

IN THE COURT OF APPEALS OF IOWA

No. 3-409 / 12-1438
Filed June 26, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TROY ANTHONY LEWIS SR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris (plea) and John J. Bauercamper (sentencing), Judges.

Appeal from the judgment and sentence following an *Alford* plea.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and David Arthur Adams and Stephan J. Japuntich, Assistant Appellate Defenders, for appellant.

Troy Lewis, Coralville, pro se.

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

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

EISENHAUER, C.J.

Troy Lewis appeals from the judgment entered and sentence imposed following his *Alford* plea¹ to sexual abuse in the third degree, contending his trial attorney was ineffective in failing to file a motion in arrest of judgment. We affirm.

Lewis was charged with sexual abuse in the third degree. He entered a plea of not guilty. He later attempted to enter a guilty plea, but the court refused to accept it for lack of a factual basis. The case was set for trial. At a pretrial conference, the prosecutor described a plea offer and stated she did not “have a problem” with an *Alford* plea. After discussion with the court, Lewis entered an *Alford* plea to sexual abuse in the third degree, as a non-forcible felony under Iowa Code section 709.4(2)(c)(4), which the court accepted. Lewis’s attorney did not file a motion in arrest of judgment. The pre-sentence investigation report recommended a prison sentence. At the sentencing hearing, the court sentenced Lewis to the maximum, a term of incarceration not to exceed ten years. Lewis appeals.

We review claims of ineffective assistance of counsel de novo. *Everett v. State*, 789 N.W.2d 151, 158 (Iowa 2010). To succeed on an ineffective-assistance-of-counsel claim, a defendant must show by a preponderance of the evidence that: “(1) counsel failed to perform an essential duty; and (2) prejudice resulted.” *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). “We can affirm

¹ An *Alford* plea is a variation of a guilty plea where a defendant does not admit participation in the acts constituting the crime. See *North Carolina v. Alford*, 400 U.S. 25, 37 (1970); *State v. Hansen*, 221 N.W.2d 274, 276 (Iowa 1974). Though the defendant does not admit guilt, the defendant may voluntarily, knowingly, and understandingly consent to the imposition of a sentence. *State v. Burgess*, 639 N.W.2d 564, 567 n.1 (Iowa 2001).

on appeal if either element is absent.” *State v. McPhillips*, 580 N.W.2d 748, 754 (Iowa 1998). We normally preserve these claims for postconviction relief, but we will resolve them on direct appeal if the record is adequate. *State v. Ray*, 516 N.W.2d 863, 865 (Iowa 1994). We conclude the record in this case is adequate.

Lewis challenges his *Alford* plea, contending he received no benefit. Failure to file a motion in arrest of judgment generally precludes challenges to a plea on appeal. Iowa Rs. Crim. P. 2.24(3)(a), 2.8(2)(d); *State v. Kress*, 636 N.W.2d 12, 19 (Iowa 2001). However, the failure to file a motion in arrest of judgment will not preclude the claim if the failure was the result of ineffective assistance of counsel. *State v. Bearnse*, 748 N.W.2d 211, 218 (Iowa 2008); *Kress*, 636 N.W.2d at 19.

Lewis argues his attorney breached an essential duty by allowing him to enter an *Alford* plea “when there was no real benefit” to him. While we are not convinced counsel is ineffective even if no “benefit” is derived from a plea of guilty, we disagree with the suggestion Lewis received no benefit. In the plea proceeding, Lewis agreed he received a concession from the State to follow the recommendation in the presentence investigation report and he was sparing the victim from having to testify publically to the alleged sexual abuse, which allowed him “an advantage at least at sentencing for arguing that.” Lewis was adamantly unwilling to admit guilt. Taking advantage of an *Alford* plea allowed him not to admit committing sexual abuse, yet to avoid a trial. See *Alford*, 400 U.S. at 32. Although an attorney may be ineffective for failing to raise a valid objection, see *Bearnse*, 748 N.W.2d at 215, 217, an attorney 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 Lewis to plead guilty and for not filing a motion in arrest of judgment. Lewis's claim of ineffective assistance of counsel fails.

AFFIRMED.