2017 IL App (1st) 150281-U

No. 1-15-0281

Order filed October 27, 2017

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 13039
	)	
ANTOINE WATSON,	)	Honorable
	)	Frank G. Zelezinski,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: Summary dismissal of defendant's *pro se* postconviction petition affirmed where he was admonished at his plea hearing regarding the requirement that he serve a period of mandatory supervised release.

¶ 2 Defendant, Antoine Watson, appeals the trial court's summary dismissal of his postconviction petition as frivolous and patently without merit. He contends that the court erred in summarily dismissing his postconviction petition because he set forth the gist of a constitutional claim based on the court's violation of his due process rights where it failed to

inform him his sentence included a three-year term of mandatory supervised release (MSR). For the following reasons, we affirm.

¶ 3 In July 2009, defendant was charged by indictment with twelve counts of first degree murder, two counts of attempted first degree murder, two counts of aggravated discharge of a firearm, and three counts of armed robbery. Defendant, through counsel, initially entered a plea of not guilty. On January 14, 2013, defendant entered into a negotiated plea of guilty to one count of first degree murder (720 ILCS 5/9-1(a)(1) (West 2008)) in exchange for 28 years' imprisonment. The State nol-prossed the remaining charges.

¶ 4 At the plea hearing, the court admonished defendant as follows:

> "Now, this charge of murder has a sentencing range by which you can be sentenced to the Illinois Department of Corrections for a period of 20 to 60 years. Upon which under certain circumstances you could, in fact, received an extended term sentence of 60 years to natural life, upon with which any penitentiary sentences there would be a mandatory supervised release period of three years which we know as patrol [*sic*] that you must serve after finishing any penitentiary sentence.
>
> Additionally, for this type of charge, you also could receive a fine. *** And if, in fact, are you [*sic*] sentenced to the Illinois Department of Corrections, you must, in fact, serve 100 percent of your sentence.
>
> Do you understand what the possible penalties are for this type of charge, sir?"

Defendant responded that he understood.

¶ 5 The court also admonished him that, in order to plead guilty, he must give up his right to a trial. Defendant acknowledged understanding those rights and that he was waiving them freely and voluntarily. The parties then stipulated to the factual basis for defendant's plea. The court found defendant understood the nature of the charges against him, the possible penalties for each offense, that there was a sufficient factual basis for the plea, and that defendant was freely and voluntarily pleading guilty. Defendant waived his right to a presentence investigation report and the court sentenced him to the agreed-upon 28 years' imprisonment. Defendant did not file a motion to withdraw his plea or appeal his conviction.

¶ 6 On September 25, 2014, defendant filed a *pro se* postconviction petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2014)) arguing, *inter alia*, that the trial court violated his due process rights when it failed to "inform [him] that he would be required to serve 3 years of [MSR] in addition to the 28 year prison term that the State and [he] jointly recommended." Defendant also alleged that, had he been properly admonished of the mandatory MSR term, he would have stood on his plea of not guilty and proceeded to trial.

¶ 7 On November 19, 2014, the trial court summarily dismissed defendant's postconviction petition, finding it frivolous and patently without merit. It stated:

> "The [c]ourt has reviewed the records here and this court *** did in fact admonish the defendant of the three-year [MSR] period. Furthermore, this is evidenced because[,] on the mittimus[,] it is also printed that the defendant is to receive a three-year [MSR] period which would not go on the mittimus unless the [c]ourt actually put it in its original order."

¶ 8 Defendant timely appealed.

¶ 9 On appeal, defendant argues that the trial court's first-stage dismissal of his postconviction petition was erroneous because the petition set forth the gist of a constitutional claim based on the court's violation of his due process rights where it failed to inform him, as required by Illinois Supreme Court Rule 402, that his sentence included a three-year term of MSR. The State responds that the trial court's first-stage dismissal of defendant's petition was proper because the trial court admonished him of the three-year term of MSR at his plea hearing. We agree with the State.

¶ 10 The Act allows criminal defendants to challenge their convictions or sentences on grounds of constitutional violations. *People v. Beaman*, 229 Ill. 2d 56, 71 (2008). "The purpose of a postconviction proceeding is to permit inquiry into constitutional issues involved in the original conviction and sentence that were not, and could not have been, adjudicated previously on direct appeal." *People v. Harris*, 206 Ill. 2d 1, 12 (2002).

¶ 11 Proceedings under the Act are divided into three stages. *People v. Pendleton*, 223 Ill. 2d 458, 472 (2006). The first stage is relevant here. At the first stage of postconviction proceedings, the circuit court must independently review the petition, take the allegations as true, and determine whether the petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2014). A petition may be summarily dismissed as "frivolous or patently without merit only if the petition has no arguable basis either in law or in fact." *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009). A claim has no arguable basis when it is based on an indisputably meritless legal theory, such as one completely contradicted by the record, or a fanciful factual allegation, such as those that are fantastic or delusional. *People v. Brown*, 236 Ill. 2d 175, 185 (2010).

¶ 12 To survive the first stage, a petition need only present the gist of a constitutional claim. *People v. Allen*, 2015 IL 113135, ¶ 24. The allegations in the petition must be taken as true and liberally construed. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). We review the summary dismissal of a petition *de novo*. *Hodges*, 234 Ill. 2d at 9.

¶ 13 Defendant was convicted pursuant to a negotiated guilty plea. Before accepting a guilty plea, the trial court must substantially comply with Illinois Supreme Court Rule 402. Ill. S. Ct. R. 402 (eff. July 1, 1997). Rule 402 sets forth admonishments that a trial court must give to a defendant in open court prior to accepting a guilty plea. Relevant here, it requires a trial court to admonish a defendant about "the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences." Ill. S. Ct. R. 402(a)(2) (eff. July 1, 1997).

¶ 14 In *People v. Whitfield*, 217 Ill. 2d 177 (2005), our supreme court held that a defendant's right to due process is violated when he pleads guilty in exchange for a specific sentence and the trial court fails to admonish him, before he accepts the plea, that an MSR term will follow his term of imprisonment. *Id.* at 195. In *Whitfield*, the trial court had failed to admonish the defendant at the negotiated plea hearing that he was required to serve a three-year term of MSR in addition to his prison sentence. *Id.* at 180. The court made no mention of the required MSR term at all. On review, our supreme court found that, where a defendant pleads guilty in exchange for a specific sentence, the trial court's failure to advise the defendant, prior to accepting his plea, that an MSR term would be added to the sentence was a violation of the defendant's due process rights. *Id.* at 195. As the defendant was completely unaware that he

would be required to serve a three-year MSR term, the court reduced his prison sentence by three years to give him the benefit of the plea bargain to which he had agreed. *Id.* at 205.

¶ 15 In *People v. Morris*, 236 Ill. 2d 345 (2010), our supreme court clarified *Whitfield*. It explained that *Whitfield* requires the trial court to advise a defendant that an MSR term "will be added to the actual sentence agreed upon in exchange for a guilty plea to the offense charged." *Id.* at 366-68. The court stated "[a]n admonishment that uses the term 'MSR' without putting it in some relevant context cannot serve to advise the defendant of the consequences of his guilty plea and cannot aid the defendant in making an informed decision about his case." *Id.* at 366. The court stated that "[i]deally a trial court's admonishment would explicitly link MSR to the sentence to which defendant agreed in exchange for his guilty plea, would be given at the time the trial court reviewed the provisions of the plea agreement, and would be reiterated both at sentencing and in the written judgment." *Id.* at 367. Nevertheless, the court declared that "a trial court's MSR admonishments need not be perfect" but rather "must substantially comply with the requirements of [Supreme Court] Rule 402 and the precedent of this court." *Id.* at 367.

¶ 16 Subsequently, in *People v. Davis*, 403 Ill. App. 3d 461 (2010), this court considered the supreme court's holdings in *Whitfield* and *Morris*. In *Davis*, we held that "a constitutional violation occurs only when there is absolutely no mention to a defendant, before he actually pleads guilty, that he must serve an MSR term in addition to the agreed-upon sentence that he will receive in exchange for his plea of guilty." *Id.* at 466. Therefore, "[i]f, prior to the guilty plea admonishments, the defendant knows he will be sentenced to the penitentiary in exchange for his plea of guilty, and knowing this, he is told during the guilty plea hearing that he must serve an MSR term upon being sentenced to the penitentiary, then the defendant is placed on

notice that his debt to society for the crime he admits having committed extends beyond fulfilling his sentence to the penitentiary." *Id.* at 462.

¶ 17 In *Davis*, we found the trial court sufficiently admonished the defendant when it told him: "[I]f you plead guilty to this, I have to sentence you to the penitentiary between 6 and 30 years. You could be fined up to $25,000. You would have to serve at least three years mandatory supervised release, which is like parole." (Emphasis omitted.) *Id.* at 642. In *People v. Hunter*, 2011 IL App (1st) 093023, ¶¶ 4, 19, following *Davis*, we found the trial court's admonishment sufficient where it informed the defendant that "[a]ny period of incarceration would be followed by a period of mandatory supervised release of two years following your discharge from the Department of Corrections." While we acknowledge that, as our supreme court stated in *Morris*, a "better practice" would be to admonish defendants of the terms of MSR when pronouncing their sentences, such a practice is not mandatory in order to satisfy the requirements of due process. *Hunter*, 2011 IL App (1st) 093023, ¶ 14.

¶ 18 Following *Davis* and *Hunter*, we find the record belies defendant's claim that the trial court failed to sufficiently admonish him of the three-year term of MSR before accepting his guilty plea. Prior to the plea hearing, defendant agreed to plead guilty to murder and serve 28 years' imprisonment in exchange for the State nol-prossing the other charges against him. He was therefore well aware he would serve a penitentiary sentence. At his plea hearing, the court admonished defendant on the potential 20 to 60 year and possible natural life sentence. It then expressly admonished him that, "upon with which along with any penitentiary sentences[,] there would be a mandatory supervised release period of three years which we know as patrol [*sic*] that you must serve after finishing any penitentiary sentence." Defendant stated he understood the

possible penalties. We grant that the court's comment was couched in terms of what defendant "could receive" and defendant responded that he understood the "possible penalty." Nevertheless, the court's statement regarding the MSR term was unequivocal: any penitentiary sentence "would" have a three-year MSR term that defendant "must serve." Defendant does not dispute that his plea of guilty included a "penitentiary sentence." We find the admonishment sufficient to apprise an ordinary person in defendant's circumstances of the required warning.

¶ 19 While the trial court did not follow the "better practice" provided in *Morris*, as it failed to reiterate the MSR requirement when it sentenced defendant to 28 years' imprisonment, its admonishment substantially complied with Rule 402 as required in *Morris* and satisfied due process. Thus, defendant's postconviction claim is rebutted by the record and the trial court's summary dismissal of his *pro se* postconviction petition as frivolous and patently without merit was proper.

¶ 20 For the reasons stated, we affirm the judgment of the circuit court of Cook County

¶ 21 Affirmed.