

IN THE COURT OF APPEALS OF IOWA

No. 3-244 / 11-2122
Filed April 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RYAN ROBERT HOEHN,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer,
Judge.

A defendant appeals a district court order denying his motion to correct an
illegal sentence. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Kimberly A. Griffith,
Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ. Bower, J., takes
no part.

VOGEL, P.J.

Ryan Hoehn appeals the district court order denying his motion to correct an illegal sentence. The issue before us is whether a complete failure to prepare a presentence investigation (PSI) as required by Iowa Code section 901.2 (1999) renders his sentence illegal, requiring a remand for resentencing or the failure is merely a procedural error, now time barred from challenge. Because Hoehn's sentence was not illegal, we affirm the district court.

I. Background Facts and Proceedings

On September 21, 2001, Hoehn pleaded guilty to possession of a controlled substance with intent to deliver, enhanced as a second and habitual offender, in violation of Iowa Code sections 124.401(1)(b), 124.411, 902.8, and 902.9, a class "B" felony, and drug tax stamp violation, a class "D" felony, in violation of Iowa Code sections 453B.12, 902.8, and 902.9. No presentence investigation ever took place. The district court sentenced Hoehn to thirty-five years imprisonment on the enhanced possession charge, and another five years on the tax stamp charge, with the sentences to run concurrently. Hoehn did not appeal. After requesting a copy of his sentencing order and moving for reconsideration of his sentence, he was provided the sentencing order but his request for reconsideration was denied on June 4, 2002.

On June 22, 2011, and August 5, 2011, Hoehn filed motions for correction of an illegal sentencing claiming no PSI report was ever prepared.¹ The district court denied the motions on the ground Hoehn submitted a guilty plea during

¹ He sought to amend his motions on October 5, 2011, which the State resisted. No order appears in the record on appeal.

which he waived a delay before sentencing and the preparation of a PSI report. He appeals.

II. Standard of Review

We review challenges to the legality of a sentence for errors at law. *Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001). We can uphold a district court ruling on a ground other than the one upon which the district court relied provided the ground was urged in that court. See *DeVoss v. State*, 648 N.W.2d 56, 61 (Iowa 2002).

III. Illegal Sentence

A defendant may waive the use, but not the preparation of, a PSI report. *State v. Brown*, 518 N.W.2d 351, 351-52 (Iowa 1994). “The PSI report serves the dual purposes of providing the sentencing court with pertinent information for purposes of sentencing and providing information for correctional planning use by correctional authorities.” *Campbell v. State*, 576 N.W.2d 362, 363 (Iowa 1998).

The State concedes the district court was required to order a PSI and failed to do so. However, it argues the district court’s failure to order a PSI is a procedural error and does not render Hoehn’s sentence illegal pursuant to Iowa Rule of Criminal Procedure 2.24(5)(a). While the district court incorrectly found Hoehn waived the preparation of a PSI, the State argued Hoehn’s sentence was not an illegal sentence. We affirm on that ground.

The rule allowing correction of an illegal sentence at any time, Iowa Rule of Criminal Procedure 2.24(5), does not apply to sentences that because of procedural errors are illegally imposed. *Tindell*, 629 N.W.2d at 359. The

exclusion of illegal sentences from the principles of error preservation is limited to those cases in which a trial court has stepped outside the codified bounds of allowable sentencing. *Id.* In other words, the sentence is illegal because it is beyond the power of the court to impose. *State v. Ceaser*, 585 N.W.2d 192, 195 (Iowa 1998). In applying the comparable federal rule, the Supreme Court of the United States noted challenges to an illegal sentence were for the narrow purpose of correcting an illegal sentence, not to re-examine errors occurring at the trial or other proceedings prior to the imposition of sentence, and an illegal sentence includes whether “[t]he punishment meted out was . . . in excess of that prescribed by the relevant statutes, multiple terms were . . . imposed for the same offense, . . . [or] the terms of the sentence itself [were] legally or constitutionally invalid in any other respect.” *Hill v. U.S.*, 368 U.S. 424, 430 (1962). For example, in Iowa, a failure to comply with Iowa Rule of Criminal Procedure 2.8(2)(b) is a procedural error and not an illegal sentence, just as claims under the Fourth, Fifth, and Sixth Amendments ordinarily do not involve the inherent power of the court to impose a particular sentence and therefore an error will not render the sentence illegal. *State v. Bruegger*, 773 N.W.2d 862, 871 (Iowa 2009); *Lopez-Penaloza v. State*, 804 N.W.2d 537, 541-42 (Iowa Ct. App. 2011).

Hoehn’s challenge fails. Clearly, the sentence for a term of no more than thirty-five years is one authorized by statute for possession of a controlled substance with intent to deliver, subsequent offense, to which he pleaded guilty without raising any issue as to lack of a PSI. See Iowa Code §§ 124.401(1)(b), 124.411, 453B.12. The terms of the sentence itself were not legally invalid in any

respect. Therefore, Hoehn should have made the challenge on direct appeal or through a post-conviction relief action, both of which are now time barred.

IV. Conclusion

Hoehn's sentence is not illegal because a failure to order a PSI is a procedural error. Therefore, the rule that correction of an illegal sentence may occur at any time is not applicable and Hoehn's claim is therefore time barred.

AFFIRMED.