

No. 1-11-2188

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 96 CR 31952
)	
WILLIAM FINNEY,)	Honorable
)	Lawrence Flood,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Palmer and Taylor concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in dismissing defendant's section 2-1401 petition; judgment affirmed.

¶ 2 Defendant William Finney appeals from an order of the circuit court of Cook County dismissing his *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)). He maintains that the administrative imposition of a term of mandatory supervised release (MSR) by the Illinois Department of Corrections (IDOC) violates due process and the separation of powers, and, therefore, the MSR term added to his sentence by the IDOC must be stricken as void.

¶ 3 This court previously affirmed defendant's 1998 jury convictions for first degree murder and home invasion and concurrent, respective sentences of 58 and 30 years' imprisonment. *People v. Finney*, No. 1-00-1352 (2002) (unpublished order under Supreme Court Rule 23). We also affirmed the second stage dismissal of his petition for post-conviction relief. *People v. Finney*, No. 1-05-3811 (2007) (unpublished order under Supreme Court Rule 23).

¶ 4 On March 22, 2011, defendant filed the *pro se* section 2-1401 petition at bar alleging, in relevant part, that he should not have to serve a three year term of MSR because it was imposed by the IDOC, and not the trial judge. He maintained that the imposition of the MSR term by the IDOC violated due process and the separation of powers.

¶ 5 The circuit court dismissed defendant's section 2-1401 petition *sua sponte*. In doing so, the court found that defendant failed to advance a claim or defense which would entitle him to relief, that he did not rely on any newly discovered evidence or material outside the record to form the basis of a section 2-1401 petition, and failed to raise any meritorious factual argument. The court also found that MSR terms are legislatively mandated and included in the court's sentence as though written therein, and thus, defendant's claim fails. The court further found that the petition was untimely, and that defendant failed to show due diligence in presenting his claim in the original action and in filing his section 2-1401 petition, or legal duress, or fraudulent concealment to excuse the tardy filing.

¶ 6 Defendant now challenges that ruling on appeal. He contends that the court erred in dismissing his petition because the imposition of a term of MSR by the IDOC violates due process and the separation of powers, and that the addition of the MSR term by the IDOC was an improper usurpation of the judicial function. As a result, he claims that the MSR term must be stricken as void.

¶ 7 The purpose of a section 2-1401 petition is to bring facts to the attention of the circuit court which, if known at the time of judgment, would have precluded its entry. *People v. Haynes*, 192 Ill. 2d 437, 463 (2000). To obtain relief under this section, defendant must file a petition no later than two years after the entry of the order of judgment (735 ILCS 5/2-1401 (West 2010)), and set forth a meritorious defense or claim, due diligence in presenting that defense or claim to the circuit court, and due diligence in filing the petition (*People v. Glowaki*, 404 Ill. App. 3d 169, 171 (2010)). Absent an evidentiary hearing on a petition, our review of the dismissal of a section 2-1401 petition is *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 14-15 (2007).

¶ 8 In this case, defendant's section 2-1401 petition was filed 11 years after the two-year limitations period expired. 735 ILCS 5/2-1401(c) (West 2010). As such, it is facially untimely and defendant has not alleged or shown any basis for excusing the tardy filing. Defendant contends, however, that he is not barred from seeking relief because he is attacking a void judgment. Although a void judgment may be challenged at any time through a section 2-1401 petition (*People v. Harvey*, 196 Ill. 2d 444, 447 (2001)), the initial question is whether the judgment is actually void (*People v. Balle*, 379 Ill. App. 3d 146, 151 (2008); *People v. Lott*, 325 Ill. App. 3d 749, 751-52 (2001)). For the reasons that follow, we find that it was not.

¶ 9 When defendant was sentenced in 1998, the Code provided that "every sentence shall include as though written therein a term in addition to the term of imprisonment. *** such term shall be identified as a mandatory supervised release term *** [which] shall be as follows: (1) for first degree murder or a Class X felony, 3 years." 730 ILCS 5/5-8-1(d)(1) (West 1998). Terms of MSR are thus mandated by statute, and courts have no authority to withhold the mandatory MSR term when imposing a sentence. *People v. Whitfield*, 217 Ill. 2d 177, 200-02 (2005); *People v. McCurry*, 2011 IL App (1st) 093411, ¶16. In addition, the supreme court has held that the enactment of the MSR statute was within the power of the legislature and does not violate the

separation of powers clause of the Illinois Constitution. *People ex rel. Scott v. Israel*, 66 Ill. 2d 190, 194 (1977); see also *People v. Lee*, 2012 IL App (4th) 110403, ¶38.

¶ 10 Here, defendant was convicted of first degree murder, and therefore, subject to a mandatory three-year term of MSR (730 ILCS 5/5-8-1(d) (West 2010)). Although the trial court did not specifically refer to it in its sentencing order, the term is reflected on the IDOC website of which this court may take judicial notice. *People v. Henderson*, 2011 IL App (1st) 090923, ¶8. Based on this set of facts, defendant maintains that the IDOC, rather than the trial court, improperly imposed the three-year MSR term against him, rendering the MSR term void. We disagree.

¶ 11 As noted, defendant was convicted after a jury trial, and the imposition of the MSR term was automatic when the trial court imposed sentence. *People v. Horrell*, 235 Ill. 2d 235, 242-44 (2009); *People v. Lee*, 397 Ill. App. 3d 1067, 1073 (2010). Since the MSR term attaches automatically under the statute, we fail to see how the ministerial act by the IDOC of recording the term of MSR defendant must serve on its website translates into an improper addition of a term of MSR to defendant's sentence. Thus, defendant's claim that the IDOC imposed the MSR term has no legal merit. *Lee*, ¶38.

¶ 12 Defendant, however, further asserts that the imposition of MSR in his case was void citing *Hill v. United States ex rel. Wampler*, 298 U.S. 460 (1936). In *Hill*, a federal trial judge orally sentenced defendant to 18 months' imprisonment and imposed a fine against him. *Hill*, 298 U.S. at 461. The clerk of the court, following a local "practice" known to the court, added the condition that defendant remain in custody until his fine was paid. *Hill*, 298 U.S. at 461-62, 465. The Supreme Court held that the clerk did not have the power to alter the sentence imposed by the court, and therefore, the additional condition was void. *Hill*, 298 U.S. at 465-67. Here, the three-year term of MSR was automatically applied pursuant to a statutory mandate unlike

Hill, where the custody provision was imposed unilaterally and without authority. Thus, we find defendant's reliance on *Hill* misplaced.

¶ 13 Defendant also cites other federal cases in support of his contention that the MSR term was void, relying primarily on *Earley v. Murray*, 451 F. 3d 71 (2d Cir. 2006). We initially observe that federal cases have no precedential value in this court (*People v. Hightower*, 172 Ill. App. 3d 678, 691 (1988)), and find, nonetheless, that *Earley* is factually distinguishable from the case at bar.

¶ 14 In *Earley*, the Second Circuit Court of Appeals addressed the imposition of a five-year term of parole mandated by a New York statute, post-release supervision (PRS), which was not mentioned when the court imposed the six-year sentence as part of a *guilty plea* agreement. *Earley*, 451 F. 3d at 73. Because the trial court did not mention it in pronouncing defendant's sentence, the Second Circuit concluded that the PRS term was not imposed by the court during sentencing, but, rather, by New York's equivalent of the IDOC upon defendant's remand to its custody, thus rendering the PRS term invalid under *Hill*. *Earley*, 451 F. 3d at 74-75.

¶ 15 Here, unlike the defendant in *Earley* who entered a guilty plea, defendant was tried by a jury, where there is no requirement that the court advise defendant of the MSR term. *People v. Chapman*, 379 Ill. App. 3d 317, 329 (2007). In addition, the term mandated by statute is automatic after sentencing and may not be altered or withheld by the State or the trial court. *Whitfield*, 217 Ill. 2d at 200-01.

¶ 16 We further note that this court recently rejected an *Earley*-based challenge to MSR. In *People v. Hunter*, 2011 IL App (1st) 093023, ¶1, defendant entered a negotiated plea of guilty to aggravated discharge of a firearm, and later filed a post-conviction petition alleging that when he entered his plea, the trial judge failed to adequately inform him that he would be required to serve a two-year term of MSR in addition to his prison sentence. This court affirmed the summary

dismissal of that petition explaining that a term of MSR is not a negotiated release or privilege, but, rather, a mandatory part of defendant's sentence, of which defendant was notified prior to plea negotiations, so that when defendant was sentenced by the trial court, his sentence included a term of MSR, which would be served only after his release. *Hunter*, ¶¶21, 23. This court thus found *Earley* distinguishable (*Hunter*, ¶21) as we do here.

¶ 17 In sum, because the MSR term was necessarily and automatically included in defendant's sentence following a trial, the three-year term of MSR was not void. *Whitfield*, 217 Ill. 2d at 200-201; 730 ILCS 5/5-8-1(d)(1) (West 1998). Accordingly, we find that defendant failed to state a cause for relief under section 2-1401, and the circuit court did not err in dismissing his petition. *Lott*, 325 Ill. App. 3d at 752.

¶ 18 In passing, we note that defendant briefly maintains in a single sentence in his opening brief that the trial court never informed him that he would subsequently have to serve a three-year term of MSR. To the extent defendant is raising an admonishment issue, we observe that he has presented no argument on it, thereby waiving it for review. *People v. Phillips*, 215 Ill. 2d 554, 565 (2005). Moreover, the trial court is not required to admonish defendant of the MSR term in a trial setting, as here. *People v. Foote*, 389 Ill. App. 3d 888, 896 (2009).

¶ 19 Accordingly, we affirm the order of the circuit court of Cook County.

¶ 20 Affirmed.