IN THE COURT OF APPEALS OF IOWA

No. 8-518 / 97-0338
Filed November 30, 1998

STATE OF IOWA,
Appellee,

vs.

LYNN PAUL SCANNELL,
Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott, Judge.

The defendant appeals from the sentences entered for operating while intoxicated and driving under suspension. **AFFIRMED.**

David L. Rose, Newton, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Steven Johnson, County Attorney, and Christine Branstad, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.

PER CURIAM.

This is an appeal by Lynn Scannell challenging his sentences entered for operating while intoxicated and driving under suspension. We affirm on appeal.

On December 27, 1995, Scannell pled guilty in Jasper County to a charge of operating while intoxicated (OWI), second offense, and driving while license revoked. He was sentenced to two years on the OWI charge and one year on the charge of driving while license revoked. Most of these sentences were suspended and Scannell was placed on probation.

In March 1996, the State alleged Scannell had violated the terms of his probation. Scannell failed to appear for the violation hearing. A Jasper County arrest warrant was issued, but never served on Scannell.

Scannell was arrested on unrelated charges in Polk County in June 1996 and placed in jail. In October 1996, he pled guilty to the Polk County charges. In sentencing, he was given credit for the time he spent in jail between his arrest and sentencing, amounting to 103 days of credit for the Polk County charges.

Scannell was subsequently transferred to Jasper County for a hearing on the probation violations. On October 10, 1996, the district court determined Scannell had violated his probation. He was ordered to serve the prior two-year and one-year sentences concurrently, and also concurrent with the Polk County charges.

On February 10, 1997, Scannell filed a motion to correct his sentence, requesting credit on his Jasper County sentences for the 103 days he spent in jail in Polk County. His motion was denied without a hearing. Scannell appealed.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4.

We first address the issue of error preservation. As a rule, a defendant must preserve error by making an objection at the earliest opportunity after the grounds for objection become apparent. *State v. Halliburton,* 539 N.W.2d 339, 343 (Iowa 1995). This rule applies equally to constitutional issues. *Id.*

Nevertheless, an illegal or void sentence may be corrected at any time. *State v. Garrett,* 516 N.W.2d 892, 894 (Iowa 1994); Iowa R. Cr. P. 23(5)(a). An illegal sentence is one not authorized by statute. *State v. Suchanek,* 326 N.W.2d 263, 265 (Iowa 1982). Such a sentence occurs when the sentencing court departs from legislative mandates. *State v. Ohnmacht,* 342 N.W.2d 838, 842 (Iowa 1983).

Here, Scannell is not claiming his sentences were outside statutory authority. He is claiming only he should be given credit on Jasper County sentences for time spent in jail in Polk County, on Polk County charges. He also claims he should have received a hearing on his motion to correct sentences. Because Scannell is not claiming he received a void sentence, his claims may not be raised "at any time." Scannell was sentenced on October 10, 1996, and he did not raise his present claims until February 10, 1997. Such claims could have been raised on appeal within thirty days. We conclude his claims are untimely.

We affirm defendant's sentences. Costs of this appeal are assessed to defendant.

AFFIRMED.