

SIXTH DIVISION
April 15, 2016

No. 1-14-1020

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. 99 CR 1847
)	
LAWRENCE COLEMAN,)	Honorable
)	James M. Obbish,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justices HOFFMAN and DELORT concurred in the judgment.

O R D E R

- ¶ 1 *Held:* We vacate defendant's \$90 frivolous filing fee and \$15 mailing fee because, when he filed his petition, defendant's contention that the Illinois Department of Corrections improperly imposed a term of mandatory supervised release was arguably meritorious.
- ¶ 2 Defendant Lawrence Coleman appeals the circuit court's assessment of a \$90 filing fee and a \$15 mailing fee under section 22-105 of the Code of Civil Procedure (735 ILCS 5/22-105 (West 2014)) for filing a frivolous petition for relief from judgment. In defendant's 2013 postconviction petition, he argued that the Illinois Department of Corrections (DOC) violated the

separation of powers and due process by imposing a term of mandatory supervised release not ordered by the court. On appeal, defendant contends that although his position was later rejected in *People v. McChriston*, 2014 IL 115310, his fees should be vacated because his postconviction petition had an arguable legal basis when filed. We vacate the \$90 filing fee and \$15 mailing fee.

¶ 3 Following a jury trial, defendant was convicted of first degree murder as an accomplice to a shooting death and was sentenced to 28 years' imprisonment. The trial court made no reference to MSR during sentencing, nor was MSR mentioned in the mittimus. However, defendant's DOC records list his projected parole date as August 2, 2027, and his projected discharge date as August 2, 2030. On September 10, 2013, defendant filed a motion for leave to file his fourth successive postconviction petition. Defendant alleged for the first time, *inter alia*, that the DOC infringed on the judiciary's sentencing power by imposing a three-year term of MSR and violated his due process rights by extending his sentence beyond the 28 years imposed by the court. Consequently, defendant claimed that his term of MSR was void. The circuit court dismissed defendant's petition in an order filed on February 21, 2014. The court stated:

“In the present case, petitioner has failed to demonstrate that the rule prohibiting successive petitions should be relaxed. Although the factual assertions relied upon by petitioner in the instant petition were available to him at the time his initial petition was filed, he has failed to identify any objective factor which impeded his efforts to raise the claims in the earlier proceedings. Petitioner does not allege that the facts underlying his present claims were withheld from him or that they are based on newly discovered evidence.

It is further apparent that petitioner has failed to demonstrate that any prejudice inured from his failure to assert this claim earlier. Had this claim been presented in the initial petition, there is scant probability that petitioner would have prevailed.”

The court noted that under section 5-8-1(d) of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-1(d) (West Supp. 1999)), defendant's sentence for first degree murder included a mandatory three year term of MSR "as though written therein." Thus, defendant was automatically subject to MSR and was not prejudiced by failing to include this claim in his initial petition. The court found that defendant's petition was frivolous and ordered him to pay a \$90 filing fee and \$15 mailing fee pursuant to section 27.2(a) of the Clerks of Courts Act. 705 ILCS 105/27.2(a)(g)(2), 27.2(a)(h) (West 2014).

¶ 4 On appeal, defendant contends the circuit court erred in imposing the \$90 filing fee and \$15 mailing fee for filing a frivolous petition. Defendant acknowledges that his argument regarding MSR was rejected in *McChriston*, but submits that his petition had an arguable basis because it was filed before *McChriston* was decided. The State responds that irrespective of whether defendant's MSR claim was arguable, the circuit court properly dismissed the petition due to defendant's procedural default. The State observes that the court did not rely on *McChriston* in dismissing defendant's petition, but instead found that defendant could have raised his MSR claim in his initial postconviction petition. Moreover, defendant did not show either cause or prejudice in raising the issue in his fourth successive postconviction petition.

¶ 5 As an initial matter, we find that defendant waived his MSR claim. Defendant alleges, however, that the DOC's imposition of MSR was unauthorized and void. Our supreme court abolished the void sentencing rule in *People v. Castleberry*, 2015 IL 116916, ¶ 19, but at the

time defendant filed his petition, a "sentence imposed without statutory authority [was] not subject to a defendant's forfeiture." *People v. Spears*, 371 Ill. App. 3d 1000, 1007 (2007). Rather, the claim that an unauthorized judgment was void could have been raised at any time, including in a successive postconviction petition that did not meet the requirements of cause and prejudice. *People v. Ramey*, 393 Ill. App. 3d 661, 669-70 (2009). We therefore review defendant's claim for error.

¶ 6 The trial court may assess fees after making a specific finding that a pleading, motion, or other filing is frivolous. 735 ILCS 5/22-105(a) (West 2014). A filing is frivolous if it "lacks an arguable basis either in law or in fact" or the "claims, defenses, and other legal contentions therein are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." 735 ILCS 5/22-105(b)(1), 22-105(b)(3) (West 2014). We review the propriety of an order imposing fines and fees *de novo*. *People v. Moody*, 2015 IL App (1st) 130071, ¶ 85.

¶ 7 Section 5-8-1(d) of the Code provides that "[e]xcept where a term of natural life is imposed, every [felony] sentence shall include as though written therein a term [of MSR] in addition to the term of imprisonment." 730 ILCS 5/5-8-1(d) (West Supp. 1999). For a conviction of first degree murder, the term of MSR is three years. 730 ILCS 5/5-8-1(d)(1) (West Supp. 1999). In *McChriston*, our supreme court determined that section 5-8-1(d) provides that MSR is automatically part of a sentence, whether or not the trial court mentions MSR at sentencing or includes MSR in the mittimus. *McChriston*, 2014 IL 115310, ¶¶ 10, 23. Therefore, the DOC neither infringes on the judiciary's sentencing power nor violates due process by enforcing a term of MSR mandated by statute. *Id.* ¶¶ 23-31.

¶ 8 On appeal, defendant directs us to several decisions that predate *McChriston* and demonstrate that his petition had an arguable legal basis when it was filed. In *People v. Munoz*, 2011 IL App (3d) 100193, ¶¶ 2, 10-12, the defendant's DOC records listed an indeterminate MSR term of three years to life, a period that comported with the relevant statute but differed from the erroneous two-year MSR term ordered by the trial court. This court ruled the DOC's imposition of MSR was void because the trial court had “sole authority to impose a term of MSR as part of a defendant’s sentence.” *Id.* ¶¶ 11-12. In *People v. Kerns*, 2012 IL App (3d) 100375, ¶ 18, this court again found that a term of MSR imposed by the DOC was void because “it is the trial court’s duty, not the DOC’s, to sentence a defendant to a term of MSR within the statutory guidelines.” Defendant also directs us to *Hill v. United States ex rel. Wampler*, 298 U.S. 460, 463-64, 467 (1936), where the United States Supreme Court found that a conditional prison term imposed by the clerk was void for infringing on the judiciary's discretionary sentencing power, and *Earley v. Murray*, 451 F.3d 71, 75 (2d Cir. 2006), where the Second Circuit Court of Appeals held that under *Wampler*, only the court could impose a term of supervised release mandated by statute. *McChriston* expressly overruled *Kerns*, distinguished *Wampler*, and found that *Earley* had no precedential value in Illinois. *McChriston*, 2014 IL 115310, ¶¶ 23-31. As defendant's petition was filed before *McChriston* was decided, however, his challenge to MSR had an arguable basis in existing law. Consequently, defendant's petition was not frivolous under section 22-105, and the fees imposed by the circuit court were improper. 735 ILCS 5/22-105 (West 2014).

¶ 9 For the foregoing reasons, we order that the \$90 frivolous filing fee and \$15 mailing fee be vacated.

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¶ 10 Judgment affirmed; fee vacated.