

IN THE COURT OF APPEALS OF IOWA

No. 1-462 / 10-1537
Filed July 27, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL MONROE SISCO,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Denver Dillard,
Judge.

Michael Sisco appeals the district court's decision that his consecutive sentences for robbery in the second degree and going armed with intent were not illegal. **AFFIRMED.**

Mark C. Meyer, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Jerry Vander Sanden, County Attorney, and Susan Nehring, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

TABOR, J.

Recognizing that a challenge to an illegal sentence under Iowa Rule of Criminal Procedure 2.24(5)(a) is not restricted by the same three-year statute of limitations as a postconviction relief (PCR) action, Michael Sisco filed a motion to correct an illegal sentence on July 29, 2010—more than five years after his direct appeal ended. The district court denied the motion, concluding that Sisco’s consecutive sentences for robbery in the second degree and going armed with intent were not illegal.

Sisco argues in this appeal that the district court should have treated his pro se motion as an action for PCR. Sisco does not cite any reported cases requiring the district court to sua sponte treat a motion to correct an illegal sentence as a PCR application. Even if such authority existed, Sisco does not allege any ground of fact or law in his case that would allow the district court to consider an untimely PCR application under Iowa Code section 822.3 (2009). Because Sisco offers no viable route to reconsider his convictions or sentences, we affirm.

I. Background Facts and Proceedings

On the afternoon of October 9, 2003, Michael Sisco walked into a flooring store in Cedar Rapids, pulled out a silver handgun, and commanded the salesman: “Give me your money.” Sisco reportedly made other threats. Sisco left the store with less than twenty dollars from the victim’s wallet. The victim described the gunman to police and identified Sisco in a photographic array. The Linn County Attorney charged Sisco with robbery in the first degree. The trial

information alleged that Sisco “did unlawfully and willfully rob employees of the Floor Shop . . . while armed with a BB gun.”

To avoid the indeterminate twenty-five-year sentence for robbery in the first degree, Sisco entered an Alford plea¹ to robbery in the second degree and going armed with intent. At the plea hearing on February 26, 2004, Sisco admitted that the minutes of evidence showed he used the BB gun in a manner indicating his intent to inflict death or serious injury. His plea attorney acknowledged the BB gun constituted a dangerous weapon under *State v. Dallen*, 452 N.W.2d 398 (Iowa 1990). Sisco waived his right to file a motion in arrest of judgment and proceeded to sentencing at the same hearing. After accepting Sisco’s pleas, the district court imposed consecutive terms not to exceed ten years for robbery in the second degree and not to exceed five years for going armed.

The supreme court granted Sisco’s request for a delayed appeal. The state appellate defender moved to withdraw, alleging no non-frivolous issues existed in the appeal. Sisco filed no response. Following its independent review of the record, the supreme court granted leave to withdraw and dismissed the appeal under then Iowa Rule of Appellate Procedure 6.104 (now 6.1005). Procedendo issued on February 7, 2005.

On July 29, 2010, Sisco filed a pro se motion to correct an illegal sentence. The motion challenged his conviction for going armed with intent.

¹An Alford plea allows a defendant to plead guilty without admitting culpability for the underlying facts of the criminal prosecution. See *North Carolina v. Alford*, 400 U.S. 25, 32–38, 91 S. Ct. 160, 164–68, 27 L. Ed. 2d 162, 168–72 (1970).

Specifically, he claimed the BB gun he used to threaten the flooring store salesman was not a “dangerous weapon.” The State resisted Sisco’s motion, pointing out that he was not challenging the legality of his sentence, but the factual basis for his plea, which should have been done by a motion in arrest of judgment. Denying the motion, the district court wrote on August 5, 2010, that it had “reviewed the sentence imposed and finds that it is not illegal as matter of law.” The court issued a second order on August 16, 2010, deeming Sisco’s pending motions untimely and frivolous. Sisco appeals.

II. Standard of Review

We review rulings on both motions to correct an illegal sentence and postconviction actions for errors at law. *Everett v. State*, 789 N.W.2d 151, 155 (Iowa 2010); *Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001).

III. Merits

Through his attorney on appeal, Sisco now argues that rather than dismissing his pro se motion to correct an illegal sentence the district court should have treated the motion as a PCR petition. In support of his claim, he relies on two unpublished decisions of this court that mention trial courts treating motions to correct an illegal sentence as PCR applications. Neither of those decisions mandate that a district court consider a motion to correct an illegal sentence to be a PCR application. We recognize that generally we “treat a motion by its contents, not its caption.” *Meier v. Senecaut*, 641 N.W.2d 532, 539 (Iowa 2002). But the contents of Sisco’s motion did not meet the requirements of chapter 822. A PCR application must be verified by the applicant and must

identify the proceedings in which the applicant was convicted; the date of the entry of the judgment of conviction or sentence complained of; and all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from the conviction or sentence. Iowa Code §§ 822.3, 822.4. Sisco's motion did not emulate a PCR application; it simply overestimated the capabilities of a motion to correct an illegal sentence. See *State v. Bruegger*, 773 N.W.2d 862, 871–72 (Iowa 2009) (recognizing that motion to correct illegal sentence does not allow courts to re-examine errors alleged to have occurred at trial or other proceedings prior to the imposition of sentence). The district court correctly ruled on the motion it was presented.

Even if the district court had approached Sisco's filing as a postconviction application, the result would have been the same—dismissal. Section 822.3 requires that PCR applications

be filed within three years from the date the conviction or decision is final or, in the event of an appeal, from the date the writ of procedendo is issued. However, this limitation does not apply to a ground of fact or law that could not have been raised within the applicable time period.

Sisco was beyond the three years for filing a PCR application under section 822.3. The pro se motion alleged no ground of fact or law that could not have been raised in the requisite time period. Likewise on appeal, he does not claim any newly discovered facts or legal principles that were not available at the time he entered his Alford plea. Accordingly, Sisco is not entitled to the remedy he requests.

AFFIRMED.