

No. 1-12-1208

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 05 CR 20792
	)	
DAVID KNIGHT,	)	Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE HARRIS delivered the judgment of the court.  
Justices Pierce and Liu concurred in the judgment.

**O R D E R**

¶ 1 **Held:** The circuit court's summary dismissal of defendant's *pro se* postconviction petition is affirmed where defendant's allegation that he was not advised that he was required to serve a term of mandatory supervised release was contradicted by the record, and his claim that the court failed to review all of the allegations in his petition is without merit.

¶ 2 Defendant David Knight appeals from an order of the circuit court summarily dismissing his *pro se* postconviction petition as frivolous and patently without merit. On appeal, defendant

contends the court erred in dismissing his petition because it stated a meritorious claim that he was denied his right to due process and deprived of the benefit of his negotiated plea bargain when the trial court failed to advise him at his guilty plea hearing that a three-year term of mandatory supervised release (MSR) would be added to his negotiated sentence. Defendant also contends the circuit court failed to address one of the allegations in his petition, rendering the summary dismissal void. We affirm.

¶ 3 On May 18, 2006, defendant entered a fully-negotiated guilty plea to a charge of attempted first degree murder for striking and grabbing his two-month-old daughter and holding a cloth over her nose and mouth until she lost consciousness. At the plea hearing, the trial court advised defendant that the offense was a Class X felony with a sentencing range of 6 to 30 years in prison and a fine up to \$25,000. The court then stated "[i]t also carries a three-year mandatory supervised release period when you are released from the penitentiary. That's like a period of parole." Defendant confirmed that he understood the charge and the penalties and pleaded guilty. Defendant further verified that he understood he was giving up his right to a jury trial, his right to confront witnesses at trial, and his right to a presentence investigation report. The parties stipulated to the factual basis for the plea that was discussed during the conference held pursuant to Supreme Court Rule 402 (eff. July 1, 1997). Based on the parties' stipulation, the trial court accepted defendant's plea and entered a finding of guilty. The court then stated that it was sentencing defendant "pursuant to the 402 conference" to 10 years' imprisonment. Defendant verified that he understood he would be required to serve at least 85% of that sentence. The court did not mention MSR when it imposed the sentence.

¶ 4 Defendant, through counsel, filed a timely motion to withdraw his guilty plea asserting that he could not recall if he had taken his prescribed psychotropic medication on the day he

entered his plea, and that he did not understand the nature of the offense to which he pled guilty. Four months later, defendant withdrew his motion. Defendant did not attempt to perfect an appeal following that action.

¶ 5 On November 2, 2011, defendant filed the instant *pro se* petition for relief under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). Defendant alleged that he was denied his constitutional rights to due process and equal protection at the guilty plea hearing because the trial court did not make a finding on the record regarding defendant's criminal history. Defendant also alleged that the trial court failed to state the terms of the plea agreement on the record as required by Rule 402(b). Within this allegation, defendant asserted that the trial court advised him of the possible penalties for the offense, including MSR, but failed to state the actual sentence that would be imposed. Consequently, defendant argued that his sentence should not include a term of MSR.

¶ 6 In a written order, the circuit court found that defendant's allegation that the trial court failed to make a finding on the record of his criminal history was conclusory and not cognizable under the Act because it did not raise a constitutional claim. The court did not expressly state its finding regarding defendant's allegation that the trial court failed to state the terms of the plea agreement on the record. The court concluded that "the issues raised and presented by petitioner are frivolous and patently without merit," and summarily dismissed his postconviction petition.

¶ 7 Defendant filed a timely *pro se* motion to reconsider the dismissal of his petition arguing that the circuit court failed to address his allegation that the trial court erred when it did not state the terms of the plea agreement on the record in accordance with Rule 402(b). Defendant again asserted that at the plea hearing, the trial court admonished him about the possible penalties he could receive, but did not inform him of the actual sentence he would receive. Defendant

maintained that the term of MSR should not be included with his sentence. The circuit court stated that it considered defendant's motion to reconsider, and denied that motion.

¶ 8 On appeal, defendant first contends the circuit court erred in dismissing his petition because it stated a meritorious claim that he was denied his right to due process and deprived of the benefit of his negotiated plea bargain when the trial court failed to advise him at his guilty plea hearing that a three-year term of mandatory supervised release (MSR) would be added to his negotiated sentence. Defendant acknowledges that the trial court mentioned MSR when it advised him of the possible penalties for the offense, but argues the court failed to mention MSR when it confirmed the terms of the plea agreement, and failed to link the MSR term to his sentence. Defendant claims he had no knowledge he would be required to serve MSR.

Defendant asserts that the trial court failed to comply with our supreme court's holdings in *People v. Whitfield*, 217 Ill. 2d 177 (2005), and *People v. Morris*, 236 Ill. 2d 345 (2010), because it did not specifically advise him that MSR would be added to his sentence, it did not mention MSR when imposing his sentence, and it did not include MSR on his mittimus.

¶ 9 Defendant acknowledges that similar challenges have been rejected by this court in *People v. Davis*, 403 Ill. App. 3d 461 (2010), *People v. Andrews*, 403 Ill. App. 3d 654 (2010), and *People v. Thomas*, 402 Ill. App. 3d 1129 (2010). He argues, however, that these cases are factually distinct from the case at bar because the courts in those cases explained that the defendants would serve a definite period of MSR after being released from prison, or analogized MSR to parole. Defendant asserts that this court must follow the action taken in *Whitfield* and reduce his prison sentence by three years, or reverse the dismissal of his postconviction petition and remand his case to the circuit court for second-stage proceedings under the Act.

¶ 10 Initially, the State asserts that defendant has forfeited review of this issue because he did not raise the MSR claim in his motion to withdraw his guilty plea. The State cites to *People v. Jolly*, 374 Ill. App. 3d 499 (2007) and *People v. Newman*, 365 Ill. App. 3d 285 (2006) for support. In *Jolly*, the defendant argued that his postplea counsel rendered ineffective assistance because counsel failed to argue in the motion to withdraw the defendant's guilty plea that the defendant was not admonished about his MSR term. *Jolly*, 374 Ill. App. 3d at 505. The *Jolly* court found the issue forfeited because the defendant did not include the allegation in his postconviction petition, but instead, asserted it for the first time on appeal. *Jolly*, 374 Ill. App. 3d at 505. In *Newman*, the court found that the defendant forfeited his claim that he was not admonished about his MSR term because the defendant could have raised the claim in his motion to withdraw his guilty plea or in his direct appeal, but did not. *Newman*, 365 Ill. App. 3d at 289. The *Newman* court acknowledged that in *Whitfield*, the supreme court did not find the defendant's MSR issue forfeited; however, the *Newman* court found *Whitfield* factually distinct because the defendant in *Whitfield* did not file a motion to withdraw his guilty plea or a direct appeal, and thus, could not have raised the claim in a prior proceeding. *Newman*, 365 Ill. App. 3d at 289-90.

¶ 11 In this case, although defendant initially filed a motion to withdraw his guilty plea, he subsequently withdrew that motion, and never attempted to file a direct appeal following that action. Accordingly, there were no prior proceedings where defendant could have asserted his MSR claim. Furthermore, defendant's *pro se* postconviction petition included an allegation that, liberally construed, asserted that the trial court erred when it failed to expressly admonish him that he was required to serve a term of MSR in addition to his negotiated sentence. Based on the facts of this case, we find that defendant has not forfeited his challenge to the MSR term.

¶ 12 We review the circuit court's summary dismissal of defendant's *pro se* postconviction petition *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 388-89 (1998). The Act provides a process whereby a prisoner can file a petition asserting that his conviction was the result of a substantial denial of his constitutional rights. 725 ILCS 5/122-1 (West 2010); *Coleman*, 183 Ill. 2d at 378-79. A *pro se* postconviction petition need only state the gist of a constitutional claim to survive summary dismissal. *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). Our supreme court has held that a petition can be summarily dismissed as frivolous or patently without merit if it has "no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). A petition lacks such an arguable basis when it is based on fanciful factual allegations or an indisputably meritless legal theory. *Hodges*, 234 Ill. 2d at 16. A legal theory that is completely contradicted by the record is indisputably meritless. *Hodges*, 234 Ill. 2d at 16.

¶ 13 Our supreme court has held that a defendant's right to due process is violated when he pleads guilty in exchange for a specific sentence and the trial court fails to admonish him, prior to accepting the plea, that a term of MSR will be added to his sentence. *Whitfield*, 217 Ill. 2d at 195. In *Whitfield*, the trial court failed to advise the defendant at any time during the plea hearing that he would be required to serve a three-year term of MSR. *Whitfield*, 217 Ill. 2d at 180. Consequently, the supreme court reduced the defendant's term of imprisonment by three years to account for the due process violation. *Whitfield*, 217 Ill. 2d at 205.

¶ 14 Our supreme court subsequently clarified the *Whitfield* holding in *Morris*, explaining that the trial court cannot merely mention the term "MSR" without placing it in a relevant context that advises the defendant of the consequences of his guilty plea. *Morris*, 236 Ill. 2d at 366. However, an MSR admonishment need not be perfect nor follow a precise formula; instead, it must "substantially comply" with precedent and Rule 402. *Morris*, 236 Ill. 2d at 366-67. An

admonishment is sufficient if an ordinary person in the defendant's circumstances "would understand it to convey the required warning." *Morris*, 236 Ill. 2d at 366. The supreme court "strongly encourage[d]" the trial courts to explicitly link the MSR term to the defendant's negotiated sentence, to give the MSR admonishment while reviewing the provisions of the plea agreement, to reiterate the admonishment when imposing the sentence, and to include the MSR term on the written mittimus. *Morris*, 236 Ill. 2d at 367-68.

¶ 15 This court has held that where defendant knows he is going to be sentenced to prison in exchange for his guilty plea, and he is thereafter admonished by the trial court during the guilty plea hearing that he must serve a term of MSR if sentenced to the penitentiary, the MSR admonishment is sufficient. *People v. Hunter*, 2011 IL App (1st) 093023, ¶¶ 18-19; *Davis*, 403 Ill. 2d at 466; *People v. Marshall*, 381 Ill. App. 3d 724, 736 (2008). See also *People v. Dorsey*, 404 Ill. App. 3d 829, 837-38 (2010) (Fourth District); *Andrews*, 403 Ill. App. 3d at 665 (Fourth District). *Contra People v. Burns*, 405 Ill. App. 3d 40 (2010) (Second District). These cases all note that in *Whitfield*, the trial court never mentioned the three-year term of MSR at any point during the plea hearing. *Hunter*, 2011 IL App (1st) 093023, ¶ 13; *Davis*, 403 Ill. App. 3d at 465-66; *Marshall*, 381 Ill. App. 3d at 735; *Dorsey*, 404 Ill. App. 3d at 834; *Andrews*, 403 Ill. App. 3d at 663. On that basis, this court has held that under *Whitfield*, defendant's due process rights are violated only where the trial court fails to make any mention to him, before he pleads guilty, that he must serve a term of MSR in addition to his negotiated sentence. *Davis*, 403 Ill. App. 3d at 466. Moreover, this court previously acknowledged that the *Morris* court stated that the "better practice" would be in to incorporate the MSR admonishment when announcing the sentence, but found such a practice is not mandatory in order to satisfy the requirements of due process. *Hunter*, 2011 IL App (1st) 093023, ¶ 14.

¶ 16 Here, we find that the record contradicts defendant's claim and shows that the trial court sufficiently admonished him about the three-year term of MSR prior to accepting his guilty plea. The record shows that defense counsel informed the court that defendant wanted to plead guilty, and immediately thereafter requested a stay of mittimus "after he's sentenced" to allow defendant time to get his artwork before being sent to prison. The trial court advised defendant that the offense of attempted first degree murder was a Class X felony with a sentencing range of 6 to 30 years' imprisonment and a fine up to \$25,000. The court then expressly stated "[i]t also carries a three-year mandatory supervised release period when you are released from the penitentiary. That's like a period of parole." Defendant confirmed that he understood the charge and the penalties and pleaded guilty.

¶ 17 The record thus shows that defendant knew he was going to be sentenced to prison in exchange for his guilty plea, and was thereafter admonished by the trial court during the guilty plea hearing that he must serve a term of MSR when he is released from the penitentiary. In accordance with our prior holdings, from which we decline to depart, we find that the trial court's MSR admonishment in this case was sufficient. Defendant's postconviction claim is rebutted by the record, and therefore, the circuit court's summary dismissal of his *pro se* petition was proper.

¶ 18 Defendant next contends the circuit court failed to address one of the allegations in his petition, rendering the summary dismissal void. Defendant argues that the circuit court's written order specifically discussed and rejected the first allegation in his postconviction petition, but ignored his second allegation that the trial court erred when it did not state the terms of the plea agreement on the record in accordance with Rule 402(b). Defendant further argues that there is no indication that the court ruled on, or was aware of, his second allegation, and therefore, the court improperly entered a partial dismissal of his petition.

¶ 19 We again find that the record contradicts defendant's claim. In its written order dismissing defendant's petition, the circuit court expressly stated "the *issues* raised and presented by petitioner are frivolous and patently without merit." (Emphasis added.) Significantly, defendant filed a *pro se* motion to reconsider the dismissal, specifically asserting that the circuit court failed to address his allegation that the trial court erred when it did not state the terms of the plea agreement on the record in accordance with Rule 402(b). The circuit court expressly stated that it had "considered his motion to reconsider," and denied that motion. The record therefore shows that the circuit court found both of the "issues" in defendant's petition frivolous and patently without merit. The record further demonstrates that the court was aware of the second allegation, which was specifically pointed out to the court in defendant's motion to reconsider. The court stated that it had "considered his motion to reconsider," thereby considering the allegation, and denied the motion.

¶ 20 Although the court did not specifically address defendant's second allegation in its written order, this is no basis for reversal. See *People v. Porter*, 122 Ill. 2d 64, 83 (1988) (the court's failure to specify its findings of fact and conclusions of law in its written order does not require reversal). The statements made by the court clearly show it considered both of defendant's allegations, found them frivolous and patently without merit, and summarily dismissed his entire postconviction petition in whole.

¶ 21 For these reasons, we affirm the judgment of the circuit court of Cook County summarily dismissing defendant's *pro se* postconviction petition.

¶ 22 Affirmed.