

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).

NO. 4-09-0848 Order Filed 4/26/11

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
TORANDO FAIRLEE,)	No. 06CF48
Defendant-Appellant.)	
)	Honorable
)	Leslie J. Graves,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and McCullough concurred in the judgment.

ORDER

Held: As no meritorious issues could be raised on appeal, the office of the State Appellate Defender's motion to withdraw as defendant's counsel on appeal was granted and the trial court's judgment affirmed.

This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground that no meritorious issues can be raised in this case. For the reasons that follow, we agree and affirm.

In May 2009, defendant, Torando Fairlee, filed a *pro se* "MOTION FOR SPECIFIC PERFORMANCE OF NEGOTIATED PLEA AGREEMENT," claiming he was denied the benefit of the bargain of his September 2006 plea agreement and asking the trial court to amend his sentence pursuant to *People v. Whitfield*, 217 Ill. 2d 177, 840 N.E.2d 658 (2005). In November 2009, following a hearing, the

court denied defendant's petition. That same month, defendant filed his notice of appeal and the court appointed OSAD to serve as his attorney.

In November 2010, OSAD moved to withdraw, including in its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by December 10, 2010. Defendant has not done so. After examining the record and executing our duties in accordance with *Finley*, we grant OSAD's motion and affirm the trial court's judgment.

I. BACKGROUND

In February 2006, the State charged defendant in a three-count information with (1) being an armed habitual criminal (720 ILCS 5/24-1.7 (West 2006)), (2) aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2006)), and (3) unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2006)). In September 2006, defendant pleaded guilty to aggravated battery with a firearm, a Class X felony (720 ILCS 5/12-4.2(b) (West 2006)), pursuant to a negotiated plea. At the plea hearing, the State recited the terms of the plea, stating the other charges against defendant would be nol-prossed, defendant would be sentenced to "10 years in the Department of Corrections

to be served at 85 percent," and defendant would receive credit toward his sentence for 233 days served. The trial court admonished defendant, in part, as follows:

"THE COURT: Possible penalties for a Class X Felony are as follows: [6] to 30 years Department of Corrections. This is not probation eligible. Some people could receive an extended term up to 60 years. You could be ordered to pay a fine of \$25,000 depending on the circumstances, and pursuant to the plea you will have three years Mandatory Supervised Release. Do you understand?

DEFENDANT: Yes, ma'am.

THE COURT: You will also serve this at 85 percent. Do you understand that means you're not going to get day for day good time? Do you understand that?

DEFENDANT: Yes, ma'am."

The court later reiterated the plea was for a sentence of "[10] years Department of Corrections." Following admonishments and the State's assertion of the factual basis, defendant persisted in his guilty plea. The court accepted defendant's plea and sentenced him to 10 years' imprisonment. Defendant took no direct appeal.

In October 2007, defendant filed a *pro se* postconviction petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 through 122-8 (West 2006)), alleging the relevant truth-in-sentencing provisions (730 ILCS 5/3-6-3(a)(2)(ii), (a)(2)(iii) (West 2006)) conflicted. Defendant alleged, in limiting defendant to accruing no more than 4.5 days of good-conduct credit per month rather than allowing him to accrue day-for-day credit, the trial court violated his due-process rights. In January 2008, the court appointed counsel for defendant. In February 2008, the State filed a motion to dismiss defendant's petition. In January 2009, defendant's appointed counsel filed a motion to withdraw in accordance with *Finley*, alleging defendant's postconviction petition presented no meritorious claim upon which defendant could realistically expect to obtain relief. In June 2009, following a hearing, the court granted the State's motion to dismiss defendant's petition.

In May 2009, while his postconviction petition and his counsel's motion to withdraw were pending, defendant *pro se* filed his "MOTION FOR SPECIFIC PERFORMANCE OF NEGOTIATED PLEA AGREEMENT" at issue in this appeal. In the motion, defendant purported to seek relief under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)). He alleged he was denied the benefit of the bargain of his plea agreement and asserted (1) as he was not admonished he would be required to

serve a three-year term of mandatory supervised release (MSR) following his prison sentence, his prison sentence should be reduced by the term of his MSR and (2) his MSR term, like his prison sentence, should be subject to accrual of good-conduct credit at a potential rate of 4.5 days per month. Accordingly, defendant requested his sentence be reduced from 10 years' imprisonment with 4.5 days per month in potential good-conduct credit followed by 3 years' MSR with no potential of good-conduct credit to 7 years' imprisonment followed by 3 years' MSR with 4.5 days per month in potential good-conduct credit for the duration of his sentence.

In November 2009, after the trial court dismissed defendant's postconviction petition, the court held a hearing on defendant's motion for specific performance. Following arguments by the State and defendant *pro se*, the court denied defendant's motion. The court explained MSR was not subject to good-conduct credit and found defendant had agreed to serve the full three years of MSR following his prison sentence when he entered his guilty plea.

This appeal followed.

II. ANALYSIS

OSAD argues this appeal presents no meritorious claim upon which defendant could realistically expect to obtain relief. We agree with OSAD.

Defendant initially claims, under *Whitfield*, his constitutional rights were violated and he was denied the benefit of his plea bargain because he was unaware the 10-year prison sentence he negotiated would be followed by a 3-year term of MSR. This claim is belied by the record.

A trial court is required at a guilty-plea hearing to admonish the defendant regarding, among other things, "the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences." Ill. S. Ct. R. 402(a)(2) (eff. July 1, 1997). In addition, "compliance with Rule 402(a)(2) 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." (Internal quotation marks omitted.) *Whitfield*, 217 Ill. 2d at 188, 840 N.E.2d at 665.

In *Whitfield*, the supreme court held the trial court's failure to admonish the defendant regarding an MSR term attaching to his guilty plea, under the particular circumstances of that case, resulted in a violation of the defendant's constitutional rights. *Id.* at 201, 840 N.E.2d at 673. However, this court recently clarified, "as long as the trial court informs a defendant at the time of his guilty plea that an MSR term must follow any prison sentence that is imposed upon him, he has received all

the notice and all the due process to which he is entitled regarding MSR." *People v. Andrews*, 403 Ill. App. 3d 654, 665, 936 N.E.2d 648, 657 (2010).

In this case, at defendant's plea hearing, the trial court directly admonished defendant he would be required to serve a three-year MSR term in addition to his prison sentence pursuant to his plea agreement. The court's admonishment was sufficient as "an ordinary person in the circumstances of the accused would understand it to convey the required warning." (Internal quotation marks omitted.) *People v. Morris*, 236 Ill. 2d 345, 366, 925 N.E.2d 1069, 1082 (2010). Accordingly, defendant's claim he was unaware his prison sentence would be followed by a three-year MSR term would not present a meritorious issue on appeal.

Defendant further contends his MSR term should be subject to good-conduct credit. Implicitly, defendant maintains he negotiated to serve his sentence at 85%, meaning he would be eligible to accrue 4.5 days of good-conduct credit each month of his imprisonment. Defendant asserts, as part of his plea bargain, this eligibility should extend to his MSR term. This claim lacks merit for at least two reasons.

First, as a matter of law, MSR is not subject to good-conduct credit. Under the truth-in-sentencing statute on which defendant bases his claim, "[t]he Department of Corrections shall prescribe rules and regulations for the *early release* on account

of good conduct of persons committed to the Department ***." (Emphasis added.) 730 ILCS 5/3-6-3(a)(1) (West 2006). Further, "a prisoner serving a sentence for *** aggravated battery with a firearm *** shall receive no more than 4.5 days of good conduct credit for each month of his or her *sentence of imprisonment*." (Emphasis added.) 730 ILCS 5/3-6-3(a)(2)(ii) (West 2006). By its terms, good-conduct credit applies only to a defendant's prison sentence. Once a defendant is released from prison and placed on MSR, good-conduct credit has no further relevancy to that defendant's sentence. This is for good reason, considering (1) the purpose of good-conduct credit "to provide felonious inmates with incentive to conform their behavior to *prison rules*" (emphasis added) (*People v. Lindsey*, 319 Ill. App. 3d 586, 593, 746 N.E.2d 308, 314 (2001)) and (2) the obvious and substantial qualitative differences between the State's custody over a defendant while in prison and on MSR. Accordingly, defendant's requested relief--the application of good-conduct credit to his three-year MSR term--is simply unavailable under the statutory scheme.

Second, a defendant's eligibility to accrue good-conduct credit is not negotiable. In *Andrews*, 403 Ill. App. 3d at 664, 936 N.E.2d at 657, this court noted

"the imposition of an MSR term is automatically required *** whenever a prison sentence

is imposed [citation], and the only question concerning an MSR term is whether it will be for one, two, three, or four years. And the answer to that question is statutorily dictated and depends entirely upon the classification *** of the felony to which the defendant is pleading guilty."

Accordingly, this court emphasized, "the parties have nothing to negotiate regarding an MSR term because even if they agreed to reduce or waive the statutorily required MSR term, the trial court would lack the authority to act in accordance with their agreement." *Id.* This court went on to conclude "MSR is never part of plea bargaining." *Id.* at 666, 936 N.E.2d at 658.

As with MSR, a defendant's eligibility to accrue good-conduct credit is statutorily determined by reference to the crime to which the defendant pleads guilty. In this case, the truth-in-sentencing statute mandates defendant, having been sentenced to prison for aggravated battery with a firearm, is eligible to receive no more than 4.5 days of credit for each month he remains in prison. See 730 ILCS 5/3-6-3(a)(2)(ii) (West 2006) (quoted above). This has nothing to do with the terms of defendant's plea bargain; rather, it has everything to do with the specific offense to which defendant pleaded guilty. Thus, defendant's implied assertion he negotiated to serve his sentence

at 85% is mistaken. As this assertion is integral to the relief defendant requested in his motion for specific performance, defendant's claim of a constitutional violation lacks merit.

III. CONCLUSION

For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment.

Affirmed.