

NOTICE

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2014 IL App (4th) 130363-U

NO. 4-13-0363

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 5, 2014
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
RODREKUS WILLIAMS,)	No. 10CF577
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Knecht 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 where no meritorious issues could be raised on appeal.

¶ 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 following reasons, we grant OSAD's motion and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 We recently addressed the factual background of defendant's criminal case in *People v. Williams*, 2012 IL App (4th) 110045-U. Only those facts necessary for this appeal are set forth.

¶ 5 In April 2010, a grand jury indicted defendant for the Class 1 felony of residential burglary, alleging defendant knowingly and without authority entered into the dwelling place of Elizabeth Anderson with the intent to commit therein a theft (count I) (720 ILCS 5/19-3 (West 2010)), and the Class 3 felony of unlawful possession of a weapon by a felon, alleging defendant, a person who had been convicted of a felony under the law of Illinois, knowingly possessed a shotgun on or about his person (count II) (720 ILCS 5/24-1.1(a) (West 2010)). In June 2010, a grand jury indicted defendant for the Class 2 felony of unlawful possession of a weapon by a felon, as an extendible and nonprobationable offense (count III) (720 ILCS 5/24-1.1(a) (West 2010)). The State dismissed count II prior to trial.

¶ 6 At the April 2010 arraignment, a June 2010 hearing, prior to the start of the August 2010 jury trial, and again in November 2010, when defendant asked to proceed *pro se*, the trial court advised defendant of the potential sentences he could receive on both counts, which would be followed by terms of mandatory supervised release (MSR) of 2 years on count I, 1 year on count II, and 2 years on count III.

¶ 7 In August 2010, a jury convicted defendant of counts I and III. On January 3, 2011, the trial court sentenced defendant to concurrent 14-year prison terms for the two convictions. Although the court did not mention MSR at the oral pronouncement of the sentence, the written sentence and judgment included the respective MSR terms for each count. Later that month, defendant filed a motion to reconsider sentence, which was denied.

¶ 8 On direct appeal, defendant argued insufficient foundation was presented regarding the expert witness' testimony concerning fingerprint evidence. In August 2012, this court affirmed the trial court's judgment. *People v. Williams*, 2012 IL App (4th) 110045-U.

¶ 9 On January 14, 2013, defendant filed an unsigned and unverified petition for relief from judgment pursuant to 735 ILCS 5/2-1401 (West 2012). No proof of service accompanied the petition indicating service on the State. The trial court provided a copy to the State in February 2013. The State did not file a responsive pleading within 30 days.

¶ 10 In his section 2-1401 petition, defendant argued (1) "requiring him to serve a term of [MSR] (after) he has served the entire sentence imposed within the confines of prison, is constitutionally unauthorized and void"; (2) "requiring offenders to serve a term of 'MSR' (after) the successful (completion) of their judicially imposed sentence of the determinate nature, is constitutionally unsound[,] resulting in an unlawful constraint upon the offender's liberty"; and (3) permitting the Department of Corrections (DOC) to impose MSR "violates the [s]eparation of [p]owers [d]octrine of American government."

¶ 11 In April 2013, the trial court issued a written order granting judgment on the pleadings to the State. The court found the petition was not timely filed since it was filed more than two years after entry of the judgment. The court further found, even if the petition had been timely filed, the MSR claim was frivolous, could have been raised on direct appeal, and was not the proper subject of a section 2-1401 petition.

¶ 12 In April 2013, defendant filed a notice of appeal. In June 2014, OSAD moved to withdraw, including in its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). On its own motion, this court granted defendant leave to file additional points and authorities by July 28, 2014. Defendant has not done so. After examining the record and executing our duties in accordance with *Finley*, we grant OSAD's motion and affirm the trial court's judgment.

¶ 13

II. ANALYSIS

¶ 14 OSAD moves to withdraw pursuant to *Finley*, arguing no meritorious arguments can be raised on appeal. Petitions for relief from judgment are governed by section 2-1401 of the Code of Civil Procedure (Code). 735 ILCS 5/2-1401 (West 2012). "Section 2-1401 is intended to correct errors of fact, unknown to the petitioner and the court at the time of the judgment, which would have prevented the rendition of the judgment had they been known." *People v. Muniz*, 386 Ill. App. 3d 890, 893, 899 N.E.2d 428, 431 (2008). "To be entitled to relief under section 2-1401, the petitioner must set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition." *People v. Lee*, 2012 IL App (4th) 110403, ¶ 15, 979 N.E.2d 992; *People v. Vincent*, 226 Ill. 2d 1, 7-8, 871 N.E.2d 17, 22 (2007). Dismissal of a petition for relief from judgment is reviewed *de novo*. *Id.* at 18, 871 N.E.2d at 28.

¶ 15 In the case *sub judice*, defendant argued in his petition for relief from judgment his MSR term is unconstitutional and void in as much as it (1) requires him to serve an MSR term "(after) he has served the entire sentence imposed within the confines of prison"; (2) "requir[es him] to serve a term of 'MSR' (after) the successful (completion) of [his] judicially imposed sentence of [a] determinate nature, *** resulting in an unlawful constraint upon [his] liberty"; and (3) "violates the [s]eparation of [p]owers [d]octrine of the American government."

¶ 16 OSAD argues defendant's claims the imposition of MSR is unconstitutional are meritless because these issues have already been decided by this court in *Lee*, 2012 IL App (4th) 110403, 979 N.E.2d 992.

¶ 17 In *Lee*, this court considered and rejected these very same claims. The petitioner in *Lee* argued (1) "requiring [him] to serve an MSR term after completion of judicially imposed sentence is an unlawful constraint on [his] liberty in that [his] sentence, as imposed by the trial court, expires before MSR"; and (2) "permitting [DOC] to impose MSR is a violation of separation of powers." *Id.* ¶ 8, 979 N.E.2d 992. In rejecting the petitioner's arguments, this court held "[y]ears of MSR and years of prison are not interchangeable." *Id.* ¶ 31, 979 N.E.2d 992.

This court further held:

"Since *People ex rel. Scott v. Israel*, 66 Ill. 2d 190, 194, 361 N.E.2d 1108, 1109 (1977), it has been axiomatic that a 'sentence to a mandatory parole is part of the original sentence by operation of law.' MSR is a mandatory part of a criminal sentence. 730 ILCS 5/5-8-1(d) (West 1998). Defendant's contentions an MSR violation may result in a second term of imprisonment were rejected in *Israel*. There, the supreme court stated this is not a second sentence and what causes a defendant's recommitment to prison is the defendant's violation of his parole conditions. *Israel*, 66 Ill. 2d at 194, 361 N.E.2d at 1109. Defendant's prison term and MSR are a part of the same sentence, not two different sentences.

Defendant's assertion his sentence expires before he is placed on MSR is without merit. Defendant will not begin his MSR term until he has completed his prison term (730 ILCS 5/3-3-8 (West 1998)), whenever that occurs. Defendant's sentence is not

discharged until he has completed his MSR term (730 ILCS 5/3-3-3 (West 1998)). See also *Faheem-El v. Klinicar*, 123 Ill. 2d 291, 299, 527 N.E.2d 307, 310-11 (1988) (holding prisoner is subject to custody of [DOC] for the remainder of maximum term of imprisonment and three-year MSR term). Defendant's argument that credit for good behavior reduces an offender's trial court sentence is a flawed reading of the statute. Section 3-6-3(a)(2.1) of the Unified Code [of Corrections] expressly states, 'Each day of good[-]conduct credit shall reduce by one day the prisoner's period of imprisonment ***.' 730 ILCS 5/3-6-3(a)(2.1) (West 1998). A 'period of imprisonment' is different from defendant's sentence. Defendant ignores the fact his good[-]conduct credit can be revoked. See 730 ILCS 5/3-6-3(c) (West 1998). Defendant's good behavior argument confuses the parts (prison term and MSR term) for the whole (sentence) and has no merit.

* * *

Defendant's contention that MSR is an unlawful constraint is fundamentally flawed. First, defendant's argument is built on the single premise 'that MSR is a separate term than that of the judicial sentence.' As previously discussed, MSR is a mandatory term of criminal sentences, and release from prison is not tantamount to discharge from [DOC]. MSR is not a form of

imprisonment but a release from the physical custody of [DOC] (730 ILCS 5/3-3-7 (West 1998)) where parolees remain in the legal custody of [DOC] for the duration of MSR. 730 ILCS 5/3-14-2(a) (West 1998); *People v. Wilson*, 228 Ill. 2d 35, 48, 885 N.E.2d 1033, 1041 (2008). Parolees are subject to conditions curtailing their liberty (730 ILCS 5/3-3-7 (West 1998)) as they present a risk to the public (*People v. Moss*, 217 Ill. 2d 511, 531, 842 N.E.2d 699, 712 (2005)). Defendant's argument confuses release from the physical custody of [DOC] with discharge from [DOC]; these are two different things. *** There is no merit to defendant's contention MSR is in addition to his sentence, as MSR is an included part of his sentence." *Id.* ¶¶ 32-33, 36, 979 N.E.2d 992.

¶ 18 Regarding defendant's claim DOC's imposition of MSR is in violation of separation of powers because sentencing is a judicial function, this court held in *Lee*, "[MSR], formerly parole, is within the power of the Illinois General Assembly, and 'this enactment does not violate the separation of powers clause of the Illinois Constitution of 1970.' [Citation.]" *Id.* ¶ 38, 979 N.E.2d 992.

¶ 19 OSAD also argues the fact the trial court erroneously dismissed defendant's petition, in part, because it was not filed within the two-year statute of limitations, was harmless error. We agree.

¶ 20 To obtain relief under section 2-1401, a defendant must file a petition no later than two years after the entry of judgment or order. 735 ILCS 5/2-1401(c) (West 2010).

