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2015 IL App (3d) 130739-U

Order filed January 21, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
Plaintiff-Appellee,)	of the 21st Judicial Circuit,
v.)	Kankakee County, Illinois.
TIMOTHY E. O'CONNELL,)	Appeal No. 3-13-0739
Defendant-Appellant.)	Circuit No. 01-CF-348
	The Honorable
	Kathy Bradshaw-Elliott,
	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice McDade and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was not entitled to enhanced good conduct credit where he was serving consecutive sentences for a Class X felony and a Class 2 felony. MSR is a constitutional and mandatory part of defendant's sentence.

¶ 2 Defendant Timothy E. O'Connell pled guilty to four counts of aggravated arson and two counts of involuntary manslaughter. Following a fully negotiated guilty plea, the trial court sentenced defendant to four concurrent 26-year prison terms on the aggravated arson convictions, to be served consecutively to two concurrent 14-year prison terms for involuntary

manslaughter, followed by three years of mandatory supervised release (MSR). On appeal, defendant argues that (1) he is being denied his right to enhanced good conduct credit, and (2) MSR is unconstitutional. We affirm.

¶ 3 In 2001, a 10-count indictment was filed against defendant, charging him with six counts of murder, one count of aggravated arson, one count of residential burglary and two counts of involuntary manslaughter. In 2005, the State filed a six-count amended information. Counts 1 through 4 charged defendant with aggravated arson, and counts 5 and 6 charged defendant with involuntary manslaughter. Pursuant to a fully negotiated plea, defendant pled guilty to all six counts of the amended information.

¶ 4 Before accepting defendant's guilty plea, the trial court admonished defendant that he would be subject to "three years mandatory supervised release or what used to be called parole" for his aggravated arson convictions and "two years mandatory supervised release or what used to be parole" for involuntary manslaughter. The court also informed defendant that aggravated arson and involuntary manslaughter are "day for day" offenses.

¶ 5 The trial court accepted defendant's guilty plea and sentenced defendant to four concurrent 26-year prison terms for aggravated arson to be served consecutively to two concurrent 14-year prison terms for involuntary manslaughter. The sentencing order indicates that defendant is to serve "50% sentence."

¶ 6 In 2013, defendant filed a declaratory judgment action, seeking determinations that the statutes related to MSR and the calculation of consecutive sentences are unconstitutional. The trial court dismissed defendant's complaint *sua sponte*, ruling that it lacked merit.

¶ 7

I

¶ 8 Defendant first argues that he is entitled to enhanced good conduct credit for participating in an industry or educational program. He acknowledges that enhanced good conduct credit was not available for his sentence for aggravated arson, a Class X felony. However, he argues that he has completed his sentence for that crime and is entitled to enhanced good conduct credit for his sentence for involuntary manslaughter, a Class 2 felony.

¶ 9 Section 3-6-3 of the Unified Code of Corrections (Code), governs how the Director of the Illinois Department of Corrections awards good conduct credit to prison inmates. *People v. Duke*, 305 Ill. App. 3d 169, 173 (1999). Subsection (a)(2.1) provides standard day-for-day good conduct credit. 730 ILCS 5/3-6-3(a)(2.1) (West 2004). Subsection (a)(4) provides enhanced good conduct credit of up to 1.5 days per day served where an inmate is “engaged full-time in *** correctional industry assignments, or educational programs provided by the Department *** and satisfactorily completes the assigned program as determined by the standards of the Department.” 730 ILCS 5/3-6-3(a)(4) (West 2004). However, no inmate is eligible for the additional good conduct credit under paragraph (4) “if convicted of *** a Class X felony.” *Id.* Subsection (b) provides: “Whenever a person is or has been committed under several convictions, with separate sentences, such sentences shall be construed under Section 5-8-4 [of the Code] in granting and forfeiting of good time.” 730 ILCS 5/3-6-3(b) (West 2004).

¶ 10 Section 5-8-4(e) of the Code provides, in relevant part, as follows:

“(e) In determining the manner in which consecutive sentences of imprisonment *** will be served, the Department of Corrections shall treat the offender as though he had been committed for a single term with the following incidents:

(4) the offender shall be awarded credit against the aggregate maximum term and the aggregate minimum term of imprisonment for all time served in an institution *** at the rate specified in Section 3-6-3 of this Code.” 730 ILCS 5/5-8-4(e) (West 2004).

¶ 11 When read together, sections 3-6-3 and 5-8-4 of the Code establish that the Department must treat consecutive sentences as a single term of imprisonment for the purpose of awarding good conduct credit. *Duke*, 305 Ill. App. 3d at 173. An inmate serving consecutive sentences for a Class X felony and a non-Class X felony is “ineligible for enhanced good-time credit during the entire ‘single term’ of imprisonment.” *Id.* An inmate cannot be awarded enhanced good conduct credit against a portion of his sentence because all credits for good conduct must be made against “the aggregate *** term of imprisonment,” rather than a separate portion of that term. *Id.* at 174 (citing 730 ILCS 5/5-8-4 (West 1992)). In other words, the Class X conviction taints any other sentence to be served consecutively with it and precludes eligibility for enhanced good time credit against *any* portion of the aggregate term of imprisonment.” (Emphasis in original.) *Id.* at 173-74.

¶ 12 Here, defendant pled guilty and agreed to serve consecutive sentences for aggravated arson, a Class X felony, and involuntary manslaughter, a Class 2 felony. For the purpose of awarding good conduct credit, defendant’s consecutive sentences are treated as a “single term” of imprisonment. 730 ILCS 5/5-8-4(e) (West 2004); *Duke*, 305 Ill. App. 3d at 173. Because defendant is serving a sentence for a Class X felony, he is ineligible for enhanced good conduct credit during “the entire ‘single term’ of imprisonment.” *Duke*, 305 Ill. App. 3d at 173. Thus, defendant’s first argument fails, and trial court properly dismissed that portion of defendant’s complaint.

¶ 13

II

¶ 14

Defendant next argues that the statute creating MSR is unconstitutional because it extends his sentence beyond the 40-year term he agreed to when he pled guilty.

¶ 15

It is within the General Assembly's authority to enact legislation that includes a mandatory parole term in a sentence. *People v. Williams*, 66 Ill. 2d 179 (1977); *People ex rel. Scott v. Israel*, 66 Ill. 2d 190 (1977). The legislature's enactment of MSR does not violate the Constitution. *Israel*, 66 Ill. 2d at 194; *People v. Lee*, 2012 IL App (4th) 110403, ¶¶ 29-37.

¶ 16

When defendant was sentenced, the Code provided that the MSR term for a Class X felony was three years. 730 ILCS 5/5-8-1(d)(1) (West 2004). The Code further stated that "[e]xcept where a term of natural life is imposed, every sentence shall include as though written therein a term in addition to the term of imprisonment." 730 ILCS 5/5-8-1(d) (West 2004).

¶ 17

MSR is a mandatory part of a criminal sentence. *Lee*, 2012 IL App (4th) 110403, ¶ 32 (citing 730 ILCS 5/5-8-1(d) (West 2004)). A criminal sentence consists of two separate parts: a period of imprisonment, and a period of MSR. *Id.* MSR is part of the original sentence, not a separate sentence. *Israel*, 66 Ill. 2d at 194.

¶ 18

MSR is not a form of imprisonment. *Lee*, 2012 IL App (4th) 110403, ¶ 31. MSR is a release from the physical custody of the Department where parolees remain in the legal custody of the Department for the duration of MSR. *Id.* ¶ 36. When a defendant's prison sentence expires, the defendant is physically released from the Department but is not discharged from the Department. *Id.* A defendant is not discharged from the Department until he completes his entire sentence, including MSR. *Id.* ¶ 33 (citing 730 ILCS 5/3-3-3 (West 1998)).

¶ 19

Here, before accepting defendant's guilty plea, the court admonished defendant that his sentence would include a three-year term of MSR. MSR does not extend defendant's sentence

but is a mandatory part of his sentence. See 730 ILCS 5/5-8-1(d) (West 2004); *Lee*, 2012 IL App (4th) 110403, ¶ 32. The MSR statute was properly enacted by the legislature and does not violate the Constitution. See *Israel*, 66 Ill. 2d at 194; *Lee*, 2012 IL App (4th) 110403, ¶¶ 29-37. The trial court properly dismissed this portion of defendant's complaint.

¶ 20 The judgment of the circuit court of Kankakee County is affirmed.

¶ 21 Affirmed.