

No. 1-10-1484

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).

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. 05 CR 1243
)	
ANTHONY CASTANEDA,)	Honorable
)	John J. Moran, Jr.,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Karnezis and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* First-stage dismissal of defendant's post-conviction petition affirmed where the record refutes his claim that the trial court's admonishment regarding the requisite MSR term before accepting his plea of guilty fell short of constitutional requirements.

¶ 2 Defendant Anthony Castaneda 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)). Defendant contends that the circuit court erred in summarily dismissing his petition as frivolous and patently without merit because the trial court's admonition regarding mandatory supervised release (MSR) fell short of the due process

requirements announced in *People v. Whitfield*, 217 Ill. 2d 177 (2005), and clarified in *People v. Morris*, 236 Ill. 2d 345 (2010).

¶ 3 The record shows that on July 16, 2007, defendant entered into a fully negotiated plea of guilty to one count of aggravated kidnaping in exchange for the State's dismissal of 11 other charges and recommendation of a sentence of nine years' imprisonment. After acknowledging the plea agreement between the parties, the trial court stated, "the sentence of the Court on a plea of guilty would be nine years Illinois Department of Corrections. And that would be – that you would have to serve 85 percent of that sentence." The trial court admonished defendant that the aggravated kidnaping charge, a Class X felony, "means that you could be sentenced anywhere from 6 to 30 years; fined up to \$25,000; and *upon your release, you will be on parole for a period of three years.*" (Emphasis added.) Defendant indicated that he understood the terms of the plea agreement, the possible sentencing range, and the consequences of pleading guilty to aggravated kidnaping. After defendant stipulated to the factual basis for the charge, the trial court accepted defendant's plea of guilty and sentenced him to nine years' imprisonment, "[p]er the agreement." Although he was advised of his right to appeal and how to perfect it, defendant did not attempt to do so.

¶ 4 On April 13, 2010, defendant filed the subject *pro se* post-conviction petition alleging that the trial court's mention of "parole" did not fairly apprise him that a three-year MSR term would be added to his negotiated prison sentence. As a result, he claimed that a three-year reduction in his prison sentence was required, citing *Whitfield*, 217 Ill. 2d at 205, where the supreme court held that a defendant who enters a negotiated guilty plea, but is not informed of the MSR term, is entitled to the benefit of his plea bargain. On April 30, 2010, the circuit court summarily dismissed defendant's petition as frivolous and patently without merit based on the

transcript of the plea hearing. Defendant now appeals that dismissal, and our review is *de novo*. *People v. Davis*, 403 Ill. App. 3d 461, 464 (2010).

¶ 5 In this court, defendant acknowledges that the trial court informed him of the MSR requirement before accepting his negotiated guilty plea, but contends that merely mentioning the MSR term during its discussion of the possible penalties was insufficient to inform him that it would apply to his actual sentence. Defendant thus requests that his sentence be reduced by the length of the MSR term under *Whitfield* because the trial court "did not link MSR to the agreed-upon terms of his plea," as clarified in *Morris*.

¶ 6 As an initial matter, we note, and reject, the State's contention that defendant has forfeited the MSR issue because he was informed about the MSR term that would follow his prison term and failed to present it at his first opportunity. This court has found that the doctrines of waiver and *res judicata* apply to appeals from the denial of post-conviction petitions only in cases where a petitioner has previously taken a direct appeal from a judgment of conviction. *People v. Miranda*, 329 Ill. App. 3d 837, 842 (2002) (and cases cited therein). Because defendant did not take a direct appeal from the judgment entered on his conviction, the doctrine of waiver is inapplicable, and we turn to the merits of defendant's appeal. *Miranda*, 329 Ill. App. 3d at 842-43; *People v. Brooks*, 371 Ill. App. 3d 482, 486 (2007).

¶ 7 In *Whitfield*, the supreme court held that there is no substantial compliance with Supreme Court Rule 402 (eff. July 1, 1997), and due process is violated when a defendant pleads guilty in exchange for a specific sentence and the trial court fails to advise him, prior to accepting his guilty plea, that a MSR term will be added to that sentence. *Whitfield*, 217 Ill. 2d at 195. The constitutional challenges, which stem from a trial court's failure to admonish on MSR, focus on matters that occur prior to the circuit court's acceptance of a defendant's guilty plea. *Davis*, 403 Ill. App. 3d at 465.

¶ 8 Subsequently, in *Morris*, the supreme court clarified that "*Whitfield* requires that defendants be advised that a term of MSR will be added to the actual sentence agreed upon in exchange for a guilty plea to the offense charged." *Morris*, 236 Ill. 2d at 367. The supreme court observed that an admonition that mentions the term "MSR" without placing it in some relevant context cannot serve to advise defendant of the consequences of his guilty plea and cannot assist him in making an informed decision. *Morris*, 236 Ill. 2d at 366. However, the supreme court noted that "there is no precise formula in admonishing a defendant of his MSR obligation," and that an admonition must be read "in a practical and real sense." *Morris*, 236 Ill. 2d at 366.

¶ 9 Here, the trial court admonished defendant of the three-year MSR term after the plea agreement of nine years in the penitentiary had been reached between defendant and the State, which reinforces, "in a practical and realistic sense," that defendant had full knowledge of the consequences of his guilty plea when he was told he would have to serve a three-year MSR term upon his release from custody if he was sentenced to the penitentiary. *Davis*, 403 Ill. App. 3d at 465 (quoting *Morris*, 236 Ill. 2d at 366). Under *Whitfield*, a constitutional violation arises only if the trial court makes no mention to defendant before he pleads guilty that he must serve an MSR term in addition to the sentence agreed upon in exchange for his guilty plea. *Davis*, 403 Ill. App. 3d at 466.

¶ 10 We acknowledge the split of authority post-*Morris*, cited by defendant, on the issue of whether the mere mention of MSR at the guilty plea hearing satisfies the requirements of *Whitfield*. However, in *Davis*, 403 Ill. App. 3d at 467, this court considered the issue settled by its decision in *People v. Marshall*, 381 Ill. App. 3d 724 (2008), which was cited with approval by the supreme court in *Morris*, 236 Ill. 2d at 367. See *Davis*, 403 Ill. App. 3d at 467. In *Marshall*, this court found that the requirements of Supreme Court Rule 402 (eff. July 1, 1997) and due process were met where the judge did not mention mandatory supervised release at sentencing or

in the written sentencing judgment, but did advise defendant of the requirement before accepting his plea. *Marshall*, 381 Ill. App. 3d at 736. This court has recognized that the "better practice" would be to incorporate the admonition regarding mandatory supervised release at the time the defendant's sentence is announced. See *People v. Hunter*, 2011 IL App (1st) 093023, ¶19 (quoting *Morris*, 236 Ill. 2d at 367). We find, however, that the admonition in the instant case comports with those in *Marshall* and *Davis* and that the defendant's claim to the contrary is rebutted by the record.

¶ 11 Accordingly, we affirm the summary dismissal of defendant's post-conviction petition as frivolous and patently without merit.

¶ 12 Affirmed.