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2012 IL App (3d) 100907-U

Order filed June 5, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
Plaintiff-Appellee,	)	Warren County, Illinois,
	)	
v.	)	Appeal No. 3-10-0907
	)	Circuit No. 06-CF-101
	)	
MATTHEW W. SHERWOOD,	)	Honorable
	)	Edward R. Danner,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Justice Lytton concurred in the judgment.  
Presiding Justice Schmidt specially concurred.

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**ORDER**

¶ 1 *Held:* The defendant received Supreme Court Rule 402(a)(2) admonitions before pleading guilty and thus the trial court did not err in denying his postconviction petition.

¶ 2 The defendant, Matthew W. Sherwood, pled guilty but mentally ill to attempted first degree murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2006)). The defendant was sentenced to 27 years' imprisonment. On January 20, 2010, the defendant filed a successive postconviction

petition alleging that he was not apprised of the three-year mandatory supervised release (MSR) period during sentencing. The trial court denied the petition. We affirm.

¶ 3

### FACTS

¶ 4 On February 15, 2007, the defendant pled guilty but mentally ill to attempted first degree murder. During the plea, the court admonished the defendant that he could be imprisoned for a minimum of 21 years or a maximum of 45 years. The court advised the defendant that he would be subject to "mandatory supervised period of release—we used to refer to it as parole—for a period of three years." Defendant indicated that he understood the possible sentencing range and the MSR period. The State provided a factual basis for the plea, and the court accepted the defendant's plea. On February 22, 2007, the State announced that it had reached an agreement with the defendant as to the sentence to be imposed. The State informed the court that the defendant had agreed to a sentence of 27 years' imprisonment. The defendant told the court that the terms of the State's agreement were accurate, and the court accepted the agreed sentence. A verbatim transcript of the sentencing hearing was not filed, and the bystander's report does not indicate that the court admonished the defendant of the MSR period during the sentencing hearing. The defendant's sentencing order also did not include his three-year MSR period.

¶ 5 On January 20, 2010, the defendant filed a *pro se* successive postconviction petition. The court appointed counsel, and the defendant filed an amended successive postconviction petition and a second amended petition. In the second amended petition, the defendant asserted that his written plea of guilty but mentally ill did not reference an MSR term as a condition of his plea or sentence and he was not advised of the MSR period during sentencing.

¶ 6 After a hearing, the court found that the defendant was admonished of the MSR term at

the February 15, 2007, plea hearing. The court noted that although there was not a report of proceedings of the sentencing hearing, it believed that the defendant was also admonished of the MSR term on February 22, 2007. The court denied the defendant's successive petition.

¶ 7

#### ANALYSIS

¶ 8 The defendant argues that the trial court erred in denying his successive postconviction petition because the court failed to adequately admonish him of his three-year MSR term. The defendant contends that the trial court's February 15, 2007, admonition was insufficient because the plea agreement changed from an open plea, with a possible sentence of 45 years in prison, to a negotiated plea of 27 years in prison. Therefore, the court erred when it failed to link the MSR admonition to the defendant's actual 27-year sentence.

¶ 9 The defendant does not contest the fact-finder's determinations but argues that the issue presents a question of law. We agree and review the defendant's case *de novo*. *People v. Caballero*, 206 Ill. 2d 65 (2002).

¶ 10 A trial court shall not accept a plea of guilty without informing a defendant of and determining that he understands the minimum and maximum sentence prescribed by law. Ill. S. Ct. R. 402(a)(2) (eff. July 1, 1997). Where a defendant has entered an open plea, the failure to admonish the defendant of the MSR term is a constitutional due process violation when the defendant's sentence plus the MSR term is greater than the maximum sentence which the defendant was told he could receive. See *People v. Whitfield*, 217 Ill. 2d 177 (2005).

Admonishing a defendant of the MSR term ensures that his plea is knowing and voluntarily entered. *People v. Morris*, 236 Ill. 2d 345 (2010). There is no precise formula in admonishing a defendant of his MSR obligation, and an admonition is sufficient if an ordinary person in the

circumstances of the accused would understand it to convey the required warning. *Id.* Ideally, the admonishment should be given at the time the court reviewed the plea agreement and reiterated both at sentencing and in the written judgment. *Id.*

¶ 11 In the instant case, the trial court sufficiently admonished the defendant of the MSR period. We acknowledge that the record does not show that the court apprised the defendant of the MSR term during sentencing, and the MSR term was not included in the sentencing order. The court, however, properly admonished defendant before accepting his plea. Moreover, the defendant stated in open court that he understood that a three-year MSR term would attach to any sentence the court ordered within the sentencing range. Although our supreme court has stated that an ideal admonition includes advising the defendant of the MSR term at the sentencing hearing and in the written sentencing order, the trial court's failure to follow this precise formula is not reversible error. See *People v. Berrios*, 387 Ill. App. 3d 1061 (2009) (defendant was properly admonished of his MSR term before pleading guilty even though the trial court did not reiterate the admonition at the sentencing hearing or in the sentencing order). Therefore, we find that the trial court's failure to provide additional admonishments at the defendant's sentencing hearing was not reversible error.

¶ 12 CONCLUSION

¶ 13 For the foregoing reasons, the judgment of the circuit court of Warren County is affirmed.

¶ 14 Affirmed.

2012 IL App (3d) 100907-U, *People v. Matthew W. Sherwood*

¶ 15 PRESIDING JUSTICE SCHMIDT, specially concurring:

¶ 16 I concur in the judgment. However, the majority cites *Whitfield* with respect to open pleas. *Supra* ¶ 10. *Whitfield* applies *only* to fully negotiated pleas. *People v. Snyder*, 2011 IL App (3d) 111382; *People v. Guerrero*, 2012 IL App (3d) 112020.