2018 IL App (1st) 152634-U

SECOND DIVISION
June 26, 2018

No. 1-15-2634

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

	)	Appeal from the
	)	Circuit Court of
PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County, Illinois.
	)	
Respondent-Appellee,	)	Nos. 01 CR 20811 (02);
	)	01 CR 20812 (01);
v.	)	01 CR 20813 (01);
	)	01 CR 20814 (02);
DELAURENCE ROBINSON,	)	01 CR 20815 (01)
	)	
Petitioner-Appellant.	)	Honorable
	)	Michele McDowell Pitman,
	)	Judge Presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Trial court properly admonished defendant regarding mandatory supervised release before accepting defendant's guilty plea. (2) Postconviction counsel provided a reasonable level of assistance, despite not amending defendant's *pro se* petition, where defendant's claims, even if reframed, would not have been meritorious.

¶ 2 Defendant DeLaurence Robinson pled guilty to five charges of armed robbery and was sentenced to 30 years' imprisonment. At his plea hearing, the trial court advised him that he

"could be punished by 6 to 30 years in the penitentiary plus 3 years of mandatory supervised release." Ten years later, Robinson filed a postconviction petition asserting that, because the trial court used the word "could," he was not adequately advised that he *would* be subject to three years' mandatory supervised release (MSR) upon completion of his prison term. The circuit court dismissed his petition, and we affirm.

¶ 3 BACKGROUND

¶ 4 On April 17, 2003, pursuant to a negotiated guilty plea agreement, Robinson pled guilty to armed robbery in five separate cases, all stemming from robberies of liquor and convenience stores in July 2001. At the plea hearing, defense counsel stated that in exchange for Robinson's guilty plea, the State recommended that he be sentenced to "30 years [in the] Illinois Department of Corrections." After reading the charges against Robinson, and before accepting Robinson's plea, the trial court advised him:

> "THE COURT: Those are all Class X felonies and as such, you could be punished by 6 to 30 years in the penitentiary, plus 3 years of mandatory supervised release. You understand that, Mr. [Robinson]?
>
> ROBINSON: Yes, sir."

Robinson then pled guilty to the charged offenses. The trial court entered judgments of guilty and sentenced Robinson to 30 years' imprisonment "in accordance with the [plea] agreement." The trial court also admonished Robinson regarding his appellate rights, explaining that he had 30 days to file a motion to withdraw his guilty plea and vacate the judgments if he wanted to appeal. Robinson did not move to withdraw his guilty plea.

¶ 5 More than 10 years after his plea, on January 22, 2014, Robinson filed a *pro se* postconviction petition alleging that the MSR term was not disclosed to him during plea

negotiations, and the trial court's admonishment that he "could" receive three years of MSR was insufficient to advise him that he would, in fact, be subject to three years of MSR. He asked the court to remove the MSR term, reduce his prison term by three years, grant him a new sentencing hearing, or allow him to withdraw his plea.

¶ 6 The circuit court did not receive Robinson's petition until April 24, 2014, two days beyond the 90-day summary dismissal period. Accordingly, the court advanced Robinson's petition to the second stage of postconviction proceedings and appointed the public defender's office to represent him.

¶ 7 The State moved to dismiss Robinson's petition. Following a hearing, the trial court granted the State's motion, finding that Robinson was properly admonished regarding his MSR term.

¶ 8 ANALYSIS

¶ 9 The Illinois Post-Conviction Hearing Act (Act) allows those convicted of criminal offenses to raise constitutional challenges to their convictions. 725 ILCS 5/122-1 *et seq.* (West 2012); *People v. Hodges*, 234 Ill. 2d 1, 9 (2009). At the second stage of postconviction proceedings, the circuit court must determine whether the petition makes a substantial showing of a constitutional violation; if not, the petition is dismissed. *People v. Edwards*, 197 Ill. 2d 239, 246 (2001). We review the dismissal of Robinson's petition *de novo*, taking as true all well-pleaded facts that are not positively rebutted by the record. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006).

¶ 10 Robinson asserts that his guilty plea was not knowing and voluntary, because when he pled guilty, he was not aware that he would receive three years of MSR upon completion of his prison term, and the trial court's admonishments were insufficient to apprise him of that fact.

Relatedly, Robinson argues that he did not receive the benefit of his bargain with the State, because he pled guilty in exchange for a 30-year prison term with no mention of MSR.

¶ 11 Initially, the State argues that Robinson has waived these claims because a voluntary guilty plea waives all non-jurisdictional errors, including constitutional ones. *People v. Townsell*, 209 Ill. 2d 543, 545 (2004); see also *People v. Jackson*, 199 Ill. 2d 286, 295 (2002). Robinson argues that waiver does not apply because his guilty plea was not knowing and voluntary. See *People v. Morgan*, 385 Ill. App. 3d 771, 776 (2008) (because waiver is the voluntary relinquishment of a known right, it does not apply if a guilty plea is not knowing and intelligent); *People v. Gosier*, 145 Ill. 2d 127, 142 (1991) ("If the admonishments were improper, the law of waiver does not apply because the defendant could not have made a knowing and intelligent waiver of his constitutional rights.").

¶ 12 We find that the trial court adequately admonished Robinson as to his MSR term. Therefore, whether we apply waiver or consider his voluntariness claim on the merits, dismissal of his claim that his plea was not voluntary was proper.

¶ 13 Due process requires that a defendant understand the terms of his plea agreement before the plea is accepted by the court. *Boykin v. Alabama*, 395 U.S. 238, 244 (1969) (a guilty plea is not voluntary unless the accused "has a full understanding of what the plea connotes and of its consequence"). This requirement is codified in Supreme Court Rule 402, which provides that before accepting a guilty plea, the trial court must admonish the defendant as to the minimum and maximum sentence prescribed by law, determine that the plea was voluntary and "confirm the terms of the plea agreement." Ill. S. Ct. R. 402 (eff. July 1, 2012).

¶ 14 Based on these principles, in 2005, our supreme court in *People v. Whitfield*, 217 Ill. 2d 177, 201-02 (2005), adopted a rule that insufficient admonishments regarding MSR can deprive

a defendant of due process. Under *Whitfield*, an admonition is sufficient if an ordinary person in the defendant's place would have reasonably understood that MSR would be added to his sentence. *People v. Morris*, 236 Ill. 2d 345, 366 (2010) (clarifying *Whitfield*). The admonition "need not be perfect" but must "substantially comply" with Rule 402. *Id.* at 367. Thus, the *Whitfield* defendant's due process rights were violated when the trial court did not advise him at any time during his plea hearing that he would be subject to a three-year MSR term. *Whitfield*, 217 Ill. 2d at 180.

¶ 15 But the new rule announced in *Whitfield* is only applied prospectively to cases that were finalized on or after *Whitfield* was decided in 2005. *Morris*, 236 Ill. 2d at 366.[1] It does not apply to Robinson, since he pled guilty on April 17, 2003, and the judgment entered on his plea became final 30 days later. Accordingly, given that the new rule announced in *Whitfield* does not apply to his case, Robinson has not made a substantial showing that his plea was not knowing and voluntary.

¶ 16 Robinson next argues that he failed to receive the benefit of his negotiated plea bargain, in violation of *Santobello v. New York*, 404 U.S. 257, 262 (1971), which held that "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." According to Robinson, his negotiated plea bargain did not include MSR, so including it in his sentence violated his due process rights.

¶ 17 A nearly identical argument was rejected by this court in *People v. Demitro*, 406 Ill. App. 3d 954 (2010). In 2000, defendant pled guilty to first degree murder and was sentenced to 20

[1] Robinson argues that *Morris* was incorrectly decided to the extent that it limited *Whitfield* to prospective application only. But, as an intermediate court of review, we are required to follow the precedent of our supreme court. *People v. Applewhite*, 2016 IL App (1st) 142330, ¶ 23.

years' imprisonment plus MSR. He filed a postconviction petition alleging that he was not informed of the MSR term and did not receive the benefit of his bargain with the State. Although his conviction was finalized before *Whitfield* was issued, defendant argued that independent of *Whitfield*, he made a substantial showing that his due process rights were violated under *Santobello*. *Id.* at 957. *Demitro* held that *Morris* was dispositive of this claim, explaining:

> "Where *Whitfield* was the first time the supreme court relied on *Santobello* in the context of MSR, defendant cannot maintain a claim for that remedy without relying on the holding in *Whitfield*. By citing *Santobello*, defendant cannot avoid the effect of its progeny *Whitfield* and its limitation to prospective application under *Morris*." *Id.*

Likewise, since Robinson's conviction was final before *Whitfield* was issued, we reject his argument that he can raise a stand-alone claim under *Santobello*.

¶ 18 Robinson argues that *Demitro* was incorrectly decided because it treats *Morris* as limiting the United State Supreme Court's earlier decision in *Santobello*. This misconstrues *Dimitro*'s holding.

¶ 19 As *Morris* explained, *Whitfield* created a new rule; although *Whitfield* relied on *Santobello*, its holding was not "dictated or compelled" by *Santobello* or other precedent. (Internal quotation marks omitted.) *Morris*, 236 Ill. 2d at 361. In *Santobello*, defendant pled guilty in exchange for, among other things, the prosecutor's promise to make no sentence recommendation. *Santobello*, 404 U.S. at 258. Contrary to that promise, the prosecutor then recommended the maximum sentence. *Id.* at 259. *Santobello* held that the defendant was thereby denied the benefit of his bargain with the State. *Whitfield* created a new rule by extending this principle to faulty MSR admonitions for the first time. *Morris*, 236 Ill. 2d at 361. Prior to *Whitfield*, "Illinois courts routinely held that a defendant's right to due process was

protected even in the face of a faulty MSR admonishment, as long as the defendant's plea was entered knowingly and voluntarily." *Id.* at 360. Thus, before *Whitfield*, the law in Illinois did not view faulty MSR admonishments as a basis to challenge the voluntariness of a plea and, therefore, Robinson's claim necessarily relies on *Whitfield*.

¶ 20 Finally, Robinson argues that his postconviction counsel failed to provide reasonable assistance, as required under the Act. *People v. Suarez*, 224 Ill. 2d 37, 42 (2007). Robinson's counsel did not amend his *pro se* petition, but instead filed a certificate pursuant to Supreme Court Rule 651(c) (eff. Feb. 6, 2013) stating that she did not need to amend his petition to adequately present his contentions. Robinson argues that counsel should have modified his petition to (i) more clearly state his claim that his guilty plea was not knowing and voluntary; (ii) preemptively respond to the State's waiver argument; and (iii) preemptively respond to the State's argument regarding *Morris*.

¶ 21 We have considered these arguments and, for the reasons stated above, have found them without merit. Because the basis for Robinson's claim that his plea admonishments were defective was plainly stated in his petition, it was unnecessary for counsel to amend it.

¶ 22 This court recently clarified in *People v. Zareski*, 2017 IL App (1st) 150836, ¶ 59, that a "*Strickland*-like" analysis applies to reasonable assistance claims under the Act. Notably, this requires an evaluation of prejudice. *Id.* ¶¶ 59, 61. Postconviction counsel's failure to modify Robinson's petition has not precluded us from considering and rejecting the substance of his claims, and therefore Robinson suffered no prejudice from counsel's actions.

¶ 23 Moreover, postconviction counsel filed a Rule 651(c) certificate, which gives rise to a presumption that she provided reasonable assistance. *People v. Jones*, 2011 IL App (1st)

092529, ¶ 23. Robinson bears the burden of demonstrating that postconviction counsel substantially failed to comply with the rule (*id.*)—a burden which he has not met.

¶ 24 CONCLUSION

¶ 25 We affirm the trial court's dismissal of Robinson's postconviction petition.

¶ 26 Affirmed.