

IN THE COURT OF APPEALS OF IOWA

No. 6-462 / 05-1821
Filed June 28, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BANTHSA MARK THONETHEVABOTH,
Defendant-Appellant.

Appeal from the Iowa District Court for Wapello County, Michael R. Mullins, Judge.

Defendant appeals from the sentence imposed following his guilty plea to distribution of marijuana to a person under eighteen years of age. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Greta Truman, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl Soich, Assistant Attorney General, Mark Tremmel, County Attorney, and Ed Harvey, Drug Task Force, for appellee.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

SACKETT, C.J.

Defendant-appellant, Banthsa Thonethevaboth, appeals from the sentence imposed following his guilty plea to distribution of marijuana to a person under eighteen years of age. He contends the court considered impermissible factors in sentencing him and asks that the case be remanded for resentencing. The State contends error was not preserved because the defendant did not object to the information in the presentence investigation that the court considered in sentencing.

Our review of a sentence imposed in a criminal case is for correction of errors at law. Iowa R. App. P. 6.4. Iowa Rule of Criminal Procedure 2.24(5) allows challenges to illegal sentences at any time. Challenges to sentences illegally imposed due to procedural errors, however, as opposed to those sentences illegal in themselves, are subject to traditional error preservation rules, and thus must be raised at the earliest opportunity. See *Tindell v. State*, 629 N.W.2d 357, 358 (Iowa 2001).

Defendant contends the court improperly considered the numerous past convictions listed in the presentence investigation because defendant's brother used defendant's name on many of his traffic related offenses. Defendant argues, therefore, that there is not evidence to prove he, not his brother, committed the traffic offenses listed, and the court improperly considered "unproven" charges. See *State v. Formaro*, 638 N.W.2d 720, 725 (Iowa 2002). During the sentencing hearing the court inquired if the defendant had "any additions, corrections, or objections" to the presentence investigation. Counsel responded that "we have no corrections" other than asking that a letter defendant

wrote not be considered. The court agreed to disregard the letter. Defendant did not object to the list of prior convictions. We conclude error was not preserved.

See Tindell, 629 N.W.2d at 358.

AFFIRMED.