IN THE SUPREME COURT OF IOWA

JACOB LEE SCHMIDT,	)	
	)	
Applicant-Appellant,	)	
	)	
v.	)	S.CT. NO. 15-1408
	)	
STATE OF IOWA,	)	
	)	
Resister-Appellee.	)	

APPEAL FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
HONORABLE EDWARD A. JACOBSON, JUDGE

APPELLANT'S APPLICATION FOR FURTHER REVIEW OF THE DECISION OF THE IOWA COURT OF APPEALS FILED AUGUST 17, 2016

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CERTIFICATE OF SERVICE

On the 26th day of August 2016, the undersigned certifies that a true copy of the foregoing instrument was served upon the Applicant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Jacob Lee Schmidt, 2123 Bryan Street, Sioux City IA 51103.

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QUESTION PRESENTED FOR REVIEW

According to the National Registry of Exonerations, (http://www.law.umich.edu/special/exoneration/Pages/detaillist), Seventeen Per Cent of Exonerations (318/1868) Involved Defendants Who Entered Guilty Pleas.

Did the Iowa Court of Appeals Err in Affirming a Summary Dismissal of a Post-Conviction Relief Application Holding That Newly Discovered, Exculpatory Evidence, Cannot Be the Basis for Post-Conviction Relief Where the Applicant, Claiming Actual Innocence, Was Convicted Following a Guilty Plea Rather Than a Trial?

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STATEMENT SUPPORTING FURTHER REVIEW

Further review should be granted in this case because the Iowa Court of Appeals decided a case which should have been decided by the Iowa Supreme Court because the issue involves a substantial issue of first impression in Iowa. Iowa R. App. P. 6.903(2)(d) and 6.1101(2)(c).

Jacob Schmidt filed a petition for post-conviction relief asserting there existed evidence of material facts, not previously available, presented or heard, that required the vacation of his conviction in the interest of justice. Iowa Code § 822.2(1)(d) (2013). Specifically, Schmidt sought relief from a guilty plea because the victim recanted his previous claims of sexual abuse. Schmidt's claim is one of "actual innocence" which falls squarely into the "in the interest of justice" language of Iowa Code section 822.2(1)(d). The decision of the Iowa Court of Appeals effectively forecloses any possibility that anyone pleading guilty could ever receive even a hearing on a claim of "actual innocence."

BRIEF

STATEMENT OF THE CASE

Nature of the Case: Jacob Schmidt seeks further review of a Court of Appeals decision upholding dismissal of his petition for post-conviction relief.

Course of Proceeding and Disposition in the District Court: On December 19, 2006, the State charged Schmidt with sex abuse in the third degree for alleged acts occurring on February 25, 2006. (TI)(App. pp. 6-7). On March 23, 2007, the State amended the Trial Information to charge two additional counts of sexual abuse in the third degree and one count of incest. (3/23/07 Motion to Amend; 3/23/07 Order)(App. pp. 22-24).

The parties reached a plea agreement on April 2, 2007. The State amended Count I of the Trial Information to charge assault with intent to commit sexual abuse. Schmidt agreed to plead guilty to amended Count I—assault with intent to commit sexual abuse and Count IV—incest. The parties agreed Schmidt would be sentenced to consecutive prison sentences for a total of seven years. The plea agreement also

provided Schmidt would be subject to a 10-year special sentence pursuant to Iowa Code section 903B.2 at the conclusion of his prison sentence. (Plea Agreement; 4/2/07 Motion to Amend; 4/2/07 Order)(App. pp. 26-29). Schmidt pled guilty pursuant to the plea agreement on April 2, 2007. (Order Upon Plea of Guilty)(App. p. 30).

Schmidt requested immediate sentencing. The court sentenced Schmidt on Count I—assault with intent to commit sexual abuse to a term of imprisonment not to exceed two years. (Ct. 1 Judgment)(App. pp. 31-34); on Count IV—incest, the district court ordered Schmidt to be incarcerated for a period not to exceed five years to be served consecutively to Count I. In addition to the five year prison sentence, the court imposed a 10-year special sentence which would commence at the end of the sentence imposed for the underlying offenses. (Ct. 4 Judgment)(App. pp. 35-38). The remaining counts were dismissed. (Motion & Order to Dismiss)(App. p. 39).

Schmidt did not file a direct appeal.

On June 23, 2014, Schmidt filed a petition for post-conviction relief. Schmidt alleged the victim had "come forward with the truth." (PCR)(App. pp. 40-44).

On May 14, 2015, the State filed a motion for summary dismissal and/or summary judgment. (Motion for Summary Dismissal/Judgment[1]) (App. pp. 46-52). The State asked the case be dismissed because it was barred by the statute of limitations. (Motion for Summary Dismissal/Judgment, p. 3-5)(App. pp. 48-50). The State also disputed BC's recantation qualified as newly discovered evidence because Schmidt "would have known at the time of his conviction and sentence what the truth of the case was, be it testimony from the victim or anyone else." The county attorney stated Schmidt's "assertion in his application is in direct contradiction to the record as well as direct contradiction to his voluntary and

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[1] The State requested the court take judicial notice of the court file and transcripts. (Motion for Summary Dismissal/Judgment)(App. pp. 46-52). The transcript of the guilty plea and sentence could not have been reviewed by the court; it was not prepared until the Appellate Defender ordered it by combined certificate in this case. See Court Reporter's Certificate.

knowing plea of guilty." (Motion for Summary Dismissal/Judgment, p. 5-7)(App. pp. 50-52)

On May 28, 2015, Schmidt filed a statement of disputed material fact and a resistance to the motion to dismiss and/or summary judgment. (Statement of Fact; Affidavit; Resistance; Memo)(App. pp. 53-65). Schmidt stated BC's recantation is relevant new information that meets the ground of fact exception. (Memo, pp. 2-3)(App. pp. 58-59). Schmidt asserted he was entitled to a hearing for consideration of BC's recantation and the failure to provide such hearing would "result in an utter failure of justice." (Memo, pp. 3-4)(App. pp. 59-60).

On July 30, 2015, the district court sustained the State's motion to dismiss and/or summary judgment. The court did not address the statute of limitations question raised by the State. The court determined the newly discovered evidence does not provide grounds to withdraw the guilty pleas because it is not intrinsic to the plea. The case was dismissed. (Ruling)(App. pp. 66-68). Schmidt filed a timely appeal. (Notice)(App. p. 69).

Proceedings and Disposition in the Iowa Court of Appeals: On August 17, 2016, the Iowa Court of Appeals affirmed the decision of the district court, finding an unpublished opinion of another panel of the Iowa Court of Appeals—Walters v. State, No. 12-2022, 2014 WL 69589 (Iowa Ct. App. Jan. 9, 2014)—"spot on" for the proposition that newly discovered evidence—victim recantation—could not be challenged in a post-conviction relief proceeding because it was not intrinsic to the plea. (Schmidt v. State, No. 15-1408 (Iowa Ct. App. Aug 17, 2016).

Facts: According to the Minutes of Testimony, on February 25, 2006, Schmidt was visiting BC's house. BC was 14 years old. Schmidt was 17 years old. BC and Schmidt have the same mother.

When BC's father left the house to do laundry, Schmidt told BC to go lie down on a bed. Schmidt told BC to pull down his pants. Schmidt took down his own pants and got on his knees behind BC. BC's father had returned to the home to get his forgotten cigarettes. When the boys were not in the living room, BC's father went into the bedroom. BC said Schmidt

was attempting to penetrate BC's anus with his penis when his father walked in.

BC's father yelled at Schmidt; telling him to leave the house. Schmidt left the residence. BC's father called the police.

BC told the police Schmidt was a sick pervert and he wanted him arrested. BC said Schmidt did not penetrate his anus on this date. Schmidt did not make any threats and he was not hurt. BC said the only time Schmidt had made any threats was a previous occasion when Schmidt had actually penetrated BC's anus. This was approximately three to four months before February 2006. Schmidt had told BC not to tell anyone or Schmidt would hurt him.

While the police were at the home regarding the complaint, Schmidt's mother called. Schmidt was taken to the hospital because his mother believed he needed to be on suicide watch. Schmidt had not threatened to harm himself, but his mother did not want him to commit suicide over possibly getting in trouble for this. Schmidt denied doing any

of this. He said BC's father was lying. There had been some negative past history between BC's father and Schmidt. (Minutes)(App. pp. 8-21).

On May 27, 2015, BC signed an affidavit. BC said at the time he made the allegations of sexual abuse, he was a child. When he was 21 years old, BC told other people that Schmidt had never touched him in a sexual way or sexually abused him. BC stated he decided to tell people when he turned 21 since he was a full adult at that time. BC wanted to see Schmidt and tell him he was sorry that he couldn't tell anyone before then. (BC Affidavit)(App. pp. 55-56).

ARGUMENT

THE COURT OF APPEALS ERRED IN AFFIRMING A SUMMARY DISMISSAL OF A POST-CONVICTION RELIEF APPLICATION HOLDING THAT NEWLY DISCOVERED, EXCULPATORY EVIDENCE, CANNOT BE THE BASIS FOR POST-CONVICTION RELIEF, WHERE THE APPLICANT, CLAIMING ACTUAL INNOCENCE, WAS CONVICTED FOLLOWING A GUILTY PLEA RATHER THAN A TRIAL.

A. Standard of Review.

This Court's review in post-conviction relief proceedings is for correction of errors at law. DeVoss v. State, 648 N.W.2d 56, 60 (Iowa 2002). See also Whitsel v. State, 525 N.W.2d

860, 862 (Iowa 1994) (newly discovered evidence). When a summary judgment is granted this Court examines the record to determine if a genuine issue of fact exists. Grissom v. State, 572 N.W.2d 183,184 (Iowa Ct. App. 1997).

B. Preservation of Error.

Schmidt resisted the State's motion for summary dismissal and/or summary judgment. (Resistance; Memo)(App. pp. 53, 57-65). The issue presented here was preserved. Collins v. State, 588 N.W.2d 399, 400 (Iowa 1998).

This Court has consistently held that any claim not properly raised on direct appeal may not be litigated in a post-conviction relief action unless sufficient reason or cause is shown for not previously raising the claim, and actual prejudice resulted from the claim of error. Jones v. State, 479 N.W.2d 265, 271 (Iowa 1991). A factual or legal matter which was excusably unknown at the time of the trial and appeal may be properly asserted on post-conviction relief. Berryhill v. State, 603 N.W.2d 243, 246 (Iowa 1999). See also Adcock v. State, 528 N.W.2d 65, 647 (Iowa Ct. App. 1994)(Evidence which is newly discovered may satisfy the sufficient reason

requirement for not raising an issue on direct appeal.). Schmidt has not waived his right to raise his claim of actual innocence.

C. Discussion.

Iowa Code section 822.6 permits the State to respond to an application for post-conviction relief by answer or motion for summary disposition of the proceedings. Iowa Code § 822.6 (2013). When the court is satisfied from the application, answer or motion, and the record the applicant is not entitled to relief the court may grant a motion for summary disposition. Iowa Code § 822.6 (2013). The applicant need only be afforded notice and adequate time to respond to the State's motion. Brown v. State, 589 N.W.2d 273, 275 (Iowa Ct. App. 1998).

However, summary judgment is only proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Behr v. Meredith Corp., 414 N.W.2d. 339, 341 (Iowa 1987); Foster v. State, 395 N.W.2d 637, 637-38 (Iowa 1986). A genuine issue of material fact is generated if reasonable minds can differ on how the

issues should be resolved, but if the conflict in the record consists only of the legal consequences flowing from the undisputed facts, entry of summary judgment is proper. Summage v. State, 579 N.W.2d 821, 822 (Iowa 1998); Castro v. State, 795 N.W.2d 789,793 (Iowa 2011). The burden of showing the nonexistence of a material fact is upon the moving party and all materials available to the court will be construed in the light most favorable to the party opposing summary judgment. Behr v. Meredith Corp., 414 N.W.2d. 339, 341 (Iowa 1987).

The district court dismissed Schmidt's post-conviction relief petition stating:

> The *Walters v. State* case, which is provided to the court by counsel as an unpublished opinion quoted *State v. Speed*, 573 N.W.2d 594, 596, quoting "It is well settled that a plea of guilty waives all defenses or objections which are not intrinsic to the plea itself. Therefore, newly discovered exculpatory evidence does not provide grounds to withdraw a guilty plea unless intrinsic to the plea itself." The Walters case is directly on point here as the allegation there as here was the victim had recanted.
>
> Because the court finds it directly on point, the court will not elaborate further with regard to the many cases that apply to the applicability or nonapplicability of summary judgment. Clearly this case is subject to dismissal on summary judgment by the state.

(Ruling[2])(App. pp. 66-68). The both the court of appeals and the district court erred in concluding Walters (and Speed) controlled the outcome of Schmidt's post-conviction claim. These rulings applied the incorrect framework to determine Schmidt's post-conviction relief claim.

In the context of a challenge to the validity of a guilty plea by motion in arrest of judgment, whether error was preserved or through a claim of ineffective assistance of counsel, a criminal defendant waives all defenses and objections to the criminal proceedings by pleading guilty. One exception to this rule involves irregularities intrinsic to the plea—irregularities that bear on the knowing and voluntary nature of the plea. State v. Carroll, 767 N.W.2d 638, 641-644 (Iowa 2009).

The Iowa Supreme Court has not addressed a claim made by a post-conviction relief petitioner who previously pled guilty who is now asserting grounds of newly discovered evidence which requires vacation of the conviction in the

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[2] Walters v. State, No. 12-2022, 2014 WL 69589 (Iowa Ct. App. Jan. 9, 2014).

interest of justice. The Iowa Court of Appeals has addressed such a claim where the petitioner pled guilty. The Court of Appeals relied on the Supreme Court's holding in State v. Speed, 573 N.W.2d 594, 596 (Iowa 1998). Lewis v. State, No. 07-0553, 2008 WL 141155, at *2 (Iowa Ct. App. Jan. 16, 2008) (Guilty plea cannot be vacated due to Lewis' new appraisal of the State's evidence); 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 post-conviction proceedings by claiming an alleged victim recantation is new evidence.").

This reliance was misplaced.

Speed was an appeal from the denial a motion in arrest of judgment. State v. Speed, 573 N.W.2d 594, 596 (Iowa 1998). See also Iowa R. Crim. P. 2.24(3). Speed did not address a claim made pursuant to Iowa Code section 822.2(1)(d). Speed does not provide the proper framework to address a claim advanced by Iowa Code section 822.2(1)(d).

In Alexander, the Supreme Court addressed whether the defendant, after a guilty plea, could move for a new trial based upon newly discovered evidence pursuant to Iowa Rule of Criminal Procedure 23(2)(a).[3] "The question is whether "new trial" may be sought only by defendants who have already been to trial, or whether the remedy is also available to defendants who plead guilty and later seek to set aside their plea and proceed to trial on the ground of newly discovered evidence." State v. Alexander, 463 N.W.2d 421, 422 (Iowa 1990). The Court concluded:

> We are confident that the legislature did not intend to give admittedly guilty persons the unfettered right to recant their admission and proceed to trial on the ground of newly discovered evidence or any other ground not intrinsic to the plea. Notions of newly discovered evidence simply have no bearing on a knowing and voluntary admission of guilt. The remedy Alexander seeks is available to him in the form of post-conviction relief. (emphasis added) See Iowa Code § 663A.2(4) (1989).[4]

State v. Alexander, 463 N.W.2d 421, 423 (Iowa 1990).

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[3] Current Iowa Rule of Criminal Procedure 2.24(2)(a), which was amended after the Alexander decision. Iowa R. Crim. P. 2.24(2)(a) (The application for a new trial can be made only by the defendant and shall be made not later than 45 days after verdict of guilty or special verdict upon which a judgment of conviction may be rendered.).

[4] Current Iowa Code section 822.2(1)(d) (2015).

The Alexander, Court acknowledged post-conviction relief is the proper avenue to assert newly discovered evidence which requires the vacation of the conviction in the interest of justice. Iowa Code § 822.2(1)(d). If Alexander had been prohibited by his guilty plea from seeking post-conviction relief, the Court would have said so.

The district court relied on the Iowa Court of Appeals unpublished decision in Walters v. State, No. 12-2022, 2014 WL 69589 (Iowa Ct. App. Jan. 9, 2014). (Ruling)(App. 66-68). In Walters, the Court of Appeals acknowledged the Supreme Court in Alexander said post-conviction relief was available to vacate a guilty plea citing the predecessor to Iowa Code section 822.2(1)(d). Walters v. State, 2014 WL 69589, at *5. Yet, the Court of Appeals held:

> Walters must jump the "in the interest of justice" hurdle of section 822.2(1)(d). His argument is focused on his now-claimed innocence. The statutory requirement is "in the interest of justice," not "in the interest of the defendant." The State prosecuted Walters, and he voluntarily and intelligently pled guilty after having confessed his guilt to law enforcement. When he pled guilty, he "waive[d] all defenses or objections which [were] not intrinsic to the plea itself." *Speed*, 573 N.W.2d at 596. His guilty plea put the "lid on the box" and ended his claim of innocence. *See State v. Kyle*, 322 N.W.2d 299, 304 (Iowa 1982). An alleged recantation does not un-

waive his defenses or objections and does not remove the lid from the box. 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 post-conviction proceeding by claiming an alleged victim recantation is new evidence.

Walters v. State, 2014 WL 69589, at *6.

The Court of Appeals' determination is inconsistent with Supreme Court holding in Alexander.

The Iowa Supreme Court has also not addressed a claim of "actual innocence" which requires the vacation of the conviction "in the interest of justice." The Iowa Court of Appeals addressed the issue in Mayberry v. State, No. 11-1982, 2013 WL 2371213 (Iowa Ct. App. May 30, 2013). The Court of Appeals assumed, without deciding, that "actual innocence" is an exception to the three year statute of limitations. The Court of Appeals, however, found Mayberry had not proved by clear and convincing evidence he was actually innocent. Mayberry v. State, No. 11-1982, 2013 WL 2371213, *4 (Iowa Ct. App. May 30, 2013). Unlike Schmidt, the petitioner in Mayberry was afforded a hearing.

The Iowa Supreme Court has not yet interpreted the "in the interest of justice" language in section 822.2(1)(d) of the post-conviction relief chapter. Federal courts have held a claim of "actual innocence" satisfies the "fundamental miscarriage of justice" exception to the procedural bar applicable to federal habeas actions. Schlup v. Delo, 513 U.S. 298 (1995); Bousley v. United States, 523 U.S. 614 (1998); House v. Bell, 547 U.S. 518 (2006). '[I]n appropriate cases,' " ..."the principles of comity and finality that inform the concepts of cause and prejudice 'must yield to the imperative of correcting a fundamentally unjust incarceration,' " House v. Bell, 547 U.S. 518, 536 (2006) (quoting Murray v. Carrier, 477 U.S. 478, 495 (1986)). In Schlup, the United States Supreme Court adopted a specific rule to implement this principle. Petitioners asserting innocence as a gateway to defaulted claims must establish that, in light of new evidence, "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." Schlup v. Delo, 513 U.S. 298, 327 (1995). This standard "ensures that petitioner's case is truly 'extraordinary,' while still providing

petitioner a meaningful avenue by which to avoid a manifest injustice." Id. (other citation omitted). The same Schlup standard is applied in collateral review of guilty pleas. Bousley v. United States, 523 U.S. 614, 623 (1998).

The federal courts have held a claim of "actual innocence" is merely a mechanism for overcoming a procedural bar to the institution of a habeas action rather than itself a substantive claim for relief. See Ira Kohlman, *Actual Innocence Exception to Procedural Bars in Federal Habeas Cases- Supreme Court Cases*, 23 A.R.L. Fed.2d 93, at § 5 (The United States Supreme Court has emphasized demonstrating actual innocence is only a gateway to allow federal habeas review of a procedurally defaulted claim, and it not itself a constitutional claim upon which habeas relief can be granted.). The Iowa post-conviction relief statute is different in that the "interest of justice" language in section 822.2(1)(d) makes a claim of actual innocence a substantive basis for post-conviction relief. Therefore, Schmidt's actual innocence assertion is not a gateway which is dependent on a constitutional violation to vacate the guilty pleas. Schmidt

does not need to pass through the "actual innocence gateway" – his claim of actual innocence is a substantive claim, permitted by Iowa Code section 822.2(1)(d).

Schmidt's claim BC had come forward with the truth that he had not been sexually abused by Schmidt fits squarely within Iowa Code section 822.2(1)(d): existence of evidence of a material facts, not previously presented and heard, that requires vacation of the conviction in the interest of justice. This subsection provides a means of pursuing a claim of "actual innocence." Claims made under section 822.2(1)(d) are not subject to the "intrinsic to the plea" standard employed in challenges to a guilty plea pursuant to Iowa Rule of Criminal Procedure 2.24(3). Cf. State v. Alexander, 463 N.W.2d 421, 423 (Iowa 1990). In enacting Iowa Code section 822.2(1)(d), the Iowa legislature has provided an avenue for claims of "actual innocence." The "in the interest of justice" standard is much broader than that allowed for arresting judgment for defects intrinsic to the plea.

Both the district court and the Iowa Court of Appeals applied an incorrect legal standard in evaluating the State's

motion for summary dismissal and/or summary judgment. Because Schmidt is not subject to the "intrinsic to the plea" framework, he may raise his claim pursuant to Iowa Code section 822.2(1)(d). Summary dismissal was inappropriate.

This Court must reverse the district court and the court of appeals and remand for an evidentiary hearing to give Schmidt an opportunity to prove his convictions should be vacated in the interest of justice.

Any other holding would forever foreclose actually, and factually innocent defendants, particularly those who received substantial charging concessions in return for a guilty plea, from challenging a conviction whether based on subsequently-recanted testimony, less-sophisticated DNA testing, or faulty scientific analysis of evidence.

CONCLUSION

Jacob Schmidt respectfully requests this Court vacate the decision of the Iowa Court of Appeals, reverse the district court's dismissal of his post-conviction relief petition and remand the case to the district court for an evidentiary hearing on his claim of actual innocence.

ATTORNEY'S COST CERTIFICATE

The undersigned hereby certifies that the true cost of producing the necessary copies of the foregoing Application for Further Review was $3.17 and that amount has been paid in full by the Office of the Appellate Defender.

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

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

[X] this application for further contains 3,788 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or (2)

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

[x] this application for further review has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Bookman Old Style, font 14 point.

/s/Mark C. Smith Filed: August 26, 2016

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IN THE COURT OF APPEALS OF IOWA

No. 15-1408
Filed August 17, 2016

JACOB LEE SCHMIDT,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury County, Edward A. Jacobson, Judge.

A postconviction-relief applicant, who previously pled guilty, appeals from a district court order summarily dismissing his application. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, and Sheryl Soich, Assistant Attorney General, for appellee State.

Considered by Vogel, P.J., Doyle, J., and Blane, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2015).

DOYLE, Judge.

Jacob Schmidt appeals from the district court's summary dismissal of his application for postconviction relief (PCR), following his guilty pleas to assault with intent to commit sexual abuse and incest. He argues that under Iowa Code section 822.2(1)(d) (2013), newly discovered exculpatory evidence—the victim's alleged recantation of his statements to law enforcement and a child advocacy interviewer—requires this court to reverse the summary dismissal and allow his PCR claim to proceed. The State responds that a claim of newly discovered evidence cannot be the basis for a PCR action where the conviction was entered following a guilty plea. Our review is for correction of errors at law. *See De Voss v. State*, 648 N.W.2d 56, 60 (Iowa 2002).

In June 2014, Schmidt filed his PCR application, claiming that he was not guilty and that his "alleged victim ha[d] come forward with the truth." In resisting the State's motion for summary dismissal, Schmidt proffered an affidavit from the victim, which stated:

> I was the victim in Woodbury County Criminal Case FECR054257, State of Iowa vs. Jacob Schmidt. Jacob Schmidt is my brother. I am currently 23 years of age, but was a child at the time of the criminal case. At the time of the original criminal case, I had told various people that Jacob had sexually abused me. When I was 21 years old, I told other people that Jacob had never touched me in a sexual way or sexually abused me. I didn't tell anyone before that date that nothing had really happened, and so Jacob couldn't have known before then. I decided to tell people when I turned 21 since I was a full adult at that time. I want to see my brother and tell him I am sorry that I couldn't tell anyone before then.

The matter was submitted to the PCR court on the parties' briefs. Thereafter, the court sustained the State's motion and dismissed Schmidt's PCR action. The court, noting Schmidt had not alleged or demonstrated a defect in

the plea-taking proceedings, relied upon this court's reasoning in *Walters v. State*, No. 12-2022, 2014 WL 69589, at *3 (Iowa Ct. App. Jan. 9, 2014), an unpublished opinion, which was denied further review by the Iowa Supreme Court.

In *Walters*, this court noted the well-settled law that guilty pleas waive "all defenses or objections which are not intrinsic to the plea itself." 2014 WL 69589, at *3 (quoting *State v. Speed*, 573 N.W.2d 594, 596 (Iowa 1998)). Because Walters's "newly discovered exculpatory evidence"—an alleged recantation by the victim—was not intrinsic to Walters's guilty pleas, the court held Walters could not challenge his convictions in the PCR proceeding. *See id.* at *3-6. Finding *Walters* "directly on point," the PCR court in this case did "not elaborate further with regard to the many cases that apply to the applicability or non-applicability of summary judgment" but found Schmidt's PCR application was subject to summary dismissal.

Schmidt appeals, challenging this court's holding in *Walters* and the PCR court's reliance upon it. However, upon our review, we find the analysis and reasoning in *Walters* to be spot-on. Applying that analysis and reasoning here without further repeating it, we agree with the PCR court that because Schmidt's convictions were entered following his guilty pleas, he cannot challenge those convictions in a PCR action on the basis of newly discovered evidence in the form of his victim's alleged recantation.

AFFIRMED.