FIRST DIVISION
November 14, 2011

No. 1-10-2002

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
	)	Cook County.
	)	
v.	)	No. 97 CR 10247
	)	
ANDRE FRANKLIN,	)	The Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justice Hall and Justice Karnezis concurred with the judgment.

O R D E R

¶ 1 ***Held:*** Summary dismissal of post-conviction petition was proper where circuit court admonished defendant about mandatory-supervised release for two of his three convictions during the plea proceeding; *People v. Whitfield*, 217 Ill. 2d 177 (2005) did not apply because defendant's conviction was finalized in 1998, predating *Whitfield*; summary dismissal of *Whitfield* issue was proper as issue did not have to be saved for second-stage post-conviction proceedings; *Santobello v. New York*, 404 U.S. 257 (1971) did not provide an independent basis for challenging the plea bargain; *People v. Morris*, 236 Ill. 2d 345 (2010) was not an affirmative defense capable of being waived.

¶ 2 Defendant, Andre Franklin, appeals from the summary dismissal of his *pro se* petition for post-conviction relief, raising issues regarding the circuit court's admonishments about mandatory-

supervised release. We affirm.

¶ 3 Pursuant to a negotiated guilty plea on September 15, 1997, defendant was convicted of the first-degree murder of DeMarco Lofton, the attempted first-degree murder of Shamika Boykin, and the aggravated-vehicular hijacking of Mr. Lofton. On March 26, 1998, defendant was sentenced to a 48½-year prison term (40 years for murder, consecutive to two concurrent 8½-year terms for attempted first-degree murder and aggravated-vehicular hijacking).

¶ 4 During the guilty plea proceeding, the circuit court admonished defendant as follows regarding the possible sentences:

> "THE COURT: All right. On the first degree murder charge, you could be sentenced to a sentence of 20 to 60 years in the state penitentiary. Your term could be extended up to 100 years, and if the aggravating points were put forth, you also could be sentenced to natural life.
>
> Do you understand that?
>
> DEFENDANT FRANKLIN: Yes.
>
> THE COURT: On the attempt[ed] first degree murder count, that is a Class X felony. On a Class X felony you could be sent to the penitentiary for a term of 6 to 30 years with three years mandatory supervised release, and you could be fined up to $10,000.
>
> Do you understand that?
>
> DEFENDANT FRANKLIN: Yes.
>
> THE COURT: On the aggravated vehicular hijacking, the minimum on that is seven years, and you could be sentenced to a maximum of 30 years with mandatory supervised

release and a fine of up to $10,000 on that.

You understand that?

DEFENDANT FRANKLIN: Yes."

¶ 5 Defendant did not file a motion to withdraw the guilty plea nor a direct appeal.

¶ 6 In April 2010, defendant filed a *pro se* post-conviction petition, alleging he was not adequately admonished about mandatory-supervised release, and his consecutive sentences were void. The circuit court summarily dismissed the petition as frivolous and patently without merit, noting defendant had failed to attach a copy of the guilty plea transcript to the post-conviction petition.

¶ 7 On appeal, defendant contends the circuit court did not properly admonish him that a three-year term of mandatory-supervised release would be added to and would follow his 48½-year prison sentence. Defendant maintains the admonishments were inadequate because they were linked only to the possible sentences, not to his particular sentences, there was no mention of mandatory-supervised release for the murder conviction, and there was no mention of mandatory-supervised release at the sentencing hearing, which was held more than six months after he pleaded guilty.

¶ 8 Defendant also contends, whether *People v. Whitfield*, 217 Ill. 2d 177 (2005), applied retroactively or prospectively, is not an appropriate issue for the first stage of post-conviction proceedings, and that *Santobello v. New York*, 404 U.S. 257 (1971), provides a wholly separate basis for concluding he did not receive the benefit of his plea bargain. Defendant maintains the State could waive the defense based on *People v. Morris*, 236 Ill. 2d 345 (2010), that *Whitfield* is not retroactive, and, therefore, this matter should not have been summarily dismissed because the court

should have had input from both the prosecution and the defense, which would have been possible only if the matter had progressed to the second stage of the post-conviction process.

¶ 9 Defendant also contends, because the trial court failed to admonish him in accordance with Supreme Court Rule 605, he would be required to move to withdraw the guilty plea and vacate the judgment prior to taking an appeal, that he had the right to an attorney, and that he had the right to a transcript of the guilty plea proceedings (Ill. S. Ct. R. 605 (eff. Oct. 1, 2001)), it was unfair for the court to dismiss the petition based on the absence of a guilty plea transcript.

¶ 10 Defendant requests reduction of his prison sentence from 48½ to 45½ years, to be followed by 3 years of mandatory-supervised release, or, alternatively, remandment for second-stage post-conviction proceedings to consider the merits of his due-process/benefit-of-the-bargain claim under *Santobello*, separately and independently of whether *Whitfield* applies. In his reply brief, defendant asks only for remandment for second-stage post-conviction proceedings, including appointment of counsel.

¶ 11 The applicable standard of review for dismissal of a post-conviction petition without an evidentiary hearing is *de novo*. See *People v. Brown*, 236 Ill. 2d 175, 184 (2010); *People v. Coleman*, 183 Ill. 2d 366, 388-89 (1998).

¶ 12 In *Whitfield*, the circuit court was held to have erred where neither the circuit court nor the prosecutor told the defendant during the plea hearing that he would have to serve three years of mandatory-supervised release following his negotiated 25-year prison sentence for murder. *Whitfield*, 217 Ill. 2d at 180.

¶ 13 In *Morris*, our supreme court held *Whitfield* only applies prospectively to cases in which the

convictions were not final before December 20, 2005, the date the *Whitfield* decision was issued. *Morris*, 236 Ill. 2d at 366. *Morris* governs this appeal. Pursuant to *Morris*, *Whitfield* does not retroactively apply to this post-conviction case because defendant's conviction was finalized before December 20, 2005, the date that *Whitfield* was issued. *Id*. Defendant's conviction was finalized in 1998, and he did not take a direct appeal. See *People v. Santana*, 401 Ill. App. 3d 663, 667 (2010) (defendant's conviction was final prior to the *Whitfield* decision where the defendant was convicted on May 29, 2001, and did not take a direct appeal).

¶ 14 Mandatory-supervised release applies to a sentence for murder, except for a sentence of natural life. *People v. Hunter*, 2011 IL App (1st), 093023, ¶ 23. Here, although the court failed to mention that mandatory-supervised release would follow his sentence for murder, defendant was adequately admonished. The court did inform him during the plea proceeding that a three-year term of mandatory-supervised release would follow the penitentiary sentence he could receive for attempted murder, and that mandatory-supervised release would follow the penitentiary sentence he could receive for aggravated-vehicular hijacking. See *People v. Marshall*, 381 Ill. App. 3d 724, 727 (2008); *People v. Davis*, 403 Ill. App. 3d 461, 462 (2010). Thus, defendant was informed that he would have to serve three years of mandatory-supervised release.

¶ 15 Defendant further contends his sentence should be reduced pursuant to *Santobello* because he was denied the benefit of his plea bargain independent of *Whitfield*, the implication being his conviction was finalized long after *Santobello* was issued in 1971. However, *Morris* recognized that *Whitfield* relied on *Santobello*. *Morris*, 236 Ill. 2d at 361; see also *People v. Demitro*, 406 Ill. App. 3d 954, 956-57 (2010); *People v. Seyferlich*, 398 Ill. App. 3d 989, 993 (2010) (observing that the

benefit of the bargain theory in *Whitfield* was "rooted in" *Santobello*). Therefore, *Santobello* is not independent of *Whitfield*, and defendant cannot avoid *Morris* by relying on *Santobello* instead of *Whitfield*.

¶ 16 Finally, defendant argues that the trial court should have allowed his post-conviction petition to proceed to the second stage because the State might waive the *Morris* defense in this case. We disagree. Defendant's argument equates the *Morris* decision with an affirmative defense. *Morris* is not an affirmative defense capable of being waived; *Morris* is a supreme court decision that we are bound to follow. Moreover, summary or first-stage dismissal of defendant's post-conviction petition raising a *Whitfield* issue was proper. See *People v. Mendez*, 402 Ill. App. 3d 95, 98 (2010).

¶ 17 Because we find that the dismissal of defendant's post-conviction petition was proper under *Morris*, we need not consider the argument that defendant's failure to provide a transcript of the plea proceedings was due to inadequate Rule 605 admonishments.

¶ 18 The judgment of the circuit court is affirmed.

¶ 19 Affirmed.