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SIXTH DIVISION
SEPTEMBER 4, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 95 CR 30494
)	
ALVINO MARTINEZ,)	Honorable
)	James B. Linn,
Defendant-Appellant)	Judge Presiding

PRESIDING JUSTICE ROBERT E. GORDON delivered the judgment of the court.
Justices Cahill and Lampkin concurred in the judgment.

ORDER

¶1 **Held:** We find that the holding of *People v. Whitfield* by the Illinois Supreme Court establishing a remedy for a trial court’s failure to admonish a defendant of a mandatory supervised release term (MSR) obligation before the entry of a guilty plea could not be applied retroactively as the Illinois Supreme Court held in *People v. Morris*.

¶2 Defendant Alvino Martinez appeals from the trial court’s second-stage dismissal of his petition for relief under the Post-Conviction Hearing Act. *725 ILCS 5/122-1 et seq.* (West 2010). Our supreme court held in *People v. Whitfield*, 217 Ill. 2d 177 (2005), that, when a trial court sentences a defendant to the Illinois Department of Corrections pursuant to a plea agreement, it must inform the defendant that a mandatory supervised release (“MSR”) term will be added to

that sentence. In the case at bar, the trial court dismissed defendant's petition finding that there was no relief available for defendant under *Whitfield* because the benefit permitted in *Whitfield* does not apply retroactively. See *People v. Morris*, 236 Ill. 2d 345, 366 (2010).

¶3 On appeal, defendant contends that the trial court erred in dismissing his petition because defendant's claim is based on the United State's Supreme Court case *Santobello v. New York*, 404 U.S. 257 (1971) (holding that where a state fails to keep its sentencing commitments on a guilty plea, defendant is entitled to a remedy).

¶4 BACKGROUND

¶5 The underlying facts relevant to this post-conviction appeal are undisputed by the parties. First, in 1998, defendant plead guilty to first-degree murder and aggravated criminal sexual assault in exchange for consecutive sentences of 24 years and 6 years, respectively, in the Illinois Department of Corrections. Second, the trial court failed to inform defendant of a three-year mandatory supervised release ("MSR") period that would follow his 30-year sentence.

¶6 In 2005, our Illinois Supreme Court found in *Whitfield* that a trial court's failure to admonish a defendant about the MSR period resulted in a violation of his constitutional right to due process and that the appropriate remedy was to modify the defendant's sentence by incorporating the MSR in the number of years to which he was sentenced. *Whitfield*, 217 Ill. 2d at 205. Five years later, in 2010, our Illinois Supreme Court clarified the *Whitfield* decision in *Morris* finding that the new rule announced in *Whitfield* had no retroactive application. *Morris*, 236 Ill. 2d at 366.

¶7 First, defendant argues that *Morris* does not bar his claim because his claim is based on *Santobello*. Defendant also argues that this court wrongly decided *People v. Demitro*, 406 Ill.

App. 3d 954 (1st Dist. 2010), when we held that a defendant to whom *Whitfield* does not apply may not make an independent *Santobello* claim. *Demitro*, 406 Ill. App. 3d at 957.

¶8 Defendant reasons that, because *Whitfield* was based on *Santobello*, a defendant must be able to claim the benefit found in *Santobello*. Additionally, defendant argues, under the federal Supremacy Clause (U.S. Const. art. VI, cl. 2), *Morris* cannot preclude a defendant from asserting an independent due process claim pursuant to *Santobello*, and if it does, *Morris*, too, was wrongly decided.

¶9 ANALYSIS

¶10 Defendant appeals the second stage dismissal of his post-conviction petition, claiming that the sentencing court's failure to advise him of the MSR term requires a decrease in his sentence to account for the three years of his MSR. Defendant requests this court to vacate the trial court's dismissal of his post-conviction petition and remand for a third stage evidentiary hearing.

¶11 The Post-Conviction Hearing Act provides a three-step process for defendants who claim a deprivation of their constitutional rights to make a collateral attack on the court's judgment. 725 ILCS 5/122-1 (West 2010). The filing of a petition in the trial court in which the original proceeding took place commences proceedings under the Act. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). The Act requires that the petition must "clearly set forth the respects in which petitioner's constitutional rights were violated." 725 ILCS 5/122-2 (West 2010). A defendant needs to only present a limited amount of detail and is not required to include formal legal arguments or citations to legal authority, so long as the petition states the gist of some arguable constitutional claim. See *Hodges*, 234 Ill. 2d at 9-10. Once the petition is filed, the trial court independently determines, within 90 days of the petition's filing, whether it states the gist of a

constitutional claim, or whether it is frivolous or patently without merit, while taking the allegations as true, except when they conflict with the record. *725 ILCS 5/122-2.1* (West 2010).

The petition may be dismissed as frivolous or patently without merit if it has no arguable basis either in law or in fact. *Hodges*, 234 Ill. 2d at 12. No arguable basis in law or in fact means that the arguments are “based on an indisputably meritless legal theory” or its “factual contentions are clearly baseless,” e.g., ‘claims describing fantastic or delusional scenarios.’” *Hodges*, 234 Ill. 2d at 12-13 (quoting *Nietzke v. Williams*, 490 U.S. 319, 324 (1989)). If the court determines that the petition is either frivolous or patently without merit, the court will dismiss the petition.

Hodges, 234 Ill. 2d at 10.

¶12 If the petition states the gist of a constitutional claim, it advances to the second stage where counsel may be appointed for a defendant who cannot afford counsel, and defendant has the opportunity to amend the petition. *Hodges*, 234 Ill. 2d at 10. The State then has the opportunity to file a motion to dismiss or to answer the petition. *Hodges*, 234 Ill. 2d at 10. If the motion to dismiss is denied, or if no motion to dismiss is filed, the State must answer the petition, and, excluding the allowance of any further pleadings by the court, the proceeding will advance to the third stage. *People v. Pendleton*, 223 Ill. 2d 248, 472-73 (2006). The third stage provides an evidentiary hearing where the defendant may present evidence in support of his petition. *Pendleton*, 223 Ill. 2d at 473.

¶13 Because this appeal arises from a claim dismissed at the second stage of the post-conviction process, a *de novo* review is required. *People v. Coleman*, 183 Ill. 2d 366, 385, 388-89 (1998). On review, we may affirm the decision of the circuit court on any grounds supported by the record, regardless of the circuit court’s reasoning. *Demitro*, 406 Ill. App. 3d at 956.

¶14 Defendant contends on appeal that the circuit court erred in granting the State's motion to dismiss his petition because, according to *Santobello*, his due process rights were violated when he was not admonished about the three-year MSR period to follow his terms of imprisonment during sentencing. *Santobello*, 404 U.S. at 262. In *Santobello*, a defendant was induced to withdraw his plea of not guilty in exchange for a guilty plea to a lesser charge with an agreement from the prosecutor to make no recommendation as to the sentence. *Santobello*, 404 U.S. at 258. At sentencing, a new prosecutor appeared and recommended the maximum sentence, which the judge imposed. *Santobello*, 404 U.S. at 258. The defendant appealed and the U.S. Supreme Court held that when a defendant does not receive the benefit of his negotiated plea bargain due to a breach of the agreement with the government, the defendant's relief is either specific performance of the agreement or withdrawal of his guilty plea. *Santobello*, 404 U.S. at 263. In the case at bar, defendant argues that because he will not receive the benefit of his negotiated plea bargain he has asserted a substantial constitutional violation, pursuant to *Santobello*.

¶15 We recently decided this identical argument in *People v. Demitro*, 406 Ill. App. 3d 954 (1st Dist. 2010). In *Demitro*, the trial court also failed to admonish the defendant of his MSR obligation before accepting his guilty plea. *Demitro*, 406 Ill. App. 3d at 955. The defendant, in that case, filed a post-conviction petition alleging that, according to *Santobello*, the trial court's failure to inform him of the MSR term violated his due process rights because he did not receive the benefit of his plea bargain. *Demitro*, 406 Ill. App. 3d at 956. In *Demitro* we found that a defendant may not make an independent *Santobello* claim because the law of this state is controlled by the Illinois Supreme Court's decisions in *Whitfield* and *Morris*. *Demitro*, 406 Ill. App. 3d at 957.

¶16 We explained:

“Where *Whitfield* was the first time the supreme court relied on *Santobello* in the context of MSR, defendant cannot maintain a claim for that remedy without relying on the holding in *Whitfield*. By citing *Santobello*, defendant cannot avoid the effect of its progeny *Whitfield* and its limitation on prospective application under *Morris*.” *Demitro*, 406 Ill. App. 3d at 957.

¶17 Just as we found in *Demitro*, we find that defendant’s claim was properly denied by the circuit court. Defendant seeks the relief ordered by our supreme court in *Whitfield*, which was limited in *Morris*. The supreme court in *Morris* held that *Whitfield* announced a new rule that may not be applied retroactively to cases on collateral review. *Morris*, 236 Ill. 2d at 366. Specifically, *Morris* held that *Whitfield* may only be applied prospectively because it was the first time the Illinois Supreme Court held that a flawed MSR admonishment deprived a defendant of due process and created an unprecedented and original remedy. *Demitro*, 406 Ill. App. 3d at 956-57 (citing *Morris*, 236 Ill.2d at 361).

¶18 We stand by our decision in *Demitro*, which is dispositive in this case. The Illinois Supreme Court clearly stated in *Morris* that “the new rule announced in *Whitfield* should only be applied prospectively to cases where the conviction was not finalized prior to December 20, 2005, the date *Whitfield* was announced.” *Morris*, 236 Ill. 2d at 366. In the case at bar, defendant plead guilty and his conviction was finalized on November 18, 1998, more than seven years prior to the decision in *Whitfield* and, as such, retroactive relief under *Whitfield* is not available to defendant. *Morris*, 236 Ill. 2d at 366.

¶19 We must also emphasize the doctrine of *stare decisis* as it looms over the argument made in this case. Both *Whitfield* and *Morris* are Illinois Supreme Court cases interpreting the United

States Supreme Court decision in *Santobello*. *Morris*, 236 Ill. 2d at 356, 358; *Whitfield*, 217 Ill. 2d at 189. This court lacks authority to overrule decisions of the Illinois Supreme Court which are binding on all lower courts; only the Illinois Supreme Court may change its holding. *People v. Artis*, 232 Ill. 2d 156, 164 (2009). Thus, we reject defendant's argument that a defendant must be able to make an independent *Santobello* claim while avoiding this state's law as decided by the Illinois Supreme Court in *Whitfield* and *Morris*. Additionally, if *Morris* was wrongly decided, only the Illinois Supreme Court may reverse its decision. *Artis*, 232 Ill. 2d at 164.

¶20 A reviewing court can affirm the decision of a lower court on any appropriate grounds. *People v. Johnson*, 208 Ill. 2d 118, 128-29 (2004). Therefore we find it unnecessary to address the State's additional arguments concerning defendant's untimely petition and failure to show that the delay was not due to his culpable negligence.

¶21 Accordingly, defendant failed to allege the gist of a constitutional deprivation. Therefore we affirm the trial court's dismissal of defendant's post conviction petition.

¶22 Affirmed.