

NOTICE
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2012 IL App (4th) 110324-U

Filed 8/20/12

NO. 4-11-0324

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Woodford County
MATTHEW J. SMITH,)	No. 07CF106
Defendant-Appellant,)	
)	Honorable
)	John B. Huschen,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Appleton and McCullough concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed the trial court's second-stage dismissal of defendant's postconviction petition but remanded with directions that the court amend its sentencing order to reflect the indeterminate three-year mandatory-supervised-release term to which defendant originally agreed.
- ¶ 2 Following a second-stage hearing, the trial court dismissed a February 10, 2011, petition that defendant, Matthew J. Smith, filed under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2010)).
- ¶ 3 Defendant appeals, arguing that (1) the trial court erred by failing to admonish him pursuant to *People v. Shellstrom*, 216 Ill. 2d 45, 56-57, 833 N.E.2d 863, 870 (2005), before treating his January 2009 letter to the trial court as a *pro se* postconviction petition and, alternatively, (2) he should be permitted to withdraw his guilty plea if this court determines that his sentence is void because the court imposed a sentence that included a determinate three-year

term of mandatory supervised release (MSR). We disagree and affirm.

¶ 4

I. BACKGROUND

¶ 5 In October 2007, defendant pleaded guilty to one count of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2006)), and the trial court sentenced him to a 10-year prison term per the agreement. Following a January 2008 hearing, the trial court denied defendant's motion to withdraw his guilty plea. Defendant appealed, and this court affirmed defendant's conviction but remanded, ordering the court to correct its sentencing order to reflect that defendant agreed to a determinate three-year term of MSR. *People v. Smith*, 4-08-0113 (Nov. 26, 2008) (unpublished order under Supreme Court Rule 23).

¶ 6

In January 2009, defendant sent a letter to the trial court, which the court (1) construed as a collateral attack on his conviction under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2008)), and (2) later summarily dismissed. Defendant appealed (appellate court case No. 4-09-0417).

¶ 7

While defendant's appeal was pending, defendant *pro se* filed a March 2010 "Letter of Notification," in which he explained to the trial court that he was enclosing a second postconviction petition and supporting documents. Defendant claimed that he was denied the effective assistance of counsel because his trial attorney failed to inform him at his juvenile detention hearing that he had the right to plead guilty before his case was transferred to adult court.

¶ 8

In October 2010, this court, citing *Shellstrom*, 216 Ill. 2d at 56-57, 833 N.E.2d at 870, reversed the trial court's judgment dismissing defendant's initial postconviction petition and directed the trial court to allow defendant the opportunity to withdraw his petition or,

alternatively, to amend it to include additional postconviction claims. *People v. Smith*, No. 4-09-0417 (Oct. 18, 2010) (unpublished order under Supreme Court Rule 23).

¶ 9 On October 25, 2010, defendant *pro se* filed a "Petition to Amend Post-Conviction Petition," in which defendant sought to amend his 2009 petition in appellate court case No. 4-09-0417. That same day, defendant also *pro se* filed (1) a "Request for Appearance," in which he asked the trial court for leave to appear in order to address his postconviction claims and (2) an amended postconviction petition, alleging (a) he was denied the effective assistance of counsel and (b) the prosecutor abused his discretion by filing new charges that subjected him to prosecution in adult court.

¶ 10 On February 10, 2011, defendant *pro se* filed a "Motion to Amend," in which defendant asked the trial court to discard his pending postconviction petition and to substitute the petition that he had enclosed. This new petition alleged that defendant was innocent. In support of his new claim, defendant attached to his petition the following documents: (1) a letter from his mother describing the floor plan of the crime scene, (2) a magazine article discussing a Missouri youth residential facility and documenting defendant's physical abuse while enrolled there, and (3) a letter from the victim's mother in which she recounted the victim's accusations of abuse.

¶ 11 At an April 4, 2011, status hearing, defendant appeared *pro se* and the court engaged in the following colloquy:

"THE COURT: People versus [Defendant], 07-CF-106.

Defendant appears *pro se*. State appears by Mr. Minger.

Cause comes on for hearing. I should say a status hearing.

MR. MINGER: Your Honor, I do have a motion to file today.

THE COURT: Okay. Just a minute here. Let me do one thing before that.

Okay, [defendant], are you still intending to represent yourself in this matter?

THE DEFENDANT: Yes, sir.

THE COURT: Now, prior to the mandate being received from the Appellate Court you filed various pleadings in our court file.

THE DEFENDANT: Yes, sir.

THE COURT: One was a motion to amend, another one is amended post[]conviction petition, and I think there is a motion that you [titled] motion to proceed to second stage.

THE DEFENDANT: Yes, sir.

THE COURT: Now, you understand that the Appellate Court has given you the right to withdraw your post[]conviction petition?

THE DEFENDANT: Yes, sir.

THE COURT: You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: They also gave you a right to supplement it

or amend it.

THE DEFENDANT: Yes, sir.

THE COURT: That's what you intend to do?

THE DEFENDANT: Yes, sir.

THE COURT: You intend to amend your post[]conviction petition?

THE DEFENDANT: Yes, sir.

THE COURT: You've already done that.

THE DEFENDANT: Yes, sir.

THE COURT: That's by your February 10th pleading?

THE DEFENDANT: Yes, sir.

THE COURT: [I]s your response that you are filing today, did it contemplate the February 10th pleading?

MR. MINGER: Yes.

THE COURT: Okay. All right. Just for your information, [defendant], your motion to proceed to second stage is—well, I guess it's granted at this point. It kind of already had been granted when I re-docketed your post[]conviction petition.

* * *

MR. MINGER: Your Honor, I do have a motion to dismiss the amended petition for post[]conviction relief. Going to hand a copy of that to *** defendant.

THE COURT: I presume, [defendant], you want some time to prepare for the motion to dismiss?

THE DEFENDANT: No. I can tackle it right now if the court has time.

THE COURT: Appreciate your *** confidence, [defendant], but to be quite honest I'm not ready to proceed because I haven't seen it.

THE DEFENDANT: All right.

THE COURT: I will do it as fast as we can, though.

THE DEFENDANT: Okay.

THE COURT: April 15th at 3:30. Okay. April 15th, then.

Thank you."

¶ 12 At the April 15, 2011, hearing, the trial court again clarified defendant's intent as to his postconviction filings before proceedings to the substance of the State's motion to dismiss, as follows:

"THE COURT: *** Before we start, [defendant], [I] want to make sure everybody is kind of on the same page on this because there have been numerous pleadings filed by you in this case, and I want to make sure that we're all looking at the same—that we're all considering the same thing.

THE DEFENDANT: Yes, sir.

THE COURT: The first thing that you filed was essentially

what was characterized later by the Appellate Court as a letter to me dated January 16th, 2009, which I then recharacterized as a post[]conviction petition, which subsequently the Appellate Court said I should not have done.

THE DEFENDANT: Yes, sir.

THE COURT: Now you wish the court to consider that?

THE DEFENDANT: To consider it, no, sir.

THE COURT: No?

THE DEFENDANT: No, sir.

THE COURT: Okay. I didn't think so. I wanted to hear it from you. Then you filed—it was filed March 19th, 2010, about a year ago, a post[]conviction petition. One of four pages. Familiar with that?

THE DEFENDANT: You said last year?

THE COURT: The one that you filed last year.

THE DEFENDANT: Yes, sir.

THE COURT: You wish the court to consider that as a post[]conviction petition?

THE DEFENDANT: No, sir.

THE COURT: You're withdrawing that petition?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Then you filed again—it was filed a

little bit different dates from when you prepared them and sent them, but this one was filed on October 25th, 2010, and it's—the initial document is [titled] petition to amend post[]conviction petition.

THE DEFENDANT: No, sir.

THE COURT: You don't want the court to consider that?

THE DEFENDANT: No, sir.

THE COURT: That relates back to the second petition that you filed.

THE DEFENDANT: Yes, sir.

THE COURT: Okay. So you are withdrawing that petition as well?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. So that brings us to the fourth petition that you—that you labeled them—as fourth. These are the four things I wanted to cover. Filed February 10th, 2011. And again it's [titled] motion to amend. And it's [titled] amended post[]conviction petition.

THE DEFENDANT: Yes, sir.

THE COURT: And you want the court to consider that?

THE DEFENDANT: Yes, sir.

THE COURT: All right. So the only petition, then, that we

are considering is the one that was filed—

THE DEFENDANT: February of this year attached with the three exhibits.

THE COURT: That was filed February 10th, 2011?

THE DEFENDANT: Yes, sir.

THE COURT: And yes, there is a periodical article attached to it, I think there's a couple of letters.

THE DEFENDANT: Yes, sir.

THE COURT: Okay. That's what you want the court to consider?

THE DEFENDANT: Yes, sir.

THE COURT: Now, Mr. Minger, is that what you answered?

MR. MINGER: Yes, Your Honor.

* * *

THE DEFENDANT: Your Honor, I was under the impression that today we were going to discuss the State's motion to dismiss my petition.

THE COURT: We are.

THE DEFENDANT: Okay. I wasn't aware that we were going to go [over] the actual petition itself. I have a list here of individuals I would like the court to subpoena as witnesses to

prepare. I mean—

THE COURT: You're correct, [defendant]. We are here only on the State's motion to dismiss.

THE DEFENDANT: Okay.

THE COURT: But I wanted to make sure he responded to what you were pursuing.

THE DEFENDANT: All right.

THE COURT: Then I think I have another question for you, but just a minute here. Now, as I review this—and it's one of the reasons I wanted to make sure we were on the same page—there is no allegation in this petition that you filed alleging ineffective assistance of counsel, which appeared in the previous ones.

THE DEFENDANT: Correct.

THE COURT: And that's what you intend to do?

THE DEFENDANT: No. I don't wish to raise ineffective assistance of counsel because my original appeal from 2007 they found that that was not ineffective assistance of counsel. Trial strategy."

The parties thereafter argued their respective positions. At the conclusion of the hearing, the trial court granted the State's motion to dismiss.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Defendant argues that the trial court erred by failing to admonish him pursuant to *Shellstrom* before treating his January 2009 letter to the court as a *pro se* postconviction petition. The State responds that the court did not err because defendant abandoned that petition, adding, however, that we should vacate the court's sentencing order and remand to afford the court the opportunity to correct its sentencing order to impose an *indeterminate* three-year MSR term. Defendant responds that if this court determines that the court did not err and that his sentence is void because the court imposed a determinate MSR term, he should be permitted to withdraw his guilty plea. We address the parties' contentions in turn.

¶ 16 A. Defendant's Claim That the Trial Court Erred
by Failing To Admonish Him Pursuant to *Shellstrom*

¶ 17 Defendant contends that the trial court erred by failing to admonish him pursuant to *Shellstrom* before treating his January 2009 letter to the trial court as a *pro se* postconviction petition. Specifically, defendant asserts that the court erred by failing to comply with this court's directive in case No. 4-09-0417, in which this court directed the trial court to admonish defendant regarding the negative consequences of its characterization of his January 2009 letter as a postconviction petition. The State responds that defendant's decision on remand to abandon his January 2009 letter has in effect "mooted any *Shellstrom* problem" with the court's characterization of that letter as a postconviction petition. We agree with the State.

¶ 18 In our background, we have quoted at length the court's colloquy with defendant at the April 4, 2011, status hearing and the April 15, 2011, hearing on the State's motion to dismiss. We have done so to make clear defendant's intent to *withdraw* that petition—which arose from his January 2011 letter—and *replace* it with a separate, new attack specifically filed pursuant to the Post-Conviction Hearing Act. In so doing, defendant rendered the *Shellstrom*

admonishments unnecessary; defendant's new petition was not the result of recharacterization by the trial court. See *Shellstrom*, 216 Ill. 2d at 56-57, 833 N.E.2d at 870 (requiring admonishments only when the trial court recharacterizes a *pro se* litigant's pleading as a postconviction petition).

¶ 19 Because the record shows that defendant withdrew his January 2009 petition, we reject defendant's contention that the trial court erred by failing to admonish him on that petition pursuant to *Shellstrom*.

¶ 20 B. The State's Request That We Remand This Case To Afford the Trial Court the Opportunity To Correct Its Sentencing Order

¶ 21 As part of its brief to this court, the State contends that we should vacate the trial court's sentencing order and remand to afford the court the opportunity to correct its sentencing order to reflect the imposition of an *indeterminate* three-year MSR term pursuant to the Supreme Court's directive in *People v. Reinhart*, 2012 IL 111719, ¶ 30, 962 N.E.2d 444, 454. Defendant responds that if this court determines that his sentence is void because the court imposed a determinate MSR term, he should be permitted to withdraw his guilty plea. For the reasons that follow, we remand with directions that the court correct its sentencing order to reflect an indeterminate three-year MSR term.

¶ 22 As part of our decision in defendant's initial direct appeal, *People v. Smith*, No. 4-08-0113, 7-9 (Nov. 26, 2008) (unpublished order under Supreme Court Rule 23), we concluded as follows: "To say that defendant's MSR period is automatically set at a range of three years to natural life is inconsistent with the determinate sentence structure the statute calls for in section 5-8-1(a) [of the Unified Code of Corrections (730 ILCS 5/5-8-1(a) (West 2006))]." Based on that conclusion, we remanded with directions that the court amend its sentencing order to reflect that defendant's MSR term was a determinate term. However, our conclusion that MSR terms

