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IN THE SUPREME COURT OF IOWA
NO. 15-1408

JACOB LEE SCHMIDT,

Applicant-Appellant,

v.

STATE OF IOWA

Respondent-Appellee,

On Appeal From The District Court For Woodbury County
The Honorable Edward A. Jacobson

Brief Of The Innocence Network And The Innocence Project Of Iowa As *Amici Curiae* In Support Of The Applicant-Appellant

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TABLE OF CONTENTS

IDENTITY AND INTEREST OF AMICI CURIAE 1

INTRODUCTION 3

ARGUMENT 5

I. The Risk That An Innocent Individual Will Plead Guilty Is Far From Theoretical 5

II. Numerous Individuals Have Encountered The Same Situation Currently Faced By Schmidt 7

III. To Foreclose Relief To Schmidt Under The Facts Presented Here Would Represent A Departure From The Approach Taken By Numerous Other Jurisdictions 11

IV. This Court Should Reverse The Court Of Appeals And Decline To Apply The Reasoning Of *Walters v. State* 15

CONCLUSION 19

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND 20

PROOF OF SERVICE AND CERTIFICATE OF FILING 21

TABLE OF AUTHORITIES

Page(s)

STATE CASES

Bell v. State, 759 So.2d 1111 (Miss. 1999) 14

Ex Parte Domingo Calderon III, 309 S.W.3d 64 (Tex. Crim. App. 2010) 7, 8, 9

In re Spencer, 218 P.3d 924 (Wash. Ct. App. 2009) 9, 10

Jamison v. State, 765 S.E.2d 123 (S.C. 2014) 13, 14

Moore v. State, 734 N.W.2d 336 (N.D. 2007) 14

People v. Schneider, 25 P.3d 755 (Colo. 2001) 13

State v. Alexander, 463 N.W.2d 421 (Iowa 1990) 15, 16

State v. Fontaine, 559 A.2d 622 (R.I. 1989) 12

State v. Morehouse, 316 N.W.2d 884 (Iowa 1982) 15

State v. Speed, 573 N.W.2d 594 (Iowa 1998) 15

Walters v. State, No. 12-2022, 2014 WL 69589, (Iowa Ct. App. Jan. 9, 2014) 10, 14, 15, 16, 17, 18, 19

STATE STATUTES

IOWA CODE § 822.2(1) 4, 11, 16, 17, 19

IOWA CODE § 822.3 18

MISS. CODE ANN. § 99-39-5(1)(e) 14

N.D. CENT. CODE § 29-32.1-01(1)(e) 14

R.I. GEN. LAWS § 10-9.1-1(a)(4) 12

S.C. CODE ANN. § 17-27-20(A)(4) 13

RULES

COLO. R. CRIM. P. 35(c)(2)(V)....................12

WASH. R. APP. P. 16.4(c)(3)....................10

OTHER AUTHORITIES

The National Registry of Exonerations Homepage, *available at* http://www.law.umich.edu/special/exoneration/Pages/about.aspx (last visited Dec. 22, 2016)....................1

Innocents Who Plead Guilty, NAT'L REGISTRY OF EXONERATIONS (Nov. 24, 2015), *available at* http://www.law.umich.edu/special/exoneration/Documents/NRE.Guilt y.Plea.Article1.pdf....................3, 4

Rebecca Stephens, *Disparities in Postconviction Remedies for Those Who Plead Guilty and Those Convicted at Trial: A Survey of State Statutes and Recommendations for Reform,* J. CRIM. LAW AND CRIMINOLOGY 309, 322 (2013), *available at* http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?ar ticle=1006&context=jclc....................11

Lucian E. Dervan & Vanessa A. Edkins Ph.D, *The Innocent Defendant's Dilemma: An Innovative Empirical Study of Plea Bargaining's Innocence Problem*, 103 J. Crim. L. & Criminology 1 (2013), *available at* http://scholarlycommons.law.northwestern.edu/jclc/vol103/iss1/1....................6

Alexandra E. Gross & Samuel R. Gross, *Witness Recantation Study: Preliminary Findings*, NAT'L REGISTRY OF EXONERATIONS (May 2013), *available at* http://www.law.umich.edu/special/exoneration/Documents/Recantatio nUpdate_5_2013.pdf....................5, 6

IDENTITY AND INTEREST OF AMICI CURIAE

The Innocence Network is an affiliation of organizations dedicated to providing pro bono legal and investigative services to individuals seeking to prove innocence of crimes for which they have been convicted. The Network also works to redress the underlying causes of wrongful convictions. As of December 2016, the efforts of the Innocence Network had resulted in the exonerations of a total of 1,945 individuals.[1] With its organizations located across the United States—including the Innocence Project of Iowa—and around the world,[2] the Innocence Network is

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[1] *See* The National Registry of Exonerations Homepage, http://www.law.umich.edu/special/exoneration/Pages/about.aspx (last visited Dec. 22, 2016).

[2] Innocence Network member organizations include: the Actual Innocence Clinic at the University of Texas, After Innocence, Alaska Innocence Project, Association in Defense of the Wrongly Convicted (Canada), Arizona Innocence Project, Boston College Innocence Program, California Innocence Project, Center on Wrongful Convictions, Committee for Public Counsel Services Innocence Program, Connecticut Innocence Project, Downstate Illinois Innocence Project, Duke Center for Criminal Justice and Professional Responsibility, The Exoneration Initiative, Georgia Innocence Project, George C. Cochran Mississippi Innocence Project, Griffith University Innocence Project (Australia), Hawaii Innocence Project, Idaho Innocence Project, Illinois Innocence Project, Innocence and Justice Project at the University of New Mexico School of Law, Innocence Institute of Point Park University, Innocence Network UK, Innocence Project Arkansas, Innocence Project of Florida, Innocence Project of Iowa, Innocence Project of Minnesota, Innocence Project at UVA School of Law, Innocence Project New Orleans, Innocence Project New Zealand, Innocence Project Northwest Clinic, Innocence Project of South Dakota, Innocence Project of Texas, Irish Innocence Project at Griffith College, Justice Brandeis Innocence Project, Justice Project, Inc., Kentucky Innocence Project, Life After Innocence, Medill Innocence Project, Miami Innocence Project, Michigan Innocence Project, Mid-Atlantic Innocence Project, Midwestern Innocence Project, Mississippi Innocence Project, Montana Innocence Project, Nebraska Innocence Project, New England Innocence Project, New York Law School Post-Conviction Innocence Clinic, North Carolina Center

committed to ensuring individuals who made the difficult decision to enter a guilty plea are permitted to pursue postconviction relief upon discovery of exculpatory evidence. To that end, the Innocence Network and the Innocence Project of Iowa have an interest in freeing the judicial system of any barriers to the pursuit of postconviction relief.

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on Actual Innocence, Northern Arizona Justice Project, North California Innocence Project, Office of the Public Defender (State of Delaware), Office of the Ohio Public Defender, Wrongful Conviction Project (State of Ohio), Ohio Innocence Project, Oklahoma Innocence Project, Oregon Innocence Project, Osgoode Hall Innocence Project (Canada), Pace Post-Conviction Project, Palmetto Innocence Project, Pennsylvania Innocence Project, Reinvestigation Project (Office of the Appellate Defender), Resurrection After Exoneration, Rocky Mountain Innocence Center, Sellenger Centre Criminal Justice Review Project (Australia), Texas Center for Actual Innocence, Texas Innocence Network, Thomas M. Cooley Law School Innocence Project, Thurgood Marshall School of Law Innocence Project, University of Baltimore Innocence Project Clinic, University of British Columbia Law Innocence Project (Canada), University of Leeds Innocence Project (UK), Wake Forest University Law School Innocence and Justice Clinic, Wesleyan Innocence Project, West Virginia Innocence Project, Wisconsin Innocence Project, and Wrongful Conviction Clinic at Indiana University.

INTRODUCTION

It is self-evident that the incarceration of an innocent person represents a failure of the justice system. That the individual pled guilty to a lesser charge in the face of a lengthy prison sentence in no way diminishes the inequity in his continued imprisonment in the face of exculpatory evidence.

The decision by an innocent person to plead guilty is informed by his or her incentives. It is not a reflection on the person's subjective belief in his or her own innocence or guilt. Consider the two familiar, yet inconvenient, choices imposed on a criminal defendant who is faced with a false accusation. The accused may wager years of freedom on the uncertain outcome that the jury will believe his account of the events. Alternatively, the accused may eliminate the risk of a lengthy incarceration by accepting a plea agreement.

Nearly 95% of criminal defendants charged with felonies in the United States choose the latter.[3] At the same time, 15% of exonerated

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[3] *Innocents Who Plead Guilty*, NAT'L REGISTRY OF EXONERATIONS (Nov. 24, 2015), *available at* http://www.law.umich.edu/special/exoneration/Documents/NRE.Guilty.Plea.Article1.pdf. Note that many of the statistics cited in this brief are derived from the comprehensive record of information concerning past exonerations maintained by the National Registry of Exonerations. The Registry was formed in conjunction with the Center on Wrongful Convictions at Northwestern University School of Law, and is maintained by the Newkirk

individuals were in prison because they had entered a guilty plea.[4] The incentive to plead guilty is therefore felt by the innocent and guilty alike.

Justice simply cannot be achieved if the law is blind to the fact that innocent people routinely make the rational decision to plead guilty to crimes they did not commit. The legal system must supply safeguards the innocent may avail themselves of when the assumptions on which they relied when entering a guilty plea prove false. Iowa's postconviction relief statute—permitting a person to seek relief if "[t]here exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence *in the interest of justice*,"—is one such safeguard. *See* IOWA CODE § 822.2(1)(d) (emphasis added). The Legislature guaranteed this relief to "[a]ny person who has been convicted," not "any person who has been convicted *and pled not guilty*." *Id.* Preventing an applicant from seeking relief under section 822.2(1) because he or she pled guilty would therefore be contrary to the plain wording of the law and sound public policy.

Center for Science & Society at University of California Irvine, the University of Michigan Law School, and Michigan State University College of Law. Additional information about the Registry is available on their website: https://www.law.umich.edu/special/exoneration/Pages/mission.aspx

[4] *Innocents Who Plead Guilty*, NAT'L REGISTRY OF EXONERATIONS (Nov. 24, 2015), *available at* http://www.law.umich.edu/special/exoneration/Documents/NRE.Guilty.Plea.Article1.pdf.

ARGUMENT

I. The Risk That An Innocent Individual Will Plead Guilty Is Far From Theoretical

Experience and practice have shown that criminal defendants frequently plead guilty to crimes they did not commit. 261 of the 1,702 exonerations tracked by the National Registry of Exonerations involved defendants who had pled guilty to at least one of the charges filed against them.[5] A similar ratio of individuals exonerated in child sex abuse cases, 25 out of 189, had pled guilty.[6]

The knowledge that even a single criminal defendant who pled guilty to a charge of child sex abuse was later exonerated should weigh on this Court. The fact that 13% of all exonerations in child sex abuse cases involve defendants who voluntarily entered a guilty plea, however, reveals a systemic pattern impossible to ignore. These figures are particularly relevant considering the rate of exonerations based upon witness recantation is particularly high in child sex abuse cases.[7] Specifically, 67 out of 250

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[5] *Id.*

[6] *Id.*

[7] Alexandra E. Gross & Samuel R. Gross, *Witness Recantation Study: Preliminary Findings*, NAT'L REGISTRY OF EXONERATIONS (May 2013), *available at* http://www.law.umich.edu/special/exoneration/Documents/RecantationUpdate_5_2013.pdf

exonerations in this category of cases stemmed from a witness or victim recanting his or her testimony.[8]

Denying a hearing to someone whose accuser has recanted his or her allegations creates an unacceptable risk that an innocent person will remain behind bars for a crime he or she did not commit. This assertion is far from speculative. In fact, witness recantation is so common in child sex abuse cases that researchers have identified an emerging pattern: "The defendant is convicted based solely on the testimony of a child (or children) who claims to have been abused; years later the child (or children) recants, usually due to a guilty conscience, and admits that no abuse ever occurred."[9]

These startling real-world statistics are further compounded by a persuasive and growing body of behavioral research. Studies designed to simulate the decision-making of an innocent criminal defendant demonstrate more than 50% of innocent individuals faced with a harsh penalty in the event they are adjudicated guilty during a fact finding proceeding will admit guilt in exchange for the guarantee of a lighter penalty.[10]

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[8] *Id.*

[9] *Id.*

[10] Lucian E. Dervan & Vanessa A. Edkins Ph.D, *The Innocent Defendant's Dilemma: An Innovative Empirical Study of Plea Bargaining's Innocence Problem*, 103 J. Crim. L. & Criminology 1 (2013), *available at* http://scholarlycommons.law.northwestern.edu/jclc/vol103/iss1/1. The study placed pairs of college students in a room to solve written logic problems. The researchers

Aside from the gravity of the statistics involving exonerations based upon recanted testimony, what is more troubling is the proportion of innocent individuals who have *not* been exonerated despite witness recantation. This figure is immeasurable. Allowing applicants to present evidence of witness recantation at a hearing will provide an avenue for these individuals to prove their innocence. This is the approach that courts around the country have repeatedly taken.

II. Numerous Individuals Have Encountered The Same Situation Currently Faced By Schmidt

The essential facts of Schmidt's case are not unique. Countless individuals have accepted plea agreements only to later learn their accuser has recanted his or her version of events. Fortunately, several of these individuals have regained their freedom after having the opportunity to present the evidence of recantation at a hearing.

Consider the situation faced by Domingo Calderon, III in Atascaso County, Texas. *See Ex Parte Domingo Calderon III*, 309 S.W.3d 64 (Tex. Crim. App. 2010). Calderon had been charged with the aggravated sexual

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notified the participants that based on their respective answers, there was less than a 4% chance that they had not cheated. The participants were then offered two choices. They could admit they had cheated, and lose the compensation they had been promised for participating in the study. Alternatively, they could proceed to the Academic Review Board. If they were found guilty before the Board, however, they would lose their compensation and would potentially be required to enroll in a weekly three-hour ethics course.

assault of his two younger sisters. *Id.* at 65. Calderon opted to plead no contest to a reduced charge of indecency. *Id.* His conviction carried a sentence of seven years of probation. *Id.* Calderon's probation was subsequently revoked, however, in part because he would not admit he had molested his sister during court-mandated sex-offender therapy. *Id.* The Court sentenced Calderon to ten years in prison for his probation violation. *Id.*

Several months after Calderon entered his guilty plea, both of his sisters notified their mother that they had falsely accused Calderon of molesting them. *Id.* Both sisters executed affidavits in which they recanted their prior allegations against Calderon. *Id.* When Calderon's sister Janie subsequently met with prosecutors, however, she declined to recant her prior version of events, in part due to the influence of her father. *Id.* at 66. After the meeting with prosecutors, Janie wrote a note in which she apologized for not recanting her story during the meeting with prosecutors, and reiterated that Calderon was innocent. *Id.* at 67.

Calderon relied on Janie's affidavit and her apology note in seeking habeas corpus relief. *Id.* at 66-69. The court held an evidentiary hearing during which Janie testified in a manner consistent with her affidavit. *Id.* at 68. The Court of Criminal Appeals of Texas in turn granted Calderon's

request for habeas relief after concluding "newly discovered evidence" supported setting aside his conviction. *Id.* at 70. Notably, the court pointed to the tangible documentary evidence of recantation—Janie's sworn affidavit and her apology note—as the relevant newly discovered evidence that entitled him to pursue habeas relief. *Id.* Based on the record developed during the evidentiary hearing, the court set aside the judgment against Calderon. *Id.* at 71.

Clyde Spencer faced a similar legal battle in the State of Washington. *See In re Spencer*, 218 P.3d 924 (Wash. Ct. App. 2009). Spencer had entered an Alford plea in 1985 after being charged with multiple counts of child sex abuse. *Id.* at 926. The alleged victims were two of Spencer's children and his stepchild, each of whom was under the age of ten. *Id.*

Although Spencer was originally sentenced to serve life in prison, the Governor of Washington subsequently issued a conditional commutation based upon an independent review of Spencer's criminal file. *Id.* at 927. The terms of the conditional commutation required Spencer to remain on the sex offender registry. *Id.* at 927.

Spencer then filed a personal restraint petition—a procedural device equivalent to that of an application for postconviction relief in Iowa.[11] Spencer filed affidavits of two of the three children in support of his petition. Both children recanted their prior accusations through the affidavits. *Id.* at 928-30. One of the children explained he had felt pressure from investigators to implicate his father. *Id.* at 931. The court held an evidentiary hearing, during which the children testified in accordance with their affidavits. *Id.* at 926. On appeal, the court concluded new evidence had been presented that changed the underlying factual basis of the Alford plea. *Id.* at 932. The court therefore held "Spencer must be allowed to withdraw his plea to avoid a complete miscarriage of justice." *Id.* at 933.

Under the reasoning of *Walters v. State*, which the State asks the Court to adopt here, Calderon and Spencer would not have had the opportunity to prove their innocence at an evidentiary hearing. *See Walters v. State,* No. 12-2022, 2014 WL 69589, at *6 (Iowa Ct. App. Jan. 9, 2014) ("We hold that 'in the interest of justice' requires that a conviction based on a guilty plea that satisfied all legal requirements cannot be successfully challenged in a postconviction proceeding by claiming an alleged victim

[11] The Washington statute permits relief if "[m]aterial facts exist which have not been previously presented and heard, which in the interest of justice require vacation of the conviction, sentence, or other order entered in a criminal proceeding." WASH. R. APP. P. 16.4(c)(3).

recantation is new evidence."). Such a rule all but guarantees future innocent individuals will remain imprisoned.

III. To Foreclose Relief To Schmidt Under The Facts Presented Here Would Represent A Departure From The Approach Taken By Numerous Other Jurisdictions

Pleading guilty is not a barrier to the pursuit of postconviction relief in most jurisdictions. Postconviction relief statutes expressly afford an individual who pled guilty the right to seek relief in at least seven jurisdictions.[12] Moreover, although "the majority of states' statutes do not explicitly grant those who plead guilty access to postconviction remedies, courts in most states allow those who plead guilty to bring postconviction petitions under the same statutes as those who are convicted at trial."[13]

Numerous courts have allowed individuals who pled guilty to pursue actions for postconviction relief under statutes that are worded similarly to Iowa Code section 822.2(1)(d). The nearly identical language of the Rhode Island postconviction relief statute, for example, provides relief when the following showing is made:

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[12] *See* Rebecca Stephens, *Disparities in Postconviction Remedies for Those Who Plead Guilty and Those Convicted at Trial: A Survey of State Statutes and Recommendations for Reform*, J. CRIM. LAW AND CRIMINOLOGY 309, 322 (2013), *available at* http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1006&context=jclc (citing the postconviction statutes of Mississippi, Pennsylvania, Utah, Alaska, Arizona, Florida, and the District of Columbia).
[13] *Id.* (collecting cases).

> [T]hat there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.

R.I. GEN. LAWS § 10-9.1-1(a)(4). Rhode Island's highest court concluded, in a child sex abuse case in which the defendant's accusers subsequently recanted their stories, that the applicant was entitled to relief despite the fact he had pled guilty to the underlying charge. *See State v. Fontaine*, 559 A.2d 622, 625 (R.I. 1989). The court reasoned that the operation of the statute "does not depend upon the plea entered by the applicant or the question of whether the applicant has been convicted after trial." *Id.* Accordingly, the court held the applicant had made a sufficient showing entitling him to an evidentiary hearing. *Id.*

The State of Colorado takes a similar approach. The postconviction statute, applicable to "every person convicted of a crime," affords the opportunity to seek relief if:

> [T]here exists evidence of material facts, not theretofore presented and heard, which, by the exercise of reasonable diligence, could not have been known to or learned by the defendant or his attorney prior to the submission of the issues to the court or jury, and which requires vacation of the conviction or sentence in the interests of justice.

COLO. R. CRIM. P. 35(c)(2)(V). The Supreme Court of Colorado determined this rule "grants to 'every person' the right to seek

postconviction relief—not just to individuals convicted after a trial." *People v. Schneider*, 25 P.3d 755, 760 (Colo. 2001). The court therefore concluded an individual who pled guilty to a child sex abuse crime was entitled to an evidentiary hearing after his accuser recanted her testimony. *Id.* at 760-64.

The Supreme Court of South Carolina has also addressed the specific issue presented here. South Carolina's postconviction relief statute provides relief for:

> Any person who has been convicted of, or sentenced for, a crime and who claims . . . that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.

S.C. CODE ANN. § 17-27-20(A)(4). Interpreting this statute in a case involving the discovery of a previously unidentified witness, the court reasoned as follows:

> [B]y its plain language, the PCR Act affords 'any person' the ability to seek post-conviction relief on the basis of newly discovered evidence—not just individuals convicted and sentenced following trial. Accordingly, we must reject the State's claim that the waiver of trial and admission of guilt encompassed in a guilty plea necessary preclude post-conviction relief in *all* cases.

Jamison v. State, 765 S.E.2d 123, 129 (S.C. 2014). The court in this case, however, ultimately concluded the applicant could not prevail under the

specific facts presented, primarily because the admission of the additional witness's testimony was unlikely to have changed the result at trial. *Id.* at 130-31.

Under North Dakota law, an individual who pleads guilty may pursue postconviction relief so long as he or she can "demonstrate a manifest injustice, justifying withdrawal of the guilty plea." *Moore v. State*, 734 N.W.2d 336, 339 (N.D. 2007).[14] The standard is satisfied if the applicant can demonstrate new evidence was discovered after entry of the guilty plea, the failure to learn of the evidence was not the result of the defendant's lack of diligence, the newly discovered evidence is material, and the weight and quality of the evidence would likely result in an acquittal at trial. *Id.* Similarly, in Mississippi, a defendant who pleads guilty is entitled to an evidentiary hearing upon discovery of new exculpatory evidence. *See Bell v. State*, 759 So.2d 1111, 1115 (Miss. 1999).[15]

To adopt the rule stated in *Walters v. State*—which was incorporated into the Court of Appeals' ruling in this case—that an individual who

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[14] North Dakota's postconviction relief statute provides for relief when "[e]vidence, not previously presented and heard, exists requiring vacation of the conviction or sentence in the interest of justice." N.D. CENT. CODE § 29-32.1-01(1)(e).

[15] Mississippi's postconviction relief statute permits a person to petition the court to set aside a conviction if "there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interests of justice." MISS. CODE ANN. § 99-39-5(1)(e).

entered a guilty plea cannot seek postconviction relief after his alleged victim recants, would therefore be inconsistent with the well-reasoned approach taken by the numerous jurisdictions that have addressed the issue.

IV. This Court Should Reverse The Court Of Appeals And Decline To Apply The Reasoning Of *Walters v. State*

It is critical that this Court provides guidance as to the proper standard to apply in cases involving witness recantation in the wake of *Walters v. State*. The Court of Appeals in this case—following the reasoning of *Walters*—improperly conflated the standard applicable to a motion in arrest of judgment with the standard applicable to an action for postconviction relief. This Court should therefore overrule *Walters* to the extent it holds a person who pleads guilty waives his right to seek postconviction relief based upon recanted witness testimony.

It is understood that in the context of a direct challenge to a criminal conviction, "a plea of guilty 'waives all defenses or objections which are not intrinsic to the plea itself.'" *State v. Alexander*, 463 N.W.2d 421, 422 (Iowa 1990) (quoting *State v. Morehouse*, 316 N.W.2d 884, 885 (Iowa 1982)). Accordingly, a defendant may not withdraw a guilty plea except upon discovery of new evidence bearing on the knowing and voluntary nature of the plea. *See State v. Speed*, 573 N.W.2d 594, 596 (Iowa 1998).

The Legislature broadened the relief available in the context of a postconviction relief action. The relevant code section provides that:

> Any person who has been convicted of, or sentenced for, a public offense and who claims any of the following may institute, without paying a filing fee, a proceeding under this chapter to secure relief: . . . (d) There exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence *in the interest of justice*.

IOWA CODE § 822.2(1) (emphasis added). This Court has recognized that a person who has pled guilty and cannot seek a new trial in the underlying criminal proceeding may seek postconviction relief. *See Alexander*, 463 N.W.2d at 423 ("The remedy Alexander seeks is available to him in the form of postconviction relief.").

The applicant in *Walters* sought postconviction relief after his accuser recanted. The State encouraged the court to categorically hold that newly discovered evidence does not justify postconviction relief when the applicant pled guilty in the underlying criminal matter, as Walters had done. *Walters*, 2014 WL 69589, at *5. The court instead concluded "we cannot accept the State's position and rule there are no circumstances under which a postconviction applicant might be able to successfully challenge a guilty plea." *Id.* In this respect, the reasoning of *Walters* is consistent with *State v. Alexander* and the out-of-state cases addressing similar factual scenarios.

Despite its recognition that pleading guilty does not waive the right to seek postconviction relief in *all* cases, however, the court of appeals concluded Walters had waived the right in his specific case. *See id.* at *6 ("When he pled guilty, he waived all defenses . . . ."). The court further held the recantation did not "un-waive his defenses or objections." *Id.* This suggests the court of appeals viewed pleading guilty as waiving the right to seek postconviction relief in cases of recanted testimony, but not necessarily in cases involving the discovery of other categories of evidence, such as physical evidence.[16]

The interests of justice, however, are equally well-served by granting postconviction relief when a key witness has recanted testimony as they are when physical evidence proves a person could not have committed a crime. Witness testimony can be just as indicative of a person's innocence or guilt as DNA evidence. The State is equally unlikely to prove its case if the victim admits the accused did not commit the crime as if DNA evidence proves the accused could not have committed it. This Court therefore should not base its decision on any distinction between categories of

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[16] Indeed, the court may very well have had other categories of evidence in mind when it indicated "[w]e need not decide whether any other facts or circumstances might be grounds for relief under section 822.2(1)(d)." *Walters*, 2014 WL 69589, at *6 n.5.

evidence.[17] Rather, the Court should hold pleading guilty does not waive the right to seek postconviction relief, regardless of the type of evidence relied on by the applicant.

The court of appeals' analysis of the statute of limitations issue in *Walters* is also misguided. The three-year statute of limitations does not apply "to a ground of fact or law that could not have been raised within the applicable time period." IOWA CODE § 822.3. The court of appeals reasoned as follows in concluding the statute of limitations barred the applicant's claim:

> The ground of fact is his actual innocence. That is a ground of fact that he could have asserted during the limitations period, but which he voluntarily and intelligently relinquished when he both confessed to law enforcement and pled guilty. Thus, his actual innocence is not a ground of fact that could not have been raised within the statute of limitations period.

Walters, 2014 WL 69589, at *6. But all criminal defendants have the ability to assert their actual innocence during the statutory period. The court's reasoning therefore implies *no* person claiming actual innocence could *ever* seek relief upon discovery of new evidence after the three-year limitations period. This Court can avoid this draconian result by

[17] Moreover, the type of evidence that is later discovered is irrelevant to the question of whether a waiver of the right to seek postconviction relief occurred at the time a guilty plea is entered. The Court should analyze the issue *ex ante*, without regard to the type of new evidence discovered years after entry of the plea.

concluding the sworn affidavit filed in support of Schmidt's petition for relief is the "new ground of fact" that could not have been asserted during the statutory period.

Affirming the decision of the Court of Appeals in this matter—which incorporated the holding of *Walters*—will narrow the operation of Iowa Code section 822.2(1)(d) considerably, setting Iowa apart from the numerous jurisdictions permitting postconviction relief where a witness recants testimony years after entry of a guilty plea.

CONCLUSION

This Court should reverse the decision of the Court of Appeals and find that the interests of justice demand that Schmidt be afforded the opportunity to prove his innocence during an evidentiary hearing.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This brief complies with the type-volume limitations of IOWA R. APP. P. 6.903(1)(g)(1) and (2) because it contains 4,293 words, excluding the parts of the brief exempted by IOWA R. APP. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirement of IOWA R. APP. P. 6.903(1)(e) and the type-style requirements of IOWA R. APP. P. 6.903(1)(f) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in Times New Roman 14 point font.

/s/ Mitch G. Nass

PROOF OF SERVICE AND CERTIFICATE OF FILING

I hereby certify that on January 4, 2017, I served the counsel below via U.S. Mail. I further certify that I electronically filed the foregoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, which will send notification of such filing to the counsel below:

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