

NOTICE
Decision filed 05/30/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 120120-U
NO. 5-12-0120
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff-Appellee,)
)
v.)
)
RANDY GIDEON,)
)
Defendant-Appellant.)
)

Appeal from the
Circuit Court of
Williamson County.

No. 05-CF-559

Honorable
John Speroni,
Judge, Presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Spomer and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's due process rights were not violated where the trial court's admonishments, when read in a practical and realistic sense, would inform an ordinary person in the defendant's circumstances that a two-year term of mandatory supervised release would be added to his sentence.

¶ 2 The defendant, Randy Gideon, pleaded guilty to criminal sexual assault under section 12-13(a)(3) of the Criminal Code of 1961 (720 ILCS 5/12-13(a)(3) (West 2004)). He was sentenced to 11½ years' imprisonment in the Department of Corrections followed by 2 years' mandatory supervised release. He filed a petition for postconviction relief. After being appointed three attorneys, he waived his right to counsel and was granted leave to file an amended petition. The State filed a motion to dismiss, which the trial

court granted. The defendant filed a timely notice of appeal. We affirm.

¶ 3

BACKGROUND

¶ 4 The defendant was charged with predatory criminal sexual assault of a child and criminal sexual assault. On June 26, 2006, the court held a plea hearing. The State informed the court that the defendant would plead guilty to criminal sexual assault in exchange for the State's dismissing the charge of predatory criminal sexual assault of a child. The State, pursuant to a plea agreement with the defendant, recommended that he be imprisoned in the Department of Corrections for 11½ years. The trial court explained the charge to the defendant. It informed him that it was a Class 1 felony with a possible sentence of 4 to 15 years' imprisonment in the Department of Corrections. The defendant indicated that he understood. The following colloquy then took place:

"THE COURT: Mandatory supervised release—and there is that attached to this; is that correct, Ms. Irvin?

MS. IRVIN [Assistant State's Attorney]: Yes, Your Honor.

THE COURT: And right, Mr. Capps?

MR. CAPPS [defense attorney]: (Nods head).

THE COURT: Is two years in respect to this case. That's called parole in most states. So once you get out you'll be on mandatory supervised release for at least two years—for two years. Do you understand that?

THE DEFENDANT: Yes, sir."

¶ 5 The trial court questioned the defendant about whether his decision to plead guilty was made of his own free will and accord. The defendant stated that it was. The trial

court determined that there was a factual basis for the offense of criminal sexual assault based upon the allegations and the admissions by the defendant.

¶ 6 The defendant waived his right to a presentence report and a sentencing hearing. The trial court stated that it would "go along with the negotiation," and sentenced him to 11½ years' imprisonment in the Department of Corrections. The court explained: "Attached to the end of that sentence is 2-year mandatory supervised release term."

¶ 7 The defendant did not file a petition to withdraw his guilty plea or a direct appeal. On July 14, 2009, the defendant filed a petition for postconviction relief. After finding the gist of a constitutional claim, the court appointed the first of three court-appointed attorneys to represent the defendant before allowing the defendant to proceed *pro se*.

¶ 8 On November 2, 2011, the defendant filed a *pro se* amended postconviction petition. He alleged that he was deprived of the benefit of his bargain with the State because a term of mandatory supervised release was added to his sentence. On January 30, 2012, the State filed a motion to dismiss the defendant's petition for postconviction relief. The State argued that the defendant's allegations were rebutted by the record and were a misstatement of the law.

¶ 9 On February 17, 2012, after reading and considering the original and amended petition for postconviction relief, the State's motion to dismiss and memorandum of law in support of its motion, and the applicable law, the trial court granted the State's motion to dismiss the defendant's postconviction petition. The defendant filed a timely notice of appeal.

¶ 11 The defendant contends that a substantial violation of his rights occurred because the trial court failed to properly admonish him prior to accepting his guilty plea that a term of mandatory supervised release would be added to his sentence. He argues that while the trial court referenced the terms mandatory supervised release and parole, an ordinary person in his circumstances would have been confused by the court's statements. The defendant asserts that the court's statements did not reasonably inform him that he would have to complete a 2-year term of mandatory supervised release after serving his full 11½-year term of imprisonment. The defendant argues that because he was not told that his plea agreement with the State included a two-year term of mandatory supervised release and the trial court's statement about such a term was confusing, he was denied due process and his sentence should be reduced by two years to reflect the benefit of his bargain.

¶ 12 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2006)) provides an avenue for a defendant to challenge his conviction or sentence for violations of federal or state constitutional rights. *People v. Whitfield*, 217 Ill. 2d 177, 183 (2005). "To be entitled to postconviction relief, a defendant must demonstrate that he has suffered a substantial deprivation of his federal or state constitutional rights in the proceedings that produced the conviction or sentence being challenged." *Id.* Postconviction proceedings are limited to constitutional matters that have not been or could not have been previously adjudicated. *Id.* Second-stage dismissals of postconviction petitions are reviewed *de novo*. *Id.* at 182-83.

¶ 13 When seeking relief from a guilty plea, either directly or collaterally, a challenge may be made that the guilty plea was not made voluntarily and with full knowledge of the consequences or that the defendant did not receive the benefit of the bargain he made with the State when he pleaded guilty. *Id.* at 183-84. If a defendant shows that his guilty plea was made in reliance on a plea agreement, he may have a due process right to enforce the terms of the agreement because a plea bargain, once embodied in the judgment of a court, deprives a defendant of liberty and other constitutionally protected interests. *Id.* at 189. If a defendant negotiates a plea agreement for a specified sentence, the court's failure to advise the defendant, on the record, that a term of mandatory supervised release has been added to the sentence is a due process violation. *Id.* at 194. The addition of the mandatory supervised release term to the agreed-upon sentence constitutes an unfair breach of the plea agreement and violates due process because the sentence imposed is more onerous than the one the defendant agreed to at the time of the plea hearing. *Id.* at 195.

¶ 14 Admonishments are given to a defendant to advise him of the actual terms of the bargain he has made with the State and to ensure that his plea is entered intelligently and with full knowledge of its consequences. *People v. Morris*, 236 Ill. 2d 345, 366 (2010). There is no precise formula for admonishing a defendant of his mandatory supervised release obligation. *Id.* The court's admonition must be read in a practical and realistic sense and is sufficient if an ordinary person in the defendant's circumstances would understand it to convey the required warning. *Id.* The defendant must be advised that a mandatory supervised release term will be added to the actual sentence agreed upon in

exchange for a guilty plea to the offense charged. *Id.* at 367. Trial courts should discuss mandatory supervised release when reviewing the terms of the defendant's plea agreement, should include the mandatory supervised release term when imposing sentence, and should add the mandatory supervised release term to the written order of conviction and sentence. *Id.* at 368.

¶ 15 The defendant argues that no one told him that after he served 11½ years' imprisonment he would have to serve 2 more years on mandatory supervised release. The defendant admits that he was told that there would be a period of mandatory supervised release once he got out, but argues that "once you get out" did not inform him that the 11½-year term of imprisonment had to be spent in prison and that the mandatory supervised release did not start running until after completely serving those 11½ years of imprisonment. He argues that the way mandatory supervised release was explained he "could have been left with the impression that it was something served at the same time as the term of imprisonment or was included in his 11 and one-half year sentence."

¶ 16 When read in a practical and rational sense, the court's mandatory supervised release admonition was sufficient for an ordinary person in the defendant's circumstances to understand it. The court explained to the defendant that criminal sexual assault was a Class 1 felony with a minimum sentence of 4 years and a maximum sentence of 15 years' imprisonment in the Department of Corrections. It went on to state that two years' mandatory supervised release was attached to the sentence. It explained that mandatory supervised release is called parole in most states. The court specifically stated: "So once you get out you'll be on mandatory supervised release for at least two years—for two

years. Do you understand that?" The defendant responded in the affirmative. If the defendant did not understand what the court meant, he was given the opportunity to ask questions. The court sentenced the defendant to 11½ years in the Department of Corrections. It stated that "[a]ttached to the end of that sentence is 2-year mandatory supervised release term." The written judgment shows a sentence of 11½ years and a mandatory supervised release term of 2 years. By describing mandatory supervised release in these terms, the court put it in context and satisfactorily advised the defendant that, as a consequence of his plea, a 2-year term of mandatory supervised release would be added to his 11½ years of imprisonment.

¶ 17 Even if the defendant did not understand that the 2 years' mandatory supervised release would be added to his 11½ years' imprisonment in the Department of Corrections, it does not matter because the defendant did not enter a fully negotiated guilty plea. At the guilty plea hearing, the State informed the court that it had entered into a plea agreement with the defendant "to recommend to the court for 138 months, or 11 years—11½ years in the Department of Corrections." The defendant argues that although the State used the term "recommend" in informing the court of the plea agreement, "it was understood that the sentence was negotiated and agreed upon." When the State used the term "recommend," defense counsel did not clarify that the plea was fully negotiated, and there is nothing in the record to indicate that it was fully negotiated. Whether the failure to admonish a defendant about a mandatory supervised release period violates due process depends upon whether the defendant entered an open plea agreement or whether he pleaded guilty in exchange for a specific sentence. *People v. Adams*, 373 Ill. App. 3d

991, 995-96 (2007). Due process is violated only when a defendant enters a plea in exchange for a specific sentence and the court fails to advise him of the mandatory supervised release period. *Id.* at 996. When a defendant enters an open plea and is not advised of the mandatory supervised release term, due process is satisfied as long as the sentence plus the term of mandatory supervised release is less than the maximum sentence the defendant was told he could receive. *Id.* The defendant was not denied due process because his 11½-year sentence plus the 2-year mandatory supervised release period is less than the 15-year maximum sentence he could have received.

¶ 18

CONCLUSION

¶ 19 For the reasons stated, we affirm the judgment of the circuit court of Williamson County.

¶ 20 Affirmed.