

IN THE COURT OF APPEALS OF IOWA

No. 2-665 / 11-1430
Filed August 22, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANDREW OLIVER JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke (plea) and George L. Stigler (sentencing), Judges.

Defendant appeals his conviction, arguing counsel was ineffective.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Rachel C. Regenold, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Thomas J. Ferguson, County Attorney, Dustin Lies, Assistant County Attorney, and Kate Cigrand, Student Legal Intern, for appellee.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

EISENHAUER, C.J.

Defendant Andrew Oliver Jr. appeals his conviction and sentence following his *Alford* plea to first-degree harassment, possession of a controlled substance—third offense, and public intoxication. See *North Carolina v. Alford*, 400 U.S. 25 (1970). The entry of Oliver’s guilty plea waived all defenses and objections not intrinsic to the plea itself. See *State v. Antenucci*, 608 N.W.2d 19, 19 (Iowa 2000). Oliver’s failure to challenge the adequacy of his guilty plea proceeding by motion in arrest of judgment prior to sentencing precludes direct appeal of his conviction. See *id.* However, in this direct appeal Oliver argues his trial counsel was ineffective for allowing the plea to proceed and by failing to file a motion in arrest of judgment. His ineffective-assistance claim “is an exception to our error preservation requirement.” *State v. Keene*, 630 N.W.2d 579, 581 (Iowa 2001). We review his claims of ineffective assistance of counsel de novo. *Id.*

Oliver notes there was no agreed-upon plea offer¹ to a lesser charge and contends he therefore received no tangible benefit from entering an *Alford* plea. While we are not convinced counsel is ineffective even if no “benefit” is derived from a plea of guilty,² we disagree with the suggestion Oliver received no benefit.

An *Alford* plea is different from a guilty plea. When a defendant enters an *Alford* plea, he does not admit participation in the acts constituting the crime. See *Alford*, 400 U.S. at 37-38. “An individual accused of crime may voluntarily,

¹ Oliver had rejected a prior plea offer.

² Since the 1800s, we have recognized: “Reasons other than the fact [the defendant] is guilty may induce a defendant to so plead, and . . . the right . . . to so plead has never been doubted. He must be *permitted to judge for himself* in this respect.” *State v. Kaufman*, 2 N.W. 275, 276 (Iowa 1879) (emphasis added).

knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.” *Id.* at 37. Therefore, an *Alford* plea permits a defendant to avoid a full trial in which the dispute as to the State’s evidence and the defendant’s claimed innocence is settled by a judge or jury.

During the court’s extensive plea colloquy, Oliver acknowledged the State would recommend a prison sentence, but he recognized the sentence imposed would be up to the court. Oliver personally informed the court on eight separate occasions he wanted “to get this nightmare over with,” or “I want to get this over with.” When specifically asked by the court what he had to gain by his plea, Oliver replied: “Well . . . avoid a trial and everything, maybe the court would be lenient on me You know, I don’t stand a . . . chance” Thus, Oliver recognized the State’s evidence and testimony would prove beyond a reasonable doubt that he committed the crimes and his plea would move the process forward. *See id.* (stating a plea is only entertained “where record before the judge contains strong evidence of actual guilt”).

We find Oliver received a benefit from entering the *Alford* plea. As he requested, he avoided a full trial, and the plea allowed him to not admit participation in the crimes. Counsel has no duty to pursue a meritless issue. *State v. Hochmuth*, 585 N.W.2d 234, 238 (Iowa 1998). Accordingly, trial counsel was not ineffective for permitting Oliver to plead guilty and for not filing a motion in arrest of judgment. Oliver’s claim of ineffective assistance of counsel must fail.

AFFIRMED.