

2011 IL App (1st) 100703-U  
No. 1-10-0703

**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).

FIFTH DIVISION  
July 22, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 97 CR 12518
	)	
ALEXANDER CHAMP,	)	Honorable
	)	Lawrence P. Fox,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Joseph Gordon and Epstein concurred in the judgment.

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**O R D E R**

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*HELD:* Where defendant argued in a successive post-conviction petition that he was entitled to relief on mandatory supervised release (MSR) issue, defendant's petition could not stand in light of the supreme court's holding that its earlier MSR decision did not apply retroactively; the circuit court's dismissal of the petition was affirmed.

¶ 1 Defendant Alexander Champ appeals the circuit court's dismissal of his successive *pro se* petition for relief under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2008)). On appeal, defendant contends the circuit court erred in dismissing his successive petition pursuant to *People v. Morris*, 236 Ill. 2d 345 (2010). We affirm.

¶ 2 Pursuant to a negotiated guilty plea in 2000, defendant was convicted of first degree murder and was sentenced to 50 years in prison. Defendant did not file a motion to withdraw his guilty plea or file a direct appeal of his conviction or sentence.

¶ 3 In 2001, defendant filed a *pro se* post-conviction petition that the circuit court dismissed as frivolous and patently without merit. Defendant did not appeal that ruling. In 2007, defendant filed a *pro se* petition seeking to correct a "void judgment," which also was dismissed. Defendant appealed that ruling, and this court affirmed. *People v. Champ*, No. 1-07-2879 (2008) (unpublished order under Supreme Court Rule 23).

¶ 4 On May 12, 2008, defendant filed a successive *pro se* petition for post-conviction relief. Defendant asserted that his petition relied on "exceptional circumstances," namely that a change in the law had occurred since the filing of his first petition. He stated that when his guilty plea was entered, he was not admonished that in addition to his 50-year sentence, he

would have to serve a three-year term of mandatory supervised release (MSR). In support of that contention, defendant cited *People v. Whitfield*, 217 Ill. 2d 177, 189-91 (2005), which held that when a defendant enters into a negotiated plea agreement, the court's failure to advise the defendant of an additional MSR period to be served following incarceration constitutes a breach of the plea agreement and violates principles of fundamental fairness.

¶ 5 Counsel was appointed to represent defendant, and counsel filed a supplemental petition for post-conviction relief to be considered together with defendant's *pro se* filing. The State moved to dismiss defendant's post-conviction claims in those petitions, asserting that defendant did not seek leave to file a successive petition.

¶ 6 On January 26, 2010, the circuit court denied the State's motion to dismiss without prejudice after the State asked to refile the motion based on recent case law. On February 10, 2010, the State filed a second motion to dismiss asserting defendant's petition should be dismissed because the holding of *Whitfield* did not apply retroactively to cases that were concluded prior to its issuance, as the Illinois Supreme Court held in *People v. Morris*, 236 Ill. 2d 345 (Jan. 22, 2010).

¶ 7 On March 3, 2010, the circuit court dismissed defendant's successive petition. The court noted: "We are at the

second stage [of post-conviction proceedings] where timeliness is an issue and I know we have a prior post-conviction petition in this case." The court went on to state it should have denied defendant leave to file the petition at the February hearing because defendant had not met the cause and prejudice requirements to bring a successive petition. The court held defendant's successive petition was not timely filed and, furthermore, under *Morris*, the rule in *Whitfield* did not apply retroactively to defendant.

¶ 8 On appeal, defendant contends the circuit court erred in dismissing his successive post-conviction petition and asserts he is entitled to relief under *Whitfield*.

¶ 9 The Act provides for the filing of only one post-conviction petition. *People v. Ortiz*, 235 Ill. 2d 319, 328 (2009). Whether a post-conviction petition is an initial or successive filing, this court's review of the petition's dismissal without an evidentiary hearing is *de novo*. See *People v. Anderson*, 401 Ill. App. 3d 134, 138 (2010); *People v. Williams*, 392 Ill. App. 3d 359, 367 (2009).

¶ 10 This court is bound to follow supreme court precedent. *People v. Fish*, 381 Ill. App. 3d 911, 917 (2008). Dispositive of this appeal is the supreme court's holding in *Morris* that *Whitfield* does not apply retroactively to cases finalized before December 2005, when *Whitfield* was decided. Defendant entered his

guilty plea in 2000 and took no direct appeal. Defendant's conviction thus was finalized well before the *Whitfield* decision in 2005. See *People v. Mendez*, 402 Ill. App. 3d 95, 100 (2010) (a defendant's conviction is final for purposes of retroactivity when the defendant has exhausted any available direct appeal). Therefore, the relief established by *Whitfield* is not available to defendant. See *People v. Demitro*, 406 Ill. App. 3d 954, 957 (2010). Although the circuit court referred to more than one basis for its dismissal of defendant's petition, we review the circuit court's judgment, not its reasoning, and if the judgment is correct, we may affirm on any basis supported by the record. See *People v. Anderson*, 401 Ill. App. 3d 134, 138 (2010).

¶ 11 Accordingly, the dismissal of defendant's successive post-conviction petition is affirmed.

¶ 12 Affirmed.