

IN THE COURT OF APPEALS OF IOWA

No. 3-1136 / 12-1880
Filed January 9, 2014

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARCELL NAVELL WIGGINS,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Bradley McCall,
Judge.

A defendant challenges his conviction of possession of a controlled
substance. **AFFIRMED.**

John C. Heinicke of Kragnes & Associates, P.C., Des Moines, for
appellant.

Thomas J. Miller, Attorney General, Martha Trout, Assistant Attorney
General, John P. Sarcone, County Attorney, and Andrea Petrovich, Assistant
County Attorney, for appellee.

Considered by Vaitheswaran, P.J., Potterfield, J., and Eisenhauer, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

EISENHAUER, S.J.

Marcell Navell Wiggins appeals his conviction of possession of a controlled substance, third offense, in violation of Iowa Code section 124.401(5) (2011). He claims he was not adequately informed of his right to file a motion in arrest of judgment or the consequences of proceeding immediately to sentencing after he entered an *Alford* plea.¹ He thus contends his plea was not knowing and voluntary and his conviction should be reversed. We review his claim for the correction of errors at law. See Iowa R. App. P. 6.907.

In order to challenge a guilty plea on direct appeal, a defendant must file a motion in arrest of judgment. Iowa R. Crim. P. 2.24(3) (“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 challenge on appeal.”). The district court must inform a defendant who pleads guilty that any challenges to the plea must be raised in such a motion. Iowa R. Crim. P. 2.8(2)(d). If the court fails to discharge its duty of informing a defendant of the right to challenge a guilty plea through a motion in arrest of judgment, the defendant is excused from the requirement of challenging the guilty plea on appeal. See *State v. Loye*, 670 N.W.2d 141, 150 (Iowa 2003).

Wiggins does not challenge the basis for the underlying plea. In fact, he states “there is no question that there is an adequate factual basis” shown in the record to “satisfy each and every element” of the crime. His only challenge is to the adequacy of the colloquy to inform him of his right to file a motion in arrest of

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

judgment and the consequences of failing to do so and whether he adequately waived his right.

Assuming the court failed to adequately inform Wiggins of his rights, his ability to challenge the legality of his plea is resurrected. But because he fails to challenge the basis for his plea, there is no ground upon which his plea can be overturned. Accordingly, we affirm.

AFFIRMED.