

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. 4-09-0930

Filed 6/28/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
ALPHA O. SULTON,)	No. 07CF162
Defendant-Appellant.)	
)	Honorable
)	Robert L. Freitag,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Pope 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 is granted and the trial court's judgment is affirmed.

This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal because no meritorious issues can be raised in this case. We agree and affirm.

In September 2009, defendant, Alpha O. Sulton, filed a *pro se* "MOTION FOR POST-CONVICTION RELIEF," claiming the trial court's failure to admonish him regarding a two-year term of mandatory supervised release (MSR) resulted in a violation of his constitutional due-process rights and asking the court to amend his sentence pursuant to *People v. Whitfield*, 217 Ill. 2d 177, 840 N.E.2d 658 (2005). In December 2009, the court issued a written order denying defendant's petition. Later in December, defendant filed his notice of appeal, and the

court appointed OSAD to represent him on appeal.

In February 2011, 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, who is currently imprisoned with the Illinois Department of Corrections (IDOC). On its own motion, this court granted defendant leave to file additional points and authorities by March 10, 2011. 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 2007, the State charged defendant in a three-count indictment with two separate counts of aggravated driving under the influence of alcohol and one count of aggravated driving under the influence of a drug. 625 ILCS 5/11-501(d)(1)(F) (West 2006). In September 2007, defendant pleaded guilty to one count of aggravated driving under the influence of alcohol, a Class 2 felony, pursuant to a partially negotiated plea, which was negotiated as to charge. At the plea hearing, the trial court recited the terms of the plea, stating the other charges against defendant would be dismissed, any term of incarceration would not exceed 10 years of which defendant would be required to serve 85%, and defendant would be assessed a fine of \$500. The court further admonished defendant, in part, as follows:

"THE COURT: [T]hat charge is a Class 2 Felony. What that means it carries, upon conviction, a possible sentence to the Illinois Department of Corrections, if a Department of Corrections sentence were imposed, it would be normally for a minimum of 3

years up to a possible maximum of 14 years.

Any sentence to the Illinois Department of Corrections would be followed by a 2 year term of mandatory supervised release or what used to be called parole. ***

Do you understand those possible penalties if there were no agreement?

THE DEFENDANT: Yes.

THE COURT: Now your plea agreement, sir, says in return for your plea of guilty to that charge today the other two charges in this felony case are being dismissed ***.

On the charge of aggravated driving under the influence that you are pleading guilty to the Plea Agreement indicates that a maximum sentence of ten years in the Illinois Department of Corrections would be imposed, but you would have the right to request a lesser sentence at a Sentencing Hearing.

Are those the terms of your Plea Agreement as you understand them?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions about those terms?

THE DEFENDANT: No."

Following admonishment and the State's assertion of the factual basis, defendant persisted in his

guilty plea. The court accepted defendant's plea. In November 2007, defendant was sentenced to seven years in prison, with credit for 273 days served, and two years MSR.

In November 2007, defendant filed a *pro se* "MOTION TO REDUCE SENTENCE." Later in November, defense counsel also filed a "MOTION TO WITHDRAW PLEA OF GUILTY." In December 2007, defense counsel withdrew the motion to reduce sentence, and the trial court denied the motion to withdraw the plea of guilty. On appeal, we remanded due to a violation of Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Sulton*, No. 4-08-0073 (May 12, 2008) (unpublished summary order under Supreme Court Rule 23(c)(2)). On remand, the trial court denied defendant's motions to withdraw guilty plea and to reconsider sentence. Defendant again appealed, and we remanded, this time with instructions to vacate a \$10 drug-court assessment against defendant and to adjust his credit for time served prior to sentencing. *People v. Sulton*, 395 Ill. App. 3d 186, 193, 916 N.E.2d 642, 648 (2009).

In September 2009, while defendant's second appeal was pending, defendant filed a *pro se* motion for postconviction relief. In December 2009, the trial court denied defendant's motion in a written order. This appeal followed.

II. ANALYSIS

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

Defendant claims under *Whitfield* his constitutional rights were violated, and he was denied the benefit of his plea bargain because he was unaware the seven-year prison sentence he received would be followed by a two-year MSR term. 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*, 217 Ill. 2d at 201, 840 N.E.2d at 673, 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 facts in *Whitfield*, resulted in a violation of the defendant's constitutional rights. 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 admonished defendant he would be required to serve a two-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). Defendant's claim he was unaware his prison sentence would be followed by a two-year MSR term would not present a meritorious issue on appeal.

The trial court reached this same conclusion but for different reasons. As we have the benefit of transcripts, we affirm because defendant was directly admonished at his plea hearing as to the term of MSR that would attach to any period of imprisonment. We need not address the court's reasoning on this matter.

III. CONCLUSION

We grant OSAD's motion to withdraw and affirm the trial court's judgment.

Affirmed.