

No. 122435

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
Ex rel. ROBERT B. BERLIN, State's)	
Attorney of DuPage County, Illinois,)	Original Petition for a
)	Writ of Mandamus or
Petitioner,)	Prohibition
)	
v.)	
)	Underlying Case
THE HONORABLE GEORGE J. BAKALIS,)	DuPage County Case
Judge, Circuit Court of DuPage County,)	No. 15 CF 850.
)	
Respondent.)	

**OPENING BRIEF AND APPENDIX
OF PETITIONER**

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NATURE OF CASE

Defendant, Frank Gilio, entered a partially negotiated guilty plea to one felony count of violation of an order of protection that included no agreement on sentencing. Respondent, Circuit Court Judge George Bakalis, correctly admonished defendant that he was subject to a maximum prison term of six years for the Class 4 felony, but incorrectly admonished him that such term would be followed by one year of mandatory supervised release (MSR) rather than four years as mandated by statute. Judge Bakalis sentenced defendant to three years in prison, with one year of MSR. Roughly one year later, Judge Bakalis entered an order increasing the MSR term from one to four years but later vacated that order, citing *People v. Castleberry*, 2015 IL 116916 (mandamus only proper vehicle to increase sentence to comply with statutory requirements). This Court granted the People leave to file a petition for a writ of mandamus requesting correction of the MSR term to four years and ordered full briefing.

ISSUES PRESENTED

1. Whether 730 ILCS 5/5-8-1(d)(6) (2015) mandates that defendant serve a four-year MSR term after the prison sentence for his felony conviction for violation of an order of protection.
2. Whether this Court should amend its rules to permit statutorily unauthorized sentences to be corrected at any time by motion in the circuit court.

JURISDICTION

Jurisdiction lies under article VI, § 4(a) of the Illinois Constitution of 1970 and Supreme Court Rule 381(a). On July 17, 2017, this Court allowed petitioner's motion for leave to file a petition for a writ of mandamus or prohibition and ordered full briefing.

STATUTES INVOLVED

720 ILCS 5/12-3.4(d) (2015) provides, in relevant part:

Violation of an order of protection is a Class A misdemeanor. Violation of an order of protection is a Class 4 felony if the defendant has any prior conviction under this Code for . . . violation of an order of protection.

730 ILCS 5/5-4.5-15(c) (2015) provides:

Except when a term of natural life is imposed, every sentence includes a term in addition to the term of imprisonment. For those sentenced under the law in effect before February 1, 1978, that term is a parole term. For those sentenced on or after February 1, 1978, that term is a mandatory supervised release term.

730 ILCS 5/5-8-1(d)(6) (2015) provides, in relevant part:

(d) Subject to earlier termination under Section 3-3-8, the . . . mandatory supervised release term shall be . . . as follows:

* * *

(6) for . . . a felony violation of an order of protection, 4 years.

STATEMENT OF FACTS

On September 22, 2015, defendant pleaded guilty to one count of violation of an order of protection. App.1, App.2.¹ The People’s factual basis explained that an order of protection had been entered and served on defendant, effective June 2013 through June 2015, prohibiting defendant from being on the property of the victim, Susan Fouch. App.8. If the matter went to trial, Fouch would testify that she was at home in April 2015 and observed defendant knock on her window. *Id.* Defendant stipulated that the People’s witnesses would so testify. App.9.

In exchange for defendant’s guilty plea, the People *nolle prossed* three additional charges (two counts of aggravated battery (of a peace officer) and one additional count of violation of an order of protection) but made no agreement with regard to the sentence. App.1, App.4, App.13; A17. The count to which defendant pleaded guilty was a Class 4 felony because he had a prior conviction for violation of an order of protection; defendant was also eligible for an extended-term sentence. App.2, App.4. At the guilty plea hearing, Judge Bakalis admonished defendant that sentencing possibilities

¹ “App.” refers to the appendix to this brief; “A_” refers to the supporting record attached to the petition for writ of mandamus. On August 15, 2017, petitioner filed a motion to supplement the supporting record with: (1) defendant’s October 28, 2015 sentencing hearing transcript; (2) defendant’s charging instruments; (3) the sentencing order for defendant’s 2013 conviction for violation of an order of protection in *People v. Gilio*, No. 13 DV 711 (DuPage Cnty.); and (4) a certified statement of defendant’s 2007 conviction for unlawful possession of a controlled substance, a class 4 felony, in *People v. Gilio*, No. 07 CR 8354(01) (Cook Cnty.).

included periods of probation or conditional discharge of up to thirty months (up to six months of which could include county jail time) or imprisonment followed by one year of MSR, with a maximum prison term of six years. App.5.

On October 28, 2015, Judge Bakalis sentenced defendant to three years of imprisonment and a one-year MSR term. App.2. On October 25, 2016, Judge Bakalis sua sponte amended the sentencing order to reflect that defendant instead serve a four-year MSR term. App.12. The following day, on October 26, 2016, defendant was released from prison onto MSR. A18; *see also* <http://www.illinois.gov/idoc/Offender/Pages/InmateSearch.aspx> (last visited Aug. 17, 2017).² Soon after, defendant filed a pro se “notice of motion and petition” to “correct mitimus,” [sic] followed by a counseled postconviction petition challenging the October 25, 2016 order changing his MSR term from one to four years and requesting that his conviction be vacated and the matter set for trial. A13; App.13-14. Defendant’s postconviction petition asserted that he was misadvised about the MSR term and that he would not have pleaded guilty had he known that he would be required to serve a four-year MSR term. App.13. Defendant also argued that, pursuant to *Castleberry*, his statutorily unauthorized one-year MSR term was neither void nor subject to a sua sponte increase by the trial court. App.14.

² This Court may take judicial notice of information on the Illinois Department of Corrections (IDOC) website. *People v. Goods*, 2016 IL App (1st) 140511, ¶ 56.

The State moved to dismiss defendant's postconviction petition because, as relevant here, (1) he provided no evidence that he pleaded guilty in reliance on the incorrect MSR admonishment, (2) he suffered no prejudice in that he was admonished that he could receive up to seven years of custody and supervision (six years of prison time followed by one year of MSR) and he in fact was sentenced to seven years of custody and supervision (three years of prison time followed by four years of MSR)), and (3) *People v. Whitfield*, 217 Ill. 2d 177, 195 (2005) (holding that "due process is violated when a defendant pleads guilty in exchange for a specific sentence and the trial court fails to advise the defendant, prior to accepting his plea, that [an MSR] term will be added to that sentence"), was distinguishable. A16, A17, A23-28. The People acknowledged that, under *Castleberry*, the trial court was not authorized to increase the MSR term and the People's remedy lay in mandamus; however, the People disagreed that defendant should be allowed to withdraw his guilty plea. A28.

In May 2017, Judge Bakalis denied the People's motion to dismiss. A30, A34-35, A37. In June 2017, he granted the People's oral motion to reconsider and dismissed the postconviction petition — not granting defendant's requested relief of allowing him to withdraw his guilty plea and set the matter for trial, App.13-14, but also vacated the order correcting the MSR term from one to four years, so that the originally ordered one-year MSR term was in force. App.15, App.18-19, App.21. Judge Bakalis

acknowledged that the one-year MSR term was statutorily unauthorized, but ruled that under *Castleberry*, it could be corrected only if the People sought mandamus relief in this Court. App.19, App.21.

On June 30, 2017, the People filed a motion for leave to file a petition for a writ of mandamus or prohibition. This Court allowed the motion on July 17, 2017 and ordered full briefing.

ARGUMENT

I. This Court Should Issue a Writ of Mandamus Directing Judge Bakalis to Increase Defendant's MSR Term From One to Four Years, the Term Mandated by Statute.

Mandamus is proper only to direct public officers to perform authorized and non-discretionary official duties. *Cordrey v. Prisoner Review Bd.*, 2014 IL 117155, ¶ 18. The petitioner must demonstrate that he has a “clear right” to mandamus, that no other adequate remedy is available, and that no factual questions are present. *Id.*

There can be no dispute that Circuit Court Judge Bakalis is authorized to impose sentences in criminal cases and that some sentencing decisions are mandated by statute, rather than subject to the judge's discretion. *See Castleberry*, 2015 IL 116916, ¶ 27 (mandamus remedy permits People to challenge statutorily non-conforming criminal sentencing orders); *see, e.g., People ex rel. Alvarez v. Gaughan*, 2016 IL 120110, ¶ 34 (issuing writ of mandamus directing respondent judge to vacate sentencing order and

resentence defendant to include mandatory firearm enhancements on both of defendant's aggravated criminal sexual assault convictions).

And there can be no dispute that Judge Bakalis lacked discretion to impose anything but a four-year MSR term. By statute, any prison term imposed upon a felony conviction for violation of an order of protection must be followed by four years of MSR. *Round v. Lamb*, 2017 IL 122271, ¶ 3 (acknowledging four-year MSR term required upon felony conviction for violation of order of protection) (citing 730 ILCS 5/5-8-1(d)(6) (2016)); *see also* 720 ILCS 5/12-3.4(d) (2015) (violation of order of protection is Class 4 felony if defendant has prior conviction for that offense); App.1-2 (defendant pleaded guilty to count 3, violation of an order of protection with prior conviction for violation of an order of protection, a Class 4 felony). MSR terms are statutorily required; the prosecution has no power to negotiate away the applicable MSR term in a plea agreement and the circuit court has no power to impose a sentence without it. *People v. Whitfield*, 217 Ill. 2d 177, 200-01 (2005); *see also Round*, 2017 IL 122271, ¶ 16 (judge cannot avoid imposing MSR by omitting it from written sentencing order); 730 ILCS 5/5-4.5-15(c) (2015) ("Except when a term of natural life is imposed, every sentence includes a term in addition to the term of imprisonment[,] . . . a mandatory supervised release term.").

If and when this Court issues the writ of mandamus and Judge Bakalis modifies the judgment by lengthening defendant's MSR term,

defendant can decide whether to pursue a subsequent challenge to that new judgment. *See, e.g., People ex rel. Daley v. Strayhorn*, 119 Ill. 2d 331, 333, 336-37 (1988) (after accepting People’s argument that writ of mandamus should issue to compel circuit court to impose mandatory natural life sentence for triple murder, declining to address as “not properly before us” defendant’s arguments that his multiple convictions were unconstitutional and violated one-act, one-crime rule, which “[p]resumably” were also raised in pending direct appeal).

In any event, the record confirms that increasing defendant’s MSR term to conform with the statute creates no constitutional concerns. A challenge to his guilty plea premised on Judge Bakalis’s inaccurate MSR admonishment would necessarily fail because defendant cannot establish that he was deprived of the benefit of his bargain or that the plea was involuntary under the undisputed facts of the case. *See Whitfield*, 217 Ill. 2d at 183-84 (recognizing these two types of constitutional challenges to guilty pleas).

First, increasing defendant’s MSR term to four years would not deprive him of the benefit of the bargain he made upon pleading guilty because the plea agreement included no agreement to a specific sentence, *id.* at 195 (“due process is violated when a defendant pleads guilty in exchange for a specific sentence and the trial court fails to advise the defendant, prior to accepting his plea, that [an MSR] term will be added to that sentence”), and because

the maximum sentence that defendant was admonished that he could receive is more onerous than his prison term plus the longer MSR term required by statute, *see, e.g., People v. Merritt*, 395 Ill. App. 3d 169, 181-82 (4th Dist. 2009) (rejecting due process claim because agreed sentencing cap was 25 years and sentence of 23 years in prison plus unadmonished three years of MSR less onerous than cap).

Here, defendant was sentenced to (and has served) a three-year prison term. App.2; A18. Serving three years in prison and four years of MSR reflects seven years of custody and monitoring, and he was admonished upon pleading guilty that he could receive up to seven years of custody and monitoring: six years in prison and one year of MSR, App.5; *see also* 730 ILCS 5/5-4.5-45 (2015) (describing penalties for Class 4 felony). In fact, serving three years in prison and four years of MSR is *less* onerous than serving six years in prison and one year of MSR because MSR is a less onerous custodial status than imprisonment. *See, e.g., Merritt*, 395 Ill. App. 3d at 182 (noting “[i]t makes no sense” to argue that 23 years of imprisonment plus three years of MSR is more onerous than 25 years of imprisonment because a year of MSR is “significantly different” than a year in prison) (citing *People v. Jarrett*, 372 Ill. App. 3d 344, 351 (4th Dist. 2007) (“[y]ears of MSR and years in prison are not interchangeable”)); *see also Round*, 2017 IL 122271, ¶ 21 (noting that MSR is designed to facilitate reintegration into society, a “purpose distinct” from imprisonment). Accordingly, requiring defendant to

serve the statutorily mandated four-year MSR term would not deprive defendant of the benefit of the bargain that he made upon pleading guilty.

Nor can defendant establish that his guilty plea was not knowingly and voluntarily made. For example, *People v. McCoy* rejected such a claim, despite the absence of any admonishment about the required parole term, because McCoy pleaded guilty in exchange only for a sentencing recommendation and because the sentence he received — plus the mandatory parole term — was less than the maximum that he was admonished he could receive upon pleading guilty. 74 Ill. 2d 398, 402-03 (1979). As explained above, that is also true here. Defendant cannot demonstrate that his guilty plea was involuntary — despite the incorrect MSR admonishment he received — on these facts.

Therefore, this Court should issue a writ of mandamus directing respondent to enter an order imposing a four-year MSR term for defendant's felony conviction for violation of an order of protection.

II. The Court Should Amend Its Rules to Permit Statutorily Unauthorized Sentences to be Corrected at Any Time by Motion in the Circuit Court.

Although the Court declined to consider amending its rules in *Castleberry* because neither party argued for a rule change, the Court “reserved judgment on the matter should any amendment be proposed in the future.” *Castleberry*, 2015 IL 116916, ¶ 28. The People now propose that the Court amend its rules to fill the void left by the now-abrogated void sentence

rule. The Court resorted to the void sentence rule as a means to correct statutorily unauthorized sentences short of separate Supreme Court litigation where Rule 615(b)'s prohibition against increasing a sentence on appeal would otherwise leave the unlawful sentences in place. *See id.* at ¶ 24 (“Indeed, the void sentence rule rests on the assumption that Rule 615(b) does *not* permit a reviewing court to increase a criminal sentence; otherwise, there would be no need for a reviewing court to resort to the notion of voidness.”). But the inability after *Castleberry* to correct statutorily unauthorized sentences other than by invoking this Court’s original mandamus jurisdiction has led to two absurd outcomes and warrants amendment.

The first absurd outcome is that this Court has become the court of first resort to correct routine errors in a large class of cases. Without a new rule, the Court will be required to review an increasing number of mandamus complaints brought by the People to correct statutorily non-conforming sentences and MSR terms, as in the present case. And defendants sentenced more severely than statutorily authorized who failed to raise the sentencing errors on direct appeal must now file mandamus actions in this Court to obtain relief. *See People v. Brown*, 2016 IL App (2d) 140458, ¶¶ 8-9 (court lacked authority to correct sentence higher than statutorily authorized after abrogation of void sentence rule). Thus, many cases involving improper fines

or MSR terms that were resolved in the appellate court under the void sentence rule now end up as mandamus complaints on this Court's docket.

Correction of errors in imposition of or omission of fines is a particularly troublesome category. The flood of mandamus actions would be greater still were the People to seek correction of every sentence that omitted terms such as mandatory fines. But the second absurd outcome of the People's inability to correct statutorily unauthorized sentences except by litigation in this Court arises from these cases *not* making their way to this Court's docket, as the People decline to pursue imposition of omitted mandatory fines. It is all too easy for circuit courts to forget one or more of the myriad small but mandatory fines. *People v. Folks*, 406 Ill. App. 3d 300, 308-09 (4th Dist. 2010) ("The possibility of error [in assessing fines, fees, and costs] because of the complicated nature of the assessment process is high and is of great concern to the court and to the elected court clerks in the 102 counties of the state of Illinois."). But relatively few of these errors of omission will ever be corrected; as the appellate court has recognized, the fines in these cases generally amount to sums too small to justify expending additional government resources on separate Supreme Court litigation. *People v. Wade*, 2016 IL App (3d) 150417, ¶ 13 ("If the State believes that it is worth the time and money to pursue these fines (less than \$150), it must file a petition for writ of *mandamus* seeking an order requiring the trial court to impose the statutorily required fines," but "[i]t seems . . . that the

economically rational thing to do is to vacate the fines and move on to the next case.”).

As a result, funds supported by these fines will be impoverished by the aggregate amount of the all of individual fines worth less than the cost of litigating them. Such causes include county mental health and drug courts, *see* 55 ILCS 5/5-1101(d-5); the Spinal Cord Paralysis Cure Research Trust Fund, *see* 730 ILCS 5/5-9-1.1(c); the Violent Crime Victim Assistance Fund, *see* 725 ILCS 240/10; among others. The aggregate amounts of these fines can be significant; the Violent Crime Victim Assistance Fund receives more than \$7 million per year from collected fines. *See* 2015 Annual Report of the Illinois Courts, Admin. Summary, at 13 (\$7,517,940 in VCVA fines collected); 2014 Annual Report of the Illinois Courts, Admin. Summary, at 13 (\$7,208,196 in VCVA fines collected); 2013 Annual Report of the Illinois Courts, Admin. Summary, at 13 (\$7,249,594 in VCVA fines collected).

In some cases it may seem efficient for the appellate court to correct clerical errors once they have been fully briefed before it, but this practice presents a systemic drain on limited appellate resources. *See People v. Griffin*, 2017 IL App (1st) 143800, ¶ 5 (noting that “[t]his case is but one of hundreds of criminal appeals involving fines-and-fees issues that were overlooked in the trial court level and raised for the first time on appeal” and that “[a] Westlaw search reveals that in 2016 alone, there were 137 cases in this court where a defendant challenged the imposition of fines and/or fees

. . . , all for the first time on appeal”).³ “Copious amounts of time, effort, and ink are spent resolving these issues at the appellate level when many of them are more appropriately resolved at the trial level through (i) routine review of judgment orders after their entry — a task that would at most take minutes — and (ii) cooperation between the parties to correct any later-discovered errors by means of agreed orders.” *Id.* at ¶ 7 (citing *In re Derrico G.*, 2014 IL 114463, ¶ 107 (State’s Attorney has duty to see that justice is done for both public and defendant)); see *People v. Williams*, 2013 IL App (4th) 120313, ¶ 25 (“Additionally, we emphasize the tremendous amount of appellate resources expended in this case and many others just like it to correctly

³ The People’s own research revealed eighteen cases in 2016 alone in which the appellate court vacated mandatory fines as improperly imposed by the clerk, not including cases that may have been disposed of by summary order. See *People v. Breeden*, 2016 IL App (4th) 121049-B; *People v. Brown*, 2016 IL App (4th) 140260-U; *People v. Daily*, 2016 IL App (4th) 150588; *People v. Evans*, 2014 IL App (4th) 130001-UB; *People v. Galmore*, 2016 IL App (4th) 140410-U; *People v. Hible*, 2016 IL App (4th) 131096 (only claim raised by defendant was fines “imposed” by clerk); *People v. Hughes*, 2016 IL App (3d) 140136-U; *People v. Karmatzis*, 2016 IL App (4th) 140641-U; *People v. McCaney*, 2016 IL App (4th) 150125-U (clerk fines sole issue); *People v. McDaniel*, 2016 IL App (2d) 141061; *People v. Mister*, 2016 IL App (4th) 130180-B; *People v. Monroe*, 2016 IL App (4th) 140522-U; *People v. Nelson*, 2016 IL App (4th) 140168; *People v. Pettius*, 2016 IL App (4th) 140301-U; *People v. Vara*, 2016 IL App (2d) 140848, PLA allowed Mar. 29, 2017, No. 121823; *Wade*, 2016 IL App (3d) 150417; *People v. Walker*, 2016 IL App (3d) 140766; *People v. Warren*, 2016 IL App (4th) 120721-B. This list does not include published cases involving clerk-imposed fines where the appellate court did not specify whether any of the fines were mandatory. The People refer to the above unpublished cases for no purpose other than to evidence the existence and frequency of appellate litigation.

determine and assess the myriad of fines and fees our legislature has created.”). Requiring defendants to seek correction of clerical errors with the circuit court before appealing those errors promotes efficiency, in keeping with this court’s policies. *See People v. Marker*, 233 Ill. 2d 158, 169 (2009) (“[T]his court has . . . espoused the efficacy of providing the opportunity for an expeditious method to correct error short of an appeal.”).

Accordingly, the judicial system requires a mechanism to correct statutorily unauthorized sentences short of Supreme Court litigation. This Court should adopt a rule providing that “a statutorily unauthorized sentence may be corrected at any time by motion in the circuit court.” This is the mechanism employed by twenty-one states (and the federal courts prior to 1987). *See* Kristopher N. Classen & Jack O’Malley, *Filling the Void: The Case for Repudiating and Replacing Illinois’ Void Sentence Rule*, 42 Loy. U. Chi. L.J. 427, 543 (2011).⁴ Any sentencing term that could be challenged as

⁴ *See* Alaska R. Crim. P. 35(a) (“The court may correct an illegal sentence at any time.”); Colo. R. Crim. P. 35(a) (“The court may correct a sentence that was not authorized by law or that was imposed without jurisdiction at any time”); Conn. Super. Ct. R. 43-22 (“The judicial authority may at any time correct an illegal sentence or other illegal disposition”); Del. Super. Ct. R. Crim. P. 35(a) (“The court may correct an illegal sentence at any time”); Fla. R. Crim. P. 3.800(a) (“A court may at any time correct an illegal sentence imposed by it”); Haw. R. Penal P. 35(a) (“The court may correct an illegal sentence at any time”); Idaho Crim. R. 35(a) (“The court may correct a sentence that is illegal from the face of the record at any time.”); Iowa R. Crim. P. 2.24(5)(a) (“The court may correct an illegal sentence at any time.”); Kan. Stat. Ann. § 22-3504(1) (West 2010) (“The court may correct an illegal sentence at any time.”); La. Code Crim. Proc. Ann. art 882(A) (2008) (“An illegal sentence may be corrected at any time by the court that imposed the sentence or by an appellate court on review.”); Md. R. 4-345(a) (“The court

void under the void sentence rule could be challenged as statutorily unauthorized under this rule. *See Castleberry*, 2015 IL 116916, ¶ 13 (quoting *People v. Arna*, 168 Ill. 2d 107, 113 (1995) (explaining that under the void sentence rule, “[a] sentence which d[id] not conform to a statutory requirement [wa]s void.”)).

Adopting this rule would place correction of routine sentencing errors in the courts best situated to correct them: the circuit courts. The vast majority of these errors are easily remedied, involving prison terms above or below the statutorily mandated maximum or minimum, incorrect MSR terms, or fines other than as statutorily mandated. Neither this Court’s nor the appellate court’s involvement is necessary in most cases; the trial court is perfectly capable of correcting its own sentences to comply with clear statutory mandates once those mandates have been brought to its attention. *See Marker*, 233 Ill. 2d at 168-69 (quoting *People v. Robins*, 33 Ill. App. 3d

may correct an illegal sentence at any time.”); Minn. R. Crim. P. 27.03, subdiv. 9 (“The court may at any time correct a sentence not authorized by law.”); Nev. Rev. Stat. § 176.555 (2010) (“The court may correct an illegal sentence at any time.”); N.J. R. Ct. 3:21-10(b) (“A motion may be filed an order may be entered at any time . . . correcting a sentence not authorized by law.”); N.D. R. Crim. P. 35(a) (“The sentencing court may correct an illegal sentence at any time”); R.I. R. Crim. P. 35(a) (“The court may correct an illegal sentence at any time.”); S.D. Codified Laws § 23A-31-1 (Rule 35) (2010) (“A court may correct an illegal sentence at any time”); Utah R. Crim. P. 22(e) (“The court may correct an illegal sentence ... at any time.”); Vt. R. Crim. P. 35(a) (“The court may correct an illegal sentence at any time”); W. Va. R. Crim. P. 35(a) (“The court may correct an illegal sentence at any time”); Wyo. R. Crim. P. 35(a) (“The court may correct an illegal sentence at any time.”); Fed. R. Crim. P. 35(a) (prior to Nov. 1, 1987) (providing that “[t]he court may correct an illegal sentence at any time”).

634, 636 (4th Dist. 1975)) (“Public policy clearly favors correction of errors at the trial level.”). Adopting this rule would eliminate the obstacle that forced these cases onto the appellate court’s docket under the void sentence rule and has forced them onto this Court’s docket now that the void sentence rule has been abrogated.⁵

CONCLUSION

For these reasons, the People of the State of Illinois request this Court to issue a writ of mandamus directing respondent, the Honorable George Bakalis, to vacate defendant Frank Gilio’s one-year MSR term and reinstate a four-year MSR term, as mandated by 730 ILCS 5/5-8-1(d)(6) (2015). This Court should also amend its rules to permit statutorily unauthorized sentences to be corrected at any time by motion in the circuit court.

August 17, 2017

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

DAVID L. FRANKLIN
Solicitor General

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ROBERT B. BERLIN
State’s Attorney
503 North County Farm Road
Wheaton, Illinois 60187

Of Counsel

Counsel for Petitioner

⁵ The People also advocate for this rule change in *People v. Vara*, No. 121823.

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 17 pages.

s/Leah M. Bendik

LEAH M. BENDIK

Assistant Attorney General

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CRIMINAL ORDER

2015CF000850-167

STATE OF ILLINOIS

UNITED STATES OF AMERICA

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS

2015CF000850

VS

CASE NUMBER

FRANK PATRICK GILIO

FILED

15 Sep 22 AM 09: 41

Chris Kachirobas

CLERK OF THE

18TH JUDICIAL CIRCUIT

DUPAGE COUNTY, ILLINOIS

File Stamp Here

ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter:

IT IS ORDERED, based on the DEFENDANT'S motion:

DEFENDANT PRESENT IN CUSTODY WITH ATTORNEY DALTON.

DEFENDANT KNOWINGLY AND WILLINGLY ENTERS A BLIND PLEA TO COUNT THREE (3). STATE'S MOTION TO NOLLE PROSSE COUNTS ONE (1), TWO (2) AND FOUR (4) IS HEREBY GRANTED.

A PRESENTENCE INVESTIGATION

CASE IS CONTINUED TO 10/28/2015 AT 08:30 AM IN COURTROOM 4006 FOR SENTENCING

STRIKE FUTURE DATE 09/29/2015 at 10:00 AM in courtroom 4006 (CODE 2840)

STRIKE FUTURE DATE 09/29/2015 at 10:00 AM in courtroom 4006 (CODE 2840)

STRIKE FUTURE DATE 09/29/2015 at 10:00 AM in courtroom 4006 (CODE 2840)

Submitted by: LYNN CAVALLO

DuPage Attorney Number 50092

Attorney for PEOPLE OF THE STATE OF ILLINOIS

George J. Bakalis
File Date: 09/22/2015

JUDGE GEORGE J BAKALIS

Validation ID : DP-09222015-0941-34100

Date : 09/22/2015

CHRIS KACHIROUBAS, CLERK OF THE 18TH JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60187-0707

Page : 1 of 1

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A-01

JUDGMENT - SENTENCE TO IDOC

PAGE ____ OF ____

2153 (08/05)

STATE OF ILLINOIS

UNITED STATES OF AMERICA

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

People of the State of Illinois

-VS-

FRANK P. GILIO

DEFENDANT

15CF 850

CASE NUMBER

CT 3

CLERK OF THE
18TH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

15 OCT 28 AM 10:58

FILED

JUDGMENT - SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

Date of Sentence 10/28/15 Date of Birth 3/17/1968 Victim's Date of Birth 11/15/1965

WHEREAS the above-named defendant has been adjudged guilty of the offenses enumerated below.

IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE	MSR
3	VIOlation ORDER PROTECTION W/PRIOR CONVICTION VIOOP	4/24/15	720 ILCS 5/12-3.4(a) 720 ILCS 5/12-3.4(d)	4	3 Yrs. ____ Mos. ____ Yrs.	1 Yrs.

and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:

____ Yrs. ____ Mos. ____ Yrs.

and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:

____ Yrs. ____ Mos. ____ Yrs.

The Court finds that the defendant is:

- ☐ Convicted of a class ____ offense but sentenced as a class X offender pursuant to 730 ILCS 5/5-5-3(c)(8).
The Court further finds that the defendant is entitled to receive credit for time actually served in custody (of 186 days as of the date of this order) from (specify dates) 4/26/15 THROUGH 10/28/15
- ☐ The Court further finds that the conduct leading to conviction for the offenses enumerated in counts ____ resulted in great bodily harm to the victim. (730 ILCS 5/3-6-3(a)(iii)).
- ☐ The Court further finds that the defendant meets the eligibility requirements and is approved for placement in the Impact Incarceration program. If the Department accepts the defendant and determines that the defendant has successfully completed the program, the sentence shall be reduced to time considered served upon certification to the Court by the Department that the defendant has successfully completed the program. Written consent is attached.
- ☐ The court further finds that offense was committed as a result of the use of, abuse of, or addiction to alcohol or a controlled substance.
- ☐ IT IS FURTHER ORDERED that the sentence(s) imposed on count(s) ____ be (concurrent with) (consecutive to) the sentence imposed in case number ____ in the Circuit Court of ____ County.
- ☐ IT IS FURTHER ORDERED that the defendant serve ☐ 85 % ☐ 100 % of said sentence.
- ☐ IT IS FURTHER ORDERED that the Clerk of the Court deliver a certified copy of this order to the Sheriff.
- ☒ IT IS FURTHER ORDERED that the Sheriff take the defendant into custody and deliver him/her to the Department of Corrections which shall confine said defendant until expiration of his/her sentence or until he/she is otherwise released by operation of law.
- ☒ IT IS FURTHER ORDERED that DEFENDANT SHALL PAY RESTITUTION TO VILLAGE OF LOMBARD IN THE AMOUNT OF \$476.00. (FOUR HUNDRED SEVENTY-SIX DOLLARS)

This order is (____) effective immediately,

(____) stayed until ____

DATE: 10/28/2015

ENTER

10-28-15

JUDGE

[Signature]

(PLEASE PRINT JUDGE'S NAME HERE)

CHRIS KACHIROUBAS, CLERK OF THE 18TH JUDICIAL CIRCUIT COURT, WHEATON, ILLINOIS 60189-0707

A-02

1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF DU PAGE)

4 IN THE CIRCUIT COURT OF DUPAGE COUNTY
 5 FOR THE 18TH JUDICIAL CIRCUIT OF ILLINOIS

6 THE PEOPLE OF THE STATE)
 7 OF ILLINOIS,)

8 Plaintiff,)

9 vs.)

No. 15 CF 850

10 FRANK GILIO,)

11 Defendant.)

ORIGINAL

12 PROCEEDINGS had at the

13 hearing of the above-entitled cause, before the
 14 Honorable George J. Bakalis, Judge of said Court on
 15 Tuesday, the 22nd day of September, 2015, at the
 16 hour of 9:30 o'clock, a.m.

17 PRESENT:

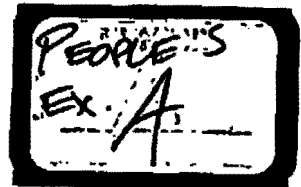
18 MR. ROBERT B. BERLIN,
 19 State's Attorney of DuPage County, by
 20 MS. LYNN CAVALLO,
 21 Assistant State's Attorney,

22 appeared on behalf of the
 23 People of the State of Illinois,

24 MR. STEVE DALTON,

appeared on behalf of the defendant.

Raymond F. Peters, CSR #84-002123



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1 THE CLERK: 15 CF 850, Frank Gilio.

2 MR. DALTON: Steve Dalton on behalf of Mr. Gilio
3 who is present and in custody.

4 MS. CAVALLO: Lynn Cavallo for the People.

5 THE COURT: It's up today for State's response,
6 argument --

7 MR. DALTON: Your Honor, we won't be proceeding
8 to argument at this time. There is a partial plea
9 agreement in terms of the charges. Mr. Gilio will
10 be entering a plea of guilty. There's no agreement
11 on the sentence and we'd ask for a pre-sentence
12 report and continue it for sentencing.

13 THE COURT: State, how do you want to proceed?

14 MS. CAVALLO: State will be proceeding on Count
15 3, your Honor. State will have a motion to nolle
16 pros Counts 1, 2 and 4.

17 THE COURT: Which one is Count 3?

18 MS. CAVALLO: Count 3 is the Violation of Order
19 of Protection. It's a class --

20 THE COURT: So Counts 1, 2 and 4 are dismissed?

21 MS. CAVALLO: Yes, Judge. It's a Class 4 and he
22 is extended term eligible on the Class 4.

23 THE COURT: The remaining charge is a charge of
24 Violation of an Order of Protection as well as a

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A-04

1 Class 4 felony.

2 A Class 4 felony, in your case, has a range
3 of a possible penalty of one to six years in the
4 Illinois Department of Corrections. A sentence
5 there would be followed by one year of mandatory
6 supervised release or parole. It carries possible
7 fines of up to \$25,000. This is the maximum
8 penalty.

9 The minimum penalty is up to 30 months of
10 probation or conditional discharge, up to six months
11 of that could consist of county jail time.

12 Do you understand the charge and the range
13 of possible penalties?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Is true today you wish to enter a
16 plea of guilty to this charge?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand you have the right
19 to continue your plea of not guilty and to ask that
20 your case proceed to a trial?

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: You are entitled to have a trial in
24 front of a jury where we would have selected twelve

~~HEGOWD BENDIK~~
~~HEGOWD BENDIK~~

1 jurors to hear the evidence and they would decide
2 whether you are guilty or not guilty or you could
3 waive that right and ask for a judge to hear your
4 case. A judge would decide whether you are guilty
5 or not guilty.

6 Do you understand that?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Do you understand that by pleading
9 guilty today you are giving up your right to such a
10 trial?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: You are also giving up your right to
13 have required the State to bring in witnesses to try
14 to prove this charge and that you and your attorney
15 could confront and cross-examine. You are giving up
16 your right to have subpoenaed witnesses on your own
17 behalf. You're giving up your right if you wish to
18 present evidence of defense in your own behalf. You
19 are giving up your right to either testify or remain
20 silent. You are giving up your right to have
21 required the State to have been able to prove your
22 guilt by proof beyond a reasonable doubt.

23 Do you understand that?

24 THE DEFENDANT: Yes, I do.

HEGUND BENDIK
HEGUND BENDIK

A-06

1 THE COURT: Are you pleading guilty today freely
2 and voluntarily?

3 THE DEFENDANT: Yes, I am.

4 THE COURT: Has anyone in any way forced you or
5 coerced you to do this?

6 THE DEFENDANT: No.

7 THE COURT: Has anyone made any promise or
8 representation to you as to what the eventual
9 sentence will be in order to get you to plead
10 guilty?

11 THE DEFENDANT: No.

12 THE COURT: Are you presently taking any type of
13 medication or drug, any other factor that might
14 affect your ability to understand what is taking
15 place here today?

16 THE DEFENDANT: No, I'm not.

17 THE COURT: Do you understand what is happening?
18 You just plead guilty. What is going to happen on a
19 future date is we are going to have a sentencing
20 hearing and I am going to decide what is the
21 appropriate sentence to be imposed.

22 Do you understand that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Are you a citizen of United States?

~~RECORD BENEATH~~
~~RECORD BENEATH~~

A-07

1 THE DEFENDANT: Yes, I am.

2 THE COURT: State, a factual basis.

3 MS. CAVALLO: Yes, your Honor. Thank you.

4 If this case were to proceed to trial, the
5 State would ask this Court to enter a certified copy
6 of an Order of Protection No. 130P6 -- strike that,
7 13 OP 630, which issued on June 12th, 2013, served
8 on the defendant June 12th, 2013, with an expiration
9 date of June 3rd, 2015, which was entered pursuant
10 to the Illinois Domestic Violence Act barring the
11 defendant from having any contact or any -- barring
12 the defendant from being on the property of the
13 victim in this case, Susan Foutch, F-O-U-T-C-H, at
14 her protected address of 835 East South Broadway,
15 Unit B, Lombard, DuPage County, Illinois.

16 The defendant would -- or the State would
17 then call the victim, Susan Foutch, F-O-U-T-C-H, who
18 would testify that on or about the 26th day of
19 April, 2015, that she was in her home at the
20 protected address and she observed the defendant who
21 she would identify as the person standing two to my
22 left, knock on the window of the protected address.

23 All these events occurring in DuPage
24 County, Illinois.

~~RECORDS SECTION~~
~~RECORDS SECTION~~

A-08

1 THE COURT: The State has witnesses that if
2 called to testify, would testify substantially in
3 that manner.

4 MR. DALTON: So stipulated.

5 THE COURT: The Court finds a factual basis,
6 finds the plea entered voluntarily. The defendant
7 understands the nature of the proceeding. The Court
8 accepts the plea and enters a finding of guilty.

9 So a pre-sentence investigation, is that
10 going to be pretty much a normal sentencing hearing?

11 MS. CAVALLO: Judge, we may have one witness but
12 I think other than that it would be nothing unusual.

13 THE COURT: What's the date --

14 MS. CAVALLO: I'm gone until October 27th.
15 October 17th, which is a Saturday. So really, the
16 19th through the 27th.

17 THE COURT: I would like to have it done before
18 then, the PSI done before that date. Your last day
19 here is the 17th?

20 MS. CAVALLO: My last day here is the 16th;
21 that's a Friday.

22 MR. DALTON: I'm not sure. I'm willing to try
23 but it may not be completed.

24 THE COURT: Okay. We'll come back on the 28th,

~~HECOWO BYNENH~~
~~HECOWO BYNENH~~

A-09

1 . 8:30, for sentencing. Okay.

2 MS. CAVALLO: Your Honor, can we strike that
3 future date, then? I think that's a trial date.

4 THE COURT: You're right. Strike 9/29.

5 Okay. Thank you.

6 MS. CAVALLO: Thank you.

7 MR. DALTON: Thank you.

8

9

10

11

12

(WHICH were all of the proceedings
had at the hearing of the above-
entitled cause, this date and time
aforesaid.)

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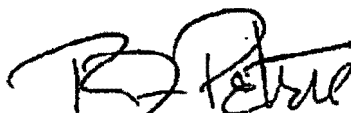
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1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF DU PAGE)
 4

5 I HEREBY CERTIFY that I reported in
 6 shorthand the proceedings had at the hearing of the
 7 above-entitled cause, and that the foregoing Report
 8 of Proceedings, consisting of Pages 1 to 9,
 9 inclusive, is a true, correct and complete
 10 transcript of my shorthand notes so taken at the
 11 time and place hereinabove set forth.
 12
 13
 14
 15

16 
 17

18 Official Court Reporter,
 19 Raymond F. Peters, CSR Lic. No. 84-002123
 20 Eighteenth Judicial Circuit of Illinois
 21 DuPage County
 22
 23
 24

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A-11

CRIMINAL ORDER

2015CF000850-232

STATE OF ILLINOIS

UNITED STATES OF AMERICA

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS

2015CF000850

VS

CASE NUMBER

FRANK PATRICK GILIO

FILED

16 Oct 25 AM 08: 52

Chris Kachirobas

CLERK OF THE

18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

File Stamp Here

ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter:

IT IS ORDERED, based on the COURT'S motion:

THE SENTENCE ORDER IS AMENDED TO REFLECT THE DEFENDANT'S MSR TERM IS FOUR (4) YEARS (NOT ONE). CLERK TO SEND ORDER TO IDOC.

Submitted by: KIRSTEN KING

DuPage Attorney Number 50033

Attorney for PEOPLE OF THE STATE OF ILLINOIS

503 N COUNTY FARM RD

WHEATON, IL, 60187

(630) 407-8000

Prosecutor email address : sa04006@dupageco.org

G. J. Bakalis
File Date: 10/25/2016

JUDGE GEORGE J BAKALIS

Validation ID : DP-10252016-0853-04752

Date : 10/25/2016

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WHEATON, ILLINOIS 60187-0707

Page : 1 of 1

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A-12

APP.12

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

**PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff**

V.

FRANK P. GILIO,

Defendant.

15 CF 850



AMENDED PETITION FOR POST-CONVICTION RELIEF

Now comes the Defendant, FRANK P. GILIO, by his attorney, JEFFREY R. YORK, Public Defender of DuPage County, through his assistant, VALERIE J. PACIS, and requests that this Honorable Court grant him relief under 725 ILCS 5/122-1, et seq, and in support thereof, he states as follows:

I. INTRODUCTION AND PROCEDURAL HISTORY

- a. On April 26, 2015, the Defendant was charged with two counts of Aggravated Battery and two counts of Violation of Order Protection.
- b. On September 22, 2015, Defendant entered a plea of guilty to one count of Violation of Order of Protection. The State dismissed the remaining counts. A pre-sentence report was ordered and the case was continued for sentencing. [Exhibit A]
- c. On October 28, 2015, after a hearing the Court imposed a sentence of three (3) years in the Illinois Department of Corrections to be followed by one (1) year of Mandatory Supervised Release (hereinafter "MSR"). [Exhibit B]
- d. On October 25, 2016, an order was signed amending Defendant's MSR term from one (1) year to four (4) years. [Exhibit C]
- e. On November 15, 2016, Defendant filed a Notice of Motion and Petition to "correct mitimus". Defendant scheduled the case to appear before the Court on November 18, 2016. [Exhibit D]
- f. On November 18, 2016 Defendant appeared before the court seeking to have his initial MSR term of one year imposed. The Court appointed the Public Defender to represent Defendant.

II. DEFENDANT WAS NOT ADVISED OF HIS PAROLE TERM

- a. Defendant essentially states that he was not properly advised of his parole term and had he known the parole term was for four years, he would not have entered a plea of guilty.


- b. The sentence imposed on October 28, 2015 was a void sentence and the only remedy for the Defendant would be to allow Defendant to withdraw his guilty plea, vacate the judgment and set the matter for trial.

III. THE ORIGINAL MSR TERM IMPOSED WAS STATUTORILY NON-CONFORMING AND WAS INCREASED *SUA SPONTE* IN THE DEFENDANT'S ABSENCE

- a. Defendant's MSR term is deemed a part of his sentence. The imposition of a one (1) year MSR term was statutorily non-conforming. However, the sentence cannot be considered "void" pursuant to *People v. Castleberry*, 2015 IL 116916.
- b. In *Castleberry*, the Illinois Supreme Court abolished the void sentence rule and held that a trial court may not *sua sponte* increase a statutorily non-conforming sentence. (See also, *People v. Glen Barrett*, 2017 IL App. (2d) 140948)
- c. Defendant's MSR term was not subject to correction at any time. The trial court was not permitted to increase the MSR term *sua sponte*.
- d. The amended MSR term entered on October 25, 2016, almost one year after Defendant received his sentence and advised in person of all the terms of his sentence, should be vacated and the original MSR term in the October 28, 2015 order should stand.

WHEREFORE, the Defendant prays this Honorable Court grant this petition for Post-Conviction Relief, vacate the judgment and sentence herein, and set this matter for trial; or, in the alternative, seeks that this Honorable Court impose the original MSR term of one (1) year.

Respectfully submitted,


 VALERIE J. PACIS
 Senior Assistant Public Defender
 Attorney for Frank P. Gilio

VALERIE J. PACIS, #100124
 DuPage County Public Defender's Office
 503 North County Farm Road
 Wheaton, IL 60187
 valerie.pacis@dupageco.org
 (630) 407-8300

1 STATE OF ILLINOIS)
 2 COUNTY OF DU PAGE) SS:

3
 4 IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
 5 DU PAGE COUNTY, ILLINOIS

6 THE PEOPLE OF THE)
 7 STATE OF ILLINOIS,)

8 Plaintiff,)

9 -vs-)

10 FRANK P. GILIO,)

11 Defendant.)

No. 15 CF 850

ORIGINAL

12
 13 REPORT OF PROCEEDINGS had at the hearing of
 14 the above-entitled cause, before the HONORABLE GEORGE
 15 BAKALIS, Judge of said court, on the 5th day of
 16 June, 2017.

17
 18 PRESENT:

19 MR. ROBERT B. BERLIN,
 20 State's Attorney of DuPage County, by
 21 MS. LISA HOFFMAN,
 Assistant State's Attorney,

22 appeared on behalf of The People of the
 State of Illinois;

23 MS. VALERIE PACIS,

24 appeared on behalf of the Defendant.

Angela M. Montini, CSR, RPR, CRR

1 THE CLERK: 15 CF 850, Frank Gilio.

2 MS. HOFFMAN: Good morning, your Honor.

3 Lisa Hoffman for the People.

4 MS. PACIS: Valerie Pacis.

5 MS. HOFFMAN: The case is set this morning for
6 status. I apologize, the attorney who had this case
7 before has been reassigned out of my unit, so it is
8 set for status.

9 And, I guess, two things: I am going to,
10 respectfully, since we're within 30 days, I am going
11 to ask the Court reconsider the decision to deny the
12 motion to dismiss the post-conviction petition. And
13 I know you're familiar with the arguments that we
14 made.

15 The bottom line, I think, is just that, in
16 this instance, post-conviction or withdrawal of the
17 guilty plea, however it is brought, isn't the right
18 remedy for the incorrect MSR.

19 And I think as the People said in our
20 motion to dismiss, we agree that this Court's sua
21 sponte order of October of 2016 was probably
22 incorrect under Castleberry because you can't correct
23 that void judgment that way, but the post conviction
24 doesn't serve -- the withdrawing of the plea isn't

Angela M. Montini, CSR, RPR, CRR

1 the remedy.

2 So, again, respectfully, I would say our
3 position would be that the petition be dismissed and
4 that the order of October be vacated so that the MSR
5 is reinstated to the one year.

6 Now, that said, at that point, the People
7 would be free to take -- to go to the Supreme Court
8 and do a mandamus action to get that proper mandamus
9 instated the four years as the appropriate mandamus.
10 And if the Supreme Court sees fit to do that, fine,
11 but that is what they told us that we're supposed to
12 do.

13 THE COURT: That is what the cases seem to say.
14 I think the one case that you made reference to --

15 MS. HOFFMAN: Yes, I think that was --

16 THE COURT: Assume for the moment, and I am
17 not -- assume for the moment that I granted his
18 request and said it was a year, couldn't you still
19 take it up?

20 MS. HOFFMAN: I will take it up.

21 THE COURT: And you could still ask if they
22 would issued a writ of mandamus.

23 MS. HOFFMAN: That they issue the writ of
24 mandamus to correct it to four years.

—Angela M. Montini, CSR, RPR, CRR—

1 THE COURT: Correct. So what is it that you
2 want to do?

3 MS. HOFFMAN: I think that is what we will do,
4 but, at this point, I guess my question is, if --
5 and, candidly, I think we will do that no matter, but
6 I guess my question is if the Court chooses not to
7 reconsider the denial of our motion to dismiss, then
8 I guess I would ask for clarification as to do we
9 then proceed to third stage on the petition or --

10 THE COURT: That is what we would have to do. I
11 think it would be argument more than anything.

12 MS. HOFFMAN: Right, right. Again, I am happy
13 to do that, I guess, but, again, I am just going to
14 say that I think our position is that the motion --
15 that withdrawing the guilty plea is not the proper
16 remedy and for him to -- and the remedy -- to remedy
17 the MSR, so --

18 THE COURT: My inclination, frankly, is not to
19 withdrawal the plea of guilty, but to, in fact,
20 indicate that that was the order, one year was
21 incorrect, but that is what I told him. That is the
22 basis he entered the plea. And that I would enter an
23 order saying that it is one year mandatory supervised
24 release and then you can do what you want to do.

Angela M. Montini, CSR, RPR, CRR

1 MS. HOFFMAN: That would be --

2 THE COURT: Can we do that today?

3 MS. HOFFMAN: That's fine.

4 THE COURT: Sir, you understand that I am
5 ordering -- this is incorrect. When I admonished
6 you, it was incorrect. I should have given you the
7 correct admonishment and I did not, but I am going to
8 adhere to the order and indicate that it is one year.

9 The State is going to appeal this to the
10 Illinois Supreme Court and ask that they issue a writ
11 of mandamus ordering me to correct the amount to four
12 years. If they do that, I have no choice in the
13 matter. Do you understand that?

14 THE DEFENDANT: Yeah, I guess, yes.

15 THE COURT: Okay. All right. Let's indicate --
16 give me an order that indicates I entered an order of
17 mandatory supervised release period will be as
18 indicated in my admonishments to him of one year and
19 the State has leave to, obviously, do what they feel.

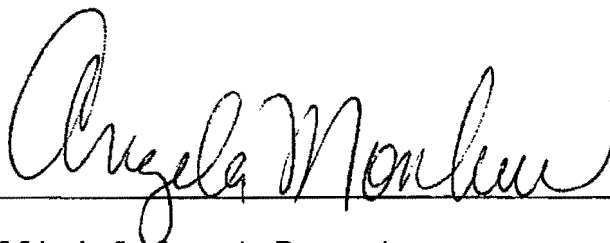
20 MS. HOFFMAN: Thank you.

21 THE COURT: Thank you.

22 (Which were all of the proceedings
23 had in the above-entitled matter.)
24

1 STATE OF ILLINOIS)
2 COUNTY OF DU PAGE) SS:
3

4 I, ANGELA M. MONTINI, do hereby certify that
5 the foregoing Report of Proceedings, consisting of
6 Pages 1 to 6, inclusive, was reported in shorthand by
7 me, and the said Report of Proceedings is a true,
8 correct and complete transcript of my shorthand notes
9 so taken at the time and place hereinabove set forth.
10

11 
12
13

14 Official Court Reporter
15 Certified Realtime Reporter
16 Eighteenth Judicial Circuit of Illinois
DuPage County
C.S.R. License No. 084-003716
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Angela M. Montini, CSR, RPR, CRR

CRIMINAL ORDER

2015CF000850-314

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS

2015CF000850

VS

CASE NUMBER

FRANK PATRICK GILIO

FILED

17 Jun 05 AM 10: 26

Chris Kachiroubas
CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

File Stamp Here

ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter:

IT IS ORDERED, based on the COURT'S motion:

MATTER COMES FOR STATUS ON POST-CONVICTION PETITION. FOR THE REASONS STATED ON THE RECORD, THE PEOPLE'S ORAL MOTION TO RECONSIDER THE MAY 8, 2017 ORDER DENYING THE MOTION TO DISMISS THE AMENDED POST-CONVICTION PETITION IS GRANTED. POST-CONVICTION IS DISMISSED.

CONSISTENT WITH PEOPLE V. CASTLEBERRY, 2015 IL 116916, THIS COURT'S ORDER OF OCTOBER 25, 2016 CORRECTING THE TERM OF MANDATORY SUPERVISED RELEASE IS VACATED. THE DEFENDANT'S TERM OF MANDATORY SUPERVISED RELEASE WILL BE ONE YEAR, AS WAS PREVIOUSLY ORDERED.

THE PEOPLE HAVE INDICATED THAT THEY WILL PURSUE A MANDAMUS ACTION IN THE ILLINOIS SUPREME COURT TO ADDRESS THE ISSUE OF MANDATORY SUPERVISED RELEASE.

THE CLERK IS DIRECTED TO SEND A COPY OF THIS ORDER TO THE ILLINOIS DEPARTMENT OF CORRECTIONS.

Submitted by: LISA ANN HOFFMAN

DuPage Attorney Number 50070

Attorney for PEOPLE OF THE STATE OF ILLINOIS

503 N COUNTY FARM RD

WHEATON, IL, 60187

(630) 407-8000

George J. Bakalis
File Date: 06/05/2017

JUDGE GEORGE J BAKALIS

Validation ID : DP-06052017-1024-57258

Date : 06/05/2017

CHRIS KACHIROUBAS, CLERK OF THE 18TH JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60187-0707

Page : 1 of 1

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APP.21

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STATE OF ILLINOIS)
)
 COUNTY OF COOK) ss.

PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 17, 2017, the **Brief and Appendix of Petitioner** was (1) filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the email addresses of the persons named below:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail thirteen copies of the brief to the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

s/Leah M. Bendik
 LEAH M. BENDIK
 Assistant Attorney General