2013 IL App (5th) 100606-U

NO. 5-10-0606

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 03-CF-1547
	)	
ERIC PADILLA,	)	Honorable
	)	Charles V. Romani, Jr.,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Stewart and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: Mandatory supervised release is imposed automatically by operation of statute, regardless of specific imposition by the circuit court or clerical imposition by the Department of Corrections.

¶ 2 Defendant, Eric Padilla, appeals from the decision of the circuit court of Madison County dismissing his *pro se* postconviction petition. Defendant argues that the three-year term of mandatory supervised release (MSR) imposed by the Department of Corrections, but not mentioned by the sentencing court, in either its oral pronouncement of sentence or its sentencing order, violates his constitutional rights in that (1) it extends the period in which he is deprived of his liberty and (2) the imposition of the MSR by the Department of Corrections infringes upon the constitutional prerogatives of the judiciary in imposing sentence. We affirm the circuit court's dismissal of defendant's postconviction petition.

¶ 3 FACTS

¶ 4 In 2003, defendant was charged with one count of attempted first-degree murder (720

ILCS 5/9-1(a)(1), 8-4(a) (West 2002)) alleging that he stabbed Frenaz Lyles in the abdomen with a knife with intent to kill. Defendant was convicted by a jury, and in June of 2004 the circuit court sentenced defendant to 23 years in the Department of Corrections. The trial court's oral imposition of sentence and the written sentencing order both indicate the 23-year sentence, but neither mentions the MSR term.

¶ 5 In 2006, this court affirmed defendant's conviction and sentence on direct appeal. *People v. Padilla*, No. 5-04-0449 (2006) (unpublished order pursuant to Supreme Court Rule 23).

¶ 6 In October of 2010, defendant filed a petition for postconviction relief alleging that his three-year MSR imposed by the Department of Corrections was unconstitutional in that (1) the MSR deprived him of liberty interest beyond the time imposed by the circuit court, and (2) in doing so, the Department of Corrections impermissibly infringed on the role of the judiciary in imposing a sentence. The circuit court summarily dismissed the defendant's postconviction petition ruling that he had forfeited his MSR argument by not raising it on direct appeal to this court and that the claim itself was without merit.

¶ 7 Defendant filed a timely notice of appeal which we allowed to be amended.

¶ 8 ANALYSIS

¶ 9 In this appeal, defendant argues that the trial court did not impose the MSR, but rather the Department of Corrections imposed it. The resulting time of defendant being under the restrictions and obligations of the Department of Corrections equaled a sentence beyond that imposed by the trial court in violation of the United States Constitution (U.S. Const., amend. XIV) and the Illinois Constitution (Ill. Const. 1970, art. II, § 1; art. IV, § 1) (due process violations and infringement of the separation of powers). Defendant argues that only a court can impose a sentence, citing *People v. Phillips*, 66 Ill. 2d 412, 362 N.E.2d 1037 (1977), and a sentence defendant must serve the "period of time specified by the court." *People v.*

Williams, 66 Ill. 2d 179, 187, 361 N.E.2d 1110, 1114 (1977). Defendant further cites in support of his position the Second Circuit case of *Earley v. Murray*, 462 F.3d 147 (2d Cir. 2006), *cert. denied sum nom.*, *Burhlre v. Earley*, 551 U.S. 1159 (2007) (considering New York law).

¶ 10 The State, in response, argues that the issue raised by defendant is forfeited as it was not raised by him on direct appeal to this court. As to the substance of defendant's claim, the State argues that, in fact, the MSR was not imposed by the Department of Corrections, but rather was an automatic operation of law by terms of the statute: "[E]very sentence shall include as though written therein a term [of MSR] in addition to the term of imprisonment." 730 ILCS 5/5-8-1(d) (West 2006). The State argues that this is automatic, citing *People v. Rinehart*, 406 Ill. App. 3d 272, 280, 943 N.E.2d 698, 705-06 (4th Dist. 2010), and is not subject to modification by the trial court. *People v. Reese*, 66 Ill. App. 3d 199, 203, 383 N.E.2d 759, 762 (5th Dist. 1978). Given the automatic imposition of an MSR, the State argues that its imposition by the Department of Corrections does not violate the separation of powers. *People ex rel. Scott v. Israel*, 66 Ill. 2d 190, 193-94, 361 N.E.2d 1108, 1109-10 (1977).

¶ 11 During oral argument of this appeal, the parties noted that *People v. Evans* was before the Illinois Supreme Court and, accordingly, we have held our decision in abeyance until our supreme court issued a ruling in *Evans*. The Illinois Supreme Court did so in February of 2013.

¶ 12 We conclude that the disposition of this appeal is controlled by our Illinois Supreme Court's recent opinion in *People v. Evans*, 2013 IL 113471. In that case, the defendant, George Evans, was found guilty of aggravated battery with a firearm and sentenced to 12 years. His conviction and sentence were affirmed on direct appeal. A subsequent *pro se* postconviction petition was dismissed by the circuit court, which dismissal was affirmed by

the appellate court. The issue raised in Evans's motion to file a successive postconviction petition was that after his direct appeal, he learned of the imposition of an MSR under which he would be under the jurisdiction of the Department of Corrections for 15 years rather than the 12 years the trial court imposed. The motion to file this successive petition was denied, the trial court stating that it had no control over imposition of an MSR.

¶ 13 Evans timely appealed, arguing that the petition he would file pursuant to motion stated the gist of a claim. The appellate court affirmed noting that all sentences include an MSR by operation of the law, citing the statute noted above and *People ex rel. Scott v. Israel*. Our Illinois Supreme Court granted Evans's petition for leave to appeal.

¶ 14 Evans argued to the Illinois Supreme Court that his lack of knowledge as to the MSR grounded his position that the petition had an arguable basis in law or fact and, accordingly, the trial court's denial of his motion was improper. Our Illinois Supreme Court declined to directly address these arguments, instead denying Evans's relief based on the factual grounding for his claim that his claim was not part of his initial postconviction petition because he did not know about imposition of the MSR. The Illinois Supreme Court held that in evaluation of cause and prejudice claims relating to a postconviction petition, ignorance of the law or a legal right cannot be a valid basis because "all citizens are charged with knowledge of the law." *People v. Lander*, 215 Ill. 2d 577, 588, 831 N.E.2d 596, 603 (2005); *People v. Boclair*, 202 Ill. 2d 89, 104-05, 789 N.E. 2d 734, 743-44 (2002). The court noted that at the time Evans was sentenced, the MSR provisions relating to Class X sentences were in effect.

¶ 15 The Illinois Supreme Court distinguished *Earley v. Murray*, 462 F.3d 147 (2d Cir. 2006), holding that a statutory period of MSR cannot be imposed unless expressly imposed by the sentencing judge. The Illinois Supreme Court distinguished *Earley* on two bases: first, that *Earley* construed New York law, and second, that *Earley* was handed down 15 months

after Evans was sentenced. The court also noted that Illinois law during this period of time was in full force and effect. Based upon its restatement of the principle that one is charged with knowledge of the law and, in particular, one's rights under the law, the Illinois Supreme Court denied Evans's relief and the affirmed the trial court and the appellate court.[1] In the instant case, defendant does not argue specific lack of knowledge of an MSR, but the basis of the Illinois Supreme Court's holding in *Evans* is applicable to defendant nevertheless. Our Illinois Supreme Court stated:

> "This court has made very clear that 'all citizens are charged with knowledge of the law' and that '[i]gnorance of the law or legal rights will not excuse a delay in filing a lawsuit.' *People v. Lauder*, 215 Ill. 2d 577, 588 (2005); see also *People v. Boclair*, 202 Ill. 2d 89, 104-05 (2002). Yet ignorance of the law is precisely the 'cause' that [Evans] asserts here to justify his failure to include the present claim in his initial postconviction petition. Again, [Evans's] present claim is that, in violation of his due process rights, he will be made to serve a three-year term of MSR that was neither imposed nor even mentioned by the trial court at sentencing. And his excuse for not including this claim in his initial postconviction petition is that:
>
> > 'The information about the [MSR] was not yet discovered to me yet. And when I did learn about it more research need to be done. Also it was still being decided in appeals court, so no case were able to be used as evidence.

[1]The Illinois Supreme Court majority addressed the issues raised by Evans obtaining leave to file successive postconviction petitions and showing cause and prejudice by urging the General Assembly to establish or clarify the statutory framework for resolving these issues. A dissent by Justice Burke noted the split in appellate districts as to the standards applicable to a motion to file a successive postconviction petition and argued the court should address this issue and resolve the split of authority among the districts.

Basically I Petitioner just discovered this.'

Thus, the only excuse that [Evans] proffers for not raising the MSR claim sooner is that he only 'just discovered' that he would be subject to a three-year term of MSR following his release. But at the time [Evans] was sentenced, as well as at the time of both his direct appeal and his initial postconviction proceeding, the Unified Code of Corrections expressly provided that, by operation of law, every Class X sentence 'shall include as though written therein a [three-year term of MSR] in addition to the term of imprisonment.' 730 ILCS 5/5-8-1(d)(1) (West 2004). [Evans] is presumptively charged with knowledge of this provision, and, as a matter of law, his subjective ignorance of it is not 'an objective factor that impeded' his ability to raise the MSR claim sooner." *People v. Evans*, 2013 IL 113471, ¶ 13.

¶ 16 The clear implication of the court's language is that, known by defendant or not, or stated by the sentencing judge or not, an MSR is imposed by operation of law. In the instant case, the fact that the MSR was not orally stated by the trial court or included in its written order neither precludes nor negates imposition of the appropriate MSR on defendant's sentence. That the Department of Corrections, in its administrative capacity, added defendant's MSR is of no consequence; it was acknowledging what was imposed by operation of law pursuant to the Unified Code of Corrections. Given the Illinois Supreme Court's holding in *Evans* on the imposition of the appropriate MSR by operation of law, we disagree with defendant's arguments to this court and rule in favor of the State.

¶ 17 Accordingly, for the reasons stated above, the judgment of the circuit court of Madison County denying defendant's motion to file a successive postconviction petition is hereby affirmed.

¶ 18 Affirmed.