2015 IL App (4th) 130645-U

NO. 4-13-0645

FILED
January 15, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
GEORGE L. AUTMAN,	)	No. 08CF597
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied defendant's *pro se* postconviction petition where the record showed the court substantially complied with Illinois Supreme Court Rule 402 (eff. July 1, 1997) when providing mandatory-supervised-release admonishments to defendant.

¶ 2 In July 2012, defendant, George L. Autman, filed a *pro se* petition for postconviction relief pursuant to the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 to 122-7 (West 2012). Defendant alleged, *inter alia*, he was not properly informed during plea proceedings of the period of mandatory supervised release (MSR) he would be required to serve following his prison sentence. In June 2013, the trial court denied defendant's postconviction petition after a third-stage evidentiary hearing. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In May 2008, the State charged defendant with three counts of murder in connection with the death of his 15-month-old son. 720 ILCS 5/9-1(a)(1), (a)(2) (West 2006).

¶ 5 At the August 6, 2009, pretrial hearing, the trial court admonished defendant, due to the charges against him, he was not eligible for probation and, in fact, he was eligible for extended-term sentencing of up to natural life because the victim was under the age of 12 years. The court also advised him he would have to serve 100% of any sentence, and, "[a]ny prison term is also followed by a three[-]year term of [MSR] upon release." Defendant indicated he understood.

¶ 6 One week later, on August 13, 2009, defendant, as part of a partially negotiated plea, pleaded guilty to one count of murder. In exchange for defendant's plea, the State agreed to (1) dismiss the two remaining murder charges and (2) a sentencing cap of 45 years' imprisonment. At the plea hearing, the trial court admonished defendant as follows:

> "THE COURT: *** [Defendant], the court has been given some documents here that indicate that you, through your lawyer, have reached a partial plea agreement with the State's Attorney on this case. Now, before I accept your guilty plea with this plea agreement, I want to go over all of its terms with you, make sure you completely understand what it says. I want to go over with you the possible penalties that could apply in this case and all of the rights that you will be giving up if you plead guilty with this agreement here this morning.
>
> Now, first of all, let me ask you, do you have a copy of the

plea agreement down there in front of you, sir?

THE DEFENDANT: Yes.

THE COURT: All right. [Defendant], do you have any difficulty reading that plea agreement.

THE DEFENDANT: No.

THE COURT: That plea agreement says in the first paragraph that you are pleading guilty today to [c]ount [II] in this case, which is a charge of murder. The charge says that back on May the 27th of last year in Bloomington, McLean County, Illinois, you committed this offense in that you knowingly and without lawful justification killed an individual identified by the initials A.L. by hitting him about the head and in performing the acts that caused the death of A.L., you knew that those acts created a strong probability of death or great bodily harm to A.L.

Now, do you understand first of all what the charge says that you did, [defendant]?

THE DEFENDANT: Yes.

THE COURT: And is that the charge you are pleading guilty to this morning?

THE DEFENDANT: Yes.

THE COURT: Now, [defendant], that charge is what we call a Class M felony. What that means[,] if there were no plea

agreement at all and you were found guilty, you could be sentenced to a term in the Illinois Department of Corrections for a minimum of 20 years and a maximum of 60 years. Any sentence to the Department of Corrections on this charge must be served completely, that means [100%], which means there are no day[-]for[-]day credits or any good[-]time credits on the charge.

It would also be followed after service of the time by a three[-]year period of [MSR] or what used to be called parole. There is also a possible fine of up to [$25,000].

Do you understand, sir that those are the possible penalties for this offense?

THE DEFENDANT: Yes.

THE COURT: Now, your plea agreement says that in return for your plea of guilty to this charge here today the other two counts, the other two charges in the case, are going to be dismissed. So that will resolve all three charges in the case.

On the charge of murder that you are pleading guilty to, you will be sentenced to no more than 45 years in the Illinois Department of Corrections. You will have the right at a sentencing hearing that we're going to schedule here in just a little bit to request a lesser sentence than that. That means you and your attorney could present evidence and argument and suggest that

some lesser penalties ought to be imposed. Now what this essentially means is at that sentencing hearing the court will sentence you to a term in the Department of Corrections for a minimum of 20 up to a maximum of 45 years or anything in between.

Now, are those the terms of the plea agreement as you understand them, sir?

THE DEFENDANT: Right."

The written plea agreement did not mention MSR.

¶ 7 The trial court (1) admonished defendant about his trial rights; (2) determined there had been no force, threats, or coercion to make defendant plead guilty; (3) determined no promises had been made beyond that of the plea agreement; and (4) heard the factual basis for the plea. Thereafter, the court accepted defendant's guilty plea.

¶ 8 On December 11, 2009, the trial court sentenced defendant to 45 years' imprisonment, with credit for 562 days previously served. The court's oral pronouncement of sentence did not reference MSR, but the written sentencing order did. On December 28, 2009, defendant filed a motion to withdraw his plea, arguing he had not fully considered or understood the consequences of entering a plea of guilty, and a motion to reconsider sentence, arguing his sentence was excessive. Following a March 2010 hearing, the court denied both motions.

¶ 9 On direct appeal, defendant argued his guilty plea was not intelligently made with full knowledge of its consequences because he was not informed his guilty plea resulted in a waiver of his right to appeal the length of his sentence. Defendant argued he did not knowingly

accept that risk when he pleaded guilty because both parties and the trial court were under the misapprehension defendant would be allowed to challenge the sentence on appeal. This court rejected defendant's argument and affirmed the trial court's judgment. *People v. Autman*, 2011 IL App (4th) 100238-U.

¶ 10 In August 2012, defendant filed a *pro se* postconviction petition pursuant to the Act (725 ILCS 5/122-1 to 122-7 (West 2012)), alleging, *inter alia*, the trial court failed to properly admonish him a three-year term of MSR would attach to his prison sentence as a result of his guilty plea. In April 2013, appointed counsel filed an addendum to defendant's petition, attaching thereto defendant's affidavit and the transcript of the guilty-plea hearing.

¶ 11 In his affidavit, defendant alleged, prior to pleading guilty, he was admonished if there were no plea agreement and he was found guilty he would be sentenced to between 20 and 60 years in prison with 3 years' MSR; however, the court advised him, in return for pleading guilty, he would be sentenced to no more than 45 years in prison and no mention was made of MSR associated with a guilty plea. Defendant alleged he had "now" been informed he would have to serve 3 years of MSR after completing his 45-year sentence, with the possibility of being returned to prison if he violated the terms of his MSR. He maintained, had he known about the three years of MSR, he would not have accepted the plea agreement.

¶ 12 In June 2013, counsel filed a Rule 651(c) certificate (Ill. S. Ct. R. 651(c) (eff. Feb. 6, 2013)) and a "Declaration to Stand on *Pro Se* Pleadings."

¶ 13 In June 2013, the State filed an answer to the postconviction petition, stating, "The [p]laintiff neither admits nor denies the allegations contained in the postconviction petition, inclusive, and demands strict proof thereof."

¶ 14 At the June 2013 third-stage evidentiary hearing on the postconviction petition, defendant presented evidence on two issues, *i.e.*, ineffective assistance of counsel and insufficient MSR admonishments prior to his guilty plea. On appeal, he raises only the MSR issue. Therefore, we refer only to the trial court proceedings regarding the MSR claim.

¶ 15 Defendant's testimony basically reiterated the allegations in his postconviction petition, *i.e.*, the trial court's admonishments regarding MSR were inadequate because he was not told the three years of MSR would attach to any sentence imposed as a result of his plea agreement.

¶ 16 After hearing arguments, regarding the MSR issue, the trial court stated as follows:

> "I understand your argument, and it's a pretty cogent argument, I think, that you've made on this point that the [c]ourt admonished you that[,] if there were no plea agreement, there would be a range of 20 to 60 years, followed by a [3-]year MSR, and that's clearly what the [c]ourt did, but if we look at the, the transcript very carefully, you—you've kind of glossed over some other things that were said by the [c]ourt that I think the case law that has now come out on this issue very clearly says and holds that the [c]ourt did properly admonish you. What the [c]ourt said to you at the time of the plea was that[,] if you did not have a plea agreement at all and you were found guilty, you could be sentenced to 20 to 60 years in the Department of Corrections. The [c]ourt then says, and I think

> this is pretty critical, right after saying that, haven't mentioned the MSR yet—we haven't even talked about it yet—I just tell you what the minimum and maximum penalties are, which is what the Supreme Court Rule requires me to do, tell you that the minimum would have been 20 years, the maximum would have been 60. The [c]ourt then says any sentence to the Department of Corrections on this charge must be served completely, that means [100%]. We were talking about truth and [*sic*] sentencing, which means there's no day[-]for[-]day credits or any good[-]time credits on the charge. Then the [c]ourt says it would also be followed after service of the time by a three[-]year period of [MSR] or what used to be called parole. Those second two sentences after the minimum and maximum were not related to the, only if there was no guilty plea. The [c]ourt was admonishing you that any sentence to the Department of Corrections must be served [100%] and would also be followed by a three[-]year period of MSR."

Thereafter, the court denied the petition.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 Defendant presented evidence on two issues at his third-stage evidentiary hearing. He has since abandoned one of those issues, his claim of ineffective assistance of trial counsel. Defendant argues on appeal the denial of his petition for postconviction relief must be reversed

because he was denied due process of law when he was not advised his specific plea agreement included a term of 3 years' MSR in addition to a sentencing cap of 45 years in prison. Relying on *People v. Whitfield*, 217 Ill. 2d 177, 202, 840 N.E.2d 658, 673 (2005), defendant further contends, since he did not receive the "benefit of the bargain," he should be given the opportunity to withdraw his guilty plea.

¶ 20 The Act "provides a means for a criminal defendant to challenge his conviction or sentence based on a substantial violation of constitutional rights." *People v. Beaman*, 229 Ill. 2d 56, 71, 890 N.E.2d 500, 509 (2008). A proceeding under the Act is a collateral proceeding and not an appeal from the defendant's conviction and sentence. *Id.* The defendant bears the initial burden of establishing a substantial deprivation of his federal or state constitutional rights. *People v. Williams*, 209 Ill. 2d 227, 242, 807 N.E.2d 448, 458 (2004).

¶ 21 The Act establishes a three-stage process for adjudicating a postconviction petition. *People v. English*, 2013 IL 112890, ¶ 23, 987 N.E.2d 371. Here, the trial court dismissed defendant's amended petition following a third-stage evidentiary hearing. "After an evidentiary hearing where fact-finding and credibility determinations are involved, the circuit court's decision will not be reversed unless it is manifestly erroneous." *Id.* However, where only questions of law are involved, our review is *de novo*. *Id.* In the case *sub judice*, even though defendant testified at the evidentiary hearing about his interpretation of the court's admonishments about MSR at the plea hearing, the court's ruling on the MSR issue was based on its review of its admonishments in the transcript of the guilty plea hearing. Therefore, our review is *de novo*.

¶ 22 To be entitled to relief under the Act, a defendant must demonstrate 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, 840 N.E.2d. at 663. Illinois Supreme Court Rule 402(a) (eff. July 1, 1997) requires, before accepting a defendant's guilty plea, the trial court give the defendant certain admonishments, including admonishing him of the minimum and maximum sentences prescribed by law. In *Whitfield*, our supreme court ruled "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 an [MSR] term will be added to that sentence." *Whitfield*, 217 Ill. 2d at 195, 840 N.E.2d at 669.

¶ 23 Here, as in *Whitfield*, defendant contends he did not receive the "benefit of the bargain" he made with the State. Unlike *Whitfield*, however, where MSR or parole was never mentioned, the admonishment in the present case correctly apprised defendant that, in addition to a prison sentence which could be imposed within the range of 20 to 60 years, the prison sentence "must be served completely, that means [100%], which means there are not day[-]for[-]day credits or any good[-]time credits on the charge. *** *It would also be followed after service of the time by a three[-]year period of [MSR] or what used to be called parole* *** also a possible fine of up to [$25,000]." (Emphasis added.) Defendant told the trial court he understood the penalties. The written sentencing order included the three-year MSR term. Defendant does not complain he misunderstood he would have to serve 100% of his sentence or pay a potential penalty of $25,000. Defendant only maintains confusion about having to serve the MSR term after his release from prison. An ordinary person in defendant's circumstances would understand this admonishment to mean a term of MSR would be added to any prison sentence. See *People*

v. Jarrett, 372 Ill. App. 3d 344, 352, 867 N.E.2d 1173, 1180 (2007) ("If defendant understood that the fines were in addition to his 10-year sentence, it is unreasonable to conclude he did not know that MSR would also be in addition to his sentence."). Any alleged mistaken impression defendant may have had about MSR was not justified when judged by objective standards.

¶ 24 Defendant further relies on *People v. Morris*, 236 Ill. 2d 345, 925 N.E.2d 1069 (2010), to support his argument. In *Morris*, the supreme court chose to clarify its decision in *Whitfield* after acknowledging confusion among lower courts regarding the admonishments necessary to comply with Rule 402 and due process post-*Whitfield*. It noted there was no precise formula for admonishing a defendant of his MSR obligation, but "[a]n admonition that uses the term 'MSR' without putting it in some relevant context cannot serve to advise the defendant of the consequences of his guilty plea and cannot aid the defendant in making an informed decision about his case." *Id.* at 366, 925 N.E.2d at 1082. The supreme court further stated an " 'admonition is sufficient if an ordinary person in the circumstances of the accused would understand it to convey the required warning.' " *Id.* (quoting *People v. Williams*, 97 Ill. 2d 252, 269, 454 N.E.2d 220, 228 (1983)). It held a trial court's MSR admonishments do not have to be perfect but they must at least "substantially comply" with Rule 402 and supreme court precedents. *Id.* at 367, 925 N.E.2d at 1082. Additionally, the supreme court stated as follows:

> "Ideally, a trial court's admonishment would explicitly link MSR to the sentence to which defendant agreed in exchange for his guilty plea, would be given at the time the trial court reviewed the provisions of the plea agreement, and would be reiterated both at sentencing and in the written judgment. [Citations.] We

> strongly encourage trial court judges to follow this practice, and to discuss MSR when reviewing the terms of a defendant's plea agreement, to include the MSR term when imposing sentence, and to add the MSR term to the written order of conviction and sentence. This practice, which is not unduly burdensome, would ensure that defendants understand the consequences of their plea agreement and would avoid prolonged litigation on the issue." *Id.* at 367-68, 925 N.E.2d at 1082-83.

Here, unlike in *Whitfield,* MSR was discussed during defendant's plea hearing. Specifically, prior to accepting defendant's guilty plea, the trial court admonished defendant regarding the applicable three-year MSR term when informing him of the minimum and maximum penalties. The MSR term was also included in the written sentencing judgment.

¶ 25 Defendant also refers us to *People v. Company*, 376 Ill. App. 3d 846, 852-53, 876 N.E.2d 1055, 1060 (2007), holding the trial 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 367-68, 925 N.E.2d at 1082-83. We agree with *Morris* admonishments need not be perfect and need to be read in a practical and realistic sense. *Id*. at 366-67, 925 N.E.2d at 1082. Thus, we reject an insistence on a rigid rule 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.

¶ 26 Other post-*Morris* authorities reject that link as a requirement and hold a trial

court's reference to MSR while explaining the possible sentencing range to a defendant, rather than while imposing sentence upon him, satisfies the requirements of due process. See *People v. Thomas*, 402 Ill. App. 3d 1129, 1133, 932 N.E.2d 658, 662 (2010) ("when the trial judge informed the defendant of the range of penalties for each offense to which the defendant was pleading guilty, the judge told the defendant, *inter alia*, *** '[a]ny sentence of imprisonment would carry with it upon a release from prison a period of [MSR] for a period of two years' "); *People v. Andrews*, 403 Ill. App. 3d 654, 665, 936 N.E.2d 648, 657 (2010) ("as long as the trial court informs a defendant at the time of his guilty plea that an MSR term must follow any prison sentence that is imposed upon him, he has received all the notice and all the due process to which he is entitled regarding MSR"); *People v. Davis*, 403 Ill. App. 3d 461, 466, 934 N.E.2d 550, 555 (2010) ("If, prior to the guilty plea admonishments, the defendant knows he will be sentenced to the penitentiary in exchange for his plea of guilty, and knowing this, he is told during the guilty plea hearing that he must serve an MSR term upon being sentenced to the penitentiary, then the defendant is placed on notice that his debt to society for the crime he admits to having committed extends beyond fulfilling his sentence to the penitentiary."); and *People v. Lee*, 2012 IL App (4th) 110403, ¶ 26, 979 N.E.2d 992 ("This court has been unwilling to expand *Whitfield* to cases where MSR was mentioned in the admonishments prior to the guilty plea. [Citation.] While the best practice may be for the trial court or counsel to expressly link the MSR term to the agreed-upon sentence [citation] failure to make that link does not violate Rule 402 or the parties' plea agreement. [Citation.]").

¶ 27 Here, the trial court specifically advised defendant first degree murder was punishable by a prison term of between 20 and 60 years, followed by a 3-year period of MSR.

Consequently, defendant was adequately admonished he would have to serve a term of MSR after serving the actual prison sentence agreed upon in exchange for a guilty plea to first degree murder.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 30 Affirmed.