

FOURTH DIVISION
September 15, 2016

No. 1-14-2542

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. 07 CR 7163
)	
BYRON BOYKINS,)	Honorable
)	Clayton J. Crane,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice Burke concurred in the judgment.

O R D E R

¶ 1 *Held:* The summary dismissal of defendant's *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)), is affirmed over his contention that the trial court violated his due process rights by failing to sufficiently admonish him, prior to accepting his guilty plea, that he would be required to serve a three-year term of mandatory supervised release following his agreed upon prison sentence.

¶ 2 Defendant Byron Boykins appeals the summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)). He contends that his petition presented an arguable claim that the trial court violated his due process rights because it deprived him of the benefit of his negotiated plea agreement by failing to advise him that he would be required to serve a three-year term of mandatory supervised release (MSR) following his agreed upon 22-year sentence. We affirm.

¶ 3 Defendant was arrested on February 27, 2007, in connection with the shooting death of Carlos Mathis. Defendant was subsequently charged by indictment with six counts of first degree murder and six counts of aggravated unlawful use of a weapon. Pursuant to a negotiated plea agreement, defendant was convicted of the first degree murder of Mathis and sentenced to 22 years' imprisonment. According to the factual basis for the plea, on October 16, 2006, "a little bit after midnight," defendant argued with Mathis near the area of 5852 South Prairie Avenue and shot him once in the back. Mathis was transported to Northwestern Memorial Hospital where he died.

¶ 4 Defendant's case was set for a jury trial. On the date of trial, defense counsel informed the court that defendant had been offered a sentence of 22 years' imprisonment on the charge of first degree murder in exchange for his plea of guilty. The court advised defendant that he was being charged with the offense of first degree murder for the shooting death of Mathis. The court then admonished defendant:

"In the State of Illinois that's referred to as – the sentencing for that case is from 20 to 40 – 20 to 60 years in the Illinois State penitentiary. If I find that you've been found

guilty of the same or greater class felony in the last ten years, the maximum penitentiary time in this case would be life.

Upon your release from the penitentiary, there is a period of three years mandatory supervised release, sometimes referred to as parole.

Understanding the nature of the offense and its possible penalties, how do you plead to this matter; guilty or not guilty?

THE DEFENDANT: Guilty."

¶ 5 The court then admonished defendant of the rights he was waiving by pleading guilty. Defendant stated that he understood those rights and that he was pleading guilty of his own free will. The State read a factual basis for the plea to which defendant stipulated. The trial court accepted defendant's plea as knowing and voluntary. The case immediately proceeded to sentencing.

¶ 6 At sentencing, defendant waived his right to a presentence report. In aggravation, the State informed the court that defendant had several juvenile adjudications and no prior adult arrests. The court found the State's recommendation appropriate and sentenced defendant to 22 years' imprisonment. The trial court did not mention MSR during sentencing and the three-year MSR term is not reflected on defendant's *mittimus*.

¶ 7 The trial court then admonished defendant of his right to appeal. Defendant did not file a direct appeal.

¶ 8 On May 9, 2014, defendant filed a *pro se* postconviction petition arguing, in pertinent part, that the trial court violated his due process rights by failing to properly admonish him that his prison sentence would be followed by a three-year term of MSR as required by *People v.*

Whitfield, 217 Ill. 2d 177 (2005). Defendant requested that the trial court reduce his prison term by three years or, in the alternative, remove his obligation to serve the three-year term of MSR.

¶ 9 On July 11, 2014, in a written order, the circuit court summarily dismissed defendant's petition, finding it frivolous and patently without merit. In doing so, the court stated the trial court substantially complied with Illinois Supreme Court Rule 402 (eff. May 20, 1997) and satisfied defendant's due process rights because the record showed that, prior to imposing sentence, the court admonished him that he would have to serve a three-year term of MSR. Defendant appeals.

¶ 10 The Act allows criminal defendants to challenge their convictions or sentences based on a substantial violation of their rights under the federal or state constitution. *People v. Beaman*, 229 Ill. 2d 56, 71 (2008). Under the Act, a trial court may summarily dismiss a petition if the court determines that it is frivolous or patently without merit. 725 ILCS 5/122-2.1(a) (West 2012). In order to be considered frivolous or patently without merit, the petition must have no arguable basis either in law or in fact. *People v. Hodges*, 234 Ill. 2d 1, 12 (2009). A petition that is completely contradicted by the record lacks an arguable basis in law or in fact. *Id.* at 16. In assessing the merits of a postconviction petition at summary dismissal stage, the court is to take all well-pleaded facts in the petition as true. *People v. Coleman*, 183 Ill. 2d 366, 378 (1998). We review a trial court's summary dismissal of a postconviction petition *de novo*. *People v. Hunter*, 2011 IL App (1st) 093023, ¶ 8.

¶ 11 When a defendant pleads guilty as part of a plea agreement, due process requires that the plea be entered "intelligently and with full knowledge of its consequences." *Whitfield*, 217 Ill. 2d at 184. Before accepting a guilty plea, the trial court must substantially comply with Rule

402, which governs admonishments required when a defendant pleads guilty. *Hunter*, 2011 IL App (1st), ¶ 10. The court must admonish a defendant and determine whether he understands the minimum and maximum sentence prescribed by law. Ill. S. Ct. R. 402 (eff. May 20, 1997). A trial court's admonishment need not be perfect, it need only substantially comply with the requirements of Rule 402 and Illinois Supreme Court precedent. *People v. Morris*, 236 Ill. 2d 345, 367 (2010). An admonishment substantially complies with the rule when an ordinary person in the defendant's circumstances would understand it to convey the necessary warning. *Id.* at 366. A court's failure to fully admonish a defendant who pleads guilty under a plea agreement requires either fulfillment of the agreement though modifying the defendant's agreement, or the withdrawal of the defendant's plea. *Whitfield*, 217 Ill. 2d at 202.

¶ 12 On appeal, defendant contends that the circuit court erred in dismissing his petition because it presented an arguable claim that the trial court deprived him of the benefit of his negotiated plea bargain when it insufficiently admonished him about the three-year term of MSR. Defendant argues that, although the court mentioned MSR in the context of the potential penalties for first degree murder, it did not "link" the admonishment about the MSR to his agreed upon sentence as required by *Whitfield* and *Morris*.

¶ 13 In *Whitfield*, the defendant pled guilty in exchange for a specific sentence, but there was no mention of the MSR term during the entirety of the proceedings. *Whitfield*, 217 Ill. 2d at 180. As a result, our supreme court found that:

"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 a [MSR] term will be added to

that sentence. In these circumstances, addition of the MSR term to the agreed-upon sentence violates due process because the sentence imposed is more onerous than the one defendant agreed to at the time of the plea hearing. Under these circumstances, the addition of the MSR constitutes an unfair breach of the plea agreement." *Id.* at 195.

¶ 14 In *Morris*, our supreme court explained that the use of the term "MSR" without 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." *Morris*, 236 Ill. 2d at 366.

The supreme court advised lower courts that "[i]deally 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." *Id.* at 367.

¶ 15 Here, unlike in *Whitfield*, the trial court in advising defendant of the nature of the charge to which he was pleading guilty expressly admonished him that the offense carried a three-year term of MSR. The record shows that the court advised defendant of the sentencing range for the offense of first degree murder and informed him that the maximum penitentiary time in this case would be life if defendant had been found guilty of the same or greater class felony in the prior ten years. The court then specifically stated "[u]pon your release from the penitentiary, there is a period of three years mandatory supervised release, sometimes referred to as parole." This admonishment conveyed the necessary warning regarding the three-year term of MSR in no uncertain terms, such that an ordinary person in defendant's circumstances would understand it. *Morris*, 236 Ill. 2d at 366. After the admonishment, the court asked defendant "understanding the

nature of the offense and its possible penalties how do you plead to this matter; guilty or not guilty?" Defendant responded "Guilty."

¶ 16 In *People v. Davis*, 403 Ill. App. 3d 461, 466 (2010), this court found that "under *Whitfield*, a constitutional violation occurs only when there is absolutely no mention to a defendant, before he actually pleads guilty, that he must serve an MSR term in addition to the agreed-upon sentence that he will receive in exchange for his plea of guilty." Here, as mentioned, defendant was expressly admonished about the three-year term of MSR. Therefore, under the holding in *Whitfield*, the trial court, by advising defendant of the MSR term prior to accepting his plea, substantially complied with the requirements of Rule 402 and did not violate defendant's due process rights. *Hunter*, 2011 IL App (1st) 093023, ¶ 13.

¶ 17 Defendant nevertheless argues that, although the court mentioned MSR in the context of the potential penalties for first degree murder, it did not "link" the admonishment about the MSR to his agreed upon sentence as required by *Morris*. We acknowledge, as pointed out by defendant, that following the decision in *Morris*, there is disagreement among the districts of the appellate court on the issue of whether a trial court's mentioning that MSR will be attached to any prison sentence when informing the defendant of the minimum and maximum penalties of the crime charged satisfies due process, Rule 402 and *Whitfield*. Compare *Davis*, 403 Ill. App. 3d at 466-67 (1st Dist. 2010); *Hunter*, 2011 IL App (1st) 093023; and *People v. Andrews*, 403 Ill. App. 3d 654 (4th Dist. 2010) with *People v. Burns*, 405 Ill. App. 3d 40 (2d Dist. 2010) and *People v. Smith*, 386 Ill. App. 3d 473 (5th Dist. 2008). Defendant urges us to follow the holding of the second district appellate court in *Burns* and find that unless a trial court links the MSR term to the specific prison sentence, due process is not satisfied. *Burns*, 405 Ill. App. 3d at 43-45.

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However, this court has previously addressed this disagreement among the districts and we continue to adhere to the reasoning of *Davis. Hunter*, 2011 IL App (1st) 093023, ¶ 18.

¶ 18 Accordingly, because the trial court complied with Rule 402 and satisfied the requirements of due process by advising defendant prior to imposing the sentence that he would have to serve three years of MSR (*Hunter*, 2011 IL App (1st) 093023, ¶ 19), the circuit court did not err in summarily dismissing his petition.

¶ 19 For the reasons stated we affirm the order of the Circuit Court of Cook County.

¶ 20 Affirmed.