

2013 IL App (1st) 122311-U

SIXTH DIVISION
January 17, 2013

Nos. 1-12-2311 and 1-12-2761
(Consolidated)

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. 93 CR 19322
)	
GREGORY JOHNSON,)	Honorable
)	Stanley J. Sacks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justices LAMPKIN and REYES concurred in the judgment.

ORDER

¶ 1 *Held:* MSR term attached to sentence of imprisonment by operation of law even though during sentencing *in absentia*, the trial court did not mention MSR in its oral pronouncement of sentence or its written sentencing order.

¶ 2 In 1996, following a bench trial and sentencing *in absentia*, defendant Gregory Johnson was convicted of first degree murder and sentenced to 40 years' imprisonment. Defendant was arrested two years later and is presently serving the term imposed on his conviction, which this court affirmed on direct appeal. *People v. Johnson*, No. 1-96-2480 (1998) (unpublished order

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under Supreme Court Rule 23). Defendant's subsequent collateral challenges also proved unsuccessful. See *People v. Johnson*, No. 1-99-0075 (2000) (unpublished order under Supreme Court Rule 23) (affirming trial court's summary dismissal of defendant's post-conviction petition); *People v. Johnson*, No. 1-01-3240 (2002) (unpublished order under Supreme Court Rule 23) (affirming the summary dismissal of defendant's successive post-conviction petition after granting appellate counsel leave to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987)).

¶ 3 On May 16, 2012, defendant filed the subject *pro se* complaint for *mandamus* relief primarily alleging his due process rights were violated by the imposition of a mandatory supervised release (MSR) term by the Department of Corrections (DOC). In a written order entered on June 22, 2012, the circuit court denied defendant's complaint for *mandamus* relief, finding that the three-year MSR term was appropriately added "by operation of law" to his 40-year term of imprisonment.

¶ 4 Defendant now appeals from that order contending that his due process rights were violated by the "automatic IDOC imposition" of a three-year MSR term, which was not mentioned by the trial court in either its oral pronouncement of sentence or its written sentencing order. Citing *People v. Munoz*, 2011 IL App (3d) 100193, ¶ 11, defendant argues that the power to impose an MSR term is exclusively the function of the trial court and, thus, it is unconstitutional for the DOC to impose an MSR term without the express authorization of the trial court.¹

¶ 5 The State responds that defendant's claim lacks merit because a term of MSR attaches by operation of law to any sentence imposed by the trial court and, thus, its "assignment" by the

¹This issue is currently pending before the Illinois Supreme Court in *People v. McChriston*, 2012 IL App (4th) 110319-U, *appeal allowed*, No. 115310 (May 29, 2013).

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DOC does not violate due process. In our *de novo* review (*Hadley v. Illinois Department of Corrections*, 224 Ill. 2d 365, 370 (2007)), we agree with the State for the reasons that follow.

¶ 6 The plain language of section 5-8-1(d) of the Unified Code of Corrections (730 ILCS 5/5-8-1(d) (West 2006)) evidences that the MSR term is a mandatory component of defendant's sentence. *People v. Hunter*, 2011 IL App (1st) 093023, ¶ 23. Except where a term of life imprisonment is imposed, "every sentence shall include as though written therein a term in addition to the term of imprisonment." 730 ILCS 5/5-8-1(d) (West 2006). Accordingly, even a defendant, as here, who was convicted of first degree murder and must serve 100% of the 40-year sentence imposed by the trial court with no good conduct credit, must serve a three-year MSR term after serving his "entire sentence." 730 ILCS 5/3-6-3(a)(2)(i) (West 2008); *Hunter*, 2011 IL App (1st) 093023, ¶ 23.

¶ 7 That the trial court made no mention, at sentencing or in its written sentencing order, that defendant would be required to serve a three-year MSR term, does not necessitate the conclusion that the MSR term was added to his sentence by the DOC, as opposed to the trial court. *Cf. People v. Munoz*, 2011 IL App (3d) 100193, ¶ 2 (the trial court's written sentencing judgment reflected a two-year MSR term, but DOC inmate records listed defendant's MSR terms as otherwise). MSR relates to a term of imprisonment by statutory requirement "without regard to whether the period is expressly attached by the sentencing court to the term of imprisonment." *People v. Brown*, 296 Ill. App. 3d 1041, 1043 (1998). Thus, defendant's argument that the DOC imposed the MSR term fails.

¶ 8 In so concluding, we are unpersuaded by defendant's mere reference, without accompanying argument, to *Carroll v. Hathaway*, 2012 WL 6758319 (N.D.Ill. Sept. 5, 2012), citing *Earley v. Murray*, 451 F.3d 71 (2d Cir. 2006), and *Hill v. Wampler*, 298 U.S. 460 (1936). See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). We also observe that in *People v. Evans*, 2013 IL

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113471, ¶ 15, the supreme court rejected the applicability of *Earley*, which relied on *Hill*, 298 U.S. at 461-62, where the clerk of the court unilaterally modified a warrant of commitment by adding a provision requiring payment of imposed fines as a condition of release from imprisonment. As the supreme court recognized in *Evans*, 2013 IL 113471, ¶ 13, MSR, in Illinois, is imposed by operation of law.

¶ 9 Accordingly, we find that the DOC correctly reported defendant's three-year MSR term, and pursuant to our authority under Rule 615(b) (eff. Aug. 27, 1999), we order that the mittimus be corrected to reflect the same. *People v. Jackson*, 2012 IL App (1st) 092833, ¶ 52. In light of defendant's failure to demonstrate a clear right to the relief he requested under *mandamus* (*Owens v. Snyder*, 349 Ill. App. 3d 35, 44-45 (2004)), we affirm the order of the circuit court of Cook County denying his complaint for such relief.

¶ 10 Affirmed.