

IN THE COURT OF APPEALS OF IOWA

No. 1-807 / 10-1797
Filed November 23, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL H. LANG,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Steven J. Andreasen, Judge.

Michael Lang appeals the district court's denial of his request to correct an illegal sentence. **AFFIRMED.**

Michael Lang, Fort Madison, pro se.

Thomas J. Miller, Attorney General, Martha Trout, Assistant Attorney General, Patrick Jennings, County Attorney, and Mark A. Campbell, Assistant County Attorney, for appellee.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

DOYLE, P.J.

Michael Lang appeals the district court's denial of his request to correct an illegal sentence. Because Lang's sentence is not an illegal sentence within the meaning of Iowa Rule of Criminal Procedure 2.24(5)(a), we affirm the district court.

In 1988, a jury found Lang guilty of kidnapping in the first degree. He was sentenced to life imprisonment, and our court affirmed his conviction. See *State v. Lang*, No. 88-1469 (Iowa Ct. App. Mar. 27, 1990). Since then, Lang has filed three applications for postconviction relief. Two were dismissed as frivolous and one dismissed as untimely.

On September 23, 2010, Lang, pro se, filed a document entitled "Correction of Illegal Sentence." Other than Lang's conclusory statement, "That sentencing court lacked power to impose this particular sentence Ia. R. Crim. P. 2.24(5)(a)," Lang did not challenge the legality of the sentence. Rather, he actually challenged his underlying conviction. The State resisted.

In its October 28, 2010 order, the district court found:

Mr. Lang has raised challenges to this verdict and judgment in posttrial submissions, appeals, postconviction relief actions, and other requests too numerous to detail herein. [Lang's] current request is to correct an illegal sentence under Iowa Rule of Criminal Procedure 2.24(5)(a). Mr. Lang's request, however, challenges the use and definition (or vagueness of definition) of the term "torture" in the trial information and jury instructions in reference to Iowa Code section 710.2. Mr. Lang also appears to be challenging the lack of lesser included offenses submitted to the jury in the jury instructions. These are not the type of challenges related to the court's lack of authority to enter the sentence imposed or the constitutionality of the sentence itself as contemplated under Rule 2.24(5)(a). [Lang's] claims are otherwise untimely or have been exhausted.

Concluding Lang failed to state a claim, the court denied Lang's request for the correction of an illegal sentence.

In a "Certify Issue" filed October 26, 2010, Lang claimed "cruel / unusual punishment exist[s], the challenge is that a sentence was illegal [because it involves a claim that the sentencing court lacked the power to impose a particular sentence.]" In a "Certify Issue" filed October 29, 2010, Lang raised additional claims, reiterated his cruel and unusual claim, and added: "Life without parole amounted to cruel / unusual punishment."

The district court then entered a supplemental order on November 2, 2010. The court referenced its previous order and noted Lang did not address or state as to why his sentence was cruel and unusual. The court nevertheless addressed the claim and determined Lang's life sentence did not constitute cruel and unusual punishment and was thus constitutionally valid. The court again denied Lang's request to correct an illegal sentence.

On November 5, 2010, Lang filed his notice of appeal. On that date, he also filed a "Support Argument to Petition of 9-23-2010," a duplicate of his "Certify Issue" filed October 29, and a "Motion for Explicit Standard to Void Judgment, Reconsideration." In an order dated November 16, 2010, the district court concluded it no longer had jurisdiction to consider these filings as Lang had already filed a notice of appeal.

The claims Lang makes on appeal, which need not be repeated here, clearly go to substantive issues concerning alleged errors occurring before or at the trial or other proceedings prior to imposition of his sentence. Those issues, which take up the bulk of his brief, are untimely or have been exhausted and are

thus barred from our consideration. Lang's invocation of rule 2.24(5)(a) for these issues was improper. See *Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001) (“[O]ur cases . . . allow challenges to *illegal* sentences at any time, but they do not allow challenges to sentences that, because of procedural errors, are illegally *imposed*.”); see also *State v. Bruegger*, 773 N.W.2d 862, 871-72 (Iowa 2009) (“[T]he purpose of [the rule] allowing review of an illegal sentence is to permit correction at any time of an illegal *sentence*, not to re-examine errors occurring at the trial or other proceedings prior to the imposition of the sentence.” (internal quotation omitted)).

We could find Lang waived his cruel and unusual punishment claim on appeal; however, we, like the district court, elect to address the claim.¹ Lang asserted in the district court his sentence of life imprisonment without parole amounted to cruel and unusual punishment. A challenge to a sentence under the Cruel and Unusual Punishment Clauses of the United States and Iowa Constitutions is a challenge to an “illegal sentence” under Iowa Rule of Criminal Procedure 2.24(5)(a). See *Bruegger*, 773 N.W.2d at 870-72. The rule allows a court to correct an illegal sentence at any time. *Id.* at 872.

¹ It is a bit difficult to discern Lang's cruel and unusual argument as it is only mentioned in passing in his brief. Lang cryptically states:

Assistant Attorney General action of October 19, 1989 to the Court of Appeals violated [Lang's] Due Process Rights of Fourteenth Amendment / His Eighth Amendment Rights of cruel/unusual punishment of United States Constitution, the Law uniform Art. 1 Sec. 6, Art. 1, Sec. 10 Life or Liberty of an individual, Iowa Constitution.

This apparently is a reference to the appellate brief filed by the State in Lang's original appeal. A random mention of an issue, without elaboration or supportive authority, is not sufficient to raise the issue for review. See *EnviroGas, L.P. v. Cedar Rapids/Linn Cnty. Solid Waste Agency*, 641 N.W.2d 776, 785 (Iowa 2002) (citation omitted). Additionally, on appeal, Lang does not appear to challenge the legality of his sentence on cruel and unusual punishment grounds.

Upon our review, we conclude Lang's sentence was not "illegal" within the meaning of rule 2.24(5)(a). Lang was convicted of kidnapping in the first degree in violation of Iowa Code section 710.2 (1987). Kidnapping in the first degree is a class "A" felony. *Id.* Life imprisonment without parole is the statutory penalty for a class "A" felony. Iowa Code § 902.1 (1987). To be an illegal sentence within the meaning of rule 2.24(5)(a), the sentence must be one not authorized by statute. See *Tindell*, 629 N.W.2d at 359. Clearly, Lang's sentence was authorized by statute and therefore not illegal.

Iowa's strict penalty for kidnapping does not constitute cruel and unusual punishment and is constitutionally valid. See *Hatter v. Iowa Men's Reformatory*, 932 F.2d 701, 703 (8th Cir. 1991) ("Although the sentence is severe, we cannot say that it is so disproportionate to the crime as to be unconstitutional."); *Lamphere v. State*, 348 N.W.2d 212, 221 (Iowa 1984) ("We find no merit in the contention that Iowa's penalty for [the] crime [kidnapping] is unconstitutionally disproportionate."); see also *State v. Nims*, 357 N.W.2d 608, 610-11 (Iowa 1984). We therefore find no merit in Lang's contention that his sentence amounts to cruel and unusual punishment.

For all the above reasons, we affirm the district court's denial of Lang's request to correct an illegal sentence.

AFFIRMED.