

NOTICE  
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2011 IL App (4th) 100465-U

Filed 7/25/11

NOS. 4-10-0465, 4-10-0466 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
JACK A. BEASLEY,	)	Nos. 08CF634
Defendant-Appellant.	)	08CF907
	)	
	)	Honorable
	)	Holly F. Clemons,
	)	Judge Presiding.

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JUSTICE APPLETON delivered the judgment of the court.  
Justices Turner and McCullough concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant must be admonished that a term of mandatory supervised release (MSR) will be added to the actual sentence agreed upon in exchange for a guilty plea to the offense charged.

¶ 2 Defendant, Jack A. Beasley, appeals from the summary dismissal of his postconviction petitions in Champaign County case Nos. 08-CF-634 and 08-CF-907. In our *de novo* review, we disagree with the summary dismissals in the two cases because the petitions state the gist of a constitutional claim, namely, that his guilty pleas were unknowing, and therefore violated due process, because the court never admonished him that a term of MSR would be added to whatever sentence of imprisonment he received as a result of pleading guilty. See *People v. Whitfield*, 217 Ill. 2d 177, 195 (2005); *People v. Holborow*, 382 Ill. App. 3d 852, 859 (2008), *aff'd*, 236 Ill. 2d 345 (2010). Therefore, we reverse the judgments and remand these cases with directions.

¶ 3

## I. BACKGROUND

¶ 4 In Champaign County case No. 08–CF–634, the State charged defendant with driving while his driver's license was revoked (625 ILCS 5/6–303(d–4) (West 2008)). He allegedly committed this offense on March 9, 2008.

¶ 5 In Champaign County case No. 08–CF–907, the State again charged defendant with driving while his driver's license was revoked (625 ILCS 5/6–303(d–4) (West 2008)). He allegedly committed this offense on April 27, 2008.

¶ 6 In a hearing on December 3, 2009, defense counsel, Lindsey Yanchus, informed the trial court that defendant wished to plead guilty to the charges in both cases.

¶ 7 In its admonitions, the trial court told defendant:

"THE COURT: Each of these matters are Class III felonies, normally punishable by a possible term of imprisonment of two to five years in the penitentiary, up to a \$25,000.00 fine, and one year, mandatory supervised release. However, as a result of your prior criminal history, these matters are non-probationable. You are eligible by an extended term sentence in this matter of five to ten years in the penitentiary. And in addition, in 08–CF–907, that sentence is mandatorily consecutive to 08–CF–634. Do you understand the possible penalties as to each of these matters?

DEFENDANT BEASLEY: Yes, ma'am.

THE COURT: All right."

¶ 8 After asking defendant if he understood the rights he would be giving up by pleading

guilty (rights the trial court had explained to him earlier) and after asking him if anyone had coerced him into pleading guilty, the court asked counsel:

"THE COURT: Have there been any negotiations in Mr. Beasley's matters.

MR. SCALES [(prosecutor)]: There have been, your Honor. In both 08-CF-634 and 08-CF-907, Mr. Beasley's to serve a term of incarceration of 30 months in the Illinois Department of Corrections. He does have 281 days served. These sentences are to be served consecutive to each other. He's to pay a genetic marker grouping analysis fee and all costs, submit to specimens of blood, saliva or tissue to the Illinois Department of State Police, unless he's already done so. Case 08-CF-670 will be dismissed.

MR. YANCHUS: that would be the agreement, your Honor.

THE COURT: Mr. Beasley, are those your agreements?

DEFENDANT BEASLEY: Yes, ma'am.

THE COURT: Other than what was just stated, has anyone promised you anything else in order to get you to plead guilty in your matters?

DEFENDANT BEASLEY: No, ma'am."

¶9 After hearing the prosecutor give a factual basis, to which defense counsel stipulated, the trial court confirmed with defendant that he wished to plead guilty to the charges in the two cases. The court found the guilty pleas to be knowingly and voluntarily made, and the court accepted

them and entered judgment on them.

¶ 10           Thereafter, on the same day, the trial court held a sentencing hearing, in which the court imposed the following sentence:

"[I]n 08–CF–634 and in 08–CF–907, I will order you to serve a period of incarceration of 30 months in the Illinois Department of Corrections, consecutive to each other, with credit for 281 days, in each case, previously served. You're further ordered to pay a violent crime victims assistance act fee, a genetic marker grouping analysis fee of \$200.00, unless you've previously done so. You're further ordered to submit specimens of blood, saliva or tissue to the Illinois Department of State Police. On People's motion, 08–CF–670 is dismissed. Written sentencing orders are entered this date on each of these matters."

¶ 11           Thus, the court sentenced defendant to a total of 60 months' imprisonment (two 30-month prison terms consecutive to each other). Under section 5–8–1(d)(3) of the Unified Code of Corrections (730 ILCS 5/5–8–1(d)(3) (West 2008)), anyone imprisoned for a Class 3 felony had to serve one year of MSR.

¶ 12           It appears, though, that the only time the trial court mentioned MSR to defendant was at the beginning of the hearing, when the court told him that the offenses were Class 3 felonies "normally punishable by a possible term of imprisonment of two to five years in the penitentiary, up to a \$25,000.00 fine, and one year, mandatory supervised release."

¶ 13           Defendant did not file a direct appeal from the judgments in case Nos. 08–CF–634

and 08–CF–907. On February 26, 2010, however, he filed an identical postconviction petition in both cases. In his petitions, he alleged that the trial court had failed to adequately admonish him that if he pleaded guilty and were sentenced to imprisonment on this guilty plea, he would receive a term of MSR upon being released from prison. He complained that he had pleaded guilty in return for sentences having a total duration of no more than 60 months and that the addition of MSR effectively lengthened the agreed-on sentence. In support of his petition, he attached the sentencing orders in the two cases. Neither of the sentencing orders mentioned MSR. Defendant requested the trial court to reduce his prison sentence by the length of the MSR.

¶ 14 On May 25, 2010, the trial court summarily dismissed the postconviction petitions as frivolous and patently without merit. See 725 ILCS 5/122–2.1(a)(2) (West 2008). The court gave two reasons for its decision. First, the court concluded that because defendant had not filed a direct appeal in either of the two cases, he had forfeited his contention that the admonitions on MSR were inadequate—a contention which, in the court's view, defendant could have made on direct appeal. Second, apart from forfeiture, the court deemed the admonitions to be adequate because the court had told defendant that the crimes were "normally punishable by a possible term of imprisonment \*\*\* and one year [of] mandatory supervised release."

¶ 15 On June 23, 2010, defendant filed notices of appeal in the two cases.

¶ 16 II. ANALYSIS

¶ 17 A. The Asserted Forfeiture

¶ 18 Defendant argues that the trial court failed to admonish him that a term of MSR would be added to any sentence of imprisonment he received as a result of pleading guilty and that, consequently, his guilty plea was unknowing, and accepting his guilty plea and entering judgment

thereon violated due process. The State responds, initially, that defendant has forfeited this argument because he could have made this argument in a direct appeal but did not do so. The State cites *People v. Rissley*, 206 Ill. 2d 403, 412 (2003), in which the supreme court held: "Any issues which could have been raised on direct appeal, but were not, are procedurally defaulted."

¶ 19 That holding, however, is inapplicable if the defendant never filed a direct appeal. We said in *People v. Brooks*, 371 Ill. App. 3d 482, 486 (2007): "[W]hen a defendant never appeals, the rule that a defendant cannot raise any issue in a postconviction petition that he or she could have made on direct appeal is inapplicable." Therefore, we disagree with the trial court and the State that defendant has forfeited his constitutional issue by omitting to file a direct appeal. See *People v. Rose*, 43 Ill. 2d 273, 279 (1969); *Brooks*, 371 Ill. App. 3d at 486; *People v. Culp*, 127 Ill. App. 3d 916, 920 (1984).

¶ 20 B. The Inadequacy of the Admonition on MSR

¶ 21 "*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." *People v. Morris*, 236 Ill. 2d 345, 367 (2010). Without that admonition, "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." *Whitfield*, 217 Ill. 2d at 195.

¶ 22 In this case, did the trial court tell defendant, before accepting his guilty pleas, that any sentence of imprisonment he received as a result of his guilty pleas would include one year of MSR? We do not see where in the record the court told him that. The court told him that "normally," the punishment for the offense with which he was charged included a year of MSR. The court hastened to tell him, though, that his case was not a normal case. The court told him that

because of his prior criminal history, he was eligible for an extended term of 5 to 10 years' imprisonment. The court said nothing about MSR being part of the punishment in defendant's "abnormal" extended-sentencing case. In that respect, this case is distinguishable from two cases on which the State relies in its brief. In both *People v. Dorsey*, 404 Ill. App. 3d 829, 831 (2010), and *People v. Andrews*, 403 Ill. App. 3d 654, 656 (2010), the trial court admonished the defendant that if he were sentenced to prison, he would receive a term of MSR. That unqualified admonition does not appear to have been given in the present case.

¶ 23

### C. The Relief

¶ 24 On July 14, 2011, defense counsel filed a motion for expedited disposition (the same day we received defendant's reply brief), and we have granted the motion. According to the motion, these appeals have a special urgency because defendant is due to be released from prison on September 22, 2011. See Illinois Department of Corrections, <http://www.idoc.state.il.us/subsections/search/inms.asp> (last visited on July 21, 2011). Defense counsel requests us to "expedite the disposition in this case so that Mr. Beasley does not complete his sentence before the appeal is decided."

¶ 25 Strictly speaking, defendant will not "complete his sentence" when he is released from prison on September 22, 2011; he still will have a year of MSR to serve. Nevertheless, no court has authority to shorten that term of MSR. *Andrews*, 403 Ill. App. 3d at 664. It appears, then, that the only way to give defendant any relief is to reduce his prison sentence—which, of course, will be impossible after September 22, 2011. See *Whitfield*, 217 Ill. 2d at 205.

¶ 26 So, although normally we simply would reverse the summary dismissal and remand for a second-stage proceeding, we will not use that procedure in these cases. Instead, in addition to

reversing the summary dismissals, we will order the immediate modification of the sentences as defendant requests: a term of 48 months' imprisonment, followed by one year of MSR.

¶ 27

### III. CONCLUSION

¶ 28 For the foregoing reasons, we reverse the summary dismissal of the postconviction petitions in Champaign County case Nos. 08–CF–634 and 08–CF–907, and we remand these cases with directions to modify the sentences as follows: imprisonment, in each case, for 24 months (a total of 48 months' imprisonment), to be followed by 12 months of MSR. The trial court shall amend the sentencing orders accordingly.

¶ 29

Reversed and remanded with directions.