

No. 1-10-1347

**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).

THIRD DIVISION  
June 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. 05 CR 15473  
 )  
WILLIAM BRANSKE, ) Honorable  
 ) Thomas P. Fecarotta, Jr.,  
Defendant-Appellant. ) Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Quinn and Justice Murphy concurred in the judgment.

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**O R D E R**

*HELD:* The circuit court's dismissal of defendant's postconviction petition will be affirmed where he was adequately admonished during his guilty plea about the mandatory supervised release term that would be added to his sentence, and the record did not contradict postconviction counsel's averments of compliance in her Rule 651(c) certificate.

Defendant, William Branske, appeals the circuit court's order which dismissed his *pro se* postconviction petition. On appeal, defendant contends his six-year prison sentence for a Class X felony should be reduced to three years or, in the alternative, this court should strike his three-year term of mandatory supervised release (MSR) where, at the time of his negotiated guilty plea, the court made no mention of the three-year MSR term he would be required to serve. Defendant also contends his appointed postconviction counsel did not fulfill her obligation under Supreme Court Rule 651(c) (eff. Dec. 1, 1984) in that counsel failed to amend defendant's *pro se* petition. We affirm.

On June 19, 2006, defendant pled guilty to one count of predatory criminal sexual assault pursuant to a negotiated plea agreement and a *nolle prosequi* order was entered on the remaining felony counts pursuant to the agreement. The following exchange took place between defendant and the court during the plea:

"THE COURT: You are pleading guilty to a Class X felony. The law requires that I tell you what the minimum to maximum sentencing could be. I could sentence you from a minimum of six to a maximum of 30 years in the Illinois Department of Corrections, a \$25,000 fine, or both, followed by two years mandatory supervised release, which is like parole.

If you qualify for an extended term because of a qualifying previous conviction, I could sentence you from a minimum of 30 to a maximum of 60 years in the Illinois Department of Corrections, a \$25,000 fine, or both, followed by four years mandatory supervised release.

Knowing all of this, do you still wish to plead guilty?

THE DEFENDANT: Yes, I do, Your Honor."

At the request of defendant, who wished to make final arrangements before surrendering, the sentence was entered on the following day when the court imposed a sentence of six years in prison pursuant to the plea agreement. No mention was made of MSR at that time. Defendant did not file post-plea motions or attempt to perfect an appeal.

On March 23, 2009, defendant filed a *pro se* postconviction petition, contending the circuit court failed to admonish him that, in addition to his prison term, he was required to serve a three-year MSR term that was not part of his specific plea agreement. The petition acknowledged that he had been admonished that he would have to serve 85% of the six-year sentence. Defendant asserted that he did not seek to withdraw his guilty plea, but sought enforcement of the plea agreement, which did not include a term of MSR. The petition contended that, because "a term of mandatory supervised release [is] statutorily mandated" and "cannot be

legally stricken from his sentence," he sought reduction of his sentence from 85% of six year to two years, one month and six days, plus the three-year MSR term.

The court appointed a public defender to represent defendant in the postconviction proceedings. Appointed counsel subsequently filed a motion to withdraw as defendant's attorney on the basis that the transcript of the guilty plea showed the court had admonished defendant about MSR. The transcript of the guilty plea is attached to the motion to withdraw. Counsel also filed a Rule 651(c) certificate, stating she had consulted with defendant by letter on numerous occasions, examined the trial court file and the report of proceedings for the dates of the plea and sentencing, examined defendant's *pro se* petition, and concluded it was unnecessary to make any amendments to it for adequate presentation of defendant's contentions. The certificate also stated that the transcript of the guilty plea indicated the court had admonished defendant about MSR.

The State moved the court to dismiss defendant's petition on the ground that he had no available remedy, as his six-year sentence was the minimum sentence for the Class X felony to which he pleaded guilty and could not be reduced. The public defender did not object to the State's motion to dismiss, and the circuit court granted the motion. Defendant's motion for reconsideration

of the order dismissing his petition, with his objection to appointed counsel's withdrawal, was stricken.

On appeal, defendant first contends he is entitled to postconviction relief because he was denied the benefit of his negotiated plea bargain. He asserts that when he pleaded guilty, the circuit court did not inform him that he would receive a three-year MSR term in addition to his six-year sentence, but mentioned MSR only in context of the possible penalties he could receive. Defendant asks that we reduce his sentence by three years or, alternatively, that we strike his term of MSR.

We review *de novo* the dismissal of a postconviction petition without an evidentiary hearing. *People v. Marshall*, 381 Ill. App. 3d 724, 730 (2008). We conclude that dismissal of defendant's petition here was correct. A trial court's reference to MSR while explaining the possible sentencing ranges to a defendant, rather than while imposing sentence upon him, has been held to satisfy due process. *People v. Dorsey*, 404 Ill. App. 3d 829, 834-38 (2010); *People v. Andrews*, 403 Ill. App. 3d 654, 665-66 (2010); *People v. Davis*, 403 Ill. App. 3d 461, 467 (2010).

Defendant's argument is based upon language from our supreme court's decision in *People v. Morris*, 236 Ill. 2d 345, 367 (2010) that the trial court should explicitly link MSR to the sentence agreed upon. That "link," however, was what the supreme court viewed as the ideal or better practice, not the required practice.

In his reply brief, defendant acknowledges *Dorsey*, *Andrews*, and *Davis*, all of which were decided after *Morris*, but claims they are distinguishable because in each case the court's admonishments informed the defendant that a MSR term would follow any prison term they received. We find the facts in those cases are not readily distinguishable from the instant case where the court, after stating the possible range of sentence and fine that could be imposed, stated they would be "followed by two years mandatory supervised release, which is like parole."

Defendant recognizes that the court was mistaken in the length of the MSR term. For the Class X offense to which defendant pleaded guilty, predatory criminal sexual assault, the MSR term ranges from a minimum of three years to a maximum of natural life. 730 ILCS 5/5-8-1(d)(4) (West 2006). However, defendant does not suggest that the misstatement about the length of the MSR term, by itself, raises a constitutional violation for which he can obtain relief.

We conclude the circuit court's admonishments to defendant at his guilty plea hearing did not violate due process and, consequently, the claim in his postconviction petition was patently without merit and was properly dismissed.

Our conclusion disposes of defendant's second issue on appeal, that his appointed postconviction counsel failed to substantially comply with Rule 651(c) where she did not amend his

*pro se* petition. Rule 651(c) requires that the record demonstrate counsel has consulted with petitioner to ascertain his contentions, has examined the record of the proceedings at the trial, and "has made any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner's contentions." Fulfillment of the third obligation under Rule 651(c) does not require counsel to advance frivolous or spurious claims on defendant's behalf. *People v. Greer*, 212 Ill. 2d 192, 205 (2004). If an amendment to a *pro se* postconviction petition would only further a frivolous or patently nonmeritorious claim, it is not "necessary" within the meaning of the rule. *Greer*, 212 Ill. 2d at 205. Consequently, we give effect to counsel's representation in her certificate that she complied with Rule 651(c).

We affirm the judgment of the circuit court dismissing defendant's *pro se* postconviction petition.

Affirmed.