

No. 1-13-0949

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. 06 CR 20809
)	
BRUCE WRIGHT,)	Honorable
)	Lawrence E. Flood,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Neville and Liu concurred in the judgment.

O R D E R

¶ 1 *Held:* Second-stage dismissal of defendant's post-conviction petition affirmed where the record refutes his claim that the trial court's admonishment regarding the requisite MSR term before accepting his plea of guilty fell short of constitutional requirements.

¶ 2 Defendant Bruce Wright appeals the second stage dismissal of his amended petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). He contends that the trial court violated his right to due process and deprived him of the benefit of his negotiated plea when it failed to advise him that his 13-year prison sentence would be

followed by a three year period of mandatory supervised release (MSR). As a remedy, he requests that his sentence be modified to 10 years in prison followed by three years of MSR, or that we remand the cause for further proceedings on his petition.

¶ 3 The record shows that defendant was charged by indictment with attempt first degree murder, aggravated battery with a firearm, and aggravated discharge of a firearm in connection with a shooting incident that occurred on August 24, 2006. On November 10, 2009, defendant entered a negotiated plea of guilty to two counts of aggravated battery with a firearm in exchange for the State's recommendation that he be sentenced to concurrent 13-year terms of imprisonment.

¶ 4 At the plea hearing, the court admonished defendant as to the rights he was relinquishing by entering his plea, and defendant stated that he understood that he was giving up those rights, and acknowledged his signature on his written jury waiver. The court then continued as follows:

"THE COURT: Okay. You also understand that each one of the charges that you are pleading guilty to is a class X felony. The range of sentence for a class X felony is anywhere from 6 years to 60 years in the Illinois Department of Corrections, a fine up to \$25,000, a 3-year period of mandatory supervised release, and no probation or conditional discharge is allowed. Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: That's on each count, do you understand that?

THE DEFENDANT: Hmm."

¶ 5 The parties then stipulated to the factual basis for the plea, and the trial court found that defendant's plea was made freely and voluntarily, and that there was a factual basis for it. The

court then accepted his plea and found him guilty of two counts of aggravated battery with a firearm. Defendant waived his right to a pre-sentence investigation report, and the trial court sentenced him in accordance with the plea agreement to concurrent terms of 13 years in prison, with 1174 days of pre-trial sentencing credit. The trial court then advised defendant of his appeal rights, but defendant failed to file a motion to withdraw his guilty plea or otherwise perfect an appeal from the judgment entered thereon.

¶ 6 On December 10, 2010, defendant filed the instant *pro se* petition for relief under the Act (725 ILCS 5/122-1 *et seq.* (West 2010)), in which he alleged that he was deprived of his right to due process because the trial court failed to admonish him that a three-year MSR term would be part of his sentence, citing *People v. Whitfield*, 217 Ill. 2d 177 (2005). The court docketed defendant's petition and appointed counsel to represent him. Counsel then filed a certificate of compliance with Supreme Court Rule 651(c) (eff. Apr. 26, 2012).

¶ 7 The State filed a motion to dismiss defendant's petition, claiming that defendant failed to make a substantial showing of a constitutional violation because he was properly advised of the MSR period which attached to his offense. On February 21, 2013, the circuit court granted the State's motion, finding, pursuant to *People v. Morris*, 236 Ill. 2d 345 (2010), that the trial court substantially complied with the requirements of Supreme Court Rule 402 in admonishing defendant of the MSR requirement.

¶ 8 In this appeal from that order, defendant contends that the trial court violated his due process rights and deprived him of the benefit of his negotiated plea bargain as defined in *Whitfield*, 217 Ill. 2d 177, and *Morris*, 236 Ill. 2d 345, because it failed to advise him that the terms of his plea bargain included a term of MSR, or to link the MSR to his sentence.

¶ 9 The Act provides a method by which a defendant may challenge his conviction or sentence for violations of federal or state constitutional rights. 725 ILCS 5/122-1 *et seq.* (West 2010); *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). In noncapital cases, the Act provides for three stages (*People v. Wheeler*, 392 Ill. App. 3d 303, 307 (2009)), and at the second stage of postconviction proceedings, as here, defendant bears the burden of making a substantial showing of a constitutional violation (*People v. Coleman*, 206 Ill. 2d 261, 277 (2002)). At this stage, all well-pleaded facts that are not positively rebutted by the trial record are to be taken as true, and, where the circuit court dismisses the petition, this court reviews that decision *de novo*. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006).

¶ 10 As noted, defendant entered a negotiated plea of guilty to two counts of aggravated battery with a firearm in exchange for concurrent sentences of 13 years' imprisonment. Supreme Court Rule 402 (eff. Jul. 1, 1997), provides, in pertinent part, that prior to accepting a guilty plea, the trial court must admonish defendant of the minimum and maximum sentences prescribed by law. Furthermore, the supreme court requires that in addition to substantial compliance with Rule 402, a trial court must also admonish defendant that a term of MSR will be added to the actual sentence agreed upon in exchange for a guilty plea to the offense charged. *Whitfield*, 217 Ill. 2d at 195; *Morris*, 236 Ill. 2d at 367.

¶ 11 Here, the record shows that the trial court advised defendant during the plea hearing that the offense of aggravated battery with a firearm was a Class X felony with a sentencing range of 6 to 60 years' imprisonment, a fine up to \$25,000, and "a 3-year period of mandatory supervised release." The court then sentenced defendant to the agreed-upon concurrent terms of 13 years' imprisonment for his convictions. Although the court did not reiterate the MSR period at the time

the specific sentence was announced, we find that under these circumstances, that the trial court complied with Rule 402 and satisfied the requirements of due process by advising defendant prior to accepting his plea that he would have to serve three years of MSR. *Hunter*, 2011 IL App (1st) 093023, ¶ 19.

¶ 12 In reaching that conclusion, we have examined *People v. Burns*, 405 Ill. App. 3d 40 (2010), cited by defendant in support of his contention, but do not find it persuasive. In *Burns*, the Second District concluded that a trial court's failure to link the MSR term to the actual sentence that defendant agreed to serve failed to satisfy the requirements of *Whitfield*. *Burns*, 405 Ill. App. 3d at 43. Defendant acknowledges that this District has rejected that interpretation in several other cases, finding that the supreme court's recommendation in *Morris* that the "better practice would incorporate the mandatory supervised release admonition when the specific sentencing is announced" (Internal quotation marks omitted.) (*Morris*, 236 Ill. 2d at 367, quoting *People v. Marshall*, 381 Ill. App. 3d 724, 736 (2008)), is not mandatory, and rejected defendant's claims to the contrary. *Marshall*, 381 Ill. App. 3d at 736; *People v. Davis*, 403 Ill. App. 3d 461, 467 (2010); *People v. Hunter*, 2011 IL App (1st) 093023, ¶ 19.

¶ 13 Defendant, nonetheless, argues that we should depart from our holdings in *Marshall*, *Davis*, and *Hunter*, because in those cases, this court "overlooked the fact that *Morris* required a trial court's admonishments to link the MSR term to the actual sentence." We disagree. Contrary to defendant's assertion, *Morris* does not require the trial court to link MSR term to the actual sentence in its admonishments, but rather, recommended that as the better practice. *Morris*, 236 Ill. 2d at 367-68 ("We strongly encourage trial court judges to follow this practice[.]").

Accordingly, this court has consistently held that although not ideal, the requirements of

Supreme Court Rule 402 (eff. Jul. 1, 1997) and due process were met where the court did not mention MSR at sentencing or in the written sentencing judgment, but did advise defendant of the requirement before accepting his guilty plea. *Marshall*, 381 Ill. App. 3d at 736; *Davis*, 403 Ill. App. 3d at 466; *People v. Hunter*, 2011 IL App (1st) 093023, ¶ 19.¹ We find no reason to depart from that reasoning here, where the record shows that the trial court complied with Supreme Court Rule 402 and satisfied the requirements of due process by admonishing defendant prior to accepting his guilty plea that he would have to serve three years of MSR.

¶ 14 In sum, we conclude that defendant failed to make a substantial showing of a constitutional violation in his postconviction petition, and, we therefore affirm the second-stage dismissal of his petition by the circuit court of Cook County.

¶ 15 Affirmed.

¹ We note that section 5-8-1(d) of the Unified Code of Corrections was amended in 2011 to require the MSR term to be reflected on the mittimus. 730 ILCS 5/5-8-1(d) (eff. Jan. 1, 2012); *People v. McChriston*, 2014 IL 115310, ¶ 19. This provision is not applicable to defendant, who was sentenced in 2009, before the amendment became effective.