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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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LENNIE J. HICKS,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 04-CF-2691
	)	
RANDY DAVIS,	)	Honorable
	)	Fred L. Foreman,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE BOWMAN delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

**ORDER**

*Held:* The trial court properly dismissed plaintiff's *habeas corpus* complaint: although the trial court at sentencing did not advise plaintiff that, by statute, he would need to serve a 3-year term of mandatory supervised release after serving his concurrent 20-year prison terms, he had been convicted after a trial and thus was not entitled to have his prison terms reduced by the length of the MSR term.

¶ 1 Plaintiff, Lennie J. Hicks, appeals, *pro se*, from an order of the circuit court of Lake County dismissing his complaint for an order of *habeas corpus*. We affirm.

¶ 2 Following a jury trial, plaintiff was convicted of two counts of armed violence (720 ILCS 5/33A-2(a) (West 2004)), a Class X felony, and was sentenced to concurrent 20-year prison terms, with credit for time served from July 21, 2004. In pronouncing sentence, the trial court did not

expressly state that plaintiff's prison term would be followed by a three-year term of mandatory supervised release (MSR) (see 730 ILCS 5/5-8-1(d)(1)(ii) (West 2004)). Nor did the written sentencing order specify that MSR was part of plaintiff's sentence.

¶ 3 *Habeas corpus* relief "is available only to obtain the release of a prisoner who has been incarcerated under a judgment of a court that lacked jurisdiction of the subject matter or the person of the petitioner, or where there has been some occurrence subsequent to the prisoner's conviction that entitles him to release." *Beacham v. Walker*, 231 Ill. 2d 51, 58 (2008). Subsequent events entitling a prisoner to release include the expiration of his or her term of imprisonment. *Faircloth v. Sternes*, 367 Ill. App. 3d 123, 125 (2006). Where a complaint for an order of *habeas corpus* is insufficient on its face to warrant relief, the trial court may dismiss it *sua sponte*. *Beacham*, 231 Ill. 2d at 59.

¶ 4 Plaintiff's argument, as we understand it, is that his sentence should be served as concurrent 17-year prison terms followed by a 3-year term of MSR. Plaintiff further contends that good-conduct credit would reduce the aggregate 20-year period of incarceration and MSR to 10 years, which should be served as 7 years in prison and 3 years of MSR. The argument is unpersuasive. For one thing, a prisoner is entitled to only one day of good conduct-credit for each day of imprisonment. See 730 ILCS 5/3-6-3(a)(2.1) (West 2004). However, plaintiff's calculations imply the accrual of 10 years of credit for 7 years of actual imprisonment, which is roughly 1.43 days of credit for every day actually served.

¶ 5 More importantly, the premise of plaintiff's argument—that his release date should be calculated on the basis of a 17-year prison term—is incorrect. At the time of plaintiff's offenses, section 5-8-1(d)(1) of the Unified Code of Corrections provided:

“(d) Except where a term of natural life is imposed every sentence shall include as though written therein a term in addition to the term of imprisonment. \*\*\* For those sentenced on or after February 1, 1978, such term shall be identified as a mandatory supervised release term. Subject to earlier termination \*\*\* the \*\*\* mandatory supervised release term shall be as follows:

(1) for first degree murder or a Class X felony \*\*\*, 3 years[.]” 730 ILCS 5/5-8-1(d)(1) (West 2004).

Plaintiff contends that, because the trial court did not “admonish” him at sentencing that he would be required to serve a three-year term of MSR, his 20-year concurrent prison terms should be reduced by 3 years. In effect, defendant attempts to invoke the holding of *People v. Whitfield*, 217 Ill. 2d 177 (2005), although he does not cite that decision by name.

¶ 6 *Whitfield* holds that, when a criminal defendant enters a negotiated guilty plea but is not admonished about MSR, “addition of the MSR term to the agreed-upon sentence violates due process because the sentence imposed is more onerous than the one defendant agreed to at the time of the plea hearing.” *Id.* at 195. Because the trial court has no power to impose a term of imprisonment that is not followed by a term of MSR (*id.* at 200-01), the remedy that best approximates the defendant’s bargain with the State is to reduce the prison term by a period equal in length to the MSR term (*id.* at 203). Because plaintiff had no agreement with the State in this case and did not plead guilty, *Whitfield* does not apply.

¶ 7 Plaintiff also argues that because section 5-8-1(d) provides that every sentence “shall include” a term of MSR (730 ILCS 5/5-8-1(d) (West 2004)), his 20-year concurrent sentences constitute the aggregate period of incarceration and MSR. Thus, in plaintiff’s view, the 20-year concurrent sentences consist of 17 years of incarceration followed by 3 years of MSR. Plaintiff

evidently reads the statute as if it provided that every *term of imprisonment* shall include a term of MSR. However, as seen, the statute provided that it is the “sentence” that includes the term of MSR. “Sentence” simply means “the disposition imposed by the court on a convicted defendant.” 730 ILCS 5/5-1-19 (West 2004). The disposition may consist of a combination of penal measures. 730 ILCS 5/5-5-3(b) (West 2004). Thus, pursuant to the plain language of section 5-8-1(d)(1), when (as in this case) a trial court imposes a 20-year prison term for a Class X felony, by operation of law the disposition includes a 3-year term of MSR “*in addition to the term of imprisonment.*” (Emphasis added.) 730 ILCS 5/5-8-1(d)(1) (West 2004).

¶ 8 Clearly, this is how our supreme court understands the statute to operate. In *Whitfield*, the court stated, “In situations where a defendant has entered an open plea and the trial court has admonished the defendant regarding the maximum sentence to which he would be exposed by his plea, the failure to admonish a defendant concerning the MSR is not a constitutional violation, *as long as the sentence plus the term of MSR is less than the maximum sentence which defendant was told he could receive.*” (Emphasis added.) *Whitfield*, 217 Ill. 2d at 193. The emphasized language is meaningful only if the terms of imprisonment and MSR are temporally distinct; otherwise, there would never be a case where the aggregate period of incarceration and MSR exceeded the statutory maximum prison term.

¶ 9 In view of the foregoing, it is clear that plaintiff is not yet entitled to release from incarceration, and his complaint for an order of *habeas corpus* was properly dismissed. We therefore affirm the judgment of the circuit court of Lake County.

Affirmed.