

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).

2016 IL App (4th) 131070-U

No. 4-13-1070

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 16, 2016
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
RYAN M. ROBERSON,)	No. 10CF217
Defendant-Appellant.)	
)	Honorable
)	Peter C. Cavanagh,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* We grant appointed counsel's motion to withdraw under *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and affirm the trial court's judgment denying defendant's petition to modify his sentence.

¶ 2 This case comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground no meritorious issues can be raised in this case. For the reasons below, we grant OSAD's motion and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 In August 2010, a jury convicted defendant, Ryan M. Roberson, of aggravated battery with a deadly weapon (720 ILCS 5/12-4(b)(1) (West 2008)) and aggravated battery causing great bodily harm (720 ILCS 5/12-4(a) (West 2008)). The trial court merged the two convictions and entered judgment on the latter count, a Class 3 felony. In November 2010, the

trial court sentenced defendant to eight years' imprisonment followed by a statutorily required one-year term of mandatory supervised release (MSR).

¶ 5 In June 2012, this court affirmed defendant's conviction and sentence on appeal. *People v. Roberson*, 2012 IL App (4th) 100974-U, ¶ 32.

¶ 6 In July 2012, defendant filed a *pro se* postconviction petition. In October 2012, the trial court appointed counsel to represent defendant. In March 2013, defendant's counsel filed a motion to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), alleging there were no meritorious issues that could be raised on defendant's behalf. The State filed a motion to dismiss defendant's motion. After a hearing, the trial court granted the State's motion. Defendant appealed. This court vacated defendant's fines improperly imposed by the circuit clerk and remanded with directions to reimpose the appropriate fines. *People v. Roberson*, 2015 IL App (4th) 130573-U, ¶ 18.

¶ 7 In September 2013, defendant filed a petition to modify his sentence and amend the sentencing judgment in the trial court. In particular, defendant argued (1) having to serve a term of MSR violated his due process rights and his right to fundamental fairness, "because the [MSR] term exceeds the sentence imposed by the court"; (2) the statute itself, imposing terms of MSR, is unconstitutional, "resulting in an unlawful constraint upon the offender's liberty"; (3) the trial court's judgment is unconstitutional because it requires him to serve a term of MSR after the prison sentence; and (4) the statute as a whole violates the separation of powers doctrine. Defendant requested the court either (1) find his sentence void and vacate the sentence accordingly, (2) remove the MSR term from his sentence, (3) subtract the MSR term from his sentence, or (4) find the "Illinois legislature's authorization of the Prison Review Board to detain offenders" on MSR terms "amounts to an unlawful delegation of [j]udicial [p]ower by the

legislative branch" and is unconstitutional. The State filed a motion to dismiss defendant's petition, arguing the petition was untimely because it was filed more than 30 days after sentencing. After a hearing, the court denied defendant's motion.

¶ 8 In December 2013, defendant filed his notice of appeal from the trial court's denial of his petition to modify his sentence and amend the sentencing judgment. OSAD filed a motion for leave to withdraw as defendant's counsel on appeal citing *Pennsylvania v. Finley*, 481 U.S. 551 (1987), asserting it had thoroughly reviewed the record and concluded any request for review would be without merit. The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by August 26, 2015, but defendant has not done so. After examining the record, we grant OSAD's motion and affirm the trial court's summary dismissal of defendant's postconviction petition.

¶ 9 II. ANALYSIS

¶ 10 OSAD argues defendant's mandatory MSR term is constitutional and not void. Thus, OSAD concludes "an appeal in this case would be frivolous" and seeks to withdraw. We agree.

¶ 11 Defendant refers to his motion as a "petition to modify sentence and amend mittimus"; we construe this pleading as a section 2-1401 petition under the Code of Civil Procedure. 735 ILCS 5/2-1401 (West 2012); see *Dorr-Wood, Ltd. v. Department of Public Health*, 99 Ill. App. 3d 170, 173-74, 425 N.E.2d 499, 501-02 (1981) (the appellate court construed a petition attacking a void judgment under the section governing relief from judgments regardless of how the pleading was labeled). A section 2-1401 motion need not comport with the precise statutory requirements. *In re Marriage of Stefiniw*, 253 Ill. App. 3d 196, 200, 625 N.E.2d 358, 361 (1993). "It is a well-settled principle of law that a void order may be attacked at

any time or in any court, either directly or collaterally." *People v. Thompson*, 209 Ill. 2d 19, 25, 805 N.E.2d 1200, 1203 (2004). An order denying a motion to vacate will be reviewed *de novo*. *People v. Donley*, 2015 IL App (4th) 130223, ¶ 30, 29 N.E.3d 683.

¶ 12 Defendant's petition argues the imposition of the MSR term was unconstitutional and the sentence was void.

¶ 13 At the time of trial, defendant was sentenced for aggravated battery causing great bodily harm. 720 ILCS 5/12-4(a) (West 2008). A conviction under this statute is a Class 3 felony. 720 ILCS 5/12-4(e)(1) (West 2008) ("aggravated battery is a Class 3 felony"). Under the statutory requirements for a conviction of a Class 3 felony, the "mandatory supervised release term *shall* be one year upon release from imprisonment." (Emphasis added.) 730 ILCS 5/5-4.5-40(l) (West 2008). The trial court had no discretion as to whether to sentence defendant to MSR; this decision was obligated by statute. See *id.*; see also *People v. McChriston*, 2014 IL 115310, ¶ 23, 4 N.E.3d 29 ("[t]he plain language of [the statute] at the time of defendant's sentencing was unambiguous and provided that the MSR term be automatically included as part of defendant's sentence and the DOC did not add onto defendant's sentence when it enforced the MSR term"). The MSR term is not in addition to the prison term. *People v. Lee*, 2012 IL App (4th) 110403, ¶ 32, 979 N.E.2d 992 ("[a] prison term and MSR are *** part of the same sentence, not two different sentences"). Instead, the MSR term is included as part of the sentence as a whole. *People v. Israel*, 66 Ill. 2d 190, 194, 361 N.E.2d 1108, 1109 (1977) ("sentence to a mandatory parole is part of the original sentence by operation of law"). As a result, we find no reason to vacate defendant's MSR term as it was properly included by the court in accordance with the statute and defendant was properly admonished of this fact.

¶ 14 Defendant presents additional arguments, which we find unpersuasive and this court has dismissed. See *Lee*, 2012 IL App (4th) 110403, ¶¶ 29-38, 979 N.E.2d 992 (the court found the following arguments without merit: the imposition of MSR after prison term (1) was unconstitutional (discussing *People v. Montana*, 380 Ill. 596, 44 N.E.2d 569 (1942)), (2) was an unlawful constraint upon liberty, and (3) violated separation of powers). "We are not disposed to again review [those contentions] as [they have] been made and disposed of in numerous cases ***." *Montana*, 380 Ill. at 601, 44 N.E.2d at 572. In addition, defendant parenthetically cites *Rippinger v. Niederst*, 317 Ill. 264, 148 N.E. 7 (1925), *People ex rel. Akin v. Butler Street Foundry & Iron Co.*, 201 Ill. 236, 66 N.E. 349 (1903), and *People ex rel. Kern v. Nelson*, 156 Ill. 364, 40 N.E. 957 (1895), for support. We do not find these cases relevant to the current facts and defendant provides no explanation why he relied on them.

¶ 15 III. CONCLUSION

¶ 16 In sum, we grant OSAD's motion to withdraw as counsel on appeal pursuant to *Finley* and affirm the trial court's denial of defendant's "petition to modify sentence."

¶ 17 Affirmed.