

IN THE COURT OF APPEALS OF IOWA

No. 2-1160 / 12-0684
Filed January 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RICHARD ALLEN MILLSAP SR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, D.J. Stovall (trial) and Karen Romano (motion for correction of illegal sentence), Judges.

Richard Allen Millsap Sr. appeals the district court's ruling denying his motion to correct an illegal sentence. **AFFIRMED.**

Gary D. Dickey and Jamie Hunter of Dickey & Campbell Law Firm, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, John Sarcone, County Attorney, and James Ward, Assistant County Attorney, for appellee.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

BOWER, J.

Richard Allen Millsap Sr. appeals the district court's ruling denying his motion to correct an illegal sentence. Millsap was convicted in 2003 of two counts of felonious child endangerment and one count of driving while barred for an incident that occurred September 7, 2002, resulting in the deaths of his two young nephews.

In this appeal, Millsap argues the district court erred in failing to find his two-year sentence for driving while barred was illegal because he did not stipulate to being "a habitual offender who did not possess a temporary restricted license." This contention does not challenge the legality of Millsap's sentence, but rather, the factual basis for his conviction. See Iowa R. Crim. P. 2.24(5)(a); *State v. Lathrop*, 781 N.W.2d 288, 293 (Iowa 2010) ("Illegal sentences may be challenged at any time."). Millsap's challenge to the factual basis of his plea has been waived as it was not previously appealed. *State v. Bruegger*, 773 N.W.2d 862, 871-72 (Iowa 2009) (observing that the purpose of allowing review of an illegal sentence is to permit correction at any time of an illegal sentence, not to re-examine errors that occurred at trial or proceedings prior to the imposition of the sentence). The two-year sentence imposed in 2003 by the district court was clearly authorized by statute. See Iowa Code § 321.561 (2001). We affirm. See Iowa R. App. P. 6.1203(a).

AFFIRMED.