

No. 1-10-2479

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 08 CR 15463
)	
JODIE BOND,)	Honorable
)	Kenneth J. Wadas,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Quinn and Justice Harris concurred in the judgment.

ORDER

¶1 *Held:* First-stage dismissal of the defendant's post-conviction petition affirmed as modified where the record rebuts his claim that the trial court's admonishment regarding the requisite MSR term before accepting his plea of guilty fell short of constitutional requirements; fees not statutorily authorized are vacated; and the defendant is entitled to a \$5-per-day credit against his fines.

¶2 Defendant Jodie Bond appeals from an order of the circuit court of Cook County summarily dismissing his *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)). The defendant contends that the circuit court erred in summarily dismissing his petition as frivolous and patently without merit because the trial court's admonition regarding mandatory supervised release (MSR) fell short of the due process requirements announced in *People v. Whitfield*, 217 Ill. 2d 177 (2005), and clarified in *People v. Morris*, 236 Ill. 2d 345 (2010). He also challenges the propriety of various pecuniary penalties imposed by the trial court and contends that he is entitled to a \$5-per-day credit against his fines for the 412 days he spent in

presentence custody.

¶ 3 The record shows that on September 9, 2009, the defendant entered into a fully negotiated plea of guilty to attempted murder in exchange for the State's dismissal of eight other charges and the recommendation of a sentence of nine years' imprisonment. After acknowledging the plea agreement between the parties, the trial court advised the defendant that this was a Class X felony punishable by a prison term of 6 to 30 years and an extended term under certain circumstances. The trial court also advised the defendant that he could be fined a maximum of \$25,000, and that probation was not an option. The trial court then asked the defendant if he understood that any period of incarceration would be followed by a three-year MSR term, and the defendant responded, "Yes, sir." The defendant also indicated that he understood the consequences of pleading guilty. After he stipulated to the factual basis for the plea, the trial court accepted the defendant's plea of guilty to attempted murder, and entered a judgment of conviction upon it. The trial court sentenced him in accordance with the negotiated plea, with credit for 412 days already served in custody, and assessed costs in the amount of \$615. The defendant did not seek to withdraw his guilty plea or to otherwise perfect a direct appeal from the judgment entered.

¶ 4 On April 14, 2010, the defendant filed the subject *pro se* post-conviction petition alleging that he was deprived of the benefit of his plea bargain with the State. In support of his argument the defendant quoted *Santobello v. New York*, 404 U.S. 257, 262 (1971), where the supreme court held that due process mandates that "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." The defendant asserted that the trial court's mention of MSR during its discussion of the possible penalties did not adequately apprise him that a three-year MSR term would be added to his negotiated prison sentence. On June 25, 2010, the circuit court summarily dismissed the defendant's petition as frivolous and patently without merit based on the transcript of the plea hearing. The defendant now appeals that dismissal, and our review is *de novo*. *People v.*

Davis, 403 Ill. App. 3d 461, 464 (2010).

¶ 5 In this court, the defendant acknowledges that the trial court informed him of the MSR requirement before accepting his negotiated guilty plea, but contends that merely mentioning the MSR term during its discussion of the possible penalties was insufficient to inform him that it would apply to his actual sentence. The defendant thus requests that his sentence be reduced by the length of the MSR term under *Whitfield* because the trial court did not "explicitly link" the three-year MSR term to his negotiated sentence.

¶ 6 In *Whitfield*, the supreme court held that there is no substantial compliance with Supreme Court Rule 402 (eff. July 1, 1997) and that due process is violated when a defendant pleads guilty in exchange for a specific sentence and the trial court fails to advise him, prior to accepting his guilty plea, that a MSR term will be added to that sentence. *Whitfield*, 217 Ill. 2d at 195. The constitutional challenges, which stem from a trial court's failure to admonish on MSR, focus on matters that occur prior to the trial court's acceptance of a defendant's guilty plea. *Davis*, 403 Ill. App. 3d at 465.

¶ 7 In *Morris*, the supreme court clarified that "*Whitfield* requires that defendants be advised that a term of MSR will be added to the actual sentence agreed upon in exchange for a guilty plea to the offense charged." *Morris*, 236 Ill. 2d at 367. The supreme court observed that an admonition that mentions the term "MSR" without placing it in some relevant context cannot serve to advise the defendant of the consequences of his guilty plea and cannot assist him in making an informed decision. *Morris*, 236 Ill. 2d at 366. However, the supreme court noted that "there is no precise formula in admonishing a defendant of his MSR obligation," and that an admonition "must be read in a practical and real sense." *Morris*, 236 Ill. 2d at 366.

¶ 8 Here, after the plea agreement of nine years in the penitentiary had been reached between the defendant and the State, and before accepting his guilty plea, the trial court admonished the defendant that any period of incarceration would be followed by a three-year MSR term. This

admonishment reinforces, "in a practical and realistic sense," that the defendant was placed on notice "that his debt to society for the crime he admits to having committed extends beyond fulfilling his sentence to the penitentiary." *Davis*, 403 Ill. App. 3d at 465-66. Under *Whitfield*, a constitutional violation arises only if the trial court makes no mention to the defendant before he pleads guilty that he must serve an MSR term in addition to the sentence agreed upon in exchange for his guilty plea. *Davis*, 403 Ill. App. 3d at 466.

¶9 We acknowledge the split of authority, cited by the defendant in his reply brief, on the issue of whether the mere mention of MSR at the guilty plea hearing satisfies the requirements of *Whitfield*. However, in *Davis*, 403 Ill. App. 3d at 467, this court considered the issue settled by its decision in *People v. Marshall*, 381 Ill. App. 3d 724 (2008), which was cited with approval by the supreme court in *Morris*, 236 Ill. 2d at 367.

¶10 In *Marshall*, this court found that the requirements of Supreme Court Rule 402 (eff. July 1, 1997) and due process were met where the judge did not mention MSR at sentencing or in the written sentencing judgment, but did advise the defendant of the requirement before accepting his guilty plea. *Marshall*, 381 Ill. App. 3d at 736. Consistent with *Marshall*, a defendant, as here, who negotiates a specific sentence in exchange for his plea of guilty before the plea hearing is conducted, receives the full bargain made with the State upon receiving that sentence. *Davis*, 403 Ill. App. 3d at 466. Although we recognize that the "better practice would incorporate the mandatory supervised release admonition when the specific sentencing is announced" (internal quotation marks omitted) (*Morris*, 236 Ill. 2d at 367), we find that the admonition in the instant case comports with those in *Marshall* and *Davis*, and that the defendant's claim to the contrary is rebutted by the record. *People v. Hunter*, 2011 IL App. (1st) 093023, ¶ 19.

¶11 The defendant next contends that the trial court was not statutorily authorized to assess a \$5 court system fee (55 ILCS 5/5-1101(a) (West 2008)), a \$25 court supervision fee (625 ILCS 5/16-104c (West 2008)), a \$20 serious traffic violation fee (625 ILCS 5/16-104d (West 2008)), and a \$10

medical costs fund fee (730 ILCS 125/17 (West 2008)). He notes that a sentence not authorized by statute is void and may be challenged at any time, citing *People v. Arna*, 168 Ill. 2d 107 (1995). We agree with the defendant and reject the State's argument that this issue is forfeited and otherwise not cognizable under the Act. *People v. Thompson*, 209 Ill. 2d 19, 24-25 (2004). An attack on a void judgment does not depend on the Act for its viability. *People v. Brown*, 225 Ill. 2d 188, 199 (2007).

¶ 12 That said, we accept the State's concession, and agree, that the \$5 court system fee, \$25 traffic court supervision fee, and \$20 serious traffic violation fee were improper and should be vacated. These fees can only be imposed upon conviction or placement on supervision for either a violation of the Illinois Vehicle Code, a municipal ordinance or serious traffic violation, which is not the case here. *People v. Williams*, 405 Ill. App. 3d 958, 964-65 (2010). As for the \$10 medical costs fund fee, we observe that the supreme court has now resolved the issue and held that the version of the statute that the defendant argues applies to him, imposes a mandatory fee on all convicted defendants. *People v. Jackson*, 2011 IL 110615, ¶ 24. In light of *Jackson*, we find that the trial court properly assessed the \$10 medical costs fund fee. *People v. Stuckey*, 2011 IL App (1st) 092535, ¶ 34.

¶ 13 Lastly, the defendant contends, and the State concedes, that he is entitled to a \$5-per-day credit against the \$10 mental health court fee, the \$5 youth diversion/peer court fee, the \$30 children's advocacy center fee, and the \$5 drug court fee. We agree with the parties that such credit is due (*Williams*, 405 Ill. App. 3d at 965-66), but only to the extent necessary to offset these fines (*People v. Isaacson*, 409 Ill. App. 3d 1079, 1086 (2011)).

¶ 14 For the reasons stated, we vacate the \$5 court system fee, the \$25 traffic court supervision fee, and the \$20 serious traffic violation fee; amend the fines, costs and fees order to reflect presentence incarceration credit toward the remaining fines, as stated; and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 15 Affirmed as modified.

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