

No. 1-11-0401

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SIDNEY COLLINS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 84 C 7889
)	
FORREST J. ASHBY, Director, RUSHVILLE)	Honorable
TREATMENT and DETENTION FACILITY,)	Noreen V. Love,
)	Judge Presiding.
Defendant-Appellee.)	

JUSTICE KARNEZIS delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Where the circuit court properly denied plaintiff's motion to vacate its January 26, 2010 order and did not impose a freestanding term of mandatory supervised release, we affirm the judgment of the circuit court.

¶ 2 Plaintiff Sidney Collins appeals from an order of the circuit court denying his motion to vacate the circuit court's order entered on January 26, 2010, which determined that his release date from prison was May 19, 1999, and that upon his release a three-year term of mandatory supervised release (MSR) remained to be served. Plaintiff contends that he served his MSR term

while incarcerated, and when he was released from prison in January 2010, there was no MSR period left to serve. Plaintiff also contends that the January 2010 order improperly sentenced him to a MSR term. We affirm.

¶ 3 Following a 1985 jury trial, plaintiff was convicted of rape, home invasion, and aggravated battery. He was sentenced to an extended-term of 60 years' imprisonment for rape, and two concurrent terms of 30 and 5 years for home invasion and aggravated battery, respectively. This court affirmed that judgment on appeal. *People v. Collins*, 176 Ill. App. 3d 169 (1988).

¶ 4 In 2007, plaintiff filed a *habeas corpus* petition, alleging that the sentencing court lacked jurisdiction to impose the extended-term sentence on the rape conviction, thus rendering that portion of the sentence void. The circuit court dismissed plaintiff's petition, but this court vacated the circuit court's dismissal, holding that the extended-term portion of the sentence was void. *People v. Collins*, No. 1-08-0886, order at 9 (2009) (unpublished order under Supreme Court Rule 23). Accordingly, this court remanded the cause to the circuit court:

"for further proceedings for the trial court to determine the factual question of plaintiff's definitive release date. If plaintiff's release date has not passed, the *habeas* petition should be denied. If the plaintiff establishes that his release date has passed, the *habeas* petition should be granted." *Collins*, No. 1-08-0886, order at 9.

¶ 5 On January 26, 2010, the circuit court found that plaintiff's release date was May 19, 1999, and that he was entitled to immediate release. The court's order and corrected mittimus further noted that, upon release, plaintiff had a three-year term of MSR remaining to be served.

¶ 6 On October 4, 2010, plaintiff moved to vacate the circuit court's January 26, 2010 order arguing that the circuit court's order and corrected mittimus improperly "sentenced" him to a term

of MSR. On January 10, 2011, the circuit court denied the motion, finding that plaintiff's three-year MSR term had been imposed as part of his original sentence in 1985, and that the intent of the court was not to sentence him to an additional MSR term in its January 2010 order. Instead, the circuit court explained that it merely admonished and reminded plaintiff that his original sentence carried with it a three-year term of MSR that remained to be served upon his release from prison.

¶ 7 Plaintiff now appeals from the January 10, 2011 order. In doing so, plaintiff first maintains that his MSR term was offset by the excess prison time he served. He specifically maintains that he completed his MSR term while in prison, and thus had nothing left to serve when he was released.

¶ 8 Any sentence, except a life sentence, "shall" include a term of mandatory supervised release "in addition to the term of imprisonment." Ill. Rev. Stat. 1983, ch. 38, par. 1005-8-1(d), now codified at 730 ILCS 5/5-8-1(d) (West 2010). Therefore, the MSR term cannot be served during the term of imprisonment and cannot begin to run until after the maximum term of imprisonment is satisfied. *Faheem-El v. Klinicar*, 123 Ill. 2d 291, 299-300 (1988). Moreover, the supreme court has found nothing in the language of the statute or its purpose to suggest that the legislature intended paragraph 1005-8-1(d) of the Unified Code of Corrections to reduce the sentence imposed by the trial court or to allow for early discharge of a sentence. *Faheem*, 123 Ill. 2d at 301. Based on this reasoning, we reject plaintiff's argument that his MSR term should be offset by the excess time he spent in prison.

¶ 9 We note that the United States Supreme Court decision in *United States v. Johnson*, 529 U.S. 53 (2000), supports our finding that plaintiff must serve his MSR term upon release from prison. In *Johnson*, 529 U.S. at 55, a defendant serving time in federal prison had two of his convictions vacated, resulting in his immediate release because he had served more time in

prison than his remaining convictions required. The question before the Supreme Court was whether the excess prison time should be credited to the supervised release term, reducing its length. *Johnson*, 529 U.S. at 54. In interpreting the federal supervised release statute, the court held that "the statute, by its own necessary operation, does not reduce the length of a supervised release term by reason of excess time served in person." *Johnson*, 529 U.S. at 60. The Supreme Court reasoned that the objectives of supervised release, *i.e.*, assisting individuals in their transition to community life and fulfilling rehabilitative ends, would be unfulfilled if excess prison time were to offset and reduce supervised release. *Johnson*, 529 U.S. at 59. Therefore, the Supreme Court held that the defendant's supervised release term remained unaltered, despite the excess time he served in prison. *Johnson*, 529 U.S. at 54. Similarly, Illinois' MSR term is designed to serve the same ends as the federal MSR term (See, *e.g.*, Ill. Rev. Stat. 1983, ch. 38, par. 1003-3-7, now codified at 730 ILCS 5/3-3-7 (West 2010)), and thus plaintiff in this case cannot substitute his excess prison time for his MSR term.

¶ 10 In reaching this conclusion, we reject plaintiff's contention that if he were still subject to MSR he could not have been granted *habeas corpus* relief because he would be in the lawful custody of the Illinois Department of Corrections (IDOC). In making this argument, plaintiff primarily relies on *Barney v. Prisoner Review Board*, 184 Ill. 2d 428 (1998). In *Barney*, 184 Ill. 2d at 430-31, the supreme court held that a petitioner who was released from prison onto MSR, but was later returned to prison for violating his MSR, could not challenge in *habeas* proceedings the Prisoner Review Board's decision to revoke his MSR. In so holding, the court in *Barney* found that *habeas corpus* relief is not available to a petitioner who is serving an MSR term. *Barney*, 184 Ill. 2d at 430-31. The court in *Barney*, however, was silent on the question before us, *i.e.*, whether a term of MSR may be offset by excess time spent in prison by a plaintiff. Therefore, we find the court's decision in *Barney* inapplicable to the case at bar.

¶ 11 Plaintiff also maintains that the circuit court "sentenced" him to a term of MSR on January 26, 2010. Contrary to plaintiff's contention, however, the circuit court never sentenced him to a term of MSR on January 26. Instead, the circuit court simply indicated that plaintiff had to serve the MSR term that was originally imposed on him following his 1985 jury trial. The January 26 order specifically stated that "upon release [plaintiff] will serve his three (3) years of mandatory supervised release." Furthermore, in denying plaintiff's motion to vacate the January 26, 2010 order, the court explicitly stated that it was merely reminding and admonishing plaintiff that his original 1985 sentence carried with it a three-year term of MSR that needed to be completed upon his release from prison. See Ill. Rev. Stat. 1983, ch. 38, par. 1005-8-1(d).

¶ 12 In so finding, we reject plaintiff's other contentions that: the circuit court exceeded the scope of this court's mandate in *Collins*, No. 1-08-0886, order at 9, when it sentenced him to a freestanding term of MSR in addition to the MSR term imposed in 1985, the circuit court erred in sentencing plaintiff without him being present, and that the Attorney General did not have authority to appear at the remand proceedings or on the motion to vacate because those were sentencing proceedings in a criminal case over which the State's Attorney had exclusive jurisdiction. These contentions are based on plaintiff's mistaken belief that the circuit court "sentenced" him to a term of MSR at the January 26, 2010 remand hearing. Therefore, each of these contentions are without merit.

¶ 13 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 14 Affirmed.