

IN THE COURT OF APPEALS OF IOWA

No. 2-679 / 11-1829
Filed August 22, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RYAN CAINE CONARD,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Carol L. Coppola,
District Associate Judge.

A defendant argues the district court erred in failing to require disclosure of any plea agreement made by the parties prior to his guilty plea; he also asserts that counsel was ineffective in failing to ensure that any plea agreement was made part of the record and in failing to create a verbatim record of the guilty plea and sentencing proceedings. **AFFIRMED.**

John Audlehelm of Audlehelm Law Office, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, John P. Sarcone, County Attorney, and Brendon E. Greiner, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

VAITHESWARAN, P.J.

The State charged Ryan Conard with operating a motor vehicle while intoxicated (first offense), a serious misdemeanor. See Iowa Code § 321J.2 (2011). Conard entered a written plea of guilty to the charge. The district court subsequently adjudged him guilty and sentenced him to a one-year jail term with all but thirty days suspended and probation for one year from the date of the order.

On appeal, Conard argues the district court erred or trial counsel was ineffective “in failing to require disclosure of any plea agreement made by the parties and in failing to create a verbatim record of the guilty plea and sentencing proceedings.”

Conard concedes he was obligated to file a motion in arrest of judgment if he wished to contest his plea. See Iowa R. Crim. P. 2.24(3)(a) (“A defendant’s failure to challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment shall preclude the defendant’s right to assert such a challenge on appeal.”); *State v. Kress*, 636 N.W.2d 12, 19 (Iowa 2001). He also concedes that he was informed of this obligation and waived his right to file a motion. These concessions are dispositive: Conard cannot now attack his plea.

In reaching this conclusion, we have considered the exception to this rule where a defendant claims that counsel was ineffective in failing to file the motion in arrest of judgment. See *Kress*, 636 N.W.2d at 19; *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). Conard has not invoked this exception. While he raises an ineffective assistance of counsel claim, that claim focuses on trial counsel’s claimed “failure to memorialize what, if any, plea agreement was made that led to

a sentence that is so much higher than the minimum” and “counsel’s . . . failure to create a record that shows what the reasons for this sentence were.” Nowhere does he assert that counsel was also ineffective in failing to file a motion in arrest of judgment. For that reason, we decline to apply this exception.

As Conard waived his right to challenge the plea on direct appeal, we affirm his judgment and sentence for operating while intoxicated (first offense).

AFFIRMED.