

NOTICE
Decision filed 04/29/14. 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.

2014 IL App (5th) 120172-U

NO. 5-12-0172

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).

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|--------------------------------------|---|-------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | St. Clair County. |
| |) | |
| v. |) | No. 06-CF-1915 |
| |) | |
| CHARLES ZAMARRON II, |) | Honorable |
| |) | Michael N. Cook, |
| Defendant-Appellant. |) | Judge, presiding. |

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Goldenhersh and Spomer concurred in the judgment.

ORDER

¶ 1 *Held:* The correct term of mandatory supervised release for the defendant in this case is two years, and the mittimus must be corrected so as to reflect a two-year term.

¶ 2 The defendant, Charles Zamarron II, is serving sentences of imprisonment for two counts of criminal sexual assault. By statute, Zamarron will be subject to mandatory supervised release (MSR) for a term of two years. However, the mittimus does not reflect any specific term of MSR, and the Department of Corrections (DOC) is under the impression that Zamarron should be subject to MSR for a term of five years. In order to ensure that Zamarron will be subject to an MSR term of the appropriate length, the

mittimus must be corrected so as to show an MSR term of two years.

¶ 3

BACKGROUND

¶ 4 In 2006, Zamarron was charged in a single information with eight felony sex offenses. All eight counts involved the same victim, who was a minor at the times the offenses were committed. Pursuant to an agreement with the State, Zamarron pleaded guilty to counts I and II of the information and was sentenced to four years of imprisonment on each of those two counts, with the two sentences to run consecutively. Counts I and II charged Zamarron with criminal sexual assault (720 ILCS 5/12-13(a)(3) (West 2004)), a Class 1 felony (720 ILCS 5/12-13(b)(1) (West 2004)). Each of those two counts stated that the offense was committed between January 9, 2004, and January 8, 2005. Although the court admonished Zamarron that a two-year term of MSR would be part of his sentence, the court did not mention MSR in the oral pronouncement of sentence or in the written judgment. Counts III through VIII of the information were dismissed as part of the plea agreement. The convictions on counts I and II were Zamarron's first-ever felony convictions.

¶ 5 Zamarron did not move to withdraw his guilty pleas. He did not appeal from the judgment of conviction.

¶ 6 On January 3, 2011, Zamarron filed *pro se* a petition for postconviction relief. His claims ran the gamut from the lawfulness of his arrest to the validity of his guilty pleas. The court appointed postconviction counsel, who filed an amended postconviction petition on behalf of Zamarron, as well as a certificate of compliance with Supreme Court Rule 651(c) (eff. Dec. 1, 1984). The State filed a motion to dismiss the amended

postconviction petition, but the court denied that motion. The State filed an answer to the petition. On April 4, 2012, the court held an evidentiary hearing on the petition. Zamarron and his plea counsel were the only witnesses at that hearing. Zamarron testified, *inter alia*, that DOC personnel told him that he would receive "a five year enhanced MSR," and this news shocked Zamarron. At the close of the hearing, the court denied the amended postconviction petition, and expressly found that Zamarron's guilty pleas were knowing and voluntary and that Zamarron received the benefit of his plea bargain with the State. Zamarron filed a timely notice of appeal from the denial order.

¶ 7

ANALYSIS

¶ 8 Before this court, Zamarron argues that the correct term of MSR in this case is two years, and he asks that the mittimus be corrected so as to indicate a two-year MSR term. Alternatively, Zamarron argues that if this court concludes that the appropriate MSR term in this case is five years, his guilty pleas should be vacated due to his being deprived of due process and the benefit of his plea bargain. The State agrees with Zamarron that the correct MSR term in this case is two years, and the State suggests that the question raised in the alternative argument is therefore moot. Indeed, the correct MSR term is two years, and the mittimus must be amended accordingly. As the State suggests, Zamarron's alternative argument is therefore moot and need not be considered.

¶ 9 The question of whether a criminal defendant's mittimus should be corrected is a purely legal issue, subject to *de novo* review. *People v. Jones*, 397 Ill. App. 3d 651, 656 (2009). This court has the authority under Supreme Court Rule 615(b)(1) (eff. Feb. 6, 2013) to order the clerk of the circuit court to issue a corrected mittimus.

¶ 10 Zamarron was simultaneously convicted of two counts of criminal sexual assault under section 12-13(a)(3) of the Criminal Code of 1961 (720 ILCS 5/12-13(a)(3) (West 2004)). This offense was a Class 1 felony. 720 ILCS 5/12-13(b)(1) (West 2004). It was punishable by a sentence of imprisonment for a term of not less than 4 years and not more than 15 years. 730 ILCS 5/5-8-1(a)(4) (West 2004). The sentence necessarily included MSR for a term of two years. 730 ILCS 5/5-8-1(d)(2) (West 2004).¹ These simple, straightforward statutory sections leave no doubt that Zamarron should be subject to MSR for a term of two years.

¶ 11 Nevertheless, according to Zamarron's testimony at the evidentiary hearing, the DOC informed Zamarron that he would be subject to an MSR term of five years. The DOC's website confirms this testimony, for it indicates a "projected parole date" of October 19, 2014, and a "projected discharge date" of October 19, 2019. See *People v. Henderson*, 2011 IL App (1st) 090923, ¶ 8 (reviewing courts may take judicial notice of records appearing on the DOC's website). This incorrect, impermissibly lengthy term of MSR probably stems from (1) the circuit court's failure to specify the MSR term on the written judgment and (2) the DOC's erroneous application of section 5-8-1(d)(4) of the

¹By virtue of Public Act 94-165 (eff. July 11, 2005), the MSR term for a defendant who commits criminal sexual assault was increased to a minimum of three years and a maximum of natural life. See 730 ILCS 5/5-8-1(d)(4) (West 2006). This increase does not affect Zamarron, since it took effect subsequent to the time period in which he committed the two offenses at issue here.

Unified Code of Corrections (730 ILCS 5/5-8-1(d)(4) (West 2004)). Section 5-8-1(d)(4) mandates a five-year term of MSR "for a second or subsequent offense of criminal sexual assault" if the victim was younger than 18 years. In this case, the victim was younger than 18 years, and Zamarron was convicted of two counts of criminal sexual assault. However, he was simultaneously convicted of both counts, and neither of the two offenses qualifies as a "second or subsequent offense." As previously noted, the instant convictions are Zamarron's first felony convictions; he had no prior felony convictions. Therefore, section 5-8-1(d)(4) is inapplicable to Zamarron. See *People v. Anderson*, 402 Ill. App. 3d 186, 193 (2010) (an offense does not qualify as a "second or subsequent offense," triggering an enhanced term of MSR, unless the defendant committed that offense sometime after conviction was entered on the first offense).

¶ 12 The appropriate term of MSR for Zamarron is two years, not five years. Although the circuit court's order denying the amended postconviction petition is hereby affirmed, this court hereby directs the clerk of the circuit court to correct the mittimus to reflect an MSR term of two years. The circuit clerk is further directed to forward the corrected mittimus to the DOC so that its records may be corrected.

¶ 13 Affirmed; mittimus corrected.