

No. 1-12-0578

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. 02 CR 22633
)	
DANIEL CROSS,)	Honorable
)	Rosemary Grant Higgins,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

O R D E R

¶ 1 *Held:* The circuit court's second-stage dismissal of defendant's amended postconviction petition was affirmed where he was adequately admonished during his guilty plea about the mandatory 3-year supervised release (MSR) term that would be added to his 25-year sentence for first degree murder.

¶ 2 Defendant Daniel Cross appeals the circuit court's order granting the State's motion to dismiss his amended postconviction petition. On appeal, defendant contends that when he

pleaded guilty in 2008 pursuant to a fully negotiated guilty plea agreement,¹ the circuit court failed to advise him that his 25-year prison sentence would be followed by a 3-year period of mandatory supervised release (MSR), denying him the benefit of his plea bargain. We affirm.

¶ 3 Defendant was charged by indictment with the first degree murder of Christopher Lane. Defendant filed a pretrial motion to quash an eavesdropping order and suppress all evidence resulting therefrom. Following a hearing, his motion was granted, and the State appealed. This court overturned the order to quash and suppress and remanded the cause to the circuit court. *People v. Cross*, No. 1-05-1469 (2008) (unpublished order under Supreme Court Rule 23).

¶ 4 Following remand, defendant changed his plea to guilty. Pursuant to a fully negotiated plea agreement with the State, defendant agreed to plead guilty to first degree murder, and the State promised to recommend a specific prison term of 25 years and to nol-pros an unrelated narcotics charge. The court did not participate in the plea negotiations. At the change-of-plea hearing on September 16, 2008, the following exchange took place:

"THE COURT: Mr. Cross, you have a matter before me which is punishable by not less than 20 but – I don't know about the circumstances. What's his maximum?

MR. DELANEY [Assistant State's Attorney]: 60.

THE COURT: Not less than 20 but not more than 60 years in the Illinois Department of Corrections followed by a three-year

¹ We disagree with the State's contention that defendant's plea was not fully negotiated because the court did not take part in the negotiations. "[A] negotiated plea is one in which the *prosecution* has bound itself to recommend a specific sentence, or a specific range of sentence ***." (Emphasis added.) Supreme Court Rule 604(d) (eff. July 1, 2006). Defendant's "benefit of the bargain" claim is based on the contractual due process right to enforce the terms of a plea agreement *between the accused and the State*. *People v. Whitfield*, 217 Ill. 2d 177, 185 (2005).

period [of] parole. Do you understand that?

THE DEFENDANT: Yes, sir."

¶ 5 The court advised defendant of the rights he would be giving up if he changed his plea, ascertained that defendant waived his right to a jury trial, and determined that defendant's decision to plead guilty was not the product of threats or promises. The court then informed defendant that it had not been a party to the proposed agreement reached between defendant's lawyer and the State and was not bound to accept their recommendation, and that the court could incarcerate defendant for 60 years regardless of the specific sentence arrived at in plea negotiations. In response to questioning by the court, defendant stated that he understood and that he still persisted in his plea. The court concluded that defendant was satisfied with the representation provided by his counsel, obtained a factual basis for the guilty plea, and determined that the plea was freely and voluntarily entered. At defendant's request, the court continued the case to October 7, 2011, for sentencing. On the sentencing date, the assistant State's Attorney advised the court that defendant was to receive a 25-year prison term for first degree murder. The court addressed defendant:

"THE COURT: *** Mr. Cross, you have two matters before the Court. A murder is punishable by not less than 20, but not more than 60 years incarceration followed by a three year period of probation (sic). A narcotics related matter is punishable by not less than four, but not more than 50 years incarceration followed by a two-year period of parole.

I understand you are prepared to plead guilty to each of these.

Is that in fact your intention?"

¶ 6 Defendant's counsel interrupted the court with the reminder: "Judge, we already pled guilty. This is for sentencing." The court determined that defendant persisted in his previously entered guilty plea, imposed a sentence of 25 years in prison on the murder charge, gave defendant credit of 2,176 days for pre-judgment time in custody, and admonished defendant of his right to withdraw his guilty plea or request that the court reconsider his sentence. The State nol-prossed defendant's narcotics case. The mittimus reflecting the 25-year prison sentence for first degree murder made no mention of an MSR or parole period. Defendant did not file a motion for withdrawal of his guilty plea or reconsideration of his sentence and did not directly appeal his conviction or sentence.

¶ 7 In April 2011, defendant filed a *pro se* petition under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). Citing *People v. Whitfield*, 217 Ill. 2d 177 (2005), defendant asserted that a three-year MSR term was added to his prison sentence which was never part of the fully negotiated plea agreement between himself and the State. The circuit court docketed the petition for further consideration and appointed counsel to represent defendant upon second-stage review. Counsel filed an amended petition contending that where the MSR period was neither part of defendant's bargain with the State nor part of the 25-year sentence actually imposed by the court and was not reflected in the *mittimus*, the supreme court's decision in *Whitfield* dictated that defendant be resentenced to a term of 22 years. Counsel also filed a certificate pursuant to Supreme Court Rule 651(c) (eff. Dec. 1, 1984). The State filed a motion to dismiss the *pro se* and amended postconviction petitions and the circuit court granted

the State's motion. The court held that on two occasions--the date defendant pleaded guilty and the date he was subsequently sentenced--he was admonished as to his MSR obligation.

¶ 8 On appeal, defendant contends that he was deprived of the benefit of his negotiated sentence where he bargained only for a 25-year prison sentence with no MSR term. He requests that, in accordance with the remedy provided in *Whitfield*, his sentence be modified to 22 years in prison and a 3-year MSR term to approximate the bargain struck between him and the State.

¶ 9 To be entitled to relief under the Act, a defendant must demonstrate that he has suffered a substantial deprivation of his constitutional rights in the proceedings that produced the conviction or sentence being challenged. *Whitfield*, 217 Ill. 2d at 183. Supreme Court Rule 402(a) (eff. July 1, 1997) requires that, before accepting a defendant's guilty plea, the circuit court give the defendant certain admonishments, including admonishing him of the minimum and maximum sentences prescribed by law. In *Whitfield*, our supreme court ruled that "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 mandatory supervised release term will be added to that sentence." *Id.* at 195.

¶ 10 Here, as in *Whitfield*, defendant is contending that he did not receive the "benefit of the bargain" he made with the State. Unlike *Whitfield*, however, where MSR or parole was not mentioned, the admonishment in the present case correctly apprised defendant of the fact that, in addition to a prison sentence which could be imposed within the range of 20 to 60 years, the prison sentence would be "followed by a three-year period [of] parole." The court asked defendant whether he understood the penalties, and he replied that he did. An ordinary accused

in defendant's circumstance would understand this admonishment to mean that a term of MSR would be added to any prison sentence. Any mistaken impression defendant may have had that his sentence did not include a period of parole or MSR was not justified when judged by objective standards. See *People v. Jarrett*, 372 Ill. App. 3d 344, 352 (2007).

¶ 11 Defendant also complains that the circuit court here "confused matters" by referring to a three-year term of "probation" in its second set of admonishments. However, that "second set of admonishments" occurred at sentencing, after defendant previously had pleaded guilty at an earlier date. When defense counsel pointed out to the court that defendant had already entered his guilty plea, the court abandoned the Rule 402 admonishments and determined that defendant was persisting in his previously entered guilty plea.

¶ 12 Defendant asserts that in *People v. Morris*, 236 Ill. 2d 345, 367 (2010), our supreme court ruled that the circuit court should explicitly link MSR to the sentence agreed upon. Defendant refers us to *People v. Burns*, 405 Ill. App. 3d 40, 44 (2010); *People v. Daniels*, 388 Ill. App. 3d 952, 959 (2009); *People v. Smith*, 386 Ill. App. 3d 473, 482 (2008); and *People v. Company*, 376 Ill. App. 3d 846, 852-53 (2007). Those decisions held that the circuit court's admonishments were insufficient where the MSR term was not linked to the actual sentence agreed upon. That link, however, was what the supreme court viewed in *Morris* as the ideal or better practice, not the required practice. *Morris*, 236 Ill. 2d at 367. We agree with *Morris* that admonishments need not be perfect and that MSR admonishments need to be read in a practical and realistic sense. *Id.* at 366-67. Thus, we reject an insistence on a rigid rule that an MSR admonishment fails to satisfy due process requirements in any case, regardless of the facts, where it is not linked to the specific sentence when it is imposed. Other post-*Morris* authorities reject that link as a

requirement and hold that a circuit court's reference to MSR while explaining the possible sentencing range to a defendant, rather than while imposing sentence upon him, has been held to satisfy the requirements of due process. See *People v. Thomas*, 402 Ill. App. 3d 1129, 1133-34 (2010); *People v. Davis*, 403 Ill. App. 3d 461, 466-67 (2010); *People v. Hunter*, 2011 IL App (1st) 093023, ¶ 23; *People v. Lee*, 2012 IL App (4th) 110403, ¶ 26. Here, the court specifically advised defendant that first degree murder was punishable by a prison term of between 20 and 60 years followed by a three-year period of parole. Consequently, defendant was adequately admonished that a term of MSR or parole would be added to the actual sentence agreed upon in exchange for a guilty plea to first degree murder. We conclude that, while the better practice may be for the circuit court to expressly link the MSR term to the agreed-upon sentence, the failure to make that link does not violate Rule 402 or the parties' plea agreement or the requirements of due process.

¶ 13 We also reject defendant's argument that, independent of *Whitfield*, he is entitled to relief under *Santobello v. New York*, 404 U.S. 257 (1971), holding that when a guilty plea rests on an agreement or promise by the State and the promise was part of the inducement or consideration for the plea, that promise must be fulfilled. In *People v. Demitro*, 406 Ill. App. 3d 954, 957 (2010), this court stated: "Where *Whitfield* was the first time the supreme court relied on *Santobello* in the context of MSR, defendant cannot maintain a claim for that remedy without relying on the holding in *Whitfield*. By citing *Santobello*, defendant cannot avoid the effect of its progeny *Whitfield* and its limitation to prospective application under *Morris*."

¶ 14 Since the circuit court's admonishment was sufficient, we conclude that defendant's postconviction petition failed to make a substantial showing that his constitutional rights were

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violated. Accordingly, we affirm the circuit court's dismissal of his petition.

¶ 15 Affirmed.