

FIRST DIVISION
August 1, 2011

2011 IL App (1st) 092607-U
No. 1-09-2607

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. 07 CR 4623
)	
CARTRELL BRENT a/k/a JOHN GALLAWAY,)	Honorable
)	Larry G. Axelrood,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hall and Justice Hoffman concur with the judgment.

ORDER

HELD: Where defendant had served his prison sentence, his *Whitfield* claim, that the circuit court's failure to advise him of mandatory supervised release (MSR) during his negotiated-guilty plea hearing required that his prison sentence be reduced, was moot. Appeal dismissed.

¶ 1 Defendant, Cartrell Brent, appeals from the second-stage dismissal of his amended-postconviction petition. On appeal, defendant contends that, at the time of his negotiated-guilty plea to a Class 1 felony, the circuit court made no mention of the required two-year period of mandatory supervised release (MSR) he must serve. Defendant has since served his prison sentence. On appeal, defendant requests our court strike his MSR term to give him the benefit of his plea bargain or, in the alternative, award him credit against his remaining MSR term. For the reasons that follow, we dismiss this appeal.

¶ 2 On June 5, 2007, defendant entered a negotiated-guilty plea to possession of a controlled

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substance (heroin) with intent to deliver - a Class 1 felony. Pursuant to the plea agreement, defendant was sentenced to five years in prison. The sentence was to run consecutive to a three-year prison sentence on an unrelated Class 2 felony, which resulted in an aggregate sentence of eight years. During the change-of-plea hearing, the court did not mention MSR, nor was an MSR period mentioned in the order of commitment.

¶ 3 On April 8, 2008, defendant filed a *habeas corpus* petition with an attached motion for reduction of sentence. The motion raised several challenges to his sentence but did not assert an argument based on the court's failure to advise defendant of an MSR term. On May 14, 2008, the sentence reduction motion was denied.

¶ 4 In June 2008, defendant filed a motion for free transcripts. On April 17, 2009, a public defender appointed to represent defendant advised the court that defendant had sought the transcripts to file a claim pursuant to *People v. Whitfield*, 217 Ill. 2d 177 (2005). The public defender filed an amended-postconviction petition, which alleged that, when defendant pleaded guilty, the circuit court had failed to mention he would be required to serve a two-year term of MSR, in addition to his prison sentences. The petition asserted defendant was entitled to a reduction in his prison sentence pursuant to *Whitfield*. Acknowledging, however, that four years was the statutory minimum sentence for defendant's Class 1 felony, the petition requested defendant's five-year sentence be reduced by only one year. The amended petition stated defendant did not desire the alternate relief of withdrawing his guilty plea and noted defendant had a projected-parole date of December 10, 2010.

¶ 5 The State filed a motion to dismiss the amended petition and defendant filed a written response. On September 4, 2009, after continuances were requested by both parties, argument was heard on the pleadings. The circuit court denied the amended-postconviction petition on the basis that it could not give the appropriate relief because the court could not reduce defendant's sentence by more than one year, and a one-year sentence credit was inadequate under *Whitfield*.

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¶ 6 On appeal, this court has been advised defendant has been paroled¹ and has amended his request for relief which requests we strike or reduce his MSR term to give him the benefit of his negotiated-plea agreement. However, we have authority only to modify sentencing, not to strike an MSR term. *People v. Porm*, 365 Ill. App. 3d 791, 795 (2006). Defendant's request for relief pursuant to *Whitfield* is now moot. *Porm*, 365 Ill. App. 3d at 795. When a case is moot because issues extant in the circuit court no longer exist due to intervening events making it impossible for this court to grant effectual relief to defendant, it must be dismissed. *People v. McNulty*, 383 Ill. App. 3d 553, 558 (2008).

¶ 7 Appeal dismissed.

¹ The Illinois Department of Corrections website confirms that defendant was paroled on January 10, 2011.