



court of St. Clair County.

¶3 On December 14, 2001, Tate entered a negotiated plea of guilty to first-degree murder and aggravated battery in exchange for a joint recommendation that he be sentenced to consecutive prison terms of 24 and 2 years, respectively. The trial court accepted Tate's guilty plea and sentenced him in accordance with the joint recommendation. Tate did not file a motion to withdraw his guilty plea or a direct appeal.

¶4 On December 28, 2007, Tate filed a petition for postconviction relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2006)), alleging that he had not been informed at the time he entered his guilty pleas that he would be required to serve a period of mandatory supervised release in addition to his prison sentences. Tate requested, pursuant to *People v. Whitfield*, 217 Ill. 2d 177, 840 N.E.2d 658 (2005), that his prison terms be reduced by the number of years he would spend on mandatory supervised release so that his sentence would conform to the parameters of his guilty plea agreement. Attached to his postconviction petition was a copy of the transcript of the guilty plea hearing which revealed that Tate had not been advised that he would be required to serve a period of mandatory supervised release following his release from prison.

¶5 Counsel was appointed to represent Tate, and on September 24, 2008, appointed counsel filed an amended postconviction petition alleging (1) that Tate was denied due process where the trial court had failed to admonish him regarding mandatory supervised release, (2) that Tate had been "under stress" at the time he pled guilty and had been "coerced" into pleading guilty by guilty plea counsel, and (3) that guilty plea counsel had rendered ineffective assistance of counsel by having failed to raise the mandatory-supervised-release issue in the trial court. The State filed a motion to dismiss Tate's amended postconviction petition, arguing (1) that the petition was untimely, (2) that Tate forfeited the mandatory-supervised-release issue by failing to file a motion to withdraw his

guilty plea, and (3) that Tate had filed a pleading in 2006 which the trial court had construed as a postconviction petition and that Tate's 2007 postconviction petition was therefore a successive postconviction petition which had been filed without leave of court.

¶ 6 A hearing on the State's motion to dismiss was held on February 18, 2009. The State argued that Tate's postconviction petition was untimely notwithstanding the fact that *Whitfield* was not decided until 2005. The circuit court granted the motion to dismiss, finding that Tate's postconviction petition was untimely. Tate appeals.

¶ 7 Section 122-1(c) of the Act provides that "[i]f a defendant does not file a direct appeal, the post-conviction petition shall be filed no later than 3 years from the date of conviction, unless the petitioner alleges facts showing that the delay was not due to his or her culpable negligence." 725 ILCS 5/122-1(c) (West 2006). "Culpable negligence" contemplates something greater than ordinary negligence. *People v. Rissley*, 206 Ill. 2d 403, 420, 795 N.E.2d 174, 183 (2003) (quoting *People v. Bocclair*, 202 Ill. 2d 89, 106-08, 789 N.E.2d 734, 744-45 (2002)). In the present case, Tate did not file a direct appeal. He filed his postconviction petition on December 28, 2007, more than seven years after his conviction. Tate argued in his amended postconviction petition that he did not learn of the constitutional violation until counsel representing him on a previous appeal advised him in a letter dated May 2, 2007, that he could possibly raise a *Whitfield* claim.

¶ 8 Tate's argument that the delay in filing his postconviction petition was not the result of his culpable negligence because *Whitfield* was not decided until 2005, four years after he was convicted, necessarily fails because Tate does not have a viable *Whitfield* claim. In *People v. Morris*, 236 Ill. 2d 345, 925 N.E.2d 1069 (2010), the supreme court held that *Whitfield* announced a new rule because it "marked the first time this court held that a faulty MSR admonishment deprived a defendant of his right to due process by denying him the benefit of his bargain with the State." *Morris*, 236 Ill. 2d at 361, 925 N.E.2d at 1079.

However, the court went on to hold that although *Whitfield* announced a new rule of law, that rule was not a "watershed rule" of criminal procedure requiring retroactive application to cases on collateral review. *Id.* Accordingly, the supreme court held that the rule announced in *Whitfield* "should only be applied prospectively to cases where the conviction was not finalized prior to December 20, 2005, the date *Whitfield* was announced." *Morris*, 236 Ill. 2d at 366, 925 N.E.2d at 1081.

¶ 9 In the present case, the sole basis which could excuse the untimeliness of Tate's postconviction petition is that *Whitfield* was not decided until four years after Tate's conviction. However, a *Whitfield* "benefit of the bargain" claim is unavailable to Tate because his convictions were finalized well before December 20, 2005. In the absence of a viable *Whitfield* claim, Tate's postconviction petition was not timely. The remaining claims Tate raised in his amended postconviction petition could have been raised in a postconviction petition filed during the three-year period following his conviction. Likewise, a claim that the circuit court's failure to admonish him regarding mandatory supervised release rendered his plea involuntary could have been raised during that period. See *People v. Wills*, 61 Ill. 2d 105, 330 N.E.2d 505 (1975).

¶ 10 For the foregoing reasons, the motion of the State Appellate Defender to withdraw as counsel is granted, and the judgment of the circuit court of St. Clair County is affirmed.

¶ 11 Motion granted; judgment affirmed.