

IN THE COURT OF APPEALS OF IOWA

No. 6-741 / 05-2051
Filed November 16, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KENTRAL LAMONT BARNES,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Jeffrey A. Neary, Judge.

Defendant appeals his sentence for third-degree sexual abuse.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Drew Bockenstedt, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

VAITHESWARAN, J.

Kentral Barnes pled guilty to third-degree sexual abuse and was sentenced to an indeterminate prison term not exceeding ten years. On appeal, Barnes contends his sentence was “illegal” because a psychosexual evaluation that was to have been included in his presentence investigation report was not completed prior to sentencing.

Our highest court has defined illegal sentences as sentences that are beyond the power of the court to impose. *Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001). The ten year prison term imposed here was authorized by statute. Iowa Code §§ 902.3, 902.9 (2005). Therefore, the sentence was not illegal.

We believe Barnes is really contending that the sentence was imposed using an illegal procedure, in this case an incomplete presentence investigation report. *Tindell*, 629 N.W.2d at 359 (distinguishing illegal sentences from challenges to sentences which, because of procedural errors, are illegally imposed). Our review of this issue is for errors of law. *State v. Witham*, 583 N.W.2d 677, 678 (Iowa 1998).

We discern no error. On June 3, 2005, the district court ordered Barnes to undergo a sexual offender evaluation and scheduled sentencing for August 11, 2005. Barnes did not appear on that date. A day later, his attorney asked for a postponement of the sentencing proceedings to allow Barnes “to commence” the sex offender evaluation. The district court granted the motion and ordered Barnes to appear on August 23, 2005, having accomplished the following tasks: (1) payment of the evaluation fee, (2) completion of two tests required for the evaluation, and (3) scheduling of “the interviews that are required for the

evaluation.” On September 20, 2005, the director of the entity charged with performing the psychosexual evaluation advised corrections’ employees that Barnes “attended his testing on an extremely sporadic basis.” He said the evaluation was not complete “by [Barnes’s] own choosing.” The director continued, “[w]e apologize for not having the psychosexual evaluation complete but working with Kentral has been most difficult.”

It is clear from this evidence that a psychosexual evaluation was not available for the district court’s review because Barnes refused to cooperate with the individuals who were to perform the evaluation. Under these circumstances, we conclude the district court did not err in proceeding with sentencing without the benefit of the psychosexual evaluation. *Cf. State v. Breese*, 581 N.W.2d 631, 632 (Iowa 1998) (“If sentencing cannot occur until a defendant ordered to undergo a substance-abuse evaluation complies with the order, an uncooperative defendant can delay sentencing. Such a delay is against the public interest.”).

We affirm Barnes’s sentence for third-degree sexual abuse.

AFFIRMED.