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NO. 4-17-0249

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Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JASON R. EATMAN, Defendant-Appellant.	) Appeal from the) Circuit Court of) Champaign County) No. 16CF142)) Honorable) Thomas J. Difanis,) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Holder White concurred in the judgment.
Justice DeArmond dissented.

ORDER

¶ 1 *Held*: Defendant never was informed, on the record, that three years of mandatory supervised release would be added to the sentence of 23 years' imprisonment he would receive under the negotiated plea agreement; consequently, defendant, who does not wish to withdraw his guilty plea, is entitled to a three-year reduction of his prison sentence.

¶ 2 Pursuant to a negotiated plea agreement, defendant, Jason R. Eatman, pleaded guilty to aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2016)), and the Champaign County circuit court sentenced him to imprisonment for 23 years. Defendant appeals, arguing a violation of due process in that three years of mandatory supervised release were added to the bargained-for sentence. We agree that defendant never was informed, on the record, that three years of mandatory supervised release would be part of the sentence he would receive under the plea agreement. Therefore, we remand this case with directions to award the remedy

that defendant has elected: a reduction of his prison sentence to 20 years, to be followed by 3 years of mandatory supervised release.

¶ 3 I. BACKGROUND

¶ 4 On November 14, 2016, in the guilty-plea hearing, the circuit court admonished defendant on the range of punishments for count I of the information, aggravated battery with a firearm:

> "THE COURT: Now, this is an X felony, mandatory minimum sentence fixed at six years, maximum sentence fixed out to 30 years, a period of mandatory supervised release three years, a maximum fine of up to $25,000, any incarceration has to be served at 85 percent.
>
> Do you understand those are the maximum penalties?
>
> THE DEFENDANT: Yes, Your Honor."

¶ 5 Only in the passage quoted above was mandatory supervised release mentioned in the guilty plea hearing. The prosecutor said nothing about mandatory supervised release when the circuit court inquired:

> "THE COURT: The agreements, please.
>
> MR. LOZAR [(PROSECUTOR)]: The State has agreed to resolve the case with a sentence of 23 years[']] incarceration in the Illinois Department of Corrections. Defendant has credit for 280 days already served. He must pay all fines, fees[,] and costs as authorized by statute[,] to include the crime lab and violent crime fees, the genetic marking grouping analyses fee if he hasn't already satisfied that, and he has a $1,400 credit for time in custody. If he hasn't done so,

he must submit specimens of blood, saliva or tissue. Count 2 as originally charged to be dismissed.

THE COURT: Is that the agreement, Ms. Propps [(defense counsel)]?

MS. PROPPS: It is.

THE COURT: [Defendant], is that the agreement that you have with the State?

THE DEFENDANT: Yes, Your Honor."

¶ 6 Accordingly, the circuit court pronounced the following sentence:

"THE COURT: Show the defendant is sentenced to a period of incarceration in the Illinois Department of Corrections for 23 years with a credit of 280 days. He has monetary obligations due and owing as set forth in the order. On motion of the People, Count 2 is dismissed."

¶ 7 In addition to those penalties, the written sentencing order, entered on November 14, 2016, imposed a three-year term of mandatory supervised release.

¶ 8 On December 15, 2016, defendant filed, *pro se*, two motions: a motion to withdraw his guilty plea and to vacate the sentence and a motion to reduce the sentence. The motion to withdraw the guilty plea alleged no ground for relief; the space reserved for the grounds was left blank. The motion to reduce the sentence read as follows: "Defendant asserts that he did not knowingly and intentionally waive his right to a trial. He made the plea under [a] misapprehension of the law."

¶ 9 On March 28, 2017, an assistant public defender—a different assistant public defender than had represented defendant in the guilty plea hearing—filed her own motion to withdraw the guilty plea and to vacate the judgment. This motion read: "Defendant asserts that

his decision to plead guilty was the result of ineffective assistance of counsel." Like the *pro se* motions, this motion made no mention of mandatory supervised release.

¶ 10 II. ANALYSIS

¶ 11 Invoking the doctrine of plain error (see *People v. Davis*, 145 Ill. 2d 240, 250 (1991)), defendant argues that *People v. Daniels*, 388 Ill. App. 3d 952 (2009), requires a reduction of his prison sentence from 23 years to 20 years, to be followed by 3 years of mandatory supervised release.

¶ 12 The State responds that the supreme court overruled *Daniels* in *People v. Boykins*, 2017 IL 121365 (2017).

¶ 13 Let us compare *Daniels* and *Boykins* to see if *Boykins* really did overrule *Daniels*.

¶ 14 A. *Daniels*

¶ 15 In *Daniels*, the defendant entered negotiated guilty pleas to burglary and forgery. *Daniels*, 388 Ill. App. 3d at 954. Before accepting the defendant's guilty pleas, the circuit court admonished him that the maximum penalty for forgery included one year of mandatory supervised release and that the maximum penalty for burglary included two years of mandatory supervised release. *Id*. The court then recited the terms of the plea agreement as follows: " '[Y]ou [will] be ordered to serve two years, which is the minimum term of penitentiary sentence on the forgery, three years, which is the minimum term of penitentiary sentence on the burglary' "—omitting to mention mandatory supervised release as part of the plea agreement. *Id*. Ultimately, however, when pronouncing the sentence, the court added one year of mandatory supervised release for forgery and two years of mandatory supervised release for burglary. *Id*.

¶ 16 Because the circuit court, before accepting the guilty pleas, never admonished the defendant in such a way as to " 'link' " mandatory supervised release to the sentences the

defendant would receive under the plea agreement (*id*. at 957), the appellate court remanded the case with directions to give the defendant the option to withdraw his guilty pleas (*id*. at 961). (Because the defendant already had received the minimum prison sentences allowed by statutory law, it would have been impossible to reduce the prison sentences by the amount of mandatory supervised release. *Id*. at 956. The only other possible remedy was to allow the defendant to withdraw his guilty pleas if he so desired. *Id*.)

¶ 17 B. *Boykins*

¶ 18 In *Boykins*, the defendant entered a negotiated guilty plea to first degree murder. *Boykins*, 2017 IL 121365, ¶ 3. Before accepting the guilty plea, the circuit court told the defendant the minimum and maximum terms of imprisonment he could receive for first degree murder, and the court added, " 'Upon your release from the penitentiary, there is a period of three years mandatory supervised release, sometimes referred to as parole.' " *Id*. When stating the terms of the plea agreement, however, the court said nothing about mandatory supervised release; the court said only that the deal was 22 years' imprisonment. *Id*. Nor did the court mention mandatory supervised release when imposing the sentence. *Id*. ¶ 4. Not even the sentencing order referred to mandatory supervised release. *Id*.

¶ 19 Afterward, the defendant petitioned for postconviction relief, alleging a violation of due process in that he was not advised he would have to serve three years of mandatory supervised release after completing the agreed-on prison term of 22 years' imprisonment. *Id*. ¶ 5. He maintained that although the circuit court had mentioned mandatory supervised release when telling him, pursuant to Illinois Supreme Court Rule 402(a)(2) (eff. July 1, 1997), what were "the minimum and maximum sentence[s] prescribed by law," the court had said nothing about mandatory supervised release when, pursuant to Illinois Supreme Court Rule 402(b) (eff. July 1,

1997), the court "confirm[ed] the terms of the plea agreement." See *Boykins*, 2017 IL 121365, ¶ 10. In other words, the defendant argued, the court "did not 'link' the admonishment about the [mandatory supervised release] term with his actual agreed-upon sentence to clearly apprise [him] that [mandatory supervised release] would apply to his bargained-for sentence." *Id.*

¶ 20 The supreme court decided that although it would have been best if the circuit court's admonitions had followed the recommendation in *People v. Morris*, 236 Ill. 2d 345, 367-68 (2010), by "explicitly link[ing]" mandatory supervised release "to the sentence to which [the] defendant [had] agreed in exchange for his negotiated plea" (*Boykins*, 2017 IL 121365, ¶ 15), the admonition the circuit court had given was good enough (*id.* ¶ 18). The circuit court had told the defendant, when advising him of the possible range of penalties, " '[U]pon your release from the penitentiary, there is a period of three years mandatory supervised release, sometimes referred to as parole.' " *Id.* ¶ 17. From that statement, an ordinary person in the defendant's circumstances would have understood that "any term he served in prison would be followed by a [three]-year period of [mandatory supervised release]." *Id.* ¶ 18. Because the circuit court had informed the defendant that mandatory supervised release "was a required part of any sentence that would be imposed upon his release from prison, a reasonable person would [have understood] that his negotiated prison sentence would be followed by a term of [mandatory supervised release]." *Id.* *Morris* thereby was satisfied. The supreme court had held in *Morris* that, "to satisfy due process, [t]he admonition [was] sufficient if an ordinary person in the circumstances of the accused would [have understood] it to convey the required warning." (Internal quotation marks omitted.) *Id.* ¶ 16. Because an ordinary person in the defendant's circumstances would have understood that mandatory supervised release would be part of the sentence he would receive under the plea agreement, there was no violation of due process. *Id.* ¶ 18.

¶ 21 After so concluding, the supreme court contrasted *Daniels* and other cases, which "ha[d] found a violation of due process [when] the [mandatory supervised release] admonitions did not convey unconditionally that [a mandatory supervised release] term would follow those bargained-for sentences." *Id.* ¶ 21. Citing *Daniels* with apparent approval, the supreme court provided the following parenthetical summary of that case: "admonition failed to satisfy Rule 402 and due process where it linked [mandatory supervised release] only to the maximum sentences authorized by law." (Internal quotation marks omitted). *Id.* ¶ 21. Then, after citing and providing parenthetical summaries of a couple of other cases, the supreme court wrote:

> "Moreover, *to the extent* that these cases have been interpreted to hold that *Morris* established a bright-line rule that to satisfy due process the admonishments must expressly link [mandatory supervised release] during the pronouncement of the agreed-upon sentence, we reject such a rigid interpretation as inconsistent with our decision in *Morris*. *To the extent* that the foregoing cases applied a bright-line rule requiring a link of [mandatory supervised release] to the pronouncement of the agreed-upon sentence, we expressly overrule them." (Emphases added.) *Id.*

¶ 22 After reading that passage in *Boykins*, it would be easy to arrive at the misconception that the supreme court partly disagreed with the analysis in *Daniels*, since *Daniels* said there had to be an express link (*Daniels*, 388 Ill. App. 3d at 957) whereas the supreme court denied there had to be an express link (*Boykins*, 2017 IL 121365, ¶ 21). But it depends on what is meant by an "express link." A careful reading of *Daniels* and *Boykins* would reveal that both cases require that mandatory supervised release be expressly linked, somehow, to the sentence the defendant will receive under the negotiated plea agreement; it is just that there is more than one way of communicating such linkage to the defendant and the clearest way of doing so—

linking mandatory supervised release to the *pronouncement* of the plea agreement—is preferable but not required. As the appellate court stated in *Daniels*:

> "Ideally, the trial court should specifically advise a defendant that a term of [mandatory supervised release] is part of the sentence to which the defendant agreed. [Citation.] However, *Whitfield* requires only substantial compliance with Rule 402. [*People v.*] *Whitfield*, 217 Ill. 2d [177,] 195 [(2005)]. It will often be sufficient for the trial court to mention [mandatory supervised release] as part of a general admonition regarding the penalties authorized by law, even though the defendant is not specifically told that [mandatory supervised release] will be part of his or her sentence.
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> * * *
>
> *** Courts have *** rejected *Whitfield* claims where, as part of the trial court's general explanation of the possible penalties for an offense, the court stated or implied that *any* prison sentence would be followed by a term of [mandatory supervised release]." (Emphasis in original.) *Daniels*, 388 Ill. App. 3d at 956-57.

As that quotation proves, the appellate court in *Daniels* and the supreme court in *Boykins* are of one mind.

¶ 23 Thus, *Daniels* remains completely sound as precedent, and it controls the outcome of this case. Like the circuit court in *Daniels*, the circuit court in this case told defendant about mandatory supervised release only in the context of the maximum penalties for the offense to which he proposed entering a negotiated guilty plea. See *id*. at 959. The mention of mandatory supervised release was sandwiched between the maximum prison sentence and the maximum

fine, and the court even followed up by asking defendant, "Do you understand those are the maximum penalties?"

¶ 24 Just because the circuit court admonished defendant that the maximum sentence included mandatory supervised release, it does not follow that "an ordinary person in the circumstances" would understood the same was true of the sentence contemplated by the plea agreement. (Internal quotation marks omitted.) *Boykins*, 2017 IL 121365, ¶ 16.

¶ 25 In sum, as *Daniels* held:

> " '[T]here 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 mandatory supervised release term will be added to that sentence.' " (Emphasis in original.) *Daniels*, 388 Ill. App. 3d at 960 (quoting *Whitfield*, 217 Ill. 2d at 195).

We see no such advice in the record before us; all we see is advice that the maximum penalty would include mandatory supervised release. The remedy is to reduce defendant's prison term by three years, the length of the mandatory supervised release. *Id*. at 956.

¶ 26 III. CONCLUSION

¶ 27 For the foregoing reasons, we remand this case with directions to issue an amended sentencing order modifying defendant's prison sentence to a term of 20 years' imprisonment, to be followed by 3 years of mandatory supervised release.

¶ 28 Remanded with directions.

¶ 29 JUSTICE DeARMOND, dissenting:

¶ 30 In considering the proper plea admonishments regarding mandatory supervised release (MSR), our supreme court has said " ' "[t]he admonition is sufficient if an ordinary

person in the circumstances of the accused would understand it to convey the required warning." ' " *Boykins*, 2017 IL 121365, ¶ 16 (quoting *Morris*, 236 Ill. 2d at 366, quoting *People v. Williams*, 97 Ill. 2d 252, 269 (1983)). Because I find the trial court's MSR admonishments in this case met the requirement of *Boykins*, I respectfully dissent.

¶ 31 To start, I believe the admonishments here are in line with a number of cases from this court, most postdating *Daniels*. In *People v. Lee*, 2012 IL App (4th) 110403, a case with facts at the time of the plea almost identical to those here, the defendant was admonished regarding the MSR term during the plea hearing when the trial court discussed the potential minimum and maximum sentences, and it was never mentioned again until the written sentencing order. *Id*. ¶¶ 4-7. This court found the defendant's claim of improper admonishments without merit. *Id*. ¶ 23. I would note *Lee* cited a number of other cases from this court as well as the First, Third, and Fifth Districts, almost all postdating *Daniels*, in support of this analysis. *Id*. ¶ 21.

¶ 32 In *People v. Andrews*, 403 Ill. App. 3d 654, 656 (2010), when discussing the possible minimum and maximum sentences to which the defendant might be eligible, this court said, "*[i]f convicted and sentenced to prison, there would then be 1 year [of MSR], or what used to be known as parole.*" (Emphasis in original.) As here, nothing more was said about MSR when the actual sentence was imposed. We noted how the *Whitfield* holding related to "the failure of the trial court to inform the defendant *at all* during his guilty plea that a statutorily mandated three-year MSR term would be added to his negotiated sentence." (Emphasis in original.) *Id*. at 663-64. Rejecting the defendant's claim that MSR was an integral part of a negotiated plea, which is similar to the claim raised in this case, the court noted how Illinois Supreme Court Rule 402(a)(2) mandates a defendant be informed of " 'the minimum and

maximum sentence prescribed by law.' " *Id*. at 664 (quoting 177 Ill. 2d R. 402(a)(2)). The court said that requirement and the holding in *Whitfield* require a defendant to be informed of any MSR term which must follow any prison sentence imposed. *Andrews*, 403 Ill. App. 3d at 664-65. Although the court gave several examples of what might be "good practice," we ultimately concluded, "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." *Id*. at 665.

¶ 33 This court, in the pre-*Daniels* case of *People v. Jarrett*, 372 Ill. App. 3d 344, 352 (2007), noted the trial court admonished the defendant he could receive 6 to 30 years in prison, a possible fine up to $50,000, and an MSR term up to three years. The court did not admonish the defendant that the period of MSR would be in addition to the sentence he received and would not be included in the 10-year cap on his sentence. *Id*. We found such an admonishment adequate. "While the trial court's admonishment could have been improved by explicitly stating that MSR was in addition to any sentence he received, imperfect admonishment is a violation of due process where real justice has been denied or defendant has shown prejudice." *Id*. at 352. This court concluded the defendant's due-process rights and real justice had not been denied. *Id*.

¶ 34 Next, I do not believe such an in-depth attempt to save *Daniels* from the clutches of *Boykins* is necessary, since we have a number of cases from this court, all subsequent to *Daniels*, that support the supreme court's conclusion in *Boykins*. The supreme court listed *Lee*, *Andrews*, and others from this court as "[c]onsistent with our conclusion," while listing *Daniels* among the category of cases attempting to establish a bright-line rule requiring a link of MSR to the pronouncement of the agreed-upon sentence. *Boykins*, 2017 IL 121365, ¶¶ 20-21. To the extent the latter cases sought to do so, the court said, "we expressly overrule them." *Id*. ¶ 21.

¶ 35 As reiterated in *Boykins* (*id*. ¶ 16), the supreme court had previously stated " '[a]n admonition of the court must be read in a practical and realistic sense. The admonition is sufficient if *an ordinary person in the circumstances of the accused* would understand it to convey the required warning.'" (Emphasis added.) *Morris*, 236 Ill. 2d at 366 (quoting *Williams*, 97 Ill. 2d at 269).

¶ 36 We are therefore to consider the circumstances of the accused when assessing whether the admonitions were sufficient. Defendant was no stranger to MSR admonishments. This appears to be his fourth trip to the penitentiary, and he has undoubtedly been through these admonishments numerous times. The trial judge, who would have had defendant's presentence investigation report before him at the time of sentencing, would have been aware of this as well. Defendant stated he understood the possible penalties. He neither raised the MSR issue in his *pro se* motion to withdraw his guilty plea, nor did he complain to his appointed counsel that he wished to have this raised in counsel's amended motion. He also never raised it in a motion to reconsider sentence. One might conclude that was for a very good reason—he did not have an issue with his MSR admonishments since he had heard them at least three times before. The issue did not surface until this appeal, which I will address below.

¶ 37 Since the trial court did, in fact, mention MSR when discussing the possible minimum and maximum sentences, as required by both Rule 402 and *Whitfield*, I do not get past the first prong of a plain-error analysis. I believe the court substantially complied and real justice was served. Therefore, I see no error. The only reason this issue must seek refuge in plain error is because it was never an issue before the court, not because of the claimed error by the court but because defendant never saw it as an issue. A defendant who has already been sentenced to the penitentiary on a number of occasions will undoubtedly be familiar with several things—his

MSR term, his presentence credit, and his release date. The fact a "sophisticated" defendant, *i.e.*, a defendant who is very familiar with the components of a penitentiary sentence, sees no issue and therefore chooses not to raise it does not mean it must be plain error. It is unreasonable to believe a defendant, who has at least three previous experiences with a penitentiary sentence and who did not hesitate to file his own motion to withdraw his plea before being appointed counsel, would not have raised this issue, if it were, in fact, an issue at some point before the trial court. "[T]he plain error rule is not a general savings clause for any alleged error, but instead is designed to address *serious injustices*." (Emphasis in original.) *People v. Williams*, 299 Ill. App. 3d 791, 796 (1998).

¶ 38 The decision of the majority would seem to ignore "the circumstances of the accused" as well as the supreme court's directive in *Boykins*, which recognized there was no precise formula to follow and that the admonishments " 'must be read in a practical and realistic way.' [Citation.]" *Boykins*, 2017 IL 121365, ¶ 16. Instead, we are relegated to splitting very fine hairs to distinguish one set of admonishments from another, with no consideration for the level of sophistication of the defendant. Were they the best admonitions possible? No. Would the trial court have done well to heed the suggestions in *Morris* and *Boykins*? Yes. But were they so deficient defendant was somehow denied due process by not hearing the words in a particular order so as to avoid confusion there is no evidence to believe he had anyway? Although *Boykins* reinforces the need to link MSR admonishments to an agreed sentence, the supreme court found there was no due-process violation, as defendant alleges here, so long as a defendant with this defendant's level of experience with MSR terms would be able to understand. *Id*. ¶ 18.

¶ 39 Without a finding of error, my analysis ends there and I would conclude defendant forfeited the issue. I also disagree defendant is entitled to an automatic reduction of

sentence. Although this was the remedy in *Whitfield*, where there was no mention of MSR, it does not automatically become the remedy in each such case. In fact, although *Daniels* cited *Whitfield* for that specific reason, it was not the remedy provided in *Daniels*. The matter was remanded to determine whether the defendant wished to withdraw his guilty pleas. *Daniels*, 388 Ill. App. 3d at 961. Here, if error was found, I believe the matter should be remanded for further proceedings which could include allowing defendant to (a) withdraw his plea and proceed to trial or enter a newly negotiated plea or (b) receive a three-year reduction of his sentence as part of a new plea agreement.