NOTICE

Decision filed 06/14/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 120070-U

NO. 5-12-0070

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 03-CF-1259
	)	
NARVIL HICKMAN,	)	Honorable
	)	Michael N. Cook,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE SPOMER delivered the judgment of the court.
Justices Stewart and Wexstten concurred in the judgment.

ORDER

¶ 1 *Held*: The motion of the State Appellate Defender to withdraw is granted and the summary dismissal of the defendant's petition for postconviction relief affirmed where there were no meritorious, nonfrivolous arguments to be made on the defendant's behalf regarding the imposition of mandatory supervised release (MSR), as the defendant was fully apprised by the trial court, before pleading guilty, that he would be required to serve the three-year MSR term.

¶ 2 The defendant Narvil Hickman appeals the circuit court's dismissal of his petition for postconviction relief. The State Appellate Defender has been appointed to represent him. The State Appellate Defender has filed a motion to withdraw as counsel, alleging that there is no merit to the appeal. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987); *People v. McKenney*, 255 Ill. App. 3d 644 (1994). The defendant was given proper notice and an extension of time to file briefs, memoranda, or other documents demonstrating why the dismissal should not be affirmed and why counsel should not be permitted to withdraw. The defendant has not done so. Upon examination of the entire record and brief of the State

Appellate Defender, we find no error or potential grounds for appeal. Therefore, we now grant the motion of the State Appellate Defender to withdraw as counsel and affirm the judgment of the circuit court of St. Clair County based upon the following.

¶ 3 On October 24, 2003, the defendant was charged with two counts of first-degree murder, one count of aggravated unlawful use of weapon by a felon, and one count of home invasion pursuant to section 12-11 of the Criminal Code of 1961 (720 ILCS 5/12-11(a)(3) (West 2002)). In exchange for the State agreeing to drop the other counts, and for a recommendation by the State of a term of between 10 and 30 years' imprisonment, the defendant agreed to plead guilty to home invasion. The court sentenced the defendant to a term of 25 years. On appeal, this court vacated the sentence and remanded because the circuit court did not admonish the defendant of the mandatory 15-year enhancement. *People v. Hickman*, No. 5-06-0467 (Oct. 22, 2008) (unpublished order pursuant to Supreme Court Rule 23).

¶ 4 On remand, the defendant entered a plea of guilty to home invasion in exchange for a sentence of 10 years' imprisonment, along with the 15-year enhancement and 3 years of mandatory supervised release (MSR), for a total of 25 years' imprisonment and 3 years of MSR. Before accepting the defendant's plea and imposing the sentence jointly recommended by the parties, the circuit court admonished the defendant, *inter alia*, as to the following:

> "This is a Class X felony. Class X meaning if you're sentenced to the Department of Corrections, the minimum you could receive would be six years, the maximum 30 years, plus you could be fined up to $25,000.00. Upon being released from the penitentiary, you will be required to serve three years of mandatory supervised release. Plus the home invasion statute *** stipulates under sentence *** that a violation of subsection (a)(3) of which you are charged is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the Court."

The court asked the defendant if he understood, and the defendant's response was, "Yes, sir." When the judge imposed the sentence to which the defendant and the State had agreed, he again advised, "[T]he Defendant will be ordered to serve three years of mandatory supervised release upon being discharged from the penitentiary ***."

¶ 5 On July 25, 2011, the defendant filed a petition for postconviction relief, in which he claimed that the imposition of the MSR term is a violation of his constitutional rights. On October 20, 2011, the circuit court summarily dismissed the petition.

¶ 6 ANALYSIS

¶ 7 At the first stage of a petition for postconviction relief, "the circuit court must independently review the petition, taking the allegations as true, and determine whether the petition is frivolous or is patently without merit." (Internal quotation marks omitted.) *People v. Tate*, 2012 IL 112214, ¶ 9 (quoting *People v. Hodges*, 234 Ill. 2d 1, 9 (2009)). At that point, "[a] petition may be summarily dismissed as frivolous or patently without merit only if the petition has no arguable basis either in law or in fact." *Id.* (citing *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009)). We review the circuit court's summary dismissal of the defendant's petition *de novo*. *People v. Newbolds*, 364 Ill. App. 3d 672, 675 (2006) (citing *People v. Edwards*, 197 Ill. 2d 239, 247, 258 (2001)).

¶ 8 With regard to the merits, we note that "MSR terms are statutorily required." *People v. Whitfield*, 217 Ill. 2d 177, 200 (2005) (citing *People v. Brown*, 296 Ill. App. 3d 1041, 1043 (1998)). " '[T]he State has no right to offer the withholding of such a period as a part of the plea negotiations and *** the court has no power to withhold such period in imposing sentence.' " *Id.* at 200-01 (quoting *People v. Brown*, 296 Ill. App. 3d 1041, 1043 (1998)). "[D]ue 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 mandatory supervised release term will be added to that sentence." *Id*. at 195.

¶ 9 In this case, the State Appellate Defender has presented as the only potential issue for review, "[w]hether due process is offended by requiring [the defendant] to serve a term of MSR after he is discharged from prison." The State Appellate Defender asserts that no nonfrivolous, meritorious argument can be made on the defendant's behalf, and we agree.

¶ 10 While the defendant asserts that the three-year MSR term was "administratively attached" to his sentence, and that he first learned about the MSR term after his "placement within the IDOC," the record clearly reveals the opposite. The judge clearly and thoroughly admonished the defendant regarding all time he could be required to serve, including the fact that he would be required to serve the MSR term.

¶ 11 The defendant also argued in his petition that Illinois Department of Corrections' (DOC) imposition of MSR violates separation of powers principles. However, the imposition of an MSR term does not administratively invade the domain of the judiciary as it is imposed by the court, not the DOC, pursuant to the enactment of the General Assembly. *People v. Lee*, 2012 IL App (4th) 110403, ¶ 38. In addition, our supreme court has held that the imposition of MSR falls "within the powers of the Illinois General Assembly" and "does not violate the separation of powers clause of the Illinois Constitution." *People ex rel. Scott v. Israel*, 66 Ill. 2d 190, 194 (1977) (citing *People v. Williams*, 66 Ill. 2d 179 (1977)).

¶ 12 CONCLUSION

¶ 13 The motion of the State Appellate Defender is granted, and the judgment of the circuit court is affirmed.

¶ 14 Motion granted; judgment affirmed.