

IN THE SUPREME COURT OF IOWA

No. 16-0860

Filed August 31, 2018

CHARLES NICHOLAS,

Appellant,

vs.

STATE OF IOWA,

Appellee.

On review from the Iowa Court of Appeals.

Appeal from the Iowa District Court for Dallas County, Gregory A. Hulse, Judge.

An applicant requests further review of a court of appeals decision affirming the district court's denial of his application for postconviction relief. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.**

Susan R. Stockdale, Windsor Heights, for appellant.

Thomas J. Miller, Attorney General, and Kyle P. Hanson, Assistant Attorney General, for appellee.

PER CURIAM.

We granted the State’s petition for rehearing and now withdraw our original opinion. On further consideration, we vacate the decision of the court of appeals because it concluded Charles Nicholes’s plea of guilty did not allow him to make an absolute innocence claim. *See Schmidt v. State*, 909 N.W.2d 778, 798 (Iowa 2018).

We affirm, however, the district court’s decision dismissing Nicholes’s postconviction action on its merits. The district court concluded,

However, [Nicholes] openly concedes that he was aware his trial counsel had not yet fully interviewed witnesses at the time of his plea, and that the [Nicholes] instead made the decision to plead guilty. . . . [Nicholes] certainly could have raised this issue in a postconviction proceeding within three years from his conviction “and thus [the issue was] available to be addressed then.” *Lopez-Penalzoza v. State*, 804 N.W.2d 537, 542 (Iowa 2011).

We agree with these findings of fact and its conclusion of law. Accordingly, we affirm the judgment of the district court.

DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.

This opinion shall not be published.