

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).

2012 IL App (4th) 110073-U

Filed 3/23/12

NO. 4-11-0073

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
RODNEY L. HARRIS,)	No. 10CF226
Defendant-Appellant.)	
)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court. Justices Steigmann and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* Where the trial court failed to admonish defendant at the plea hearing as to the applicable term of mandatory supervised release (MSR) that would be added to his sentence, the court's judgment is reversed and the case remanded for further proceedings.

¶ 2 In April 2010, defendant, Rodney L. Harris, pleaded guilty to two counts of violation of an order of protection (subsequent offense). In July 2010, the trial court sentenced him to concurrent extended terms of six years for each offense.

¶ 3 On appeal, defendant argues the trial court erred in sentencing him to the maximum extended-term sentence of six years in prison when it failed to advise him prior to accepting his guilty plea that the applicable MSR term would be added to his sentence. We reverse and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 In March 2010, a grand jury indicted defendant on two counts of violation of an order of protection (subsequent offense) (720 ILCS 5/12-30(a)(1) (West 2010)). In April 2010, defendant entered an open plea of guilty to both counts as well as an admission to a petition to revoke probation in a separate case. At the plea hearing, the trial court informed defendant of the nature of the charges and the minimum and maximum extended-term sentences. The court also informed defendant of the rights he would be waiving by pleading guilty. Defendant indicated no one had forced or threatened him to give up his trial rights and plead guilty. Following the State's factual basis, the court found defendant's guilty plea to be knowing and voluntary. No mention was made of any MSR term.

¶ 6 In July 2010, the trial court sentenced defendant to two concurrent extended terms of six years in prison to be served consecutive to a sentence for aggravated domestic battery in a separate case. The court did not impose a term of MSR at the hearing, but the amended sentencing judgment lists an MSR term of four years on each count.

¶ 7 In August 2010, defendant filed a *pro se* motion to withdraw guilty plea. In December 2010, the trial court denied the motion. This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Defendant argues the trial court erred in sentencing him to the maximum extended-term sentence without advising him prior to accepting his guilty plea of the four-year MSR term that would be added to his sentence. We agree, and the State concedes.

¶ 10 "A defendant's due-process rights may be violated where the defendant did not receive the 'benefit of the bargain' of his plea agreement with the State." *People v. Holt*, 372 Ill. App. 3d 650, 652, 867 N.E.2d 1192, 1194 (2007) (quoting *People v. Whitfield*, 217 Ill. 2d 177,

186, 840 N.E.2d 658, 664 (2005)). Prior to accepting a guilty plea, the trial court must admonish the defendant, *inter alia*, as to the nature of the charge and the minimum and maximum sentence prescribed by law. Ill. S. Ct. R. 402(a) (eff. July 1, 1997). Although substantial compliance is sufficient to establish due process, our supreme court has held a court fails to substantially comply with Rule 402 "when a defendant pleads guilty in exchange for a specific sentence and the trial court fails to advise the defendant, prior to accepting his plea, that a mandatory supervised release term will be added to that sentence." *Whitfield*, 217 Ill. 2d at 195, 840 N.E.2d at 669.

"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." *Whitfield*, 217 Ill. 2d at 193, 840 N.E.2d at 668.

¶ 11 In the case *sub judice*, the trial court admonished defendant that the maximum extended-term sentence for the Class 4 felony of violating an order of protection was six years in prison. 730 ILCS 5/5-4.5-45(a) (West 2010). The court made no mention of the applicable four-year MSR term for this offense. 730 ILCS 5/5-8-1(d)(6) (West 2010). The court also did not address the MSR term during the pronouncement of the six-year sentence. The MSR term was, however, included in the written sentencing orders.

¶ 12 Here, the trial court failed to comply with Rule 402, and the six-year sentence plus

the MSR term is greater than the maximum sentence defendant was told he could receive. Thus, we reverse the court's judgment denying defendant's motion to withdraw guilty plea.

¶ 13 As to possible remedies, defendant asks this court to reduce his sentence to two years in prison followed by a four-year MSR term or remand to the trial court for resentencing. However, our supreme court has recently held that, when a plea does not address sentencing, the appropriate remedy for the trial court's failure to properly admonish a defendant pursuant to Rule 402 is to remand the case and allow the defendant an opportunity to withdraw his guilty plea. *People v. Snyder*, 2011 IL 111382, ¶ 31, 959 N.E.2d 656, 662. Accordingly, we remand this case to give defendant the opportunity to withdraw his guilty plea.

¶ 14 III. CONCLUSION

¶ 15 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 16 Reversed and remanded for further proceedings.