

No. 1-11-2453

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. 91 CR 8676
)	
WALTER JEFFERSON,)	Honorable
)	Nicholas R. Ford,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice McBride and Justice Palmer concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where *Whitfield* decision requiring that a term of mandatory supervised release be incorporated into a sentence did not apply retroactively to defendant's case on collateral review, his post-conviction petition did not present a due process claim worthy of third-stage review; the judgment of the circuit court was affirmed.
- ¶ 2 Defendant Walter Jefferson appeals the dismissal of his post-conviction petition without an evidentiary hearing. He contends his petition made a substantial showing of a violation of his due process rights in that he was not advised at his 1992 sentencing hearing that a three-year term of mandatory supervised release (MSR) would be added to his sentence. We affirm.

¶ 3 Defendant was charged with first degree murder, armed robbery and concealment of a homicidal death in connection with events that occurred on March 8, 1991. The court found defendant eligible for the death penalty. On February 28, 1992, pursuant to a negotiated guilty plea, defendant was sentenced to 60 years in prison for murder and to a concurrent 30-year term for armed robbery. Defendant was not admonished that he would be required to serve three years of MSR upon the completion of his sentence.

¶ 4 The circuit court denied defendant's motion to withdraw his guilty plea. On appeal, this court affirmed defendant's convictions and sentence, rejecting defendant's arguments that his plea was involuntary. *People v. Jefferson*, No. 1-92-1952 (1993) (unpublished order under Supreme Court Rule 23), *appeal denied*, No. 76082 (1993).

¶ 5 On July 23, 2009, defendant filed a *pro se* petition for post-conviction relief in which he claimed he learned from a prison law clerk that he would be required to serve a three-year MSR period following his sentence. Citing *People v. Whitfield*, 217 Ill. 2d 177 (2005), defendant argued he did not receive the benefit of his plea and that his sentence was therefore void. Defendant asked that he be allowed to withdraw his guilty plea or that his sentences be reduced by three years.

¶ 6 Post-conviction counsel was appointed for defendant, and counsel filed a certificate pursuant to Illinois Supreme Court Rule 651(c) (eff. April 26, 2012). The State filed a motion to dismiss defendant's petition, asserting that under *People v. Morris*, 236 Ill. 2d 345 (2010), the holding in *Whitfield* does not apply retroactively to defendant's case. The circuit court granted the State's motion to dismiss.

¶ 7 On appeal, defendant contends his petition made a substantial showing of a violation of his constitutional rights. He argues the addition of a three-year MSR term to his sentence deprived him of the benefit of the bargain as to his guilty plea.

¶ 8 A review of the circuit court's dismissal of a post-conviction petition without an evidentiary hearing is conducted using a *de novo* standard, meaning this court performs the same analysis that the circuit court would perform. *People v. Schlosser*, 2012 IL App (1st) 092523, ¶ 12. In *Whitfield*, the supreme court held that a defendant who was not advised as to the MSR requirement before entering a plea could receive modification of his sentence to incorporate the MSR term into the original number of years. *Whitfield*, 217 Ill. 2d at 205. The court subsequently stated in *Morris* that the rule set out in *Whitfield* would be applied only to cases where the conviction was final after December 20, 2005. *Morris*, 236 Ill. 2d at 366 (a new rule may not be applied retroactively to cases on collateral review).

¶ 9 A state conviction becomes final "when the availability of direct appeal to the state courts has been exhausted and the time for filing a petition for a writ of certiorari has elapsed or a timely filed petition has been finally denied." *People v. Avery*, 2012 IL App (1st) 110298, ¶ 32, citing *Caspari v. Bohlen*, 510 U.S. 383, 390 (1994). Here, defendant's sentence was entered on February 28, 1992. Defendant appealed, and this court affirmed the judgment on August 6, 1993. Defendant's petition for leave to appeal in the Illinois Supreme Court was denied on December 10, 1993. Therefore, for retroactivity purposes, defendant's conviction was finalized in 1993, long before the 2005 date set out in *Morris* for *Whitfield's* applicability. Because *Whitfield* does not retroactively apply to defendant, his petition does not present a substantial showing of a constitutional violation.

¶ 10 Defendant also contends his petition stated a due process claim under *Santobello v. New York*, 404 U.S. 257 (1971), which held that due process rights could be violated by the State's failure to honor the terms of a plea agreement. However, as the State asserts on appeal, this court has explicitly rejected that position and has noted that the *Whitfield* court relied on *Santobello* in its decision. See *People v. Hildenstein*, 2012 IL App (5th) 100056, ¶ 19; *People v. Demitro*, 406

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Ill. App. 3d 954, 957 (2010) (holding that a defendant cannot avoid the effects of *Whitfield* and *Morris* by citing *Santobello*). We therefore reject defendant's similar assertion in this case.

¶ 11 Accordingly, the circuit court's dismissal of defendant's post-conviction petition is affirmed.

¶ 12 Affirmed.