

IN THE COURT OF APPEALS OF IOWA

No. 3-837 / 13-0034
Filed September 18, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

OTIS SEAY JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Otis Seay Jr. appeals following his pleas of guilty to three counts of third-degree sexual abuse. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Linda Fangman, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

Otis Seay Jr. appeals following his pleas of guilty to three counts of third-degree sexual abuse. He contends trial counsel was ineffective in allowing him to enter an *Alford* plea to count III,¹ which charged him with committing a sex act with a seventeen-year-old girl who was incapacitated and could not give consent. See *State v. Keene*, 630 N.W.2d 579, 581 (Iowa 2001) (“If a defendant enters a plea of guilty to a crime and the record fails to disclose a factual basis, defense counsel fails to provide effective assistance.”).

Here, the minutes of testimony² provide a factual basis to support the guilty plea: the seventeen-year-old victim stated the defendant asked if she wanted some Ecstasy, gave her one-half of a pill, and she did not remember much after that but that defendant had sex with her and she did not give consent.

We affirm. See Iowa Ct. R. 21.26(a), (c), (e).

AFFIRMED.

¹ *North Carolina v. Alford*, 400 U.S. 25, 37 (1970), allows a defendant to consent to the imposition of judgment of guilty without admitting to participation in the crime.

² The minutes of testimony make reference to a “Mike”: Otis Seay Jr. is also known as Mike.