

IN THE COURT OF APPEALS OF IOWA

No. 2-082 / 10-1299
Filed February 15, 2012

STATE OF IOWA,
Plaintiff-Appellee.

vs.

RONNIE EARL HARRINGTON,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Carlynn D. Grupp (sentencing), District Associate Judge, and Christopher C. Foy (motion), Judge.

Ronnie Harrington appeals from a district court's order denying a motion to correct an illegal sentence. **AFFIRMED.**

Ronnie Harrington, Fort Dodge, appellant pro se.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant Attorney General, Carlyle D. Dalen, County Attorney, for appellee State.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

VOGEL, P.J.

Ronnie Harrington appeals from a district court's order denying a motion to correct an illegal sentence. On May 9, 2002, Harrington pleaded guilty to indecent exposure in violation of Iowa Code section 709.9 (2001). The initial trial information was amended based on plea agreement negotiations, to exclude reference to a previous sexual predatory offense that subjected him to sentence enhancement under Iowa Code sections 901A.1 and 901A.2. Harrington was sentenced to one year incarceration, with all but sixty days of the sentence suspended, and ordered to pay a fine of \$250. On July 1, 2010, Harrington filed a "Pro Se Motion to Correct Illegal Sentencing." On July 20, 2010, the district court denied the July 1 motion, stating the claims had no merit.¹ Harrington appeals.

Harrington raises several claims on appeal. Harrington's claims that pertain to the plea agreement were waived by virtue of the fact that after Harrington pleaded guilty, he failed to file a Motion in Arrest of Judgment.² Moreover, the constitutional issues raised by Harrington are deemed waived because "[i]ssues not raised before the district court, including constitutional issues, cannot be raised for the first time on appeal." *State v. Mitchell*, 757

¹ Harrington pleaded guilty and was sentenced in this case, case number SRCR 010177, on May 9, 2002, before Carolyn Grupp, District Associate Judge for the Second Judicial District; the July 20, 2010 order was issued by Christopher C. Foy, District Judge for the Second Judicial District. Harrington filed a notice of appeal based on Judge Foy's July 20, 2010 order. Harrington also included other orders in the appendix related to a separate case, case number SRCR012779; these orders have no relevance to this appeal.

² "Iowa Rule of Criminal Procedure [2.24(3)] requires a defendant to file a motion in arrest of judgment if the defendant desires to challenge the adequacy of a guilty plea proceeding on appeal." *State v. Kress*, 636 N.W.2d 12, 19 (Iowa 2001).

N.W.2d 431, 435 (Iowa 2008). We therefore address only Harrington's claim of an illegal sentence.

We review challenges to the illegality of a sentence for errors at law. *Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001). "An illegal sentence is one which is not authorized by statute." *State v. Wade*, 757 N.W.2d 618, 628 (Iowa 2008). "It is void and not subject to the usual concepts of waiver, whether from a failure to seek review or other omissions of error preservation. Because an illegal sentence is void, it can be corrected at any time." *State v. Gordon*, 732 N.W.2d 41, 43 (Iowa 2007) (citation omitted).

Harrington alleges his sentence was illegal because the first predatory sexual offense conviction and sentencing enhancement under Iowa Code section 901A were to be stricken. The record reflects the reference to the first predatory sexual offense, as well as sentencing enhancement under Iowa Code section 901A, were indeed stricken.³ The crime he pleaded guilty to—indecent exposure—is a "serious misdemeanor" under Iowa Code section 709.9. The district court followed the sentencing guidelines for serious misdemeanors under Iowa Code section 903.1. The district court sentenced Harrington under Iowa Code section 709.9 to one year in prison, with all but sixty days of the sentence suspended, and imposed a fine of \$250. This sentence was consistent with Iowa Code section 903.1 and Harrington's sentence was therefore not illegal.

³ Harrington's argument as it pertains to Iowa Code section 901A is misplaced. As the State noted, "Harrington's argument is perhaps based on his sentence as a three-time offender in the subsequent case (SRCR 012779). That argument must be presented within the context of that case. Indeed, it appears defendant has unsuccessfully challenged that sentence as well."

We affirm the district court's denial of Harrington's motion to correct illegal sentence.

AFFIRMED.