

IN THE COURT OF APPEALS OF IOWA

No. 6-964 / 06-0579
Filed January 31, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMIE LEE COLE,
Defendant-Appellant.

Appeal from the Iowa District Court for Delaware County, Monica L. Ackley (Judgment and Sentence) and Alan L. Pearson (Motion to Correct Illegal Sentence), Judges.

The defendant appeals from the district court's ruling denying his motion to correct an illegal sentence. **AFFIRMED.**

Stuart G. Hoover of Blair & Fitzsimmons, P.C., Dubuque, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, and John Bernau, County Attorney, for appellee.

Heard by Sackett, C.J., and Huitink and Vogel, JJ.

VOGEL, J.

Jamie Cole appeals from the district court's denial of a motion to correct an illegal sentence. Because we conclude requiring him to register as a sex offender is a non-punitive, collateral consequence of his conviction and specifically authorized by statute, we affirm.

In November 2003, Cole was charged by trial information with: (1) one count of lascivious acts with a child, in violation of Iowa Code section 709.8(3) (2003); one count of indecent contact with a child, in violation of section 709.12; and one count of assault with the intent to commit sexual abuse, in violation of section 709.11. After reaching a plea agreement with the State, Cole entered a written *Alford*¹ plea on February 2, 2004, as to count three, assault with the intent to commit sexual abuse. He waived his right to challenge his plea through a motion in arrest of judgment and waived time prior to sentencing. The district court entered judgment and sentence the same day, convicting Cole of assault causing injury,² suspending the two-year sentence imposed, placing him on formal probation and ordering him to register as a sex offender.

Cole filed a pro se motion in arrest of judgment on February 24, twenty-two days after his plea, conviction and sentencing, alleging ineffective assistance of counsel and requesting to withdraw his plea. The motion was denied by the district court as untimely, as sentencing had already occurred. Cole also filed a pro se appeal of his case to the Iowa Supreme Court on March 2, 2004, and

¹ See *North Carolina v. Alford*, 400 U.S. 25, 32-38, 91 S. Ct. 160, 164-168, 27 L. Ed. 2d 162, 168-172 (1970).

² An order nunc pro tunc was entered correcting the conviction to accurately reflect count three of the trial information, assault with the intent to commit sexual abuse.

another motion to withdraw his plea in the district court on March 9, 2004. Cole's appeal was denied as frivolous, dismissed by order dated July 21, 2004, and procedendo issued thereafter.

It appears that following his sentencing, Cole was required to comply with the sex-offender treatment program as a term of his probation recommended by Department of Correctional Services. He filed a pro se request to withdraw his guilty plea on March 9, 2004, asserting that he received ineffective assistance of counsel because although he agreed to an *Alford* plea, he did not agree there was sufficient evidence to convict him if he went to trial. He claimed he was under duress, his counsel failed to inform the court of Cole's disagreement with the evidence, or that the judge failed to pursue Cole's disagreement with the plea agreement, which would then have been rejected by the court. He asked for a variety of relief: that his plea be withdrawn and the charges dismissed; that the *Alford* plea be accepted but he not be required to register as a sex offender or participate in the sex-offender program; or that a new trial be scheduled. Following a hearing on his request to withdraw his plea, the district court issued another nunc pro tunc order in September 2005 clarifying the offense of Cole's conviction and relieving him from participating in the sex-offender program as a term of his probation. However, the order reiterated the requirement for Cole to register as a sex offender under Iowa Code chapter 692A. He again sought relief from registration by filing a motion to correct an illegal sentence in March 2006, which was summarily denied by the district court and from which he now appeals.

Our review of challenges to the illegality of a sentence is for errors at law. *Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001). To be “illegal” for purposes of Iowa Rule of Criminal Procedure 2.24(5)(a), the sentence must be one not authorized by statute. *Id.* An illegal sentence is void and “not subject to the usual concepts of waiver, whether from a failure to seek review or other omissions of error preservation.” *State v. Woody*, 613 N.W.2d 215, 217 (Iowa 2000). Ordinarily, objections must be raised at the earliest opportunity after the grounds for the objection become apparent, even for sentencing unless the sentence imposed was illegal. *Tindell*, 629 N.W.2d at 359. However, the court may correct an illegal sentence at any time. Iowa R. Crim. P. 2.24(5)(a).

Cole argues that he was not informed of the requirement to register as a sex offender during plea negotiations or prior to entering his plea and appearing before the district court for judgment and sentencing. He alleges that the district court went beyond the plea agreement by imposing the registration requirement as part of his sentence and, because he was not given an opportunity to withdraw his plea under rule 2.10(4), the sentence was illegal.

There is no evidence in the record that the district court in any way rejected or modified the plea agreement between Cole and the State. Although the requirement to register as a sex offender was not part of the written plea agreement, it was not required to be so as it is not punitive, see *State v. Seering*, 701 N.W.2d 655, 667 (Iowa 2005) (stating “the restrictions of section 692A.2A are predominately clothed with the earmarks of legislation to protect the health and safety of individuals, especially children, not to impose punishment.”). It is a collateral consequence required by law upon a conviction for assault with the

intent to commit sexual abuse. See Iowa Code §§ 692A.1-692A.16 (2003). Sex-offender registration is therefore not a part of the actual sentence³ that “represents a definite, immediate and largely automatic effect on the range of the defendant’s punishment,” *Mott v. State*, 407 N.W.2d 581, 583 (Iowa 1987), but a collateral consequence akin to other effects of convictions for certain offenses. See also *State v. Ramirez*, 636 N.W.2d 740, 742 (Iowa 2001) (listing some collateral effects not required that defendant be informed of including: loss of civil rights (voting, traveling abroad, possessing firearms); increased punishment if the defendant should repeat the offense (habitual offender); undesirable discharge from the armed forces; deportation or another negative impact on citizenship status; ineligibility for federal benefits; later parole date; revocation of an existing parole; an adverse recommendation from the court to the parole authorities; denial of “good time” as a multiple offender; revocation of a driver’s license; and an adverse effect on civil litigation). While the above consequences may to a varying degree impact a person’s daily life, our supreme court has not denominated them as punishment, but as collateral to the plead offense. We conclude that due to the non-punitive and collateral nature of requiring sex-offender registration, the district court did not act illegally by imposing sex-offender registration following Cole’s conviction for assault with the intent to

³ Even if mention of the sex-offender registration had been required, its omission from a sentencing colloquy would have been a procedural error not falling into the purview of the illegal sentence doctrine because registration is authorized by statute; therefore, any error in this case is precluded by our normal error-preservation rules. See *Tindell*, 629 N.W.2d at 359-60.

commit sexual abuse and the subsequent motion to correct an illegal sentence was properly denied.

AFFIRMED.