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No. 3-09-0212

Order filed April 6, 2011

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IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	for the 13th Judicial Circuit,
Plaintiff-Appellee,	)	LaSalle County, Illinois
	)	
v.	)	No. 07-CF-18
	)	
ERICA L. FORD,	)	Honorable
	)	Cynthia Raccuglia,
Defendant-Appellant.	)	Judge, Presiding

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Holdridge and Lytton concurred in the judgment.

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**ORDER**

*Held:* Trial court's admonishment of defendant regarding three-year term of mandatory supervised release included in her plea agreement with the State substantially complied with the requirements of Illinois Supreme Court Rule 402.

Defendant Erica Ford pleaded guilty to unlawful possession of a controlled substance with intent to deliver in exchange for the dismissal of two counts of unlawful delivery of a controlled substance and a sentence of 11 years' imprisonment and three years' mandatory supervised release (MSR). The trial court denied her motion to withdraw her plea in which she alleged that the trial court did not properly admonish her that her sentence would also include a three-year MSR term.

She appealed. We affirm.

## FACTS

Defendant Erica Ford was charged by superceding indictment with one count of unlawful possession of a controlled substance with intent to deliver (count I). 720 ILCS 570/401(a)(2)(A) (West 2007). She was later charged by superceding indictment with two additional counts of unlawful delivery of a controlled substance (counts II, III). 720 ILCS 570/401(c)(2) (West 2007). On March 8, 2008, Ford agreed to a 10-year term of imprisonment and a three-year term of MSR and the trial court admonished her, *inter alia*, that her sentence included three years' MSR. Ford withdrew her plea. On March 20, at Ford's final pre-trial conference, the parties reached a plea agreement and informed the trial court. The State presented that the parties had agreed that Ford would plead guilty to count I, that counts II and III would be dismissed, and that Ford would be sentenced to 11 years' imprisonment and three years' mandatory supervised release (730 ILCS 5/5-8-1(d)(1) (West 2007)). The trial court read the charge in count I which included the minimum and maximum sentences and stated:

“Now, if I was called upon to sentence you based on the amount of the substances involved, Miss Ford, and the fact that this is a Class X felony, I could sentence you between a minimum of nine and a maximum of 40 years in the Department of Corrections with a mandatory supervised release period thereafter of three years.”

The trial court ensured that Ford understood the rights she was waiving by pleading guilty, that she had not been coerced, and she was satisfied with trial counsel. The State presented the

factual basis for the plea. After finding Ford's plea was voluntary, the trial court accepted and entered it. The parties waived a pre-sentence investigation report and evidence of factors in aggravation and mitigation. Ford did not allocute and the trial court stated, "I sentence you as proposed." The trial court then admonished Ford of her appeal rights. In response to the State, the trial court indicated that it had admonished Ford regarding MSR.

Ford filed a notice of appeal which this court dismissed for lack of jurisdiction based on defense counsel's failure to file a Supreme Court Rule 604(d) certificate. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). Defense counsel filed a Rule 604(d) certificate in January 2009. While the appeal was pending, Ford filed motions to vacate her guilty plea and to reduce her sentence, arguing, *inter alia*, that her plea counsel was ineffective for failing to explain the consequences of her plea. A hearing was held. Ford testified that her plea counsel did not explain to her the consequences of her plea, and told her that she had to plead guilty and accept the agreement for an 11-year sentence. She further stated that counsel told her she would have to "do three years" when she is doing a five-and-one-half year term, and advised her to "say yes to everything the [j]udge says." Ford said she is illiterate, she did not understand what she was signing when she signed the guilty plea, and she was forced into pleading guilty.

The attorney who Ford retained whose associate represented her at the plea hearing testified that he did not tell Ford she had to plead guilty but rather indicated what they could do at trial. The State forwarded him a letter from Ford indicating that she had contacted the state's attorney's office directly and wanted to plead guilty. His associate contacted him from Ford's final pre-trial conference and informed him that Ford insisted on accepting an 11-year plea agreement with the dismissal of counts II and III. Ford did not tell him she could not read or write. Plea counsel testified

that he explained the consequences of the plea to Ford, including the sentencing range with its 9-year minimum sentence. She indicated she wanted to plead guilty. Ford did not tell him she was illiterate.

Following testimony, the trial court stated that throughout the proceedings, Ford was “an individual who knew what was going on, spoke her mind, and in no way was confused.” There was “no question in [the trial court’s] mind when I questioned her as to the plea in this matter she was knowledgeable, she understood me, and particularly in light of some of the things I saw as to her discussions with lawyers.” The trial court noted that if it had not thought that Ford understood the plea and its consequences, it would not have accepted the plea. The trial court denied Ford’s motion to vacate her plea. She appealed.

#### ANALYSIS

The issue on appeal is whether Ford was properly admonished regarding her term of mandatory supervised release (MSR). Ford argues that although the trial court mentioned MSR at her plea hearing, the trial court linked it to her conviction if found guilty after trial rather than to her plea. She asks this court to reduce her sentence to the minimum of nine years’ imprisonment as a remedy for violating her due process rights by improperly admonishing her.

As an initial matter, we address the State’s contention that Ford has forfeited this issue on appeal by failing to object to the trial court’s admonishments at the plea hearing and include the issue in her post-plea motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Ford asserts that forfeiture does not apply under the facts of this case, relying on *People v. Whitfield*, 217 Ill. 2d 177 (2005), for support. The State responds that *Whitfield* is distinguished and inapplicable. In *Whitfield*, the supreme court found under the facts of that case that the defendant could not forfeit his right to bring

his postconviction petition challenging the trial court's failure to properly admonish him, noting that to do so would "place the onus on defendant to ensure his own admonishment in accord with due process." *Whitfield*, 217 Ill. 2d at 188. In *Whitfield*, the trial court failed to admonish the defendant in any respect regarding his term of MSR and defendant did not learn that MSR was included in his sentence until he was serving his prison term. *Whitfield*, 217 Ill. 2d at 188.

The facts and reasoning employed in *Whitfield* are not applicable to the instant case. Unlike the defendant in *Whitfield* who had no basis to question his admonishments or lack of information regarding his MSR term, Ford was informed of the three-year MSR term applicable to her offense on several occasions. The MSR term was discussed at the first plea attempt and again when Ford's plea was entered. At that hearing, both the State and the trial court expressly observed a MSR term of three years applied to Ford's offense. An exception to forfeiture does not apply to every instance of improper MSR admonishments. *People v. Newman*, 365 Ill. App. 3d 285, 290 (2006)(*Whitfield* "did not hold that all improper-MSR admonishment claims were immune from forfeiture").

Rejecting Ford's contention that the *Whitfield* exception applies to excuse her forfeiture, we must next determine whether plain error review is appropriate under the facts. A forfeited error may be reviewed under the plain error doctrine (1) where the evidence is closely balanced, or (2) where the error is so fundamental and of such magnitude that the accused was denied a fair trial. *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). The first step in the plain error analysis is to determine whether error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). We thus consider whether the trial court erred in admonishing Ford as to the MSR term to which she was sentenced.

Illinois Supreme Court Rule 402 provides the admonishments a trial court must give a defendant who pleads guilty, including the minimum and maximum sentence. Ill. S. Ct. R. 402 (eff.

July 1, 1997). Rule 402 admonishments must inform the defendant about any term of MSR applicable to her sentence. *People v. Wills*, 61 Ill. 2d 105, 109 (1975). A defendant's due process rights are violated when a trial court fails to admonish her of the MSR term to be added to her sentence. *Whitfield*, 217 Ill. 2d at 195. Substantial compliance with Rule 402 affords a defendant due process. Ill. S. Ct. R. 402 (eff. July 1, 1997); *People v. Louderback*, 137 Ill. App. 3d 432, 435 (1988) (quoting *People v. Krantz*, 58 Ill. 2d 187, 192 (1974)). It generally suffices for the trial court to mention MSR as part of its general admonishment about the penalties rather than specifically admonish a defendant that MSR will be part of the sentence. *People v. Daniels*, 388 Ill. App. 3d 952, 956 (2009).

An admonishment is “ ‘sufficient if an ordinary person in the circumstances of the accused would understand it to convey the required warning.’ ” *People v. Morris*, 236 Ill. 2d 345, 366 (2010) (quoting *People v. Williams*, 97 Ill. 2d 252, 269 (1983)). The ideal admonishment would explicitly link MSR to the sentence to which the defendant agreed in the plea agreement, would be given when the trial court reviews the plea agreement, and would be reiterated at sentencing and in the written judgment. *Morris*, 236 Ill. 2d at 367. An imperfect admonishment is not reversible error unless it denies the defendant real justice or prejudices her. *Whitfield*, 217 Ill. 2d at 195. We will not reverse a trial court's denial of a motion to vacate a guilty plea absent an abuse of discretion. *People v. Kidd*, 129 Ill. 2d 432, 447 (1989).

Ford first attempted to plead guilty on March 7, 2008, based on an agreement that included three years' MSR, as provided by both the State and the trial court's admonishment at the plea hearing. On March 20, 2008, at the final pre-trial conference, the parties informed the trial court they had reached a plea agreement as follows. Ford agreed to plead guilty to the charge in count I in

exchange for the dismissal of counts II and III and the imposition of an 11-year term of imprisonment and a three-year term of MSR. The State informed Ford that the agreed sentence was 11 years' imprisonment and three years' mandatory supervised release. The trial court reiterated that a MSR term would be part of Ford's sentence. It read count I of the indictment, including the minimum and maximum sentences, and stated:

“Now, if I was called upon to sentence you based on the amount of the substances involved, Miss Ford, and the fact that this is a Class X felony, I could sentence you between a minimum of nine and a maximum of 40 years in the Department of Corrections with a mandatory supervised release period thereafter of three years.”

The trial court sentenced Ford “as proposed.” Per inquiry by the State, the trial court stated that it had admonished Ford regarding the MSR term. At the hearing on Ford's motion to vacate her guilty plea, the trial court reaffirmed its determination that Ford was aware of the sentence when she entered her plea.

Ford was informed on various occasions, by both defense counsel and the State, as well as the trial court, that her sentence, whether determined by verdict or plea, would include a MSR term. Similar admonishments have been found sufficient in *People v. Marshall*, 381 Ill. App. 3d 724, 736 (2008) (substantial compliance with Rule 402 where trial court mentioned MSR in connection with possible penitentiary sentence); *People v. Holt*, 372 Ill. App. 3d 650, 653 (2007) (same); *People v. Borst*, 372 Ill. App. 3d 331, 334 (2007) (general admonishment regarding MSR sufficient to inform defendant); *People v. Jarrett*, 372 Ill. App. 3d 344, 352 (2007) (same). In *People v. Berrios*, 387 Ill.

App. 3d 1061, 1064 (2009), this court found the trial court's MSR admonishment sufficient where the defendant was informed about the MSR term prior to accepting his plea, although MSR was not mentioned at sentencing or included in the sentencing order. Here, the trial court's admonishment conveyed to Ford that her sentence would include a three-year MSR term and was sufficient to inform an ordinary person in Ford's circumstances. As in *Berrios*, we again recognize "that trial courts should incorporate the mandatory supervised release admonitions into the pronouncement of the specific sentence and the written judgment." *Berrios*, 387 Ill. App. at 1064. We find that the trial court's admonishment substantially complied with the requirements of Rule 402 and that Ford's due process rights were not violated. Because we determine that no error occurred in the trial court's admonishment to Ford regarding the inclusion of a three-year term of MSR in her sentence, review under the plain error doctrine is not warranted. We find the trial did not abuse its discretion in denying Ford's motion to vacate her guilty plea.

For the foregoing reasons, the judgment of the circuit court of LaSalle County is affirmed.

Affirmed.