

2018 IL App (1st) 160734-U

No. 1-16-0734

Order filed June 1, 2018

Sixth 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 06 CR 17720
	)	
AISHEF SHAFFER,	)	Honorable
	)	Thomas J. Hennelly,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE DELORT delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Connors concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court erred in summarily dismissing defendant’s *pro se* postconviction petition because he presented an arguable claim that his due process right to receive the benefit of his negotiated plea bargain was violated when the court incorrectly admonished him that a two-year term of mandatory supervised release (“MSR”) would be added to his sentence, but instead an indeterminate three-years-to-life term of MSR attached.

¶ 2 Defendant Aishef Shaffer appeals from the circuit court’s summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.*

(West 2014)). On appeal, defendant contends that the circuit court erred in summarily dismissing his petition because it presented an arguable claim that his due process right to receive the benefit of his negotiated plea bargain was violated when the court incorrectly admonished him that a two-year term of mandatory supervised release (“MSR”) would be added to his sentence, instead of the indeterminate three-years-to-life term of MSR that was actually added. We reverse and remand for further proceedings under the Act.

¶ 3 The State charged defendant with a total of 16 counts related to a September 25, 2006, sexual assault: eight counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(4) (West 2006)), four counts of criminal sexual assault (720 ILCS 5/12-13(a)(1)-(a)(2) (West 2006)), two counts of home invasion (720 ILCS 5/12-11(a)(6) (West 2006)), and one count of residential burglary (720 ILCS 5/19-3 (West 2006)).

¶ 4 On July 28, 2008, the State informed the court that the parties had reached a negotiated plea agreement and that defendant would plead guilty to two counts of criminal sexual assault in exchange for a sentence of two consecutive terms of four years’ imprisonment. Before the court accepted defendant’s guilty plea, it admonished him that: the two counts to which he would plead guilty were Class 1 felonies with a sentencing range of 4 to 15 years’ imprisonment; he would be required to serve the two sentences consecutively; and he “will be subject to a term period of [MSR] of two years, which is much like parole, on each count.” Defendant indicated that he understood and wished to plead guilty. After the parties stipulated to the factual basis for defendant’s plea, the court found him guilty of two counts of criminal sexual assault pursuant to the plea agreement. The State nolle prossed the remaining counts.

¶ 5 The case immediately proceeded to sentencing, where the parties rested on the negotiated plea agreement. In accordance with the agreement, the court sentenced defendant to two consecutive terms of four years' imprisonment. In doing so, the court discussed defendant's presentence custody credit, fines and fees, and his reporting requirements under the Sex Offender Registration Act (SORA). The court's oral pronouncement of defendant's sentence did not include a mention of an MSR term. The written mittimus does not reflect a term of MSR.

¶ 6 Defendant did not move to withdraw his plea nor filed a direct appeal. On December 2, 2015, defendant filed a *pro se* petition for postconviction relief under the Act. In his petition, defendant alleged that, while in prison, he learned that the Illinois Department of Corrections (IDOC), "via the record office," had added a three-years-to-life term of MSR to his sentence. Defendant argued that the addition of an indeterminate period of MSR violated his due process right to receive the benefit of his negotiated plea bargain.

¶ 7 On January 8, 2015, the circuit court summarily dismissed defendant's *pro se* postconviction petition, finding it frivolous and patently without merit.

¶ 8 On appeal, defendant argues, and the State agrees, that the court erred in summarily dismissing his *pro se* postconviction petition where he presented an arguable claim that the court's admonishments regarding MSR violated his due process right to receive the benefit of his negotiated plea bargain. In support of his argument, defendant has included his sentencing information from the IDOC website as an appendix to his brief, which reflects that an indeterminate term of MSR was added to his sentence. See *People v. Henderson*, 2011 IL App (1st) 090923, ¶ 8 (courts may take judicial notice of information on the IDOC website).

¶ 9 The Act allows criminal defendants to challenge their convictions or sentences on grounds of constitutional violations. *People v. Beaman*, 229 Ill. 2d 56, 71 (2008). “The purpose of a postconviction proceeding is to permit inquiry into constitutional issues involved in the original conviction and sentence that were not, and could not have been, adjudicated previously on direct appeal.” *People v. Harris*, 206 Ill. 2d 1, 12 (2002).

¶ 10 Proceedings under the Act are divided into three stages. *People v. Pendleton*, 223 Ill. 2d 458, 472 (2006). At the first stage of postconviction proceedings, the trial court must independently review the petition, take the allegations as true, and determine whether the petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2014). A petition may be summarily dismissed as “frivolous or patently without merit only if the petition has no arguable basis either in law or in fact.” *People v. Hodges*, 234 Ill. 2d 1, 11-12 (2009). A claim has no arguable basis when it is based on an indisputably meritless legal theory, such as one completely contradicted by the record, or a fanciful factual allegation, such as those that are fantastic or delusional. *People v. Brown*, 236 Ill. 2d 175, 185 (2010). To survive the first stage, a petition need only present the gist of a constitutional claim. *People v. Allen*, 2015 IL 113135, ¶ 24. The allegations in the petition must be taken as true and liberally construed. *People v. Edwards*, 197 Ill. 2d 239, 244 (2001). We review the summary dismissal of a petition *de novo*. *Hodges*, 234 Ill. 2d at 9.

¶ 11 The principles of due process require that a defendant entering into a plea agreement understands and voluntarily agrees to the terms before the court accepts that agreement. *Boykin v. Alabama*, 395 U.S. 238, 243-44 (1969). This due process right to be fully admonished in open court is embodied in Illinois Supreme Court Rule 402 (Ill. S. Ct. R. 402(a) (eff. July 1, 2012)). See

*People v. Whitfield*, 217 Ill. 2d 177, 188 (2005). Rule 402(a) requires that the trial court give a defendant certain admonishments before accepting a guilty plea, including admonishing defendant of the “the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences[.]” Ill. S. Ct. R. 402(a)(2) (eff. July 1, 2012). Further, “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.” *Santobello v. New York*, 404 U.S. 257, 262 (1971).

¶ 12 After reviewing the record and defendant’s petition, we agree with the parties that defendant raised an arguable claim that the court’s admonishments regarding MSR violated his due process right to receive the benefit of his negotiated plea bargain. The record shows that, prior to accepting defendant’s guilty plea, the trial court admonished him that a two-year term of MSR would be added to his sentence under the negotiated plea agreement. However, the statutorily mandated MSR term for defendant’s conviction of two counts of criminal sexual assault is three years to natural life and is indeterminate (730 ILCS 5/5-8-1(d)(4) (West 2006)), which is a significant departure from the MSR term that the trial court admonished defendant he would receive. Defendant, according to his petition, only learned that the greater MSR term was added to his sentence after he already began serving his prison sentence. In his brief, defendant asserts that he relied upon the court’s admonishment when he entered his plea of guilty. This record and allegations, taken as true, present an arguable basis in law that defendant’s due process right to receive the benefit of his bargain was violated. Accordingly, the trial court erred in summarily dismissing his petition.

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¶ 13 We reverse the order of the circuit court of Cook County and remand for second-stage proceedings in accordance with the Act.

¶ 14 Reversed and remanded.