No. 124143

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 4-16-0255.
Plaintiff-Appellee,	)	There on appeal from the Circuit Court of the Seventh Judicial
-vs-	)	Circuit, Sangamon County, Illinois, No. 11-CF-953.
QUENTIN BATES	)	Honorable John Schmidt,
Defendant-Appellant	)	Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

JAMES E. CHADD
State Appellate Defender

PATRICIA MYSZA
Deputy Defender

EMILY E. FILPI
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

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Carolyn Taft Grosboll
SUPREME COURT CLERK

REPLY BRIEF FOR DEFENDANT-APPELLANT

Quentin Bates's trial counsel's post-trial admission that he went to trial unprepared sufficiently triggered the trial court's duty to conduct a preliminary inquiry pursuant to *People v. Krankel,* 102 Ill. 2d 181 (1984).

Quentin Bates argued in his opening brief that his case should be remanded for a preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), into Bates's trial counsel's claim that he was ineffective, or, alternatively, for the appointment of new, conflict-free counsel to argue the claim. (Def. Op. Br. 9-10, 23-31) The State does not contest that preliminary inquiries pursuant to *Krankel* apply to claims of ineffectiveness made by counsel rather than *pro se*. See St. Br. 16 (addressing only whether "an *express* claim of ineffective assistance (whether made by defendant pro se or through counsel)" was made (emphasis in original)); St. Br. 19 (acknowledging, and not disputing, Bates's showing that the duty to inquire applies to counsel-triggered claims). On the issue this Court granted for review, then, the parties are in agreement: all claims of attorney neglect trigger a *Krankel* preliminary inquiry.

Instead, the State argues that Bates' trial counsel's admission that he did not review the other-crimes evidence involved in this case do not trigger the trial court's duty to conduct a *Krankel* preliminary inquiry because they were not an "express claim" of ineffectiveness. (St. Br. 13, 15-17) Additionally, the State contends that *Krankel* inquiries into claims of ineffectiveness raised by trial counsel are limited to those claims raised by *appointed* trial counsel, and that an inquiry is not required when a defendant, like Bates, is represented by *privately-retained* counsel and does not inform the court that he wants, but cannot afford, new counsel. (St. Br. 11) These arguments will be addressed in turn. Neither are persuasive.

A. Trial counsel's admissions during the hearing on the motion for new trial that he "was taken by surprise at the depth" of the State's other-crimes evidence and "had no chance to review" it, were sufficient to trigger a preliminary inquiry under *Krankel*.

In its brief, the State dos not contest that an attorney's failure to prepare for trial, evaluate all expert opinions, and make reasonable investigation, is ineffective. Instead, the State insists that trial counsel's remarks admitting that he failed to review the other-crimes evidence prior to trial and was surprised by the State's evidence were not admissions of ineffectiveness, but merely claims that "the trial court erred in admitting the evidence of defendant's assault against C.H." (St. Br. 13) The State argues that trial counsel's acknowledgment "that he could not rebut the C.H. [other-crimes] evidence as effectively as he would have, had he also represented defendant on the C.H. matter" was ambiguous and not an "express" claim of ineffectiveness. (St. Br. 13)

The State's discussion is incomplete, as it overlooks counsel's explicit admission that he did not review C.H.'s statement or the forensic evidence from 11-CF-888 prior to Bates's trial. (RVII. 139) Specifically, counsel explained that:

> The thing that really bothers me, and I think could bother the Appellate Court if it went that way is that Mr. Bates had another attorney Ryan Cadigin, I was not that attorney. So all the testimony about the hearing that – the event that occurred afterwards [11CF888], I was generally aware, of course, but **I couldn't possibly do as good a job in defending my client since it wasn't my case.** So I think that perhaps we all should have thought of that, State's Attorney as well. But I think that is first and foremost a reason for a new trial.
>
> **I was taken by surprise at the depth of the evidence and testimony** brought by the State's attorney, meaning, brought the victim – alleged victim, forensic scientists**, I had no chance to review that.** As you know, **had I been thinking about that case, I would have asked for review by our own experts.** So **that alone**, I think, **is reason for a new trial**. * * *

(RVII. 138-9) (emphasis added) Contrary to the State's claim, trial counsel was not arguing that the other-crimes evidence should not have been admitted because he was not Bates's attorney on the other-crimes case, 11-CF-888. (St. Br. 13) Rather, trial counsel was admitting that he did not fully prepare for Bates's trial and explained to the court why he was not prepared and did not review all of the other-crimes evidence – because he was not the attorney representing Bates on 11-CF-888. (RVII. 138-9)

According to the State, a court's duty to investigate is only triggered by "an express claim of ineffectiveness." (St. Br. 13, 15-17) It is true that an undeveloped, bare claim of "ineffective assistance of counsel" triggers a preliminary inquiry. See *People v. Ayres*, 2017 IL 120071, ¶ 18 (holding that defendant's *pro se* allegation of "ineffective assistance of counsel" in posttrial pleading triggered preliminary inquiry). But this Court has never found that the phrase "ineffective assistance of counsel" *must* be uttered to trigger an inquiry. Rather, any claims that are brought to the attention of the trial court that suggest neglect by counsel warrant a preliminary inquiry. See *People v. Patrick*, 2011 IL 111666, ¶ 29 ("a *pro se* defendant is not required to file a written motion, but just only bring the claim to the trial court's attention").

It is the purpose of the preliminary inquiry to determine the underlying factual basis of the ineffectiveness claim. *Ayres*, 2017 IL 120071, ¶ 24. In *Ayres*, a bare, but clear, claim of counsel's ineffectiveness triggered the need for a preliminary inquiry under *Krankel* to unearth the factual basis of the claim. *Id.* at 18. Here, Bates's trial counsel presented more than simply a "bare bones" statement that counsel was ineffective. Here, trial counsel presented the underlying

factual basis of his own ineffectiveness to the trial court when he admitted that he did not review all of the discovery materials prior to trial. (RVI. 138-9) As such, trial counsel's remarks went beyond those found sufficient in *Ayres*. Indeed, the State has not presented any authority that holds that presenting the underlying facts of trial counsel's ineffectiveness was not sufficient to trigger a preliminary inquiry.

This Court has not required the words "ineffective assistance of counsel" be used to trigger a preliminary inquiry. In *People v. Taylor*, 237 Ill. 2d 68 (2010), this Court considered whether a *pro se* defendant's post-trial comments that "I had no idea what I was facing" constituted a claim of counsel's ineffectiveness sufficient to trigger a preliminary inquiry. This Court recognized that conventional claims of ineffectiveness are not necessary to trigger a preliminary inquiry in situations where the defendant "expressly complained about counsel's performance." *Taylor*, 237 Ill. 2d at 76 (citing with approval *People v. Finley*, 222 Ill. App. 3d 571, 576 (1st Dist. 1991) (defendant wrote letter to the trial court claiming that his appointed counsel did not attempt to contact certain potential witnesses and "did not represent me to the best of her ability")). This Court found that the defendant's statement did not "specifically complain about his attorney's performance, or expressly state he was claiming ineffective assistance of counsel" and held that it was insufficient to require a preliminary inquiry. *Id.* at 77.

Here, in contrast to *Taylor*, counsel's admissions constitute a specific complaint about his own performance. (RVII. 138-9) Even though counsel's remarks do not expressly state that he was "ineffective," counsel's remarks are clearly an indictment of his own performance at, and lack of preparation for, Bate's trial.

As such, counsel's remarks clearly raise the claim of his own ineffectiveness to the trial court, requiring a preliminary inquiry.

Moreover, if a *pro se* claim of ineffectiveness is vague, as suggested by the State (St. Br. 13), the trial court cannot simply ignore it. See *Ayres*, 2017 IL 120071, at ¶ 23 ("a circuit court cannot ignore" a *pro se* claim in court that "I received ineffective assistance of counsel"). The purpose of the preliminary inquiry is to ascertain the factual basis of the ineffectiveness claim so that the trial court has the information it needs to determine whether new counsel should be appointed. *Id.* at ¶ 24. If a vague claim of trial counsel's ineffectiveness is brought to the trial court's attention, the "law requires the trial court to conduct some type of inquiry into the underlying factual basis, if any, of a defendant's *pro se* posttrial claim of ineffective assistance of counsel." *Id.* at ¶ 11.

In *Ayres*, this Court held that a claim "need not be supported by facts or specific examples." *Id.* at ¶¶ 18-19. Here, trial counsel's remarks during the hearing on the motion for new trial went beyond the level of detail presented to the trial court in *Ayres*. Instead of a bare legal conclusion that his performance had been ineffective, trial counsel here provided factual information about *how* his representation was deficient. Trial counsel explained to the trial court that Bates was entitled to a new trial because he was only "generally aware" of the other-crimes offense that was presented by the State during the jury trial. (RVII. 138) He admitted that he was not prepared for trial because he did not review C.H.'s statement or the forensic evidence in 11-CF-888: "I was taken by surprise at the depth of the evidence and testimony brought by the State's attorney, meaning, brought by **the victim – alleged victim, forensic scientists, I had no chance**

to review that." (RVII. 138-9) (emphasis added) Counsel concludes this point by noting that "had I been thinking about that case, I would have asked for review by our own experts" and "that alone" requires a new trial. (RVII. 139)

The State also contends that trial counsel's admissions were insufficient to trigger a preliminary inquiry because they were not "an independent reason for a new trial,"as they were part of his larger argument that the other-crimes evidence was improperly admitted at trial. (St. Br. 13) However, trial counsel's remarks presented a clear claim of ineffectiveness in handling the other-crimes evidence at Bates's trial. (RVII. 138-9) Further, this Court has never limited *Krankel* to claims raised in a specific, formal format. Although trial counsel's admission that he did not review all of the discovery prior to trial did not use magic words that he was "ineffective," counsel's remarks clearly presented his lack of preparation to the trial court. This is sufficient. See *Ayres*, 2017 IL 120071, ¶ 18 ("when a defendant brings a clear claim asserting ineffective assistance of counsel, either orally or in writing, this is sufficient to trigger the trial court's duty to conduct a *Krankel* inquiry").

To the extent that the State's argument suggests that trial counsel's oral claim of his own ineffectiveness was insufficient to trigger a preliminary inquiry because it was not contained in the written motion for new trial, the State's argument clearly fails. This Court has long held that no formal method of raising a claim of ineffective assistance of counsel is required for a preliminary *Krankel* inquiry. See *Patrick*, 2011 IL 111666, ¶ 29 (defendant is not required to raise the claim in a written post-trial motion). Such a claim may be raised orally. *People v. Banks*, 237 Ill. 2d 154, 213 (2010).

All that is required to trigger a preliminary inquiry under *Krankel* is for the claim to be brought to the trial court's attention. Here, trial counsel did not merely assert, "I was ineffective." Rather, he provided the trial court with the necessary factual basis to determine whether the appointment of new counsel was necessary. *Ayres*, 2017 IL 120071, ¶ 20. Indeed, it would have been inappropriate for trial counsel to present anything to the trial court beyond the facts and circumstances surrounding his ineffectiveness, as that would constitute argument. *People v. Moore*, 207 Ill. 2d 68, 79 (2003) ("It would be inappropriate for trial counsel to argue a motion that is predicated on allegations of counsel's own incompetence"). Because trial counsel's claims admitted his ineffectiveness to the trial court, the court should have either inquired into counsel's claims or appointed new counsel to argue the claims.

B. *Pecoraro* does not control the outcome in this case, because *Pecoraro* involved a *pro se* claim that private counsel was ineffective.

The petition for leave to appeal in this case was granted to decide the issue of whether *Krankel* applies to situations where trial counsel raises a claim of his own ineffectiveness. The State now reframes the issue as whether *Krankel* applies when a defendant is represented by privately-retained counsel. (St. Br. 9-12) A *Krankel* inquiry should be held whenever an *attorney*, appointed or privately-retained, makes a post-trial admission of ineffectiveness.

The State posits that *People v. Pecoraro*, 144 Ill. 2d 1 (1991) resolves the case at bar. (St. Br. 9-12) It does not. *Pecoraro* does not address this situation. In *Pecoraro*, after the trial and prior to sentencing, the defendant requested to proceed as co-counsel. *Pecoraro*, 144 Ill. 2d at 14. The trial court informed him

that he either had a right to represent himself or to be represented by an attorney. Pecoraro chose the latter. *Id.* The trial court allowed Pecoraro the opportunity to write a motion which could be presented by trial counsel. *Id.* Pecoraro filed a *pro se* post-trial motion alleging ineffective assistance of counsel of his privately-retained counsel. *Id.* at 15. After hearing argument on the defendant's motion, the trial court denied it, finding that the defendant's claims "dealt with matters of trial strategy," and that the defendant was "'defended excellently' and given a 'vigorous and intelligent defense.'" *Id.* at 13-14.

On appeal, Pecoraro argued that his case should be remanded for the appointment of new counsel and a hearing to determine whether trial counsel was ineffective. *Id.* at 12. This Court held that the trial court did not err by denying the motion without appointing new counsel to represent the defendant, as the trial court "considered all arguments posed by defendant in accordance with the *Strickland* standards." *Id.* at 14-15. In addition, this Court found *Krankel* distinguishable because the defendant in *Pecoraro* was represented by privately-retained counsel and did not request a new attorney, noting that "the trial judge could not force defendant to retain counsel other than that chosen by defendant." *Id.* at 15 (citing *People v. Johnson*, 75 Ill. 2d 180, 185 (1979))[1].

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[1] Notably, *Pecoraro* also cites to *People v. Walsh*, 28 Ill. 2d 405, 409 (1963), for the proposition that "It was not within the trial court's rubric of authority to advise or exercise any influence or control over the selection of counsel by defendant, who was able to, and did, choose counsel of his own accord." *Pecoraro*, 144 Ill. 2d at 15. In *Walsh*, this Court stated that "It is clear that under the constitution and laws of Illinois a defendant has an absolute right to be represented by counsel of his own choice." *Walsh*, 28 Ill. 2d at 409. This Court has since abrogated this position. See *People v. Holmes*, 141 Ill. 2d 204, 217 (1990) ("The sixth amendment right to choose one's own counsel is not, however, absolute").

Pecoraro does not resolve the instant case because in *Pecoraro* it was the defendant, not the attorney, who alleged counsel's ineffectiveness. *Id.* at 12. When a defendant complains about his attorney's representation, it is inherent in his complaint that he is dissatisfied with his attorney's performance and desires a new attorney to attack his attorney's deficient performance. A dissatisfied client of retained counsel has the option of firing his attorney and hiring new counsel, and, presumably, he would have done so had he wanted. Therefore, since the judge in *Pecoraro* had heard from the disgruntled defendant, he had no obligation to step in and replace trial counsel. If Pecoraro wanted an attorney to replace the one who he thought was ineffective, he could have hired one himself.

Here, in contrast, it was trial counsel who confessed his inadequate performance. Because there was no preliminary inquiry or further discussion, there is nothing to suggest that Bates was aware that : (1) his trial counsel had a conflict of interest in arguing his own ineffectiveness, (2) due to counsel's conflict of interest, trial counsel could not argue his own ineffectiveness; and (3) Bates should have new counsel to raise this claim and present it fully to the trial court. In contrast, a *Krankel* preliminary inquiry is superfluous for a defendant who believes his private counsel was ineffective and knows that he could hire new counsel to present counsel's ineffectiveness to the trial court. A preliminary inquiry is critical in cases like the present one, where counsel has confessed his ineffectiveness but cannot be expected to argue his failures entitle his client to a new trial.

The procedure outlined in *Krankel* and its progeny recognized the inherent conflict that arises when counsel is forced to argue his own ineffectiveness. See

People v. Moore, 207 Ill. 2d 68, 78 (2003) ("if the allegations show possible neglect of the case, new counsel should be appointed" to "independently evaluated the defendant's claim and . . . avoid the conflict of interest that trial counsel would experience I trial counsel had to justify his or her actions contrary to defendant's position"); *People v. Willis*, 2013 IL App (1st) 110233, ¶ 71 (acknowledging that the *Krankel* procedure was developed in an attempt to rectify the conflict of interest faced by trial counsel arguing his or her own ineffectiveness). The potential for this conflict exists regardless of whether the claim of trial counsel's ineffectiveness is raised by the defendant or by trial counsel. *Cuyler v. Sullivan*, 446 U.S. 335, 344-5 (1980) ("The vital guarantee of the Sixth Amendment would stand for little if the often uninformed decision to retain a particular lawyer could reduce or forfeit the defendant's entitlement to constitutional protection" and "we see no basis for drawing a distinction between retained and appointed counsel that would deny equal justice to defendants who must choose their own lawyers"); *Mickens v. Taylor*, 535 U.S. 162, 168, n. 2 (2002) (the Sixth Amendment does not draw a distinction between privately-retained and appointed counsel); see also *Pecoraro*, 144 Ill. 2d at 23 (Clark, J., dissenting) ("It is equally inappropriate for *private counsel* to argue his incompetence at a post-trial hearing as it is for an appointed public defender"); *People v. Taylor*, 237 Ill. 2d 68, 79 (2010) ("To read *Pecoraro* as distinguishing between appointed and retained counsel would create conflict with *Cuyler v. Sullivan*, 446 U.S. 335 (1980)" (Burke, J., specially concurring)),

And the preliminary inquiry stage does not entail the ending of trial counsel's representation. As this Court has consistently held, new counsel is not automatically required when a claim of ineffectiveness is brought to the trial court's attention.

People v. Nitz, 143 Ill. 2d 82, 134-5 (1991). Before appointing new counsel, the trial court must hold a preliminary inquiry to evaluate the claim to determine whether counsel may have neglected the defendant's case. *Nitz*, 143 Ill. 2d at 134-5. It is only if "the allegations show possible neglect of the case," that new counsel should be appointed in order to avoid the inherent conflict of interest that arises when counsel argues his own ineffectiveness. *Moore*, 207 Ill. 2d at 78-9.

The State argues that "[t]he trial court lacks the authority to direct a defendant to fire his chosen attorney and accept a court-ordered replacement." (St. Br. 11) This argument misstates Bates's claim. Bates is not arguing that the trial court can order a defendant to fire his retained counsel and accept an appointed one, as indicated by the State. (St. Br. 11) Rather, Bates is arguing that if the trial court's preliminary *Krankel* inquiry shows possible neglect of the case by retained counsel, the trial court should inquire of the defendant if he desires a new attorney to raise an ineffective assistance of counsel claim.

The question of whether new counsel should be appointed only comes up *after* the preliminary inquiry is held and the trial court has determined there was, in fact, possible neglect of the defendant's case. *People v. Moore*, 207 Ill. 2d 68, 77-8 (2003) (At the preliminary inquiry, the trial court determines whether the claim shows possible neglect of the case, and, if so, the court then appoints new counsel to argue the claim); *People v. Jolly*, 2014 IL 117142, ¶ 38 ("a defendant is not appointed new counsel at the preliminary *Krankel* inquiry"). It is not until this point where counsel's continued representation results in a conflict of interest, necessitating new conflict-free counsel. *Moore*, 207 Ill. 2d at 78 ("The appointed counsel can independently evaluate the defendant's claim and would avoid the

conflict of interest that trial counsel would experience if trial counsel had to justify his or her actions contrary to defendant's position"). No preliminary inquiry has yet been held on trial counsel's claims of ineffectiveness in this case. Since there has not yet been a finding of possible neglect in this case, there is no conflict between Bates's sixth amendment right to competent counsel and right to counsel of his choosing.

Typically, the defendant's right to competent counsel and right to counsel of his own choosing "coexist symbiotically." *People v. Johnson*, 75 Ill. 2d 180, 185 (1979). However, when the trial court determines that counsel of defendant's counsel of choice is not providing competent representation, one of the defendant's sixth amendment rights must be sacrificed. *Id*. A defendant can waive his constitutional right to competent counsel in favor of being represented by counsel of choice. See *Johnson*, 75 Ill. 2d at 186 ("defendant's right to counsel of his own choice *** required that he be allowed to make a voluntary, knowing and understanding waiver of the right to competent counsel in order to receive the representation of his choice"); *People v. Holmes*, 141 Ill. 2d 204, 222 (1990) ("a defendant who wishes to exercise the right to counsel of choice despite a conflict of interest must necessarily waive the right to effective assistance of counsel"). Alternatively, a trial court may, within its discretion, deny an attorney's representation of a defendant if it creates an actual or potential conflict of interest. *People v. Ortega*, 209 Ill.2d 354, 358 (2004).

In *Johnson*, a case cited in *Pecoraro*, this Court addresses the procedure that should occur when a defendant's sixth amendment rights are at odds. *Johnson*, 75 Ill. 2d 180. In *Johnson*, at the start of the second day of trial, the trial court informed the defendant that he believed Johnson was not receiving assistance

of competent counsel from his privately-retained attorney. *Id.* at 184. The trial court advised Johnson of his right to have counsel of his own choosing or to have an attorney appointed for him if he was financially unable to employ one, and gave Johnson the opportunity to continue with his present counsel or to obtain new counsel. *Id*. at 184-5. Johnson decided that he wanted to proceed with his retained counsel. *Id.* at 185.

On appeal, Johnson argued that he was denied the effective assistance of trial counsel. *Id.* at 183. The appellate court agreed, holding his waiver of competent counsel was insufficient and remanding for a new trial. *Id.* This Court reversed, holding that Johnson's waiver of competent counsel was sufficient, as the trial court ensured it was voluntary, knowingly, and understandingly made. *Id.* at 187. This Court recognized that the defendant has the constitutional rights to competent counsel and counsel of his choice, and that Johnson's decision to exercise his right to counsel of his own choosing over his right to competent counsel required him to execute a waiver of his constitutional right to competent counsel. *Id.* at 185. This Court explained that "where the judge had determined that defendant's choice of counsel was not providing the defendant with competent representation, one [of his constitutional rights] had to be sacrificed." *Id.*

In the context of a *Krankel* preliminary inquiry, if the trial court determines at the preliminary inquiry that retained counsel's actions show possible neglect of defendant's case, it is the trial court's responsibility to address the arising sixth amendment conflict between the defendant's right to competent counsel and right to counsel of his choosing. If the defendant chooses to waive his constitutional right to competent counsel by keeping the attorney who has confessed his

ineffectiveness, it is the trial court's duty to ensure that this waiver was voluntary, knowingly, and intelligently made. *Johnson*, 75 Ill. 2d at 186.

Moreover, it cannot be assumed that all defendants who are able to retain private trial counsel have sufficient financial means to continue to hire additional private counsels, as suggested by the State. (St. Br. 9) Indeed, Bates is presently represented by appointed counsel, the Office of the State Appellate Defender. (RVII. 159) (On April 1, 2016, the trial court directed the clerk to file a notice of appeal and to send the notice to the Office of the State Appellate Defender).

The State also cites to *People v. Mourning*, 2016 IL App (4th) 140270 to support its position that in order for a preliminary inquiry under *Krankel* to occur when the defendant has privately-retained counsel, the defendant must first : (1) inform the trial court that he desires new counsel, and (2) cannot afford private counsel. (St. Br. 11) In *Mourning*, the defendant made a *pro se* claim that counsel was ineffective and also informed the court that he wished to be represented by new counsel and needed court-appointed counsel. *Mourning*, 2016 IL App (4th) 140270, ¶ 16. The trial court declined the defendant's request for appointed counsel and did not hold a preliminary inquiry into the defendant's *pro se* claims of ineffectiveness. *Id.* at ¶ ¶ 6-7. The appellate court held that "a court should conduct an initial inquiry to determine whether new counsel should be appointed" when a defendant makes a *pro se* post-trial claim of ineffective assistance of counsel and simultaneously informs the court that he wants, but cannot afford, new private counsel. *Id.* at ¶ 20.

Mourning is distinguishable from the present case. In *Mourning*, the defendant filed a written *pro se* motion claiming that his retained counsel was

ineffective and requesting new counsel. *Id.* at ¶ 18. In contrast, here, it was trial counsel who confessed his own ineffectiveness. (RIV. 138-9) Simply because a defendant is represented by retained counsel rather than appointed counsel does not exempt the trial court from conducting a preliminary inquiry into counsel's ineffectiveness.

Finally, the State's claim that Bates has "other, adequate remedies for pursuing ineffective assistance claims" such as direct appeal or collateral proceedings contravenes one of the primary purposes of *Krankel*. (St. Br. 19-20) The purpose of the *Krankel* procedure is to fully explore ineffectiveness claims, in order to to limit issues on appeal. See *Ayres*, 2017 IL 120071, ¶ 21 (*Krankel*'s purpose "is to facilitate the trial court's full consideration of a defendant's [*pro se* ineffective assistance] claim, and thereby to potentially limit issues on appeal") (quotation omitted); *People v. Jolly*, 2014 IL 117142, ¶ 38 ("[b]y initially evaluating the defendant's claims in a preliminary *Krankel* inquiry, the circuit court will create the necessary record for any claims raised on appeal"); *Patrick*, 2011 IL 111666, ¶ 41 (*Krankel* was intended to "promote consideration of *pro se* ineffective assistance of counsel claims in the trial court" in order to "limit issues on appeal"). This serves the goal of judicial economy, particularly because the inquiry will take place when "the facts and circumstances surrounding the claim will be much clearer in the minds of all involved." *Ayres*, 2017 IL 120071, ¶ 21. Delaying the trial court's consideration of post-trial ineffectiveness claims, as suggested by the State, thwarts this goal and should be rejected.

Because trial counsel's statements to the trial court indicated possible neglect of the case, this Court should either remand for a preliminary inquiry or for the

appointment of new, conflict-free counsel to present the claim that Bates's trial counsel was ineffective.

CONCLUSION

For the foregoing reasons, Quentin Bates, defendant-appellant, respectfully requests that this Court remand for a preliminary inquiry, or, alternatively, remand for the appointment of new, conflict-free counsel to present the claim that Bates's trial counsel was ineffective.

Respectfully submitted,

PATRICIA MYSZA
Deputy Defender

EMILY E. FILPI
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

CERTIFICATE OF COMPLIANCE

I, Emily E. Filpi, certify that this reply brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this reply brief, excluding pages containing the Rule 341(d) cover and the Rule 341(c) certificate of compliance is 17 pages.

/s/Emily E. Filpi
EMILY E. FILPI
Assistant Appellate Defender

No. 124143

IN THE

SUPREME COURT OF ILLINOIS

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NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

Mr. David J. Robinson, Deputy Director, State's Attorney Appellate Prosecutor, 725 South Second Street, Springfield, IL 62704, 4thdistrict@ilsaap.org;

John Milhiser, Sangamon County State's Attorney, 200 S. 9th St., Suite 402, Springfield, IL 62701-1629, johnmi@co.sangamon.il.us;

Mr. Quentin Bates, Register No. R08179, Stateville Correctional Center, P.O. Box 112, Joliet, IL 60434

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 August 12, 2019, the Reply Brief 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-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

/s/Carol Chatman
LEGAL SECRETARY
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
Service via email is accepted at
1stdistrict.eserve@osad.state.il.us