

CONCURRING OPINION BY NAKAMURA, C.J.

I concur in this court's decision. Except for claims reserved for appeal in a conditional plea, a defendant waives the right to assert nonjurisdictional claims by knowingly and voluntarily entering a guilty or no contest plea. Adams v. State, 103 Hawai'i 214, 225-26, 81 P.3d 394, 405-06 (2003); State v. Morin, 71 Haw. 159, 162-63, 785 P.2d 1316, 1318-19 (Hawai'i 1990). The United States Supreme Court held in United States v. Cotton, 535 U.S. 625, 629-31 (2002), that defects in an indictment do not deprive a court of jurisdiction, and the United States Court of Appeals for the Eighth Circuit has since held that a guilty plea waives a claim that the indictment failed to state an offense. United States v. Todd, 521 F.3d 891, 894-95 (8th Cir. 2008). Hawai'i, however, regards defects in a charge that involve the failure to adequately allege an essential element of the offense to be "jurisdictional," State v. Cummings, 101 Hawai'i 139, 142-45, 63 P.3d 1109, 1112-15 (2003), and thus a defendant's claim that his or her charge was defective in this respect is not waived by a guilty or no contest plea.

*Craig H. Nakamura*