NOTICE
Decision filed 06/07/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-10-0159

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Randolph County.
	)	
v.	)	No. 05-CF-26
	)	
PAIGE R. DAVIS,	)	Honorable
	)	William A. Schuwerk, Jr.,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Donovan and Wexstten concurred in the judgment.

R U L E 2 3 O R D E R

Held: The defendant's motion to reduce his sentence, which asserted that the circuit court had failed to admonish him regarding mandatory supervised release, was properly dismissed. The circuit court was not required to admonish the defendant regarding mandatory supervised release because the defendant did not plead guilty; rather, he was convicted following a jury trial.

The defendant, Paige R. Davis, appeals the denial of his motion to reduce his sentence. The Office of the State Appellate Defender has been appointed to represent him. The State Appellate Defender has filed a motion to withdraw as counsel, alleging that there is no merit to the appeal. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987); *People v. McKenney*, 255 Ill. App. 3d 644, 627 N.E.2d 715 (1994). The defendant was given proper notice and was granted an extension of time to file briefs, objections, or any other documents supporting his appeal. He has not filed a response. We have considered the State Appellate Defender's motion to withdraw as counsel on appeal. We have examined the entire record on appeal and find no error or potential grounds for appeal. For the following reasons, we now grant the State Appellate Defender's motion to withdraw as counsel on appeal and

affirm the judgment of the circuit court of Randolph County.

Following a jury trial in 2005, Davis was convicted of home invasion, aggravated robbery, and unlawful restraint. On May 20, 2005, he was sentenced to two 10-year terms of imprisonment on the home invasion and aggravated robbery convictions and a 3-year term of imprisonment on the unlawful restraint conviction, with all the sentences to run concurrently. His motion to reconsider the sentence was denied. Davis did not appeal.

On March 1, 2010, Davis filed *pro se* a second motion to reduce his sentence, arguing that his 10-year sentence should be reduced to 7 years because at his sentencing hearing the trial court did not admonish him pursuant to Supreme Court Rule 402 (eff. July 1, 1997) that he would be required to serve a 3-year period of mandatory supervised release. The circuit court denied Davis's motion, finding that Rule 402 was inapplicable because Davis was convicted and sentenced following a jury trial. Davis appeals.

Initially, we note that Davis's March 1, 2010, motion to reduce his sentence was clearly untimely because it was filed more than 30 days after he was sentenced. 730 ILCS 5/5-4.5-50(d) (West 2008). Timeliness aside, Davis's argument is meritless.

Rule 402 provides in relevant part as follows:

> "In hearings *on pleas of guilty* *** there must be substantial compliance with the following:
>
> **(a) Admonitions to Defendant.** *The court shall not accept a plea of guilty* *** without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:
>
> ***
>
> (2) 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 ***."

(Emphasis added.) Ill. S. Ct. R. 402(a)(2) (eff. July 1, 1997).

In *People v. Whitfield*, 217 Ill. 2d 177, 840 N.E.2d 658 (2005), the supreme court held that when a defendant pleads guilty in exchange for a specific sentence, Rule 402 requires the circuit court to admonish the defendant, prior to accepting his plea, that a period of mandatory supervised release will be added to that sentence. The failure to do so, the court held, resulted in the defendant having to serve a more onerous sentence than that to which he had agreed, violating his constitutional right to due process and denying him the benefit of his bargain with the State. Recognizing that it could not vacate the mandatory-supervised-release term, the supreme court reduced the defendant's prison sentence by the amount of the mandatory-supervised-release term so that he would receive the sentence for which he had bargained.

Rule 402 was adopted to ensure compliance with *Boykin v. Alabama*, 395 U.S. 238 (1969), wherein the Supreme Court held that for a guilty plea to be valid under the due process clause, the record must affirmatively show that the plea was entered intelligently and with full knowledge of its consequences. *Whitfield*, 217 Ill. 2d at 188 n.3, 840 N.E.2d at 665 n.3. In the present case, however, Davis did not plead guilty–he pled not guilty and was convicted following a jury trial. Because Davis did not plead guilty, the circuit court was not required to admonish him pursuant to Rule 402 and it was under no obligation to advise him that a period of mandatory supervised release would be attached to any prison sentence. Davis is not entitled to *Whitfield* relief, *i.e.*, having his prison sentenced reduced by the mandatory-supervised-release term, because his sentence was the result of a conviction following a trial, not a plea bargain with the State.

For the foregoing reasons, the motion of the State Appellate Defender to withdraw as counsel is granted, and the judgment of the circuit court of Randolph County is affirmed.

Motion granted; judgment affirmed.