

THIRD DIVISION  
May 11, 2011

No. 1-10-1029

**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).

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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. 00 CR 1651
	)	
OSCAR NEVAREZ,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE STEELE delivered the judgment of the court.  
Presiding Justice Quinn and Justice Neville concurred in the judgment.

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**ORDER**

*Held:* Where defendant's conviction was finalized prior to the date *Whitfield* was announced, he is not entitled to application of the rule in that case; the trial court's judgment was affirmed.

Defendant Oscar Nevarez appeals from the second-stage dismissal of his *pro se* and supplemental petitions under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2008). On appeal, he contends that he was denied the benefit of his bargain where the trial court made no mention of

mandatory supervised release (MSR) in accepting his negotiated guilty plea. Defendant also maintains that he was not culpably negligent for the untimely filing of his petition. We affirm.

On October 17, 2000, defendant pleaded guilty to attempted first-degree murder and was sentenced to 14 years' imprisonment. The trial court made no mention of MSR during the guilty plea proceedings. Defendant failed to file a post-plea motion or a direct appeal challenging his guilty plea or sentence.

In 2007, defendant filed a *pro se* petition under the Act. In the petition, defendant relied on *People v. Whitfield*, 217 Ill. 2d 177 (2005), which afforded the guilty plea defendant sentencing relief where the trial court made no mention of MSR at his plea hearing. Defendant alleged that the trial court's failure to inform him that a three-year period of MSR was included in his sentence denied him the benefit of his plea bargain. Defendant's petition advanced to the second-stage of proceedings under the Act. In 2009, defendant's appointed counsel filed a supplemental petition, which highlighted the *Whitfield* decision and requested that defendant's sentence be reduced by three years. The State filed a motion to dismiss defendant's petitions, which was granted by the circuit court.

On appeal, defendant contends that he made a substantial showing of a constitutional violation where the trial court failed to admonish him of his three-year MSR term at the time of

his guilty plea. As relief, defendant requests that this court reduce his prison term from 14 to 11 years, followed by 3 years of MSR. In the alternative, defendant asks this court to remand his cause for a third-stage evidentiary hearing.

Our supreme court determined that *Whitfield* announced a new rule that will not be applied retroactively to cases on collateral review. *People v. Morris*, 236 Ill. 2d 345, 365-66 (2010). Specifically, *Whitfield* may only be applied prospectively to cases where the defendant's conviction was not finalized prior to December 20, 2005, the date *Whitfield* was announced. *Morris*, 236 Ill. 2d at 366.

Here, defendant's 2000 conviction was finalized before *Whitfield* was decided. Accordingly, defendant is not entitled to application of the rule announced in that case, and the trial court properly dismissed his petition.

Nevertheless, defendant contends that, independent of *Whitfield*, he did not receive the benefit of his plea bargain under *Santobello v. New York*, 404 U.S. 257, 262 (1971), which held that a defendant's due process rights may be violated where the State fails to honor its promise as part of a plea agreement. This court expressly rejected this argument in *People v. Demitro*, No. 1-09-2104, slip op. at 4 (Ill. App. Dec. 17, 2010), which held that *Whitfield* was dependent upon, not independent of, *Santobello*. We specifically held:

"[w]here *Whitfield* was the first time the supreme court relied on *Santobello* in the context of MSR, defendant cannot maintain a claim for that remedy without relying on the holding in *Whitfield*. By citing *Santobello*, defendant cannot avoid the effect of its progeny *Whitfield* and its limitation to prospective application under *Morris*."

*Demitro*, slip op. at 4.

Having so found, we need not address whether defendant was culpably negligent for the untimely filing of his petition. See *Demitro*, slip op. at 4 (finding no need to address whether defendant established a lack of culpable negligence where *Morris* was clearly applicable).

Accordingly, we affirm the judgment of the circuit court.

Affirmed.