

2018 IL App (1st) 152877-U

No. 1-15-2877

Order filed March 15, 2018

Fourth Division

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
)	Nos. 11 CR 6516
v.)	11 CR 6517
)	11 CR 6518
)	
JUAN C. CORRAL,)	Honorable
)	Timothy Joseph Joyce,
Defendant-Appellant.)	Judge, presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Burke and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court's denial of defendant's *pro se* petition for relief from judgment reversed where defendant correctly alleged that he was sentenced to an incorrect term of mandatory supervised release; mittimus corrected.

¶ 2 Defendant Juan Corral appeals from an order of the circuit court of Cook County denying his *pro se* petition for relief from judgment filed under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)). On appeal, defendant solely contends, and

the State agrees, that his petition raised a meritorious claim that he was sentenced to an incorrect term of mandatory supervised release (MSR), and that his mittimuses must be amended to reflect the correct three-year term. We concur with the parties, and therefore, reverse the denial of defendant's petition and correct the mittimuses.

¶ 3 On August 19, 2013, defendant pled guilty to charges in three separate cases. Defendant committed each of the offenses between March 18, 2000, and December 2, 2004. In both case numbers 11 CR 6516 and 11 CR 6517, defendant pled guilty to one count of aggravated criminal sexual assault of a child under nine years old, and was sentenced to terms of six years' imprisonment. In case number 11 CR 6518, defendant pled guilty to one count of predatory criminal sexual assault of a child under 13 years old, and was sentenced to a term of eight years' imprisonment. The sentences run consecutively, for an aggregate term of 20 years' imprisonment.

¶ 4 During the plea hearing, for each offense, the trial court admonished defendant that he would be required to serve a mandatory term of MSR between three years and life. The mittimuses in case numbers 11 CR 6516 and 11 CR 6517 indicate that defendant must serve an MSR term of three years to life. The mittimus in case number 11 CR 6518 does not include the MSR term.

¶ 5 On September 6, 2013, Ernest VanZant, the record office supervisor at Big Muddy River Correctional Center, sent a letter to the trial court requesting corrected mittimuses reflecting an MSR term of five years rather than three years to life. VanZant opined that because defendant's offenses occurred prior to December 13, 2005, he was not subject to the MSR term of three years to life. VanZant further opined that because defendant was convicted of multiple sexual assaults,

he was subject to a five-year term of MSR. There is no indication in the record that corrected mittimuses were ever issued, or that the trial court took any action on VanZant's request. Both parties note that the website for the Illinois Department of Corrections (IDOC) indicates that defendant will serve a five-year term of MSR.¹

¶ 6 On January 7, 2015, defendant mailed the instant *pro se* petition for relief from judgment alleging, *inter alia*, that his MSR term should be three years, not three years to life. Defendant pointed out that the MSR statute had been amended effective July 11, 2005, adding the term of three years to life. He argued that all of his offenses occurred prior to that date, and therefore, the amended term did not apply to him. Defendant noted that at the time of his offenses, the statute provided that his MSR term would be three years. The circuit court found defendant's claims without merit and denied his petition.

¶ 7 On appeal, defendant solely contends, and the State agrees, that his petition raised a meritorious claim that his MSR term of three years to life is incorrect, and that his mittimuses should be amended to reflect the correct term of three years. The parties agree that when the trial court sentenced defendant during the plea hearing in August 2013, it erroneously imposed the MSR term in effect on that date, rather than the three-year term in effect at the time of the offenses. The parties further agree that defendant was not subject to a five-year term of MSR because he was not convicted of a "second or subsequent" sexual assault. The parties point out that defendant simultaneously pled guilty to multiple sexual assaults, none of which are considered "second or subsequent" offenses because he did not have a prior sexual assault conviction.

¹ This court may take judicial notice of the information appearing on IDOC's website. *People v. Sanchez*, 404 Ill. App. 3d 15, 17 (2010).

¶ 8 We review the circuit court's denial of a section 2-1401 petition *de novo*. *People v. Matthews*, 2016 IL 118114, ¶ 9. The determination of the proper term of MSR that applies in defendant's case is a matter of statutory construction which we also review *de novo*. *People v. Rinehart*, 2012 IL 111719, ¶ 23.

¶ 9 A defendant has the right to be sentenced under either the law in effect at the time the offense was committed, or the law in effect at the time he is sentenced. *People v. Horrell*, 235 Ill. 2d 235, 242 (2009). The trial court has a duty to advise a defendant of his right to elect the provision under which he should be sentenced, and where the court had failed to do so, the defendant was denied due process of law. *People v. Hollins*, 51 Ill. 2d 68, 71 (1972).

¶ 10 The *ex post facto* clauses of the United States and Illinois Constitutions prohibit retroactive application of laws that inflict greater punishment than the law that was in effect at the time the offense was committed. U.S. Const., art. I, §§ 9, 10; Ill. Const. 1970, art. I, § 16; *People v. Cornelius*, 213 Ill. 2d 178, 207 (2004).

¶ 11 Here, defendant committed the offenses in these three cases between March 18, 2000, and December 2, 2004. Throughout that time, section 5-8-1(d)(1) of the Unified Code of Corrections provided for an MSR term of three years for a Class X felony, including the sexual assault offenses at issue here. 730 ILCS 5/5-8-1(d)(1) (West Jan. 1, 2000 to July 10, 2005). By 2013, when defendant was sentenced, the legislature had amended the language of section 5-8-1(d), to provide for an MSR term of three years to life for defendants convicted of predatory criminal sexual assault of a child, aggravated criminal sexual assault, or criminal sexual assault "on or after the effective date of the amendatory Act of the 94th General Assembly," which was July 11, 2005. 730 ILCS 5/5-8-1(d)(4) (West 2004). Because defendant committed the offenses

prior to the effective date, the MSR term of three years to life does not apply to him. Accordingly, the trial court erred when it imposed the MSR term of three years to life, and when it denied defendant's *pro se* petition for relief under section 2-1401. The applicable MSR term is that which was in effect when defendant committed the offenses, which was three years. 730 ILCS 5/5-8-1(d)(1) (West 2004).

¶ 12 As noted by the parties, when defendant committed the offenses, the MSR statute also provided for an extended term of five years for a “second or subsequent offense of criminal sexual assault or aggravated criminal sexual assault” where the victim was under 18 years old. 730 ILCS 5/5-8-1(d)(4) (West 2000-2002). Both of defendant's victims of aggravated criminal sexual assault were under nine years old. Defendant committed one offense between March 18, 2000, and July 19, 2001, and the second offense between January 31 and March 17, 2002. IDOC records indicate that defendant will serve a five-year MSR term. However, the parties agree that the five-year extended term does not apply to defendant because his simultaneous convictions did not constitute “second or subsequent offenses.”

¶ 13 In *People v. Anderson*, 402 Ill. App. 3d 186, 190-93 (2010), the court analyzed the phrase “second or subsequent offense” in the MSR statute, and based on interpretations of similar provisions in other criminal statutes, determined that where a defendant is simultaneously convicted of two offenses, one is not a “second or subsequent offense” of the other. The court held that an offense does not constitute a “second or subsequent offense” that triggers the enhanced MSR term unless the defendant was previously convicted of the first offense prior to committing the second offense. *Anderson*, 402 Ill. App. 3d at 190-93.

¶ 14 Here, defendant did not have a prior sexual assault conviction when he simultaneously pled guilty to the two aggravated criminal sexual assault charges in these cases. Therefore, defendant's convictions do not constitute "second or subsequent offenses," and he was not subject to the extended five-year MSR term.

¶ 15 For these reasons, we reverse the order of the circuit court denying defendant's *pro se* petition for relief under section 2-1401, and direct the clerk of the court to issue new mittimuses in each of defendant's three cases to reflect his correct MSR term of three years.

¶ 16 Reversed; mittimuses corrected.