

**IN THE COURT OF APPEALS OF IOWA**

No. 2-655 / 10-1769  
Filed August 22, 2012

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JEFFREY L. LEMON,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Henry County, Cynthia A. Danielson, Judge.

Defendant appeals the district court order denying his motion to correct an illegal sentence on one count of sexual abuse in the third degree. **AFFIRMED.**

Jeffrey L. Lemon, Clarinda, pro se appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, and Darin Stater, County Attorney, for appellee.

Considered by Doyle, P.J., Tabor, J., and Schechtman, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

**SCHECHTMAN, S.J.**

On October 17, 2008, Jeffrey Lemon entered a guilty plea in Henry County to three counts of sexual abuse in the third degree, in violation of Iowa Code section 709.4(2)(b) (2007). Lemon was sentenced to a term of ten years imprisonment on each offense, to run consecutively. He did not appeal these sentences.

In 2010, he filed a motion for correction of illegal sentence, asserting that his sentence for one offense should be vacated because it had occurred in Washington County, not Henry County. The court determined it did not have jurisdiction to consider the motion as it was an “attempted collateral attack” on the sentence, and should have been raised by a postconviction relief proceeding under Iowa Code chapter 822 (2009). Shortly thereafter, Lemon filed a similar motion, followed by a “Motion to Produce Ruling on Motion to Correct an Illegal Sentence.” The court denied the pro se motions, reciting its earlier order addressing the original motion and the impropriety of the motions. We affirm, though for different reasons.

Our review of challenges to the legality of sentences is for the correction of errors at law. *State v. Carstens*, 594 N.W.2d 436, 437 (Iowa 1999).

It is true, as Lemon suggests, that an illegal sentence may be corrected at any time and is not subject to waiver, whether arising from a plea of guilty, failure to seek review, or error preservation. *State v. Woody*, 613 N.W.2d 215, 217 (Iowa 2000). But, his challenge fails as the sentence imposed was not illegal, as it was permitted by statute. “Our cases are clear that, to be ‘illegal’ for purposes

of [Iowa] [R]ule [of Criminal Procedure] 23(5)(a),<sup>1</sup> the sentence must be one not authorized by statute.” *Tisdale v. State*, 629 N.W.2d 357, 359 (Iowa 2001). Clearly, the sentence “for a term of no more than ten years” is one authorized by statute for the crime of sexual abuse in the third degree, a class C felony, to which the defendant had pled guilty, without raising any issue as to the situs of the crime. The terms of the sentence itself were not legally or constitutionally invalid in any respect.

The rule allowing redress “at any time” is directed to sentences beyond the jurisdiction of the court and, therefore, void. See *State v. Wilson*, 294 N.W.2d 824, 825 (Iowa 1980). It does not extend into those sentences wherein it is contended that procedural defects alone were existent. *Id.*

Challenges, under our rule and cases, is for *illegal* sentences. The subject sentence was directly within the codified bounds of allowable sentencing for the subject offense. The dismissal of the motion to correct an illegal sentence was appropriately denied, which is accordingly affirmed.

**AFFIRMED.**

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<sup>1</sup> That rule, now Iowa Rule of Criminal Procedure 2.24(5)(a), provides, “The court may correct an illegal sentence at any time.”