

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) 120421-U

NO. 4-12-0421

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
July 29, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
GABRIEL LEE,	)	No. 98CF396
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.  
Justices Pope and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* We grant the office of the State Appellate Defender's motion to withdraw as appellate counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and affirm the trial court's dismissal of defendant's later petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)).

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground no meritorious issues can be raised in this case. We agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 We recently addressed the factual background of defendant's criminal case in *People v. Lee*, 2012 IL App (4th) 110403, ¶¶ 3-11, 979 N.E.2d 992. Only those facts necessary for this appeal are set forth.

¶ 5

#### A. The Trial Court's Admonishments

¶ 6

On September 9, 1998, defendant, Gabriel Lee, pleaded guilty to first degree murder (720 ILCS 5/9-1(a)(1) (West 1998)). The trial court admonished defendant as follows:

"If you are convicted, the law requires that you be sentenced to a term in prison. The term in prison would be for some definite period of time. It could not be less than twenty years, it could not be more than sixty years. Any term in prison would be followed by a period of mandatory, supervised release of at least three years."

¶ 7

After defendant pleaded guilty to one count of first degree murder, the trial court sentenced defendant to 30 years' imprisonment "subject to statutory conditions," with 175 days' credit. The written sentencing judgment omitted any reference to mandatory supervised release (MSR). Defendant filed neither posttrial motions nor a direct appeal.

¶ 8

#### B. Defendant's Previous Petitions and Appeals

¶ 9

On March 18, 2011, defendant filed a *pro se* petition pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). Defendant asserted the trial court did not properly admonish him three years' MSR attached to his prison sentence and requiring him to serve MSR was unlawful. In April 2011, the State filed a motion to dismiss defendant's petition. In May 2011, the trial court dismissed the petition.

¶ 10

On October 7, 2011, defendant filed a *pro se* petition for postconviction relief pursuant to section 122-1 of the Post-Conviction Hearing Act (725 ILCS 5/122-1 (West 2010)). Defendant asserted he was denied the benefit of his negotiated plea bargain by imposition of a three-year MSR term. In October 2011, the trial court found this to be the same allegation

contained in defendant's section 2-1401 petition for relief from judgment filed in March 2011 and summarily dismissed the petition.

¶ 11 On appeal, we consolidated those two appeals and held defendant's contention MSR is an additional sentence is meritless and MSR is an included part of his sentence. *Lee*, 2012 IL App (4th) 110403, ¶¶ 10, 36, 979 N.E.2d 992.

¶ 12 C. The Instant Petition

¶ 13 On March 19, 2012, defendant filed a second petition for relief from judgment pursuant to section 2-1401 asserting his MSR term was void because the Illinois Department of Corrections (Department) and not the trial court imposed his MSR term. On April 20, 2012, the trial court dismissed defendant's petition.

¶ 14 On March 6, 2013, OSAD moved to withdraw as appellate counsel, including in its motion a brief in conformity with the requirements of *Finley*. The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by April 8, 2013. Defendant did not do so. After examining the record and executing our duties in accordance with *Finley*, we grant OSAD's motion and affirm the court's judgment.

¶ 15 II. ANALYSIS

¶ 16 OSAD argues defendant's petition presents no meritorious issues. OSAD asserts defendant's arguments were raised in his previous appeal and rejected by this court.

¶ 17 In defendant's previous appeal, this court rejected defendant's contentions MSR was imposed by the Department and an unlawful constraint on his liberty. First, we held defendant's contention the trial court did not admonish him about the MSR term was contradicted

by the record and without legal merit. *Lee*, 2012 IL App (4th) 110403, ¶¶ 23, 36, 979 N.E.2d 992. As to the merits of defendant's arguments the trial court did not impose MSR, this court stated "[t]here is no merit to defendant's contention MSR is in addition to his sentence, as MSR is an included part of his sentence," and "when the trial court sentenced defendant to 30 years' imprisonment, his sentence included a 3-year MSR term." *Lee*, 2012 IL App (4th) 110403, ¶¶ 36, 38, 979 N.E.2d 992. This court expressly stated "Defendant's claim the Department imposed the MSR term has no legal merit." *Lee*, 2012 IL App (4th) 110403, ¶ 38, 979 N.E.2d 992.

¶ 18 Defendant's claims in the instant petition are without merit.

¶ 19 III. CONCLUSION

¶ 20 We grant OSAD's motion to withdraw and affirm the trial court's judgment.

¶ 21 Affirmed.