

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 111,243

STATE OF KANSAS,
Appellee,

v.

MATTHEW WOOD,
Appellant.

SYLLABUS BY THE COURT

The definition of an illegal sentence does not include a claim that the sentence violates a constitutional provision, and a defendant may not file a motion to correct an illegal sentence based on constitutional challenges to his or her sentence.

Review of the judgment of the Court of Appeals in an unpublished opinion filed April 10, 2015. Appeal from Sedgwick District Court; ERIC A. COMMER, judge. Opinion filed May 5, 2017. Judgment of the Court of Appeals is affirmed. Judgment of the district court is affirmed.

Michael P. Whalen, of Law Office of Michael P. Whalen, of Wichita, argued the cause and was on the brief for appellant.

Lance J. Gillet, assistant district attorney, argued the cause, and *Marc Bennett*, district attorney, and *Derek Schmidt*, attorney general, were with him on the brief for appellee.

The opinion of the court was delivered by

STEGALL, J.: In July 2003, the State charged Wood with attempted criminal sodomy, but he later pled guilty to one count of attempted indecent liberties with a child. The district court accepted Wood's plea, placed him on 24 months' probation, and

imposed an underlying 12-month prison sentence. Although the record does not contain a transcript of sentencing, the journal entry of judgment indicates that the district court "certified" Wood as a sex offender and informed him of his duty to register. In January 2006, the court discharged Wood from probation.

At the time Wood committed the crime, the Kansas Offender Registration Act (KORA), K.S.A. 22-4901 *et seq.*, required sex offenders to register for 10 years from the date of discharge or release if it was the offender's first conviction for a sexually violent crime. K.S.A. 2002 Supp. 22-4906(b); see K.S.A. 2002 Supp. 22-4902(c)(2) (defining indecent liberties with a child as a "sexually violent crime"). In 2011, the legislature amended KORA, increasing the length of time Wood was required to register to 25 years. See L. 2011, ch. 95, sec. 6; K.S.A. 2011 Supp. 22-4906(b)(1)(E).

In April 2012, Wood filed a motion challenging the retroactive application of the 2011 KORA amendments, asking the court to "declare 2011 SB 37 unconstitutional as retroactively applied." The district court entered a written order finding that it lacked jurisdiction to consider Wood's constitutional claims where "1) the trial has been completed; and 2) probation has been completed or terminated or a felony sentence of imprisonment has been placed in effect; and 3) appeal rights have expired or been exhausted; and 4) . . . the conviction has not been expunged."

Wood appealed, arguing that the district court possessed the requisite jurisdiction to consider his challenge as a motion to correct illegal sentence. The panel found, however, that it had considered and rejected a similar argument in *State v. Ward*, No. 109,325, 2014 WL 5610212 (Kan. App. 2014) (unpublished opinion), *rev. granted* 304 Kan. 1022 (2016), which, in turn, relied upon *State v. Simmons*, 50 Kan. App. 2d 448, 451, 329 P.3d 523 (2014), *rev. granted* 304 Kan. 1021 (2016). *State v. Wood*, No.

111,243, 2015 WL 1782675, at *6-7 (Kan. App. 2015) (unpublished opinion). The panel ultimately dismissed Wood's appeal for a lack of jurisdiction, and we granted his petition for review.

Wood asserts on appeal that the 2011 amendments to KORA created an illegal sentence. Whether a sentence is illegal pursuant to K.S.A. 22-3504 is a question of law subject to plenary review. *State v. Jeffries*, 304 Kan. 748, 751, 375 P.3d 316 (2016). We have defined an illegal sentence as one:

"[1] imposed by a court without jurisdiction; [2] a sentence that does not conform to the statutory provision, either in the character or the term of the punishment authorized; or [3] a sentence that is ambiguous with respect to the time and manner in which it is to be served." *State v. Lee*, 304 Kan. 416, 417, 372 P.3d 415 (2016).

A court has the power to correct an illegal sentence at any time, including for the first time on appeal. See K.S.A. 22-3504(1); *State v. Luarks*, 302 Kan. 972, 975, 360 P.3d 418 (2015) (citing *State v. Dickey*, 301 Kan. 1018, 1034, 350 P.3d 1054 [2015]).

Wood has lodged a purely constitutional complaint against the burden of registration he finds himself under. In *State v. Dickey*, 305 Kan. 217, 220, 380 P.3d 230 (2016), we made it clear that a party who raises a question of constitutional law via a motion to correct an illegal sentence "runs squarely into the hurdle imposed by our prior caselaw that "the definition of an illegal sentence does not include a claim that the sentence violates a constitutional provision [and] a defendant may not file a motion to correct an illegal sentence based on constitutional challenges to his or her sentence." [Citations omitted.]" See *Lee*, 304 Kan. at 418 (holding that a motion to correct illegal sentence is not the proper vehicle to challenge a sentence on constitutional grounds pursuant to *Alleyne v. United States*, 570 U.S. ___, 133 S. Ct. 2151, 2163, 186 L. Ed. 2d

314 [2013]). Thus, Wood may not use a motion to correct illegal sentence to litigate his constitutional claim.

In conclusion, the lower courts had jurisdiction to hear and consider Wood's motion to correct an illegal sentence made pursuant to K.S.A. 22-3504. But Wood has advanced no meritorious argument demonstrating that his sentence is illegal, so his claim fails on the merits. See *State v. Williams*, 303 Kan. 585, 595, 363 P.3d 1101 (2016) (affirming judgment as right for the wrong reason).

Affirmed.