

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 110,021

STATE OF KANSAS,
Appellee,

v.

JASON A. REESE,
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Review of the judgment of the Court of Appeals in an unpublished opinion filed April 10, 2015.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; BENJAMIN L. BURGESS, 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 briefs for appellant.

Lance J. Gillett, 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 May 2011, the State charged Jason A. Reese with aggravated assault with a deadly weapon after he used his vehicle to repeatedly ram another vehicle in an apparent road rage incident. Shortly thereafter, the Kansas Offender Registration Act (KORA), K.S.A. 22-4901 *et seq.*, was amended to include any offender who "on or

after July 1, 2006, is convicted of any person felony and the court makes a finding on the record that a deadly weapon was used in the commission of such person felony." L. 2011, ch. 95, sec. 2; K.S.A. 2016 Supp. 22-4902(e)(2). The legislature also lengthened the amount of time certain violent offenders are required to register from 10 years to 15 years. L. 2011, ch. 95, sec. 6; K.S.A. 2016 Supp. 22-4906(a)(1).

On July 14, 2011, Reese pled no contest to the charge, and the court later ordered Reese to serve 24 months' probation and imposed an underlying 29-month prison sentence. At sentencing, the court notified Reese of his duty to register under KORA—mistakenly reciting a 10-year period. It subsequently memorialized this decision in an order nunc pro tunc, stating that the district court had determined Reese committed the crime with a deadly weapon and that he was required to register for 10 years. Shortly thereafter, the Kansas Bureau of Investigation (KBI) mailed letters to offender registrants—including Reese—explaining that they were now required to register for 15 years pursuant to the 2011 amendments to KORA.

After the time for direct appeal had passed, Reese filed—through counsel—a motion challenging the retroactive application of the 2011 KORA amendments, asking the court to "declare 2011 SB 37 unconstitutional as retroactively applied." Several months later, Reese's counsel filed another motion with an attached brief, arguing in greater detail that the 2011 amendments constitute punishment under the Ex Post Facto Clause of the United States Constitution. Throughout November and December 2012, Reese's counsel submitted several motions claiming (1) the plain language of the 2011 amendments did not contain explicit language authorizing retroactive application; (2) the KBI violated the separation of powers doctrine by altering the amount of time Reese was required to register; (3) Reese's right to effective assistance of counsel was violated because he was not provided accurate advice about the length of time he would be required to register at the time of his plea; (4) registration constituted cruel and unusual

punishment; (5) registration is punishment; and (6) the prosecution unfairly modified the plea agreement after plea negotiations by lengthening the amount of time Reese is required to register. The State responded to these motions by challenging the court's jurisdiction.

Relying primarily on *State v. Jackson*, 291 Kan. 34, 238 P.3d 246 (2010), and *State v. Myers*, 260 Kan. 669, 923 P.2d 1024 (1996), the district court ruled that Reese's registration was an "incident of sentencing," and that the court lost subject matter jurisdiction once the order became final. To its credit, the court candidly admitted that it had erred by imposing a 10-year registration term rather than the 15-year term. It later entered several journal entries denying the motions, from which Reese filed a timely notice of appeal.

Reese argued before the Court of Appeals that the district court possessed the requisite jurisdiction to consider his challenge as a motion to correct illegal sentence. The panel held, 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. Reese*, No. 110,021, 2015 WL 1782348, at *6 (Kan. App. 2015) (unpublished opinion). The panel ultimately dismissed Reese's appeal for a lack of jurisdiction, and we granted his petition for review.

Reese asserts on appeal that the 2011 amendments to KORA created an illegal sentence. See K.S.A. 22-3504. 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]).

The motions filed with the district court as well as Reese's arguments made on appeal make it clear that his illegal sentence claim is premised on allegations of constitutional deficiencies. In *State v. Dickey*, 305 Kan. 217, 220, 380 P.3d 230 (2016), we warned that a party who raises a question of constitutional law "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]). Reese 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 Reese's motions to correct an illegal sentence made pursuant to K.S.A. 22-3504. But Reese 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.