No. 121365

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- BYRON BOYKINS Petitioner-Appellant	)	Appeal from the Appellate Court of Illinois, No. 1-14-2542. There on appeal from the Circuit Court of Cook County, Illinois , No. 07 CR 7163. Honorable Clayton J. Crane, Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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ORAL ARGUMENT REQUESTED

POINT AND AUTHORITIES

NATURE OF THE CASE

Byron Boykins, petitioner-appellant, appeals from a judgment summarily dismissing his petition for post-conviction relief.

An issue is raised concerning the sufficiency of the post-conviction pleadings.

ISSUE PRESENTED FOR REVIEW

When the trial judge admonished Byron Boykins before Boykins entered his negotiated guilty plea, the judge mentioned mandatory supervised release ("MSR") only in the context of possible penalties. Where the judge's admonishments were such that an ordinary person in Boykins's circumstances would not understand that he would be required to serve MSR, has Boykins stated an arguable claim that he has been denied the benefit of his bargain?

STATUTES AND RULES INVOLVED

Illinois Supreme Court Rule 402(a)(2) (2009)

In hearings on pleas of guilty, . . . there must be substantial compliance with the following:

(a) Admonitions to Defendant.

The court shall not accept a plea of guilty . . . without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:

. . .

(2) 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.

730 ILCS 5/5-8-1(d) (2009)

Except where a term of natural life is imposed, every sentence shall include as though written therein a term in addition to the term of imprisonment. . . . For those sentenced on or after February 1, 1978, such term shall be identified as a mandatory supervised release term. Subject to earlier termination under Section 3-3-8, the parole or mandatory supervised release term shall be as follows:

(1) for first degree murder . . . 3 years.

STATEMENT OF FACTS

The State charged seventeen-year-old Byron Boykins with the murder of Carlos Mathis. (C. 21-35) On March 25, 2009, Boykins's attorney told the judge, "There was an offer that was conveyed to Mr. Boykins of 22 years Illinois Department of Corrections, in exchange for his plea of guilty. He's informed me that he wishes to accept the offer." (Supp. R. 3)

In his guilty plea admonishments, the judge stated:

> Mr. Boykins, you're charged with the offense of first degree murder. That event is alleged to have occurred on or about October the 16th of the year 2006, in that you, without lawful justification, intentionally or knowingly killed – shot and killed Carlos Mathis, M-a-t-h-I-s.
>
> In the State of Illinois that's referred to as – the sentencing range for that case is from 20 to 40 – 20 to 60 years in the Illinois State Penitentiary. If I find that you've been found guilty of the same or greater class felony in the last ten years, the maximum penitentiary time in this case would be life. Upon your release from the penitentiary, there is a period of three years mandatory supervised release, sometimes referred to as parole. Understanding the nature of the offense and its possible penalties, how do you plead to this matter; guilty or not guilty? (Supp. R. 4-5)

Boykins responded that he was pleading guilty. (Supp. R. 5) Boykins affirmed that he understood that he had a right to a trial, including by jury, and that he was giving up that right, as well as his rights to confront the witnesses against him, call his own witnesses, and testify. (Supp. R. 5-6) He further agreed that he had signed forms waiving his right to a jury trial and to a pre-sentence investigation, and said that he was entering his plea freely and voluntarily, without threats or promises. (Supp. R. 7, 10-12)

Following those admonishments, the judge stated, "Now, in this particular situation, as you're aware, a meeting was held which involved your attorney, the Assistant State's Attorney, and in that meeting that Assistant State's Attorney

indicated that if you were to plead guilty to this matter, that she would recommend to me that you be sentenced to a period of 22 years in the Illinois Department of Corrections." (Supp. R. 7) Boykins stated that did not have any questions, and the judge responded, "Okay. The credit on this case is 757 days. I will bind myself to those results, the court having been familiar with this case and the defendant's background." (Supp. R. 7-8)

After the State provided a factual basis for the plea and advised the judge that Boykins had prior juvenile adjudications but no adult arrests, the judge sentenced Boykins to a 22-year term based on the terms of the plea deal. (Supp. R. 8-12) In sentencing Boykins, the judge did not mention mandatory supervised release ("MSR"). (Supp. R. 12-13) The mittimus did not refer to MSR. (C. 80)

Boykins did not appeal his conviction. (C. 122) In June 2011, Boykins asked the prison for a copy of his sentencing order. (C. 122-23, 139) On October 31, 2012, Boykins filed a *pro se* motion for sentencing transcripts, which the judge granted on January 4, 2013. (C. 111-19, 123) The clerk sent those transcripts to Boykins on January 14, 2013. (C. 119)

On April 30, 2014, Boykins filed a *pro se* post-conviction petition challenging his MSR term. (C. 120-45) Boykins alleged that the judge mentioned the rights he would be giving up when he pleaded guilty, but did not mention MSR, and that the judge did not mention MSR when issuing his sentence or on the mittimus. (C. 123-24) Accordingly, he argued, the MSR term violated his due process rights. (C. 125, 127-28, 131-32) Boykins further explained that he had not been aware of MSR until he heard other inmates discussing it. (C. 122)

The judge summarily dismissed Boykins's post-conviction petition on July

11, 2014. (R. D-2, C. 153-54) In his ruling, the judge found that he had substantially complied with Rule 402 by mentioning MSR during the Rule 402 admonishments. (R. D-2, C. 152-57)

On appeal, the appellate court affirmed, finding that the judge's mention of MSR during the Rule 402 admonishments sufficiently complied with Rule 402. *People v. Boykins*, 2016 IL App (1st) 142542-U, ¶¶ 12-18. This Court granted Boykins leave to appeal on November 23, 2016.

ARGUMENT

Byron Boykins stated an arguable claim that he was denied the benefit of his bargain by the addition of mandatory supervised release ("MSR") to his negotiated sentence, as the trial judge mentioned MSR only once during guilty plea admonishments when explaining the possible penalties.

Byron Boykins alleged in his *pro se* post-conviction petition that the trial judge failed to advise him that he *will* have to serve a three-year term of mandatory supervised release ("MSR") in addition to the 22-year sentence that he negotiated for and agreed to serve in exchange for his guilty plea. (Supp. R. 3-10, C. 24, 80, 123-25) The record confirms that the judge only mentioned MSR a single time in the context of *possible* penalties for first degree murder. (Supp. R. 4-5) Since the judge never linked MSR to the agreed-upon terms of Boykins's plea, Boykins raised an arguable claim that he will have to serve three years of MSR for which he never bargained, which violates his due process rights. This Court should therefore reverse the summary dismissal of Boykins's post-conviction petition and remand for second-stage proceedings.

This Court reviews the summary dismissal of a post-conviction petition *de novo*. *People v. Coleman*, 183 Ill. 2d 366, 389 (1998). First-stage petitions may be dismissed only if the petition is frivolous or patently without merit. 725 ILCS 5/122-2.1(2) (2014). A *pro se* petition survives first-stage review when it contains a gist of a claim, which requires only a limited amount of detail. *People v. Edwards*, 197 Ill. 2d 239, 245 (2001). Boykins presented a gist of a constitutional claim here.

Constitutional due process guarantees require a guilty plea to be knowing and voluntary. U.S. CONST. amend XIV; ILL. CONST. 1970 art I § 2; *Boykin v. Alabama*, 395 U.S. 238, 242-43 (1969). In accordance with those constitutional guarantees, Illinois Supreme Court Rule 402 requires all defendants who plead

guilty to be admonished of the rights that they relinquish with their guilty plea, as well as the consequences of a plea – including any MSR term for the offense. Ill. Sup. Ct. R. 402(a); *People v. Wills*, 61 Ill. 2d 105, 109 (1975). Substantial compliance with Rule 402 is sufficient, but "there is no substantial compliance with Rule 402 and due process is violated when a defendant pleads guilty in exchange for a specific sentence and the circuit court fails to advise the defendant, prior to accepting his plea, that a mandatory supervised release term *will be added to that sentence*." *People v. Whitfield*, 217 Ill. 2d 177, 195 (2005) (emphasis added).

In *Whitfield*, this Court detailed two constitutional claims that apply when a defendant challenges his guilty plea: "(1) that the plea of guilty was not made voluntarily and with full knowledge of the consequences, and (2) that the defendant did not receive the benefit of the bargain he made with the State when he pled guilty." 217 Ill. 2d at 183-86. Here, as in *Whitfield*, Boykins challenges his plea on the second basis: that he has not received the benefit of his bargain. *Id.* at 184; (C. 123-124). This claim arises from *Santobello v. New York*, 404 U.S. 257, 262 (1971), in which a defendant pleaded guilty in exchange for the government's promise not to make a sentencing recommendation. At sentencing, a different prosecutor recommended a sentence over defendant's objection, and the judge accepted that recommendation. *Id.* at 259-60. The United States Supreme Court reversed and remanded, stating that "when a plea rests in any significant degree on a promise or agreement by the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Id.* at 262.

The defendant in *Whitfield* entered a negotiated plea, in which he agreed to plead guilty in exchange for a 25-year sentence. *Whitfield*, 217 Ill. 2d at 180.

Neither the judge nor the prosecutor told Whitfield that he would have to serve a three-year MSR term after he finished his prison term. *Id*. When the defendant later learned about MSR, he filed a post-conviction petition alleging that the three-year MSR term violated due process because the MSR term resulted in a "more onerous" sentence than the one to which he agreed when he pleaded guilty. *Id*. Following the reasoning in *Santobello*, this Court held that adding the statutorily-required MSR term to Whitfield's negotiated sentence amounted to a unilateral modification and breach of his plea agreement with the State. *Id*. at 190, 195. This Court then "approximate[d] the penal consequences contemplated by the original plea agreement" and reduced his prison sentence by three years to offset the three-year MSR term. *Id*. at 204-05.

After *Whitfield*, this Court then considered whether a mere mention of MSR in the context of *possible* penalties sufficiently apprised two defendants at the time of their pleas that their negotiated terms would include MSR terms. *People v. Morris*, 236 Ill. 2d 345, 355 (2010) (consolidated with *People v. Holborow*). There, the judge told defendant Morris that his plea deal was for "thirty years in the Illinois Department of Corrections," and discussed the possible sentences available for Morris's Class X offense. *Id*. at 350. The judge's discussion of the possible sentences included that Class X felonies carry a "possible punishment of six to thirty years in the Illinois Department of Corrections, plus three years of mandatory supervised release," without probation, and a possible fine of up to $10,000. *Id*. The judge did not mention MSR again – not at sentencing and not on Morris's sentencing order. Similarly, a different judge told defendant Holborow that if his case were "handled by other than a plea agreement," he would face the applicable

sentencing range, plus MSR, but did not otherwise mention MSR. *Id.* at 351-53. After later learning about their MSR terms, Morris and Holborow each filed post-conviction petitions citing *Whitfield*. *Id.* at 350, 353.

On appeal, this Court ruled that *Whitfield* did not apply retroactively to guilty pleas entered before December 20, 2005, the date *Whitfield* was decided. 236 Ill. 2d at 353-66. Since both defendants' pleas pre-dated *Whitfield*, it did not apply to them. However, this Court went on to address whether admonishments such as Morris's and Holborow's sufficed under Rule 402. This Court held that Rule 402 admonishments are "given to ensure that the plea was entered intelligently and with full knowledge of its consequences," but "must also *advise the defendant of the actual terms of the bargain he has made with the State*." *Id.* at 366 (emphasis added) (internal quotation omitted). Thus, an admonition "that uses the term 'MSR' without putting it in some relevant context cannot serve to advise the defendant of the consequences of his guilty plea and cannot aid the defendant in making an informed decision about his case." *Id.* The admonishment is therefore sufficient only if "an ordinary person in the circumstances of the accused would understand it to convey the required warning." *Id.*

Morris further held that ideally, a judge's admonishments "would explicitly link MSR to the sentence to which defendant agreed in exchange for his guilty plea, would be given at the time the trial court reviewed the provisions of the plea agreement, and would be reiterated both at sentencing and in the written judgment." *Id.* at 367. This Court further "strongly encourage[d] trial court judges to follow this practice, and to discuss MSR when reviewing the terms of the defendant's plea agreement, to include the MSR term when imposing sentence, and to add

the MSR term to the written order of conviction. This practice, which is not unduly burdensome, would ensure that defendants understand the consequences of their plea agreement and would avoid prolonged litigation on the issue." *Id.* at 368.

Here, the admonishments given by the judge who accepted Boykins's guilty plea fell far short of this recommended practice. At the outset of proceedings, defense counsel explained the plea agreement, stating that the offer was "22 years Illinois Department of Corrections, in exchange for [Boykins's] plea of guilty." (Supp. R. 3) None of the parties mentioned MSR at that point.

The only reference to MSR came when the judge admonished Boykins of the *possible* sentences available for the offense, first degree murder:

> Mr. Boykins, you're charged with the offense of first degree murder. . . . In the State of Illinois that's referred to as – *the sentencing range* for that case is from 20 to 40 – *20 to 60 years* in the Illinois State Penitentiary. If I find that you've been found guilty of the same or greater class felony in the last ten years, *the maximum penitentiary time in this case would be life. Upon your release from the penitentiary, there is a period of three years mandatory supervised release, sometimes referred to as parole. Understanding the nature of the offense and its possible penalties*, how do you plead to this matter; guilty or not guilty?

(Supp. R. 4-5) (emphasis added)

But after those admonishments, the judge stated,

> Now, *in this particular situation*, as you're aware, a meeting was held which involved your attorney, the Assistant State's Attorney, and in that meeting the Assistant State's Attorney indicated *if you were to plead guilty to this matter, that [the State] would recommend to me that you be sentenced to a period of 22 years in the Illinois Department of Corrections.*

(Supp. R. 7) (emphasis added)

The judge's mention of a 22-year deal "in this particular situation," coming after the general admonishment about the *possible* penalties, would lead a

reasonable person in Boykins's circumstances to believe that MSR, which would normally apply, was not part of Boykins's "particular situation." Such a belief would be particularly reasonable because the judge did not mention MSR when he actually sentenced Boykins. (Supp. R. 12-13) Nor did the sentencing order refer to an MSR term. (C. 80) Thus, the only mention of MSR came during a discussion of the *possible* penalties.

Under *Morris*, the judge's admonishments were insufficient because the judge did not "explicitly link MSR to the sentence to which defendant agreed in exchange for his guilty plea." *Morris*, 236 Ill. 2d at 367. Moreover, the judge did not place the term of MSR in a context that clearly apprised Boykins that MSR would apply to his bargained-for sentence. *Id.* at 366. Simply put, an ordinary person in Boykins's circumstances would not understand that his sentence included the three-year MSR term, because the *only* mention of MSR came in the context of *possible* penalties, such as up to 60 years' imprisonment, or even natural life. (Supp. R. 4-5) Boykins was 16 at the time of the offense, with no adult convictions, and the parties had repeatedly referred to Boykins's deal "in this particular situation": a 22-year term. (Supp. R. 3-4, 7-8, 12)[1] The parties' repeated references to the plea agreement *never* mentioned MSR. (Supp. R. 3-4, 7-8, 12) A person in Boykins's circumstances therefore would not understand his sentence to include MSR – just as he would reasonably understand that his plea did not involve a prison sentence of 60 years or natural life. Thus, the judge did not substantially comply with Rule 402, and Boykins made an arguable claim that the addition of the three-year MSR term violated his due process rights to the benefit of his

[1]The record reflects that Boykins was 16 at the time of the offense, but 17 by the time he was charged. (C. 9, 24)

bargain.

While the judge did mention MSR when explaining the applicable sentencing range to Boykins, the judge concluded his explanation with the caveat that these were the "*possible* penalties," and did not inform Boykins that he himself would *have* to serve the term of MSR. (Supp. R. 4-5) (emphasis added). Since this reference to MSR does not explicitly link MSR to Boykins's sentence by advising him that a three-year MSR term *will* be added to his negotiated sentence, it does not comport with due process. Due process cannot be satisfied by merely mentioning MSR as part of a hypothetical. Furthermore, by specifically mentioning MSR when he explained the applicable sentencing range, and failing to mention MSR at all when discussing his plea agreement, the judge created the impression that the plea agreement did not include the additional term of MSR. (Supp. R. 4-5, 7) Based on the admonishments here, there would be no reason for Boykins to conclude that he would receive MSR as part of his sentence, when he did not negotiate for it and neither the judge nor the State mentioned it when explaining the agreement in court – just as there would be no reason for Boykins to conclude that he would receive the possible sentences of 60 years or even life that the judge mentioned.

This Court should therefore conclude that, just as the admonishments in *Whitfield* did not satisfy due process, the admonishments here do not satisfy Boykins's due process rights. Both federal and Illinois appellate case law support this conclusion. Indeed, in *Whitfield*, this Court agreed with the Seventh Circuit's opinion in *United States ex rel. Miller v. McGinnis*, 774 F.2d 819 (7th Cir. 1985), a case with admonishments very similar to those that Boykins received. *Whitfield*, 217 Ill.2d at 182. In *Miller*, the defendant pleaded guilty to murder and lesser

offenses in exchange for a 20-year murder sentence to be served concurrently with the sentences for the other charges. *United States ex rel. Miller*, 774 F.2d at 820-21. The judge admonished the defendant about the range of possible sentences available for each charge, then stated:

> As to each of these offenses, without murder being included, the Court can also impose what is called a mandatory supervised release period on you of up to a period of three years as to each of these - on each of these charges.

Id. at 820. The judge then asked the defendant if he understood, to which the defendant responded affirmatively, and the judge imposed the agreed-upon sentences without mentioning MSR again. *Id.* at 820-21.

The defendant, however, was required to serve a three-year MSR term, which, he argued on appeal in the Illinois appellate court, violated his plea agreement. *Id.* at 821-22. The appellate court found that not being informed that he would have to serve MSR did not deprive the defendant of any substantial constitutional right. *Id.* at 821. After this Court denied his petition for leave to appeal, the defendant filed a petition for *habeas corpus* in federal court. *Id.* at 822. The federal district court disagreed with the Illinois appellate court, finding that the failure to inform the defendant of his MSR term violated his due process rights because the defendant received a more onerous sentence than he had been told. *Id.* at 822. The Seventh Circuit affirmed and allowed the defendant to vacate his plea. *Id.* at 823-24, 826.

The admonishments in *Miller* are virtually indistinguishable from the admonishments here. Miller was told that a three-year MSR term was within the *possible* range of sentences available, but he was not told during his guilty plea admonishments or when he was sentenced that MSR would actually be part

of his sentence. In *Whitfield*, this Court cited *Miller* and then applied the same reasoning, using similar wording. *See Whitfield*, 217 Ill.2d at 182, 195 ("In these circumstances, addition of the MSR term to the agreed-upon sentence violates due process because the sentence imposed is more onerous than the one defendant agreed to at the time of the plea hearing"). Since the admonishments in *Miller* did not comport with due process, the admonishments given to Boykins likewise do not.

Similarly, Boykins is entitled to relief under Illinois cases that considered whether a defendant could have reasonably understood that MSR applied to his sentence when MSR was mentioned only in the context of possible penalties. In *People v. Daniels*, 388 Ill.App.3d 952, 954 (2d Dist. 2009), the judge apprised the defendant of the maximum and minimum sentences available for the charged offenses of burglary and forgery, and mentioned the relevant MSR terms. The judge then said, however, "*The agreement here* is that you be ordered to serve two years. . . on the forgery, three years...on the burglary." *Id.* (emphasis added). Critically, the judge also mentioned MSR when he actually sentenced the defendant. *Id.* The court nonetheless found the judge's admonishments insufficient, noting that the judge "did not link MSR to defendant's plea. . . the trial court did not state or imply that MSR would follow *any* prison term. Nor was the admonition a broad statement that the defendant's prison term would be followed by MSR." *Id.* at 959. Instead, the judge had "linked MSR only to the *maximum* sentences authorized for forgery and burglary," and the appellate court found that it was not certain the defendant would understand that MSR would follow a *minimum* prison term. *Id.* (emphasis added). Further, the court noted that the judge's comment

that "the agreement here" for the minimum sentences "could easily have reinforced" the idea that MSR only applied to a maximum sentence. *Id.*

In *People v. Smith*, 386 Ill.App.3d 473, 479-84 (5th Dist. 2008), the court held that the mere mention of MSR at any point in a negotiated guilty plea, without the explanation that MSR *will* be added to the negotiated sentence, does not ensure that the defendant fully understands the consequences of his plea. There, the judge mentioned the minimum and maximum punishments for first degree murder, then told Smith that he "could be" subject to three years' MSR. *Id.* at 474-75. The appellate court found these admonishments insufficient to satisfy due process, because the judge "never linked the mandatory-supervised-release term to the defendant's plea." *Id.* at 481-82. Further, the court held that "an ordinary person in the defendant's circumstances would not understand the trial court's admonishments to mean that a term of [MSR] would be added to any prison sentence, but would understand the admonishment as a warning about the *possible* penalties." *Id.* at 483 (emphasis added).

Similarly, in *People v. Company*, 376 Ill.App.3d 846, 850-51 (5th Dist. 2007), the judge included MSR in admonishing the defendant about the possible sentencing range, but qualified all of the possible sentences by stating that those sentences were available "if you were convicted at trial." The judge then stated that Company would receive a 15-year sentence as a result of the plea, "instead of" the possible available sentences the judge had previously mentioned. *Id.*; *see also People v. Mendez*, 387 Ill.App.3d 311, 313, 316-18 (2d Dist. 2008) (judge's admonishments did not satisfy due process where the judge stated that those sentences "could have" been the possible penalties, leading a defendant to reasonably believe that

he would only receive MSR if he had gone to trial).

Further, after this Court's decision in *Morris*, the court in *People v. Burns*, 405 Ill. App. 3d 40, 43 (2d Dist. 2010), concluded that a judge's failure to link the MSR term to the actual sentence that defendant agreed to serve failed to satisfy *Whitfield*. There, the judge's only reference to MSR came when the judge addressed the minimum and maximum Class X penalties, telling Burns that a conviction "could result in you being sentenced to the Illinois Department of Corrections for a period of time from 6 to 30 years; the extended term is 30 to 60 years. There's a potential fine of up to $25,000, with a period of three years mandatory supervised release." *Id.* at 42. The court held that this admonishment violated due process "because it did not link the term of MSR to the actual sentences that the defendant would receive under his plea agreement and did not convey unconditionally that the MSR *would* be added to the agreed-upon sentences." *Id.* at 43 (emphasis added). Instead, the admonishment "related solely to the penalties that the defendant *might* receive, and did not mention at all the sentences that the defendant *would in fact* receive under the plea agreement." *Id.* at 44 (emphasis added); *see also People v. Dorsey*, 404 Ill.App.3d 829, 836-37 (4th Dist. 2010) ("A court's mentioning of MSR only during the minimum and maximum penalties requires an ordinary person to make a significant analytical jump that MSR, which the court had just informed him applied to any prison term under the statutory sentencing range, also applied to the agreed-upon sentence").

Simply put, these cases properly considered whether an ordinary person in the defendant's circumstances would understand, after hearing the plea admonishments, that MSR *would* follow the defendant's sentence. These cases'

approach more accurately follows the intent behind Rule 402, "to ensure that the plea was entered intelligently and with full knowledge of its consequences," and to "advise the defendant of the actual terms of the bargain he has made with the State." *Morris*, 234 Ill. 2d at 366 (internal quotation omitted). This approach also gives effect to *Morris*'s language that an admonishment is only sufficient if "an ordinary person in the circumstances of the accused would understand it to convey the required warning." *Id.*; *see also Smith*, 386 Ill.App.3d at 482-83 ("[j]udged by objective standards, the circumstances existing at the time of the plea hearing justify the defendant's belief that his sentence did not include a mandatory-supervised-release term"); *Mendez*, 387 Ill.App.3d at 316-18 ("an ordinary person in defendant's place would not have known that MSR attached to his prison term"); *Daniels*, 388 Ill.App.3d at 959 (defendant could have objectively believed that MSR only applied to a maximum sentence, not his agreed-upon minimum term). Further, this approach makes a trial judge's admonishment obligations clear, reducing prolonged litigation. *Morris*, 234 Ill. 2d at 368. Here, the *only* reference to MSR in Boykins's cases came during the judge's discussion of *possible* penalties, and the judge later noted that "in this particular situation," the parties had agreed on a 22-year term, suggesting that the possible penalties – including MSR – did not apply. (Supp. R. 4-5, 7) Under this Court's decision in *Morris*, as well as under persuasive federal and Illinois precedent, Boykins thus made an arguable claim that his due process rights were violated by the addition of the MSR term.

Boykins acknowledges that other Illinois appellate courts have limited *Whitfield* to its facts, refusing to grant relief in cases in which MSR was mentioned only in the context of possible penalties. However, those courts have done so out

of a hostility to, and misapprehension of, *Whitfield*. For instance, in *People v. Jarrett*, and *People v. Borst*, the defendants were admonished about MSR when the judges explained the possible available sentences. *People v. Jarrett*, 372 Ill.App.3d 344, 345-46 (4th Dist. 2007) ("There's a possible fine of up to $500,000. There's what's called mandatory supervised release, what we used to call parole, up to 3 years"); *People v. Borst*, 372 Ill.App.3d 331, 332 (4th Dist. 2007) (judge stated the relevant sentencing range, then mentioned the applicable MSR term, then asked if defendant understood the "maximum possible penalties"). The judge in each case did not otherwise mention MSR, although the *Jarrett* judge included MSR on the sentencing order. *Jarrett*, 372 Ill.App.3d at 352. Both *Jarrett* and *Borst* found no due process violations because the trial judges mentioned MSR when informing the defendants of the possible available sentences. *Jarrett*, 372 Ill.App.3d at 352[2]; *Borst*, 372 Ill.App.3d at 334; *see also People v. Holt*, 372 Ill.App.3d 650, 651-54 (4th Dist. 2007) (admonishments adequate where judge told defendant that prison term would be followed by an MSR term of one to three years).

However, *Jarrett* and *Borst* make clear that the Fourth District Appellate Court disagrees with *Whitfield* in principle, and is not inclined to apply it to any situation beyond those in which MSR is not mentioned at all. *Jarrett*, 372 Ill.App.3d at 351; *Borst*, 372 Ill. App.3d at 334. In *Jarrett*, the court stated, "We have serious concerns about both the analysis and remedy in *Whitfield*." *Jarrett*, 372 Ill.App.3d at 351. *Jarrett* further noted that the court would be "constrained" to follow *Whitfield* only if the admonishments did not include *any* mention of MSR *and* MSR was

[2]The court in *Jarrett* also viewed the plea as only "partially negotiated," further distinguishing the case from *Whitfield*. 372 Ill.App.3d at 351.

not written on the judgment order – in other words, it would only apply *Whitfield* to a case that was completely on point with *Whitfield*. *Id.* at 351. Similarly, in *Borst*, the court stated, "If the trial court had failed to give defendant any admonishments concerning MSR, we would follow *Whitfield* even though we have concerns about the supreme court's opinion." *Borst*, 372 Ill.App.3d at 334. The Fourth District continued this approach after this Court's pronouncement in *Morris*. *See People v. Andrews*, 403 Ill.App.3d 654, 663-66 (4th Dist. 2010) (holding that a single mention of MSR during guilty plea admonishments about the sentencing range satisfied due process, and emphasizing that the Fourth District "has consistently rejected claims that have attempted to broaden *Whitfield*'s fundamental holding"); *Dorsey*, 404 Ill.App.3d at 836-38 (despite recognizing that *Morris* requires a "clearer and closer link between MSR and the agreed-upon sentence," stating that the Fourth District would follow *Andrews* to "maintain a consistent body of case law within the Fourth District").

Further, the Fourth District's resistance to *Whitfield* stems from a misapprehension of *Whitfield* itself. For instance, in *Andrews*, the court "categorically reject[ed] any notion that the statutorily mandated MSR is ever part of a plea agreement between the State and a defendant." *Andrews*, 403 Ill.App.3d at 663; *see also People v. Lee*, 2012 IL App (4th) 110403, ¶ 27. *Andrews* emphasized that "the parties have nothing to negotiate regarding an MSR term" because MSR is statutorily-required. 403 Ill.App.3d at 664. But, as *Andrews* also acknowledged, "the actual holding in *Whitfield* has nothing to do with plea agreements." *Id.* Instead, *Whitfield* focused on whether the defendant understood when he pleaded guilty that he would have to serve an MSR term in addition to his bargained-for sentence.

Whitfield, 217 Ill. 2d at 180, 183-86, 190, 195. Thus, to the extent that the Fourth District's resistance to *Whitfield* is based on its misapprehension of the claim in *Whitfield*, this Court should reject the Fourth District's narrow reading of *Whitfield*.

Boykins acknowledges that other districts of the appellate court have followed the *Jarrett* and *Borst* line of cases. *See*, *e.g. People v. Marshall*, 381 Ill.App.3d 724, 735-36 (1st Dist. 2008) (judge's admonishments sufficient where judge mentioned MSR during the guilty plea admonishments but did not explicitly link it to Marshall's agreed-upon sentence; court adopted the reasoning in *Jarrett* and held that *Whitfield* is limited to cases in which MSR is *never* mentioned); *People v. Berrios*, 387 Ill.App.3d 1061, 1062-65 (3d Dist. 2009) (judge's admonishments sufficient where judge said that "any sentence to the Department of Corrections [would be] followed by three years mandatory supervised release," and reiterated that the penalties included three years' MSR; court cited *Borst* and *Marshall*, reasoning that the defendant said that he understood that MSR would "apply to any sentence of imprisonment regardless of his plea"); *People v. Davis*, 403 Ill.App.3d 461, 465-67 (1st Dist. 2010) (following *Marshall*); *People v. Hunter*, 2011 IL App (1st) 093023, ¶¶ 15-19 (following *Marshall*). But, as explained above, the Fourth District's limitation of *Whitfield* to its facts stems from a resistance to, and misapprehension of, *Whitfield* itself. Cases relying on the Fourth District's interpretation of *Whitfield* thus suffer from that same faulty foundation.

Ultimately, this Court should find that Boykins stated an arguable claim that the addition of an MSR term to his agreed-upon sentence violates his due process rights because the judge did not advise him that he *would* be required to serve MSR in addition to his prison sentence. Under *Whitfield*, as clarified by

Morris, MSR must be linked to the defendant's bargained-for sentence during plea admonishments, which places MSR in the relevant context. *Whitfield*, 217 Ill.2d at 195 ("there is no substantial compliance with Rule 402 and due process is violated when a defendant pleads guilty in exchange for a specific sentence and the circuit court fails to advise the defendant, prior to accepting his plea, that a mandatory supervised release term *will be added to that sentence*") (emphasis added); *Morris*, 234 Ill. 2d at 366 (an admonition "that uses the term 'MSR' without putting it in some relevant context cannot serve to advise the defendant of the consequences of his guilty plea and cannot aid the defendant in making an informed decision about his case"). This approach more fully complies with the benefit of the bargain principles espoused by *Santobello* and *Whitfield* by ensuring that a defendant understands the terms of his plea deal and the consequences of his plea, and more accurately complies with *Morris*. Additionally, this approach clarifies the required guilty plea admonishments for both trial judges and reviewing courts. Under this approach, a trial judge will be aware that he or she must mention MSR when addressing the terms of the defendant's negotiated plea agreement, and reviewing courts will apply that standard to claims such as Boykins's. Clarifying the requisite admonishments ultimately will, as this Court recognized in *Morris*, "ensure that defendants understand the consequences of their plea agreement and would avoid prolonged litigation on the issue." *Morris*, 234 Ill. 2d at 368.

In this case, an ordinary defendant in Boykins's position would not reasonably understand that a term of MSR would be added to his sentence, when he was only admonished about MSR in the context of *possible* penalties, most of which he did not receive. The judge told him the sentencing range was 20 to 60 years'

imprisonment, or even natural life, then mentioned a three-year MSR term and asked if Boykins understood the *possible* penalties. (Supp. R. 4-5) These admonishments did not put MSR in a relevant context that advised Boykins of the consequences of his plea. Moreover, after giving Boykins that general admonishment, the judge told Boykins "in this particular situation," the parties had met and agreed to a 22-year term – suggesting to Boykins that all of the earlier-mentioned *possible* penalties, including MSR, did not apply to him because he had a separate plea deal. (Supp. R. 7) The judge thus entirely failed to link the three-year MSR term to Boykins's plea agreement and sentence. This Court should therefore hold that Boykins made an arguable claim that he was denied the benefits of his bargain by the addition of the MSR term to his sentence, and remand his case for second-stage proceedings on his post-conviction petition.

CONCLUSION

For the foregoing reasons, Byron Boykins, petitioner-appellant, respectfully requests that this Court reverse the summary dismissal of his post-conviction and remand for second-stage post-conviction proceedings.

Respectfully submitted,

PATRICIA MYSZA
Deputy Defender

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CERTIFICATE OF COMPLIANCE

I, Aliza R. Kaliski, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding 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 23 pages.

/s/Aliza R. Kaliski
ALIZA R. KALISKI
Assistant Appellate Defender

No. 121365

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- BYRON BOYKINS Petitioner-Appellant	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-14-2542. There on appeal from the Circuit Court of Cook County, Illinois , No. 07 CR 7163. Honorable Clayton J. Crane, Judge Presiding.

NOTICE AND PROOF OF SERVICE

TO: Lisa Madigan, Attorney General, 100 W. Randolph St., Chicago, IL 60601;

Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602;

Mr. Byron Boykins, Register No. M03783, Dixon Correctional Center, 2600 North Brinton Avenue, Dixon, IL 61021

Under the penalties provided in law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that an electronic copy of the Brief and Argument in the above-entitled cause was submitted to the Clerk of the above Court for filing on January 31, 2017. On that same date, we personally delivered three copies to the Attorney General of Illinois, personally delivered three copies to opposing counsel and mailed one copy to the petitioner-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. The original and twelve copies of the Brief and Argument will be sent to the Clerk of the above Court upon receipt of the electronically submitted filed stamped motion.

/s/Kelly Zielinski
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APPENDIX TO THE BRIEF

Byron Boykins No. 121365

INDEX TO THE RECORD

2016 IL App (1st) 142542-U

FOURTH DIVISION
September 15, 2016

No. 1-14-2542

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 7163
	)	
BYRON BOYKINS,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

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

O R D E R

¶ 1 *Held*: The summary dismissal of defendant's *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)), is affirmed over his contention that the trial court violated his due process rights by failing to sufficiently admonish him, prior to accepting his guilty plea, that he would be required to serve a three-year term of mandatory supervised release following his agreed upon prison sentence.

1-14-2542

¶ 2 Defendant Byron Boykins appeals the summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)). He contends that his petition presented an arguable claim that the trial court violated his due process rights because it deprived him of the benefit of his negotiated plea agreement by failing to advise him that he would be required to serve a three-year term of mandatory supervised release (MSR) following his agreed upon 22-year sentence. We affirm.

¶ 3 Defendant was arrested on February 27, 2007, in connection with the shooting death of Carlos Mathis. Defendant was subsequently charged by indictment with six counts of first degree murder and six counts of aggravated unlawful use of a weapon. Pursuant to a negotiated plea agreement, defendant was convicted of the first degree murder of Mathis and sentenced to 22 years' imprisonment. According to the factual basis for the plea, on October 16, 2006, "a little bit after midnight," defendant argued with Mathis near the area of 5852 South Prairie Avenue and shot him once in the back. Mathis was transported to Northwestern Memorial Hospital where he died.

¶ 4 Defendant's case was set for a jury trial. On the date of trial, defense counsel informed the court that defendant had been offered a sentence of 22 years' imprisonment on the charge of first degree murder in exchange for his plea of guilty. The court advised defendant that he was being charged with the offense of first degree murder for the shooting death of Mathis. The court then admonished defendant:

> "In the State of Illinois that's referred to as – the sentencing for that case is from 20 to 40 – 20 to 60 years in the Illinois State penitentiary. If I find that you've been found

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guilty of the same or greater class felony in the last ten years, the maximum penitentiary time in this case would be life.

Upon your release from the penitentiary, there is a period of three years mandatory supervised release, sometimes referred to as parole.

Understanding the nature of the offense and its possible penalties, how do you plead to this matter; guilty or not guilty?

THE DEFENDANT: Guilty."

¶ 5 The court then admonished defendant of the rights he was waiving by pleading guilty. Defendant stated that he understood those rights and that he was pleading guilty of his own free will. The State read a factual basis for the plea to which defendant stipulated. The trial court accepted defendant's plea as knowing and voluntary. The case immediately proceeded to sentencing.

¶ 6 At sentencing, defendant waived his right to a presentence report. In aggravation, the State informed the court that defendant had several juvenile adjudications and no prior adult arrests. The court found the State's recommendation appropriate and sentenced defendant to 22 years' imprisonment. The trial court did not mention MSR during sentencing and the three-year MSR term is not reflected on defendant's *mittimus*.

¶ 7 The trial court then admonished defendant of his right to appeal. Defendant did not file a direct appeal.

¶ 8 On May 9, 2014, defendant filed a *pro se* postconviction petition arguing, in pertinent part, that the trial court violated his due process rights by failing to properly admonish him that his prison sentence would be followed by a three-year term of MSR as required by *People v.*

Whitfield, 217 Ill. 2d 177 (2005). Defendant requested that the trial court reduce his prison term by three years or, in the alternative, remove his obligation to serve the three-year term of MSR.

¶ 9 On July 11, 2014, in a written order, the circuit court summarily dismissed defendant's petition, finding it frivolous and patently without merit. In doing so, the court stated the trial court substantially complied with Illinois Supreme Court Rule 402 (eff. May 20, 1997) and satisfied defendant's due process rights because the record showed that, prior to imposing sentence, the court admonished him that he would have to serve a three-year term of MSR. Defendant appeals.

¶ 10 The Act allows criminal defendants to challenge their convictions or sentences based on a substantial violation of their rights under the federal or state constitution. *People v. Beaman*, 229 Ill. 2d 56, 71 (2008). Under the Act, a trial court may summarily dismiss a petition if the court determines that it is frivolous or patently without merit. 725 ILCS 5/122-2.1(a) (West 2012). In order to be considered frivolous or patently without merit, the petition must have no arguable basis either in law or in fact. *People v. Hodges*, 234 Ill. 2d 1, 12 (2009). A petition that is completely contradicted by the record lacks an arguable basis in law or in fact. *Id.* at 16. In assessing the merits of a postconviction petition at summary dismissal stage, the court is to take all well-pleaded facts in the petition as true. *People v. Coleman*, 183 Ill. 2d 366, 378 (1998). We review a trial court's summary dismissal of a postconviction petition *de novo*. *People v. Hunter*, 2011 IL App (1st) 093023, ¶ 8.

¶ 11 When a defendant pleads guilty as part of a plea agreement, due process requires that the plea be entered "intelligently and with full knowledge of its consequences." *Whitfield*, 217 Ill. 2d at 184. Before accepting a guilty plea, the trial court must substantially comply with Rule

402, which governs admonishments required when a defendant pleads guilty. *Hunter*, 2011 IL App (1st), ¶ 10. The court must admonish a defendant and determine whether he understands the minimum and maximum sentence prescribed by law. Ill. S. Ct. R. 402 (eff. May 20, 1997). A trial court's admonishment need not be perfect, it need only substantially comply with the requirements of Rule 402 and Illinois Supreme Court precedent. *People v. Morris*, 236 Ill. 2d 345, 367 (2010). An admonishment substantially complies with the rule when an ordinary person in the defendant's circumstances would understand it to convey the necessary warning. *Id.* at 366. A court's failure to fully admonish a defendant who pleads guilty under a plea agreement requires either fulfillment of the agreement though modifying the defendant's agreement, or the withdrawal of the defendant's plea. *Whitfield*, 217 Ill. 2d at 202.

¶ 12 On appeal, defendant contends that the circuit court erred in dismissing his petition because it presented an arguable claim that the trial court deprived him of the benefit of his negotiated plea bargain when it insufficiently admonished him about the three-year term of MSR. Defendant argues that, although the court mentioned MSR in the context of the potential penalties for first degree murder, it did not "link" the admonishment about the MSR to his agreed upon sentence as required by *Whitfield* and *Morris*.

¶ 13 In *Whitfield*, the defendant pled guilty in exchange for a specific sentence, but there was no mention of the MSR term during the entirety of the proceedings. *Whitfield*, 217 Ill. 2d at 180. As a result, our supreme court found that:

> "there is no substantial compliance with Rule 402 and 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 a [MSR] term will be added to

that sentence. In these circumstances, addition of the MSR term to the agreed-upon sentence violates due process because the sentence imposed is more onerous than the one defendant agreed to at the time of the plea hearing. Under these circumstances, the addition of the MSR constitutes an unfair breach of the plea agreement." *Id.* at 195.

¶ 14 In *Morris*, our supreme court explained that the use of the term "MSR" without relevant context "cannot serve to advise the defendant of the consequences of his guilty plea and cannot aid the defendant in making an informed decision about his case." *Morris*, 236 Ill. 2d at 366. The supreme court advised lower courts that "[i]deally a trial court's admonishment would explicitly link MSR to the sentence to which defendant agreed in exchange for his guilty plea, would be given at the time the trial court reviewed the provisions of the plea agreement, and would be reiterated both at sentencing and in the written judgment." *Id.* at 367.

¶ 15 Here, unlike in *Whitfield*, the trial court in advising defendant of the nature of the charge to which he was pleading guilty expressly admonished him that the offense carried a three-year term of MSR. The record shows that the court advised defendant of the sentencing range for the offense of first degree murder and informed him that the maximum penitentiary time in this case would be life if defendant had been found guilty of the same or greater class felony in the prior ten years. The court then specifically stated "[u]pon your release from the penitentiary, there is a period of three years mandatory supervised release, sometimes referred to as parole." This admonishment conveyed the necessary warning regarding the three-year term of MSR in no uncertain terms, such that an ordinary person in defendant's circumstances would understand it. *Morris*, 236 Ill. 2d at 366. After the admonishment, the court asked defendant "understanding the

nature of the offense and its possible penalties how do you plead to this matter; guilty or not guilty?" Defendant responded "Guilty."

¶ 16 In *People v. Davis*, 403 Ill. App. 3d 461, 466 (2010), this court found that "under *Whitfield*, a constitutional violation occurs only when there is absolutely no mention to a defendant, before he actually pleads guilty, that he must serve an MSR term in addition to the agreed-upon sentence that he will receive in exchange for his plea of guilty." Here, as mentioned, defendant was expressly admonished about the three-year term of MSR. Therefore, under the holding in *Whitfield*, the trial court, by advising defendant of the MSR term prior to accepting his plea, substantially complied with the requirements of Rule 402 and did not violate defendant's due process rights. *Hunter*, 2011 IL App (1st) 093023, ¶ 13.

¶ 17 Defendant nevertheless argues that, although the court mentioned MSR in the context of the potential penalties for first degree murder, it did not "link" the admonishment about the MSR to his agreed upon sentence as required by *Morris*. We acknowledge, as pointed out by defendant, that following the decision in *Morris*, there is disagreement among the districts of the appellate court on the issue of whether a trial court's mentioning that MSR will be attached to any prison sentence when informing the defendant of the minimum and maximum penalties of the crime charged satisfies due process, Rule 402 and *Whitfield*. Compare *Davis*, 403 Ill. App. 3d at 466-67 (1st Dist. 2010); *Hunter*, 2011 IL App (1st) 093023: and *People v. Andrews*, 403 Ill. App. 3d 654 (4th Dist. 2010) with *People v. Burns*, 405 Ill. App. 3d 40 (2d Dist. 2010) and *People v. Smith*, 386 Ill. App. 3d 473 (5th Dist. 2008). Defendant urges us to follow the holding of the second district appellate court in *Burns* and find that unless a trial court links the MSR term to the specific prison sentence, due process is not satisfied. *Burns*, 405 Ill. App. 3d at 43-45.

However, this court has previously addressed this disagreement among the districts and we continue to adhere to the reasoning of *Davis*. *Hunter*, 2011 IL App (1st) 093023, ¶ 18.

¶ 18 Accordingly, because the trial court complied with Rule 402 and satisfied the requirements of due process by advising defendant prior to imposing the sentence that he would have to serve three years of MSR (*Hunter*, 2011 IL App (1st) 093023, ¶ 19), the circuit court did not err in summarily dismissing his petition.

¶ 19 For the reasons stated we affirm the order of the Circuit Court of Cook County.

¶ 20 Affirmed.

In the Circuit Court of the First Judicial Circuit
Cook County, Illinois
(Or in the Circuit Court of Cook County).

THE PEOPLE OF THE STATE OF ILLINOIS)
v.)
Byron Boykins #M03783)
Defendant/Appellant

No. 07CR07163-01

Notice of Appeal

An appeal is taken from the order or judgment described below:

(1) Court to which appeal is taken:
Appellate Court First District
160 N. Lasalle Street Chicago, IL 60601

(2) Name of appellant and address to which notices shall be sent:
Name: Byron Boykins #M03783
Address: Hill Correctional Center [illegible] Galesburg, IL 61401

(3) Name and address of appellant's attorney on appeal:
Name: NONE
Address:
If appellant is indigent and has no attorney, does he want one appointed?
The appellant is asking for an attorney on appeal

(4) Date of judgment or order: July 11, 2014 ✓

(5) Offense of which convicted: Pleaded guilty to First degree Murder 720 ILCS 5/9-1(A)(1) (West 2007)

(6) ~~Sentence:~~ 22 years of imprisonment in I.D.O.C.

(7) If appeal is not from a conviction, nature of order appealed from: Post-Conviction Hearing Act 725 ILCS 5/122-1 (West 2008)

Signed Byron Boykins
(May be signed by appellant, attorney for appellant, or clerk of circuit court)

Revised Feb 2002

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IN THE CIRCUIT COURT OF COOK COUNTY

CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- BYRON BOYKINS, Petitioner-Appellant.	IND./INF. No. 07 CR 7163 Trial Judge: Clayton J. Crane Trial Atty: Type of Trial: Hearing

AMENDED NOTICE OF APPEAL

An appeal is taken to the Appellate Court, First District:

Appellant(s) Name:	Byron Boykins
Appellant's Address:	Hill Correctional Center P. O. Box 1700 Galesburg, IL 61401
Appellant(s) Attorney:	Office of the State Appellate Defender
Address:	203 N. LaSalle, 24th Floor Chicago, IL 60601
Offense of which convicted:	first degree murder
Date of Judgment or Order:	July 11, 2014
Sentence:	22 years

If appeal is not from a conviction, nature of order appealed:

Dismissal of petition for post-conviction relief.

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COUNSEL FOR PETITIONER-APPELLANT

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