

No. 1-09-3408

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).

FOURTH DIVISION
February 17, 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. 06 CR 7869
)	
MICHAEL HALL,)	Honorable
)	Dennis J. Porter,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Gallagher and Justice Pucinski concurred
in the judgment.

O R D E R

HELD: Summary dismissal of defendant's *pro se* post-conviction affirmed where record contradicted his *Whitfield* claim; filing fees and costs properly imposed against defendant for filing a frivolous petition, but revocation of good-conduct credit reversed and remanded; \$5 court system fee vacated.

Defendant Michael Hall 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)). He contends that he stated a meritorious claim that the trial court failed to explicitly link his agreed-upon 18-year sentence to the three-year period of mandatory supervised release (MSR), which denied him the benefit of his plea bargain and due process of law. Defendant also contests the propriety of certain pecuniary penalties imposed against him, and the circuit court's notification to the Illinois Department of Corrections (IDOC) that they may initiate revocation proceedings of his good-conduct credit.

On September 19, 2006, defendant entered a negotiated guilty plea to one count of home invasion and was sentenced to 18 years' imprisonment with a three-year term of MSR. At the plea proceeding, the court admonished defendant, *inter alia*, that,

"[b]y pleading guilty, it being a class X felony, class X felony if you're convicted you must be sentenced to the penitentiary for period not less than six years or more than 30 years.

When you get out of the penitentiary, you have a term of mandatory supervised release of three years to do. That's what they used to call parole.

Also be fined up to \$25,000. If you had a previous conviction for class X or greater felony within last ten years, then you could be sentenced to the penitentiary for up to 60 years. If you had two prior convictions for class X felony, you'd have to be sentenced to natural life on this charge."

Defendant indicated that he understood the possible penalties and still wished to plead guilty. The court accepted defendant's plea, sentenced him to the agreed term of 18 years' imprisonment, and assessed him court costs and fees. On October 24, 2006, defendant filed a *pro se* motion to withdraw his guilty plea, then subsequently withdrew it, and made no further attempt to perfect an appeal from the judgment entered on his plea.

On September 23, 2009, defendant filed a *pro se* post-conviction petition. He alleged that his due process rights were violated, and that he was denied the benefit of the bargain, when a three-year term of MSR was added to his negotiated sentence, resulting in a more onerous sentence. Defendant further alleged that the plea he negotiated with the State provided that he would be sentenced to 18 years' imprisonment, "but, once in the court room, a 3 year [MSR term] was added to [his] negotiated plea agreement." He claimed that the plea bargain "was immediately violated once [he] appeared before the honorable judge, with the addition of a [three-year] MSR term."

Defendant then alleged that the "gist" of his entire motion was that the admonition was made "not in what [he] actually was bargaining for," but in the context of the penalty phase. He quoted the court's MSR admonishment, claimed that it was inadequate and that no questions were asked regarding this MSR addition. Defendant further alleged that, "[to] tell [] the truth, [he] never heard of this MSR," and was told to check in with a parole officer and not a MSR officer when he left prison. He maintained that whether or not he was admonished of the MSR term, the imposition of the term violated his due process rights; that when he came to prison, he learned that the term would be added to his plea agreement by operation of law; then conceded that it was statutorily mandated, but requested that his sentence be modified to approximate his plea bargain with the State.

On October 22, 2009, the circuit court summarily dismissed defendant's petition. In doing so, the court observed that defendant did not claim that the trial court failed to admonish him of the three-year term of MSR, but that he was not aware of the MSR term until the trial court admonished him of it, and that the MSR addition violated his due process rights regardless of any admonishment. The circuit court noted that defendant misinterpreted the law, and the record showed that the trial court duly admonished him of the MSR term. The court then

dismissed defendant's petition as frivolous and patently without merit.

The circuit court also assessed defendant \$105 in fees and costs for filing a frivolous petition. In doing so, the court noted that the petition lacked an arguable basis in law or in fact, did not have evidentiary support, and was presented to hinder, cause unnecessary delay, and needless increase in the cost of litigation. The court also informed defendant that it would notify the legal department of the prison where he was incarcerated of its decision, and that it may revoke his good-time credit pursuant to section 3-6-3(d) of the Unified Code of Corrections (Code) (730 ILCS 5/3-6-3(d) (West 2008)). The court then sent a letter to prison officials informing them of its decision to assess defendant \$105 pursuant to section 3-6-3(d) of the Code, and that they could take further action as deemed appropriate.

On appeal, defendant first contends that the circuit court erred in dismissing his petition because he stated a meritorious claim that the trial court failed to explicitly link the three-year term of MSR to the agreed-upon sentence. He maintains that this error denied him the benefit of his plea bargain and due process of law.

At the first stage of post-conviction proceedings, a *pro se* defendant need only present the gist of a meritorious

constitutional claim. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). The gist standard is a low threshold, requiring that defendant only plead sufficient facts to assert an arguably constitutional claim. *People v. Brown*, 236 Ill. 2d 175, 184 (2010). If a petition has no arguable basis in law or in fact, it is frivolous and patently without merit, and the court must summarily dismiss it. *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). Our review of the dismissal of a post-conviction petition is *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388-89 (1998).

Defendant maintains that he alleged a meritorious claim in his petition based on *People v. Whitfield*, 217 Ill. 2d 177 (2005) and *People v. Morris*, 236 Ill. 2d 345 (2010). In *Whitfield*, 217 Ill. 2d at 190, the supreme court held that the trial court's failure to admonish defendant of the MSR term during the guilty plea proceeding amounts to a unilateral modification and breach of the plea agreement with the State entitling him to relief.

Here, unlike *Whitfield*, the record shows that defendant was admonished of the three-year term of MSR that he was required to serve upon his release from the penitentiary. Although the trial court did not refer to this term again at the time of sentencing, the admonishment given to him comports with those previously found compliant with *Whitfield* by this court. *People v. Davis*, 403 Ill. App. 3d 461, 465 (2010), and cases cited therein.

Defendant, however, claims that, in *Morris*, the supreme court clarified that *Whitfield* requires the trial court to explicitly link the term of MSR to his agreed-upon sentence or plea of guilty by specifically stating that the MSR term would be added to his actual sentence agreed upon in exchange for his guilty plea. We disagree.

In *Morris*, 236 Ill. 2d at 367, the supreme court noted that *Whitfield* requires defendants to be advised that a term of MSR will be added to the actual sentence agreed upon in exchange for the guilty plea. The court further stated that "[i]deally," this admonition would explicitly link the MSR term to the sentence defendant agreed upon in exchange for his guilty plea, be given when the court reviewed the provisions of the agreement, and be reiterated at sentencing and in the written judgment. *Morris*, 236 Ill. 2d at 367. However, the supreme court further noted that there is no precise formula for accomplishing this, and that the admonition is sufficient if an ordinary person in defendant's circumstances would understand it to convey the required warning. *Morris*, 236 Ill. 2d at 366.

Here, the record shows that defendant was duly informed of the required term of MSR during the plea proceedings, and we find that an ordinary person in defendant's circumstances would understand the admonition given to convey that he was required to serve a term of MSR. We thus conclude that defendant failed to

present an arguable basis in fact or in law that the court failed to sufficiently advise him that a term of MSR was added to his negotiated sentence, and that the circuit court properly dismissed his petition as frivolous and patently without merit. *Hodges*, 234 Ill. 2d at 16.

Defendant next contends that the court erred in imposing \$105 in fees and costs against him for filing a frivolous petition pursuant to section 22-105 of the Illinois Code of Civil Procedure (Civil Procedure) (735 ILCS 5/22-105 (West 2008)), and erred in notifying the IDOC of this result under section 3-6-3(d) of the Code (730 ILCS 5/3-6-3(d) (West 2008)) so that it could initiate revocation of his good-conduct credit. He maintains that even if he failed to state the gist of a constitutional claim in his petition, it was not frivolous for the purposes of these statutes which, he claims, is to punish defendants who knowingly file meritless petitions and not those who file in good faith.

The cardinal rule of a statutory construction issue, such as the one here, is to ascertain and give effect to the intent of the legislature which is best determined by the plain and ordinary meaning of the language of the statute. *People v. Jamison*, 229 Ill. 2d 184, 188 (2008). Where that language is clear and unambiguous, we must apply the statute without further aids of statutory construction. *People v. Jones*, 223 Ill. 2d

569, 581 (2006). Our review of the construction of the statutes is *de novo*. *Jones*, 223 Ill. 2d at 580.

Section 22-105 of the Code of Civil Procedure provides, in relevant part, that if a prisoner in the IDOC files a post-conviction petition and the court specifically finds that it is frivolous, the prisoner is responsible for full payment of filing fees and court costs. Section 22-105 defines a petition as frivolous if, *inter alia*, it lacks an arguable basis in fact or in law, is presented for any improper purpose such as to harass, cause unnecessary delay or needless increase in the cost of litigation, or does not have evidentiary support.

Defendant maintains that if a petition is filed in good faith, it is not frivolous for purposes of section 22-105. In support of this claim, he cites to statements made at proceedings before the House of Representatives in 1997 regarding the enactment of section 22-105 and amendments to two other statutes. We, however, need not resort to any further aid of statutory construction since we find that the language of section 22-105 is clear and unambiguous. *Jones*, 223 Ill. 2d at 581. In section 22-105, the definitions of "frivolous" include not only situations where defendant presented the petition for an "improper purpose" such as to harass, but also where it simply "lacks an arguable basis either in law or in fact." 735 ILCS 5/22-105(b) (1) and (2) (West 2008). We find that this plain

language clearly and unambiguously indicates that the court may impose fees and costs where the petition fails to present an arguable basis in fact or in law without regard to defendant's purpose in presenting it.

Defendant further maintains that his petition was not frivolous under section 22-105 because at the time he filed it the issue he raised in it was pending before the supreme court in *Morris* and there was a split of authority on it. *Morris* has no bearing here where defendant failed to present an arguable basis in fact or in law that he was not sufficiently advised of the MSR term where his claim was contradicted by the record and he admitted in his petition that he was aware of the addition of the MSR term at the guilty plea proceeding. We, therefore, find that his petition was frivolous as defined under section 22-105 of the Civil Procedure, and that the court did not err in imposing \$105 in fees and fines against him.

Defendant, however, maintains that section 22-105 violates his due process and equal protection rights¹. He maintains that the statute discourages indigent *pro se* defendants from filing a petition by threatening them with pecuniary penalties for failing to adequately articulate a non-frivolous claim, thereby denying

¹Defendant represents that this issue is currently pending before the supreme court in *People v. Alcozar*, No. 1-07-2092 (2009) (unpublished order under Supreme Court Rule 23), *appeal allowed*, No. 108109 (March 24, 2010).

them meaningful access to the courts, and violates his equal protection rights by targeting prisoners to the exclusion of other defendants.

This court has repeatedly found that section 22-105 does not deny defendants meaningful access to the courts as the costs and fees are only charged if the funds exist, no financial consideration is interposed between defendants and their access to the courts as they are only charged after filing a document found to be frivolous, and the assessments are rationally related to the State's interest in maintaining efficiency and administration of our legal system. *People v. Smith*, 383 Ill. App. 3d 1078, 1094-96 (2008) (and cases cited therein). Furthermore, the imposition of the fee for filing a frivolous claim, as defendant did here, does not violate his right to meaningful access to the courts. *Smith*, 383 Ill. App. 3d at 1095. We therefore, reject defendant's due process argument, as well as his equal protection claim. Although defendant maintains that the latter is supported by *Rinaldi v. Yeager*, 384 U.S. 305 (1966), we have already found *Rinaldi* unpersuasive (*People v. Jarrett*, 399 Ill. App. 3d 715, 729 (2010)), and continue to do so here.

We agree with defendant, however, that section 3-6-3(d) of the Code was erroneously applied in this case. Under that section, if a prisoner files a lawsuit against the State, the

Department of Corrections or Prisoner Review Board, and the court makes a specific finding that the motion or pleading is frivolous, the IDOC shall conduct a hearing to revoke defendant's good-conduct credit. Prior to the 2008 amendment, section 3-6-3(d)(2), defined lawsuit as, *inter alia*, a petition for post-conviction relief (730 ILCS 5/3-6-3(d)(2) (West 2006)), however under the amendment, first post-conviction petitions were removed from the definition of lawsuit (Pub. Act. 95-585 §5 (eff. June 1, 2008)). *People v. Shaw*, 386 Ill. App. 3d 704, 711 (2008). That section, as amended, provides that the definition of lawsuit includes, *inter alia*, second or subsequent post-conviction petitions. 730 ILCS 5/3-6-3(d) (West 2008).

Since defendant's post-conviction petition is his first and was filed after the 2008 amendment, section 3-6-3(d) does not apply to him. 730 ILCS 5/3-6-3(d) (West 2008). The circuit court thus erred in directing the IDOC to conduct a hearing to revoke defendant's good-conduct credit, and we direct the circuit court to notify the IDOC of the error and to reinstate any good-conduct credit that might have been revoked on that basis.

Defendant finally asserts and the State concedes that the trial court improperly assessed him a \$5 court-system fee. Our *de novo* review of the imposition of this fee (*People v. Price*, 375 Ill. App. 3d 684, 697 (2007)), leads us to agree with the

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parties that it is inapplicable here because this fee only applies to vehicle offenses (55 ILCS 5/5-1101(a) (West 2006)).

In light of the foregoing, we vacate the \$5 court-system fee and direct that the fines and fees order be modified to that effect; direct the circuit court inform the IDOC of its error concerning the revocation of any good-conduct credit on that basis and rectify the error; and affirm the circuit court's order in all other respects.

Affirmed in part; vacated in part; remanded with directions.