2025 IL App (2d) 240484-U
No. 2-24-0484
Order filed November 10, 2025

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. LORIN VOLBERDING, Defendant-Appellant.	)	Appeal from the Circuit Court of McHenry County. No. 17-CF-140 Honorable Michael E. Coppedge and Tiffany E. Davis, Judges, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Kennedy and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: On remand from the vacatur of defendant's sentence, and with directions to conduct a preliminary inquiry under *People v. Krankel* into defendant's claims that his trial counsel was ineffective, the trial court (1) properly conducted a *Krankel* preliminary inquiry and concluded that defendant's claims lacked merit and (2) did not err in finding that defendant raised no *bona fide* doubt of his fitness to be resentenced.

¶ 2 After a bench trial, defendant, Lorin Volberding, was found guilty of the first degree murder (720 ILCS 5/9-1(a)(2) (West 2016)) of his wife, Elizabeth Volberding, and was sentenced to 50 years' imprisonment. Half of the sentence was a mandatory add-on because he personally

discharged a firearm and thereby caused the victim's death (see 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2016)). On appeal, we held that the trial court erred by failing to inquire into defendant's *pro se* claims that his attorney provided ineffective assistance of counsel, and we remanded for proceedings in accordance with *People v. Krankel*, 102 Ill. 2d 181 (1984). *People v. Volberding*, 2022 IL App (2d) 200346-U, ¶¶ 67-69. Also, because the trial court relied on improper factors at sentencing, we vacated defendant's sentence. *Id.* ¶ 65.

¶ 3 On remand, the trial court made a preliminary inquiry under *Krankel* and, finding no merit to defendant's *pro se* ineffective claims, declined to appoint counsel and hold a full hearing. The court also denied his motion for a finding of a *bona fide* doubt of his fitness to be resentenced. After a resentencing hearing, the trial court imposed an aggregate term of 50 years in prison, on the same basis as before. Defendant appeals, contending that the court erred by (1) declining to find a *bona fide* doubt of his fitness for resentencing and (2) refusing to appoint counsel for him and hold a hearing on his claims of ineffective assistance of counsel. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The facts of the case up to the first appeal are recounted in detail in our 2022 order. See generally *Volberding*, 2022 IL App (2d) 200346-U. We repeat them as necessary to present the issues now on appeal.

¶ 6 On February 4, 2017, defendant was charged with two counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2016)), based on the allegation that, on February 3, 2017, he shot Elizabeth in their home. Initially, counsel was appointed for defendant. On February 7, 2017, the trial court ordered that defendant be evaluated for fitness to stand trial. In a report dated March 24, 2017, the evaluating psychologist, Dr. Robert Meyer, opined that defendant was fit, despite his limited memory of the circumstances of February 3, 2017. On April 21, 2017, based on Meyer's

finding, the court determined that there was no *bona fide* doubt of defendant's fitness to stand trial. Also on that date, the court granted appointed counsel's request that Meyer evaluate defendant again—this time to determine his "mental status *at the time of the offense*." (Emphasis added.) After Meyer completed the report, appointed counsel declared in court that, based on Meyer's findings, counsel would not submit the report to the trial court or the State.

¶ 7 In September 2017, defendant retained counsel, who represented defendant through the trial (for clarity, we refer to this attorney as "trial counsel").

¶ 8 On April 12, 2019, defendant filed a motion for a comprehensive neuropsychological evaluation. In the motion, trial counsel indicated that, in their interactions, defendant had difficulty recalling details of the offense. The trial court granted the motion. Dr. Joshua Barras examined defendant. In his report dated May 28, 2019, Barras opined that defendant was not fit for trial, as he remembered little about the incident and thus could not assist counsel in his defense.

¶ 9 Based on Barras's report, the trial court found a *bona fide* doubt of defendant's fitness to stand trial. On August 27, 2019, after a two-day evidentiary hearing, a jury found defendant fit for trial. The cause proceeded to a bench trial. On January 15, 2020, the court found defendant guilty of both counts of first degree murder. On February 3, 2020, defendant moved for a new trial. On February 27, 2020, trial counsel moved to withdraw, alleging that defendant recently told him that he "did not think counsel did a good job on either of the trials" and that counsel "failed to provide him a defense." On April 8, 2020, after a hearing, the court denied the motion to withdraw. On June 17, 2020, the court denied defendant's posttrial motion and, moving immediately to sentencing, imposed a total of 50 years' imprisonment, including a mandatory 25-year add-on for personally discharging a firearm and thereby causing the victim's death.

¶ 10 On appeal, we held that the trial court erred when, after trial counsel disclosed defendant's dissatisfaction with his representation, the court failed to conduct a preliminary inquiry into whether defendant had been denied the effective assistance of counsel. *Volberding*, 2022 IL App (2d) 200346-U, ¶ 49. We stated the following principles governing *Krankel* claims:

> "When a defendant brings a *pro se* posttrial claim that trial counsel was ineffective, *Krankel* requires the trial court to inquire into the factual basis of the claim and, under certain circumstances, to appoint new counsel to argue the claim. [Citations.] New counsel is not automatically appointed in every case when a defendant presents a *pro se* posttrial claim alleging ineffective assistance of counsel. [Citation.] Rather, the court should first examine the factual basis of the defendant's claim. [Citation.] If the court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court may deny the *pro se* motion. [Citation.] However, if the allegations show possible neglect of the case, new counsel should be appointed. [Citation.] If a trial court 'fails to conduct the necessary preliminary examination as to the factual basis of the defendant's allegations, the case must be remanded for the limited purpose of allowing the court to do so.' " *Id.* ¶ 42 (quoting *People v. Remsik-Miller*, 2012 IL App (2d) 100921, ¶ 9).

¶ 11 We held that defendant's allegations against trial counsel, as related by the motion to withdraw, required a preliminary inquiry. *Id.* ¶ 49. We also held that the trial court prejudicially erred in sentencing defendant by considering improper factors in aggravation. *Id.* ¶ 64.

¶ 12 We vacated the defendant's sentence and remanded the cause. *Id.* ¶¶ 65, 70. We directed the trial court to conduct a *Krankel* preliminary inquiry. *Id.* ¶ 67. If the court determined that defendant's allegations lacked merit, then it should conduct a new sentencing hearing. *Id.* ¶ 68. If

the court determined that the allegations showed possible neglect of the case, then it should appoint new counsel for defendant and proceed to the next stage per *Krankel*. *Id.* ¶ 69.

¶ 13 We turn to the proceedings on remand.

¶ 14 On August 10, 2022, the trial court, Judge Coppedge presiding, explained to defendant the nature of a *Krankel* proceeding and asked him whether he was ready to proceed. Defendant requested an attorney, but the court explained that a *Krankel* preliminary inquiry involves only the court, the defendant proceeding *pro se*, and, if present, the defendant's trial counsel. The court appointed an assistant public defender for defendant solely to explain the *Krankel* proceeding to him. The court postponed the proceeding so that defendant could speak with counsel.

¶ 15 On August 31, 2022, the trial court conducted a *Krankel* preliminary inquiry. An assistant public defender was present as standby counsel. The court asked defendant for specific examples of trial counsel's deficient performance. Defendant responded, "Well, he failed to bring up quite a few things that we had talked about. He did say—He told me right up-front several times that he would get me off for sure and that's a quote. At least three times he told me that." Defendant then described his health struggles, medications, and work history. The court reminded defendant that it had asked for specific examples of trial counsel's ineffectiveness and that defendant had claimed that trial counsel failed to raise certain issues. Defendant answered, "Yes. I've got things written down. I tend to forget, and I apologize for that."

¶ 16 Defendant then related that, sometime before the jury trial on his fitness, he compiled files concerning his traumatic experiences as a police officer and put the files on a flash drive that he gave to trial counsel. Contrary to defendant's expectations, trial counsel shared the flash drive with the State. Defendant also complained that trial counsel remarked that he was "the only one [defendant] got left." Defendant continued:

> "I don't think that was a very nice thing to say. I don't know if that has anything to do with court proceedings, but I firmly believe to this day that it was an accident. I didn't want to kill my wife. I didn't kill my wife. I don't remember really what happened. I believe I had a seizure, a stroke."

¶ 17 Defendant told the trial court that he had written a 16-page letter and mailed it to the Office of the State Appellate Defender (OSAD) in Elgin. He gave the court a copy of the letter. Defendant recounted that, at the trial on his fitness, trial counsel and the prosecutor agreed that defendant had memory lapses. Next, defendant told the court that, at his bench trial, trial counsel's closing argument did not mention that the police had found gunshot residue on his wife but not on him. The court recalled that trial counsel had, in fact, argued that point.

¶ 18 Defendant referenced other "stuff [trial counsel] never brought up." For instance, just before the shooting, he and Elizabeth argued over whether to sell their home and downsize. Also, a few months before her death, Elizabeth fell, struck her head, and became unconscious. When she awoke, she declined to seek medical treatment. When the trial court asked defendant how the evidence of Elizabeth's accident might have been material to the issues at trial, defendant responded that Elizabeth's mental condition might have made her combative on the morning of the shooting.

¶ 19 Defendant next stated that, when he needed to take medicine for his various conditions, Elizabeth "would either give [him] too many of one kind of pill or not any of another kind of pill." Another time, Elizabeth began "acting weird" and verbally abused defendant. Defendant took her to the hospital. Before the bench trial, defendant asked trial counsel to obtain Elizabeth's hospital records. Defendant did not know whether trial counsel obtained the records, but counsel never showed them to him.

¶ 20 Defendant then noted that, during her autopsy, Elizabeth's blood-alcohol concentration was tested. Defendant wondered why his was not. The trial court asked defendant why this mattered. He responded, "Well, I don't know. It's just strange to me ***."

¶ 21 Defendant mentioned the amount he paid trial counsel to represent him. The trial court asked him why this mattered. Defendant responded, "Well, I would think he could have done a better job ***." He added, "I asked him one time has the State ever offered me any plea, a plea bargain, and he said no." Specifically, more than three years into the case, defendant asked trial counsel if the State had made any plea offers, and trial counsel said no. Defendant then suggested to trial counsel that he make the State an offer for him to plead to "involuntary manslaughter time served." Defendant did not know if trial counsel ever communicated the offer. When the court asked defendant whether he had followed up with trial counsel about the offer, defendant replied, "I don't really remember other than I can assume he didn't offer it."

¶ 22 Next, defendant told the trial court that, at some point, he personally drafted a change in the executor of his estate. When the trial court asked defendant what this had to do with the outcome of his case, he responded, "I don't know other than, like I said, Your Honor, I'm confused." Last, defendant complained that some of the information gathered for his presentence investigation report (PSI) was not brought up at trial. The trial court clarified for defendant that the PSI writer began gathering information only after defendant was found guilty. Defendant said he "thought the [PSI writer] investigated all that stuff *** before." The court replied, "[The PSI writer] investigated that information for purposes of assisting in the sentencing hearing, but she would not have been a witness available at trial." Defendant then said, "Okay. Thank you, sir, for explaining that. I started with some tangent. I forgot what that was. Okay. Thank you. I guess it's irrelevant why [the PSI writer] didn't present, why [trial counsel] didn't present that." The

court continued the preliminary inquiry to September 15, 2022, so that the court could review defendant's letter to OSAD.

¶ 23 The letter to OSAD consists essentially of issues defendant addressed at the *Krankel* preliminary inquiry. Defendant also mentions trial counsel's fees and complains that counsel had insufficient experience in criminal law and appeared intoxicated at times during the case. Defendant states that he had proposed a plea bargain to trial counsel. According to defendant, "[Trial counsel] told me the prosecutor refused. But now I wonder if [counsel] actually made the proposal."

¶ 24 At the September 15, 2022, hearing, the trial court ruled that defendant's claims of trial counsel's ineffectiveness lacked merit. The court recounted the history of the case, including the appeal, remand, and the court's appointment of an assistant public defender for the sole purpose of helping defendant understand the *Krankel* process. The court explained that it had presided over both the jury trial on fitness and the later bench trial and that its *Krankel* determination was based on not only its personal knowledge of those proceedings, but also its colloquy with defendant at the August 31, 2022, hearing. The court noted that it had also reviewed the letter to OSAD and that much of its material was presented orally by defendant during the *Krankel* preliminary inquiry.

¶ 25 The trial court then discussed defendant's specific allegations against trial counsel, stating as follows. Defendant claimed that trial counsel "failed to bring up quite a few things that [they] had talked about," but since defendant did not specify those "things," the claim had no merit. Trial counsel's alleged statement that he "would get [defendant] off for sure" in no way supported a claim of ineffective assistance, as it did not affect the trial's outcome. Next, even if trial counsel shared the flash drive with the State, this was only because he was duty-bound to disclose this potential evidence. Nothing showed that a different handling of the flash drive would have affected

the outcome of the trial. Next, because the State's ballistics report showed that little, if any, gunpowder residue was found on defendant's hands, trial counsel reasonably raised this favorable fact in closing argument. To the extent that defendant implied that trial counsel should have retained his own ballistics expert, the claim failed because it involved a matter of trial strategy.

¶ 26 The trial court stated next that any evidence that Elizabeth had injured her head months before the shooting would not have affected the outcome of the trial. In his police interview a few hours after the shooting, defendant did not mention mutual combat or his wife's mental state. Also, immediately after the incident, he told his neighbor that he shot Elizabeth; he did not mention any aggression by Elizabeth before the shooting. The court found that trial counsel made a strategic decision not to present dubious and easily impeached evidence about her mental state.

¶ 27 The trial court then noted that, while defendant merely "assume[d]" at the *Krankel* hearing that trial counsel did not convey defendant's plea offer, defendant admitted in his letter to OSAD that trial counsel told him he did convey the offer and the State refused it. Thus, the claim lacked merit. Next, defendant's remarks about his age, medical condition, education, and profession simply had nothing to do with the trial. At most, they were pertinent to sentencing, where trial counsel raised all of them in mitigation.

¶ 28 The trial court concluded that trial counsel had provided effective representation during the jury trial on fitness and the bench trial on guilt or innocence. Therefore, defendant's claims failed to merit the appointment of counsel and a full *Krankel* hearing.

¶ 29 On October 28, 2022, defendant, now represented by private counsel (hereinafter, "postremand counsel"), moved to reset the sentencing hearing. The motion alleged that there was a good-faith basis to believe that defendant was not fit for resentencing. Postremand counsel requested that defendant be "evaluated for fitness by a psychologist or psychiatrist." Counsel also

requested additional time in which to investigate defendant's claims of ineffective assistance and whether there was evidence to support a request to release defendant on medical grounds (see 730 ILCS 5/3-3-14 (West 2022)).

¶ 30 On November 9, 2022, the trial court heard defendant's motion. The court granted defendant's request for an evaluation but clarified that it was not finding a *bona fide* doubt of his fitness. The court's written order stated that (1) defendant "shall be permitted to receive an evaluation from a forensic psychologist or psychiatrist for purposes of conducting a fitness to stand trial/sentencing assessment" and (2) postremand counsel "shall make arrangements for said evaluation with a qualified expert."

¶ 31 On September 19, 2023, defendant filed a "Motion for a Finding of a *Bona Fide* Doubt of the Defendant's Fitness." In the motion, postremand counsel alleged that, in their conversations, defendant appeared to exhibit memory loss and cognitive defects that impaired his ability to understand the nature of the proceedings and cooperate with counsel. Postremand counsel alleged that a *bona fide* doubt of defendant's fitness for resentencing was created by the combination of counsel's observations and the report of Dr. Kara Anast, who had examined and evaluated defendant on June 15, 2023, and June 29, 2023. In her evaluation report, Anast related the following "Clinical Impressions:"

> "Overall, [defendant] appears to be struggling with symptoms of depression, anxiety, and post-traumatic stress disorder (PTSD). Specifically, regarding his symptoms of depression, he is experiencing intense levels of sadness most of the day, diminished interest in activities, difficulty sleeping, and feelings of worthlessness. Regarding his symptoms of anxiety, [defendant] is experiencing anxiety and worry and finds it difficult to control his worries. Regarding his PTSD symptoms, [defendant] has had exposure to actual death

> and is experiencing intrusive symptoms associated with these events including[ ] recurrent distressing memories and recurrent distressing dreams related to the events. Regarding [defendant's] symptoms of memory loss, without specific cognitive and social emotional testing, it is not clear as to whether these deficits are due to significant cognitive deficits or are a product of his social emotional issues (*i.e.* depression, anxiety, and PTSD) which can also cause cognitive deficits. It is recommended that further testing be completed in order to determine the cause of his memory issues."

¶ 32 Anast's report said nothing about whether defendant was fit to be resentenced. Anast signed her letter as "Kara G. Anast, PsyD, LCPC, LPC." She did not identify herself as a *forensic* psychologist or psychiatrist.

¶ 33 On September 19, 2023, the State filed a "Motion to Set Sentencing Hearing." In the motion, the State argued that defendant had failed to raise a *bona fide* doubt of his fitness for resentencing. The State noted first that, in disregard of the trial court's order of November 9, 2022, the evaluation was not conducted by a *forensic* psychologist or psychiatrist. Moreover, although Anast made findings as to defendant's mental health, and noted particularly his diminished ability to recall the events of February 3, 2017, she did not opine at all as to defendant's fitness for resentencing. The State argued that the record showed that defendant understood the nature of the proceedings and that he would be able to cooperate with counsel at resentencing. The State noted that, on April 17, 2023, it tendered to defendant a recording of a phone call of July 24, 2022, that defendant made to his daughter. The State attached a transcript to the motion. The State asserted that, during the phone call, defendant "solicit[ed] mitigati[ng] evidence" for his resentencing, showing an awareness of that proceeding's nature and purpose. The State asked the trial court to set a date for the resentencing hearing.

¶ 34 The transcript of defendant's jail call is 20 pages. Most of it is unremarkable. It reads as an entirely normal father-daughter conversation, considering the circumstances. There is both banter and serious discussion. The daughter tells defendant she is sick. She also informs him about a death in the family. Defendant claims not to have met certain family members, but the daughter insists that he had. At one point, defendant mentions that he needs an attorney, and he names both a law firm and an individual attorney (whom he eventually hired). Later, defendant notes that the call cost him 23 cents per minute and that the money came from his jail account, to which his daughter contributed and which he used for "commissary expenditures and telephone expenditures," haircuts, and other prison expenses. Shortly afterward, he informs his daughter that, the next time he goes to court, he will probably request a continuance to obtain a lawyer. In all, defendant arguably displays some memory loss about family matters (which it is unclear signals an actual cognitive deficiency regarding memory), but he is coherent and intelligible.

¶ 35 On September 22, 2023, the parties presented arguments on their respective motions. Defendant argued in part that standby counsel was ineffective for not "intervening" while defendant spoke during the *Krankel* preliminary inquiry. The trial court agreed with the State that Anast's report did not speak to any of the statutory criteria for fitness and that Anast never opined about defendant's fitness for resentencing. The court also noted that, in the proceedings to date, defendant showed no indication that he would have difficulty assisting counsel. The court also found no basis to revisit the September 15, 2022, *Krankel* ruling. The court noted that standby counsel was appointed strictly to help defendant understand his rights; only if defendant's claims had arguable merit would he be entitled to counsel to help him argue those claims.

¶ 36 The trial court denied defendant's motion, granted the State's motion, and continued the case for the scheduling of a resentencing hearing.

¶ 37 After Judge Coppedge passed away, the case was assigned to Judge Davis. On January 23, 2024, defendant again moved for a finding of a *bona fide* doubt of his fitness and claimed that the *Krankel* preliminary inquiry was deficient because the trial court "did not seek to hear from appointed counsel or encourage investigation by counsel into [defendant's] claims of ineffectiveness."

¶ 38 On February 16, 2024, the State responded to the motion. The State argued that defendant's challenge to the *Krankel* preliminary inquiry was misconceived because, under *Krankel*, a defendant has no right to have counsel appointed unless he makes a sufficient *pro se* showing of grounds for his claim of ineffective assistance. As to the request for a finding of a *bona fide* doubt, the State reiterated the arguments that Judge Coppedge accepted in denying the same request in September 2023.

¶ 39 At the May 7, 2024, hearing on defendant's motion, postremand counsel stated that he personally observed "cognitive deficits" in defendant, including memory loss and "PTSD." The State responded that defendant's interaction during the jail call cut against finding a *bona fide* doubt of fitness. The State also stressed that Anast was not a forensic psychologist and never addressed defendant's fitness for resentencing. The State further noted that cognitive deficits alone do not raise a *bona fide* doubt of fitness. Postremand counsel replied in part, "I knew where I was going to come up with a *bona fide* doubt because I have seen it. I've felt it. I've smelled it in my experience."

¶ 40 The trial court questioned defendant about his understanding of the proceedings. Defendant knew that he was convicted of murder. He identified his attorney and the prosecutor. Asked, "[W]hat are we here to decide?" he responded, "What you are going to do with me." Defendant recounted in some detail his career of nearly 30 years as a police officer, including the

various capacities in which he worked and his start and end dates. He also specified his education, including a college degree and some time in graduate school.

¶ 41 After the questioning, the trial court stated:

> "The [c]ourt has considered the opinion of [Anast]. *** The defendant is completely rational in court. He does have good cognitive memory of his career as a police officer, prior educational background. He is intelligent and articulate."

¶ 42 The trial court asked postremand counsel whether he had noticed any side effects from the medications that defendant had been taking. Counsel said no.

¶ 43 The trial court found that defendant had not raised a *bona fide* doubt of fitness for resentencing. The court noted that Anast was not a forensic expert and did not inquire into whether (1) defendant understood the nature of the proceedings and the roles of the judge, prosecutor, and defense attorney; and (2) defendant could assist counsel in his defense. Anast discussed only defendant's "purported memory loss of the murder [*sic*]."

¶ 44 On the *Krankel* issue, the trial court noted that, at the preliminary inquiry, counsel was appointed for defendant to act "in a standby role only." The court's preliminary inquiry was proper and followed the appellate court's mandate. Therefore, the court denied relief on the *Krankel* issue.

¶ 45 The cause proceeded to resentencing. On July 25, 2024, after hearing evidence in aggravation and mitigation, the trial court merged count I into count II and resentenced defendant to 50 years' imprisonment, which incorporated the mandatory 25-year add-on.

¶ 46 This timely appeal followed.

¶ 47 II. ANALYSIS

¶ 48 Preliminarily, we agree with the State that the statement of facts in defendant's brief is seriously deficient. Illinois Supreme Court Rule 341(h)(6) (eff. Oct. 1, 2020) requires an appellant's brief to include a "Statement of Facts, which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal ***." Defendant's brief contains an almost skeletal statement of facts, omitting most of the material necessary for an understanding of the case. Most notably, there are almost no facts relating to the postremand proceedings that preceded resentencing, which are crucial to understanding the two issues on appeal. Further, the statement is argumentative at several points. The result of these deficiencies is a factual presentation that is both insufficient for understanding the case and misleadingly one-sided.

¶ 49 Previously, we denied the State's motion to strike defendant's brief. We have thoroughly examined the record on our own. The shortcomings in defendant's brief, while serious, do not substantially hinder our review. We turn to the issues.

¶ 50 On appeal, defendant argues that, on remand, (1) he sufficiently raised a *bona fide* doubt of his fitness for resentencing and (2) the trial court did not conduct a sufficient *Krankel* inquiry. We consider these arguments in turn.

¶ 51 "Due process bars prosecuting *or sentencing* a defendant who is not competent to stand trial." (Emphasis added.) *People v. Sandham*, 174 Ill. 2d 379, 382 (1996). When a *bona fide* doubt of a defendant's fitness for trial or sentencing is raised, the trial court must order that the issue be determined before proceeding further. 725 ILCS 5/104-11(a) (West 2022). For a defendant to raise a *bona fide* doubt of his fitness to stand trial or be sentenced, the defendant must prove facts in existence at the pertinent time that raised a real, substantial, and legitimate doubt of his mental capacity to participate meaningfully in his defense and cooperate with counsel. *People*

v. Eddmonds, 143 Ill. 2d 501, 518 (1991); see 725 ILCS 5/104-10 (West 2022) ("A defendant is presumed to be fit to stand trial or to plead, and be sentenced. A defendant is unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense."). In deciding whether a *bona fide* doubt has been raised, the court may consider, among possible other factors, "(1) the rationality of the defendant's behavior and demeanor at trial [or sentencing]; (2) counsel's statements concerning the defendant's competence; and (3) any prior medical opinions on the issue of the defendant's fitness." *People v. Hanson*, 212 Ill. 2d 212, 223 (2004). Absent an abuse of discretion, we may not disturb a trial court's finding that a defendant did not raise a *bona fide* doubt of fitness. *Sandham*, 174 Ill. 2d at 382.

¶ 52 Here, the only fitness issue in play on remand was defendant's fitness to be resentenced. Before his bench trial, the parties presented conflicting evidence on defendant's fitness to be tried, and a jury determined that he was fit. On his first appeal, defendant did not challenge that finding, and, as the law of the case, the finding is not before us now. See *Preferred Personnel Services, Inc. v. Meltzer, Purtill & Stelle, LLC*, 387 Ill. App. 3d 933, 947 (2009).

¶ 53 We hold that the trial court did not abuse its discretion in refusing to find a *bona fide* doubt of defendant's fitness for resentencing. First, no expert opinion addressed whether defendant met the statutory standard for fitness. As the court observed, Anast was not a forensic psychologist (even though the court's order of November 9, 2022, had specified distinctly that defendant was to consult a forensic psychologist). More importantly, her report said nothing about whether defendant could understand the proceedings and assist counsel. Second, at the May 7, 2024, hearing, the trial court questioned defendant at length and found no cognitive impairment—at least, none that impacted his ability to understand the proceedings. The trial judge's personal

observations of defendant are entitled to deference on appeal. See *People v. Haynes*, 174 Ill. 2d 204, 254 (1996). Third, the trial court's impressions were corroborated by the transcript of defendant's jail call to his daughter. Defendant was wholly rational, if occasionally forgetful; he recognized the importance of retaining an attorney and considered two possibilities. We recognize that postremand counsel claimed that he personally observed "cognitive deficits" in defendant, including memory loss and "PTSD." Anast observed these conditions as well. However, " '[f]itness speaks only to a person's ability to function within the context of a trial; a defendant may be fit to stand trial even though his mind is otherwise unsound.' " *People v. Finlaw*, 2023 IL App (4th) 220797, ¶ 50 (quoting *Haynes*, 174 Ill. 2d at 226). "In other words, having a mental illness does not on its own render an individual unfit to stand trial." *Id.*

¶ 54 Defendant does not address the foregoing considerations but relies instead on the evidence of his memory loss, primarily in connection with the crime, and his sometimes rambling or irrelevant statements during the *Krankel* inquiry. The trial court did not err in refusing to attach decisive weight to these factors, in view of the strong considerations cutting the other way. Defendant overlooks that "the fact that a defendant cannot recollect the incident at issue is just one of the circumstances that may be considered" in determining "whether [the] defendant is fit *to stand trial*." (Emphasis added.) *People v. Stahl*, 2014 IL 115804, ¶ 39. Here, defendant had already stood trial and only resentencing was left. Therefore, any loss of his memory of the "incident at issue" was not only far from dispositive, but also of far less consequence than in the context of a determination of his fitness to stand trial.

¶ 55 Defendant also points to his meandering remarks during his allocution at the resentencing hearing. Defendant began by personally attacking the impact victim witnesses over their abuse allegations; only after being redirected by his attorney did he address the circumstances of the

offense. He ended appropriately by describing how he accidentally killed the victim. We attribute defendant's initial imprudent remarks to overwhelming emotion, not misapprehension of the purpose of an allocution.

¶ 56 We hold that the trial court did not abuse its discretion in finding that defendant did not raise a *bona fide* doubt of his fitness for resentencing.

¶ 57 We turn to defendant's second contention of error: that the trial court did not conduct a proper preliminary inquiry under *Krankel*. Defendant makes three subarguments: (1) because of defendant's "mental infirmities," the trial court erred in conducting the inquiry "without any assistance of counsel"; (2) the court failed to take "necessary steps to inquire" into his *pro se* contentions; and (3) even if the *Krankel* inquiry were sufficient, defendant was entitled to a full hearing on two of his claims that trial counsel was ineffective. We review *de novo* whether the trial court conducted the preliminary inquiry properly. *People v. Jolly*, 2014 IL 117142, ¶ 28.

¶ 58 Relying on the controlling principles of law that we set out in the initial appeal (*supra* ¶ 11; *Volberding*, 2022 IL App (2d) 200346-U, ¶ 42), we consider each subargument in turn.

¶ 59 Defendant's first subargument is unsound. Defendant's suggestion would circumvent both (1) the procedure that our supreme court dictated in *People v. Ayres*, 2017 IL 120071, ¶ 11, and *People v. Moore*, 207 Ill. 2d 68, 78 (2003), and (2) our directions to the trial court (*Volberding*, 2022 IL App (2d) 200346-U, ¶¶ 68-69). As the State notes, defendant conflates the two stages of a *Krankel* proceeding. The defendant in a *Krankel* proceeding is not entitled to counsel *until* he has passed the preliminary inquiry. "New counsel is not automatically required in every case in which a defendant presents a *pro se* posttrial motion alleging ineffective assistance of counsel." *Moore*, 207 Ill. 2d at 77. "*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." *People v. Patrick*, 2011 IL 111666, ¶ 39; see *People v. Brzowski*, 2023 IL App (3d) 220047-U, ¶ 17 ("It is a well settled principle that [the] defendant is not entitled to counsel during a preliminary inquiry."). Defendant cites no authority to suggest that the trial court must, or even may, appoint counsel for the *Krankel* preliminary inquiry. Even if there were authority for appointing counsel at the preliminary stage to assist a defendant who has "mental infirmities"—as defendant claims he had—we disagree that defendant's capacity was so diminished. Defendant fails to acknowledge that a jury found him fit to stand trial and that, in his first appeal, he did not challenge that finding. Of course, the passage of time could have affected defendant's fitness on remand—but, as recounted above, the trial court, after careful inquiry, determined that defendant had not raised a *bona fide* doubt of defendant's fitness.

¶ 60 Nor has defendant presented a claim that standby counsel was ineffective during the preliminary inquiry. Standby counsel was appointed only to ensure that defendant understood the nature of the *Krankel* proceeding. To prevail on a claim that standby counsel was ineffective, "[the] defendant should show how standby counsel's actions fell below an objective standard of reasonableness with respect to the level of guidance standby counsel was required to offer." *People v. Simpson*, 204 Ill. 2d 536, 566 (2001). Defendant does not claim that standby counsel failed to perform the limited role assigned him.

¶ 61 We turn to defendant's second subargument. He contends that the trial court should have questioned trial counsel about the *pro se* allegations of ineffective assistance. Defendant provides only a single "example" of a topic that the trial court should have queried trial counsel about whether trial counsel conveyed defendant's suggested plea offer and whether the State countered the offer or simply refused to bargain. Defendant supports his contention with no legal authority other than the statement in *Jolly* that " '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.' " *Jolly*, 2014 IL 117142, ¶ 30 (quoting *Moore*, 207 Ill. 2d at 78). Defendant's contention is not persuasive.

¶ 62 We place the *Jolly*'s quotation from *Moore* in its original context:

> "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. [Citation.] *During this evaluation, 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.* Trial counsel may simply answer questions and explain the facts and circumstances surrounding the defendant's allegations. [Citations.] A brief discussion between the trial court and the defendant may be sufficient. [Citations.] Also, the trial court can base its evaluation of the defendant's *pro se* allegations of ineffective assistance on its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face." (Emphasis added.) *Moore*, 207 Ill. 2d at 78-79.

¶ 63 As *Moore* notes, the overarching concern is whether the trial court sufficiently inquired into the grounds of defendant's ineffectiveness claims; the inquiry need not follow any precise formula. Here, defendant has not shown that the trial court (Judge Coppedge) failed to inquire sufficiently into his allegations. As our summary of the facts demonstrates, the court painstakingly went through defendant's claims, considering both his 16-page letter and his answers to the court's thorough and mostly open-ended inquiries. By asking defendant to clarify the substance and

relevance of his numerous and frequently conclusional allegations of ineffective assistance, the court "made a significant effort to explore the matters that [the] defendant raised" (*People v. Chapman*, 194 Ill. 2d 186, 230 (2000)). In making its assessment, the court could and did draw on its knowledge of the prior proceedings.

¶ 64 As to the one "example" of a matter defendant argues the trial court should have addressed to trial counsel—the alleged failure to convey defendant's plea offer to the State—we note that defendant admitted in his letter to OSAD that trial counsel "told [him] the prosecutor refused" the offer, but defendant "wonder[ed] if [counsel] actually made the proposal." As defendant admitted that trial counsel contradicted his allegation, and that he could only "wonder" about what really happened, we conclude that defendant's second subargument lacks merit.

¶ 65 We turn to defendant's final subargument on his *Krankel* claim: that, even if the trial court conducted a proper preliminary inquiry, defendant was still entitled to a full hearing on trial counsel's arguable ineffectiveness in (1) failing to timely convey to defendant a plea offer that he rejected only after his trial commenced and (2) failing to raise "any affirmative defense, such as insanity." We disagree with defendant in both respects.

¶ 66 On the first instance of alleged ineffectiveness, defendant notes that, on January 13, 2020, when defendant's bench trial was about to start, the trial court noted that, apparently, the court and the parties had not "explored the subject of whether the State ha[d] tendered any offers to [defendant] and if those offers ha[d] been rejected by him." The State informed the court that, at some point (which the State did not specify), the State had offered to amend the indictment by removing the allegation on which the mandatory 25-year enhancement was based, in return for which defendant would plead guilty to first degree murder and the State would recommend the minimum 20-year prison term. Trial counsel confirmed that this offer had been communicated to

the defense, although he did not specify when. After the court explained the offer to defendant, he told the court that he had not heard of the offer before. The court then allowed trial counsel and defendant to discuss the offer. After a brief recess, defendant told the court that he had discussed the offer with trial counsel, that he understood the terms of the offer, and that he had instructed trial counsel to reject it. The court again explained the offer to defendant, noting that it proposed a 20-year sentence and that a conviction of first degree murder based on the present charges would mean a sentence of at least 45 years. Defendant responded that he understood but that he nonetheless rejected the offer. The trial then began.

¶ 67 We disagree with defendant's contention that the trial court should have appointed counsel to investigate the first subissue. Defendant can only speculate as to (1) when the offer was conveyed to trial counsel and (2) whether being able to confer with counsel at this earlier time would have produced a different decision by defendant.[1] When defendant was presented with the offer, he resolutely rejected it. This was consistent with his insistence that the shooting had been an accident. Also, defendant was obviously aware that (1) he was 74 years old, (2) in poor health, and (3) even a 20-year sentence with credit for time in pretrial custody would effectively be a life sentence. Thus, deciding to go to trial was the more rational alternative. In that light, defendant can rely only on a highly dubious speculation that trial counsel's earlier disclosure of the State's offer would have made a difference.

¶ 68 Defendant's remaining possible subissue fares no better. Based on his nonspecific statement at the preliminary inquiry that trial counsel could have "done a better job," he argues

[1]We note that defendant does not appear to assert that he would have accepted the offer if he had learned of it earlier.

that he showed "an arguable basis" for a claim that trial counsel was ineffective for failing to raise the affirmative defense of insanity (see 720 ILCS 5/6-2(a) (West 2016)).

¶ 69 Defendant asserts that there was "strong evidence to support an insanity defense." Yet the *only* such evidence defendant cites is a statement in Barras's report of May 28, 2019, that defendant "had a markedly elevated ammonia level of 310" on February 7, 2017. As defendant notes, Barras opined that the elevated ammonia caused "hepatic encephalopathy." However, defendant does not tie elevated ammonia or hepatic encephalopathy to a possible insanity defense. His presentation of this potential subissue is so grossly underdeveloped that we deem it forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (points not argued are forfeited); *Holmstrom v. Kunis*, 221 Ill. App. 3d 317, 325 (1991) (arguments that are insufficiently developed are forfeited). As we have admonished appellants previously, this court "is not a depository in which the [appealing party] may dump the burden of argument and research." (Internal quotation marks omitted.) *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 5.

¶ 70 Forfeiture aside, defendant's argument is devoid of merit. First, defendant never mentioned a possible insanity defense during the *Krankel* proceeding. The trial court had no duty to *sua sponte* find and raise possible issues that defendant never alleged. A *Krankel* proceeding moves beyond the preliminary stage only "if the [*pro se* defendant's] *allegations* show possible neglect of the case." (Emphasis added.) *Moore*, 207 Ill. 2d at 78.

¶ 71 Second, the record shows neither (1) that trial counsel's decision not to raise the insanity defense was objectively unreasonable nor (2) that defendant suffered any prejudice. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *People v. Houston*, 226 Ill. 2d 135, 143 (2007) (defendant must prove both unreasonable performance and prejudice to establish claim of ineffective assistance). The sole evidence that defendant cites—Barras's remark about elevated

ammonia and hepatic encephalopathy—was made during his discussion of whether defendant was fit for trial, *not* whether he was arguably insane at the time of the shooting. Barras was concerned not with defendant's state of mind during the shooting, but with whether his deficient memory of the incident meant that he was unable to assist his attorney in his own defense. (In any event, the jury resolved the fitness issue against defendant, and he never appealed that jury determination.)

¶ 72 Moreover, on appointed counsel's pretrial motion, Meyer evaluated defendant to determine his mental status at the time of the offense. After Meyer prepared his findings in a supplemental report, appointed counsel decided not to submit the report to the trial court or the State. We presume that appointed counsel reasonably decided that the report would not support, and might undermine, an insanity defense. See *Strickland*, 466 U.S. at 689; *People v. Edwards*, 195 Ill. 2d 142, 162 (2001) (court must indulge in a strong presumption that counsel's performance was reasonable). Therefore, even had the trial court at the preliminary inquiry been obligated to *sua sponte* consider whether trial counsel was ineffective for failing to raise an insanity defense at trial, the court could well have inferred that Meyer's supplemental report made such a defense implausible and thus that trial counsel did not act unreasonably.

¶ 73 In sum, we reject defendant's challenges under *Krankel*. As defendant has failed to show reversible error, the judgment must stand.

¶ 74 III. CONCLUSION

¶ 75 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 76 Affirmed.