

IN THE COURT OF APPEALS OF IOWA

No. 1-355 / 10-1351
Filed July 13, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KHASIF RASHEED WHITE,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble (motion to dismiss attorney, *Alford* plea) and Joel D. Novak (sentencing), Judges.

Khasif White contends on appeal that the district court erred in denying his motion to dismiss his attorney and that he was denied effective assistance of counsel. **AFFIRMED.**

Matthew Boles of Parrish Kruidenier Dunn Boles Gribble Parrish Gentry Fisher, L.L.P., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, John P. Sarcone, County Attorney, and George Karnas and James Ward, Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

In this consolidated appeal, Khasif White appeals from judgments and sentences imposed upon his three convictions of second-degree robbery in violation of Iowa Code sections 711.1 and 711.3 (2009)¹ following *Alford*² pleas. White contends the district court abused its discretion in denying his motion to dismiss his trial counsel. He also contends he was denied effective assistance of counsel. Because we conclude White's *Alford* pleas waived his challenge to the denial of substitute counsel, and the district court did not unreasonably exercise its discretion in denying his motion, we affirm.

On August 1, 2009, White was charged with second-degree robbery after assaulting a store employee who tried to stop him from stealing merchandise.

¹ Iowa Code section 711.1 provides:

A person commits a robbery when, having the intent to commit a theft, the person does any of the following acts to assist or further the commission of the intended theft or the person's escape from the scene thereof with or without the stolen property:

1. Commits an assault upon another.
2. Threatens another with or purposely puts another in fear of immediate serious injury.
3. Threatens to commit immediately any forcible felony.

It is immaterial to the question of guilt or innocence of robbery that property was or was not actually stolen.

Robbery in the first degree occurs "when, while perpetrating a robbery, the person purposely inflicts or attempts to inflict serious injury, or is armed with a dangerous weapon." Iowa Code § 711.2. "All robbery which is not robbery in the first degree is robbery in the second degree." *Id.* § 711.3.

²As described in *State v. Burgess*, 639 N.W.2d 564, 567 n1 (Iowa 2001),

An *Alford* plea is different from a guilty plea in that when a defendant enters an *Alford* plea, he or she does not admit participation in the acts constituting the crime. Though the defendant does not admit guilt, he or she may voluntarily, knowingly, and understandingly consent to the imposition of a sentence. There is no material difference between the pleas, however, when a defendant intelligently concludes his interests require entry of a guilty plea and the State has overwhelming evidence of the defendant's guilt. See *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167, 27 L. Ed. 2d 162, 171 (1970).

(Internal citations omitted.)

On September 12, 2009, he was again charged with second-degree robbery after he attempted to steal a bottle of alcohol and scuffled with another store employee. On January 19, 2010, White was admitted to the Youthful Offender Pretrial Intervention Program, and proceedings on the two charges noted were continued.

On February 20, 2010, the victim cashed a check for \$480 at a convenience store. The clerk at the store where the victim cashed the check noticed that a young male observed the victim's transaction and appeared to signal others, who then followed the victim to his nearby apartment complex. At the apartment complex, the men jumped the victim. White's accomplice then held the victim down while White repeatedly punched and kicked the victim in the face asking "where's the money." Persons came to the aid of the victim, who was bleeding and had injuries to his forehead, temple, nose, cheek, and knee. White ran away, but was quickly apprehended by police who happened to be in the area. As a result of this incident, White was charged with first-degree robbery and first-degree burglary.

In all three of his criminal cases, White filed a pro se "motion to dismiss attorney." At the May 10, 2010 hearing on his motion, White stated he and his attorney "disagree[d] how these cases should be handled" and White had a personal "conflict of interest" with his attorney. After hearing from White and counsel, the district court stated,

Mr. White, you've given the Court absolutely no reason for the discharge of your attorney. There is no indication that she has failed to perform an essential duty on your behalf. She has represented you well, and your motion to discharge your attorney is denied.

The court then set White's three cases for trial.

On June 7, 2010, White entered *Alford* pleas to second-degree robbery in each of his three criminal cases. Pursuant to the plea agreement, the State dismissed the first-degree burglary charge in the February 20, 2010 matter and recommended concurrent sentences.

An *Alford* plea is a variation of a guilty plea; a guilty plea freely and voluntarily entered waives all defenses and objections, including constitutional guarantees. *State v. Burgess*, 639 N.W.2d 564, 567 (Iowa 2001). "The exceptions [to the 'guilty plea waiver' principle] are for the right to challenge the plea itself, the right to challenge the indictment or information if it charges no offense, and the right to be free from double jeopardy." *State v. Yodprasit*, 564 N.W.2d 383, 385 (Iowa 1997).

Here, White's *Alford* pleas waived his challenge to the denial of substitute counsel as it is not one of the excepted challenges. *See id.* Moreover, even if the merits of his claim were reached, White has failed to show the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. A defendant must show more than general frustration and dissatisfaction with counsel. *See State v. Lopez*, 633 N.W.2d 774, 778-79 (Iowa 2001).

In an attempt to avoid the waiver issue, White contends he was denied effective assistance of counsel as trial counsel directed him to "enter a plea that was not knowing, intelligent, and voluntary." He argues that if his counsel had challenged the underlying first-degree robbery charge, which he claims has

insufficient factual basis, “a factual basis could have been established for a plea or trial *on a less serious charge*.” We can discern no prejudice as White pled to a less-serious charge. See *State v. Bearce*, 748 N.W.2d 211, 214-15 (Iowa 2008) (“A successful ineffective-assistance-of-counsel claim requires proof by a preponderance of the evidence that (1) counsel failed to perform an essential duty, and (2) prejudice resulted.”). White does not challenge the factual basis for his pleas to second-degree robbery, and we affirm his convictions.

AFFIRMED.