! . . . u help me i help u to the fullest thats how we do it. always n forever xooooooooooo"
- "I've decided family is family and mines not going ANYWHERE! You can relax bd and sleep easy nothing's going to happen to you I'm going to make sure of it"
- "I got u on states attorney case dismissed just help me Ryan It was an accident!!!!!!!"

- "i just want my life back the life i had b4 I met you and im finally getting it. Sorry but i have no love for you and havent for a lil while now i just said it to get wat i wanted and get money you played me a long time ago and HATE to say it but i been playing u the whole time ur extremely dumb for not seeing that the first time i didn't talk to ur lawyer[,]" and

- "LOL THE STATE GUNA BE PISSED AF WHEN THEY SEE HOW WE COME THROUGH LOL wastin all they time n money on some shit that never guna work, id take a case b4 i let them take u, YOU KNOW THAT!!!"

C116-21. The trial court denied defendant's motion as untimely. R221-22.

B. Defendant's First Appeal

On appeal, defendant argued that (1) the evidence was insufficient to prove him guilty beyond a reasonable doubt; and (2) the trial court erred by dismissing his pro se motion as untimely. C170-71. The appellate court affirmed defendant's conviction, holding that the evidence was sufficient to convict because a reasonable person "would be consciously aware that pushing another person's head into the corner of a steel door is practically certain to cause great bodily harm." C174. The appellate court then remanded for consideration of defendant's pro se motion, noting that the People conceded that it was appropriate to do so. C175.

C. Proceedings on Remand

On remand, the trial court appointed counsel to help "get me organized." R227. That attorney almost immediately noted that he had a potential conflict of interest, and the trial court allowed him to withdraw, finding that it was unnecessary to appoint counsel in any event until after the court had conducted the preliminary *Krankel* inquiry. R319.

At the preliminary *Krankel* inquiry, defendant appeared, as did his trial counsel, Tibbs and Patel. At the start of the hearing, the court said

> [Defendant], here is how this is going to work. In your motion for reduction of sentence, which you filed on June 9, 2014, you have made certain allegations directed against Mr. Patel and kind of inferentially against Mr. Tibbs. I'm going to allow you to elaborate. First of all, I'll briefly summarize each of the allegations. I'll allow you to briefly elaborate if you want to add additional facts. Mr. Patel, I'll then allow you to respond. And Mr. Tibbs, if appropriate, I'll allow you to respond. Then, I'll rule as to whether or not I find that there was ineffective assistance in this situation. [Prosecutor], your participation at this stage is to be de minimus[.]
>
> If I find that the allegations are founded, I'll have to appoint separate counsel, and we will proceed to a full-blown *Krankel* hearing.

R244-45. The court then proceeded in the manner it had outlined by questioning defendant as to each individual claim of ineffective assistance, before allowing defendant and the attorneys to comment. R245-63.

Defendant's primary claim (and the only claim he would later raise on appeal) was that his trial counsel was ineffective for failing to impeach Collins with her text messages to defendant. R247-51. The trial court asked trial counsel to respond to those allegations:

Patel:	Judge, it is my recollection, it's been three years ago, but I do recall specifically I think the victim admitted during my cross-examination she felt it was not knowingly done to her by [defendant], and also she used the word accident. At that point, once I had the admission, there was nothing to impeach her with. She admitted the issue that was at trial.
Court:	Okay. Thank you, Mr. Patel. And Mr. Patel, let me ask you one question further. As I recall, the victim testified that she didn't think it was an accident as to how the incident

itself happened, but it was an accident regarding the degree of harm that she ended up suffering.

Patel: Correct. Regarding, I think, a cushion being thrown and her head striking a side door.

R249. Defense counsel further stated that it was unnecessary to introduce the text messages because Collins testified that "it was an accident at least in terms of the degree of harm" and he cross-examined her regarding her false statement to police that defendant hit her. R251; *see also* R263 (trial court noting that it "recall[ed] the victim indicating she thought at least the degree of harm she suffered was an accident").

After examining each of defendant's allegations in this manner, the court found that defendant was "well represented," his allegations "do not amount to ineffective assistance of counsel," and, thus, under *Krankel* he was not entitled to the appointment of new counsel to further pursue his ineffective assistance claims. R263.

D. Defendant's Second Appeal

On appeal, defendant argued that the trial court erred by denying his *Krankel* motion and declining to appoint *Krankel* counsel because defendant established that his trial counsel "possibly neglect[ed]" his case "by failing to impeach [Collins] with her text messages." Def. App. Br., *People v. Roddis*, Case No. 4-17-0605, at 14.

The appellate court reversed, holding that the trial court had erred in two respects. First, "the trial court erred" during the preliminary *Krankel* inquiry "by addressing the *merits* of defendant's ineffective assistance claim."

People v. Roddis, 2018 IL App (4th) 170605, ¶ 88 (emphasis in original). That was error, according to the appellate court, because at the preliminary inquiry stage, a trial court "does not — and cannot — reach the merits of an ineffective assistance claim." *Id.* ¶ 47; *see also id.* ¶ 81 ("a trial court commits reversible error when it conducts a *Krankel* hearing and concludes — on the merits — that there was no ineffective assistance"). Second, the appellate court believed that the trial court had already appointed new counsel and, thus, "no reason existed for the court to conduct any further hearings pursuant to *Krankel*; instead, the case should have proceeded based on whatever action defendant's new counsel might choose to take regarding defendant's ineffective assistance claims." *Id.* ¶ 85. The appellate court thus remanded "with directions to appoint new counsel for defendant, so that the new counsel may take whatever action the new counsel deems appropriate" regarding defendant's ineffective assistance of counsel claims. *Id.* ¶ 102.

STANDARD OF REVIEW

Whether a trial court conducted a proper *Krankel* inquiry presents a legal question that is reviewed de novo. *People v. Jolly*, 2014 IL 117142, ¶ 28. A reviewing court will reverse a trial court's denial of a *Krankel* motion at the preliminary inquiry stage only if the ruling was manifestly erroneous, *see, e.g.*, *People v. Willis*, 2016 IL App (1st) 142346, ¶ 18, *i.e.*, only if it is an error that is "clearly evident, plain, and indisputable," *People v. J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 40.

ARGUMENT

The appellate court's judgment should be reversed for two reasons. First, the appellate court's holding that a trial court "may not" consider the merits of an ineffective assistance claim during the preliminary *Krankel* inquiry is contrary to this Court's longstanding precedent. Second, the trial court correctly denied defendant's *Krankel* motion because his claim is plainly meritless and relates solely to matters of trial strategy.

I. The Appellate Court's Opinion Directly Contradicts This Court's Settled Precedent.

A. It is settled law that trial courts should consider the merits of a defendant's pro se allegations of ineffective assistance of counsel at the preliminary inquiry stage.

The appellate court's holding that, during a preliminary *Krankel* inquiry, a "trial court does not — and cannot — reach the merits of an ineffective assistance claim," *Roddis*, 2018 IL App (4th) 170605, ¶¶ 47, 52, 81, is directly contrary to more than twenty opinions of this Court.

The *Krankel* rule permits a defendant in a criminal case to submit a pro se post-trial motion alleging that his trial counsel provided ineffective assistance. *People v. Krankel*, 102 Ill. 2d 181, 189 (1984). But this Court has repeatedly cautioned that "the trial court is not required to automatically appoint new counsel when a defendant raises such a claim." *E.g., People v. Ayres*, 2017 IL 170071, ¶ 11 (collecting cases). Instead, the trial court first must "conduct some type of inquiry" into the defendant's pro se claims. *Id.* (collecting cases). During this so-called preliminary *Krankel* inquiry, it is

"usually necessary" for the trial court to confer with defense counsel about the basis for the pro se claims to determine whether new counsel should be appointed. *Id.* ¶ 12 (collecting cases). The trial court also "is permitted to discuss the allegations with defendant" and "to make its determination [of whether to appoint new counsel] based on its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations." *Id.* (collecting cases).

As this process suggests, the decision the trial court must reach at the preliminary inquiry stage — whether to appoint new counsel — turns on the merits of the defendant's claims. In particular, a defendant is entitled to *Krankel* counsel only if, at the end of the preliminary inquiry, the defendant has shown "possible neglect of the case" by trial counsel. *Id.* ¶ 11. Plainly, the trial court cannot make that determination unless it considers the merits of the defendant's claims.

Indeed, in more than twenty cases over the last twenty-five years, this Court has held that trial courts should decline to appoint new counsel following the preliminary *Krankel* inquiry if the defendant's claim is meritless. *See, e.g.*, *id.* ¶ 11 (collecting cases); *People v. Jocko*, 239 Ill. 2d 87, 92 (2010) (no new counsel if defendant's claim "lacks merit"); *People v. Simms*, 168 Ill. 2d 176, 199 (1995) (no new counsel if defendant's claim "is meritless"); *People v. Byron*, 164 Ill. 2d 279, 305 (1995) (no new counsel if

defendant's claim is "without merit"); *People v. Sims*, 167 Ill. 2d 483, 518 (1995) (no new counsel if "there is no validity to the defendant's claim").[2]

This Court's decision in *People v. Chapman*, 194 Ill. 2d 186 (2000), is particularly instructive. Following his conviction, Chapman filed a pro se motion for a new trial alleging that his trial counsel had erred. *Id.* at 227. Similar to this case, the trial court in *Chapman* held a preliminary inquiry, allowed Chapman to elaborate on his claims, then denied his motion and declined to appoint new counsel because it "found that [Chapman] received the effective assistance of counsel." *Id.* at 229. As in this case, Chapman argued on appeal that the trial court had erred by evaluating the merits of his ineffective assistance claim, "rather than first determining whether new counsel should be appointed to argue [his] assertions regarding the ineffectiveness of trial counsel." *Id.* This Court rejected Chapman's argument and affirmed the trial court's judgment, noting that new counsel should not be appointed if the defendant's claim "lacks merit." *Id.* at 230-31. As this Court explained, the trial court correctly found that one of Chapman's claims had "no merit" and the other involved a complaint about legal

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[2] *See also, e.g.*, *People v. Jolly,* 2014 IL 117142, ¶ 29; *People v. Taylor*, 237 Ill. 2d 68, 75 (2010); *People v. Banks*, 237 Ill. 2d 154, 214 (2010); *People v. Moore*, 207 Ill. 2d 68, 78 (2003); *People v. Bull*, 185 Ill. 2d 179, 210 (1998); *People v. Towns*, 174 Ill. 2d 453, 466-468 (1996); *People v. Munson*, 171 Ill. 2d 158, 199 (1996); *People v. Kidd*, 175 Ill. 2d 1, 44-45 (1996); *People v. Johnson*, 159 Ill. 2d 97, 124 (1994); *People v. Coleman*, 158 Ill. 2d 319, 350-51 (1994); *People v. Robinson*, 157 Ill. 2d 68, 86 (1993); *People v. Strickland*, 154 Ill. 2d 489, 527 (1992); *People v. Ramey*, 152 Ill. 2d 41, 52 (1992); *People v. Williams*, 147 Ill. 2d 173, 251-53 (1991); *People v. Crane*, 145 Ill. 2d 520, 533 (1991).

strategy, which is not cognizable in *Krankel* proceedings. *Id*. at 231. Chapman's arguments on appeal did "not affect the fact" that his complaints about trial counsel "lack merit[.]" *Id.* The trial court properly denied the *Krankel* motion and declined to appoint new counsel because it "reviewed counsel's performance and concluded that counsel provided effective representation." *Id.* Thus, as *Chapman* and the cited cases show, it has long been established that courts should consider the merits of a defendant's claims at the preliminary inquiry stage.

Departure from stare decisis "must be specifically justified" by showing that the prior decision is "unworkable or badly reasoned" and "likely to result in serious detriment prejudicial to public interests." *People v. Williams*, 235 Ill. 2d 286, 294 (2009). No such justification exists here, because this Court's rule that trial courts should consider the merits of a defendant's ineffective assistance claim during the preliminary *Krankel* inquiry is not only longstanding and frequently re-affirmed, it is also straightforward, sensible, and efficient. Certain claims can — and should — be disposed of promptly, at the preliminary inquiry stage, rather than wasting the time and resources that would be incurred by automatically appointing new counsel every time a defendant alleges that his trial counsel erred. And there can be no dispute that this rule has proved to be simple, understandable, and easily applied. In short, this Court's longstanding rule works, and there is no reason to change it.

B. The appellate court's proposed framework is unnecessary and confusing.

The appellate court held that trial courts may deny *Krankel* motions at the initial inquiry stage only if the defendant's claim is "(1) conclusory, (2) misleading, (3) legally immaterial, (4) or pertaining solely to an issue of trial strategy." *Roddis*, 2018 IL App (4th) 170605, ¶ 65. That proposed framework should be rejected.

First, as discussed above, this Court has never adopted such a restrictive framework but instead has consistently instructed trial courts to deny claims at the preliminary inquiry stage if they are "meritless." Notably, the appellate court's opinion provides no basis to believe that trial courts have been unable to distinguish meritless claims from those that might have validity if new counsel were appointed to further pursue them. Rather, the case law demonstrates that this Court's rule has proved to be workable, easily understood, and correctly applied by the lower courts.[3] The appellate court's proposed new framework is simply unnecessary.

Second, the appellate court's proposed framework is confusing and internally inconsistent. To begin, the appellate court states that trial courts should deny at the preliminary inquiry stage claims that are "conclusory," but then concedes that it is "unclear" when a claim would be so conclusory

[3] *See, e.g.*, *Chapman*, 194 Ill. 2d at 230-31 (holding that trial court properly denied meritless claims at preliminary inquiry stage); *Williams*, 147 Ill. 2d at 253 (same); *Towns*, 174 Ill. 2d at 466-68 (same); *Strickland*, 154 Ill. 2d at 527-30 (same); *Coleman*, 158 Ill. 2d at 350-53 (same); *Byron*, 164 Ill. 2d at 305 (same); *Bull*, 185 Ill. 2d at 211 (same).

that it would not warrant further relief. *Roddis*, 2018 IL App (4th) 170605, ¶ 67. In addition, although the appellate court says that trial courts may not "reach the merits of an ineffective assistance claim," *id.* ¶¶ 47, 52, it also indicates that the trial court may deny a claim at the preliminary inquiry stage if the defendant fails to show that counsel erred or that the error prejudiced the defendant, *id.* ¶¶ 71, 73. For example, the appellate court states that if the defendant alleges that his counsel failed to call an exculpatory witness, the trial court may deny the claim at the preliminary inquiry stage if it determines (based on counsel's assurances) that the omitted witness's testimony would be "not helpful to the defendant," *i.e.*, if there was no prejudice. *Id.* ¶ 71. And the appellate court states that a trial court may determine at the preliminary inquiry stage that counsel did not err by failing to raise certain arguments or defenses if the court deems them immaterial. *Id.* ¶ 73. The opinion also states that in some cases the trial court "must determine" at the preliminary inquiry whether counsel's actions could be said to be "objectively unreasonable." *Id.* ¶ 77. The line dividing the determinations that the appellate court deems permissible at the preliminary inquiry stage from those that are purportedly on the "merits" and thus impermissible is impossible to identify, much less apply in practice.

Indeed, the appellate court's resolution of this case demonstrates the confusing nature of its proposed framework. In particular, the appellate court states that at the preliminary inquiry stage, trial courts should deny

claims that relate to "matters of trial strategy," such as "when to introduce a particular piece of evidence or testimony," yet it remands this case for appointment of *Krankel* counsel and further proceedings even though defendant is complaining about his counsel's decision to introduce certain text messages at sentencing, rather than at trial. *Id.* ¶¶ 100, 102.

In sum, the appellate court's proposed framework is unnecessary, would result in confusion about what claims could or should be denied at the preliminary inquiry stage, and would waste judicial resources as parties fight about whether a particular claim fits into one of the appellate court's four categories. The better rule is the one this Court has re-affirmed for decades: lower courts can and should be trusted to determine at the preliminary inquiry stage whether claims are "meritless" and whether claims may potentially be viable if new counsel is appointed to pursue them.

II. The Trial Court Properly Denied Defendant's *Krankel* Motion.

This case need not be remanded for further proceedings because the trial court correctly denied defendant's *Krankel* motion.

A. The appellate court's ruling misinterprets the record.

In addition to holding that trial courts may not consider the merits of a claim at the preliminary inquiry stage, the appellate court found that the trial court erred in a second way: the appellate court believed that the trial court had appointed new counsel before conducting the preliminary *Krankel* inquiry and therefore concluded that "[a]s soon as the court decided to appoint counsel, not only was a [preliminary] *Krankel* hearing not called for,

but the court purportedly conducting one made no sense." *Roddis*, 2018 IL App (4th) 170605, ¶ 85. The appellate court's conclusion rests on a misinterpretation of the record.

After this case was remanded following defendant's first appeal, the trial court appointed counsel to help "get me organized." R227. When appointed counsel appeared, however, the court and appointed counsel agreed that the court could "proceed at this point with a pre-inquiry *Krankel* hearing" which is to be conducted "with the prior [trial] lawyer" *before* appointing any new counsel. R313-14. In the course of that discussion, the appointed counsel also noted that he had a potential conflict of interest because he had briefly represented Collins. R314.

The court agreed that the attorney should be permitted to withdraw "until such time as a pre-*Krankel* hearing could be held and it was determined that [defendant] was entitled to another lawyer." R317-19. The court allowed counsel to withdraw because "the court believes the court may first proceed with a pre-inquiry *Krankel* hearing which would not necessitate the defendant being represented by [new counsel]." R319. The court then scheduled a preliminary *Krankel* inquiry and ordered defendant's trial counsel to appear for questioning. R319-20. At that preliminary *Krankel* inquiry, the court informed defendant that it would question him and his trial counsel about defendant's claims and "if I find that the allegations are

founded, I'll have to appoint separate counsel" to pursue defendant's claims that he was entitled to a new trial because his trial counsel erred. R245.

Thus, the record shows that (1) the trial court appointed new counsel briefly, and only because it wanted help "getting organized" — not because the court believed defendant was entitled to new counsel under *Krankel*, (2) appointed counsel withdrew before the preliminary *Krankel* inquiry, and (3) the court and parties understood that the purpose of the preliminary inquiry was to determine whether defendant was entitled to the appointment of counsel to pursue his claims. Thus, the appellate court wrongly concluded that there was no need to hold a preliminary *Krankel* inquiry.

B. The trial court properly denied defendant's *Krankel* motion at the preliminary inquiry stage.

The trial court conducted the preliminary *Krankel* inquiry precisely as it should have. The court (1) required defendant and both of his trial attorneys to attend, (2) read aloud each allegation defendant had included in his pro se motion, (3) provided defendant ample opportunity in open court to explain, expand, or attempt to support each allegation, and (4) asked trial counsel to respond to each allegation. R245-64. The trial court also understood its role, noting that if it found a basis for defendant's allegations, it would appoint new counsel to further pursue defendant's claim that he was entitled to a new trial due to counsel's errors. R245.

Ultimately, following the preliminary inquiry, the trial court concluded that there was no merit to defendant's claims and declined to appoint

Krankel counsel. R263-64. On appeal, defendant raised only one of his *Krankel* arguments, claiming that the trial court erred because defendant "establish[ed] that his attorney 'possibly neglected' his case by failing to impeach [Collins] with her text messages." Def. App. Br., *People v. Roddis*, Case No. 4-17-0605, at 14.[4] But, under settled law, that allegation was insufficient to require the appointment of new counsel.

As noted, it has long been established that new counsel should not be appointed when a defendant's *Krankel* claim "lacks merit or pertains only to matters of trial strategy." *Ayres*, 2017 IL 120071, ¶ 11 (collecting cases). It is also settled that issues regarding what evidence to present, how to conduct cross-examination, and whether to impeach a witness are "matters of trial strategy" that "are generally immune from claims of ineffective assistance of counsel." *E.g.*, *People v. West*, 187 Ill. 2d 418, 432 (1999) (questions of which witnesses to call and evidence to present are matters of legal strategy generally immune from challenge); *People v. Franklin*, 167 Ill. 2d 1, 22 (1995) (cross-examination and impeachment of witnesses are matters of trial strategy generally immune from review). The "only exception" to this rule is when counsel "'entirely fails to conduct any meaningful adversarial testing.'" *West*, 187 Ill. 2d at 432-33; *see also People v. Reid*, 179 Ill. 2d 297, 310 (1997) (same).

[4] Defendant thus has forfeited any suggestion that the trial court erred by rejecting his other *Krankel* arguments. *See, e.g., People v. Washington*, 2012 IL 110283, ¶ 62 ("Where the appellant in the appellate court fails to raise an issue in that court, this Court will not address it").

Here the record plainly shows that defense counsel subjected the People's case to meaningful adversarial testing. In cross-examining Collins, defense counsel elicited that she had been communicating with defendant since the incident and that she said in those messages that she believed that defendant did not intend to (1) hit her head against the door or (2) cause her any injury. R94-95, 102. Counsel also elicited that her statement to police that defendant hit her multiple times was untrue and that she had a pending charge for filing a false report in an unrelated case. R93-94, 96.

Defense counsel next elicited testimony from the responding police officer to support an argument that defendant conducted himself like an innocent man: *i.e.*, he waited for police to arrive, cooperated with them in the investigation, and was taken into custody without incident. R109-110.

Defense counsel then called defendant to testify to his version of the events — *i.e.*, that the injury was an accident, caused by Collins inadvertently moving into the path of the cushion as defendant threw it out the door. R122-27. And counsel elicited from defendant that after the incident, Collins contacted him "all the time" by text messages in which she said that she (1) knew the incident was an accident and (2) would testify against him unless he gave her money. R126-27.

Then, during closing arguments, defense counsel argued that (1) the People failed to prove that defendant knowingly caused great bodily harm because Collins admitted that her injury was an accident, which admission

was consistent with defendant's version of events; (2) unlike Collins, defendant's version of events had never changed; (3) defendant conducted himself throughout like an innocent man, including by waiting for police and cooperating with them; and (4) Collins testified that she maintained contact with defendant and "admits letting him know that he didn't mean for this to happen." R142-47.

The record thus shows that defense counsel provided meaningful adversarial testing of the People's case. Although defense counsel did not introduce the text messages themselves at trial, the existence and substance of the messages were brought out in testimony and defense counsel otherwise developed evidence to attempt to support a theory that defendant was innocent. Accordingly, defendant's complaint about his counsel's decision not to introduce the text messages into evidence is not a colorable *Krankel* claim, and the trial court properly denied it.

Although the fact that defense counsel subjected the People's case to meaningful adversarial testing is fatal to defendant's claim, three additional points bear mention.

First, the text messages are not as helpful to defendant's case as he believes because none of them state that Collins lied to police or on the stand when she said that defendant pushed her head into the door. C116-21. Indeed, the content of the text messages suggests that Collins alternated between a desire to keep her family together and anger at what defendant

had done. *See id*. Even in the "1k" text, which defendant believes proves that he is innocent, Collins states that she was willing to "talk to [defendant's] lawyer" before trial, and not that her prior statements were false; moreover, any request for money is consistent with the fact that defendant owed her child support. C116; R171, 197. Further, as the trial court and defense counsel noted at the preliminary *Krankel* inquiry, much of the substance of the text messages was brought out through defense counsel's examinations of witnesses at trial and, thus, the actual text messages themselves provide little, if any, value. R94-95, 102, 126-127 (trial); R249-251, 262-63 (*Krankel* inquiry).

Second, had defense counsel emphasized these text messages by introducing them at trial, the People could — and presumably would — have introduced numerous text messages that Collins received from defendant in which he (1) offered Collins money to change her statement or not show up his trial; (2) proposed different versions of how she should testify at trial; (3) said he would commit suicide if convicted and it would be her fault; and (4) included a picture of a masked man holding a knife and said "I'm going to come and knock on your back door." R169-71. These text messages paint defendant as a dishonest and violent man, and would have been extremely damaging to his case.

Third, there is no doubt that the verdict would have been the same had counsel introduced the text messages at trial. When finding defendant

guilty, the court acknowledged that both defendant and Collins said that they believed the incident was an accident. R152. But the court made clear that the key fact in this case was "the severity of the cut" on Collins's head. R153. It was the severity of the injury — a gaping wound that required multiple staples to close — that demonstrated that defendant's version of events "simply doesn't make sense." R151. As the court explained, it "[did] not believe that one could possibly receive that degree of injury by simply throwing the pillow out the door and somebody wandering in the path." R151-52. Nothing about the text messages diminishes the severity of Collins's injury nor makes defendant's story any less absurd, a point the trial court made clear when it noted during the preliminary *Krankel* inquiry that the text messages would "not be sufficient to sway the Court's decision" that defendant was guilty. R262.

In sum, the trial court correctly denied defendant's claim because it plainly pertains to legal strategy and is meritless.

CONCLUSION

For the foregoing reasons, this Court should reverse the appellate court's judgment.

June 27, 2019

Respectfully submitted,

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RULE 341(c) CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is twenty-five pages.

/s/ Michael L. Cebula
MICHAEL L. CEBULA
Assistant Attorney General

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KeyCite Yellow Flag - Negative Treatment
Appeal Allowed by People v. Roddis, Ill., March 20, 2019

2018 IL App (4th) 170605
Appellate Court of Illinois, Fourth District.

The PEOPLE of the State of Illinois,
Plaintiff-Appellee,
v.
Ryan M. RODDIS, Defendant-Appellant.

NO. 4-17-0605
|
FILED November 21, 2018

Synopsis
Background: Defendant was convicted in a bench trial in the Circuit Court, Macon County, No. 12CF897, Thomas E. Griffith Jr., J., of aggravated domestic battery. Defendant appealed. The Appellate Court, 2016 WL 4005418, affirmed and remanded for a hearing in compliance with *People v. Krankel*, 102 Ill. 2d 181, 80 Ill.Dec. 62, 464 N.E.2d 1045. On remand, the Circuit Court denied motion. Defendant appealed.

[Holding:] The Appellate Court, Steigmann, J., held that trial court should not have decided the merits of defendant's claim at the hearing.

Reversed and remanded with directions.

West Headnotes (32)

[1] **Criminal Law**
Duty of court to inquire as to effectiveness in general

A "*Krankel* hearing" describes the hearing the court must conduct when a defendant pro se has raised a posttrial claim regarding his counsel's ineffective assistance. U.S. Const. Amend. 6.

Cases that cite this headnote

[2] **Criminal Law**
Procedure

The only issue to be decided at a hearing *People v. Krankel*, 102 Ill. 2d 181, 80 Ill.Dec. 62, 464 N.E.2d 1045, when a defendant pro se has raised a posttrial claim regarding his counsel's ineffective assistance, is whether new counsel should be appointed. U.S. Const. Amend. 6.

Cases that cite this headnote

[3] **Criminal Law**
Procedure

There are only two possible outcomes when a trial court conducts a hearing under *People v. Krankel*, 102 Ill. 2d 181, 80 Ill.Dec. 62, 464 N.E.2d 1045, when a defendant pro se has raised a posttrial claim regarding his counsel's ineffective assistance: (1) the court appoints new counsel who should then conduct an independent investigation into the defendant's ineffective assistance claims and take whatever action counsel thinks would be appropriate or (2) the court does not appoint new counsel and posttrial matters proceed as in any other case. U.S. Const. Amend. 6.

2 Cases that cite this headnote

[4] **Criminal Law**
Procedure

At a hearing under *People v. Krankel*, 102 Ill. 2d 181, 80 Ill.Dec. 62, 464 N.E.2d 1045, when a defendant pro se has raised a posttrial claim regarding his counsel's ineffective assistance, the trial court does not—and cannot—reach the merits of an ineffective assistance claim; the court simply determines whether it is appropriate to appoint new counsel for the

defendant to investigate such claims. U.S. Const. Amend. 6.

Cases that cite this headnote

[5] **Criminal Law**
Procedure

The "preliminary inquiry" at a hearing under *People v. Krankel*, 102 Ill. 2d 181, 80 Ill.Dec. 62, 464 N.E.2d 1045, when a defendant pro se has raised a posttrial claim regarding his counsel's ineffective assistance, is the preliminary inquiry into the factual basis, if any, of a defendant's claims of ineffective assistance of counsel to determine whether appointing new counsel to pursue those claims is necessary. U.S. Const. Amend. 6.

1 Cases that cite this headnote

[6] **Criminal Law**
Procedure

At a hearing under *People v. Krankel*, 102 Ill. 2d 181, 80 Ill.Dec. 62, 464 N.E.2d 1045, when a defendant pro se has raised a posttrial claim regarding his counsel's ineffective assistance, if the appointment of new counsel is warranted, determining whether the defendant actually received ineffective assistance of counsel is for another day; the court does not reach the merits of such claims at the hearing. U.S. Const. Amend. 6.

Cases that cite this headnote

[7] **Criminal Law**
Procedure

Once a trial court determines whether to appoint new counsel to a criminal defendant, inquiry under *People v. Krankel*, 4102 Ill. 2d 181, 80 Ill.Dec. 62, 464 N.E.2d 1045, when a defendant pro se has raised a posttrial claim regarding his counsel's ineffective assistance, is over; if the court appoints new counsel, the case proceeds regarding the defendant's claims of ineffective assistance as determined by new counsel. U.S. Const. Amend. 6.

2 Cases that cite this headnote

[8] **Criminal Law**
Duty of court to inquire as to effectiveness in general

An inquiry under *People v. Krankel*, 102 Ill. 2d 181, 80 Ill.Dec. 62, 464 N.E.2d 1045, which considers a defendant's pro se posttrial motion asserting ineffective assistance of counsel, is an initial and nonadversarial evaluation and is not the forum at which the merits of the ineffective assistance claim are resolved. U.S. Const. Amend. 6.

Cases that cite this headnote

[9] **Criminal Law**
Procedure

The sole question at a hearing under *People v. Krankel*, 102 Ill. 2d 181, 80 Ill.Dec. 62, 464 N.E.2d 1045, when a defendant pro se has raised a posttrial claim regarding his counsel's ineffective assistance, is whether the court should appoint the defendant new counsel to investigate and pursue the defendant's ineffective assistance claims. U.S. Const. Amend. 6.

1 Cases that cite this headnote

[10] **Criminal Law**
Procedure

The function of a hearing under *People v. Krankel*, 102 Ill. 2d 181, 80 Ill.Dec. 62, 464

N.E.2d 1045, when a defendant pro se has raised a posttrial claim regarding his counsel's ineffective assistance, is to decide whether to appoint counsel and not to reach the merits of the ineffective assistance claims. U.S. Const. Amend. 6.

Cases that cite this headnote

[11] **Criminal Law**
Duty of court to inquire as to effectiveness in general

A hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181, 80 Ill.Dec. 62, 464 N.E.2d 1045, is required when a defendant raises a pro se posttrial claim of ineffective assistance of trial counsel. U.S. Const. Amend. 6.

Cases that cite this headnote

[12] **Criminal Law**
Duty of court to inquire as to effectiveness in general

Although a defendant's bare assertion of ineffective assistance of counsel is sufficient to trigger a hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181, 80 Ill.Dec. 62, 464 N.E.2d 1045, the defendant must nevertheless clearly state that he is asserting a claim of ineffective assistance of counsel; in instances where the defendant's claim is implicit and could be subject to different interpretations, such a hearing is not required. U.S. Const. Amend. 6.

Cases that cite this headnote

[13] **Criminal Law**
Duty of court to inquire as to effectiveness in general

An issue under *People v. Krankel*, 102 Ill. 2d 181, 80 Ill.Dec. 62, 464 N.E.2d 1045, when a defendant pro se has raised a posttrial claim regarding his counsel's ineffective assistance, may be raised any time after a conviction but before the trial court's judgment is final. U.S. Const. Amend. 6.

Cases that cite this headnote

[14] **Criminal Law**
Right to discharge or substitute

A defendant is not automatically entitled to appointed counsel when he files pro se a motion asserting ineffective assistance of counsel. U.S. Const. Amend. 6.

Cases that cite this headnote

[15] **Criminal Law**
Duty of court to inquire as to effectiveness in general

When a defendant files a pro se posttrial motion asserting ineffective assistance of counsel, the trial court must conduct some type of inquiry into the underlying factual basis, if any, of defendant's claim. U.S. Const. Amend. 6.

1 Cases that cite this headnote

[16] **Criminal Law**
Duty of court to inquire as to effectiveness in general

During an inquiry into a defendant's pro se claim of ineffective assistance of counsel, some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted on defendant's claim. U.S. Const. Amend. 6.

3 Cases that cite this headnote

[17] **Criminal Law**
Duty of court to inquire as to effectiveness in general

In the course of a hearing pursuant to *People v. Krankel*, 464 N.E.2d 1045, a trial court is allowed to ask the defendant's trial counsel to comment on the defendant's allegations of ineffective assistance; the trial court may also rely upon its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations. U.S. Const. Amend. 6.

1 Cases that cite this headnote

[18] **Criminal Law**
Duty of court to inquire as to effectiveness in general

During a hearing pursuant to *People v. Krankel*, 464 N.E.2d 1045, a trial court may not seek input from the State on the merits of the defendant's claims of ineffective assistance of counsel. U.S. Const. Amend. 6.

Cases that cite this headnote

[19] **Criminal Law**
Procedure

If a trial court, after holding a hearing pursuant to *People v. Krankel*, 464 N.E.2d 1045, determines that a defendant's pro se claim of ineffective assistance lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the motion; if the allegations show possible neglect of the case, new counsel should be appointed. U.S. Const. Amend. 6.

2 Cases that cite this headnote

[20] **Criminal Law**
Adequacy of Representation
Criminal Law
Strategy and tactics in general

There are four primary ways in which a trial court may conclude that an ineffective assistance of counsel claim lacks merit: determining that the claim is (1) conclusory, (2) misleading, (3) legally immaterial, or (4) pertaining solely to an issue of trial strategy. U.S. Const. Amend. 6.

2 Cases that cite this headnote

[21] **Criminal Law**
Adequacy of Representation

An allegation of ineffective assistance of counsel is conclusory, and thus lacks merit, when a defendant is unable to add any additional factual basis to support his bare allegation from which a court could infer a basis in support of his claim. U.S. Const. Amend. 6.

Cases that cite this headnote

[22] **Criminal Law**
Adequacy of Representation

A claim of ineffective assistance of counsel is misleading—and therefore lacks merit—when the record clearly rebuts or contradicts the substance of the allegations, demonstrating that the claim is unsupported. U.S. Const. Amend. 6.

Cases that cite this headnote

[23] **Criminal Law**
Adequacy of Representation

If a claim that is taken as true, either on its face or after inquiry, would still not support a finding of ineffective assistance, then it is legally immaterial and the claim lacks merit. U.S. Const. Amend. 6.

Cases that cite this headnote

[24] **Criminal Law**
Strategy and tactics in general
Criminal Law
Presentation of witnesses

Certain claims that may generally be matters of trial strategy, such as the calling of witnesses, can potentially support an ineffective assistance claim if counsel's actions were objectively unreasonable. U.S. Const. Amend. 6.

Cases that cite this headnote

[25] **Criminal Law**
Duty of court to inquire as to effectiveness in general

The operative concern for a court reviewing denial of a pro se claim of ineffective assistance of counsel is whether the trial court conducted an adequate inquiry into the defendant's allegations. U.S. Const. Amend. 6.

3 Cases that cite this headnote

[26] **Criminal Law**
Review De Novo

The issue of whether a trial court properly conducted a preliminary inquiry under *People v. Krankel*, 464 N.E.2d 1045, presents a legal question that an appellate court reviews de novo. U.S. Const. Amend. 6.

Cases that cite this headnote

[27] **Criminal Law**
Counsel for Accused

A trial court commits reversible error during a hearing pursuant to *People v. Krankel*, 464 N.E.2d 1045, if it concludes—on the merits—that there was no ineffective assistance of counsel. U.S. Const. Amend. 6.

Cases that cite this headnote

[28] **Criminal Law**
Procedure

Trial court should not have used a hearing, held pursuant to *People v. Krankel*, 464 N.E.2d 1045, to decide the merits of defendant's pro se posttrial claim of ineffective assistance of counsel; the sole issue to be decided at the hearing was whether to appoint counsel and the hearing should have ended at this point rather than have forced defendant to argue, without the aid of counsel, that his allegations rose to the level of ineffective assistance. U.S. Const. Amend. 6.

Cases that cite this headnote

[29] **Criminal Law**
Procedure

The State is not allowed to have any more than de minimis input at a hearing pursuant to *People v. Krankel*, 464 N.E.2d 1045, because no rights are being adjudicated and the sole matter being addressed is whether the court should appoint new counsel for the defendant on his claim of ineffective assistance of trial counsel. U.S. Const. Amend. 6.

Cases that cite this headnote

[30] **Criminal Law**
Petition or Motion

A trial court's first step in evaluating a postconviction petition is to review the petition and determine if it is frivolous or patently without merit, that is, the petition has no arguable basis either in law or in fact; the court should conduct its evaluation of the petition without any input from the State.

Cases that cite this headnote

[31] **Criminal Law**
Petition or Motion

In order to survive the first stage of review of a postconviction petition, a defendant is required to state the gist of a constitutional claim.

Cases that cite this headnote

[32] **Criminal Law**
Right to counsel

If the court finds a pro se defendant's postconviction petition has stated the gist of a constitutional claim, it appoints counsel to further evaluate the matter and amend the petition if necessary.

Cases that cite this headnote

***55** Appeal from the Circuit Court of Macon County No. 12CF897, Honorable Thomas E. Griffith Jr., Judge Presiding.

Attorneys and Law Firms

James E. Chadd, Jacqueline L. Bullard, and Ryan R. Wilson, of State Appellate Defender's Office, of Springfield, for appellant.

Jay Scott, State's Attorney, of Decatur (Patrick Delfino, David J. Robinson, and David E. Mannchen, of State's Attorneys Appellate Prosecutor's Office, of Counsel), for the People.

OPINION

JUSTICE STEIGMANN delivered the judgment of the court, with opinion.

***56 **676** ¶ 1 In June 2012, the State charged defendant, Ryan M. Roddis, with aggravated domestic battery (720 ILCS 5/12-3.3(a), 12-3.2(a)(1) (West 2010)). Following a bench trial, the trial court found defendant guilty and sentenced him to six years in prison. Defendant filed *pro se* a motion to reduce sentence that also alleged that his trial counsel was ineffective. The trial court dismissed the motion as untimely.

¶ 2 On direct appeal, this court upheld defendant's conviction and sentence but remanded for a hearing in compliance with *People v. Krankel*, 102 Ill. 2d 181, 80 Ill.Dec. 62, 464 N.E.2d 1045 (1984). *People v. Roddis*, 2016 IL App (4th) 140631-U, ¶ 3, 2016 WL 4005418.

¶ 3 On remand, the trial court initially appointed new counsel to represent defendant on his ineffective assistance of counsel claims. However, at a subsequent hearing, the trial court allowed that counsel to withdraw because of a potential conflict.

¶ 4 In January 2017, the trial court conducted a hearing purportedly pursuant to this court's remand but deemed it a hearing on defendant's ineffective assistance claims. After reviewing defendant's written claims and questioning him and his trial counsel, the court found that the allegations did not amount to ineffective assistance of counsel. The court then appointed new counsel to represent defendant on his motion to reduce sentence. In August 2017, the court denied that motion.

¶ 5 Defendant appeals, arguing that the trial court erred by (1) addressing the merits of his ineffective assistance of counsel claims instead of determining whether new

counsel should have been appointed and (2) not appointing new counsel because defendant showed "possible neglect of the case." We agree with defendant's first argument, vacate the trial court's order, and remand with directions.

¶ 6 I. BACKGROUND

¶ 7 A. The Bench Trial and Conviction

¶ 8 In June 2012, the State charged defendant with aggravated domestic battery (720 ILCS 5/12-3.3 (West 2010)), alleging that he pushed his girlfriend, Meghan Collins, causing her head to hit a door, resulting in a laceration. Defendant was initially represented by Philip Tibbs. However, defendant later retained new counsel, Baku Patel, and fired Tibbs.

¶ 9 At defendant's December 2013 bench trial, Collins testified that, in June 2012, defendant was living at her apartment with their daughter. Defendant and Collins were arguing; she asked him to leave, and he refused. Defendant then picked up a pillow from the back of the couch, moved toward Collins, and began to throw the pillow out the door. Collins pushed the pillow down to prevent defendant from throwing it. Defendant then pushed Collins's head, which hit the corner of the open door, causing a laceration. Collins ran upstairs to the bathroom and called the police. Collins was later treated at the hospital and received staples to close the laceration on her head.

¶ 10 On cross-examination, Collins testified that although she told the police that defendant punched her multiple times, that is not what happened. She also admitted she was currently being charged with filing a false police report. Collins testified that she did not believe defendant meant to push her head into the door. Collins admitted she had communicated with defendant by text message and told him she thought he did not mean to push her head against the door.

***57 **677** ¶ 11 Decatur police officer Scott Bibby responded to Collins's apartment. He stated that Collins had a laceration on her head. Defendant told Bibby the two were arguing and he threw a couch cushion at Collins to get her to stop yelling. Defendant said he did not mean to hit Collins but the cushion struck her in her head, and her head then collided with the door. Collins told Bibby that defendant had punched her in the head multiple times.

¶ 12 An emergency room physician testified that (1) she treated Collins for a laceration to her head, (2) the laceration required three staples to close, and (3) Collins reported the laceration was caused by someone grabbing her head and hitting it against a door.

¶ 13 Defendant testified that he was living with Collins and their daughter in June 2012. He and Collins were arguing when she told him to leave and began throwing his belongings out of the front door. Defendant told Collins if she was going to throw his things out, he was going to throw his couch outside. He picked up a large seat cushion and threw it toward the open door when it struck Collins in her head, causing her head to hit the door.

¶ 14 Patel asked defendant if Collins had stayed in contact with him. Defendant responded that Collins had threatened to testify against him if he did not give her money. Patel then asked if Collins admitted to him that she thought it was an accident, and defendant said she did.

¶ 15 During closing arguments, Patel argued the State failed to prove defendant knowingly caused great bodily harm because Collins admitted her injury was the result of an accident, which was also consistent with defendant's version of events. The State argued that (1) defendant knowingly committed battery and (2) the State did not need to prove the defendant intended to cause great bodily harm.

¶ 16 The trial court found defendant guilty of aggravated domestic battery, explaining that it did not find defendant's story credible. In February 2014, the court sentenced defendant to six years in prison. (We note that defendant had eight prior felony convictions.)

¶ 17 B. The Postsentence Proceedings

¶ 18 In June 2014, defendant *pro se* filed a motion for reduction of sentence that also raised claims of ineffective assistance of counsel. At a hearing at which defendant was not present, the trial court dismissed defendant's motion as untimely.

¶ 19 Defendant appealed, arguing that (1) the evidence was insufficient to prove him guilty beyond a reasonable doubt and (2) the trial court erred when it dismissed his *pro se* posttrial claims of ineffective assistance of counsel without conducting a *Krankel* hearing. In July 2016, this court affirmed defendant's conviction and sentence but remanded for a hearing in compliance with *Krankel* on defendant's posttrial claims of ineffective assistance of counsel. *Roddis*, 2016 IL App (4th) 140631-U, ¶ 3.

¶ 20 C. The Proceedings on Remand

¶ 21 1. *The Initial Hearing*

¶ 22 In September 2016, on remand, the trial court conducted a hearing at which defendant was present. The court stated the case had been remanded for the court to consider defendant's claims of ineffective assistance of counsel. The court then asked defendant if he was going to represent himself "on this matter or do you want me [to] consider[ ] appoint[ing] counsel?" Defendant responded that he wanted the court to consider appointing counsel but was told by his appellate attorney that it was in the court's discretion based on the merits of his claims. The court then stated, "I'm not sure counsel is necessary, ***58 **678** but I think counsel is always better, at least to perhaps to get me organized." The court asked the State if it disagreed, and the State said it thought "it[ ] [was] a good idea." The trial court appointed public defender Rodney Forbes to represent defendant and continued the matter for a status hearing.

¶ 23 2. *The Subsequent Status Hearings*

¶ 24 Later in September 2016, Forbes appeared on defendant's behalf and stated that the case had been remanded for a *Krankel* hearing. The trial court then stated that the case needed to be set for a "pre-inquiry *Krankel* hearing." Forbes agreed and requested additional time to review the file, speak with his client, and file any amended pleading if necessary. The court granted his request and continued the matter.

¶ 25 In November 2016, Forbes appeared for defendant, who was also present personally. The trial court recounted the procedural history of the case and then the following exchange took place:

"THE COURT: [The appellate court] sent the matter back for a hearing in compliance with *Krankel.*

And I think, Mr. Forbes, I want to certainly allow you a chance to speak, but I can probably proceed at this point with a pre-inquiry *Krankel* hearing before I proceed to a full-blown *Krankel* hearing. Would you agree with that procedural assessment, Mr. Forbes?

MR. FORBES: Well, Your Honor, in this case I was appointed to represent this defendant. Normally, I wouldn't be appointed at a pre-*Krankel* inquiry.

THE COURT: Correct.

MR. FORBES: Normally, a pre-*Krankel* inquiry the attorney would be—

THE COURT: Proceed with the prior lawyer.

MR. FORBES: Right. And so that way the court can inquire as to matters of strategy and such. So I know this is set for pre-*Krankel* inquiry on today's date. I was prepared to represent the defendant. I have received several affidavits and correspondence from the defendant. I understand the gist of his claims. He is claiming ineffective assistance of counsel from his prior counsel, Mr. Patel.

THE COURT: So you think we would be safer, in a nutshell, Mr. Forbes, to probably just proceed with an ordinary *Krankel* hearing, I think is what I am hearing from you?

MR. FORBES: Well, yes, I do. And then also I need to inform the court that as public defender, I briefly represented the alleged victim in this case, Megan Collins. I represented her at [a] preliminary [hearing]. Her case was assigned to an assistant public defender. That was during while this case was pending."

¶ 26 Forbes indicated that there may be a conflict. (As best we can tell, Forbes's representation of Collins was unconnected with the charges against defendant.) The trial court commented that Patel was not present and, in order to properly conduct the hearing, he would need to appear. Forbes then moved to withdraw until the court would conduct a hearing to determine if new counsel was required.

¶ 27 The trial court asked defendant if he had a position

regarding Forbes's withdrawing. Defendant stated that he "would like to ask him to represent me because he understands my case." Nonetheless, the court granted Forbes's motion to withdraw over defendant's objection and noted that it believed it could proceed with a "pre-inquiry *Krankel* " hearing without Forbes's representing defendant. The court then discussed with the parties how ***59 **679** Patel's presence at the next hearing would be secured.

¶ 28 Finally, the trial court explained to defendant what would take place at the next hearing. The court stated it had "to get through one step before Mr. Forbes' involvement in this case becomes necessary." The court added that at the next hearing, defendant would be allowed to elaborate on the claims raised in his motion alleging ineffective assistance of counsel. Then Patel would be allowed to respond. The State would be present, but the State's "involvement on that date is to be almost nothing." The court further stated that if it found the allegations directed at Patel were "well-grounded," then either Forbes or someone else would be appointed to represent defendant.

¶ 29 3. *The January 2017 Hearing*

¶ 30 In January 2017, the trial court conducted what it called a "pre-inquiry *Krankel*" hearing. At the hearing, defendant was present *pro se*, as were his earlier trial attorneys, Patel and Tibbs. Also present was the prosecutor. Forbes was not present.

¶ 31 The trial court began by outlining the procedure it would follow. The court said that it would first summarize each allegation. Then defendant would be allowed to elaborate and trial counsel would be permitted to respond. The court then stated that after hearing from counsel, it would "rule as to whether or not I find that there was ineffective assistance in this situation." The court later added that "once we determine where we are at the end of the day, if the allegations are denied, I'll probably go ahead and appoint you counsel *** and then we'll deal with the rest of your motion for reduction of sentence. If I find that the allegations are founded, I'll have to appoint separate counsel, and we will proceed to a full-blown *Krankel* hearing." The hearing then proceeded as described.

¶ 32 Defendant primarily contended that his trial counsel was ineffective for failing to impeach Collins with various text messages. Defendant explained that he gave his attorney copies of texts and emails from Collins in which she said she would speak to defendant's lawyer for $1000, that she had been "playing" him the whole time to get money, and that the incident was an accident. However, Patel did not impeach Collins with these messages on cross-examination.

¶ 33 Patel responded that, from what he remembered, he got Collins to admit she thought her injuries were the result of an accident. Patel explained that once Collins admitted it was an accident, he had all the impeachment he needed to show defendant did not knowingly cause great bodily harm.

¶ 34 Defendant also alleged his counsel (1) "tricked" him into waiving his right to a jury trial, (2) indicated that counsel personally knew the judge, and (3) assured defendant that the State would dismiss the charges or offer a lower plea once it saw the victim's text messages. Patel and Tibbs denied making any such representations.

¶ 35 Defendant then presented a letter Patel had written to the Attorney Registration and Disciplinary Commission (ARDC) in response to a complaint defendant had made about Patel's failure to use Collins's text messages in his defense. In the letter, Patel stated he "conduct[ed] a thorough cross[-]examination of the victim, including questioning her regarding emails and text messages." At the hearing, Patel stated he stood by what he wrote in his letter.

¶ 36 The trial court then stated that it had considered the pleadings, the ARDC letter, and the statements of defendant and his previous lawyers and found "the ***60 **680** defendant's allegations do not amount to ineffective assistance of counsel." Accordingly, the court would "not proceed to a full *Krankel* hearing." The court stated it thought defendant was "well represented" and that the case was "one of credibility." The court noted that despite the evidence that impeached Collins's testimony, the court found Collins credible while defendant was not. The court concluded, "I'm satisfied that you were properly represented" and found again "that there was no ineffective assistance."

¶ 37 Nonetheless, the court appointed the public defender to represent defendant on the remainder of his posttrial motion, which was a motion to reduce sentence.

¶ 38 4. *The Remaining Proceedings*

¶ 39 In July 2017, defendant's new counsel filed an amended motion for reduction of sentence, arguing the trial court erred by failing to consider the financial impact when it sentenced defendant. In August 2017, the trial court denied defendant's amended motion.

¶ 40 This appeal followed.

¶ 41 II. ANALYSIS

¶ 42 Defendant appeals, arguing that the trial court erred by (1) addressing the merits of his ineffective assistance claims instead of determining whether counsel should have been appointed and (2) not appointing new counsel because defendant showed "possible neglect of the case." We agree with defendant's first argument, vacate the trial court's order, and remand with directions.

¶ 43 The record in the present case reveals that the trial court misunderstood both the purpose of a *Krankel* hearing and how one should be conducted. Because we have seen too many cases in which trial courts suffer from the same confusion, we believe a thorough discussion of *Krankel* hearings might be helpful.

¶ 44 A. *Krankel* Hearings

¶ 45 In *Krankel*, the defendant filed *pro se* a posttrial motion, alleging his trial counsel was ineffective for failing to contact an alibi witness or present an alibi defense at trial. *Krankel*, 102 Ill. 2d at 187, 80 Ill.Dec. 62, 464 N.E.2d 1045. The defendant personally argued his *pro se* motion, which the trial court denied. *Id.* at 188-89, 80 Ill.Dec. 62, 464 N.E.2d 1045. On appeal, the State conceded that the defendant should have had new counsel represent him on the motion. *Id.* at 189, 80 Ill.Dec. 62, 464 N.E.2d 1045. The supreme court agreed and remanded the case for a new hearing on the motion with different counsel to determine whether the defendant was denied the effective assistance of counsel. *Id.*

¶ 46 1. *The* Krankel *Inquiry*

[1] [2] [3] [4]¶ 47 The common law procedure first recognized in *Krankel* "serves the narrow purpose of allowing the trial court to decide *whether to appoint independent counsel* to argue a defendant's *pro se* posttrial ineffective assistance claims." (Emphasis added.) *People v. Patrick*, 2011 IL 111666, ¶ 39, 355 Ill.Dec. 943, 960 N.E.2d 1114. Thus, "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." *People v. McGath*, 2017 IL App (4th) 150608, ¶ 51, 416 Ill.Dec. 173, 83 N.E.3d 671. The *only* issue to be decided at a *Krankel* hearing is whether new counsel should be appointed. *Id.*; *Patrick*, 2011 IL 111666, ¶ 39, 355 Ill.Dec. 943, 960 N.E.2d 1114. Accordingly, there are only two possible outcomes when a trial court conducts a *Krankel* hearing: (1) the court appoints new counsel who should then conduct an independent investigation into the defendant's ineffective assistance ***61 **681** claims and take whatever action counsel thinks would be appropriate or (2) the court does not appoint new counsel and posttrial matters proceed as in any other case. Accordingly, at a *Krankel* hearing, the trial court does not—and cannot—reach the merits of an ineffective assistance claim; the court simply determines whether it is appropriate to appoint new counsel for the defendant to investigate such claims.

[5] [6]¶ 48 The "preliminary inquiry" to which *Krankel* cases sometimes refer is the preliminary inquiry into the factual basis, if any, of a defendant's claims of ineffective assistance of counsel to determine whether appointing new counsel to pursue those claims is necessary. The Illinois Supreme Court recently affirmed this principle in *People v. Ayres*, 2017 IL 120071, ¶ 24, 417 Ill.Dec. 580, 88 N.E.3d 732, holding as follows:

> "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. In this way, the circuit court will have the necessary information *to determine whether new counsel should be appointed to argue the claim of ineffective assistance of counsel*." (Emphasis added.)

See also *Patrick*, 2011 IL 111666, ¶ 43, 355 Ill.Dec. 943, 960 N.E.2d 1114 ("The trial court was required to conduct a preliminary inquiry into the factual basis of defendant's [ineffective assistance] allegations."). If the appointment of new counsel is warranted, determining whether the defendant actually received ineffective assistance of counsel is for another day; the court does not reach the merits of such claims at the *Krankel* hearing.

[7]¶ 49 Though occasionally mentioned in some cases, there is no true second stage or subsequent *Krankel* inquiry because the *sole* issue to be resolved at a *Krankel* hearing is whether new counsel should be appointed. *Id.* ¶ 39. Once the trial court determines whether to appoint new counsel, the *Krankel* inquiry is over; if the court appoints new counsel, the case proceeds regarding the defendant's claims of ineffective assistance as determined by new counsel. *Id.*

[8]¶ 50 The supreme court explained its rationale for limiting the *Krankel* hearing to this narrow purpose in *People v. Jolly*, 2014 IL 117142, ¶ 38, 389 Ill.Dec. 101, 25 N.E.3d 1127. In that case, the court addressed the proper scope of the State's participation in a *Krankel* hearing and concluded that it is reversible error to permit the State to respond to the defendant's *pro se* claims or otherwise adversarially participate in a *Krankel* hearing. *Id.* In reaching that conclusion, the court described the *Krankel* hearing as "neutral and nonadversarial" and an opportunity for the trial court to "initially evaluate" a defendant's *pro se* claims. *Id.* ¶¶ 38-39. This initial and nonadversarial evaluation is not the forum at which the merits of a claim of ineffective assistance of counsel are resolved. See *id.*

[9]¶ 51 Courts have used the terms "*Krankel* hearing," "*Krankel* inquiry," "preliminary *Krankel* inquiry," and words to that effect interchangeably; this lack of consistency may be responsible for some of the confusion that exists, as seen in the proceedings in this case. The narrow and proper function of a *Krankel* hearing becomes clear when contrasted with a situation in which a defendant, who hires new counsel, files a posttrial motion alleging ineffective assistance of his original trial counsel. In such instances, no *Krankel* hearing is necessary because the defendant is already represented by counsel to investigate and appropriately pursue the ***62 **682** defendant's claims of ineffective assistance of trial counsel. In those cases, courts routinely conduct hearings—at which both the defense and State fully participate—on the merits of those motions. And no *Krankel* hearing is necessary because the sole question at a *Krankel* hearing is whether the court should appoint the defendant new counsel to investigate and pursue the defendant's ineffective assistance claims. When the defendant already has hired new counsel to do that, the issue of the court's appointing counsel simply does not exist.

[10]¶ 52 Perhaps terms like "preliminary *Krankel* hearing" arose because the question of the appointment of counsel to pursue *pro se* claims of ineffective assistance is necessarily preliminary to the consideration of such claims on their merits. Whatever the reason, the function of the *Krankel* hearing remains simply to decide whether to appoint counsel—its "narrow purpose" (*Patrick*, 2011 IL 111666, ¶ 39, 355 Ill.Dec. 943, 960 N.E.2d 1114)—and not to reach the merits of the ineffective assistance claims. Whether the defendant is then represented by appointed or retained counsel, the merits of an ineffective assistance claim are addressed at a subsequent hearing in which both parties can participate. *Ayres*, 2017 IL 120071, ¶ 24, 417 Ill.Dec. 580, 88 N.E.3d 732.

¶ 53 2. *When a* Krankel *Hearing Is Required*

[11]¶ 54 A *Krankel* hearing is required "when a defendant raises a *pro se* posttrial claim of ineffective assistance of trial counsel." *Id.* ¶ 11. The supreme court recently clarified what little a defendant must do:

> " '[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. Moore*, 207 Ill. 2d 68, 79[, 278 Ill.Dec. 36, 797 N.E.2d 631] (2003); [citation]), and thus, a defendant is not required to file a written motion (*Patrick*, 2011 IL 111666, ¶ 29[, 355 Ill.Dec. 943, 960 N.E.2d 1114]) but may raise the issue orally (*People v. Banks*, 237 Ill. 2d 154, 213-14[, 343 Ill.Dec. 111, 934 N.E.2d 435] (2010)) or through a letter or note to the court (*People v. Munson*, 171 Ill. 2d 158, 200[, 215 Ill.Dec. 125, 662 N.E.2d 1265] (1996))." *Id.*

[12]¶ 55 Further, although a defendant's bare assertion of " 'ineffective assistance of counsel' " is sufficient to trigger a *Krankel* hearing (*id.* ¶ 23), the defendant must nevertheless clearly state that he is asserting a claim of ineffective assistance of counsel. *Id.* ¶ 18. Accordingly, "[i]n instances where the defendant's claim is implicit and could be subject to different interpretations, a *Krankel* inquiry is not required." *People v. Thomas*, 2017 IL App (4th) 150815, ¶ 26, 419 Ill.Dec. 545, 93 N.E.3d 664 (finding a hearing was not required where defendant failed to mention attorney in his letter to trial court complaining about sentence); *People v. King*, 2017 IL App (1st) 142297, ¶ 20, 414 Ill.Dec. 456, 80 N.E.3d 599 (*Krankel* not implicated when defendant, without mentioning her attorney, claimed error because a witness was not called).

[13]¶ 56 A *Krankel* issue may be raised any time after a conviction but before the trial court's judgment is final.

The issue is most commonly raised between conviction and sentencing, but need not be. For instance, a defendant, as in the present case, may raise that claim on a motion to reconsider sentence.

¶ 57 3. Krankel *Hearing Proceedings*

[14] [15]¶ 58 A defendant is not automatically entitled to appointed counsel when he files *pro se* a motion asserting ineffective assistance of counsel. ***63 ****683** *Ayres*, 2017 IL 120071, ¶ 11, 417 Ill.Dec. 580, 88 N.E.3d 732. "Rather, '[t]he law requires the trial court to conduct some type of inquiry [*i.e.*, a *Krankel* inquiry] into the underlying factual basis, if any, of a defendant's *pro se* posttrial claim of ineffective assistance of counsel.' " *Id.* (quoting *People v. Moore*, 207 Ill. 2d 68, 79, 278 Ill.Dec. 36, 797 N.E.2d 631, 638 (2003)).

[16] [17]¶ 59 Initially, it often is a sound practice for the trial court to discuss the allegations with the defendant in open court. Because the function of the *Krankel* hearing is to give the defendant an opportunity to flesh out his claim of ineffective assistance (*Ayres*, 2017 IL 120071, ¶ 20, 417 Ill.Dec. 580, 88 N.E.3d 732), asking the defendant about his claims provides clarity for the record and thereby limits the issues on appeal. *Id.* ¶ 13. In addition, "some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted on a defendant's claim." (Internal quotation marks omitted.) *Id.* ¶ 12. For that reason, the trial court is allowed to ask the defendant's trial counsel to comment on the defendant's allegations. *Id.* The trial court may also rely upon "its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations." *Id.*

[18]¶ 60 What the trial court may *not* do, however, is seek input from the State on the merits of the defendant's *pro se* claims of ineffective assistance of counsel. *Jolly*, 2014 IL 117142, ¶ 38, 389 Ill.Dec. 101, 25 N.E.3d 1127. Doing so converts this initial and nonadversarial proceeding into a contested hearing on the merits—a hearing at which the defendant would necessarily be forced to prove the merits of his claims *pro se* against the arguments of the State's Attorney. Such a hearing "cannot reveal, in an objective and neutral fashion, whether the circuit court properly decided that a defendant is not entitled to new counsel." *Id.* ¶ 39.

¶ 61 4. *When New Counsel Should Be Appointed*

¶ 62 As shown by the record in this case, trial courts and counsel are sometimes confused regarding the purpose of a *Krankel* hearing, thinking the issue to be resolved is whether the defendant in fact ultimately received ineffective assistance of counsel. As explained earlier, this view is not correct. Instead, the *sole* issue to be resolved by a *Krankel* hearing is whether the court should appoint new counsel for a defendant so that the new counsel can take whatever action regarding defendant's claim of ineffective assistance that counsel thinks would be appropriate.

[19]¶ 63 "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." (Internal quotations marks omitted.) *Ayres*, 2017 IL 120071, ¶ 11, 417 Ill.Dec. 580, 88 N.E.3d 732.

¶ 64 It bears mentioning that the purpose of appointing counsel pursuant to *Krankel* is for new counsel to investigate the defendant's *pro se* claims of ineffective assistance of trial counsel—not to pursue other claims of error, like those commonly raised in posttrial motions.

[20]¶ 65 Although courts have not clearly defined when a *pro se* ineffective assistance claim "lacks merit," the supreme court, in *People v. Johnson*, 159 Ill. 2d 97, 126, 201 Ill.Dec. 53, 636 N.E.2d 485, 498 (1994), did conclude that the defendant ***64 ****684** in that case "did not bring to the trial court's attention a colorable claim of ineffective assistance of counsel." In reaching that conclusion, the supreme court found that the defendant's various allegations were conclusory, misleading, and legally immaterial. *Id.* A review of the case law since *Johnson* was decided reveals that there are generally four primary ways a trial court, when conducting a *Krankel* inquiry, may conclude that an ineffective assistance claim "lacks merit" so that the court need not appoint new counsel to pursue the defendant's ineffective assistance claim. Those four primary ways are when the court determines that the defendant's ineffective assistance claim is (1) conclusory, (2) misleading, (3) legally immaterial, or (4) pertaining solely to an issue of trial strategy. See, *e.g.*, *Johnson*, 159 Ill. 2d at 126, 201 Ill.Dec. 53, 636 N.E.2d 485; *Moore*, 207 Ill. 2d at 78, 278 Ill.Dec. 36, 797 N.E.2d 631. We

address each in turn.

¶ 66 a. Conclusory

[21]¶ 67 Following the supreme court's recent decision in *Ayres*, it is unclear when a defendant's *pro se* posttrial claim of ineffective assistance of counsel may be so conclusory that a *Krankel* hearing is not required. Nonetheless, we believe the following rule applies: An allegation is conclusory when a defendant is unable to add any additional factual basis to support his bare allegation from which a court could infer a basis in support of an ineffective assistance claim. *People v. Munson*, 171 Ill. 2d 158, 201, 215 Ill.Dec. 125, 662 N.E.2d 1265, 1284 (1996).

¶ 68 For instance, in *People v. Towns*, 174 Ill. 2d 453, 467, 221 Ill.Dec. 419, 675 N.E.2d 614, 620-21 (1996), the defendant's allegations were properly deemed conclusory because he claimed his counsel should have investigated "relevant facts and witnesses," but defendant offered no explanation as to what or to whom he was referring. Similarly, in *Munson*, the defendant stated he was claiming ineffective assistance of counsel, but, despite the trial court's making "every effort to ascertain the nature and substance of defendant's ineffectiveness claim," the defendant "provided neither a basis nor facts from which the court could infer a basis in support of such claim." *Munson*, 171 Ill. 2d at 201, 215 Ill.Dec. 125, 662 N.E.2d 1265.

¶ 69 b. Misleading

[22]¶ 70 A claim is misleading—and therefore lacks merit—when the record clearly rebuts or contradicts the substance of the allegations, demonstrating that the claim for ineffective assistance is unsupported. In *Johnson*, the defendant claimed his attorneys failed to investigate police misconduct, including that he was beaten and that a witness lied under oath. *Johnson*, 159 Ill. 2d at 126, 201 Ill.Dec. 53, 636 N.E.2d 485. However, the record revealed that trial counsel presented significant evidence of the alleged police misconduct and, contrary to the defendant's claims, the witness admitted to the very fact defendant claimed he lied about. *Id.* at 126-28, 201 Ill.Dec. 53, 636 N.E.2d 485.

¶ 71 A claim may also be misleading when the inquiry at the *Krankel* hearing reveals that the defendant's assertions are false and do not support a claim of ineffectiveness. For example, a defendant may claim to have an exculpatory witness whom his counsel failed to present. However, after an inquiry at the *Krankel* hearing, the court may learn (from defense counsel or defendant) that the witness's testimony was (1) not helpful to the defendant or (2) contrary to his claims. See *People v. Nitz*, 143 Ill. 2d 82, 135, 157 Ill.Dec. 431, 572 N.E.2d 895, 919 (1991) (court determined that witnesses' testimony was not in accord ***65 **685** with defendant's representations and was actually inapposite to his claims).

¶ 72 c. Legally Immaterial

[23]¶ 73 If a claim that is taken as true, either on its face or after inquiry, would still not support a finding of ineffective assistance, then it is legally immaterial. In *People v. Giles*, 261 Ill. App. 3d 833, 846, 200 Ill.Dec. 630, 635 N.E.2d 969, 979 (1994), the defendant was convicted of aggravated criminal sexual assault and argued that his trial counsel was ineffective for not arguing the victim's hymen was not torn, despite the medical evidence supporting such a finding. The court noted that only slight contact with the victim's vagina was required to support the conviction, and thus, the medical evidence had no bearing on counsel's performance. *Id.* at 848, 200 Ill.Dec. 630, 635 N.E.2d 969.

¶ 74 d. Matter of Trial Strategy

¶ 75 A claim may be meritless if it pertains solely to a matter of trial strategy. *Moore*, 207 Ill. 2d at 78, 278 Ill.Dec. 36, 797 N.E.2d 631. A claim that relates to a matter that does not fall within the definition of ineffective assistance of counsel as provided in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), is meritless. *People v. Banks*, 237 Ill. 2d 154, 215-16, 343 Ill.Dec. 111, 934 N.E.2d 435, 469 (2010). In *Banks*, for example, the supreme court rejected a claim that counsel should have been appointed on defendant's *pro se* ineffectiveness claims because the claim pertained to trial counsel's conduct during *voir dire* that is generally not subject to *Strickland* review. *Id.*

[24]¶ 76 However, certain claims that may *generally* be matters of trial strategy could still potentially support an ineffective assistance claim. In *People v. Peacock*, 359 Ill. App. 3d 326, 339-40, 295 Ill.Dec. 563, 833 N.E.2d 396, 407 (2005), the appellate court remanded for a *Krankel* hearing based on the defendant's claims that his counsel failed to call a witness and failed to ask certain questions on cross-examination of another witness. The court in *Peacock* acknowledged these matters generally pertain to trial strategy but noted that if counsel's actions were "objectively unreasonable, it can amount to ineffective assistance if the defendant suffered prejudice." *Id.* at 340, 295 Ill.Dec. 563, 833 N.E.2d 396.

¶ 77 Therefore, when dealing with matters of trial strategy, the trial court at the *Krankel* hearing must determine if the allegations and factual bases therefor could support a claim that trial counsel was objectively unreasonable. If the allegations and factual bases could support that claim, new counsel should be appointed.

¶ 78 5. *The Standard of Review*

[25] [26]¶ 79 " '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.' " *Ayres*, 2017 IL 120071, ¶ 13, 417 Ill.Dec. 580, 88 N.E.3d 732 (quoting *Moore*, 207 Ill. 2d at 78, 278 Ill.Dec. 36, 797 N.E.2d 631). "The issue of whether the circuit court properly conducted a preliminary *Krankel* inquiry presents a legal question that we review *de novo*." *Jolly*, 2014 IL 117142, ¶ 28, 389 Ill.Dec. 101, 25 N.E.3d 1127.

¶ 80 Some courts, including this one, have remarked that "if the trial court properly conducted the entire *Krankel* inquiry and reached a determination on the merits [of the defendant's ineffective assistance claims], we will reverse only if the trial court's action was manifestly erroneous." *People v. Robinson*, 2017 IL App (1st) 161595, ¶ 90, 419 Ill.Dec. 454, 93 N.E.3d 573; see *People v. Sims*, 2014 IL App (4th) 130568, ¶ 142, 380 Ill.Dec. 950, 9 N.E.3d 621 (substantially the same). We ***66 **686** now believe these cases were not correctly decided.

[27]¶ 81 We hold that a trial court commits reversible error when it conducts a *Krankel* hearing and concludes—on the merits—that there was no ineffective assistance, and we note that we are not the first court to so conclude. See *People v. Fields*, 2013 IL App (2d) 120945, ¶ 41, 375 Ill.Dec. 480, 997 N.E.2d 791 (trial court violated the defendant's right to be represented by counsel by converting a *Krankel* hearing on the defendant's *pro se* claim of ineffective assistance into an adversarial proceeding); *People v. Cabrales*, 325 Ill. App. 3d 1, 5-6, 258 Ill.Dec. 479, 756 N.E.2d 461, 465 (2001) (trial court erred by proceeding to full hearing on the merits of the defendant's *pro se* claims instead of conducting a fact-gathering investigation).

¶ 82 We mentioned earlier that a thorough discussion of *Krankel* hearings might be helpful because we have seen too many cases in which trial courts have misunderstood the purpose of *Krankel* and how a *Krankel* hearing should be conducted (*supra* ¶ 43). Sometimes the same difficulty affects the appellate court.

¶ 83 In *People v. Jackson*, 2018 IL App (5th) 150274, ¶¶ 107-22, 426 Ill.Dec. 725, 116 N.E.3d 1025, the Fifth District recently addressed a defendant's claim that the trial court failed to conduct a *Krankel* inquiry regarding the defendant's claims of ineffective assistance of his trial counsel. The Fifth District in *Jackson* did not review the trial court's handling of the *Krankel* inquiry (in which the *sole* question is whether the trial court received sufficient information from which to decide whether counsel should be appointed to investigate the defendant's *pro se* claim of ineffective assistance) but instead reviewed the record and concluded *on the merits* that the defendant did not receive ineffective assistance of counsel during his trial. *Id.* In doing so, the appellate court rejected the defendant's ineffective assistance claim, despite the fact that the defendant did not have the assistance of counsel to investigate and argue that claim before the trial court. *Id.* Accordingly, we respectfully disagree with the analysis and conclusion the Fifth District reached in *Jackson*.

¶ 84 B. The Facts of This Case

[28]¶ 85 In this case, at the first hearing after remand, the trial court appointed counsel for defendant on his *pro se* motion to reduce sentence. Once the court appointed counsel, no reason existed for the court to conduct any further hearings pursuant to *Krankel*; instead, the case should have proceeded based upon whatever action defendant's new counsel might choose to take regarding defendant's ineffective assistance claims. Further inquiry pursuant to *Krankel* was not appropriate at that point

because *the sole issue to be decided at a* Krankel *hearing is whether to appoint counsel*. As soon as the court decided to appoint counsel, not only was a *Krankel* hearing not called for, but the court's purportedly conducting one made no sense. Indeed, the case should have continued the same way it would have if defendant had hired private counsel to assert the same claims.

¶ 86 We also note that the trial court at one point reconsidered its appointment of new counsel, apparently believing (incorrectly) that the court was required to conduct a hearing at which defendant and his trial counsel could appear and address defendant's claims of ineffective assistance.

¶ 87 Although the vast majority of cases in which a defendant *pro se* raises a claim of ineffective assistance of trial counsel will (and likely should) proceed to a *Krankel* hearing with trial counsel present, doing so is not necessarily required in every case. After a trial court reviews a *pro se* motion ***67 **687** or letter alleging ineffective assistance of counsel, the court may conclude that the allegations on their face have sufficient merit to justify the appointment of counsel. New counsel would then take whatever action counsel might deem appropriate regarding the defendant's claim of ineffective assistance.

¶ 88 Here, the trial court erred when it conducted the January 2017 hearing by addressing the *merits* of defendant's ineffective assistance claim without appointing new counsel for defendant. The record clearly demonstrates the court, believing it was conducting a *Krankel* hearing, ruled on the merits of defendant's ineffective assistance claims. Indeed, the trial court indicated as much, stating that it would "rule as to whether or not I find that there was ineffective assistance in this situation," as well as the court's later findings at that hearing that "the defendant's allegations do not amount to ineffective assistance of counsel" and "I'm satisfied you were properly represented, *** and there was no ineffective assistance." The court reached the wrong result because it made the wrong inquiry.

¶ 89 Multiple parties suffered prejudice as a result of the trial court's error. First and foremost, defendant was prejudiced because he did not have counsel to help him argue that his allegations did in fact rise to the level of ineffective assistance. Defendant thought (indeed, was told by the court) that the court was evaluating his claims for potential merit and whether an evidentiary hearing should be conducted at a later date. Then the court in fact conducted that evidentiary hearing and forced defendant to argue the merits of his motion without his even being aware that they were being considered.

[29]¶ 90 Additionally, the State is prejudiced when a trial court evaluates the merits of a defendant's claims of ineffective assistance without the State's being allowed to comment or argue. The supreme court has emphasized that the State is not allowed to have any more than *de minimis* input at a *Krankel* hearing. *Jolly*, 2014 IL 117142, ¶ 38, 389 Ill.Dec. 101, 25 N.E.3d 1127. The reason for this unique prohibition is simple: no rights are being adjudicated. *Id.* No rights are being adjudicated because the *sole* matter addressed at a *Krankel* hearing is whether the court should appoint new counsel for the defendant on his claim of ineffective assistance of trial counsel. *Id.* The State, just like a defendant, always suffers the risk of prejudice when a court adjudicates the merits of an issue without permitting the State to argue its position.

¶ 91 C. How a *Krankel* Hearing Should Proceed on Remand

¶ 92 Given that the trial court in this case misunderstood how to proceed with a *Krankel* inquiry following the earlier remand from this court, and given further that remands to trial court to conduct *Krankel* hearings happen with some regularity, we clarify the proper steps to take. (We note that these steps are also the ones a trial court should take in the first instance.)

¶ 93 First, when a case is remanded for a *Krankel* hearing, the trial court should not automatically appoint new counsel for the defendant. In the usual case, the appellate court remands for a *Krankel* hearing because the record is inadequate. Therefore, on remand, the trial court should familiarize itself with the defendant's claims of ineffective assistance and review any written submissions, as well as any transcripts of the proceedings if the allegations were raised orally. Then, in the usual case, the court should require the attendance of the defendant's trial counsel at the *Krankel* hearing.

***68 **688** ¶ 94 Once the State, defendant, and defendant's trial counsel are present, the court should review the allegations and ask the defendant if he has anything to add, thereby giving the defendant the opportunity to clarify or expand upon his previous claims. Then, the court should allow defendant's trial counsel to respond. In evaluating the defendant's claim, the court may ask any questions of defense counsel or defendant the court believes to be helpful. The court should not

allow the State to respond or participate during the *Krankel* hearing.

¶ 95 After the court has engaged in what it believes to be an adequate inquiry into the defendant's claims, it should determine whether new counsel should be appointed to pursue the defendant's claim of ineffective assistance as determined by new counsel.

¶ 96 D. Comparison to Postconviction Petitions

¶ 97 Although the standards are not identical, in order to illustrate the type of inquiry in which trial courts should engage, we believe the evaluation made at *Krankel* hearings is similar to one trial courts routinely make at the first stage of postconviction petitions. Trial courts are familiar with the well-established principles for evaluating postconviction petitions at the first stage, so courts may find it helpful to think of *Krankel* hearings in a similar fashion.

¶ 98 Postconviction petitions provide a good basis for comparison because, like *Krankel* inquiries, they are the most common of very few instances when the trial court exercises its judgment in a criminal case without input from the State. Additionally, both circumstances typically involve a defendant's *pro se* claims (indeed, typically ineffective assistance claims), and the trial court is asked to evaluate the viability of those claims.

[30] [31] [32]¶ 99 The three stages of postconviction petitions are familiar and well settled. In the first stage, the trial court is required to review the petition and determine if it is "frivolous or patently without merit," that is, "the petition has no arguable basis either in law or in fact." *People v. Tate*, 2012 IL 112214, ¶ 9, 366 Ill.Dec. 741, 980 N.E.2d 1100. At this first stage, the court should conduct its evaluation of the postconviction petition without any input from the State. *People v. Turner*, 2012 IL App (2d) 100819, ¶ 18, 362 Ill.Dec. 172, 972 N.E.2d 1205. In order to survive the first stage, a defendant is required to state the "gist of a constitutional claim." (Internal quotation marks omitted.) *People v. Hodges*, 234 Ill. 2d 1, 9, 332 Ill.Dec. 318, 912 N.E.2d 1204, 1208 (2009). If the court finds a *pro se* defendant has met this low threshold, it appoints counsel to further evaluate the matter and amend the petition if necessary. *Tate*, 2012 IL 112214, ¶ 10, 366 Ill.Dec. 741, 980 N.E.2d 1100. (We hasten to add that we are simply pointing to the postconviction context for its illustrative value and not suggesting that the "gist" standard applies in a *Krankel* context.) The State is then allowed to participate, and the matter can proceed to an evidentiary hearing on the merits. *Id.* (Unlike postconviction proceedings, the State cannot move to dismiss a claim alleging ineffective assistance under *Krankel.*)

¶ 100 In this way, *Krankel* hearings are comparable to first-stage postconviction proceedings, except the trial court is permitted to (and in most cases probably should) conduct an inquiry into the facts behind a defendant's claims of ineffective assistance. In determining whether to appoint counsel, the court determines whether a defendant has stated a sufficient basis for the appointment of counsel. In both instances, trial courts are being asked to ***69 **689** weed out "patently frivolous" or "spurious" claims. As a result, after a *Krankel* hearing, the trial court should decline to appoint new counsel when the defendant's claims lack support (that is, after asking a defendant to elaborate, the defendant fails to identify facts to support his claims or such facts are affirmatively contradicted by the record or legally immaterial) or are solely matters of trial strategy (for example, when to introduce a particular piece of evidence or testimony).

¶ 101 III. CONCLUSION

¶ 102 Because this appeal is the second time this court has addressed these issues in this case, in the interests of judicial economy, we remand with directions to appoint new counsel for defendant, so that the new counsel may take whatever action the new counsel deems appropriate regarding defendant's *pro se* claims of ineffective assistance of counsel.

¶ 103 For the reasons stated above, we reverse the trial court's judgment and remand with directions.

¶ 104 Reversed and remanded with directions.

Presiding Justice Harris and Justice Knecht concurred in the judgment and opinion.

All Citations

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People v. Roddis, 2018 IL App (4th) 170605 (2018)

119 N.E.3d 52, 427 Ill.Dec. 672

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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT

MACON COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
-vs-	)	No. 12-CF-897
RYAN RODDIS, Defendant.	)	

REPORT OF PROCEEDINGS

REPORT OF PROCEEDINGS of the hearing before the Honorable THOMAS E. GRIFFITH, on the 10th day of January, 2017.

APPEARANCES:

MR. JAY SCOTT,
State's Attorney of Macon County, by
MS. REGAN RADTKE,
Assistant State's Attorney

MR. BAKU PATEL
Present

MR. PHIL TIBBS
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BE IT REMEMBERED AND CERTIFIED, that heretofore, on to-wit: The 10th day of January, 2017, the same being one of the regular judicial days of said court, the above-entitled cause came on for hearing, before the Honorable THOMAS E. GRIFFITH, Judge Presiding, whereupon, the following proceedings were had of record:

THE COURT: This is 2012-CF-897, the People Vs. Ryan Roddis. The People are present by Ms. Radtke. The defendant is present pro se. Mr. Roddis, you can have a seat at that table right there. And show the cause is called for pre-inquiry Krankel hearing. And Carolyn, you might also show that Mr. Roddis's previous attorneys, Mr. Patel and Mr. Tibbs, are present. And Mr. Roddis, here is how this is going to work. In your motion for reduction of sentence, which you filed on June 9, 2014, you have made certain allegations directed against Mr. Patel and kind of inferentially against Mr. Tibbs. I'm going to allow you to elaborate. First of all, I'll briefly summarize each of the allegations. I'll allow you to briefly elaborate if you want to add additional facts. Mr. Patel, I'll then allow you to respond. And Mr. Tibbs, if appropriate, I'll allow you to respond. Then, I'll

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rule as to whether or not I find that there was ineffective assistance in this situation. Ms. Radtke, your participation at this stage is to be de minimus. And then once we determine where we are at the end of the day, if the allegations are denied, I'll probably go ahead and appoint you counsel, Mr. Roddis, and then we'll deal with the rest of your motion for reduction of sentence. If I find that the allegations are founded, I'll have to appoint separate counsel, and we will proceed to a full-blown Krankel hearing. Do you understand procedurally where we are, Mr. Roddis?

THE DEFENDANT: Was I supposed to have an attorney with me?

THE COURT: Not at this stage, no. Ms. Radtke, do you understand?

MS. RADTKE: Yes, sir.

THE COURT: And Mr. Patel and Mr. Tibbs, again, thank you for coming but you understand your roles at least at this stage?

MR. TIBBS: Yes.

MR. PATEL: Yes, Judge.

THE COURT: Very well. Again, show the cause is called for pre-inquiry Krankel hearing. And, again, I'm only going to address the allegations, at this

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point, that are addressed against your prior counsel. Mr. Roddis, here is the first allegation. It is paragraph six. It says the victim gave a picture to the State's attorney almost six months after the incident occurred, and my lawyer should have had that evidence suppressed but he didn't even file a motion. Do you want to elaborate on that, Mr. Roddis, or add any additional facts?

THE DEFENDANT: That is pretty much what it was is what you just said.

THE COURT: Okay. It was a picture of what, Mr. Roddis?

THE DEFENDANT: A picture that she took and took it to the State's attorney. It wasn't like a crime scene photo that the officers took or anything. You know, it was just something that could have been done.

THE COURT: So it was just a photo of her that she took six months --

THE DEFENDANT: With a cut or whatever. I don't know if it was from the crime scene or if it was something that she did. I don't -- There was no, like, it wasn't, like a -- There was police photos that the police took, and then later on down the line she brought forth more photos.

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THE COURT: All right. Well, here is what I'm trying to figure out. This photo that you reference, was it taken at the time of the incident or was it taken six months after the incident or don't you know?

MR. RODDIS: I don't know, but she didn't present it until months later, after.

THE COURT: All right. Mr. Patel, can you add any additional facts on this point?

MS. PATEL: I don't recall photograph. If it was taken at the time showing no injury, I would have likely impeached her with it. I don't recall ever having a photo.

THE COURT: If it was taken six months later, I wouldn't think it would have any relevance. All right. Very well. Let's see. Mr. Roddis, the next allegation is contained in paragraph 8. And I'll just read it. It's actually paragraph nine. My mistake. It says my lawyer didn't subpoena any witnesses to my trial, but he had them come to my sentencing. Their statements at trial could've made a huge impact on the verdict. Do you want to add further facts there, Mr. Roddis?

THE DEFENDANT: Well, I mean, they are right here to where they heard the victim herself make inconsistent statements to what she testified to at

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trial, and then they have the text messages, the stuff that she was messaging back and forth to me and them as well. And he had all that stuff in his power to present it while she was on the stand, and he never even, you know -- He asked her if she ever said it was an accident and she said no but I have text messages from her, from her phone to me and numerous other people that it was indeed an accident and that she was getting the case dismissed. And he didn't -- I had the text messages at my trial, and that was the whole position I thought we were going to take at trial was to confront her about these text messages, and he didn't even bring it in. He not once mentioned about one text message.

THE COURT: All right. So as I recall, Mr. Roddis, and my memory isn't perfect, but at the time of the incident itself, it was just you and the victim who were present, correct?

THE DEFENDANT: Correct.

THE COURT: So there wasn't any other eyewitnesss to the incident, correct?

THE DEFENDANT: There was somebody that came out when the police were there. They weren't at there when the scene -- when the incident actually occurred.

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THE COURT: You have answered my first question. So what you are talking about, witnesses that would have been called to impeach the victim based on statements she made after the incident occurred, correct?

THE DEFENDANT: With the -- Yeah. With the text messages that came from her phone, correct.

THE COURT: And the text messages. All right. Mr. Patel, do you want to respond to that allegation?

MR. PATEL: Judge, it is my recollection, it's been three years ago, but I do recall specifically I think the victim admitted during my cross-examination she felt it was not knowingly done to her by Mr. Roddis, and also she used the word accident. At that point, once I had the admission, there was nothing to impeach her with. She admitted the issue that was at trial.

THE COURT: Okay. Thank you, Mr. Patel. And Mr. Patel, let me ask you one question further. As I recall, the victim testified that she didn't think it was an accident as to how the incident itself happened, but it was an accident regarding the degree of harm that she ended up suffering.

MS. PATEL: Correct. Regarding, I think, a cushion being thrown and her head striking a side door.

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THE COURT: Okay. Okay.

MR. PATEL: I think it's the side door incident that she --

THE COURT: All right. I just wanted to be clear on that point. Thank you, Mr. Patel. All right. And this next allegation that we kind of touched on already, it's paragraph ten, Mr. Roddis. It said my lawyer could've had the victim read all the texts and e-mails she sent me while she was on the stand but he told me, quote, that is not how court works, unquote. All the messages from her bribing me, threatening me, saying the case was an accident, extorting me, et cetera. Mr. Roddis, do you want to add any additional facts there?

THE DEFENDANT: Just, basically, he could have contradicted a lot of the stuff that she was saying. He asked her did she ever say it was an accident, and her exact words were, no. But I have text messages that she did indeed say it was an accident, and I have text messages where she said she would talk to my lawyer for $1,000. And I have text messages from her where she said I been playing you this whole time just to get money. You know, and I just, like, when I brought these messages to him at his office, my whole

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intention, his whole intention I thought was to, like, he basically said I would not get found guilty according to these text messages, and he never brought one of them up until my sentencing, after the fact, and she never ever got on the stand and said it was an accident. She said, no, I never said it was an accident. But I have proof from here and people in this courtroom that she was indeed saying it was an accident because I never did knowingly cause any harm to that woman ever, your Honor.

THE COURT: As I recall, Mr. Roddis, she also said it happened in a different fashion in her statement to the police officer; isn't that correct?

THE DEFENDANT: Yeah. She also said that I struck her repeatedly, and then she told you I didn't.

THE COURT: Okay. All right. Very well. Mr. Patel, do you want to respond?

MR. PATEL: Nothing more than what has already just been brought out a second ago.

THE COURT: That in your cross she admitted, at least on that day, she said it was an accident at least in terms of the degree of harm.

MR. PATEL: Correct. And the inconsistent statement.

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THE COURT: Okay. All right. Very well. Let's see. Moving on, paragraph 17, it says if someone's head is cut open and bleeding bad enough to require stitches, staples parens, why would the police charge me with a misdemeanor? The victim is suicidal and could and would have self-inflicted the wound on herself. She did refuse medical treatment and took herself to the hospital. I didn't come home one night and she ate stolen prescribed diabetic pills to the point she was admitted into the ICU and psych ward. If a person will do that to themselves, they can self-inflict a head wound. My lawyer was aware of all of this but didn't bring it up at trial. My uncle, Joe Harrison, told my lawyer there was no blood on the victim at the scene. My lawyer said my uncle's testimony wouldn't help me. Just focusing on the last part there, Mr. Roddis, anything you want to add to that allegation?

THE DEFENDANT: Just like I said, my uncle, he was at the scene whenever the police were there and he was talking to Megan, and he said there was absolutely no blood on her, no blood anywhere on the scene. And she -- They asked her if she wanted medical treatment, and she said no. And I just don't see how that could

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happen. I mean, I might -- I don't know. I didn't see any blood when the whole scene, incident occurred. I didn't run off. I didn't, I didn't do anything. I didn't, didn't even know it happened like that.

THE COURT: All right. Mr. Patel, anything as to the uncle, Joe Harrison, indicating there was no blood on the victim at the scene? Do you recall anything about that, Mr. Patel?

MR. PATEL: I don't recall what the evidence was regarding blood at the scene. It may have been already admitted to by the police officer, and I felt that that was enough at least for the purposes of our trial.

THE COURT: All right. So you simply don't recall any details regarding that allegation?

MR. PATEL: I don't.

THE COURT: Okay. All right. Very well. Thank you, Mr. Patel. All right. Then paragraph 18, the first lawyer I hired, Phil Tibbs, tricked me into waiving my jury trial, telling me he personally knows the judge and he can get my charge reduced if my -- if I waive my right to a jury trial. My lawyer lied. Mr. Roddis, anything you want to add there?

THE DEFENDANT: That I would have never waived my jury trial ever. He just -- It was basically like go

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to jury trial that day or buy some time to, you know, plead to a reduced charge. So I did waive my jury trial. And to come to find out, the victim, the subpoenaed, the victim wasn't even here for that day to even do the trial. So I would have never waived my jury trial, ever.

THE COURT: All right. Mr. Tibbs, you are present. I'll allow you to respond to that allegation.

MR. TIBBS: Well, I guess I'm not really sure exactly how to respond to that, Judge, except I don't agree with the scenario about tricking him. I think I certainly probably told him that I trusted you to be fair and impartial in a trial and may have recommended doing the bench trial in this case. And we certainly had discussed trying to get it reduced to a misdemeanor, but, of course, there's no guarantees made about that. If I recall correctly, I think it may have been that day that the State informed us, also, that they were filing that other felony charge, as well.

THE COURT: Regarding the intimidation of witnesses?

MR. TIBBS: Of a witness, correct. And I don't recall, of course, I wouldn't know whether the subpoenaed witness was here or not at the time that we

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would've waived jury trial.

THE COURT: All right. Very well. Thank you, Mr. Tibbs. Then, the next paragraph kind of relates to the prior paragraph. And Mr. Roddis, back to you. It says once I realized my lawyer, Phil Tibbs, tricked me -- and some of this I'm paraphrasing trying to make good sense -- tricked me into waiving my right to a jury trial, I fired him and hired Baku or Mr. Patel. Mr. Patel told me that the judge, myself and State's attorney, Mrs. Domash, have a personal problem with me and there is no way I can beat my case since I waved my jury trial. The Courts were being biased against me and judging me according to my background and not the facts of the case. Anything you want to add there, Mr. Roddis?

THE DEFENDANT: Well, basically, with the text messages that I brought forward to Mr. Patel, once I gave them to him he said that once he shows this to the State, that there is -- that they have to do something. That she can't sit there and text me and demand money to testify against me if I don't do this, if I don't give her a thousand dollars she's coming to court. I gave them the paperwork. He called me to his office the next day, and said I don't know what you did to

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make them mad. They are not doing anything. That was it. He said I don't know what's going on. You got the State against you. They are not willing to budge. Seven years at eighty-five percent, that is your only offer.

THE COURT: All right. So he indicated the State wouldn't budge with respect to your charges. But then there is also an allegation here that I was somehow personally prejudice against you, Mr. Roddis. Tell me about that.

THE DEFENDANT: He just, basically, was like giving me the assumption that I'm doing a bench trial and I'm stuck and there is no if ands or buts about it. You know, it was -- It was over with. I waived my jury trial. That was the dumbest thing I could've done and I'm going to get found guilty. But I refused to plead guilty to something I did not do, your Honor.

THE COURT: Very well. Mr. Patel, can you respond to last paragraph at all that somehow that I, Mrs. Domash and myself were biased against Mr. Roddis?

MR. PATEL: Yeah. Judge, I would have no knowledge of that. I dealt with Ms. Domash rarely, couple of cases. I would have no knowledge. I deny that. I would never have made that kind of assertion. I can

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tell you that.

THE COURT: And we certainly never had any type of ex parte conversation.

MR. PATEL: Ever.

THE COURT: Would never do such a thing. Okay. Thank you, Mr. Patel. And regard, any of Ms. Domash's bias, she just indicated essentially she wouldn't move off her offer; correct, Mr. Patel?

THE DEFENDANT: Yeah. She made that clear because Mr. Tibbs already exhausted that effort that this was going to be trial.

THE COURT: Okay. All right. Very well. All right. Then, let's see, paragraph 20, when I showed my lawyer, Mr. Patel, the numerous texts and e-mail from the victim demanding money in order to talk to my lawyer, my lawyer said once he shows the messages to the prosecutor, the case will be dismissed because the victim is extorting me and the victim will be charged with extortion, but when he showed the prosecutor, they did nothing and he said he has no idea why or how they didn't charge the victim with extortion for bribing me. I think that is pretty straightforward, Mr. Roddis. Anything you want to add there?

THE DEFENDANT: That is exactly what I just had

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told you, that I give him the text messages and I showed him what she was saying and where she was leading this whole case onto and trying to get money and stuff, you know, to basically tell the truth. And he told that it means nothing. And then whenever the text messages got brought up at sentencing, the State act like they never even seen them before. They said they'd never -- Ms. Domash said at my sentencing she never even seen the text messages.

THE COURT: Then, Mr. Patel, I have seen the text messages attached to various things. I think one does reference 1K and I'll drop everything. Another indicates it was an accident and so on and so forth along those lines. I presume you did show those to Ms. Domash?

MR. PATEL: I must have, Judge. I don't recall the actual exchange and conversation but I must have.

THE COURT: And I think probably in large part, well I can't answer for the State's position and the State is not allowed to respond in this proceeding, but you've already -- the State wouldn't budge based on, essentially, what you perceived to be their investigation of this particular case; is that --

MR. PATEL: That is very true.

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THE COURT: -- is that a fair statement, Mr. Patel?

MR. PATEL: Yes.

THE COURT: Okay. All right. Very well. Let's see. And then paragraph 21, once I fired my first attorney, Mr. Tibbs, for tricking me to waive my right to a jury trial, I hired Baku Patel and explained to him that I'm innocent and I will not accept any offer or plea agreement, and if I can't get this case dismissed, then I'm going to trial. My lawyer, Patel, told me that I'm going to get found guilty no matter what because I waived my jury trial forcing me to have a bench trial in front of a judge that was biassed against me. Even my lawyer said that Judge Griffith hates me, and it would be impossible to have a fair trial in front of Judge Griffith no matter how much evidence or statements may have proved my innocence. Mister -- That seems pretty straightforward, Mr. Roddis. Anything you want to add there?

THE DEFENDANT: That is exactly what it was, your Honor. That those text messages should've been brought forward, and he said that that stuff was my ticket to proving that I been being blackmailed this whole time. And nothing, it did nothing.

THE COURT: Okay. Mr. Patel, can you respond to

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the allegations in that paragraph at all?

MR. PATEL: Well, Judge, I would deny indicating to him that this particular Court or your Honor was particularly biased. I would have no knowledge or information to ever make that kind of allegation or that, quote, he hates me. Yeah. I'm sure he told me if I don't, I'm not pleading to anything and this will be a trial. I knew that. He had made me aware of that. So I would admit he did indicate that if I can't get this case dismissed that I want to go to trial and that is what we did. I thought at trial we raised all the issues that were necessary and had an argument to make.

THE COURT: All right. Very well. And then, those are all of the allegations that I found that directly related to representation by the lawyers, being either Mr. Patel or Mr. Tibbs. Mr. Roddis, anything else you want to add at this time?

THE DEFENDANT: Yes.

THE COURT: What is that?

THE DEFENDANT: I have a letter from Mr. Patel that he wrote to the ARDC where he said that he did a thorough cross-examination of the victim while she was on the stand, including questioning her in regards to

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text messages and e-mails in contradiction of my claims. He never questioned her about one text message nor one e-mail nor anything, and my whole claims to the ARDC was about the text messages.

THE COURT: Stop. Do you have the letter with you?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. I want you to mark it as Defendant's -- You can step up here. We'll have it marked as Defendant's Exhibit No. 1. I'll allow the exhibit into evidence. And I then want to review it, Mr. Roddis.

THE DEFENDANT: Okay. I have a copy for you but this the master copy. Do you want me to find your copy that I was going to give -- I got a --

THE COURT: Just a one page letter, Mr. Roddis?

THE DEFENDANT: Just a header attached to it but --

THE COURT: Let me see the letter, Mr. Roddis. Carolyn, go ahead and make a -- just three pages. Make a quick copy of that so we can give that back to Mr. Roddis. You can have a seat, Mr. Roddis.

All right. So let's see. Mark that copy as Defendant's Exhibit 1. One of you all can give that back to Mr. Roddis. Thank you. All right. So, Carolyn, show Defendant's Exhibit 1 shall be admitted.

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Give me a moment to review the letter. All right. Mr. Roddis, again, you have referenced the letter. I've carefully read the letter. Anything else you want to add at this time?

THE DEFENDANT: Also, that I asked the man to put me in for an appeal and sentence reduction as well, which he never did, which I have proof that people contacted him numerous times within 30 days after I was sentenced. And, I mean, it is all in here that he just lied when he wrote that. He never did any of that stuff.

THE COURT: All right. Very well. Mr. Patel, do you wish to make any additional response?

MR. PATEL: I don't recall what I --

THE COURT: I have read your letter.

MR. PATEL: I don't recall what my response was.

THE COURT: Do you want to look at the letter?

MR. PATEL: Yeah, if I could, Judge. Thank you, Judge. I stand by my comments in that in my response the ARDC would have been much, obviously, fresher to me at that time than it is today. I do recall now when the victim was testifying, impeaching her on a number of issues, some of which may have included texts and e-mails but I don't have a copy of the transcript. But

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certainly my responses to the ARDC, I would say, are accurate.

THE COURT: Okay. Very well. All right. Carolyn, show the Court has considered the pleadings, the statements of the defendant and of his previous counsel and the exhibit. Finding by the Court the defendant's allegations do not amount to ineffective assistance of counsel. And the Court shall not proceed to a full Krankel hearing. And to comment briefly, Mr. Roddis, as I did at the time of your trial and/or the sentence hearing, I do think you were well represented by Mr. Patel and prior to that time by Mr. Tibbs in this particular case. I don't recall every fact perfectly regarding this trial, but I do recall the victim indicating she thought at least the degree of harm she suffered was an accident. She had also made various other, I guess, more incriminating statements. You had also made various statements. I found this case to be one of credibility. I did find the victim's testimony to be credible. And at least the allegations regarding the accident and so on and so forth to not be -- the word relevant is incorrect but to not be sufficient to sway the Court's decision. I believe the State did have a very strong case against you in this particular

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case. And I'm satisfied that you were properly represented. So I'm going to deny, again, I'm going to find that there was no ineffective assistance. However, I am now going to find that you are indigent. I'm going to appoint public defender Rodney Forbes to represent you. And as I recall, Mr. Roddis, at the time of the last hearing, Mr. Forbes said that his -- he may have had some type of conflict because he may have represented one of the witnesses at the time of the incident. So Mr. Forbes is probably going to have to hire or appoint conflict counsel. And I think Mr. Hassinger is typically used. I don't know if Mr. Hassinger has a conflict or not because Mr. Hassinger himself was a police officer at some point. But then I'm going to appoint Mr. Forbes to represent you. I'm going to allot this case for appearance of Mr. Forbes on January the 27th at 9 o'clock in this courtroom. Mr. Roddis, you will not need to be present on that date, and then whoever he appoints as counsel, I'm going to let him amend, if the new counsel wants, your full motion to reconsider sentence in any fashion counsel wants to amend it. And then that motion will have to be heard where you are actually represented by counsel and then after that point you will still have a

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right to appeal. Do you understand, Mr. Roddis?

THE DEFENDANT: An appeal on this decision right here?

THE COURT: Well, this decision I made today will also be appealable, but it is really not ripe yet. What I'm saying is I'm going to appoint separate counsel to represent you on your full motion to reconsider sentence. He can bring up anything else at the time of that hearing that you want brought up before the Court, that you also included in your motion. Okay. Then that will have to be decided. Then once that is decided, if you don't think it's gone your way, then that issue can be appealed and this issue can be appealed.

THE DEFENDANT: So I won't miss a deadline or nothing?

THE COURT: No. Because the deadline won't run until the final motion is decided.

THE DEFENDANT: Okay.

THE COURT: Do you understand, Mr. Roddis?

THE DEFENDANT: Yes, sir.

THE COURT: Anything else at this time, Ms. Radtke?

MS. RADTKE: No, sir.

THE COURT: Mr. Patel or Mr. Tibbs, anything else

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you want to add at this time?

MR. TIBBS: No, your Honor.

MR. PATEL: No, Judge.

THE COURT: Very well. Thank you, counsel.

(WHICH WERE ALL THE PROCEEDINGS REQUESTED TO BE TRANSCRIBED IN THE ABOVE-ENTITLED CAUSE.)

Index to the Record on Appeal[1]

Common Law Record

[1] This index is ordered by the page numbers provided by the circuit court clerk, rather than by chronological order.

Report of Proceedings

PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 27, 2019, the foregoing **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my email address to the email addresses below:

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Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen duplicate paper copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

/s/ Michael L. Cebula

MICHAEL L. CEBULA
Assistant Attorney General