

No. 1-11-0661

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 06 CR 23898
	)	
MICHAEL BOSTON,	)	Honorable
	)	Steven J. Goebel,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE HARRIS delivered the judgment of the court.  
Justices Quinn and Connors concurred in the judgment.

**ORDER**

¶ 1 *Held:* Court did not err in summarily dismissing defendant's post-conviction petition alleging ineffective assistance of counsel during guilty plea proceedings where any misrepresentations by counsel regarding the sentence defendant faced under his plea agreement were rendered harmless by the court's repeated and unambiguous explanations of the sentence before defendant expressed his understanding and confirmed his intent to plead guilty. Moreover, counsel did not misrepresent the legal sentence in the plea agreement but gave a correct explanation of the actual prison sentence in light of defendant's presentencing detention credit.

¶ 2 Pursuant to a 2009 guilty plea, defendant Michael Boston was convicted of three counts of armed robbery and sentenced to 10 years' imprisonment followed by 3 years of mandatory

supervised release (MSR). Defendant now appeals from the summary dismissal of his 2010 *pro se* post-conviction petition, contending that the summary dismissal was erroneous as his petition stated an arguably meritorious claim of ineffective assistance of trial counsel during the guilty plea hearing. In particular, he contends that counsel misrepresented that he faced a sentence of 10 years when he actually received a 13-year sentence.

¶ 3 Defendant was charged with armed robbery (while armed with a firearm) of eight victims, aggravated unlawful restraint against the same eight persons, burglary, unlawful use of a weapon by a felon, and aggravated unlawful use of a weapon, all allegedly committed on or about October 6, 2006.

¶ 4 On December 2, 2009, the day defendant was scheduled for a jury trial, the jail sent defendant to court in a jail uniform; the court therefore passed the case. When the case was recalled, the parties informed the court that an "agreed upon disposition" of "ten years IDOC" had previously been offered and defendant now wanted to accept it. After defendant confirmed that this was his intention, the court told him "that's a Class X felony so it's three years of [MSR] which you have to serve once you got out." However, when the court asked if defendant understood that, he replied "No." Therefore, the court told him "[o]nce you did the ten years in the Illinois Department of Corrections, you have to serve three years of [MSR.] Does that change your mind at all?" Defendant replied that it would change his mind. When the court explained that MSR would mean that "[y]ou would be released, but you have to report to a parole officer," defendant stated that he understood what MSR is and reiterated that it changed his mind about the plea. The court then informed defendant that, with the firearm enhancement to armed robbery, he would face a minimum of 21 years' imprisonment. When defendant then said "I wish to accept the plea," the court asked him if he understood that "after you serve the ten years in the Illinois Department of Corrections, you are going to have to serve three years of [MSR]."

Defendant replied that he understood, and when the court asked "[t]hat's your understanding and that's what you wish to do?" defendant replied "Yes."

¶ 5 The case then proceeded through guilty plea proceedings on three counts of armed robbery, including reading of the charges and applicable sentencing ranges, waiver of a jury and bench trial, detailed factual basis for the plea, ascertainment that defendant's plea was voluntary, and discussion of defendant's criminal history. The court pronounced that "it will be the sentence of this court that you serve ten years in the Illinois Department of Corrections. You will also have to serve three years of [MSR] when you get out. \*\*\* You will receive credit for 1120 days that you have already served in custody." The court asked defendant if he had any questions about his sentence, to which he replied "No."

¶ 6 Defendant did not file a motion to withdraw his plea, and there was no direct appeal.

¶ 7 In December 2010, defendant filed the instant *pro se* post-conviction petition. He alleged that trial counsel misled and coerced him into his guilty plea, in that he told defendant that he would receive seven years' imprisonment and three years MSR in exchange for his plea. When the court informed defendant that the agreement was for 10 years of prison followed by 3 years' MSR, defendant expressed his confusion over this "13 year sentence." However, trial counsel then reassured him that he would receive a 10-year sentence, so he entered the guilty plea. Specifically, defendant alleges that trial counsel said "that he would serve 7 years imprisonment and 3 years" MSR. Defendant claimed that he would not have pled guilty had he understood that he was receiving a 13-year sentence. The petition was signed by defendant but not notarized, nor was any affidavit attached.

¶ 8 On January 28, 2011, the court summarily dismissed the petition. The court noted that it had properly admonished defendant that he was receiving 10 years in prison and 3 years of MSR. The court also noted that it corrected defendant's misconception and that defendant told the court that he understood its explanation. The court found that counsel had "clearly and repeatedly"

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explained defendant's sentence to him. In open court announcing the summary dismissal, the court noted that:

"defendant was given ample opportunity to discuss \*\*\* that he said that he did not understand what MSR was with [trial counsel]. The court did take a break [and] sat on the bench while [trial counsel and defendant] talked but it was ample opportunity. And after that discussion occurred, \*\*\*\* I went over [MSR] and I went over the plea with him again and he did, in fact, state that he understood."

This appeal timely followed.

¶ 9 On appeal, defendant contends that the summary dismissal of his petition was erroneous because he stated an arguably meritorious claim that trial counsel rendered ineffective assistance by misrepresenting during the plea hearing that defendant faced a sentence of 10 years, consisting of 7 years' imprisonment and 3 years of MSR, when he actually received 10 years' imprisonment and 3 years' MSR, thus inducing him to accept a plea agreement that he would have rejected had he understood it.

¶ 10 Under section 122-2.1 of the Post-Conviction Hearing Act (725 ILCS 5/122-2.1 (West 2010)), the circuit court may examine the trial record and any action by this court in evaluating a post-conviction petition within 90 days of its filing, and must summarily dismiss the petition if it is frivolous or patently without merit. A *pro se* petition is frivolous or patently without merit only if it has no arguable basis in law or fact; that is, if it is based on an indisputably meritless legal theory, such as one completely contradicted by the record, or a fanciful factual allegation, such as one that is fantastic or delusional. *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010). On a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that the deficient performance prejudiced him; in other words, that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a

reasonable probability that the outcome of the proceedings would have been different but for counsel's errors. *Id.* at 496-97. A petition alleging ineffective assistance of counsel may not be summarily dismissed if (1) it is arguable that counsel's performance fell below an objective standard of reasonableness and (2) it is arguable that the defendant was prejudiced. *Id.* at 497. The summary dismissal of a post-conviction petition is reviewed *de novo*. *Id.* at 496.

¶ 11 Here, the record utterly belies the allegations of the petition. The court informed defendant that he would have to serve three years of MSR, and defendant indeed expressed confusion at this admonishment. However, the court twice explained in pellucid language that defendant would serve three years of MSR following 10 years in prison. Defendant told the court that he understood this and wished to plead guilty. At the end of the plea hearing, the court pronounced sentence, again stating clearly that defendant would serve 10 years in prison followed by three years of MSR. Defendant was given an opportunity to ask the court questions about this sentence and chose not to.

¶ 12 Defendant alleges that trial counsel reassured him after his expression of confusion regarding MSR that his total sentence including MSR would be 10 years so that he was induced to enter his plea. We note that the transcript of the plea hearing contains no discussion between defendant and trial counsel, no continuance or passing of the case, and no notation or indication of a conference, after the expression of confusion during which counsel could have made the alleged assurances or misrepresentations. Accepting the post-conviction court's statement that there was a conference between trial counsel and defendant utterly unreflected by the plea-hearing transcript, we consider it key that the second of the court's unambiguous explanations of defendant's sentence followed the conference and preceded defendant's renewed decision to plead guilty. Under such circumstances, any misrepresentations by counsel could not have prejudiced defendant as he had two clear explanations by the court of the sentence he was agreeing to before

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he with equal clarity expressed his understanding of the court's explanation and his willingness to plead guilty.

¶ 13 Moreover, accepting defendant's allegation that trial counsel told him that he would serve seven years in prison and three years of MSR, that was not an erroneous statement of the legal sentence but a generally correct statement (absent considerations of good-time credit) of the prison time and MSR period that defendant was facing in light of his 1120 days – that is, three years and 25 days – of presentencing detention credit. It was appropriate for counsel to reassure defendant that if he pled guilty, he would in fact not be spending 10 calendar years in prison but, regardless of future events, no more than 7 years in prison. In sum, the court admonished defendant clearly and correctly regarding his legal sentence, while counsel gave correct practical advice as to the sentence he could actually serve to put the plea agreement into a clearer context.

¶ 14 Accordingly, the petition did not state a claim of arguable merit and its summary dismissal was proper. The judgment of the circuit court is therefore affirmed.

¶ 15 Affirmed.