



outside the Collinsville VFW hall during a wedding reception. The only person injured in the shooting was Mario Montalvo, who suffered gunshot wounds to both hands. The defendant subsequently entered an open plea of guilty to the charge in exchange for the State's agreement to recommend to the court a sentence of seven years in the Department of Corrections (Department).

¶ 5 The court was not a party to the agreement and did not bind itself to the State's sentencing recommendation. Prior to accepting the defendant's guilty plea, the court, *inter alia*, advised him as follows:

"The range of sentence is between 6 and 30 years in the Department of Corrections. If you have a Class X or greater felony conviction previous to this you could be eligible for what's called an extended term which means you could face a sentence between 6 and 60 years. Any sentence to the Department of Corrections is followed by three years of mandatory supervised release."

¶ 6 The defendant was released pending sentencing, which the court scheduled for January 24, 2007. The court advised the defendant that any violation of the conditions of his bond could result in additional charges being filed and would be considered when the court sentenced him. On December 26, 2006, though, the defendant was taken into custody in Webb County, Texas, after attempting to cross the border into Mexico. The defendant was detained in Texas until he was picked up by a sheriff's deputy and returned to Madison County, where he was jailed until his sentencing hearing.

¶ 7 At the sentencing hearing, the State told the court that although it had previously agreed to recommend a sentence of seven years' imprisonment, it was now recommending that the defendant be issued a sentence "in excess of seven years" due to his attempt to leave the country, which violated the conditions of his bond and the terms of his agreement with the State.

¶ 8 The court sentenced the defendant to 8½ years in the Department and ordered him to pay \$1,200 restitution to the Madison County sheriff's department to reimburse it for costs incurred in returning him from Texas. The court left blank the space on the preprinted sentencing order under the column headed "MSR."

¶ 9 The defendant did not pursue a direct appeal, but he subsequently filed a petition pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-8 (West 2008)). The defendant alleged that he was improperly admonished regarding the term of mandatory supervised release he would face as a result of his guilty plea and that he received the ineffective assistance of counsel because his attorney failed to object to the admonishments and failed to file a motion to withdraw his guilty plea.

¶ 10 The judge who presided over his guilty plea and sentencing dismissed the petition, finding that the defendant had failed to state the gist of a constitutional claim and that "the petition on its face contains information contrary to defendant's contentions" because it quoted from the proceedings at which the court advised the defendant that "any sentence to the Department of Corrections is followed by three years of mandatory supervised release." As for the defendant's allegation that he received the ineffective assistance of counsel, the court found that the "issue is non-existent as the basis for the assertion is non-existent."

¶ 11 The defendant now appeals the court's dismissal of his petition.

¶ 12 DISCUSSION

¶ 13 "The Act provides a method by which persons under criminal sentence in this state can assert that their convictions were the result of a substantial denial of their rights under the United States Constitution or the Illinois Constitution or both." *People v. Hodges*, 234 Ill. 2d 1, 9, 912 N.E.2d 1204, 1208 (2009). We review the circuit court's dismissal of a postconviction petition *de novo*. *Id.* A summary dismissal of a postconviction petition at the first stage of proceedings is proper only if it is found to be "frivolous or patently without

merit," meaning that it lacks an "arguable basis in either fact or law" because it is "based on an indisputably meritless legal theory or a fanciful factual allegation." *Id.* at 16, 912 N.E.2d at 1212. "An example of an indisputably meritless legal theory is one which is completely contradicted by the record." *Id.*

¶ 14 The defendant first argues that the judge who dismissed his petition was precluded from ruling on it because he had also presided over the proceedings which resulted in the defendant's conviction. The defendant bases this argument on section 122-8 of the Act, pursuant to which proceedings brought under the Act "shall be considered by a judge who was not involved in the original proceeding which resulted in conviction." 725 ILCS 5/122-8 (West 2008).

¶ 15 As the State correctly notes, though, the supreme court has held that section 122-8 of the Act violates the separation-of-powers clause of the Illinois Constitution and is thus invalid. *People v. Joseph*, 113 Ill. 2d 36, 48, 495 N.E.2d 501, 507 (1986). Decisions of the supreme court are binding on all Illinois courts, and this court lacks the authority to disregard its holdings. *People v. Artis*, 232 Ill. 2d 156, 164, 902 N.E.2d 677, 682 (2009). We therefore reject the defendant's contention that the judge was not permitted to rule on his petition.

¶ 16 The defendant next argues that the circuit court's dismissal of his petition must be reversed because his petition stated the gist of a constitutional claim and was not frivolous or patently without merit. He contends that he met the low standard required of the Act when he alleged that he was improperly admonished and that counsel acted unreasonably when he failed to move to withdraw his guilty plea. He seeks the reversal of the circuit court's dismissal of his petition and asks that this court reduce his sentence of imprisonment by 3 years so that his sentence, including the applicable term of mandatory supervised release, totals 8½ years.

¶ 17 Pursuant to Supreme Court Rule 402 (eff. July 1, 1997), courts must ensure that

defendants are entering into pleas intelligently and with full knowledge of their consequences by, *inter alia*, admonishing them in regard to the minimum and maximum penalties to which their pleas would expose them. *People v. Daniels*, 388 Ill. App. 3d 952, 955, 905 N.E.2d 349, 353 (2009). A court's failure to inform a defendant that a term of mandatory supervised release will follow any term of imprisonment may act to invalidate a guilty plea if the sentence ultimately imposed, including the applicable term of mandatory supervised release, exceeds that to which the court advised the defendant would be the maximum. *People v. Whitfield*, 217 Ill. 2d 177, 190, 840 N.E.2d 658, 667 (2005).

¶ 18 The defendant contends that the circuit court failed to comply with Rule 402 and that its dismissal of his petition was thus improper. He argues that because the court did not refer to mandatory supervised release during the sentencing hearing and failed to record the term of mandatory release on the written sentencing order, his due process rights were violated and the court's dismissal of the petition must be reversed.

¶ 19 The defendant's claims are belied by the record. As the transcript of the defendant's guilty plea proceedings shows, the court advised him prior to accepting his plea that "any sentence to the Department of Corrections is followed by three years of mandatory supervised release."

¶ 20 In the defendant's memorandum of law attached to his postconviction petition, he cites to *People v. Mendez*, 402 Ill. App. 3d 95, 931 N.E.2d 308 (2010), in support of his argument that the admonitions given by the circuit court were ambiguous and therefore inadequate to satisfy the requirements of Rule 402. In *Mendez*, the circuit court advised the defendant prior to accepting his guilty plea that the " 'possible penalties could have been between six and thirty years in the Department of Corrections with three years of mandatory supervised release.' " *Id.* at 97, 931 N.E.2d at 310. The court further advised the defendant that " 'under certain circumstances [he] could receive an extended term sentence' " and that " '[t]hat could

mean between thirty and sixty years, with three years of mandatory supervised release.'" *Id.* The court made no other mention of mandatory supervised release prior to accepting the defendant's guilty plea. *Id.*

¶ 21 On review of the circuit court's dismissal of the defendant's petition, the appellate court did not reach the merits of the defendant's claims, though, instead holding that retroactively applying *Whitfield* was improper because the *Whitfield* court had announced a new statement of law subsequent to the defendant's conviction. *Id.* at 100, 931 N.E.2d at 312-13.

¶ 22 Regardless, though, the admonishments given to the instant defendant are in stark contrast to the arguably ambiguous language used by the circuit court in *Mendez*. The court here clearly advised the defendant of exactly what sentencing range he faced and made clear that a three-year term of mandatory supervised release would necessarily follow any sentence to the Department. The circuit court's admonishments to the instant defendant were unambiguous and clearly advised him of the potential penalties he faced, and his reliance on *Mendez* is misplaced.

¶ 23 We note that even had the court failed to admonish the defendant in regard to mandatory supervised release, the dismissal of his petition would still have been proper. The *Whitfield* court limited its holding to situations in which the court had bound itself to the terms of a fully negotiated plea agreement and then issued a sentence that, when added to the applicable term of mandatory supervised release, exceeded the sentence to which the parties agreed. 217 Ill. 2d 177, 190, 840 N.E.2d 658, 666-67.

¶ 24 Here, though, the defendant entered an open plea, with the State merely agreeing to recommend a sentence of seven years in the Department provided the defendant did not violate the conditions of his bond. The court did not accede to the terms of the agreement, and it advised the defendant that it could impose a sentence of up to 30 years in prison, to be

followed by 3 years of mandatory supervised release. *Whitfield* is thus inapplicable under the facts before us.

¶ 25 The defendant's next contention—that the court's failure to record the term of mandatory supervised release on the written sentencing order acts to invalidate the sentence—is also unsupported by law. Section 5-8-1(d) of the Unified Code of Corrections provides that every sentence to the Department "shall include as though written therein" a term of mandatory supervised release. 730 ILCS 5/5-8-1(d) (West 2006). For a Class X felony, the term of mandatory supervised release is three years. 730 ILCS 5/5-8-1(d)(1) (West 2006). The court's failure to specify the term of mandatory supervised release on the sentencing order is of no consequence because it was imposed by operation of law "as though written therein," and the defendant's argument to the contrary is baseless.

¶ 26 Finally, the defendant argued in the memorandum of law attached to his petition that he had received the ineffective assistance of counsel because his attorney failed to object to the court's admonishments and failed to move to withdraw his plea when the State recommended a sentence in excess of the seven years it had previously agreed to recommend. The defendant's brief, however, does not develop a coherent argument on this issue. A point raised but not argued fails to meet the requirements of Supreme Court Rule 341(h)(7) (eff. July 1, 2008), and it is within our discretion to consider the issue forfeited. *Hansen v. Baxter Healthcare Corp.*, 198 Ill. 2d 420, 438, 764 N.E.2d 35, 46 (2002). Because the defendant's petition is contained within the record on appeal, though, we decline to deem the issue forfeited and will instead consider the arguments put forth in the defendant's petition.

¶ 27 We review claims of ineffective assistance of counsel under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). In order to prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance "fell below an objective standard of reasonableness" and that the unreasonable performance resulted in

prejudice to the defendant. *Id.* at 687-88. At the first stage of proceedings under the Act, a summary dismissal of a petition is improper if it is arguable that (1) counsel's performance fell below an objective standard of reasonableness and (2) the defendant was prejudiced as a result of the unreasonable representation. *Hodges*, 234 Ill. 2d at 17, 912 N.E.2d at 1212.

¶ 28 As previously discussed, the defendant's claim that he received inadequate admonitions is contradicted by the record and is thus without merit. Counsel's failure to frivolously object to the admonitions therefore cannot be said to be unreasonable.

¶ 29 The defendant's claim that counsel's failure to move to withdraw his guilty plea was unreasonable is likewise unpersuasive. The defendant does not allege that he requested that his plea be withdrawn, nor does he establish that he was arguably prejudiced by his attorney's failure to do so on his own initiative.

¶ 30 The defendant claims that it would have been advantageous to withdraw his guilty plea because the State decided to "opt out" of the agreement and recommend a sentence of incarceration in excess of seven years. It was the defendant, though, who failed to live up to his obligations under the agreement, thus rendering it ineffectual. When the defendant violated the conditions of his bond by attempting to leave the country, he also violated the terms of his agreement with the State and the State was no longer bound by its agreement to recommend a sentence of seven years. Absent a plea agreement concurred in by the court, a defendant has no right to know in advance the specific sentence that will be imposed and the court has no obligation to follow the recommendation of the State. *People v. Lambrechts*, 69 Ill. 2d 544, 556, 372 N.E.2d 641, 647-48 (1977). The grounds proffered by the defendant as bases for withdrawing his plea have no basis in fact or law, and it thus cannot be said that counsel's failure to move to withdraw his plea was arguably unreasonable.

¶ 31 The defendant has also failed to establish that he arguably was prejudiced by counsel's alleged ineffectiveness. Casting serious doubt on the defendant's claim that he was

prejudiced by counsel's failure to move to withdraw his plea is the fact that the defendant's sentence was considerably closer to the minimum sentence provided by statute than it was the maximum. Had the defendant's attorney managed to successfully move to withdraw his plea, it is exceedingly unlikely that he would have received a less onerous sentence than the one imposed, which, as the court noted immediately following sentencing, was, under the circumstances, "for the most part rather lean." The defendant's claim that he was prejudiced by the alleged ineffective assistance of counsel is unpersuasive, and the circuit court did not err in dismissing his petition on this basis.

¶ 32

#### CONCLUSION

¶ 33 For the foregoing reasons, the circuit court committed no error and we affirm its dismissal of the defendant's petition for postconviction relief.

¶ 34 Affirmed.