

No. 1-12-0617

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 7417
	)	
MICHAEL MORGAN,	)	Honorable
	)	Frank G. Zelezinski,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE GORDON delivered the judgment of the court.  
Justices McBride and Palmer concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant's three-year term of mandatory supervised release is not void.
- ¶ 2 Defendant Michael Morgan now appeals from the trial court's summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2012)). On appeal, defendant contends that his three-year term of mandatory supervised release (MSR) is void because it was not imposed by the trial court, but was instead added by the Illinois Department of Corrections (IDOC), which violates both the separation of powers clause of the Illinois Constitution and his due process rights under the United States Constitution. We affirm.
- ¶ 3 Defendant does not challenge his conviction of delivery of more than 15 but less than 100 grams of cocaine, a Class X felony, and of obstruction of justice, a Class 4 felony, following a

bench trial in 2010. The court sentenced defendant to respective, concurrent prison terms of 14 and 3 years' imprisonment.

¶ 4 On direct appeal, this court allowed an agreed motion for summary disposition directing the Clerk of the Circuit Court to correct the mittimus to reflect the proper statutory citation for one offense. *People v. Morgan*, No. 1-10-1177 (2011) (dispositional order).

¶ 5 In January 2012 defendant filed a timely *pro se* postconviction petition which raised one issue, *i.e.*, that his three-year term of MSR was improper because the court did not pronounce it as a part of the sentence and his due process rights were violated when IDOC added the MSR term. The trial court summarily dismissed defendant's postconviction petition and defendant then filed a timely appeal.

¶ 6 On appeal, defendant asserts that his three-year term of MSR is void because IDOC, rather than the court, imposed it. Defendant argues that this action violated both the constitutional separation of powers doctrine and his right to federal due process.

¶ 7 During the pendency of this appeal, the Illinois Supreme Court rejected these claims in *People v. McChriston*, 2014 IL 115310. First, the supreme court rejected the defendant's separation-of-powers argument, raised in a section 2-1401 petition, that the IDOC impermissibly added a three-year MSR term to his 25-year sentence because the trial court did not refer to the mandatory MSR term. *Id.* at ¶ 3. The supreme court reasoned that the General Assembly may enact legislation that includes a MSR term in a sentence by operation of law. *Id.* at ¶ 13.

Construing the plain language of section 5-8-1(d) of the Unified Code of Corrections (730 ILCS 5/5-8-1(d) (West 2004)), the court held that a sentence includes a period of MSR "as if it were written within the sentence," even if the court did not mention the MSR period at the sentencing hearing or include it in the sentencing order. *Id.* at ¶¶ 16-17. Therefore, the supreme court

noted the IDOC did not in fact add the MSR term to defendant's sentence but, instead, it was added by operation of law. *Id.* Accordingly, we must also reject defendant's identical separation-of-powers argument in the instant appeal. *Id.* at ¶ 23; *People v. Ross*, 2014 IL App (1<sup>st</sup>) 120089, ¶ 39.

¶ 8 In addition, *McChriston* held that the imposition of MSR did not violate federal due process, rejecting the defendant's argument that the imposition of the three-year term of MSR impermissibly increased his sentence because only the court retained the authority to increase his sentence. *McChriston*, 2014 IL 115310, ¶¶ 25-31. The supreme court noted that "the enforcement of the mandatory MSR term in this case was not an increase in sentencing, as the MSR term attached automatically as though written into defendant's sentence." *Id.* at ¶ 31. In accordance with the holding in *McChriston*, we also must reject defendant's identical argument based on federal due process.

¶ 9 In light of the decision in *McChriston*, defendant's challenge to his term of MSR fails. Thus, the trial court properly summarily dismissed his postconviction petition because it had no arguable basis in fact or law. *People v. Hodges*, 234 Ill. 2d 1, 16 (2009).

¶ 10 Affirmed.