

No. 1-11-0883

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 3590
)	
SHAUN JACKSON,)	Honorable
)	Diane Gordon Cannon,
Defendant-Appellant.)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in dismissing defendant's postconviction petition where the petition asserted a claim based in law that defendant's due process right to receive the benefit of his plea bargain was violated when the trial court sentenced him to 15 years' imprisonment and improperly admonished him that he would receive two years of mandatory supervised release ("MSR") for criminal sexual assault, while the statutory required MSR term for defendant's sex offense is three years to life. We reverse and remand.

¶ 2 Defendant Shaun Jackson appeals the summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act ("Act"). 725 ILCS 5/122-1 *et seq.* (West 2010). On appeal, defendant contends that the trial court erred in summarily dismissing the petition where the petition established that defendant had been improperly admonished that the mandatory

supervised release (MSR) term that attached to his negotiated guilty plea sentence was two years while the required statutory MSR term was actually an indeterminate three years to life. Defendant requests we modify his sentence to give him the benefit of his plea bargain. Instead, we reverse and remand for further proceedings under the Act.

¶ 3

BACKGROUND

¶ 4 Defendant was charged with two counts of predatory criminal sexual assault, eight counts of criminal sexual assault, ten counts of aggravated criminal sexual abuse, and nine counts of criminal sexual abuse. Following negotiations with the State, defendant pled guilty on April 16, 2009 to a single count of criminal sexual assault with the use of force. The factual basis for the plea was that defendant sexually assaulted his girlfriend's 14-year-old daughter. With regard to sentencing, the following admonishments occurred:

"THE COURT: The agreement your attorney has made with the state's attorney, which I will go along with, is to nolle or drop all the Class Xs to the Class 1. You'll receive 15 years. You'll be on parole or mandatory supervised release for 2 years. You must register as a sex offender. You must submit DNA samples to the Illinois State Police for analysis and storage in their databank. Has anyone promised you anything else in order to get you to plead guilty?

THE DEFENDANT: No, ma'am."

Following the stipulation to the factual basis for the guilty plea, the trial court accepted defendant's guilty plea and sentenced defendant, stating:

"THE COURT: I will go along with the agreement. Your sentence is 15 years in the Illinois Department of Corrections on Count 6. You'll be on parole or mandatory supervised release for 2 years upon your release from the penitentiary. Credit for 624 days."

¶ 5 Defendant did not move to withdraw his plea or directly appeal his conviction and sentence. However, on January 20, 2011, defendant filed his *pro se* petition for post-conviction relief and made 41 allegations, including that he received a more onerous sentence than the one he bargained for in his plea agreement. He argued that he agreed to, and the trial court admonished him of, a two-year MSR sentence, but that the Illinois Department of Corrections lists his projected MSR term as three years to natural life. Defendant contended in his petition that this violated his right to due process and Supreme Court Rule 402, citing *People v. Whitfield*, 217 Ill. 2d 177 (2005) and *People v. Morris*, 236 Ill. 2d 345 (2010), and argued that he did not receive the benefit of his bargain. The circuit court summarily dismissed the petition as frivolous and patently without merit on February 22, 2011.

¶ 6 ANALYSIS

¶ 7 On appeal from this order, defendant requests this court to modify his sentence so as to give him the benefit of his bargain, and asserts there are "many ways" to accomplish this result. For example, defendant suggests that this court "enforce his bargain by reducing his prison term to time served and ordering his immediate release to a term of MSR of three-years-to-life, or by reducing his prison term and ordering a subsequent period of MSR in such a manner that the sum of his prison and supervised release terms does not exceed 17 years, accounting for time already served." For the following reasons, we believe that the requested relief is premature, and instead remand for further proceedings under the Act.

¶ 8 At the first stage of postconviction proceedings, a defendant "need present only a limited amount of detail and is not required to include legal argument or citation to legal authority." *People v. Brown*, 236 Ill. 2d 175, 184 (2010). This stage of postconviction proceedings presents a "low threshold" and summary dismissal is allowed only if the petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2010); *Brown*, 236 Ill. 2d at 184. A petition is

considered frivolous or without merit only if it has "no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009); see also *People v. Tate*, 2012 IL 112214, ¶¶ 9, 12 (explaining that the threshold for survival at the first stage is low and that the "petition cannot be said to be at issue"). Petitions based on meritless legal theory or fanciful factual allegations will be dismissed. *Hodges*, 234 Ill. 2d at 16. The trial court's dismissal of a postconviction petition at the first stage without conducting an evidentiary hearing will be reviewed *de novo*. *People v. Williams*, 186 Ill. 2d 55, 59-60 (1999); *People v. Coleman*, 183 Ill. 2d 366, 378 (1998).

¶ 9 Initially, we conclude that, contrary to the State's contention, this issue has not been procedurally defaulted. The postconviction proceeding is "limited to constitutional matters that have not been, and could not have been, previously adjudicated." *People v. Whitfield*, 217 Ill. 2d at 183 (2005). Our supreme court, however, has concluded that "it would be incongruous to hold that a defendant forfeited the right to bring a postconviction claim because he did not object to the circuit court's failure to admonish him" because to do so would place the onus on the defendant "to ensure his own admonishment in accord with due process." *Id.* at 188. Following *Whitfield*, we find that defendant did not procedurally default this claim. See *Whitfield*, 217 Ill. 2d at 188.

¶ 10 We now turn to defendant's substantive claim. "To be entitled to postconviction relief, a defendant must demonstrate that he has suffered a substantial deprivation of his federal or state constitutional rights in the proceedings that produced the conviction or sentence being challenged." *Whitfield*, 217 Ill. 2d at 183. Supreme Court Rule 402(a) requires that the trial court give a defendant certain admonishments before accepting a guilty plea, including admonishing defendant of the "the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences[.]" Ill. S. Ct. R. 402(a)(2) (eff. July 1, 1997).

¶ 11 Further, "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, *such promise must be fulfilled.*" (Emphasis added.) *Santobello v. New York*, 404 U.S. 257, 262 (1971). Here, prior to accepting defendant's guilty plea, the trial court stated that it would go along with the agreement made between defendant and the State and then admonished defendant that his sentence would be 15 years with two years of MSR following his incarceration. Then, after defendant pleaded guilty, the court again stated that defendant would receive a two-year MSR term following his incarceration. The State does not dispute that the trial court was incorrect in admonishing defendant of the two-year term. The statutorily mandated MSR term for defendant's conviction is three years to natural life and is indeterminate (730 ILCS 5/5-8-1(d)(4) (West 2009)), which departs significantly from the MSR term that the trial court admonished defendant he would receive and the sentence that the trial court imposed. These undisputed facts present an arguable basis in law that defendant's due process right to receive the benefit of his bargain was violated.

¶ 12 The State's reliance on *People v. Morris*, 236 Ill. 2d 345 (2010), is misplaced because although the *Morris* court explained that *Whitfield* requires that defendants be advised that a term of MSR will be added to their actual sentences, the court also stated that admonishments are given to ensure that the plea was entered "with full knowledge of its consequences." *Id.* at 366-67; quoting *Whitfield*, 217 Ill. 2d at 184. *Morris* is distinguishable from the present case because in *Morris*, the defendant, while being admonished that the penalty for his conviction may carry a three-year MSR term, was not admonished prior to the trial court's acceptance of his guilty plea that the three-year MSR term would be in fact added to his sentence. *Morris*, 236 Ill. 2d at 350. *People v. Andrews*, 403 Ill. App. 3d 654, 656 (2010) is similarly distinguishable because the trial court in that case did in fact admonish defendant of the MSR term required for defendant's

conviction prior to accepting his guilty plea. Finally, *People v. Hunter*, 2011 IL App (1st) 093023, ¶¶ 4-5, is also distinguishable because prior to accepting defendant's guilty plea, the court admonished defendant that a two-year period of MSR would follow defendant's prison term, but did not mention the MSR term when imposing the sentence. In all three cases, the trial court admonished the defendants of the correct MSR terms prior to accepting their guilty pleas. In this case, however, the trial court affirmatively misstated defendant's MSR term prior to accepting his guilty plea, and defendant relied upon this affirmative misstatement. Thus, we hold that defendant sufficiently alleged an arguable claim of denial of his due process right to receive the benefit of his plea bargain to withstand summary dismissal. As stated above, the Act authorizes summary dismissal only in those cases where the petition presents no arguable issue of merit; this is not one of those cases.

¶ 13

CONCLUSION

¶ 14 For the foregoing reasons, we reverse the ruling of the circuit court of Cook County and remand for further proceedings in accordance with sections 4 through 6 of the Act (725 ILCS 5/122-4 – 122-6 (West 2010)).

¶ 15 Reversed and remanded.