

IN THE COURT OF APPEALS OF IOWA

No. 1-458 / 10-1360
Filed July 27, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DAVID LEE HERING,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, Paul L. Macek,
Judge.

A defendant contends that his speedy trial waiver was invalid and that this
(1) deprived the district court of its power to sentence him and (2) rendered the
judgment void. **AFFIRMED.**

Jeffrey L. Powell of Tindal Law Office, P.L.C., Washington, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, Alan Ostergren, County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Mullins, JJ.

VAITHESWARAN, J.

The State charged David Hering with one count of first-degree murder and two counts of attempted murder. Hering signed a waiver of his right to a speedy trial.

Following trial, a jury found Hering guilty of the charges, and the district court imposed sentence. Hering did not file a direct appeal or a postconviction relief application challenging his judgment or sentence.

Six years after his judgment and sentence were imposed, Hering filed a “Motion to Correct Illegal Sentence and Void Judgment.” He alleged the speedy trial waiver he signed was “invalid and presumed to have been fraudulently obtained.” The district court denied the motion, finding the basis—an alleged speedy trial violation—was not related to the court’s sentencing power.

On appeal, Hering reiterates that his speedy trial waiver was invalid. He contends this claimed error (1) deprived the district court of its power to sentence him and (2) rendered the judgment void.

Hering’s challenge is a thinly-veiled attempt to circumvent the deadlines for raising substantive challenges to his conviction. See Iowa Code § 822.3 (2009) (three-year deadline for filing postconviction relief application); Iowa R. App. P. 6.101(1)(b) (thirty-day deadline for filing notice of appeal). By characterizing his objection as a challenge to an illegal sentence or void judgment, Hering seeks to avail himself of the rules that a court may correct an illegal sentence at any time and may vacate a void judgment at any time. See Iowa R. Crim. P. 2.24(5)(a); *In re S.P.*, 672 N.W.2d 842, 846 (Iowa 2003) (“A void judgment is subject to attack at any time.”).

Notwithstanding Hering's strenuous arguments to the contrary, his speedy-trial objection is not an argument that his sentence is "inherently illegal." See *State v. Bruegger*, 773 N.W.2d 862, 872 (Iowa 2009). Instead, it is an impermissible attempt "to re-examine errors occurring at the trial or other proceedings prior to the imposition of the sentence." *Id.* at 871–72 (quoting *Hill v. United States*, 368 U.S. 424, 430, 82 S. Ct. 468, 472, 7 L. Ed. 2d 417, 422 (1962)); see *United States v. Furman*, 112 F.3d 435, 438 (10th Cir. 1997) (noting much of the defendant's petition related to matters not involving correction of illegal sentence, such as objections regarding speedy trial).

Hering's argument that the claimed speedy trial objection rendered the judgment void is similarly unavailing. See *State v. McCright*, 569 N.W.2d 605, 608 (Iowa 1997) (stating a void judgment means "one which has no legal force or effect" (citation omitted)). His argument goes as follows: the State was required to bring him to trial within ninety days of the filing of the trial information, the State did not do so, his waiver of his speedy trial right was invalid, the district court "automatically lost personal jurisdiction" over him, and the absence of personal jurisdiction deprived the court of authority to enter judgment. The argument is premised on the absence of personal jurisdiction, but Hering cites no authority for the proposition that a speedy trial violation deprives the court of personal jurisdiction over a defendant. Absent such authority, this argument falls of its own weight.

We conclude the district court did not err in denying Hering's motion to correct an illegal sentence and void judgment. We affirm Hering's judgment and sentence.

AFFIRMED.