

NOTICE

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

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED

September 11, 2025
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Peoria County
ISAIHA M. HERRING,)	Nos. 19CF665,
Defendant-Appellant.)	21CF383,
)	21CF384
)	
)	Honorable
)	Paul P. Gilfillan,
)	Judge Presiding.

JUSTICE VANCIL delivered the judgment of the court.
Justices Zenoff and Grischow concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court vacated the trial court's judgment denying defendant's motion to withdraw his guilty pleas and remanded for further proceedings, holding postplea counsel labored under an actual conflict of interest.

¶ 2 Defendant, Isaiha M. Herring, pleaded guilty but mentally ill to aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(4) (West 2018)) in Peoria County case No. 19-CF-665, aggravated criminal sexual assault (*id.* § 11-1.30(a)(2)) in Peoria County case No. 21-CF-383, and criminal sexual assault (*id.* § 11-1.20(a)(1)) in Peoria County case No. 21-CF-384. He was sentenced to consecutive prison terms of 30 years for each count of aggravated criminal sexual assault and a concurrent term of 15 years for criminal sexual abuse, for an aggregate prison term of 60 years. The trial court denied defendant's motion to withdraw his guilty pleas.

¶ 3 Defendant filed a notice of appeal in each case, and we entered an order

consolidating the appeals on our own motion. In this consolidated appeal, defendant contends this court should vacate the trial court's order denying his motion to withdraw his guilty pleas and remand for new postplea proceedings because (1) his postplea counsel labored under an actual conflict of interest or (2) the record rebuts his postplea counsel's facially compliant Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024) certificate . Alternatively, defendant argues this court should remand for a preliminary inquiry pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984), because he wrote a postplea letter to the trial court making a specific claim that he had received ineffective assistance of counsel.

¶ 4 We hold postplea counsel labored under an actual conflict of interest. Accordingly, we vacate the trial court's denial of defendant's motion to withdraw his guilty pleas and remand for the appointment of conflict-free counsel and further postplea proceedings.

¶ 5 I. BACKGROUND

¶ 6 In 2019, the State indicted defendant on two counts of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(2), (a)(4) (West 2018)), two counts of home invasion (*id.* § 19-6(a)(2), (a)(6)), and one count of residential burglary (*id.* § 19-3(a)) in case No. 19-CF-665 based on conduct that occurred on October 24, 2019. Although he was 16 years old at the time of the offenses, defendant was charged in adult criminal court.

¶ 7 Defendant was subsequently charged in case No. 21-CF-383 with two counts of aggravated criminal sexual assault (*id.* § 11-1.30(a)(2), (a)(4)), two counts of home invasion (*id.* § 19-6(a)(2), (a)(6)), and one count of residential burglary (*id.* § 19-3(a)) based on events that occurred on September 18, 2019. Defendant was 15 years of age at the time of those offenses and was charged as a juvenile.

¶ 8 Defendant was also charged in case No. 21-CF-384 with one count of home

invasion (*id.* § 19-6(a)(6)) and one count of criminal sexual assault (*id.* § 11-1.20(a)(1)) based on events that occurred on October 13, 2019. Defendant was 16 years of age on the date of the offenses and was charged as a juvenile.

¶ 9 The juvenile court found defendant unfit to stand trial based on an evaluation by Dr. William Hillman. In a report filed in November 2020, Dr. Hillman opined that defendant was unfit to stand trial, but it was “likely that he can be restored to fitness within 12 months.” Dr. Hillman noted defendant was taking Zoloft for depression, Zyprexa for anxiety and psychosis, and Clonidine for anxiety. Dr. Hillman explained, “Unless [defendant] experiences side [e]ffects that cause impairment in thinking, none of these medications would likely impair capacities for fitness.”

¶ 10 Defendant was sent to Streamwood Behavioral Healthcare System (Streamwood) for further evaluation and treatment. In a report filed in April 2021, Dr. Ahmed Hussain found defendant fit to stand trial and wrote “[c]ontinued counseling and compliance with medications are recommended” to maintain fitness. The juvenile court found defendant was restored to fitness and the juvenile case Nos. 21-CF-383 and 21-CF-384 were transferred to adult criminal court.

¶ 11 In July 2021, defendant pleaded guilty but mentally ill to one count of aggravated criminal sexual assault (*id.* § 11-1.30(a)(4)) in case No. 19-CF-665, one count of aggravated criminal sexual assault (*id.* § 11-1.30(a)(2)) in case No. 21-CF-383, and one count of criminal sexual assault (*id.* § 11-1.20(a)(1)) in case No. 21-CF-384. In exchange for defendant’s guilty pleas to those offenses, the State agreed (1) to dismiss the remaining charges and (2) defendant “would be eligible up to and including 60 years in the Illinois Department of Corrections,” consisting of a “combination sentence to be fashioned by the Court of all three cases to no more than 60 years.” The prosecutor explained the aggravated criminal sexual assault convictions were “mandatory

consecutive to each other” and the criminal sexual assault offense “would be discretionary consecutive.” The prosecutor asserted, “Based upon the fact that the maximum sentence that he could receive in the two most serious offenses is 60 years, that would be the maximum allowed by the Court in any event had these matters gone to trial.”

¶ 12 The trial court admonished defendant in accordance with Illinois Supreme Court Rule 402 (eff. July 1, 2012). After advising defendant of the applicable sentencing ranges for the offenses, the court asserted:

“[R]egardless of the sentences that I’ve outlined for each case *** you and the State have agreed that the sentence that you will receive in totality when we have the sentencing hearing in September will not exceed 60 years in the Illinois Department of Corrections, followed by a one-time parole of three years to natural life.”

Defendant stated he understood the court’s admonishments. The State presented a factual basis for defendant’s pleas. In accepting the pleas, the court stated defendant appeared “alert in all spheres” and had “a grasp and an understanding—not even in a close-call way, but in a complete way he has a total grasp and understanding of the nature of the charges against him.” The court stated it did not “believe that we’re trying to walk anybody through anything.” The court then set the matter for sentencing.

¶ 13 The presentence investigation report (PSI) noted that defendant had attempted to harm himself or commit suicide multiple times while in custody for the offenses, including once after he pled guilty. Reports from the Peoria County Juvenile Detention Center attached to the PSI described several suicide attempts, including an incident on May 13, 2021, where defendant informed staff he took multiple pills he had hidden and was transported to the hospital for evaluation.

¶ 14 At the September 2021 sentencing hearing, the State argued defendant should be sentenced to 60 years' imprisonment in accordance with the cap in the plea agreement. Defendant asked for a sentence of 20 years, given his young age at the time of the offenses. Defendant also made a statement in allocution.

¶ 15 In sentencing defendant, the trial court asserted it considered the PSI, the evidence and arguments presented by counsel, defendant's statement in allocution, the applicable aggravating and mitigating factors, defendant's history and character, and the circumstances and nature of the offenses. Based on all the considerations, the court sentenced defendant to consecutive terms of 30 years' imprisonment for the aggravated criminal sexual assault offenses and a concurrent term of 15 years for criminal sexual assault, for a total of 60 years.

¶ 16 After the trial court admonished defendant of his right to appeal, the court asserted, "[I]f there's a motion to be filed for reconsideration, you can do that whenever you like." Defense counsel immediately filed a handwritten motion to reconsider the sentence as excessive. The following day, defense counsel filed a typewritten motion to reconsider the sentence, repeating the claim that "the sentence of a collective 60 years was excessive." The court denied defendant's motion following a hearing that same day.

¶ 17 On appeal, defendant contended, in pertinent part, that the case should be remanded for further proceedings because the trial court's postplea admonishments failed to substantially comply with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001). *People v. Herring*, 2023 IL App (3d) 220343-U . The Third District agreed, holding the admonishments incorrectly suggested that the trial court could reduce a sentence entered pursuant to a negotiated guilty plea without first granting a motion to withdraw the plea. *Id.* ¶ 26. It held the court undermined its initial admonishments by inviting defendant to challenge his sentence with a motion to reconsider and

suggesting defendant could challenge his sentence by appealing from a denial of that motion. *Id.* ¶ 32. Accordingly, the court’s ruling on defendant’s motion to reconsider his sentence was reversed and the cause was remanded for compliance with Rule 605(c). *Id.* ¶ 38.

¶ 18 On remand, defendant’s guilty plea counsel continued to represent defendant in the postplea proceedings. During a hearing, without defendant present, defense counsel informed the trial court he had spoken with defendant but needed a continuance to obtain his presence for the court to admonish him pursuant to Rule 605(c). Defendant then mailed a letter addressed to the Peoria County Courthouse, stating:

“My attorney [*sic*] is Mickeal Doubet[.] [I] don’t know if I have an court date. [I] don’t know if my judge taking action in my case. Can please receive an court update[.] Please give me any info. Can I please have an legal call report for my attorney and motion for ineffective of an assistance of counsle [*sic*] on Mickeal Doubet for me to be in person to prove evidence and be remanded at Peoria County[.]”

¶ 19 Defendant was present with his counsel at the next court date. The trial court admonished defendant in accordance with Rule 605(c), and the case was continued for defendant to prepare and file a motion to withdraw his guilty pleas. At the end of the hearing, defendant asked to speak. The court asked defendant to tell his counsel what he wanted to tell the court. Defense counsel then asserted defendant wanted to make sure he could bring some legal work he had prepared with him to the next hearing. When the court responded that was between defendant and the Illinois Department of Corrections, defense counsel asserted it was “getting worked out.”

¶ 20 In August 2024, defendant filed a motion to withdraw his guilty pleas. Defendant asserted his guilty plea in each case was not knowing, voluntary, and intelligent because (1) he

was unfit and had not been properly restored to fitness at the time of his guilty plea, (2) his mental illness “interfered with his ability to understand the impact of his plea of guilty,” and (3) he had not been taking his medication as prescribed at the time of his plea, but had been “ ‘cheeking’ ” or fake swallowing his pills and storing them in his cell, and he took more than the prescribed amount on the day of his plea, causing him to be unable to comprehend the proceedings. Defendant further alleged the trial court erred by failing to ask him if he was under the influence of any drugs or alcohol or if he was taking his medication as prescribed. Defendant contended if the court had made those inquiries, it “would have discovered that [he] was not taking his medication as prescribed and that he was under the influence of an overdose of his medication.” Counsel attached to his motion a certificate in compliance with Illinois Supreme Court Rule 604(d) (eff. Apr. 15, 2024). Counsel did not attach any affidavit or other evidence to his motion.

¶ 21 At the September 2024 motion hearing, defense counsel asserted he could “either proffer *** anything prior to argument as far as what [defendant] has to say or I could have him supply evidence himself.” The trial court responded, “[w]hatever you would like to do.” Counsel stated it was “probably easiest, if counsel is okay, with me just proffering.” Counsel then proceeded with his proffer. Defense counsel asserted that after defendant was found unfit and transferred to Streamwood, he had “multiple encounters” and was still suffering from his mental illness. Defendant told counsel “they really just kind of got tired of dealing with him and didn’t fully address his mental health issue there.” Defendant was still engaging in self-harm while at Streamwood and “still having difficulty understanding things.” According to counsel, because defendant was “hard to deal with, hard to handle,” Streamwood “just shipped him back up and said he was fit.” Defendant told counsel people at Streamwood stated, “We’re going to just put you up there, you’re done, get out.” When the court asked if that was hearsay, counsel agreed it

was but asserted there was a “recurring problem” of people with mental health issues not being “dealt with properly” and “just kind of flushed back out of the system.” The court responded it was difficult to conclude the system had failed defendant without specific evidence, and defense counsel stated, “It’s just an argument.”

¶ 22 Defense counsel further asserted defendant told him that, in the time leading up to his guilty plea, he had been fake swallowing his medication and storing it in his cell for the purpose of harming himself. Defendant took multiple pills prior to coming to court on the day of his guilty pleas, resulting in a “dream talking, dream walking” state where “[h]e’s there, but he’s really not functioning.” Counsel asserted he “couldn’t recognize it because [defendant] could answer my simple questions because I had very few questions” and “nothing raised a red flag for me.”

¶ 23 Counsel argued the trial court erred when accepting the guilty pleas by failing to ask defendant standard questions about whether he was taking any medications and if he had taken them as prescribed. Given the fitness issue in this case, counsel asserted the court had reason to assume defendant was taking prescription medications and it “would be a minimum requirement” for “not just the counsel but the Court” to inquire about prescription medications and their effects. When the court asked if defense counsel would have been under the same obligation to make a minimum inquiry before presenting defendant for the plea, counsel replied that defendant was a bit subdued, but “nothing stood out.” Counsel asserted he assumed the court would question defendant on the issue at some point, but it never did. Counsel stated he did not bring the issue to the court’s attention because a problem was not apparent to him. Counsel argued the court had an obligation to ask questions to ensure defendant was not under the influence of any medication and that his plea was knowing and voluntary, even if defense counsel assured the court that defendant was competent or “fine.” Counsel asserted if the court had made that inquiry, defendant could have

revealed he had not been taking his medications as prescribed.

¶ 24 The State responded that the trial court was not required to ask about defendant's medications or drug use at the plea hearing. Additionally, even if the court had asked those questions, defendant likely would not have admitted taking an excessive amount of his medications. When accepting the guilty pleas, the court specifically commented on defendant's appropriate behavior, appearance, responses, and alertness throughout the proceedings. The State argued the record rebutted defendant's claim that his pleas were not knowing and voluntary and defendant failed to provide any proof in support of his claims.

¶ 25 The trial court denied defendant's motion to withdraw his guilty pleas. The court reasoned that the records submitted to the court indicated defendant was fit to stand trial before he entered his guilty pleas and Rule 402 does not specifically require a court to ask whether a defendant is under the influence of any substance. The court asserted defendant's argument involved "a lot of guess, speculation and conjecture that something might have turned south if a different magic question was answered." In sum, the court concluded it complied with Rule 402 and did not err in accepting defendant's guilty pleas as knowing and voluntary.

¶ 26 Defendant filed a timely notice of appeal in each case. We consolidated the appeals on our own motion.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 On appeal, defendant contends this court should vacate the trial court's order denying his motion to withdraw his guilty pleas and remand for new postplea proceedings because (1) his postplea counsel labored under an actual conflict of interest or (2) the record rebutted his postplea counsel's facially compliant Rule 604(d) certificate. Alternatively, defendant argues this

court should remand for a preliminary inquiry pursuant to *Krankel* because his postplea letter to the court made a specific claim of ineffective assistance of counsel.

¶ 30

A. Actual Conflict of Interest

¶ 31

Defendant contends his counsel acted under an actual conflict of interest because, if the claims of trial court error raised in defendant's motion were meritorious, it would mean counsel was also ineffective in representing defendant during the guilty plea proceedings. Defendant maintains postplea counsel's performance was adversely affected by the conflict because he did not allege a claim of ineffective assistance or provide any testimony, affidavit, or evidence to support the claims raised in defendant's motion to withdraw his guilty pleas. Additionally, counsel was likely to be a necessary witness on the issue of whether defendant could enter a knowing and voluntary guilty plea. Based on the actual conflict of interest, defendant concludes this court should vacate the denial of his motion to withdraw his guilty pleas and remand for the appointment of conflict-free counsel and new postplea proceedings.

¶ 32

The State responds counsel did not notice anything that would lead him to question defendant's fitness on the day of the guilty pleas. At the motion hearing, counsel asserted he spoke to defendant about the pleas multiple times, defendant was able to answer his questions, and "nothing raised a red flag" for him. Defendant asked appropriate questions during the hearing and indicated he understood the proceedings. The State maintains counsel was not laboring under an actual conflict of interest because there was no indication that defendant was unfit, that a fitness hearing may have been required, or that defendant had failed to take his medication as prescribed.

¶ 33

The State further argues the trial court, not plea counsel, was responsible for ensuring defendant's guilty pleas were knowing and voluntary and inquiring about defendant's use of medication. Accordingly, the State contends, counsel properly alleged the court erred in

accepting defendant's guilty pleas without ensuring they were knowing and voluntary rather than raising a claim of his own ineffectiveness. The State also insists counsel was not likely to be a witness because counsel explained in his proffer that he did not observe any indication defendant was unfit or failed to take his medication as prescribed.

¶ 34 A criminal defendant's right to effective assistance of counsel is guaranteed by the sixth amendment to the United States Constitution (U.S. Const., amend. VI), and it includes the right to conflict-free representation. See *People v. Green*, 2020 IL 125005, ¶ 20. "Conflict-free representation means 'assistance by an attorney whose allegiance to his client is not diluted by conflicting interests or inconsistent obligations.' " *Id.* (quoting *People v. Spreitzer*, 123 Ill. 2d 1, 13-14 (1988)). "Essentially, the party asserting such a claim is arguing that a conflict rendered the attorney's performance substandard and that the substandard performance caused prejudice." *In re Br. M.*, 2021 IL 125969, ¶ 44.

¶ 35 Our supreme court has recognized two categories of conflict of interest: *per se* and actual. *People v. Fields*, 2012 IL 112438, ¶ 17. A *per se* conflict exists when certain facts about an attorney's status, by themselves, establish a disabling conflict. *People v. Hernandez*, 231 Ill. 2d 134, 142 (2008). Generally, a *per se* conflict of interest arises when an attorney has a connection to a person or an entity that will benefit from an unfavorable outcome for the defendant. *People v. Yost*, 2021 IL 126187, ¶ 39. When a *per se* conflict exists, a defendant is not required to demonstrate that counsel's performance was affected by the conflict or show actual prejudice. *Hernandez*, 231 Ill. 2d at 143. A *per se* conflict is grounds for automatic reversal unless the defendant waives his right to conflict-free counsel. *Id.*

¶ 36 To establish an actual conflict of interest, a defendant must show counsel's performance was adversely affected by the conflict. *People v. Austin M.*, 2012 IL 111194, ¶ 82.

The defendant must identify a specific deficiency in his counsel's strategy, tactics, or decision-making attributable to the alleged conflict. *Hernandez*, 231 Ill. 2d at 144. Mere speculation and conclusory statements are insufficient to establish an actual conflict of interest. *Id.* Whether counsel was operating under a conflict of interest presents a question of law that we review *de novo*. *People v. Garcia*, 2018 IL App (5th) 150363, ¶ 26.

¶ 37 Initially, we note this court has long held counsel should withdraw when a defendant challenges his or her effectiveness in a motion to withdraw a guilty plea. See *People v. Norris*, 46 Ill. App. 3d 536, 541-42 (1977); see also *People v. Friend*, 341 Ill. App. 3d 139, 140-41 (2003). This rule is premised on the principles that attorneys cannot argue their own ineffectiveness and cannot serve as a witness for or against the defendant when the issue involves their representation. See *Norris*, 46 Ill. App. 3d at 541-42; Ill. R. Prof'l Conduct (2010) R. 3.7 (eff. Jan. 1, 2010). Although in *People v. Salamie*, 2023 IL App (2d) 220312, ¶ 61, the Second District recently asserted *Norris* "is no longer good law and has not been for decades," we subsequently explained the rule in *Norris* is still applicable and valid in situations where counsel is put in a position to argue his or her own ineffectiveness in a motion to withdraw a guilty plea. See *People v. Gray*, 2023 IL App (4th) 230076, ¶¶ 19-22.

¶ 38 In *Gray*, we found the defendant's counsel was not subject to the rule in *Norris* because "[t]here was no reason for counsel to infer she would need to argue her own ineffectiveness or testify in a hearing on [the] defendant's motion." *Id.* ¶ 24 (citing *Norris*, 46 Ill. App. 3d at 541-42). Here, in contrast, a claim of ineffective assistance was apparent from counsel's allegations in the motion to withdraw defendant's guilty plea. Defendant's allegations involving the failure to ensure he was fit to enter his guilty plea and not under the influence of an excessive amount of his prescription medications implicated a potential claim of ineffective assistance of

counsel. Additionally, given his position and close contact with defendant during the relevant events, counsel would likely need to testify to establish the claims alleged in the motion. Based on the allegations in the motion, counsel could certainly infer he would need to argue his own ineffectiveness or testify in a hearing on defendant's motion to withdraw his guilty plea. We continue to adhere to our decision in *Norris* that counsel should withdraw in this specific situation, where counsel will be placed in a position to argue his own ineffectiveness or testify in a hearing on a motion to withdraw defendant's guilty plea.

¶ 39 However, even if counsel were not required to withdraw under the rule set forth in *Norris*, we would find an actual conflict of interest existed in this case. Defendant contends his claim of an actual conflict of interest is supported by the decisions in *Salamie, Garcia, ,* and *People v. Brown*, 2017 IL App (3d) 140921. We agree and find *Garcia* and *Brown* particularly persuasive.

¶ 40 In *Garcia*, the defendant was convicted of attempted residential burglary. *Garcia*, 2018 IL App (5th) 150363, ¶ 19. Prior to trial, the court granted the defendant's motion *in limine*, barring the State from presenting evidence of other crimes involving the defendant during the jury trial. *Id.* ¶ 8. Despite this order, the defendant's counsel did not object when the State played two unedited videotaped interviews of the defendant, which included evidence of his other crimes. *Id.* ¶ 9. Defense counsel raised the issue of the introduction of inadmissible evidence in a posttrial motion, but counsel characterized it as plain error rather than ineffective assistance of counsel. *Id.* ¶ 20. At the motion hearing, defense counsel and the court discussed whether counsel knew what was contained on the videotapes, and counsel concluded he “ ‘should have objected,’ ” but he thought the State only intended to play certain parts of the videotapes. *Id.* ¶ 21. When the court asked counsel if he wanted to present evidence on his motion, counsel declined and stated he was not “ ‘casting blame on anyone.’ ” *Id.* ¶¶ 22, 24. The court denied the defendant's motion for a

new trial. *Id.* ¶ 24.

¶ 41 On appeal, the defendant argued his counsel had either a *per se* or an actual conflict of interest because counsel was required to argue his own ineffectiveness resulted in an unfair trial. *Id.* ¶ 26. In holding defense counsel labored under an actual conflict of interest, the *Garcia* court noted the defendant's posttrial motion was based on counsel's own error, but counsel made no effort to establish a claim of ineffective assistance of counsel. *Id.* ¶ 39. The record showed counsel was reluctant to " 'cast[] blame on anyone' " for his error and declined the trial court's offer to present evidence on the issue. *Id.* ¶ 49. The *Garcia* court held counsel's reluctance to attempt to establish a claim of ineffective assistance was attributable to the conflict of interest inherent in having to argue his own ineffectiveness. *Id.* ¶ 39. Accordingly, the court vacated the denial of the defendant's posttrial motion and remanded for the appointment of conflict-free counsel and further posttrial proceedings. *Id.* ¶ 49.

¶ 42 In *Brown*, the defendant was convicted of domestic battery following a jury trial. *Brown*, 2017 IL App (3d) 140921, ¶ 1. The defendant then filed a letter *pro se*, stating, in part, that he wanted to appeal because one of his witnesses was not called to testify. *Id.* ¶ 12. At the beginning of the sentencing hearing, defense counsel made an oral motion to set aside the verdict, asserting she was adopting the part of the defendant's *pro se* letter that alleged a failure to call a witness to testify. *Id.* ¶ 13. When the court asked counsel if she had any witnesses to present, counsel asserted she would proceed through proffer. *Id.* ¶ 14. Defense counsel then explained the failure to call two witnesses was the result of " 'nothing short of just a miscommunication and that it's a miscommunication between him and me that led to him not being able to call all the people that could be put on.' " *Id.* The trial court denied the defendant's motion, finding miscommunication was not a proper basis for setting aside the verdict. *Id.* ¶ 15.

¶ 43 The *Brown* court found counsel’s motion to set aside the verdict “was premised on a single issue: her own ineffectiveness in calling [the] defendant’s witnesses.” *Id.* ¶ 32. Counsel, however, failed to make a reasonable effort to establish a claim of ineffective assistance. Instead, counsel “placed the blame on [the] defendant and a ‘miscommunication.’ ” *Id.* ¶ 33. Counsel also failed to provide affidavits or evidence concerning the expected testimony of the witnesses. *Id.* The appellate court concluded that the “defects in counsel’s performance were attributable to the conflict of interest inherent in arguing her own ineffectiveness.” *Id.* The court, therefore, vacated the denial of the defendant’s posttrial motion and remanded for appointment of conflict-free counsel and further posttrial proceedings. *Id.* ¶ 34.

¶ 44 Similar to *Garcia* and *Brown*, the factual allegations in defendant’s motion to withdraw his guilty plea clearly implicated a claim of ineffective assistance of counsel. Defendant’s young age and fitness were critical issues throughout the proceedings in this case. Defendant was initially found unfit to stand trial and transferred to Streamwood for evaluation and treatment. Dr. Hussain subsequently found defendant fit to stand trial, but he also specified “[c]ontinued counseling and compliance with medications [were] recommended” to maintain defendant’s fitness. Thus, the parties and the trial court were certainly aware of the necessity of defendant taking his medications as prescribed to maintain his fitness. Additionally, there was reason for both the court and defense counsel to know of defendant’s attempts at self-harm, including by use of his prescription medication. The records attached to the PSI specifically documented an incident in May 2021, when defendant informed staff he took multiple pills he had hidden and was taken to the hospital for evaluation. That incident occurred approximately two months before defendant entered his guilty plea in July 2021.

¶ 45 In the motion to withdraw the guilty pleas, defense counsel alleged the trial court

should have ensured defendant was fit to enter his pleas, but, as the court noted during the motion hearing, counsel also had an obligation to ensure defendant was fit to proceed. See *People v. Holt*, 2014 IL 116989, ¶ 52 (stating defense counsel has a responsibility to “independently assess whether the client is fit to stand trial”); *People v. Shanklin*, 351 Ill. App. 3d 303, 308 (2004) (stating defense counsel may provide ineffective assistance by failing to raise the issue of a defendant’s fitness to plead guilty). In the trial court, counsel acknowledged it was a “minimum requirement” for “not just the counsel but the Court” to inquire about prescription medications and their effects, given defendant’s fitness issues. At the very least, counsel was in a similar position to the court to recognize any problem with defendant’s fitness or use of medications during the guilty plea proceedings. At the motion hearing, however, counsel asserted he was unaware of any issue and asked defendant “very few questions.” Thus, counsel implicitly acknowledged this case presents an apparent claim of ineffective assistance for failure to make reasonable efforts to ensure defendant was fit and not under the influence of an excessive amount of his prescription medications. As defendant argues, if the claims of trial court error alleged in defense counsel’s motion were valid, then counsel also provided ineffective assistance in representing defendant during the guilty plea proceedings. We conclude this case presents defects in counsel’s performance during the postplea proceedings.

¶ 46 The record also shows the deficiencies in counsel’s performance were attributable to the conflict inherent in counsel arguing his own ineffectiveness. See *Hernandez*, 231 Ill. 2d at 144 (stating an actual conflict of interest is established when the defendant identifies a specific deficiency attributable to the alleged conflict). Despite the apparent claim of ineffective assistance of counsel based on the facts alleged in the motion, counsel made no effort to argue that claim. During the motion hearing, the trial court even suggested the facts indicated a claim of ineffective

assistance of counsel. Counsel also did not present any evidence at the motion hearing after being prompted by the court and informed he was presenting inadmissible hearsay in his proffer. When the court pointed out the evidentiary problem, defense counsel simply responded, “It’s just an argument.” Counsel did not present any evidence, whether by testimony or affidavit, supporting his claims that defendant was unfit at the time of his guilty pleas, he was improperly determined to be fit while at Streamwood, and he took an excessive amount of his prescription medications, which could cause the alleged effects if taken in excess.

¶ 47 We also note defense counsel was likely to be a necessary witness, given his close contact and representation of defendant during the events at issue. Although the State argues counsel explained in his proffer that he did not observe any indication of unfitness, counsel’s proffer was not testimony. Counsel did not testify to any facts and was not subject to cross-examination. Counsel likely would have been a critical witness to facts necessary to establish the claims alleged in the motion.

¶ 48 The State’s argument in this case focuses on indications from the record that defendant appeared fit to enter his guilty plea to both the trial court and counsel. But, that is not the controlling issue here. Counsel filed a postplea motion to withdraw defendant’s guilty pleas. The substance of the motion was that defendant was allowed to enter unknowing and involuntary guilty pleas because he was unfit to stand trial and under the influence of an excessive amount of his prescription medications. The question is whether counsel labored under an actual conflict of interest as defendant’s attorney in presenting those postplea claims. The motion did not allege any claim of ineffective assistance of counsel when that claim was apparent from the allegations in the motion. Instead, counsel sought to place the blame solely on the court for accepting the involuntary guilty pleas. Additionally, counsel did not present any evidence in support of defendant’s claims

but proceeded only by proffer, even after the court asserted counsel was presenting inadmissible hearsay.

¶ 49 In sum, similar to *Garcia* and *Brown*, the facts of this case indicate counsel was reluctant to allege a claim of his own ineffectiveness and failed to provide competent evidence on the claims raised in the motion to withdraw defendant's guilty pleas. See *Garcia*, 2018 IL App (5th) 150363, ¶ 39 (stating counsel labored under an actual conflict where his reluctance to allege a claim of ineffective assistance was attributable to the conflict inherent in arguing his own ineffectiveness); *Brown*, 2017 IL App (3d) 140921, ¶ 33 (stating counsel had an actual conflict where she "placed the blame on [the] defendant and a 'miscommunication' " and failed to provide evidence on the expected testimony of witnesses). We conclude counsel labored under an actual conflict of interest when he presented defendant's motion to withdraw his guilty pleas. Accordingly, defendant was denied his constitutional right to conflict-free counsel during the postplea proceedings.

¶ 50 We express no opinion on the merits of defendant's postplea claims. Given this record, however, we must vacate the trial court's order denying defendant's motion to withdraw his guilty pleas and remand for appointment of conflict-free counsel. On remand, counsel may raise whatever issues counsel deems appropriate in a new postplea motion.

¶ 51 B. Remaining Issues

¶ 52 Defendant also argues we should vacate the trial court's denial of his motion to withdraw his guilty pleas because the record rebuts his postplea counsel's facially compliant Rule 604(d) certificate or, alternatively, we should remand for a preliminary *Krankel* inquiry because he made a specific claim of ineffective assistance of counsel in his postplea letter to the court. We need not address those issues, given our conclusion that postplea counsel labored under an actual

conflict of interest. Given our decision, we have vacated the court's order denying defendant's motion to withdraw his guilty plea and remanded for further proceedings with new conflict-free counsel. Defendant has been afforded all the relief he seeks in this appeal, including remand for appointment of conflict-free counsel and new postplea proceedings. Accordingly, we decline to address defendant's remaining issues. See *Brown*, 2017 IL App (3d) 140921, ¶ 29 (finding consideration of a *Krankel* claim unnecessary where relief was granted based on an actual conflict of interest).

¶ 53

III. CONCLUSION

¶ 54 For the reasons stated, we vacate the trial court's order denying defendant's motion to withdraw his guilty plea in each case, and we remand for the appointment of conflict-free counsel and new postplea proceedings.

¶ 55 Order vacated; cause remanded with directions.