No. 124352

IN THE

SUPREME COURT OF ILLINOIS

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

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLEE

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

I.

The appellate court correctly found that the circuit court erred by considering the final legal merits of Ryan Roddis' ineffective assistance of counsel claims during a preliminary *Krankel* inquiry.

A.

During first stage *Krankel* inquiries, the circuit court considers only the factual merits of the defendant's claims. If the factual underpinnings of the claims withstand scrutiny, counsel should be appointed to address the legal merits of the defendant's arguments.

B.

The appellate court did not set forth a new mandatory framework but simply collected Illinois precedent to explain the "primary" ways that a defendant's *Krankel* claim can lack factual merit.

II.

The appellate court correctly found that Ryan Roddis' case should be remanded for further *Krankel* proceedings.

A.

The appellate court correctly found that a circuit court commits reversible error if it conducts a *Krankel* inquiry and concludes, on the merits, that there was no ineffective assistance of counsel.

ISSUES PRESENTED FOR REVIEW

I.

Whether the appellate court correctly found that the circuit court erred by considering the final legal merits of Ryan Roddis' ineffective assistance of counsel claims during a preliminary *Krankel* inquiry.

II.

Whether the appellate court correctly found that Ryan Roddis' case should be remanded for further *Krankel* proceedings.

STATEMENT OF FACTS

Meghan Collins and Ryan Roddis lived together, with their three-year-old daughter, at 3065 Southern Hills Drive in Decatur. (R. 82, 86-87) On June 8, 2012, they had an argument that allegedly turned physical. Ryan was charged with aggravated domestic battery. (C. 26) His case proceeded to a bench trial. (C. 48)

Meghan testified that, on June 8th, she wanted Ryan to leave their residence, so she put a pair of his shoes outside. (R. 83) Ryan picked up a pillow. (R. 83) Meghan pushed the pillow down out of Ryan's hands. (R. 83) According to Meghan, Ryan "pushed [her] head against the [corner of a] door." (R. 83-84) She ran upstairs and called the police. (R. 84) Meghan did not believe that Ryan planned for her head to hit the door. (R. 94) She later clarified that her "personal belief is that [Ryan] did not mean to hurt [her]." (R. 102) Meghan was taken to Decatur Memorial Hospital, and three staples were used to close a roughly two-inch wound on her head. (R. 114-16)

Meghan admitted that she may have told a police officer that Ryan struck her multiple times in the head. (R. 93) She clarified: "that's not what happened." (R. 93) She also acknowledged that, at the time of trial, she had a pending charge for filing a false report. (R. 96) She denied, however, that she ever told Ryan that her injury resulted from an accident. (R. 94-95)

Decatur Police Officer Scott Bibby responded to the Southern Hills Drive address on June 8th and spoke with Ryan who agreed to waive his *Miranda* rights. (R. 103, 106) Ryan explained that he threw a couch cushion which struck Meghan and caused her head to strike a door. (R. 106, 111) Bibby spoke to Meghan who reported that Ryan also punched her in the head. (R. 111)

Ryan testified that Meghan wanted him to leave and starting throwing his belongings outside. (R. 122) He decided to throw his couch outside and picked up a sofa cushion that was approximately 2 feet by 4 feet. (R. 122, 128) Ryan threw the couch cushion toward the door and it hit Meghan. (R. 122) He testified that he never intended to cause her bodily harm. (R. 123-24) Ryan also testified that Meghan contacts him "all the time" by text message and e-mail to tell him that she is going to testify against him unless he gives her money. (R. 126)

After hearing the evidence, the court found, based on Meghan's testimony, that a battery did occur and that great bodily harm was proven "based on the severity of the cut." (R. 151-53) It concluded that Ryan was guilty of aggravated domestic battery. (R. 153)

The court sentenced Ryan to six years in the Illinois Department of Corrections and ordered that he serve a four-year term of mandatory supervised release on February 21, 2014. (C. 88)

Ryan appealed and argued, in part, that his case should be remanded for a hearing into post-trial claims of ineffective assistance of counsel that he included in a motion to reconsider sentence but the circuit court failed to address. *People v. Roddis*, 2016 IL App (4th) 140631-U, ¶ 16; (C. 94-110) On July 22, 2016, the appellate court remanded Ryan's case for proceedings in compliance with *People v. Krankel,* 102 Ill. 2d 181, 188 (1984). *Roddis*, 2016 IL App (4th) 140631-U at ¶¶ 27-32.

Following remand — and with the State's agreement — the court appointed an attorney to represent Ryan during *Krankel* proceedings. (R. 227-28) However, after additional hearings, defense counsel noted that he was not usually appointed for preliminary *Krankel* inquiries and might have a conflict of interest because he briefly represented Meghan in a previous case. (R. 313-14, 317) The court allowed defense counsel to withdraw over Ryan's objection. (R. 319-20)

A little over a month later, the court heard the merits of Ryan's *Krankel* complaints. (R. 243-66) The court reviewed each of the allegations of ineffective assistance of counsel that Ryan made.

Among other things, Ryan argued that his attorney was ineffective for failing to impeach Meghan's testimony with text messages she sent to him indicating that she would contact Ryan's attorney or testify in a certain manner if Ryan paid her money. (R. 248, 250-51, 255, 257-58) The court asked the attorney who represented Ryan during plea proceedings, Baku Patel, to respond to Ryan's allegations. (R. 249) The following exchange occurred:

> "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." (R. 249)

Ryan explained his claim further:

> "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 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." (R. 250-51)

Ryan added that Meghan told responding officers that he repeatedly struck her but later testified that he did not. (R. 251) In response, Patel said that he had nothing to say "more than what has already just been brought out a second ago." (R. 251)

During an exchange with the court, Patel clarified that Meghan said that "it was an accident at least in terms of the degree of harm" and he noted that he cross-examined Meghan regarding her inaccurate statement that Ryan struck her. (R. 251)

Ryan also explained that, though Patel claimed to have shown Meghan's text messages to the State, during the sentencing proceedings, the State informed the court that it had not seen some of the relevant text messages. (R. 192-94, 257-58) The court asked Patel whether he brought these text messages to the State's attention, and Patel explained, "I must have, Judge. I don't recall the actual exchange and conversation but I must have." (R. 258)

Ryan provided the court with a letter that Patel wrote in response to an Illinois Attorney Registration and Disciplinary complaint that Ryan filed. (R. 260-62; Def. Ex. No. 1; E. 3-4) In that letter, Patel explained that he did a "thorough cross examination of the victim, including questioning her regarding emails and text messages, in contradiction of Mr. Roddis' current claim." (Def. Ex. No. 1; E. 3-4) Patel clarified that he did not have a copy of the trial transcript but his "response [to] the ARDC would have been much, obviously, fresher to [him] at that time than it is today." (R. 262-63)

The court found that Ryan's allegations did "not amount to ineffective assistance of counsel." (R. 263) The court explained that it did not recall every fact about the case perfectly but did "recall the victim indicating she thought at least

the degree of harm she suffered was an accident." (R. 263) It also clarified that it "found this case to be one of credibility" and noted that Meghan's trial testimony was credible. (R. 263) After denying Ryan *Krankel* relief, the court explained that it was going to appoint counsel to represent him on the remaining claims in his motion to reconsider sentence. (R. 265)

On July 24, 2017, defense counsel filed an amended motion for reduction of sentence alleging that the court erred by failing to consider the financial impact of incarceration when it sentenced Ryan. (C. 213-14) A hearing was held on that motion on August 14, 2017. (R. 297-304) The court denied the motion. (R. 302)

Ryan appealed and argued that the circuit court erred by addressing the final merits of his ineffective assistance of counsel claim rather than determining whether he demonstrated that his case suffered from "possible neglect." The appellate court agreed. *Roddis*, 2018 IL App (4th) 170605, ¶¶ 88-90, 102-03. It remanded Ryan's case for the appointment of a new attorney and directed counsel to take whatever action counsel deemed appropriate following the remand. *Roddis*, 2018 IL App (4th) 170605, ¶¶ 88-90, 102-03. This Court granted the State's petition for leave to appeal.

ARGUMENT

I.

The appellate court correctly found that the circuit court erred by considering the final legal merits of Ryan Roddis' ineffective assistance of counsel claims during a preliminary *Krankel* inquiry.

On August 29, 2016, the appellate court remanded Ryan Roddis' post-trial claims of ineffective assistance of counsel for a *Krankel* hearing. *People v. Roddis*, 2016 IL App (4th) 140631-U, ¶¶ 27-29. The circuit court initially appointed counsel, with the State's agreement, to represent Ryan during *Krankel* proceedings. (R. 227-28, 234-35) After several hearings, including one where defense counsel indicated that he might file an amended *Krankel* motion, the circuit court allowed counsel to withdraw and held a preliminary *Krankel* inquiry where Ryan was unrepresented. (R. 263-65, 319)

After hearing from Ryan and his trial attorney, the court concluded that it would not advance his claims to a full *Krankel* hearing because "the defendant's allegations do not amount to ineffective assistance of counsel." (R. 263)

Ryan appealed, and the appellate court held that the circuit court erred by examining the final substantive merits of his ineffective assistance of counsel claim without appointing new counsel to represent him. *People v. Roddis*, 2018 IL App (4th) 170605, ¶ 88.

The State argues that the appellate court erred by holding that the circuit court should not have considered the "merits" of an ineffective assistance of counsel claim during a preliminary *Krankel* inquiry and by not finding that Ryan's claim relates solely to matters of trial strategy. (St. Br. 11-14) It argues that the appellate court's holding conflicts with this Court's precedent. Contrary to the State's position, the appellate court's holding is in lockstep with this Court's decisions.

A.

During first stage *Krankel* inquiries, the circuit court considers only the factual merits of the defendant's claims. If the factual underpinnings of the claims withstand scrutiny, counsel should be appointed to address the legal merits of the defendant's arguments.

The State's first argument seizes on one line from the appellate court's decision and argues that it illustrates the appellate court's misunderstanding of the correct *Krankel* procedure: "during a preliminary *Krankel* inquiry, a 'trial court does not – and cannot – reach the merits of an ineffective assistance claim ***.'" St. Br. 11, quoting *Roddis*, 2018 IL App (4th) 170605, ¶¶ 47, 52, 81. The State argues that this holding is "directly contrary to more than twenty opinions of this Court." (St. Br. 11) The State is incorrect.

In 2003, when considering the standards that should be applied to a claim of ineffective assistance of counsel, this Court concluded that counsel:

> "is not automatically required in every case in which a defendant presents a *pro se* posttrial motion alleging ineffective assistance of counsel. Rather, when a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion. However, if the allegations show possible neglect of the case, new counsel should be appointed." *People v. Moore*, 207 Ill. 2d 68, 77–78 (2003).

Numerous cases, including some of those relied upon by the State, have cited to the above-quoted "lacks merit" passage from *Moore* or to its earlier use in *People v. Nitz*, 143 Ill. 2d 82, 134 (1991), to explain that, during a preliminary *Krankel* inquiry, a circuit court is allowed to examine the "merits" of a defendant's claim. See *People v. Jocko,* 239 Ill. 2d 87, 92 (2010); *People v. Jolly,* 2014 IL 117142, ¶ 29; *People v. Rohlfs*, 368 Ill. App. 3d 540, 548 (3d Dist. 2006); *People v. McGath*, 2017 IL App (4th) 150608, ¶ 47. The State relies on the "lacks merits" language from *Nitz and Moore* while asserting that the appellate court erred by finding that a remand was required in the instant case. (St. Br. 11-14)

Few courts have examined what the "lacks merit" language really means. In the instant case, the appellate court concluded that, during the first stage of the *Krankel* process, a circuit court examines a defendant's claim to determine whether to appoint an attorney. *Roddis*, 2018 IL App (4th) 170605, ¶ 63. It found that a circuit court should not adjudicate the final legal merits of a defendant's claim during a preliminary inquiry. *Roddis*, 2018 IL App (4th) 170605, ¶ 47. Such an interpretation is supported by this Court's precedent.

In *Moore*, this Court explained that:

> "the trial court should first examine the *factual basis of the defendant's claim*. If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion." *Moore*, 207 Ill. 2d at 77–78, emphasis added.

A plain reading of this Court's holding in *Moore* illustrates that the "lacks merit" language relates only to the factual merit of the defendant's claim and not the end legal merit of an ineffective assistance of counsel claim. See *People v. Chapman*, 194 Ill. 2d 186, 230 (2000) (explaining that, during a preliminary *Krankel* inquiry, the court examines the factual basis of a claim to determine if it has merit).

Such a conclusion is confirmed by this Court's decision in *People v. Ayres,* 2017 IL 120071, ¶ 24. There, this Court explained:

> "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." *Ayres*, 2017 IL 120071, ¶ 24.

Moore and *Ayres* clearly indicate that, at the initial *Krankel* inquiry, a defendant presents his factual allegations to the court in an effort to establish possible neglect. *Moore*, 207 Ill. 2d at 77–78; *Ayres*, 2017 IL 120071, ¶ 24. If the defendant satisfies the possible neglect standard, an attorney is appointed who can argue the legal merits of the defendant's claims. *Moore*, 207 Ill. 2d at 78.

The State fails to cite to any case holding that it is proper for the circuit court to adjudicate the final legal merits of a claim of ineffective assistance of counsel during a preliminary inquiry. Such a rule would improperly require a *pro se* petitioner to represent himself with the skill of a licensed attorney.

The appellate court correctly noted that there are parallels between the process used to investigate and adjudicate claims of ineffective assistance of counsel and the post-conviction process. *Roddis*, 2018 IL App (4th) 170605, ¶¶ 96-100. The Post-Conviction Hearing Act is construed "liberally, taking into consideration the fact that those submitting petitions are often found to possess a limited education." *People v. Potter*, 174 Ill. App. 3d 217, 218 (4th Dist. 1988). As a result, in order to be appointed an attorney, a petitioner need only present the gist of a constitutional claim. See *People v. Edwards*, 197 Ill. 2d 239, 245 (2001) ("If the circuit court does not dismiss the post-conviction petition as frivolous or patently without merit, then the petition advances to the second stage and counsel is appointed, if necessary ***."). A circuit court does not consider a first stage petition on the merits but only determines whether the petition alleges a constitutional infirmity which would necessitate relief under the Act. *People v. Reyes*, 369 Ill. App. 3d 1, 18 (1st Dist. 2006).

Similarly, "[t]he common law procedure developed in *Krankel* and subsequent cases is intended to promote consideration of *pro se* ineffective assistance claims in the trial court and to limit issues on appeal." *People v. Patrick*, 2011 IL 111666, ¶ 41. *Pro se Krankel* petitioners are responsible for providing a factual basis for their claims but are arguably no more sophisticated than post-conviction petitioners. Most have limited education, and very few will have any formal legal training. *Potter*, 174 Ill. App. 3d 217, 218; *The Compiler*, Illinois Criminal Justice Information Authority, Fall 1991, at 7 (explaining that, at the time of its publication, nearly three-quarters of all Illinois prison inmates were high school dropouts).

It is, arguably, not too onerous to require a *pro se Krankel* petitioner to demonstrate "possible neglect" of his case. A *pro se* defendant should be able to enunciate, in general terms, why he believes that his attorney possibly neglected his case. It is, however, wholly improper to require a *pro se* litigant to fully litigate a claim of ineffective assistance of counsel, which can involve the application of complex legal theories, during a preliminary *Krankel* inquiry. The principles discussed by *Krankel* and its progeny have worked for nearly 30 years. There is little reason to change them now.

B.

The appellate court did not set forth a new mandatory framework but simply collected Illinois precedent to explain the "primary" ways that a defendant's *Krankel* claim can lack factual merit.

While setting forth the standards that apply to *Krankel* inquiries, the appellate court noted that confusion exists in the lower courts about when a claim "lacks merit." *Roddis*, 2018 IL App (4th) 170605, ¶¶ 62-77. As a result, it discussed the four "primary ways" a circuit court usually finds that an ineffective assistance of counsel claim "lacks merit." *Roddis*, 2018 IL App (4th) 170605, ¶ 65.

The State appears to have misread the appellate court's decision. It begins one of its argument subsections by asserting that the appellate court held that "trial courts may deny *Krankel* motions at the initial inquiry stage *only if* the defendant's claim is" conclusory, misleading, legally immaterial, or pertains only to an issue of trial strategy. (St. Br. 15, emphasis added)

The appellate court merely noted that this and other courts have primarily set forth four reasons why a *pro se* defendant's *Krankel* claim lacks merit. See *e.g.*, *Roddis*, 2018 IL App (4th) 170605, ¶ 65 ("A review of the case law since [*People v.] Johnson,* [159 Ill. 2d 97, 126 (1994)] 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."). The appellate court set forth each of those four primary grounds and explained the standards applicable to each. *Roddis*, 2018 IL App (4th) 170605, ¶¶ 67-77.

Similarly, contrary to the State's argument otherwise, the appellate court did not develop a "framework" with which to examine *Krankel* claims. (St. Br. 15-17) Instead, it merely attempted to explain the most used grounds for a circuit court's conclusion that a *pro se Krankel* claim lacks factual merit. *Roddis*, 2018 IL App (4th) 170605, ¶¶ 62-77. Additionally, the appellate court's explanation of these various grounds is sound.

In *People v. Johnson*, 159 Ill. 2d at 126, for example, this Court cited to its other cases to hold that, during a preliminary *Krankel* inquiry, a circuit court "should examine the *factual matters* underlying the defendant's claim, and, if the claim *lacks merit or pertains to matters of trial strategy*, then no new counsel need be appointed. Only if the allegations show possible neglect of the case * * * should new counsel be appointed." *Johnson*, 159 Ill. 2d at 126, emphasis added.

The *Johnson* Court concluded that the defendant was not entitled to *Krankel* relief because the defendant's *pro se* claims of ineffective assistance of counsel were *conclusory*, *misleading*, or *legally immaterial*. *Johnson*, 159 Ill. 2d at 126.

Similarly, in *Moore*, this Court explained that "when a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the *factual basis* of the defendant's claim." *Moore*, 207 Ill. 2d at 78, emphasis added. "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, emphasis added.

Not only did the appellate court not construct a new framework to examine *Krankel* claims, the appellate court's holding is not confusing, as the State asserts. (St. Br. 15-16)

As an example of this confusion, the State notes that the appellate court cited to *Ayres* and explained that it is unclear when an ineffective assistance of counsel claim would be so conclusory as to not warrant further relief. (St. Br. 15-16) Though the appellate court acknowledged that the *Ayres* Court took a rather expansive view of ineffective assistance of counsel claims — a view which Ryan believes is appropriate — it also cited to this Court's decision in *People v. Munson*, 171 Ill. 2d 158 (1996).

According to the appellate court, *Munson* supports a holding that 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. *Roddis*, 2018 IL App (4th) 170605, ¶ 67, citing *Munson*, 171 Ill. 2d at 201. The appellate court's explanation of when a claim is conclusory is consistent with this Court's holdings. See also *People v. Towns*, 174 Ill. 2d 453, 467 (1996) (also explaining when a claim is conclusory).

Possibly more problematic for the State is its assertion that the appellate court held "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.'" (St. Br. 17) Specifically, the State cites to the appellate court's holding that a trial court should decline to appoint new counsel for a defendant who has made a *Krankel* inquiry where the alleged errors "are solely matters of trial strategy (for example, when to introduce a particular piece of evidence or testimony)." *Roddis*, 2018 IL App (4th) 170605, ¶ 100.

The State, however, overlooks paragraph 76 of the *Roddis* Court's appellate decision:

> "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, 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." *Roddis,* 2018 IL App (4th) 170605, ¶ 76.

During *Krankel* proceedings, Ryan told the court that his attorney failed to cross-examine Meghan, the complainant and the State's primary witness, with text messages she sent which contradicted her trial testimony. (R. 247-48) During trial, she testified that she did not tell Ryan that the incident in this case was an accident. (R. 94-95) Defense counsel, however, possessed text messages that contradicted her testimony. (C. 119) Ryan alleged that his attorney was ineffective for failing to impeach Meghan with this information. This is an allegation which demonstrates factual merit and is not conclusory, misleading, legally immaterial, or solely a matter of trial strategy - especially where credibility was a central issue for the court. See also (R. 86-97, 99-102; E. 4) (detailing counsel's failure to properly cross-examine Meghan with the text messages she sent).

This was the exact type of claim that the court examined in *Peacock* where the appellate court acknowledged that matters, such as cross-examination, 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." *People v. Peacock*, 359 Ill. App. 3d 326, 340 (2005).

It was objectively unreasonable for defense counsel to fail to impeach the State's main witness, Meghan Collins, on the issue of whether Ryan knowingly pushed her head into the door. See 720 ILCS 5/12-3.2(a) (2012) ("A person who, in committing a domestic battery, knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated domestic battery."). The text messages that Meghan sent indicate that she told Ryan that her injury was accidentally caused. If that is true, Ryan's conduct might constitute recklessness but the State could not establish that he acted knowingly.

Simply put, Ryan demonstrated that his case suffered from his attorney's possible neglect. Nothing in this record establishes that his factual claims lack merit. As a result, the appellate court's holding should be affirmed.

II.

The appellate court correctly found that Ryan Roddis' case should be remanded for further *Krankel* proceedings.

Contrary to the State's argument, a remand is required where the circuit court improperly reached the legal merits of Ryan's ineffective assistance of counsel claim during the preliminary *Krankel* inquiry when he was unrepresented, and the State was not allowed to participate. (St. Br. 17)

A.

The appellate court correctly found that a circuit court commits reversible error if it conducts a *Krankel* inquiry and concludes, on the merits, that there was no ineffective assistance of counsel.

Before addressing the substantive merits of the State's argument, it is necessary to delineate the proper standard of review.

The appellate court explained that the question of whether a circuit court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel is a legal question which is reviewed *de novo*. *People v. Roddis*, 2018 IL App (4th) 170605, ¶ 79, citing *People v. Ayres*, 2017 IL 120071, ¶ 13, quoting *People v. Moore*, 207 Ill. 2d at 78 (2003). The State and defense agree that *de novo* review is appropriate to address that legal issue. (St. Br. 10)

However, over the course of five paragraphs, the appellate court explained that a number of reviewing courts have held that the circuit court's examination of the merits of a *Krankel* inquiry is reviewed for manifest error. *Roddis*, 2018 IL App (4th) 170605, ¶¶ 79-83, quoting *People v. Robinson*, 2017 IL App (1st) 161595, ¶ 90. It questioned the viability of the manifest error standard of review in this circumstance and correctly found that reversible error occurs when a court conducts

an initial *Krankel* inquiry and concludes — on the merits — that there is no viable claim of ineffective assistance of counsel. *Roddis*, 2018 IL App (4th) 170605, ¶ 81, citing *People v. Fields*, 2013 IL App (2d) 120945, ¶ 41 (reversing for new *Krankel* proceedings where the trial court violated the defendant's right to be represented by counsel when it converted a *Krankel* inquiry on the defendant's *pro se* claim into an adversarial proceeding); *People v. Cabrales*, 325 Ill. App. 3d 1, 5-6 (2d Dist. 2001) (reversing for a new *Krankel* inquiry where the circuit court did not hold a preliminary investigation before the court proceeded to a full hearing on the merits of the defendant's *pro se* motion without any discussion or resolution of the need for a preliminary investigation for appointment of conflict counsel).

The State, in its brief, does not acknowledge the appellate court's examination of the proper standard of review. It does not point out a flaw in the appellate court's analysis or argue that *Fields* or *Cabrales* are distinguishable.

Instead, it cites to a single case for the proposition that the manifestly erroneous standard applies when a court examines a circuit court's resolution of a *Krankel* claim. (St. Br. 10), citing *People v. Willis*, 2016 IL App (1st) 142346, ¶ 18.

Willis' origins begin at *People v. Woodson*, 220 Ill. App. 3d 865, 873 (1st Dist. 1991), which held that "where a trial judge conducts an evidentiary hearing on a motion to quash an arrest and suppress evidence, the findings will not be disturbed on review unless manifestly erroneous." *Woodson*, 220 Ill. App. 3d at 873. Applying the manifestly erroneous standard to a situation such as that discussed in *Woodson* makes sense. During an evidentiary hearing, a court is arguably presented with the factual basis for a defendant's claim and the legal precedent that guides its determination of the matter in contention.

It sees the witnesses, views the exhibits, and understands the applicable law. See *People v. Richardson*, 234 Ill. 2d 233, 251 (2009) ("the circuit court is in a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony"). As a result, its findings are entitled to deference.

However, as was explained by the appellate court in the instant case, when the merits of an ineffective assistance of counsel claim are adjudicated during a preliminary *Krankel* inquiry, the proceedings are short-circuited. See *Roddis*, 2018 IL App (4th) 170605, ¶ 89 (explaining that multiple parties suffered prejudice as a result of the circuit court's error in the instant case). The *pro se* petitioner is denied the legal representation to which he is entitled and the State cannot assist the court in determining the scope of the claim or the proper legal standards because it is not allowed to participate during a preliminary inquiry. *People v. Jolly*, 2014 IL 117142, ¶ 41 (explaining that the State is not allowed to participate in an adversarial fashion during a preliminary *Krankel* inquiry). When the process, endorsed by this Court to adjudicate a claim of ineffective assistance of counsel breaks down, any ruling on the ultimate merits cannot be relied upon.

The appellate court properly concluded that a circuit court commits reversible error when it rules on the merits of a claim of ineffective assistance of counsel during a preliminary *Krankel* inquiry. *Jolly*, 2014 IL 117142, ¶ 41 (finding reversible error where the State participated in a preliminary *Krankel* inquiry).

B.

The appellate court's factual findings which were consistent with the record.

The State argues that the appellate court misinterpreted the appellate record. (St. Br. 17-19) According to the State, the appellate court incorrectly found that, once counsel was appointed to represent the defendant, no additional *Krankel* proceedings were warranted. (St. Br. 17-19)

In support of its argument, the State summarizes the proceedings that were held after the appellate court initially remanded Ryan's case. (St. Br. 18-19) According to the State, the circuit court appointed counsel to help "get [the court] organized." (St. Br. 18); R. 227. The State adds, "[w]hen 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 new counsel." (St. Br. 18) There, however, is more to the procedural history than the State explains.

The appellate court initially remanded Ryan's case for a *Krankel* inquiry on August 29, 2016. (C. 170-75) The circuit court held a hearing following that remand on September 22, 2016. (R. 224-30) After reviewing the procedural posture of the case, the circuit court asked Ryan whether he wanted to represent himself or if he wanted the court to consider appointing counsel to represent him. (R. 226) Ryan asked the court to appoint an attorney to represent him. (R. 226) The court explained that it was not sure counsel was necessary "but I think counsel is always better at least to perhaps to get me organized." (R. 227) The State agreed. (R. 227) The State told the court that it thought appointing counsel was a "good idea." (R. 227) As a result, the court appointed the public defender, Rodney Forbes, to represent Ryan. (R. 228)

A month later, Mr. Forbes appeared with Ryan for a status hearing. (R. 232-35) Mr. Forbes told the court that he had only briefly looked through the file but did not think there was anything that would prevent him from representing Ryan. (R. 233-34) The court asked Mr. Forbes if he wanted the case set for a status hearing to determine whether "some type of amended document" should be filed on Ryan's behalf. (R. 234) Mr. Forbes answered, "yes." (R. 235)

Another status hearing was held on November 4, 2016. (R. 238-41) Mr. Forbes was not present, but an attorney from his office addressed the court. (239-40) According to the assistant public defender:

> "Mr. Forbes' notes say that he's requesting -- or suggesting that the Court set this for a *Krankel* hearing. He thinks it'll take about 45 minutes because there are -- he says there may be some witnesses, and if he can have just at least two weeks preparation time." (R. 239)

Mr. Forbes appeared for a November 28, 2016, hearing. (R. 311-22) The circuit court noted that it should proceed to a pre-inquiry *Krankel* hearing before holding a "full-blown" *Krankel* hearing. (R. 313) Mr. Forbes explained that, normally, he would not be appointed to represent a defendant during a pre-*Krankel* inquiry. (R. 313) Mr. Forbes added that he was prepared to represent Ryan, had received several affidavits and correspondence from him, and understood the gist of his claims. (R. 324) The court asked Mr. Forbes if it would be "safer" to proceed with an ordinary *Krankel* hearing. (R. 313) Mr. Forbes agreed and also alerted the court that a conflict of interest might be present because he represented Meghan Collins at a preliminary hearing while Ryan's case was pending. (R. 314) At that time, Meghan was represented by an assistant public defender. (R. 314)

Mr. Forbes moved to withdraw the appointment of the public defender's office "until such time as a pre-*Krankel* hearing could be held and it was determined that he was entitled to another lawyer." (R. 317) Ryan objected to Mr. Forbes' withdrawal. (R. 319) The court allowed Mr. Forbes to withdraw and, ultimately, denied Ryan's *Krankel* claims. (R. 319)

The State, in its facts section, explained that Mr. Forbes was appointed to help the court get organized. (St. Br. 7) It added that he, "almost immediately" disclosed 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. (St. Br. 7) As the preceding two pages illustrate, the proceedings were more involved than the State represents.

The State agreed that it was "a good idea" for counsel to be appointed to represent Ryan during *Krankel* proceedings. (R. 227) After he was appointed, Mr. Forbes told the court that there *was not* anything that would prevent him from representing Ryan. (R. 233-34) Mr. Forbes asked the court for an opportunity to file an amended document if he determined one was necessary. (R. 234-35) He represented Ryan for approximately 67 days before requesting leave to withdraw.

The procedural posture of this case following the appellate court's remand for a *Krankel* inquiry supports the appellate court's subsequent decision 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 correctly found that appointed counsel should have addressed Ryan's claims of ineffective assistance of counsel in whatever way counsel felt was appropriate. *Roddis*, 2018 IL App (4th) 170605, ¶ 85. The State's argument otherwise is based on its misunderstanding that counsel was only appointed to help "get [the court] organized." (R. 227)

C.

The appellate court correctly concluded that a remand was required to address Ryan Roddis' claims of ineffective assistance of counsel.

While addressing the merits of the *Krankel* proceedings held in this case, the State asserts that the circuit court conducted the *Krankel* inquiry precisely as it should have. (St. Br. 19) The record indicates that the court understood the basic mechanics of the *Krankel* procedure. However, it applied an incorrect standard. It concluded that Ryan, an incarcerated, *pro se* petitioner, with a 10th grade formal education, could not establish the elements of an ineffective assistance of counsel claim. (Sec. C. 11)

Ryan was not required to establish that he was provided with "ineffective assistance of counsel" until he was appointed an attorney and an evidentiary hearing had been held. Because Ryan's case involved a preliminary *Krankel* inquiry, he was only required to show that defense counsel "possibly neglected" his case. See *e.g., Moore*, 207 Ill. 2d at 78; *Jolly*, 2014 IL 117142 at ¶ 29. Ryan demonstrated, during the preliminary *Krankel* proceedings, that his case suffered from possible neglect. As a result, the appellate court's judgment, remanding Ryan's case for the appointment of an attorney and further *Krankel* proceedings should be affirmed.

Ryan testified that he threw a two-foot by four-foot couch cushion and the cushion accidentally hit Meghan's head causing her head to strike a door. (R. 123-24, 128) Meghan testified that Ryan purposefully pushed her head, though he did not mean for her head to strike the door. (R. 95) When finding Ryan guilty, the court noted that the only important element was whether he touched Meghan's head. (R. 152) According to the court, if he did, and because of the severity of her injury, he was guilty of aggravated domestic battery. (R. 152-53)

However, while ruling that Ryan was guilty, the court implicitly found that Meghan's version of events was more credible than the version Ryan told. (R. 151-53) The court repeated this finding while denying *Krankel* relief. (See R. 263 ("I found this case to be one of credibility. I did find the victim's testimony to be credible")). Credibility played a monumental role in this case and, because of defense counsel's ineffectiveness, the circuit court was denied essential information while finding Meghan to be a credible witness. *People v. Fillyaw*, 409 Ill. App. 3d 302, 315 (2011) ("The constitutional guarantee of effective assistance of counsel requires a criminal defense attorney to use the applicable rules of evidence to shield his client from a trial based upon unreliable evidence.").

During *Krankel* proceedings, Ryan presented the court with text messages that Meghan sent to him - text messages that painted the veracity of Meghan's testimony in a very dim light. (C. 116-21; R. 247-63) Defense counsel's failure to use these text messages constituted possible neglect.

For example, on August 13, 2013, Meghan sent Ryan text messages explaining that she was "done playin" and, for $1,000, she would talk to Ryan's attorney. (C. 116) Approximately two months before Ryan's trial, Meghan sent him a series of text messages wherein she explained that she did not want her "baby daddy locked up" and "u help me I help u to the fullest that[']s how we do it." (C. 117) Meghan also texted that the State had wasted its "time n money on some shit that never guna work, id take a case b4 I let them take u, YOU KNOW THAT!!!" (C. 121)

Defense counsel failed to use these text messages while cross examining Meghan. While questioning Meghan, defense counsel established that she had maintained contact with Ryan by text, phone, and e-mail. (R. 94) Counsel asked Meghan whether she told Ryan that she did not think that he meant to hit her in the head. (R. 94) Meghan said she had not. (R. 94-95)

Ultimately, the court was presented with two different versions of events. Ryan's guilt depended upon the court's credibility assessment. In order for the court's credibility determination to be fully informed, it was essential that defense counsel present the relevant text messages to the court.

Counsel failed to inform the court that Meghan's testimony was, essentially, for sale. (C. 116) Defense counsel failed to tell the court that Meghan said she had been "playin" in this case and was prepared to tell the State that it was wasting its time and money on Ryan's case. (C. 121) Counsel failed to tell the court that Meghan was willing to talk to defense counsel - if Ryan paid her "1k." (C. 116)

When assessing the importance of the failure to impeach for purposes of a *Strickland* claim, "[t]he value of the potentially impeaching material must be placed in perspective." *People v. Jimerson*, 127 Ill. 2d 12, 33 (1989). Here, the impeachment value of evidence that Meghan was willing to take certain steps to assist Ryan only if he paid her (C. 116), admitted that she had "said it to get wat I wanted and get money," (C. 120) and told Ryan that she would help him to the fullest if he helped her (C. 117), cannot be overestimated. This is especially true in a case where Ryan's guilt turned on the court's assessment of Meghan's credibility.

Ryan has established that his attorney "possibly neglected" his case by failing to impeach Meghan with her text messages. As a result, his case should be remanded for the appointment of an attorney and further *Krankel* proceedings.

D.

Admission of the text messages would not have harmed Ryan's case and could have led to an acquittal given the closeness of the evidence.

The State concludes its brief by making three claims, each of which, it asserts, supports its argument that the appellate court erred by remanding Ryan's case for a *Krankel* inquiry. (St. Br. 22-24)

While noting that the text messages Ryan received from Meghan were not admitted at trial, the State asserts that "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" Mr. Roddis which would have painted him as a dishonest and violent man and would have been damaging to his case. (St. Br. 23; See R. 121-22 (Ryan's testimony discussing his criminal history during trial)).

During *Krankel* proceedings, defense counsel did not claim that his failure to introduce the text messages that Meghan sent was informed, in any way, by the prospect that the State might introduce text messages that Ryan allegedly sent to Meghan. (R. 249) Indeed, during Meghan's direct examination, the State did not mention the messages that she allegedly received from Ryan. (R. 81-97) Whether the State would have admitted the text messages Ryan allegedly sent to Meghan had her text messages been admitted is a question better answered during a *Krankel* evidentiary hearing, where the State can participate and make an argument in the circuit court. *Jolly*, 2014 IL 117142, ¶ 36 (noting that the State is not allowed to participate during a preliminary *Krankel* inquiry).

The State argues that Meghan's text messages were helpful to Ryan's case, because Meghan never admitted that she lied when she said that Ryan pushed her head into the door. (St. Br. 22) It is incorrect. The text messages were essential to the defense in this closely balanced case.

During his direct appeal, Ryan argued that there was insufficient evidence that he knowingly caused great bodily harm to Meghan. *Roddis*, 2016 IL App (4th) 140631-U, ¶ 24. The appellate court affirmed Ryan's conviction after concluding that the trial evidence required the circuit court to make a credibility determination. *Roddis*, 2016 IL App (4th) 140631-U, ¶ 25. It reasoned that "the court's finding was that it found credible M.C.'s testimony that defendant pushed her head into the door, causing a laceration that required staples." *Roddis*, 2016 IL App (4th) 140631-U, ¶ 25. The circuit court, however, made this credibility determination without knowing about the text messages Meghan sent to Ryan. The messages Meghan sent to Ryan directly impact her credibility. (C. 116-21)

The circuit court did not know that Meghan told Ryan that she was "done playin" and, for $1,000, she would talk to Ryan's attorney. (C. 116) Possibly most importantly, she added "I had ur back from day one, I might have slipped up, but I still got it." (C. 118) Her "slipped up" comment may have indicated that she messed up by erroneously telling the police that Ryan intentionally battered her. A *Krankel* hearing should be held to determine how admission of these text messages may have impacted the State's case.

Regardless, the text messages were important evidence in the instant case where Ryan's guilt was determined after the circuit court made a credibility determination. During the guilt phase of trial, the circuit court never knew that Meghan was shaking Ryan down for money or that she told him that she "slipped up."

At this stage of the *Krankel* proceedings, Ryan only has to establish that his case suffered from possible neglect. *Moore*, 207 Ill. 2d at 77–78. Given the importance of the text messages, and the closely balanced nature of the evidence, he has met that standard. As a result, the appellate court's judgment should be affirmed.

CONCLUSION

For the foregoing reasons, Ryan Roddis, defendant-appellee, respectfully requests that this Court affirm the appellate court's decision remanding Mr. Roddis' case for the appointment of an attorney and further *Krankel* proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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

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IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

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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 September 6, 2019, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellee in an envelope deposited in a U.S. mail box in Springfield, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

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