

No. 3-19-0700

Summary Order filed October 19, 2022.

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2022

THE PEOPLE OF THE STATE OF
ILLINOIS.

Plaintiff-Appellee.

v.

CHANDEL S. DIRKANS.

Defendant-Appellant.

) Appeal from the Circuit Court
) of the 12th Judicial Circuit,
) Will County, Illinois.
)
)
) Circuit No. 15-CF-2452
)
) Honorable
) David M. Carlson.
) Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Daugherty and Hauptman concurred in the judgment.

SUMMARY ORDER

The State indicted the defendant, Chandel S. Dirkans, on 10 counts of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(3), (West 2014)); 1 count of armed habitual criminal (AHC) (*id.* § 24-1.7(a)(1), (2)); 5 counts of criminal sexual assault (*id.* § 11-1.20(a)(1)); 1 count of aggravated domestic battery (*id.* § 12-3.3(a-5)); 3 counts of unlawful use of weapon by a felon (UUWF) (*id.* § 24-1.1(a)); and 1 count of aggravated unlawful restraint (*id.* § 10-3.1(a)).

Prior to trial, the defendant pled guilty to AHC, and the State dismissed the UUWF charges. The court sentenced the defendant to 29 years' imprisonment for AHC. The case proceeded to a bench trial on the remaining charges.

J.M. testified that she lived with her father and stepmother, along with her stepmother's children. The defendant, J.M.'s stepmother's brother, also lived in the home. On November 5, 2015, J.M. was home alone with the defendant. While they were home alone, the defendant sexually assaulted J.M. several times while armed with a knife. The defendant then took J.M. outside through the basement door after he removed a wooden board that was placed in front of the door. He forced J.M. into her father's truck and drove around while J.M. pleaded for her release. The defendant eventually drove back to the house and let J.M. go after she promised not to tell anyone what had happened. Once the defendant let her leave, J.M. called her mother and went to the nearby drugstore. J.M.'s mother called the police and met J.M. at the drugstore.

During cross-examination, defense counsel questioned J.M. regarding why she lived with her father and not her mother. Counsel pointed out that J.M. had access to her cell phone the entire time these events occurred but never called for help. He also questioned why J.M. did not fight back during the assaults.

The defendant testified that he did not sexually assault J.M. and that she was acting out because she did not appreciate him acting as an authority figure in the house.

The court found the defendant guilty of 10 counts of aggravated criminal sexual assault, 5 counts of criminal sexual assault, aggravated domestic battery, and aggravated unlawful restraint.

Including his sentence from his guilty plea, the court sentenced the defendant to an aggregate term of 118 years' imprisonment. Afterward, the defendant, as a self-represented

litigant. filed a motion alleging ineffective assistance of counsel. He argued that counsel did not conduct a sufficient investigation and failed to question several witnesses.

The court held a hearing on the defendant's motion, and the defendant argued that he never took J.M. out of the house and that had counsel questioned neighbors they would have been able to testify that the truck did not leave the driveway that day. Defendant wrote in his motion that counsel failed to investigate eyewitnesses and told the court that "[t]he neighbors will say that they never saw my truck leave, never left the driveway." Additionally, the defendant argued that the basement door that J.M. testified they used to exit the house was drilled shut and unusable. The court denied the motion, finding the defendant's allegations did not amount to ineffective assistance of counsel and the claims related to matters of trial strategy.

On appeal, the defendant argues that he sufficiently demonstrated possible neglect of his case, and that the court's finding to the contrary was manifestly erroneous. Specifically, the defendant showed that counsel possibly neglected his case in that counsel failed to conduct an adequate investigation into witnesses on his behalf and failed to properly challenge J.M.'s testimony regarding the basement door that was drilled shut.

Through *People v. Krankel*, 102 Ill. 2d 181 (1984), and its progeny, our supreme court has developed a procedural framework for the resolution of posttrial claims of ineffective assistance of counsel. When a defendant raises, as a self-represented litigant, an ineffective assistance of counsel claim after trial, the circuit court must conduct a preliminary *Krankel* inquiry to determine whether new counsel should be appointed to address the issue. *People v. Jolly*, 2014 IL 117142, ¶ 29. The purpose of the preliminary inquiry is to determine the underlying factual basis of the claims and to provide defendant an opportunity to argue his

claims to the court. *People v. Ayres*, 2017 IL 120071, ¶ 24. New counsel is only appointed if the defendant's allegations show possible neglect. *People v. Moore*, 207 Ill. 2d 68, 78 (2003).

At a preliminary *Kranke*/inquiry, the court may consider the legal merit of the claim as well as the factual basis. *People v. Roddis*, 2020 IL 124352, ¶ 61. The court may base its decision on "its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face" *Moore*, 207 Ill. 2d at 79. A court's determination that a defendant did not demonstrate a possible neglect of the case will not be reversed unless such decision is manifestly erroneous. *People v. Maya*, 2019 IL App (3d) 180275, ¶ 17. Manifest error occurs when such error is "clearly evident, plain, and indisputable." *People v. Ruiz*, 177 Ill. 2d 368, 384-85 (1997).

In the instant case, the court found the defendant's claims were a matter of trial strategy and that counsel's performance was not deficient. Matters of trial strategy are accorded great deference by the court and "are generally immune from claims of ineffective assistance of counsel." *People v. West*, 187 Ill. 2d 418, 432 (1999). Where a defendant argues ineffective assistance due to mistakes in trial strategy, he must overcome the strong presumption that counsel's action constituted reasonable strategy. *People v. Clendenin*, 238 Ill. 2d 302, 317 (2010). "[E]ven if defense counsel makes a mistake in trial strategy or tactics or an error in judgment, this will not render representation constitutionally defective." *People v. Perry*, 224 Ill. 2d 312, 355 (2007).

The defendant contends that counsel failed to call witnesses to testify that he never left the house, in direct contradiction to J.M.'s testimony that the defendant forced her into her father's truck and drove around with her. However, he failed to provide adequate detail, either in his motion or at the preliminary inquiry, regarding which witnesses he believed his counsel

should have called, or what the testimony of these witnesses would have been. Although the defendant argued that if counsel had investigated properly, "[t]he neighbors will say that they never saw my truck leave, never left the driveway," the defendant never provided the name of a single witness who could testify as such. His entire argument rests on the assumption that unspecified neighbors could have been home to observe the defendant at the house, not that there actually was a neighbor who did see him. Also, the decision of which witnesses to call is a matter of trial strategy that is generally immune from claims of ineffective assistance. See *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 79 ("Decisions concerning which witnesses to call at trial and what evidence to present on defendant's behalf ultimately rest with trial counsel.").

The defendant also challenges counsel's preparedness for trial, arguing that counsel did not argue that the basement door was drilled shut, even though J.M. testified that was the door the defendant used to exit the house. The defendant argues counsel failed to cast sufficient doubt on J.M.'s testimony, by proving they could not have left through the door she described and that they did not leave the house at all. However, the record clearly establishes that defense counsel conducted an extensive cross-examination of J.M., pointing out the differences in her testimony and the defendant's testimony to discredit her. Moreover, the defendant cannot demonstrate that even if counsel had proven the door was unable to be opened, this would be sufficient to find counsel neglected his case, given his thorough questioning of the rest of J.M.'s testimony.

We are unconvinced the circuit court made an indisputably erroneous decision. The court, after conducting the preliminary *Kranke* inquiry, found that counsel did not act deficiently in his representation of the defendant. Only after hearing from the defendant and carefully reviewing the matter did the court determine the defendant's claims were without merit and counsel did

not provide deficient representation. Accordingly, we find it unnecessary to remand for the appointment of independent counsel and further *Kranke* proceedings.

The judgment of the circuit court of Will County is affirmed. This decision is issued in accordance with Illinois Supreme Court Rule 23(c)(2) (eff. Jan. 1, 2021).

Affirmed.



SUPREME COURT OF ILLINOIS

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January 25, 2023

In re: People State of Illinois, respondent, v. Chandel S. Dirkans,
petitioner. Leave to appeal, Appellate Court, Third District.
129060

The Supreme Court today DENIED the Petition for Leave to Appeal in the above
entitled cause.

The mandate of this Court will issue to the Appellate Court on 03/01/2023.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

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