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FIRST DIVISION
FILED: JUNE 27, 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 17719
)	
NORMAN YOUNG,)	The Honorable
)	Joseph G. Kazmierski,
Defendant-Appellant.)	Judge Presiding.
)	

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Hall and Justice Lampkin concurred in the judgment.

O R D E R

HELD: Summary dismissal of post-conviction petition was proper where circuit court's admonishment about mandatory supervised release substantially complied with Illinois Supreme Court Rule 402(a)(2) (eff. July 1, 1997) and *People v. Whitfield*, 217 Ill. 2d 177 (2005), as required by *People v. Morris*, 236 Ill. 2d 345, 366-67 (2010).

Defendant Norman Young appeals from the summary dismissal of his petition for post-conviction relief, contending that he was

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not adequately admonished about mandatory supervised release during his guilty plea and sentencing proceedings. Defendant requests reduction of his sentence from 22 years to 20 years, or, alternatively, permission to withdraw the guilty plea, or remandment for second-stage post-conviction proceedings. We affirm.

Pursuant to a negotiated guilty plea on October 10, 2007, defendant was convicted of first degree murder, and was sentenced to a 22-year prison term to be served 100%.

The factual basis for the plea disclosed that on July 13, 2006, defendant and the victim, 31-year-old Stanley Nevils, had several fistfights throughout the day. At approximately 11:30 p.m., defendant went to the victim's house at 1516 West 87th Street in Chicago. When the victim came to the door, defendant fired several shots at him with a handgun, striking him several times in the chest, arm, and thigh. Defendant then fled. A witness, Michelle Barber, observed defendant leaving the area and wrapping the gun in a T-shirt. Defendant was apprehended later, and gave an admission to Chicago police detective Fassl.

Dr. Jorden of the Cook County Medical Examiner's Office would testify that she examined the victim's body on July 14, 2006, and observed the gunshot wounds to the victim's chest, thigh, and arm. Dr. Jorden would testify that those gunshot

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wounds constituted the cause of death to a reasonable degree of medical and scientific certainty, and that the manner of death was a homicide.

During the guilty plea proceeding, the circuit court admonished defendant as follows about mandatory supervised release:

"THE COURT: This is a murder in a class of offense all by itself which means in this case under the terms of the indictment here, the range of sentences you could get on this charge can go anywhere from a period in the penitentiary from 20 years to 60 years. Getting a penitentiary sentence you'll have to serve a period of three years mandatory supervised release, which is like parole, when you get out of the penitentiary. And this is a hundred percent sentence, as I said just a little while ago. There's no day-for-day good time sentence. You're going to be serving all this time that the parties just talked about. That's the range of sentences you could get for this charge. Do you understand that?

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THE DEFENDANT: Yes."

The court also admonished defendant of the rights he was waiving by pleading guilty, but did not re-admonish defendant about mandatory supervised release during the sentencing phase of the plea proceedings and did not refer to mandatory supervised release when it imposed sentence.

Defendant did not file a motion to withdraw the guilty plea or a direct appeal.

In 2009, defendant filed a *pro se* petition for post-conviction relief, alleging that he had been denied due process of law because he had not been properly informed about mandatory supervised release. The circuit court summarily dismissed the petition as frivolous and patently without merit in December 2009.

On appeal, citing *People v. Whitfield*, 217 Ill. 2d 177 (2005), and *People v. Morris*, 236 Ill. 2d 345, 366 (2010), defendant contends that his actual total sentence was 25 years, in violation of the plea agreement for 22 years, because the circuit court did not properly admonish him that a three-year term of mandatory supervised release would be added to and would follow the negotiated 22-year prison term. Defendant argues that the circuit court referred to mandatory supervised release only when discussing the possible sentences for first degree murder,

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and did not admonish him that mandatory supervised release would apply to the terms of his negotiated plea and be added to his actual 22-year prison sentence. He also maintains that his legal arguments cannot be characterized as indisputably meritless given the conflicting authorities.

A post-conviction petition may be summarily dismissed as frivolous and patently without merit only if it lacks an arguable basis in law or in fact, meaning that it "is based on an indisputably meritless legal theory or a fanciful factual allegation." *People v. Hodges*, 234 Ill. 2d 1, 16 (1009); see also *People v. Mendez*, 402 Ill. App. 3d 95, 98 (2010). The applicable standard of review for the summary dismissal of a post-conviction petition is *de novo*. See *People v. West*, 187 Ill. 2d 418, 426 (1999); *People v. Coleman*, 183 Ill. 2d 366, 388-89 (1998).

Illinois Supreme Court Rule 402(a)(2) (eff. July 1, 1997) requires the circuit court to provide various admonishments to a defendant who pleads guilty, including an admonishment about the minimum and maximum sentence.

In *Whitfield*, 217 Ill. 2d at 180, 195, 201, 205, neither the circuit court nor the prosecutor told the defendant during the plea hearing that he would have to serve three years of mandatory supervised release following his negotiated 25-year prison

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sentence for murder. The Illinois Supreme Court reversed the judgment, vacated the sentence, and remanded to the circuit court with directions to impose a prison sentence of 22 years, to be followed by a three-year term of mandatory supervised release. *Whitfield*, 217 Ill. 2d at 205.

In *Morris*, 236 Ill. 2d at 366, the Illinois Supreme Court ruled that *Whitfield* applies prospectively to post-conviction petitioners whose convictions were finalized after December 20, 2005, the date that the *Whitfield* decision was issued. The court in *Morris*, 236 Ill. 2d at 366, also stated that it was clarifying *Whitfield*. The court stated that, pursuant to *Whitfield*, the defendant must be advised that a period of mandatory supervised release will be added to the actual, agreed sentence, in exchange for the guilty plea. *Morris*, 236 Ill. 2d at 367. However, the court also stated that "there is no precise formula in admonishing a defendant" about mandatory supervised release, that the admonishment "need not be perfect" (*id.*), and that it is sufficient if it substantially complies with Supreme Court Rule 402 and case law precedent (*id.*).

Although the districts are divided over what constitutes a *Whitfield* violation after *Morris* (see the discussion in *People v. Dorsey*, 404 Ill. App 3d 829, 834-37 (2010)), the first district has held that a constitutional violation under *Whitfield* occurs

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only where there is no mention of mandatory supervised release (see *People v. Davis*, 403 Ill. App. 3d 461, 466 (2010)).

Here, *Whitfield* applies to defendant because his October 10, 2007, conviction occurred after the date that *Whitfield* was issued. Defendant acknowledges that the circuit court did admonish him about mandatory supervised release, but he complains that the admonishment occurred only in the context of possible penalties.

However, unlike *Whitfield*, this is not a case where the circuit court was absolutely silent about mandatory supervised release. See *Davis*, 403 Ill. App. 3d at 466. Instead, the circuit court substantially complied with *Whitfield* and Rule 402(a)(2) because it clearly admonished defendant that he would be getting a penitentiary sentence for the murder conviction, and that a penitentiary sentence would require him to serve a three-year period of mandatory supervised release, which was similar to parole, upon his release from the penitentiary. The clear meaning of the admonishments was that defendant would receive a penitentiary sentence to be followed by three years of mandatory supervised release. Under these circumstances, defendant failed to allege the gist of a meritorious constitutional claim in his post-conviction petition, and the circuit court's summary dismissal of the petition was proper.

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Finally, defendant cited *Santobello v. New York*, 404 U.S. 257, 262-63 (1971). Pursuant to *Santobello*, a defendant who pleads guilty pursuant to a plea agreement has a due process right to enforce the plea bargain. Defendant implies that his sentence should be reduced because he was denied the benefit of his plea bargain under *Santobello* and independent of *Whitfield*. However, *Morris* recognized that *Whitfield* relied on *Santobello*. *Morris*, 236 Ill. 2d at 361; see also *People v. Seyferlich*, 398 Ill. App. 3d 989, 993 (2010) (observing that the benefit of the bargain theory in *Whitfield* was "rooted in" *Santobello*). Therefore, *Santobello* is not independent of *Whitfield*, and defendant cannot avoid *Morris* by relying on *Santobello* instead of *Whitfield*. See *People v. Demitro*, 406 Ill. App. 3d 954, 957 (2010). We reject defendant's suggestion that the law applicable to his benefit of the bargain argument begins and ends in 1971 with *Santobello*.

We conclude that the circuit court correctly ordered the summary dismissal of defendant's post-conviction petition because the court's admonishment concerning mandatory supervised release substantially complied with *Whitfield* and Rule 402(a)(2) as required by *Morris*, and therefore the post-conviction petition was based on an indisputably meritless legal theory and a factual allegation rebutted by the record. See *Davis*, 403 Ill. App. 3d

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at 467.

We have considered, and rejected, all of defendant's arguments on appeal.

The judgment of the circuit court is affirmed.

Affirmed.