

No. 2—09—0895  
Order filed May 9, 2011

**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  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 98—CF—3350
	)	
SHAUN B. LUCAS,	)	Honorable
	)	Charles D. Johnson,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Hutchinson and Hudson concurred in the judgment.

**ORDER**

*Held:* The trial court properly denied defendant's section 2—1401 petition alleging a *Whitfield* violation; under *Morris*, *Whitfield* did not apply to defendant; mandatory supervised release was properly part of defendant's sentence by operation of law, even though the trial court mentioned only his prison term.

Defendant, Shaun B. Lucas, appeals from an order of the circuit court of Lake County denying, *sua sponte*, his petition under section 2—1401 of the Code of Civil Procedure (735 ILCS 5/2—1401 (West 2008)), seeking relief from his sentence of 12½ years' imprisonment for predatory criminal sexual assault of a child (720 ILCS 5/12—14.1(a)(1) (West 1998)). Defendant's conviction was predicated on a negotiated guilty plea. In his petition and an accompanying affidavit, defendant

claimed that, prior to entering his plea, the trial court did not adequately apprise him, and he was not otherwise aware, that after completing his prison term he would be required to serve an additional three-year term of mandatory supervised release (MSR) (see 730 ILCS 5/5—8—1(d)(1) (West 1998)). Defendant argues on appeal that requiring him to serve a term of MSR deprives him of the benefit of his bargain with the State and thereby violates his right to due process of law. As explained below, however, the relief defendant requests—reduction of his prison term—is barred by principles governing the retroactive application of new constitutional rules of criminal procedure. Thus, we affirm.

Substantively, defendant’s argument is, in all material respects, identical to the argument successfully advanced in *People v. Whitfield*, 217 Ill. 2d 177 (2005). In *Whitfield*, our supreme court noted its earlier holding that “ ‘compliance with [Illinois Supreme Court] Rule 402(a)(2) [(eff. Sept. 17, 1970)] requires that a defendant be admonished that the mandatory period of parole [now called mandatory supervised release] pertaining to the offense is a part of the sentence that will be imposed.’ ” *Id.* at 188 (quoting *People v. Wills*, 61 Ill. 2d 105, 109 (1975)). The court held:

“[A]lthough substantial compliance with Rule 402 is sufficient to establish due process [citations], and an imperfect admonishment is not reversible error unless real justice has been denied or the defendant has been prejudiced by the inadequate admonishment [citation], there is no substantial compliance with Rule 402 and due process is violated when a defendant pleads guilty in exchange for a specific sentence and the trial court fails to advise the defendant, prior to accepting his plea, that a mandatory supervised release term will be added to that sentence. In these circumstances, addition of the MSR term to the agreed-upon sentence violates due process because the sentence imposed is more onerous than the one

defendant agreed to at the time of the plea hearing. Under these circumstances, the addition of the MSR constitutes an unfair breach of the plea agreement.” *Id.* at 195.

*Whitfield* further held that, when a defendant is not properly admonished about MSR, “there are two separate, though closely related, constitutional challenges that may be made: (1) that the plea of guilty was not made voluntarily and with full knowledge of the consequences, and (2) that defendant did not receive the benefit of the bargain he made with the State when he pled guilty.” *Id.* at 183-84. The *Whitfield* court explained that the second form of challenge “finds its roots” (*id.* at 184) in *Santobello v. New York*, 404 U.S. 257 (1971), which held that “when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” *Id.* at 262.

In *Whitfield*, the defendant entered a guilty plea pursuant to an agreement providing that he would serve a 25-year prison term, but he was not informed that after completing the prison term he would be required to serve a 3-year MSR term. The *Whitfield* court reasoned that “adding the statutorily required three-year MSR term to defendant’s negotiated 25-year sentence amounts to a unilateral modification and breach of the plea agreement by the State, inconsistent with constitutional concerns of fundamental fairness.” *Whitfield*, 217 Ill. 2d at 190. In fashioning a remedy, the court noted:

“The remedy defendant requests \*\*\* is enforcement of the negotiated plea agreement as he understood it. At the same time, however, defendant concedes that a term of supervised release is mandated by statute and legally cannot be struck from his sentence. [Citation.] Having conceded that the promise which induced his plea is unfulfillable under state law, defendant asks that his sentence be modified to 22 years’ imprisonment plus 3 years of

mandatory supervised release to approximate the bargain that was struck between the parties.” *Id.* at 202-03.

The court concluded that the relief sought by the defendant was appropriate and reduced his prison term accordingly. Here, defendant similarly requests a three-year reduction in the length of his prison term.

This case differs from *Whitfield*, in which the MSR was not mentioned at all when the defendant’s plea was taken and when he was sentenced. Here, in contrast, the trial court admonished defendant as follows prior to accepting his guilty plea:

“The nature of the charge, the age of the complainant, and your age, makes this a Class X felony under Illinois law. It’s a minimum of 6 years to a maximum of 30 years in the state penitentiary, a nonprobational [*sic*] offense. \*\*\* After you serve the penitentiary sentence there’s something called [MSR], it’s commonly known as parole. And that would be for 3 years. That’s the penalty of what could happen in terms of the maximum penalty.”

Defendant argues, however, that the trial court failed to make it sufficiently clear that MSR would be a part of defendant’s negotiated sentence. Be that as it may, defendant’s reliance on the benefit-of-the-bargain theory fails because a section 2—1401 petition is a collateral attack on a judgment (*Burchett v. Goncher*, 235 Ill. App. 3d 1091, 1098 (1991)), and our supreme court has held that a benefit-of-the-bargain claim based on a faulty MSR admonition is not available in a collateral proceeding when the defendant’s conviction had become final before *Whitfield* had been decided. *People v. Morris*, 236 Ill. 2d 345 (2010).

In *Morris*, our supreme court concluded that *Whitfield* had announced a new constitutional rule of criminal procedure within the meaning of *Teague v. Lane*, 489 U.S. 288 (1989). As explained

in *Morris*, *Teague* holds that “new constitutional rules of criminal procedure are not applicable to cases on collateral review unless the rule falls within one of two exceptions: (1) the new rule places certain kinds of primary, private individual conduct beyond the power of the criminal-law-making authority to proscribe; or (2) the new rule is a ‘watershed rule’ of criminal procedure, *i.e.*, a rule that is ‘ “ ‘implicit in the concept of ordered liberty’ ” ’ and ‘without which the likelihood of an accurate conviction is seriously diminished.’ ” *Morris*, 236 Ill. 2d at 359 (quoting *Teague*, 489 U.S. at 311-13, quoting *Mackey v. United States*, 401 U.S. 667, 693 (1971) (Harlan, J., concurring in part and dissenting in part), quoting *Palko v. Connecticut*, 302 U.S. 319, 325 (1937)). Under *Teague*, “a case announces a new rule when it breaks new ground or imposes a new obligation on the States or the Federal Government. [Citations.] To put it differently, a case announces a new rule if the result was not *dictated* by precedent existing at the time the defendant’s conviction became final.” (Emphasis in original.) *Teague*, 489 U.S. at 301. It is not enough that a rule is “within the compass” of or “controlled” by a prior decision. *Butler v. McKellar*, 494 U.S. 407, 415 (1990). Rather, the question is whether “a state court considering [the defendant’s] claim at the time his conviction became final would have felt compelled by existing precedent to conclude that the rule [he or she] seeks was required by the Constitution.” *Saffle v. Parks*, 494 U.S. 484, 488 (1990). The *Morris* court acknowledged that, in *Whitfield*, the court had relied “squarely” on *Santobello*. *Morris*, 236 Ill. 2d at 361. However, the *Morris* court concluded that *Whitfield* announced a new rule for purposes of *Teague*. *Id.* That conclusion necessarily implies that *Santobello*, although doctrinally central to *Whitfield*’s holding, did not dictate or compel that holding. The *Morris* court further held that neither of the exceptions to the nonretroactivity principle were applicable and that the rule “should only be applied prospectively to cases where the conviction was not finalized prior to December 20, 2005,

the date *Whitfield* was announced.” *Id.* at 366. For purposes of *Teague*, “the date that the defendant’s conviction became final \*\*\* is when ‘ “the availability of direct appeal to the state courts has been exhausted and the time for filing a petition for a writ of certiorari has elapsed or a timely filed petition has been finally denied.” ’ [Citations.]” *People v. Sanders*, 393 Ill. App. 3d 152, 162 (2009), *aff’d*, 238 Ill. 2d 391 (2010). This court affirmed defendant’s conviction and sentence in 2000. *People v. Lucas*, No. 2—99—0779 (2000) (unpublished order under Supreme Court Rule 23). There is no question that defendant’s conviction became final long before *Whitfield* was decided.

We note that defendant has identified a Seventh Circuit decision—*United States ex rel. Baker v. Finkbeiner*, 551 F.2d 180 (7th Cir. 1977)—that partly bridges the gap between *Santobello* and *Whitfield*. In *Baker*, the defendant (who had been imprisoned for a parole violation) filed a *habeas corpus* petition alleging that, when he entered a negotiated guilty plea, he was not informed that his sentence would include a mandatory parole term. The Seventh Circuit held that the defendant’s “guilty plea was unfairly induced in violation of the Due Process Clause.” *Id.* at 184. Citing *Santobello*, the *Baker* court held that, because the defendant had performed his side of the bargain, “fundamental fairness demands that the state be compelled to adhere to the agreement as well.” *Id.* Accordingly, the court ordered the defendant’s release from custody. Despite a degree of similarity between *Baker* and *Whitfield*, the former case has no bearing on whether the latter announced a “new rule” for purposes of *Teague*. See *Soffar v. Cockrell*, 300 F.3d 588, 598 (5th Cir. 2002) (“In order to qualify as existing, a rule must be dictated by Supreme Court precedent, not circuit court precedent.”).

In an attempt to sidestep the holding of *Morris*, defendant argues that “[i]ndependent of *Whitfield*” his section 2—1401 petition raises a “classic claim under the federal due process clause

in an attempt to enforce the terms of his plea agreement” pursuant to *Santobello*’s holding that the State must honor promises that induce, or serve as consideration for, a guilty plea. The argument is nothing more than sophistry. Whether defendant purports to rely on *Whitfield* or on the cases that *Whitfield* relied on, the inquiry under *Teague* is the same—when defendant’s conviction became final, did existing precedent dictate that defendant’s prison term be reduced by three years in order to approximate his bargain with the State? Pursuant to *Morris*, the answer is no. That being the case, the remaining inquiry under *Teague* is whether either of the exceptions to the rule of nonretroactivity is applicable. Again, the answer, under *Morris*, is no. Simply put, *Santobello* is not precedent—in the relevant sense under *Teague*—for the collateral relief defendant seeks. To hold otherwise would render *Morris* all but meaningless. Defendant argues that *Santobello* is binding on this court pursuant to the United States Constitution’s supremacy clause (U.S. Const., art. VI). That is certainly true, but of no moment; *Santobello* simply does not dictate that defendant receive the relief he seeks.

Defendant also argues that, because the written sentencing order makes no reference to MSR, MSR is not part of the sentence imposed by the trial court. According to defendant, forcing him to serve a sentence different from that imposed by the trial court runs afoul of *Hill v. United States ex rel. Wampler*, 298 U.S. 460 (1936), as interpreted by the Second Circuit in *Earley v. Murray*, 451 F.3d 71 (2d Cir. 2006). In *Wampler*, the clerk of the United States District Court for the District of Maryland unilaterally augmented a warrant of commitment by adding a provision requiring payment of fines as a condition of release from imprisonment. In holding the condition ineffective, the *Wampler* Court commented that “[t]he only sentence known to the law is the sentence or judgment entered upon the records of the court.” *Wampler*, 298 U.S. at 464. In *Earley*, a New York court sentenced the defendant to a prison term, but did not expressly impose a term of post-release

supervision (PRS). Although a PRS term was statutorily required, the *Earley* court held that it was not part of the defendant's sentence. Citing *Bozza v. United States*, 330 U.S. 160 (1947), the state argued that because PRS was mandatory it became part of the sentence by operation of law. The *Earley* court rejected the argument, observing that *Bozza* merely held that the double jeopardy clause did not prohibit *a court* from increasing a sentence by adding a previously omitted mandatory fine.

In neither *Wampler* nor *Bozza* did the Court have any occasion to consider whether or not a statutorily mandated component of a sentence can become part of the trial court's judgment by operation of law. The question simply did not arise in either case. *Wampler* involved the validity of a condition of release that was not required by statute. In *Bozza*, the trial court corrected its statutory error, so it was unnecessary to decide whether the mandatory fine would have otherwise been enforceable by operation of law. Our General Assembly carefully structured the MSR requirement to take effect whether or not expressly mentioned by the trial court when pronouncing sentence or in its written sentencing order. To that end, section 5—8—1(d) of the Unified Code of Corrections, as in effect at the time of defendant's offense, provided, "Except where a term of natural life is imposed, every sentence shall include *as though written therein* a term in addition to the term of imprisonment. \*\*\* For those sentenced on or after February 1, 1978, such term shall be identified as a mandatory supervised release term." (Emphasis added.) 730 ILCS 5/5—8—1(d) (West 1998). Thus, by legislative fiat, MSR becomes a term of the defendant's sentence and a part of the court record when a sentence of imprisonment is imposed. Nothing in either *Wampler* or *Bozza* suggests any constitutional impediment to carrying out this legislative directive. Consistent with the language of section 5—8—1(d), in *Nance v. Lane*, 663 F. Supp. 33 (N.D. Ill. 1987), the United States District

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Court for the Northern District of Illinois held that a term of MSR attached to a prison term by operation of law even though the sentencing order did not provide for MSR.

In light of the foregoing, defendant's petition was properly denied and we therefore affirm the judgment of the circuit court of Lake County.

Affirmed.