THIRD DIVISION
September 19, 2018

No. 1-16-2121

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. 15 CR 7123
	)	
ANTHONY WOODRIDGE,	)	Honorable
	)	Thomas M. Davy,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Lavin and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County sentencing defendant as a Class 2 offender is affirmed; defendant's admission during bond reduction proceedings was sufficient to prove beyond a reasonable doubt that defendant was serving mandatory supervised release at the time he committed unlawful use of a weapon by a felon thereby subjecting himself to sentencing as a Class 2 offender, and the State could rely on defendant's admission because it was not made during a pretrial services interview.

¶ 2 The State charged defendant, Anthony Woodridge, with several offenses related to his possession of a firearm on April 7, 2015, including unlawful use or possession of a weapon by a felon (UUWF). Following a bench trial, the circuit court of Cook County convicted defendant and merged all of the charges against him into one charge for UUWF. The court sentenced defendant to four and a half years in the Illinois Department of Corrections as a Class 2 offender based on the fact defendant was on mandatory supervised release (MSR) at the time he

committed the offense in this case. Defendant appeals on the grounds the State failed to prove beyond a reasonable doubt that defendant was on MSR at the time of the instant offense. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 We will limit our discussion to those facts relevant to the issues on appeal bearing in mind defendant does not challenge the sufficiency of the evidence to prove he possessed a firearm on April 7, 2015, or that he had a prior felony conviction on that date. The State charged defendant by information with seven counts related to his possession of a firearm on April 7, 2015, including, in Count I, Unlawful Use or Possession of a Weapon by a Felon. Count I of the information also stated that the State "shall seek to sentence defendant as a Class 2 offender" in that he was on Mandatory Supervised Release (MSR) at the time of the offense. On April 8, 2015 defendant was given a $50,000 bond. On October 5, 2015, defendant, through his attorney, made a motion to the trial court to reduce bond. The following colloquy occurred in court:

> "THE COURT: And, State, are you prepared to respond?
>
> [Assistant State's Attorney]: That's fine Judge. I can respond to that at this time.
>
> THE COURT: I believe bond is currently set at 50,000 'D'?
>
> [Assistant Public Defender]: That is correct, your Honor. Mr. Woodridge indicated that his grandmother has recently passed away; *he is no longer on parole*. He is requesting a bond reduction, probably 25,000 at this time.
>
> THE COURT: Okay. State, response?
>
> [Assistant State's Attorney]: Judge, first of all, we'd object that there is no substantial change in circumstances, other than the defendant no longer being on

parole which I don't really believe warrants a reduction in bond, that would warrant that.

* * *

By way of background, the defendant has two prior bond forfeiture warrants. He was currently on parole at the time of this offense for an aggravated fleeing and eluding the police which occurred on October 28th of 2014. He received one year Illinois Department of Corrections on that offense.

* * *

THE COURT: [A]nything further?

[Assistant Public Defender]: No, your Honor.

THE COURT: Based on what's been presented by way of *Gerstein*, as well as the defendant's background, including the fact that he was on mandatory supervised release at the time of this incident, motion for bond reduction is denied." (Emphasis added.)

¶ 5 On June 8, 2016 the case proceeded to a bench trial. The State called two police officers to testify to the circumstances of defendant's arrest and statements to police. The parties stipulated that defendant did not have a valid Firearm Owners Identification Card or Firearm Concealed Carry License on the date of the offense. The State entered a certified copy of defendant's prior conviction into evidence. The trial court received the certified copy of conviction into evidence "as it relates to the elements of the offense in the counts of unlawful use of a weapon by a felon and for no other purpose." We again note defendant does not challenge the sufficiency of the evidence to prove he possessed a firearm or that he had a prior felony conviction. The State does not dispute that at trial it failed to elicit evidence defendant was serving a term of MSR at the time of the offense, nor does our review of the evidence presented

at trial reveal any such evidence. The court found defendant guilty, ordered a presentence investigation report, and set the matter for posttrial motions.

¶ 6 The trial court denied defendant's motion for a new trial and the case proceeded to sentencing. Defendant's attorney informed the court of changes to defendant's presentence investigation report. Those changes were that the report stated defendant was in a gang and he denied that he was a member of that gang and that defendant was in the Behavioral Modification Program in the Cook County Department of Corrections as well as attending AA meetings, yoga, mental health treatment, and the art program. The court allowed the State to argue in aggravation whereupon the following exchange occurred:

> "[Assistant State's Attorney]: Judge, the case before you indicates that the defendant has three prior felony convictions. We are pursuant to the State's Attorney's Office policy requesting that the defendant be convicted—or, I'm sorry, be sentenced to the maximum sentence allowable by this class, a Class 2, and his prior criminal history indicates that that is a reasonable sentence. Three prior felony convictions indicates that the defendant is not someone who is going to rehabilitate himself in that he continues to commit felony offenses. And we believe that it is an appropriate sentence in this case, Judge.
>
> THE COURT: That would be the 3 to 14 years, Class 2, Aggravated Unlawful Use of a Weapon, because Mr. Woodridge was on Mandatory Supervised Release based on the 2014 conviction?
>
> [Assistant State's Attorney]: Correct Judge."

The court then allowed the defense to argue in mitigation.

¶ 7 The trial court stated the factors in aggravation and mitigation it considered, including "a charge that Mr. Woodridge was on Mandatory Supervised Release at the time of this offense."

The court stated, having considered all those factors, the sentencing range on the UUWF is a 3 to 14-year nonprobational sentence in the Illinois Department of Corrections. The court merged all of the counts of the information into the count for UUWF and sentenced defendant to four and a half years imprisonment.

¶ 8 This appeal followed.

¶ 9 ANALYSIS

¶ 10 Defendant's sole contention on appeal is that the State failed to prove beyond a reasonable doubt that defendant was serving a term of MSR at the time of the instant offense as required by *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Alleyne v. United States*, 570 U.S. 99 (2013), because it was a fact that increased the range of possible penalties to which defendant was subjected. In *Apprendi*, the United States Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi*, 530 U.S. at 490. The Court expanded on that holding in *Alleyne*, finding that "facts that increase mandatory minimum sentences must be submitted to the jury" and found beyond a reasonable doubt. *Alleyne*, 570 U.S. at 116. Based on defendant's qualifying conviction for the Class 4 felony offense of aggravated fleeing (625 ILCS 5/11-204.1(b) (West 2014)), defendant's commission of UUWF would be a Class 3 felony with a sentencing range of 2 to 10 years but for his being on MSR which makes the offense a Class 2 felony with a sentencing range of 3 to 14 years. Thus, as defendant points out, the fact of defendant being on MSR increases the class of the offense, and the minimum and maximum penalty for the offense. Therefore, we agree, and the State does not dispute, that fact was required to be proved to the trier of fact beyond a reasonable doubt.

¶ 11 Defendant argues that the State's assertion at his sentencing hearing that defendant was on MSR at the time of the offense does not constitute proof of that fact beyond a reasonable doubt. Defendant also argues the State cannot rely on the certification of his conviction because it does not establish that defendant was still serving a term of MSR at the time of the offense. Defendant argues it is possible, if he received a variety of sentence reduction credits, that he could have completed his MSR by the time of this offense. See 730 ILCS 5/3-6-3 (West 2014).

¶ 12 Finally, defendant admits he failed to preserve this error by objecting in the trial court and/or raising the issue in a posttrial motion but asks this court to review the matter as plain error. Defendant argues the failure by the State to prove a fact that increased the penalty for the offense beyond a reasonable doubt deprived him of a fair sentencing hearing and is reviewable under the "second prong" of the plain error analysis. See *People v. Ramirez*, 2017 IL App (1st) 130022-B, ¶ 16 ("Plain error preserves otherwise forfeited errors for review. In the sentencing context, the doctrine requires a defendant to show that a clear and obvious error occurred and that *** (2) the error was egregious so as to deny the defendant a fair sentencing hearing." (citing *People v. Hillier*, 237 Ill. 2d 539, 545 (2010))). Alternatively, defendant argues his forfeiture should be excused because his trial attorney rendered ineffective assistance of counsel in failing to raise and preserve the issue.

¶ 13 The State, citing *People v. Nitz*, 219 Ill. 2d 400, 411-16 (2006), responds forfeited *Apprendi* claims may only be reviewed under the "first prong" of the plain error analysis which requires that the evidence was closely balanced and that the error prejudiced the defendant. But see *People v. Sebby*, 2017 IL 119445, ¶ 68 ("The State is correct in its contention that a defendant must show prejudice to obtain relief under the first prong of the plain error doctrine. As our cases clearly indicate, though, prejudice rests not upon the seriousness of the error but upon the closeness of the evidence. What makes an error prejudicial is the fact that it occurred in

a close case where its impact on the result was potentially dispositive.") The State also argues defendant failed to establish that error occurred in his sentencing or if it did occur that it prejudiced him. For that reason, the State also argues that defendant cannot establish ineffective assistance of counsel.

¶ 14 This court has recognized that "[o]ur supreme court has held that *Apprendi* errors do not fall under the narrow category of established structural errors. [Citations.]" *People v. Daniel*, 2014 IL App (1st) 121171, ¶ 70. "An *Apprendi* error is not a structural error and does not warrant automatic reversal under the second prong of the plain-error doctrine." *People v. White*, 2011 IL App (1st) 092852, ¶ 91. "In applying the first prong of the [plain error] analysis, we require defendant to prove both that there was an error ([citations]) and that the evidence was closely balanced. [Citation.]" *Nitz*, 219 Ill. 2d at 416. In *Nitz*, the *Apprendi* violation was "a sentence based on a judge-made finding that a murder was brutal or heinous." *Id.* at 415. The court found that the *Apprendi* violation was "unquestionably error." *Id.* at 416. To determine whether the defendant satisfied the "closely balanced evidence" requirement of a first-prong plain error analysis, our supreme court examined the evidence adduced at trial on the issue of whether the murder was brutal or heinous. See *id.* at 416-20. Based on the evidence adduced at trial, our supreme court found that the defendant did not meet his burden of proof that the evidence was closely balanced "as to whether [the] defendant's crime was exceptionally brutal or heinous," and that the defendant had not proved the evidence was "closely balanced on the issue of wanton cruelty." *Id.* at 419. The *Nitz* court held "that [the] defendant has not met his burden of proving that the evidence was closely balanced as to whether his crime was exceptionally brutal or heinous and indicative of wanton cruelty. Thus, defendant has failed to show he was prejudiced by the trial court's erroneous imposition of a sentencing enhancement based on a judge-made finding. Because he has not satisfied this court's plain-error test, we decline to

excuse defendant's procedural default of the *Apprendi* violation." *Id.* at 420-21. Applying a similar analysis in this case is a simple matter that yields the opposite result. In this case, the State failed to adduce any evidence that defendant was serving a term of MSR at the time of the offense. Thus, we can easily conclude that alleged *Apprendi* error in this case was actually dispositive as to defendant's potential sentence. If the error occurred, defendant was definitely prejudiced by it. *Cf. Daniel*, 2014 IL App (1st) 121171, ¶ 70 ("the evidence here was not closely balanced. The State presented ample evidence that defendant committed the instant armed robbery and overwhelming evidence that he did so while armed with a firearm. As a result, defendant cannot satisfy the first prong.").

¶ 15 Regardless, "[t]he first step in applying the plain-error doctrine is to determine whether any error occurred at all. [Citation.]" *White*, 2011 IL App (1st) 092852, ¶ 42. The State argues no error occurred in sentencing because the record contains defendant's judicial admission during the hearing on defendant's motion to reduce bond that he was serving a term of MSR at the time of the offense. The State asserts that during the motion to reduce bond hearing defendant, through counsel, admitted he was serving MSR at the time he was given bond after being arrested in this case because defendant requested to reduce bond because "he is no longer on parole."[1] The State also points to the absence of a transcript of the original bond hearing, which it asserts must be construed against defendant; the State's response objecting to reducing bond on the grounds the only change in circumstances was "the defendant no longer being on parole;" and the trial court's finding in its order denying the motion that "he was on mandatory supervised release at the time of this incident." The State concludes that considering the

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[1] See *People v. Morris*, 236 Ill. 2d 345, 357 (2010) ("a defendant must be admonished that a period of parole (*now called MSR*) is part of the sentence imposed to ensure that the plea is knowing and voluntary" (Emphasis added.)).

foregoing "it is clear that everyone involved knew that defendant was on MSR at the time he committed the instant UUWF." Defendant replies "evidence not admitted at trial cannot be considered in a court's review of the sufficiency of the evidence in a criminal case" and, regardless, the statements during the hearing on the motion to reduce bond are inadmissible under this court's decision in *People v. Bennett*, 257 Ill. App. 3d 299 (1993) and section 11 of the Pretrial Services Act (Act) (725 ILCS 185/11 (West 2014)).

¶ 16 The United States Supreme Court has held that "the 'statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict *or admitted by the defendant*." (Emphasis added.) *Blakely v. Washington*, 542 U.S. 296, 303 (2004).[2] "Accordingly, [a]ny fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict *must be admitted by the defendant* or proved to a jury beyond a reasonable doubt. [Citation.]" (Emphasis added and internal quotation marks omitted.) *United States v. Johnson*, 437 F.3d 665, 679 (7th Cir. 2006). See also *People v. Schrader*, 353 Ill. App. 3d 684, 695 (2004) (acknowledging *Blakely*), abrogation on other grounds recognized by *People v. Allen*, 377 Ill. App. 3d 938, 942-43 (2007); *People v. Nitz*, 353 Ill. App. 3d 978, 993 (2004) (applying *Apprendi* and *Blakely*), reversed on other grounds, *Nitz*, 219 Ill. 2d 400. See also *People v. Tabb*, 374 Ill. App. 3d 680, 697 (2007) ("This court has also found that *Blakely* is 'simply an application of *Apprendi*' and not an expansion of that case."). In *U.S. v. Lechuga-Ponce*, 407 F.3d 895, 896 (7th Cir. 2005), the defendant challenged his sentence on the grounds a sentence "enhancement was unconstitutional because the fact of his prior conviction was not

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[2] But see *Alleyne v. United States*, 570 U.S. 99, 116 (2013) ("facts that increase mandatory minimum sentences must be submitted to the jury").

proven beyond a reasonable doubt." *Id.* The Seventh Circuit found that argument "flawed in two key respects. First, Lechuga-Ponce's prior conviction was, in effect, proven beyond a reasonable doubt-in his plea agreement and at the change of plea hearing, Lechuga-Ponce admitted the prior conviction." *Id.* Under the facts of that case, the court also found that "even assuming Lechuga-Ponce had not admitted to the 1997 conviction, the fact of a prior conviction need not be proven beyond a reasonable doubt. [Citation.]" *Id.* In *U.S. v. Henderson*, 16 Fed. App'x. 487 (7th Cir. 2001), the court held that because "the district court properly found that Henderson's admission (that he was involved in a conspiracy that distributed several kilograms of crack cocaine) provided proof beyond a reasonable doubt that his offense involved at least 50 grams of crack cocaine, we see no *Apprendi* violation." *Henderson*, 16 F. App'x at 490. In *Henderson*, the defendant's admission came during "the government's proffer that was presented at Henderson's change of plea hearing." *Id.* Finally, the Seventh Circuit has stated that "[a]n admission is even better than a jury's finding beyond a reasonable doubt; it removes all contest from the case." *United States v. Warneke*, 310 F.3d 542, 550 (7th Cir. 2002).

¶ 17 It is clear that a defendant's admission can provide the factual basis for a sentence. Defendant, relying on, *inter alia*, our supreme court's decision in *People v. Steidl*, 142 Ill. 2d 204, 226 (1991), argues we cannot consider his admission because it was not admitted into evidence at trial. *Steidl* is inapposite. There, our supreme court stated "[i]t is axiomatic that the evidence to be reviewed on appeal must be the evidence presented to the fact finder at trial." *Steidl*, 142 Ill. 2d at 226. In *Steidl*, the defendant challenged the sufficiency of the evidence to sustain his conviction in part on the grounds the witnesses' testimony was inconsistent with their pretrial statements. *Id.* at 225-26. Our supreme court found that although the defendant relied on out-of-court inconsistent statements made by the witnesses, "those remarks are not considered on review, as they were never entered into evidence." *Id.* at 226. *Steidl* did not involve evidence

of facts used to enhance the sentencing range applicable to the defendant. In *People v. Reed*, 396 Ill. App. 3d 636, 649 (2009), also relied upon by defendant, the court found:

> "the United States Supreme Court has declared '[s]ufficiency-of-the-evidence review involves assessment by the courts of whether the evidence adduced at trial could support any rational determination of guilt beyond a reasonable doubt.' [Citations.] Thus, we will not consider any evidence that was not presented at trial." *People v. Reed*, 396 Ill. App. 3d 636, 649 (2009) (citing *U.S. v. Powell*, 469 U.S. 57, 67 (1984) ("Sufficiency-of-the evidence review involves assessment by the courts of whether the evidence adduced at trial could support any rational determination of guilt beyond a reasonable doubt.").

Powell involved the rule that "a criminal defendant convicted by a jury on one count could not attack that conviction because it was inconsistent with the jury's verdict of acquittal on another count." *Powell*, 469 U.S. at 58. The *Powell* court held that "a criminal defendant already is afforded protection against jury irrationality or error by the independent review of the sufficiency of the evidence undertaken by the trial and appellate courts. This review should not be confused with the problems caused by inconsistent verdicts." *Id.* at 67. In *Reed*, the defendant argued there was no physical evidence linking him to the crime scene, two witnesses who identified the defendant received benefits from the State, and other witnesses gave descriptions that did not match the defendant. *Reed*, 396 Ill. App. 3d at 649. We do not find either case persuasive.

¶ 18 "[T]he essential Sixth Amendment inquiry is whether a fact is an element of the crime. When a finding of fact alters the legally prescribed punishment so as to aggravate it, the fact necessarily forms a constituent part of a new offense and must be submitted to the jury." *Alleyne*, 570 U.S. at 114-15. Unlike *Reed* and *Powell* this case involves a potential admission to

"a constituent part of a new offense;" therefore, *Reed* and *Powell* are inapplicable.[3] We can find no basis to hold an *Apprendi* violation occurred where the admission was heard by the trier of fact, in this case the trial judge, but not during the guilt phase of the case. See, *e.g.*, *People v. Blinderman*, 148 P.3d 232, 235 (Colo. App. 2006) ("If a fact admitted by the defendant is a *Blakely*-compliant factor, it is sufficient to support imposition of an aggravated sentence.") Nonetheless, defendant disputes whether his attorney's statement during the hearing on defendant's motion to reduce bond constitutes a judicial admission. Defendant argues counsel's statement during the hearing on the motion to reduce bond does not constitute a judicial admission because it was "neither a formal concession nor a stipulation." See *People v. Wright*, 2012 IL App (1st) 073106, ¶ 92 ("[J]udicial admissions are formal concessions in the pleadings in the case or stipulations by a party or its counsel that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact. [Citations.]" (Internal quotation marks omitted.)). We reject defendant's argument and find his attorney's statement was a judicial admission.

¶ 19 "[I]f a fact is judicially admitted, the adverse party has no need to submit any evidence on that point. The admission serves as a substitute for proof at trial." *Id.* (citing *Lowe v. Kang*, 167

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[3] See also 26 A.L.R. 6th 511 (Originally published in 2007), which found:

> "In *Freeze v. State*, 827 N.E.2d 600 (Ind. Ct. App. 2005), where the defendant pleaded guilty to Class B felony possession of methamphetamine with intent to deliver and claimed that the trial court's reliance on facts not found by a jury beyond a reasonable doubt to enhance his sentence violated his Sixth Amendment right to trial by jury, the court rejected the claim, as the defendant admitted during the sentencing hearing that he was on bond when he committed the current offense. Admissions by a defendant are exempt from the jury trial requirement of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296, 6 A.L.R. Fed. 2d 619 (2004), stated the court. The defendant also admitted that he had once violated probation on one of his misdemeanor convictions, albeit an attempt to explain it away, added the court."

Ill. App. 3d 772, 776 (1988) (relied upon by *People v. Howery*, 178 Ill. 2d 1, 40-41 (1997))). In *Lowe*, the court stated:

> "Attorneys are deemed agents of their clients for the purpose of making admissions in all matters relating to the progress and trial of an action. [Citation.] Actions of an attorney in the management of a client's case are binding on the client, and the negligence of an attorney is insufficient to warrant a new trial. [Citation.] *** What constitutes a judicial admission must be decided under the circumstances in each case, and before a statement can be held to be such an admission, it must be given a meaning consistent with the context in which it is found. [Citation.] The power of a court to act upon facts conceded by counsel is as plain as its power to act upon evidence produced. [Citation.]" *Lowe*, 167 Ill. App. 3d at 776.

The *Lowe* court found that whether, for example, the statement by the attorney is made during opening or closing arguments, or during direct or cross examination, "is relevant as to the context in which the statement is made and not determinative of whether or not the statement is a judicial admission." *Id.* at 777. The *Lowe* court examined the state of the proceedings to place the statements alleged to be admissions in context. *Id.* In their proper context, the *Lowe* court found the trial court did not err in finding the statements were judicial admissions of the defendant's liability. *Id.* at 780. The court found the statements were unambiguous, unequivocal, and were not "simple misstatements or inadvertently made." *Id.* A party may make judicial admissions in pretrial proceedings. See, *e.g.*, *Shelton v. OSF Saint Francis Medical Center*, 2013 IL App (3d) 120628, ¶ 27.[4]

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[4] In *Shelton*, the court found:

> "Admissions come in two varieties, judicial and evidentiary. A judicial admission is conclusive upon the party making it; it may not be controverted at trial or on appeal. Judicial admissions are not evidence at all but rather have the effect of withdrawing a fact from contention. [Citation.] Included in this category are admissions made in pleadings, formal admissions made in open court, stipulations, and admissions pursuant to requests to admit. [Citation.]
>
> Evidentiary admissions, on the other hand, may be controverted or explained by the party. Evidentiary admissions may be made in, among other things, pleadings in a case other than the one being tried, pleadings that have been superseded or withdrawn, answers to interrogatories, and other statements made pursuant to Federal Rule of Evidence 801(d)(2) ([citations]). [Citation.]" (Internal quotation marks omitted.) *Brummet v. Farel*, 217 Ill. App. 3d 264, 267 (1991).

¶ 20 In this case, the statement by defendant's attorney during the hearing on defendant's motion to reduce bond constitutes a judicial admission that defendant was serving a term of MSR at the time of the offense. A judicial admission "carries with it an admission of other facts necessarily implied from it." *Caponi v. Larry's 66*, 236 Ill. App. 3d 660, 671 (1992). We find

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> "Plaintiff's deposition, which was attached to OSF's motion for summary judgment, included plaintiff's testimony that she was terminated. In addition, plaintiff's own letter to OSF, dated June 27, 2008, which was attached as an exhibit to plaintiff's deposition, demanded OSF should honor her 'termination.' The trial court further noted the agreed statement of the case prepared for the August 8, 2011, trial stated OSF 'discharged' plaintiff in retaliation for filing a workers' compensation claim. Accordingly, we conclude the trial court did not abuse its discretion by finding that plaintiff's verified amended complaint and numerous statements created a binding judicial admission that OSF terminated her employment and was not the result of inadvertence or mistake." *Shelton*, 2013 IL App (3d) 120628, ¶ 27.

that defendant's attorney's statement that at the time of the motion to reduce bond defendant was "no longer on parole" and therefore his bond should be reduced was a deliberate, unequivocal, and certain statement that defendant was "on parole," or rather, serving MSR, when the trial court previously set his bond on April 8, the day after the offense occurred; moreover, that defendant was serving MSR when the offense occurred is a concrete fact within the peculiar knowledge of defendant and his attorney. See *id.* at 266 ("A judicial admission is a (1) deliberate, (2) clear, (3) unequivocal, (4) statement of a party, (5) about a concrete fact, (6) within that party's peculiar knowledge. [Citation.]"). Defendant's judicial admission to serving a term of MSR at the time of the instant offense withdrew that fact from issue and dispensed "wholly with the need for proof of [that] fact." *Wright*, 2012 IL App (1st) 073106, ¶ 92. The State had "no need to submit any evidence on that point." *Id.* Further, defendant's reliance on section 11 of the Act is misplaced. Section 11 of the Act reads as follows:

> "No person shall be interviewed by a pretrial services agency unless he or she has first been apprised of the identity and purpose of the interviewer, the scope of the interview, the right to secure legal advice, and the right to refuse cooperation. Inquiry of the defendant shall carefully exclude questions concerning the details of the current charge. Statements made by the defendant during the interview, or evidence derived therefrom, are admissible in evidence only when the court is considering the imposition of pretrial or posttrial conditions to bail or recognizance, or when considering the modification of a prior release order." 725 ILCS 185/11 (West 2014).

Defendant's admission was not made during an interview with a pretrial services agency, nor is his admission evidence derived from such an interview. See 725 ILCS 185/11 (West 2014). Defendant's reliance on *Bennett* is also misplaced. There, this court found the language of the

statute clear and unambiguous and applied it according to its plain an ordinary meaning. *Bennett*, 257 Ill. App. 3d at 305-06. This court found the Act "clearly and unambiguously bars any statements made *during the interview* from being used for impeachment purposes at trial." (Emphasis added.) *Id.* at 305. Nor is using defendant's admission inconsistent with the purpose of the Act, which this court found was "to encourage a defendant to speak freely with the probation officer." *Id.* at 306. We note again that defendant's admission was not made during an interview with a probation officer, but was a deliberate, clear, and unequivocal statement by defendant's attorney of a concrete fact within defendant's peculiar knowledge. *Lowe*, 167 Ill. App. 3d at 776 ("Actions of an attorney in the management of a client's case are binding on the client, and the negligence of an attorney is insufficient to warrant a new trial."). Although the State did not adduce evidence that defendant was serving a term of MSR at the time of the offense, defendant made a judicial admission to that fact. Therefore, no *Apprendi* violation occurred when defendant was subjected to greater punishment based on that fact.

¶ 21 Finally, we note defendant has only raised ineffective assistance of counsel based on his trial attorney's failure to object to the State's lack of evidence that defendant was serving a term of MSR at the time of the offense in this case as a basis to address whether an *Apprendi* violation occurred. Defendant argues that counsel's failure prejudiced him by subjecting him to a Class 2 felony conviction and, therefore "this Court should address this issue regardless of any forfeiture." For the reasons stated above, we find no *Apprendi* violation occurred in this case; therefore, we will not reach defendant's argument forfeiture should be excused because his trial attorney provided ineffective assistance.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 24 Affirmed.