

2026 IL App (1st) 250728-U

No. 1-25-0728

Order filed October 30, 2026

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 17 CR 09052 (02)
	)	
NELON DRAKE,	)	Honorable
	)	Steven G. Watkins,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE ODEN JOHNSON delivered the judgment of the court.
Justices C.A. Walker and Wilson concurred in the judgment.

ORDER

¶ 1 Held: Denial of defendant's claim for ineffective assistance of counsel is reversed and remanded for appointment of new counsel and second-stage adversarial hearing regarding his claim of ineffective assistance of trial counsel.

¶ 2 Following a bench trial, defendant Nelon Drake was convicted of criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2020)) and sentenced to 7 years' imprisonment. Drake appealed, arguing that the State failed to prove him guilty beyond a reasonable doubt and that he received ineffective assistance of counsel. This court affirmed Drake's conviction and remanded for proper

inquiry into his ineffective assistance of counsel claim. *People v. Drake*, 2024 IL App (1st) 210482-U.

¶ 3 On remand, the trial court conducted a preliminary hearing pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984). Drake elaborated on his claim, and counsel testified as to his representation. The court found that Drake’s allegations did not establish ineffective assistance of counsel.

¶ 4 On appeal, Drake asserts that the trial court erroneously denied his ineffective assistance claim and alternatively contends that the court failed to conduct an adequate inquiry as to his claim. We reverse the trial court’s ruling and remand for appointment of new counsel and second-stage adversarial hearing.

¶ 5 I. BACKGROUND

¶ 6 A. Bench Trial

¶ 7 Because we detailed the underlying facts at trial in *People v. Drake*, 2024 IL App (1st) 210482-U, we relate only the facts necessary to address the present appeal.

¶ 8 The State charged Drake with criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2020)), alleging that he made contact between his penis and B.D.’s mouth while using or threatening force.

¶ 9 At the bench trial, the victim B.D. testified that while she was held in the women’s cell near courtroom 106 on May 2, 2017, she was sexually assaulted by two different men. Due to her daily medications, B.D. fell asleep in her cell. When she woke, a man was in her cell. He “grabbed [her] from behind” and “had [his] way” with her. B.D. sat down afterward, feeling disoriented. Then, a second man entered the cell and said, “Let’s go.” B.D. said no and refused to stand. The man then put his penis in her mouth and held her head in place until he ejaculated inside her mouth.

The man left, and B.D. spat on the floor. Through her window, she saw Drake and another man “high fiving each other” in the men’s holding cell.

¶ 10 When guards took B.D. to the bullpen, she told a deputy that “something happened” and wrote a note detailing the incident, though she could not remember everything due to her medication. When B.D. returned to jail, she reported the assault and was taken to an emergency room, where medical professionals collected evidence from her vagina, anus, and mouth.

¶ 11 David Freeborn testified that he, Drake, and another man shared a holding cell near courtrooms 105 and 106 in the Markham Courthouse on May 2, 2017. The two other men noticed a woman in a cell across the hall. They gestured for her to move away from her cell window, and convinced security guards to escort them to her cell. The other man went first. When a female guard escorted the man back to his cell, she asked if anyone was held in the women’s cell. Drake said that the woman in the cell was “taken downstairs.” The guard then admitted Drake to the woman’s cell. After a sergeant later returned Drake to the men’s cell, Drake and the other man laughed and discussed how they “got it in.” When escorted from his cell, Freeborn saw a woman through the window of her cell. She held her face as she sat, and her shoulders moved as if she was crying.

¶ 12 Centrayl Rogers testified that he was held in a cell at the Markham courthouse near courtrooms 105 and 106 on May 2, 2017. A sheriff admitted Rogers to a cell across the hall to use the commode. Rogers noticed a woman seated in the corner against the wall, not visible from the cell window. The woman “had her face in her lap” and “sniff[ed] like she was crying.” Rogers asked her if she was okay, but she did not respond. He used the commode and left.

¶ 13 Tyres Baynes testified before the grand jury in June 2017, but could not recall that testimony at trial. The State introduced a transcript of his grand jury testimony. Before the grand jury, Baynes testified that he was held next to courtroom 106 on May 2, 2017. A female inmate was placed in the cell across the hall. Baynes saw a male inmate enter the cell. Through the woman's cell window, the man made a hand gesture "like he was getting oral sex," laughed it off, spoke to someone inside the cell, and exited. Later, Baynes heard the man tell a guard that he was raped by a woman in a cell, but Baynes thought the man was lying to get to the "outside hospital."

¶ 14 The parties stipulated that a jail employee would testify that Drake submitted an inmate grievance alleging that, *inter alia*, a guard admitted him to the women's cell, but failed to check the cell for occupants beforehand. Once Drake was inside the cell, a female prisoner appeared from "a blind spot," holding a needle. She threatened to infect Drake with "AIDS" unless he consented to oral sex. She lowered Drake's pants and performed oral sex on him until he ejaculated in her mouth. Drake and the others in the men's holding cell "bang[ed] on the doors and walls" until an officer retrieved Drake and returned him to the men's cell. Drake told Officer Buchanan and Sergeant Garrett that he was sexually assaulted. Later, a rape kit was performed at a hospital. The parties stipulated that no needle was recovered from the holding cells.

¶ 15 The parties further stipulated to the following: that an emergency room physician would testify that on May 2, 2017, she examined B.D. and collected samples for her sexual assault kit, and that B.D. reported taking her prescribed medication and suffered sleepiness and memory loss; a registered nurse would testify that on May 2, 2017, she collected blood standard and penile swab samples from Drake for a sexual assault kit; an expert in forensic biology would testify that no semen was found in B.D.'s oral swabs, and that semen was detected on Drake's penile swabs; and

an expert in forensic DNA analysis would testify that, of the two DNA profiles identified from the non-sperm fraction extracted from Drake's penile swab, one matched Drake's DNA profile and the other was consistent with having originated from B.D.

¶ 16 After the State rested, the parties further stipulated that Deputy Sheriff Kalina would testify that on May 2, 2017, Sergeant Garrett informed her that two prisoners claimed that they were placed in a cell with B.D. Kalina replied that the inmates never came "in contact" with each other. She transported B.D. from the women's lockup to the courtroom around 10:45 a.m., placed her "in a single cell by herself," and returned B.D. to lockup around 1:45 p.m. Garrett interviewed B.D. in Kalina's presence. B.D. told Garrett that nothing unusual happened to her in her cell.

¶ 17 After hearing all the evidence, the trial court found Drake guilty of sexual assault.

¶ 18 B. First Appeal

¶ 19 Drake's trial counsel filed, at Drake's request, a posttrial motion asserting that counsel was ineffective at trial for failing to object to leading questions and failing to "call necessary witnesses and bring forth possible exculpatory evidence."

¶ 20 At a November 2020 hearing, trial counsel stated that he "could have" and "should have," but did not, call trial witnesses. Counsel's memorandum, filed with leave of court, argued that he failed to call correctional officers who spoke with witnesses, witnessed relevant events, and could provide "potentially exculpatory evidence." The trial court did not inquire further, but rejected Drake's motion, finding his claims were meritless and pertained to matters of trial strategy.

¶ 21 On appeal, we found that the trial court failed to "inquire into the identity of the witnesses, the effort made by defense counsel to secure any of the alleged witnesses' testimony, what the

witnesses would testify to, or the importance of this testimony to the defense strategy.” *Drake*, 2024 IL App (1st) 210482-U, ¶ 51. We remanded for a new preliminary *Krankel* hearing. *Id.*

¶ 22 C. Proceedings on Remand

¶ 23 On remand, trial counsel failed to appear on multiple dates before finally appearing without Drake on November 26, 2024. That day, counsel stated that he was unaware that the case was remanded but was prepared for the hearing. The court continued the matter, and counsel failed to appear again. The court continued the matter to February 7, 2025, and ordered counsel to appear.

¶ 24 On February 7, 2025, trial counsel appeared with Drake. The court asked counsel to identify the trial witnesses he “could have and should have” called. Counsel lacked Drake’s file, did not recall all the officers, had only read the appellate mandate that day, and did not know names of witnesses or why he was in court. The court continued the matter and informed counsel that he would need to disclose the witnesses he “could have or should have” called, the effort he made to secure those witnesses, the content of their testimony, and its importance to defense strategy.

¶ 25 On March 21, 2025, counsel and Drake appeared. Drake stated that, before trial, he gave counsel the names of trial witnesses, including Cook County Sheriff’s Department Lieutenants “Baker” and “Boyd,” Deputy Sheriff Gregory Hart, Sergeant George Burke, Sergeant John Vega, and “Emin” Zabadneh. Drake also named Deangelo Tellafarrow, and Tellafarrow’s codefendants, who were detained with Drake in May 2017.

¶ 26 Drake testified that Lieutenant Baker, the shift commander on the day of the incident, would have testified that B.D. denied that the incident occurred. Drake presented an excerpt from separate proceedings, absent from the record on appeal, in which Baker testified as much. Drake informed counsel of the document before trial.

¶ 27 The court asked counsel if Drake asked him to call Lieutenant Baker. Counsel replied that he received information about the sheriff's investigation in discovery and spoke to Drake about witnesses. Counsel added, "it's a cleansing feeling for me because right after I lost, I filed that motion for new trial. It was combined alleging evidentiary issues, but *** I raised the issue of ineffective." Counsel raised an ineffective assistance claim apart from Drake's claim because he had health issues that "made [him] take shortcuts and [he] thought [he] could compensate with [his] trial skill." The court did not ask counsel about his "shortcuts."

¶ 28 Counsel stated that Drake asked him to call Baker, but he decided not to call "those witnesses." He recalled that during the sheriff's investigation, B.D. denied any sexual contact and the defendants claimed they were assaulted. Nine officers tendered reports and evidence, including post-incident interviews and potentially inconsistent statements that counsel "would probably have to go into." He thought that Baker could testify about information from the sheriff's investigation.

¶ 29 Counsel stated that "Deputy Sheriff Hart" would have testified to observations or information gathered after Drake reported the sexual assault. He noted that all officers were "part of the investigation and the processing of the scene," but "without specifically recalling what Hart did," it was "kind of confusing." The officers each served various roles "from incident to outcry," and observed "some impeachable evidence or inconsistencies."

¶ 30 The court asked counsel, "What would [H]art have testified to had he been called?" Counsel replied, "I don't know."

¶ 31 Counsel "generally recalled discussing" Sergeant Burke with Drake, who would have testified to information he received before and after the men were held in their cell, and to Drake's sexual assault allegation against B.D. Counsel could not recall if Burke witnessed Drake's outcry.

¶ 32 Counsel chose not to call Sergeant John Vega but did not explain why. He could “only speculate” as to Vega’s testimony, noting that “[t]here was an opportunity for those officers to review surveillance footage and videos of the incident,” and that officers reviewed the logs of the inmates’ movements. The court did not inquire about the surveillance footage.

¶ 33 Drake asserted that Deangelo Tellafarrow and his two codefendants would have testified that B.D. exposed herself to the men before they entered her cell. Counsel stated that he once had a list of “about ten inmates” in custody that day, including Tyrese Barnes, Ivory King, and “Hermenjildo.” He believed Tellafarrow was on that list. He thought that he tried to find some of the men listed, but could not indicate which ones, and did not know if he found Tellafarrow.

¶ 34 Drake stated that he and B.D. were alone in the women’s cell. The court did not inquire about the remaining witnesses.

¶ 35 When addressing Drake’s claim that counsel failed to object to several leading questions, counsel stated that he missed several objections but could not list them.

¶ 36 In issuing its decision, the court stated that it would not second-guess counsel’s trial strategy as to his failure to object, and that counsel’s performance was not objectively unreasonable or prejudicial to Drake. The court found that no witnesses viewed any interaction between Drake and B.D. It found that “at best, these witnesses were a part of *** an investigation as to whether Lieutenant Baker should have been fired” because of the incident, but found those facts irrelevant.

¶ 37 The court noted that counsel “indicated that they discussed which witnesses to call,” stated that “whether or not to call these witnesses was a trial strategy,” and found counsel’s strategy “not so unsound that counsel can be said to have entirely failed to conduct a meaningful adversarial testing of the State’s prosecution.” The court reasoned that counsel was not deficient for failing to

call the proposed witnesses, and rejected appointment of new counsel. The court then rejected Drake's motion, concluding that Drake's claim of ineffective assistance was meritless and only pertained to matters of trial strategy.

¶ 38

II. ANALYSIS

¶ 39 On appeal, Drake contends that the trial court erred in denying his ineffective assistance claim where he showed possible neglect by trial counsel, and alternatively contends that the court's deficient inquiry on remand gave rise to that denial.

¶ 40 "Through *People v. Krankel* and its progeny, the Illinois Supreme Court has provided our trial courts with a clear blueprint for the handling of posttrial *pro se* claims of ineffective assistance of counsel. *People v. Robinson*, 2017 IL App (1st) 161595, ¶ 82. When a defendant presents a *pro se* posttrial motion alleging ineffective assistance of counsel, new counsel is not automatically appointed. *People v. Moore*, 207 Ill. 2d 68, 77 (2003). Rather, the court must conduct a preliminary inquiry to examine the factual basis of the claim. *Id.* at 77-78.

¶ 41 The purpose of a *Krankel* inquiry is to create a record and potentially limit issues on appeal. *People v. Ayres*, 2017 IL 120071, ¶¶ 13, 24. The trial court's goal in reaching this purpose is to ascertain the underlying factual basis of a defendant's claims of ineffective assistance and give him the chance to explain and support those claims. *Id.* Accordingly, the trial court has a duty to conduct an adequate inquiry when a defendant alleges that he received ineffective assistance. *People v. Willis*, 2013 IL App (1st) 110233, ¶ 72.

¶ 42 During a preliminary *Krankel* inquiry, "some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary" to evaluate whether further action is warranted. *Moore*, 207

Ill. 2d at 78-79. The court may question trial counsel about the facts and circumstances surrounding defendant's allegations, discuss the allegations with defendant, or rely on its own knowledge of defense counsel's performance at trial and the insufficiency of defendant's allegations on their face. *Robinson*, 2017 IL App (1st) 161595, ¶ 84. If a defendant's claim shows "possible neglect of the case," then the trial court should move to the second stage of the *Krankel* proceeding, where the defendant receives new representation at an evidentiary hearing. *Id.* ¶ 85. "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." *Moore*, 207 Ill. 2d at 78.

¶ 43 Here, Drake challenges both the trial court's procedure and its denial of his claim of ineffective assistance. We review *de novo* the procedure the trial court used to conduct the preliminary *Krankel* inquiry. *Robinson*, 2017 IL App (1st) 161595, ¶ 88. "[I]f the trial court properly conducted the entire *Krankel* inquiry and reached a determination on the merits, we will reverse only if the trial court's action was manifestly erroneous." *Id.* ¶ 90.

¶ 44 We must first address whether the court conducted a proper *Krankel* inquiry. *Id.*; *People v. McLaurin*, 2012 IL App (1st) 102943, ¶ 40 (noting that this court's review of defendant's claim of ineffective assistance necessarily turns on the adequacy of the trial court's inquiry).

¶ 45 Drake contends that the court failed to inquire into the testimony of all the identified witnesses, counsel's efforts to secure those witnesses, and the importance of their testimony as to his defense. Drake further contends that the court should have inquired into counsel's admitted "shortcuts" at trial. Additionally, counsel's inability to provide information impeded the court from conducting an adequate inquiry. As such, the court's inquiry was lacking.

¶ 46 Where a defendant's claims are based on facts outside of the record, an inquiry is insufficient where it fails to develop the factual record needed to resolve the claims. *McLaurin*, 2012 IL App (1st) 102943, ¶ 44. A trial court is in no position to evaluate a defendant's *pro se* claim of ineffective assistance where the record does not reflect who the witnesses were, or what their testimony would reveal. See *People v. Peacock*, 359 Ill. App. 3d 326, 339 (2005). While in the case at bar, the record does reflect who the witnesses were (*supra* paragraph 25), it does not reflect what their testimony would reveal.

¶ 47 Although the court inquired as to some of the identified trial witnesses, counsel admitted that Drake provided additional witnesses before trial which counsel could not name or recall. The court did not inquire further. Counsel did not explain why he declined to call Lieutenant Baker, even though counsel thought that she would provide impeachment testimony and Drake stated that she would testify as to investigation errors.¹ Counsel stated that he had "a cleansing feeling" when raising the ineffective assistance claim because he "took shortcuts." The court did not inquire into counsel's "shortcuts" or why he declined to call Baker.

¶ 48 Counsel stated that nine officers tendered reports on the sheriff's investigation, and that there was impeachment evidence in some records that counsel "would probably have to go into." The court did not inquire about the impeachment evidence, whether counsel interviewed those witnesses, why counsel elected not to call them, or why counsel would "probably have to go into" the records rather than explain the evidentiary value of those records at the hearing.

¹ In its brief, the State directed this court to Baker's employment appeal, which includes testimony that the women's cell was not secured upon reports of the incident, and was cleaned by staff prior to investigation. *Baker v. Cook Co. Sheriff's Merit Bd.*, 2022 IL App (1st) 210067-U, ¶ 11. In the case at bar, while the parties stipulated that "no needle of any kind was recovered ...," there was no testimony or stipulation regarding whether the cell had been cleaned prior to evidence collection.

¶ 49 Counsel admitted that he did not know what Deputy Sheriff Hart’s testimony might offer, but the court did not inquire if counsel interviewed Hart or reviewed his investigation reports. Nor did the court explore counsel’s statement that officers reviewed “surveillance footage and videos of the incident.” It did not ask what their surveillance evidence might show, or to why counsel could “only speculate,” rather than speak to, Sergeant Vega’s potential testimony.

¶ 50 We also find the record lacking as to the issue of counsel’s failure to object. While decisions regarding what to object to, and when to object, are presumed to be matters of trial strategy, that presumption can be overcome in certain cases. *People v. Lucious*, 2016 IL App (1st) 141127, ¶¶ 31-32. Accordingly, the court must first have access to the facts related to the defendant’s claim, to evaluate whether the presumption can be overcome. The court must develop a record to determine whether Drake’s claims showed “possible neglect of the case” as defined by *Moore* and its progeny. *People v. Moore*, 207 Ill. 2d 68, 78 (2003).

¶ 51 On prior remand, the trial court was directed to properly inquire into “the effort made by defense counsel to secure any of the alleged witnesses’ testimony, what the witnesses would testify to, or the importance of this testimony to the defense strategy.” *Drake*, 2024 IL App (1st) 210482-U, ¶ 51. We note that the trial court attempted to comply with this court’s instruction but counsel failed to appear on several court dates, was unprepared, could not remember some of the potential witnesses, and admitted to taking short cuts. Counsel also stated that he missed several objections, but could not list any of them, and thus deprived the record of the information required to evaluate whether his performance was deficient. As a result of counsel’s continued inability or refusal to cooperate fully with the trial court’s second initial inquiry as a result of this court’s prior remand,

we find that the record does not support the trial court's denial of defendant's ineffective assistance claim.

¶ 52 Consequently, we find that the trial court's denial was error that the allegations show possible neglect of the case, such that new counsel should be appointed and the matter proceed to a second stage adversarial hearing. *People v. Chapman*, 194 Ill.2d 186, 230, (2000). The new counsel would then represent the defendant at the hearing on the defendant's *pro se* claim of ineffective assistance. *People v. Munson*, 171 Ill.2d 158, 200 (1996). The appointed counsel can independently evaluate the defendant's claim and would avoid the conflict of interest that trial counsel would experience if trial counsel had to continue to justify his or her actions contrary to defendant's position. *Chapman*, at 230.

III. CONCLUSION

¶ 53 For the reasons above, we find that the trial court erred by denying Drake's claim of ineffective assistance of counsel based on the initial *Krankel* inquiry. We reverse the judgment of the circuit court and remand for a second stage adversarial proceeding.

¶ 54 Reversed and remanded with instructions.