

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).

2013 IL App (4th) 120112-U
NO. 4-12-0112
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
September 6, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
TRAVIS C. CHILDRESS,)	No. 10CF1621
Defendant-Appellant.)	
)	Honorable
)	Timothy J. Steadman,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Steigmann and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court committed no error in summarily dismissing defendant's *pro se* postconviction petition where the record showed the court substantially complied with Illinois Supreme Court Rule 402 (eff. July 1, 1997) when providing mandatory supervised release (MSR) admonishments to defendant.

¶ 2 Defendant, Travis C. Childress, filed a petition for postconviction relief, alleging he was not properly informed during plea proceedings of the period of mandatory supervised release (MSR) he was required to serve following his negotiated prison sentence. The trial court dismissed defendant's petition finding it was frivolous and without merit, and he appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On November 4, 2010, the State charged defendant with seven counts of aggravated robbery (720 ILCS 5/18-5 (West 2008)) and one count of robbery (720 ILCS 5/18-1

(West 2008)). On December 29, 2010, defendant, pursuant to a fully negotiated plea agreement with the State, pleaded guilty to all eight counts and was sentenced to eight, nine-year prison sentences. Each sentence also included a three-year period of MSR and all sentences were to be served concurrently.

¶ 5 At the guilty plea hearing, defense counsel set forth defendant's understanding of parties' plea agreement, stating defendant was subject to Class X sentencing and would receive nine years on each count. He noted defendant's sentences would be served concurrently and two other cases against defendant would be dismissed. The State agreed with defense counsel's comments. Initially, the trial court ascertained defendant's understanding of each charged offense. Regarding penalties, the court stated as follows:

"Now, all the Aggravated Robberies are Class 1 felonies. Count VIII, the Robbery is a Class 2 Felony. However[,] because of your prior record for all these offenses you would have to be sentenced as a Class X offender. What that means is for all these eight offenses Probation is not a possible sentence. For all these offenses the minimum term in the Illinois Department of Corrections is six years up to maximum prison sentence which is thirty years. *And then there's a three year parole or mandatory supervised release term.*" (Emphasis added.)

Defendant stated he understood the court's admonishments.

¶ 6 The trial court continued to admonish defendant regarding the possibility of consecutive sentences and the rights defendant would be giving up by pleading guilty. The State

then presented its factual basis. Upon inquiry by the court, defendant indicated he was knowingly and voluntarily pleading guilty and denied having any questions with respect to the charges against him, his rights, possible sentences, or any other matter. The court accepted defendant's plea, finding it was knowingly and voluntarily made. It then stated as follows:

"Show pursuant to plea agreement, for each count defendant is sentenced to nine years in the Illinois Department of Corrections with credit for time served *** plus a three year parole term. Show the sentences to be served concurrently amount all eight counts."

The court informed defendant that he "got [his] plea agreement" and defendant responded "[all right."

¶ 7 On January 6, 2012, defendant filed a *pro se* postconviction petition, alleging the trial court imposed a sentence in excess of that agreed upon by the parties in the fully negotiated plea agreement when it ordered that he serve a three-year period of MSR. Defendant asserted he was not informed that he was required to serve a period of MSR and, had he known a three-year MSR term would be added to the nine-year prison sentence, he would not have agreed to plead guilty. He requested the court modify his sentence to require that he serve six years in prison and three years of MSR "to approximate the bargain which was struck with the State."

¶ 8 On January 11, 2012, the trial court summarily dismissed defendant's postconviction petition, finding it frivolous and patently without merit. The court stated it reviewed defendant's plea proceedings and found (1) the court advised defendant regarding the applicable MSR term prior to its acceptance of defendant's guilty plea, (2) defendant indicated he understood all possible sentences, and (3) the court included the MSR term when pronouncing

defendant's sentence.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues the trial court erred by summarily dismissing his postconviction petition. He contends he is entitled to postconviction relief based on the trial court's failure to admonish him regarding the three-year MSR term that he was required to serve in addition to his negotiated prison sentence. Defendant acknowledges the court referenced MSR twice during plea proceedings but contends its comments were insufficient and did not satisfy due process because (1) the court's initial reference "only discussed MSR as a potential penalty" and did not link MSR to defendant's agreed-upon, nine-year sentence and (2) the court's second reference to MSR came after it had already accepted defendant's guilty plea.

¶ 12 "Under the Post-Conviction Hearing Act [(Act)], individuals convicted of criminal offenses may challenge their convictions on grounds of constitutional violations." *People v. Domagala*, 2013 IL 113688, ¶ 32, 987 N.E.2d 767 (citing 725 ILCS 5/122-1 *et seq.* (West 2010)). At the first stage of postconviction proceedings, the trial court may dismiss the petition upon a determination that it is " 'frivolous or *** patently without merit.' " *Domagala*, 2013 IL 113688, ¶ 32, 987 N.E.2d 767 (quoting 725 ILCS 5/122-2.1(a)(2) (West 2010)).

"[A] *pro se* petition seeking postconviction relief under the Act may be summarily dismissed as 'frivolous or *** patently without merit' *** only if the petition has no arguable basis either in law or in fact. A petition which lacks an arguable basis either in law or in fact is one which is based on an indisputably meritless legal theory

or a fanciful factual allegation. An example of an indisputably meritless legal theory is one which is completely contradicted by the record. [Citation.] Fanciful factual allegations include those which are fantastic or delusional." *People v. Hodges*, 234 Ill. 2d 1, 16-17, 912 N.E.2d 1204, 1212 (2009).

¶ 13 "[A] defendant at the first stage need only present a limited amount of detail in the petition." *Hodges*, 234 Ill. 2d at 9, 912 N.E.2d at 1208. The threshold for survival is low and a *pro se* defendant need only "allege enough facts to make out a claim that is arguably constitutional for purposes of invoking the Act." *Hodges*, 234 Ill. 2d at 9, 912 N.E.2d at 1208. The trial court's first-stage dismissal of a defendant's postconviction petition is subject to *de novo* review. *People v. Wright*, 2013 IL App (4th) 110822, ¶ 23, 987 N.E.2d 1051.

¶ 14 As stated, defendant's postconviction claim is that he was not properly admonished regarding the applicable MSR term prior to pleading guilty. Illinois Supreme Court Rule 402 (eff. July 1997), requires that the trial court provide a defendant with certain admonishments before accepting his guilty plea, including the minimum and maximum sentences prescribed by law. Pursuant to Rule 402, "every defendant who enters a plea of guilty has a due process right to be properly and fully admonished." *People v. Whitfield*, 217 Ill. 2d 177, 188, 840 N.E.2d 658, 665 (2005). In *Whitfield*, 217 Ill. 2d at 195, 840 N.E.2d at 669, the supreme court held that, "although substantial compliance with Rule 402 is sufficient to establish due process [citations], *** there is no substantial compliance with Rule 402 and due process is violated 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 [MSR] term will be added to that sentence." In

Whitfield, the defendant received absolutely no MSR admonishments and, as a result, the supreme court found a substantial violation of his constitutional rights. *Whitfield*, 217 Ill. 2d at 201, 840 N.E.2d at 673.

¶ 15 In *People v. Morris*, 236 Ill. 2d 345, 367, 925 N.E.2d 1069, 1082 (2010), the supreme court chose to clarify its decision in *Whitfield* after acknowledging confusion among lower courts regarding the admonishments necessary to comply with Rule 402 and due process post-*Whitfield*. It noted there was no precise formula for admonishing a defendant of his MSR obligation but "[a]n admonition that uses the term 'MSR' without putting it in some relevant context cannot serve to advise the defendant of the consequences of his guilty plea and cannot aid the defendant in making an informed decision about his case." *Morris*, 236 Ill. 2d at 366, 925 N.E.2d at 1082. The supreme court further stated an "'admonition is sufficient if an ordinary person in the circumstances of the accused would understand it to convey the required warning.'" *Morris*, 236 Ill. 2d at 366, 925 N.E.2d at 1082 (quoting *People v. Williams*, 97 Ill. 2d 252, 269, 454 N.E.2d 220, 228 (1983)). It held that a trial court's MSR admonishments do not have to be perfect but they must at least "substantially comply" with Rule 402 and supreme court precedents. *Morris*, 236 Ill. 2d at 367, 925 N.E.2d at 1082. Additionally, the supreme court stated as follows:

"Ideally, a trial court's admonishment would explicitly link MSR to the sentence to which defendant agreed in exchange for his guilty plea, would be given at the time the trial court reviewed the provisions of the plea agreement, and would be reiterated both at sentencing and in the written judgment. [Citations.] We strongly

encourage trial court judges to follow this practice, and to discuss MSR when reviewing the terms of a defendant's plea agreement, to include the MSR term when imposing sentence, and to add the MSR term to the written order of conviction and sentence. This practice, which is not unduly burdensome, would ensure that defendants understand the consequences of their plea agreement and would avoid prolonged litigation on the issue." *Morris*, 236 Ill. 2d at 367-68, 925 N.E.2d at 1082-83.

¶ 16 Here, unlike in *Whitfield*, MSR was discussed during defendant's plea hearing. Specifically, prior to accepting defendant's guilty plea, the trial court admonished defendant regarding the applicable three-year MSR term when informing him of minimum and maximum penalties. Although defendant argues such admonishments are insufficient to comply with Rule 402 or supreme court precedents, in *People v. Lee*, 2012 IL App (4th) 110403, ¶ 23, 979 N.E.2d 992, this court recently addressed a substantially similar situation and determined the defendant was properly admonished. In so holding, we noted "[t]his court has been unwilling to expand *Whitfield* to cases where MSR was mentioned in the admonishments prior to the guilty plea." *Lee*, 2012 IL App (4th) 110403, ¶ 26, 979 N.E.2d 992 (citing *People v. Andrews*, 403 Ill. App. 3d 654, 666, 936 N.E.2d 648, 659 (2010)). Further, we stated that "[w]hile the best practice may be for the trial court or counsel to expressly link the MSR term to the agreed-upon sentence" the trial court's "failure to make that link does not violate Rule 402 or the parties' plea agreement." *Lee*, 2012 IL App (4th) 110403, ¶ 26, 979 N.E.2d 992 (citing *People v. Dorsey*, 404 Ill. App. 3d 829, 836-38, 942 N.E.2d 535, 541-43 (2010), and *Andrews*, 403 Ill. App. 3d at 665, 936 N.E.2d

at 657-58).

¶ 17 In this instance, prior to accepting defendant's guilty plea, the trial court admonished defendant regarding the minimum and maximum penalties for his offenses, including the applicable three-year MSR term. Upon inquiry by the court, defendant asserted he understood the court's admonishments. Per this court's previous decisions, addressing similar factual situations, we find the court substantially complied with the requirements of Rule 402. As a result, defendant's postconviction petition had no arguable basis either in law or in fact and the court committed no error in summarily dismissing the petition.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State's request that defendant be assessed \$50 as costs for this appeal.

¶ 20 Affirmed.