No. 2—09—1089, 2—09—1090, 2—09—1091 cons.
Order filed March 18, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ADNAN M. ABBAS, Defendant-Appellant.	)	Appeal from the Circuit Court of Du Page County. No. 05—CF—2237 Honorable Kathryn E. Creswell, Judge, Presiding.

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ADNAN M. ABBAS, Defendant-Appellant.	)	Appeal from the Circuit Court of Du Page County. No. 06—CF—879 Honorable Kathryn E. Creswell, Judge, Presiding.

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v.	)	Appeal from the Circuit Court of Du Page County. No. 08—CF—156

ADNAN M. ABBAS,	)	Honorable
	)	Kathryn E. Creswell,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

Held: The trial court properly dismissed defendant's postconviction petitions alleging a *Whitfield* violation, as the court's admonishments were sufficient to advise him that any prison term, and thus his negotiated prison term, would be followed by a term of mandatory supervised release.

In separate prosecutions, defendant, Adnan M. Abbas, was charged with, *inter alia*, theft (720 ILCS 5/16—1(a)(1)(A) (West 2004)) (case No. 2—09—1089), unlawful delivery of a controlled substance (720 ILCS 570/401(a)(7.5)(A)(ii) (West 2006)) (case No. 2—09—1090), and violation of bail bond (720 ILCS 5/32—10(a) (West 2006)) (case No. 2—09—1091). On May 5, 2008, defendant entered negotiated guilty pleas to the charges. Pursuant to his agreement with the State, he was sentenced to consecutive prison terms of two years for theft, two years for violation of bail bond, and six years for unlawful delivery of a controlled substance. Other charges were nol-prossed. Defendant did not move to withdraw his pleas and did not appeal from his convictions. However, on September 2, 2009, defendant filed *pro se* petitions for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122—1 *et seq.* (West 2008)) in each case. In the petitions, defendant alleged that he was not properly admonished that, upon completion of his prison terms, he would be required to serve a three-year term of mandatory supervised release (MSR) (see 730 ILCS 5/5—8—1(d)(1) (West 2004)). He contended that he was entitled to have his sentence reduced pursuant to the rule of *People v. Whitfield*, 217 Ill. 2d 177 (2005). The trial court summarily dismissed the petitions.

See 725 ILCS 5/122—2.1(a)(2) (West 2008). Defendant appealed from the summary dismissal of each petition, and we consolidated the appeals.

When a defendant who has been sentenced to imprisonment files a petition under the Act, the trial court shall examine the petition and shall summarily dismiss it if the trial court finds that the petition is "frivolous or is patently without merit" (725 ILCS 5/122—2.1(a)(2) (West 2008)). Summary dismissal is proper if the petition "is based on an indisputably meritless legal theory or a fanciful factual allegation." *People v. Hodges*, 234 Ill. 2d 1, 16 (2009). As the *Hodges* court pointed out, "[a]n example of an indisputably meritless legal theory is one which is completely contradicted by the record." *Id.* Summary dismissal is reviewed *de novo*. *Id.* at 9.

Illinois Supreme Court Rule 402(a)(2) (eff. July 1, 1997) provides that the trial court shall not accept a defendant's plea of guilty of an offense without first admonishing the defendant of the minimum and maximum sentences prescribed by law for that offense. In *Whitfield*, our supreme court noted its earlier holding that " 'compliance with Rule 402(a)(2) requires that a defendant be admonished that the mandatory period of parole [now called mandatory supervised release] pertaining to the offense is a part of the sentence that will be imposed.' " *Whitfield*, 217 Ill. 2d at 188 (quoting *People v. Wills*, 61 Ill. 2d 105, 109 (1975)). When a defendant enters a negotiated guilty plea in the absence of a proper admonition, "addition of the MSR term to the agreed-upon sentence violates due process because the sentence imposed is more onerous than the one defendant agreed to at the time of the plea hearing." *Id.* In such circumstances, the defendant is entitled to enforce his or her bargain with the State. *Id.* However, because the term of MSR cannot be stricken from the defendant's sentence, the appropriate remedy that best approximates the defendant's bargain is to reduce his or her prison term by a period equal in length to the MSR term. Thus, in

Whitfield, where the defendant agreed to serve 25 years in prison, but was not advised that the prison term would be followed by a 3-year MSR term, the court reduced the prison term to 22 years.

In *People v. Morris*, 236 Ill. 2d 345 (2010), our supreme court offered the following guidance as to what information a Rule 402(a)(2) admonition must convey:

> "Ultimately, admonishments are given to ensure that 'the plea was entered intelligently and with full knowledge of its consequences' [citations], but they must also advise the defendant of the actual terms of the bargain he has made with the State. An admonition 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. We recognize that there is no precise formula in admonishing a defendant of his MSR obligation, and we are mindful that '[a]n admonition of the court must be read in a practical and realistic sense. The admonition is sufficient if an ordinary person in the circumstances of the accused would understand it to convey the required warning.' [Citation.] The trial court's MSR admonishments need not be perfect, but they must substantially comply with the requirements of Rule 402 and the precedent of this court. [Citation.] *Whitfield* requires that defendants be advised that a term of MSR will be added to the actual sentence agreed upon in exchange for a guilty plea to the offense charged.
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> Ideally, 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. [Citations.] We strongly encourage trial court

judges to follow this practice, and to discuss MSR when reviewing the terms of a defendant's plea agreement, to include the MSR term when imposing sentence, and to add the MSR term to the written order of conviction and sentence. This practice, which is not unduly burdensome, would ensure that defendants understand the consequences of their plea agreement and would avoid prolonged litigation on the issue." *Id.* at 366-67.

Judge Perry R. Thompson admonished defendant as follows with respect to the theft charge:

"The possible penalty on it is two to ten years in the Department of Corrections. If you're sent there, which you are under this agreement, on your release, you serve one year of mandatory supervised release."

Judge Kathryn E. Creswell admonished defendant as follows with respect to the other charges:

"[Unlawful delivery of a controlled substance is] a Class X felony. It means you're not eligible for probation or conditional discharge. It carries a mandatory penitentiary sentence of a minimum of six up to a maximum of 30 years. This sentence will be followed by three years of mandatory supervised release and it carries a possible fine of up to $500,000.

* * *

*** [Violation of bail bond is] a Class 4 felony. The possible penalties in that case are up to 30 months probation or conditional discharge or up to 18 months of periodic imprisonment or you could be sent to the penitentiary for a fixed period of time not less than one and not more than three years but you're eligible for an extended term on that case through the six years.

> The penitentiary sentence of two years that you're going to serve will be followed by one year of mandatory supervised release and you could be fined up to $25,000 on that charge."

Judge Creswell advised defendant that the negotiated sentences for the three offenses would be served consecutively. In this appeal, defendant challenges only the admonition concerning the charge of unlawful delivery of a controlled substance. It is clear that that admonition did not conform to the ideal described in *Morris*. It is equally clear, however, that an admonition is not constitutionally defective merely because it falls short of that ideal. The pertinent inquiry is whether an ordinary person in defendant's circumstances would understand that a three year MSR term would follow his or her prison term. "It will often be sufficient for the trial court to mention MSR as part of a general admonition regarding the penalties authorized by law, even though the defendant is not specifically told that MSR will be part of his or her sentence." *People v. Daniels*, 388 Ill. App. 3d 952, 956 (2009).

The admonition given to defendant with respect to the charge of unlawful delivery of a controlled substance was substantially similar to an admonition given in *People v. Davis*, 403 Ill. App. 3d 461, (2010), a case decided after *Morris*. In *Davis*, the defendant was charged with aggravated battery with a firearm, a Class X felony, and was asked " 'do you understand if 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 in original.) *Id.* at 462. The defendant's affirmative response foreclosed his *Whitfield* claim. The *Davis* court reasoned that "[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 to having committed extends beyond fulfilling his sentence to the penitentiary." *Id.* at 466.

Here, as in *Davis*, defendant knew that his plea of guilty to the charge of unlawful delivery of a controlled substance would result in a prison term, and the trial court told defendant that the prison term for that offense "will be followed by three years of [MSR]." An ordinary person receiving this admonition would understand that the MSR term applied to any prison term for the offense he committed, regardless of the length of the prison term and regardless of whether the sentence was connected to a negotiated guilty plea. In this respect, the admonition is distinguishable from the faulty admonition given in *Daniels*, cited by defendant. In *Daniels*, before accepting the defendant's guilty plea to charges of forgery and burglary, the trial court admonished the defendant as follows:

> " 'Minimum sentences you can receive are probation or conditional discharge.
>
> Maximum sentence on the forgery would be 10 years in the Illinois Department of Corrections. Normally would be five, but the State tells me that based on your background, you are eligible for extended term, with one year parole or mandatory supervised release. You could be fined up to $25,000.
>
> Burglary is a Class 2 felony. Minimum sentence is probation or conditional discharge. Maximum sentence would be 14 years in the Illinois Department of Corrections with two years mandatory supervised release or parole. You could be fined up to $25,000.' " *Daniels*, 388 Ill. App. 3d at 954.

We observed:

> "[T]he admonition linked MSR only to the *maximum* sentences authorized by law for forgery and burglary. Just because defendant was made aware that the maximum sentences for those offenses included MSR, it does not follow that defendant understood that the same was true of the *minimum* prison terms (which he was to serve pursuant to his plea agreement). The admonition could have fostered a reasonable belief that defendant's agreement with the State did not require him to serve a term of MSR after his release from prison. Moreover, what the trial court said next—"*[t]he agreement here* is that you be ordered to serve two years, *which is the minimum term* of penitentiary sentence on the forgery, three years, *which is the minimum term* of penitentiary sentence on the burglary" (emphases added)—could have easily reinforced the idea that MSR attached only to the maximum sentences that defendant could have received absent the plea agreement." *Id.* at 959.

There is no possibility of similar confusion in this case.

Another case cited by defendant, *People v. Burns*, 405 Ill. App. 3d 40 (2010), is also inapposite. In *Burns*, the trial court recited the maximum and minimum prison terms for a Class X felony, and then added, " 'There's a potential fine of up to $25,000, with a period of three years mandatory supervised release.' " *Id.* at 42. The admonition did not link MSR to the prison sentences the defendant had agreed to serve. *Id.* at 43. Here, in contrast, the trial court advised defendant that the prison term for unlawful delivery of a controlled substance "will be followed" by a term of MSR. Unlike in *Burns*, the admonition here was stated without contingency and could *not* "have fostered a reasonable belief that MSR attached only to a particular contingency that might or might not happen." *Id.* at 44-45.

Defendant emphasizes that MSR was not mentioned when the prosecutor outlined the plea agreement, when the trial court inquired whether defendant understood the prosecution's description of the agreement, or when the trial court pronounced sentence. On the other hand, the trial court said nothing that would contradict its admonition that the prison term for unlawful delivery of a controlled substance would be followed by a three-year MSR term. That the trial court did not reiterate this component of defendant's sentence at each opportunity does not vitiate the admonition, which was otherwise sufficient to apprise defendant of the consequences of his plea.

Defendant correctly notes that, for purposes of MSR, consecutive prison terms are treated as a single prison term and the defendant serves a single MSR term corresponding to the most serious offense. *People v. Jackson*, 231 Ill. 2d 223, 227 (2008). Defendant complains that the separate admonitions about the sentencing range and corresponding MSR term for each of his three offenses did not convey that he would serve a 10-year period of incarceration followed by a 3-year term of MSR. He insists that the admonition that the three-year MSR term would follow the *six-year prison term for unlawful delivery of a controlled substance* was misleading because an ordinary person in his position would be aware that he would not be released after six years and would therefore conclude that MSR was merely a *possible* penalty that might attach in other circumstances. Defendant contends that, if MSR was to be an actual component of his sentence, the separate admonitions for each offense implied that the prison terms and the MSR terms would alternate, *i.e.* he would serve a prison term, an MSR term, a prison term, and so on. Because this is an implausible scenario, defendant maintains that an ordinary person would simply conclude that MSR was not part of the bargain. We disagree. The trial court's admonitions were sufficient to inform an ordinary person in defendant's position that MSR was a component of the sentence for each offense. If

anything, the ordinary person might conclude that he would serve consecutive prison terms followed by *consecutive MSR terms*, *i.e.* 10 years' imprisonment followed by 5 years' MSR. Such a misunderstanding could not be the basis for a claim that defendant did not receive the benefit of his bargain.

Because the record on appeal contradicts defendant's allegation that he did not receive a proper admonition, summary dismissal of his petitions was proper. Accordingly, we affirm the judgments of the circuit court of Du Page County.

Affirmed.