

No. 1-11-1997

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 92 CR 10078
	)	
RAYMOND SCOTT,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE KARNEZIS delivered the judgment of the court.  
Justices Cunningham and Rochford concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court did not err in dismissing defendant's section 2-1401 petition; judgment affirmed.
- ¶ 2 Defendant Raymond Scott appeals from the dismissal of his *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (Civil Procedure) (735 ILCS 5/2-1401 (West 2010)) by the circuit court of Cook County. He maintains that the court erred in dismissing his petition because the 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 is void and must be stricken.

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¶ 3 The record shows that defendant is currently serving the respective, consecutive terms of 30 and 10 years' imprisonment imposed on his jury convictions for attempted murder and attempted armed robbery. *People v. Scott*, No. 1-93-1325 (1995) (unpublished order under Supreme Court Rule 23). On direct appeal, this court affirmed that judgment over defendant's claim, *inter alia*, that the trial court considered an improper factor in imposing sentence and that the sentence was excessive. *Scott*, order at 8.

¶ 4 In 1997, defendant filed a *pro se* post-conviction petition which was dismissed as frivolous and patently without merit. In 2004, defendant filed a section 2-1401 petition for relief from judgment which was treated as a post-conviction petition, dismissed as frivolous and patently without merit, and that decision was affirmed on appeal. *People v. Scott*, No. 1-05-0227 (2006) (unpublished order under Supreme Court Rule 23).

¶ 5 On January 5, 2011, defendant filed the instant *pro se* section 2-1401 petition alleging, in relevant part, that the IDOC improperly imposed a three year term of MSR which only the trial court can impose. The State subsequently filed a motion to dismiss defendant's petition, alleging that it was untimely and without merit. The State also maintained that the MSR term is part of the original sentence, and not an extension of it.

¶ 6 On May 19, 2011, defendant appeared in court *pro se*, and essentially argued the allegations made in his section 2-1401 petition. The trial court denied the petition finding that it was untimely and without merit because "the statute requires that MSR be served as a part of a sentence." The court also assessed defendant fees and court costs based on its findings that the petition lacked an arguable basis in law or in fact, the allegations and other factual contentions did not have evidentiary support, and the filings were presented to hinder, cause unnecessary delay, and needless increase in the cost of litigation.

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¶ 7 On appeal, defendant solely contends that the IDOC improperly increased his sentence by adding a three year term of MSR. He asserts that the MSR term imposed by the IDOC violates due process and the separation of powers, and is, therefore, void and must be stricken.

¶ 8 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 2008)), 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).

¶ 9 In this case, defendant's section 2-1401 petition was filed 16 years after the two-year limitations period expired. 735 ILCS 5/2-1401(c) (West 2010). Defendant, nonetheless, contends 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 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.

¶ 10 When defendant was sentenced in 1993, the Code provided that "*every sentence shall include as though written therein a term in addition to the term of imprisonment \*\*\*[and] such term shall be identified as a mandatory supervised release term \*\*\* [which] shall be as follows*" three years for a Class X felony. (Emphasis added.) Ill. Rev. Stat. 1993, ch. 38, par. 1005-8-1(d)(1). 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

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(2005); *People v. McCurry*, 2011 IL App (1st) 093411, ¶16. Here, defendant was a Class X offender, and therefore subject to a mandatory three-year term of MSR (730 ILCS 5/5-8-1(d) (West 2010); 720 ILCS 5/8-4 (West 2010)), which is reflected on the IDOC website (*People v. Henderson*, 2011 IL App (1st) 090923, ¶8 (reviewing court can take judicial notice of IDOC's website)). Based on this, defendant maintains that the IDOC, rather than the trial court, imposed the three-year MSR term against him, and thus the MSR term is 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 sentenced him. *People v. Horrell*, 235 Ill. 2d 235, 242-44 (2009); *People v. Lee*, 397 Ill. App. 3d 1067, 1073 (2010). We thus fail to see how the ministerial act by the IDOC of recording on its website the term of MSR defendant must serve translates into the IDOC improperly adding a term of MSR to his sentence.

¶ 12 Moreover, the supreme court has held that the adoption of the MSR statute was within the powers of the legislature and does not violate the separation of powers doctrine. *People ex rel. Scott v. Israel*, 66 Ill. 2d 190, 194 (1977). Defendant, however, citing *Hill v. United States ex rel. Wampler*, 298 U.S. 460 (1936), asserts that the imposition of MSR in his case was void. 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. In the case at bar, 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.

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¶ 13 Defendant also relies on 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 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 this case.

¶ 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 (PSR), 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 trial 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 *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)) which applies automatically ((Ill. S. Ct. R. 402 (eff. July 1, 2012)), 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

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a term of MSR, which would be served only after his release. *Hunter*, ¶¶21, 23. This court thus found *Earley* distinguishable from the case being considered. *Hunter*, ¶21.

¶ 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; Ill. Rev. Stat. 1993, ch. 38, par. 1005-8-1(d)(1). 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 light of the foregoing, we affirm the order of the circuit court of Cook County.

¶ 19 Affirmed.