IN THE SUPREME COURT OF FLORIDA

No. SC18-1172

Lower Court Case No. 571994CF0000397XXAXMX

GARY LAWRENCE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF
THE FIRST JUDICIAL CIRCUIT, IN AND
FOR SANTA ROSA COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

ROBERT S. FRIEDMAN
CAPITAL COLLATERAL
REGIONAL COUNSEL - NORTH
1004 DeSoto Park Drive
Tallahassee, FL 32301
(850) 487-0922

STACY BIGGART
Assistant CCRC-North
Florida Bar No. 0089388

MATLETHA BENNETTE
Assistant CCRC-North
Florida Bar No. 1003257

COUNSEL FOR APPELLANT

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PRELIMINARY STATEMENT

This proceeding involves the appeal of the circuit court's summary denial of Mr. Lawrence's successive Rule 3.851 motion for postconviction relief, filed pursuant to Rule 3.851 of the Florida Rules of Criminal Procedure. This motion was based on *Moore v. Texas*, 137 S. Ct. 1039 (2017), *Hall v. Florida*, 134 S. Ct. 1986 (2014), and *Atkins v. Virginia*, 536 U.S. 304 (2002).

CITATIONS TO THE RECORD

The following symbols will be used to designate references to the record: "T" refers to the transcript of trial proceedings; "R" refers to the record on direct appeal to this Court; "PP" refers to the transcript of the penalty phase of the trial; "PCR" refers to the record on appeal from the denial of Mr. Lawrence's 3.850 motion; "PCR-S" refers to the supplemental record on appeal from the denial of Mr. Lawrence's 3.850 motion; "HPCR" refers to the record on appeal from the denial of Mr. Lawrence's successive 3.851 motion based on *Hurst v. Florida*, 136 S. Ct. 616 (2016), and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016); and "SPCR" refers to the record on appeal from the denial of Mr. Lawrence successive 3.851 that is the subject of the instant appeal. All other references will be self-explanatory.

STANDARD OF REVIEW

When the circuit court denies postconviction relief without an evidentiary hearing, this Court should accept the defendant's allegations as true to the extent

they are not conclusively refuted by the record. *Ventura v. State*, 2 So. 3d 194, 197-98 (Fla. 2009). Further, the Court "review[s] the trial court's application of the law to the facts *de novo*." *Green v. State*, 975 So. 2d 1090, 1100 (Fla. 2008). A postconviction court's decision of whether to grant an evidentiary hearing depends upon the actual material before the court, not the court's innate belief about the evidence, and the ruling as to whether a hearing is appropriate is subject to *de novo* review. *Rose v. State*, 985 So. 2d 500, 505 (Fla. 2008). Procedural bar findings are reviewed *de novo*.

INTRODUCTION

Gary Lawrence suffers from an intellectual disability. He displays a lifelong history of intellectual and adaptive deficits with causal risk factors evident from before his birth. Born to impoverished parents who abused alcohol, Mr. Lawrence grew up in squalor without access to proper medical care, shelter, or nurturing caregiver relationships. He was introduced to alcohol and illicit drugs before the age of ten and encouraged to imbibe by his father. (PP. 467-68). He was subjected to domestic violence from his father and abandoned by his mother prior to his adolescence. This deprived upbringing was an incubator for his intellectual disability and allowed Mr. Lawrence to slip through the cracks without receiving appropriate societal supports.

Mr. Lawrence has always struggled in school, most notably with basic reading and writing. As a child, he scored poorly on achievement tests, and his teachers thought even those poor scores overestimated his true abilities. They described him as "very slow" and recommended he be placed in special education. (SPCR. 154). He was held back twice, and at age 15 he was still in the seventh grade. Still, this was not indicative of Mr. Lawrence's functioning, as he would have been held back two additional years if not for social promotions. Ultimately unable to keep up with the expectations of a mainstream classroom, Mr. Lawrence was institutionalized during adolescence at the Dozier School for Boys. This marked the end of Mr. Lawrence's education and the beginning of his experience with the criminal justice system. Even as an adult, his literacy level was so low that he could not undergo the basic testing normally carried out on all inmates in DOC custody. He had to sound out simple words and was unable to properly read, write, or even sign his own name. His trial attorneys noted that he was "very, very slow." (PCR-S. 46, 56).

Deficits were apparent in all aspects of Mr. Lawrence's life. Since childhood, Mr. Lawrence has struggled with social skills and functioned more like a child than an adult. Gullible and easily manipulated, Mr. Lawrence would do whatever anyone asked him to do without thinking of the consequences. Mr. Lawrence was unable to manage money or hold down a job. He was unable to live alone, cook, do laundry, or keep up with day-to-day affairs. He depended on family, friends, and girlfriends

for financial support. Even with assistance, Mr. Lawrence struggled to function outside of an institutional setting.

Despite his rife history of deficits—and the Supreme Court's holding in *Atkins v. Virginia*, 536 U.S. 304, 321 (2002), that the execution of intellectually disabled individuals violates the Eighth Amendment—Mr. Lawrence was precluded from litigating his claim of intellectual disability until recently.

After *Atkins* was decided, Florida utilized a strict cutoff rule that required an individual to have an IQ score of 70 or below in order to raise a meritorious claim of intellectual disability. It was not until the Supreme Court decided *Hall v. Florida*, 134 S. Ct. 1986, 1990 (2014), and deemed Florida's "rigid rule" unconstitutional that Florida defendants could raise a claim of intellectual disability with IQ scores above Florida's pre-*Hall* cutoff. In *Walls v. State*, 213 So. 3d 340 (Fla., corrected and reissued May 4, 2017), this Court found that *Hall* applies retroactively to cases that became final prior to the *Hall* decision. This, for the first time, enabled Mr. Lawrence to pursue a good-faith claim of intellectual disability. On May 2, 2018, Mr. Lawrence filed a successive Rule 3.851 motion within one year of this Court's decision in *Walls*. Mr. Lawrence proffered unrebutted expert and lay evidence that he is intellectually disabled within the meaning of *Hall*.

The circuit court summarily denied Mr. Lawrence's claim of intellectual disability on procedural grounds without addressing the merits of Mr. Lawrence's

claim. Because Mr. Lawrence's allegations of intellectual disability "are not conclusively refuted by the record," this Court "must accept [them] as true." *Ventura v. State*, 2 So. 3d 194, 197-98 (Fla. 2009). The evidence Mr. Lawrence has proffered, accepted as true, establishes his intellectual disability and ineligibility for execution under *Atkins*, *Hall*, and their progeny.

STATEMENT OF CASE AND FACTS

A. Trial Proceedings and Direct Appeal

In 1995, before the United States Supreme Court decided *Atkins v. Virginia*, 536 U.S. 304 (2002), Mr. Lawrence was convicted of first-degree murder, conspiracy to commit first-degree murder, and petit theft and was sentenced to death in Santa Rosa County. During the sentencing phase, the "advisory" jury recommended death by a 9 to 3 vote.

Prior to the trial, Dr. James Larson evaluated Mr. Lawrence as part of a mitigation assessment. (PP. 465). Dr. Larson testified at the penalty phase that he had administered the Wechsler Adult Intelligence Scale Revised (WAIS-R) to Mr. Lawrence and determined Mr. Lawrence's full-scale score to be 81. (T. 469-70). Dr. Larson indicated that Mr. Lawrence's intellectual functioning appeared so low that, "[i]f it got a couple points lower, we would say it fell in the borderline range of retardation." (T. 470). Dr. Larson administered further tests and determined that Mr. Lawrence's actual functioning "fell lower than we would expect based upon his

overall IQ" and, consequently, "he never achieved anything more than someone in the borderline range of retardation." (T. 472). Dr. Larson testified that his findings were consistent with Mr. Lawrence's school records, which mostly consisted of D's and F's. (T. 475).

Dr. Larson testified that Mr. Lawrence's intellectual deficits coexisted with problems in academic achievement (T. 468-69, 471-74), personal relationships (T. 481-83), and an unstable home environment defined by parental alcoholism, domestic violence, physical abuse, neglect, and childhood introduction to alcohol and illicit substances. (T. 465-67). His testimony makes plain that Mr. Lawrence's deficits manifested prior to the age of eighteen.

On May 5, 1995, the trial court sentenced Mr. Lawrence to death. (R. 239). The judge found the following aggravating factors: (1) Mr. Lawrence was under a sentence of imprisonment when he committed the murder; (2) the murder was heinous, atrocious or cruel; and (3) the murder was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. (R. 231-34). The trial court found no statutory mitigating factors (R. 234-35), but found the following nonstatutory mitigating factors: (1) Mr. Lawrence's cooperation with law enforcement; (2) Mr. Lawrence's *learning disability and low IQ*; (3) Mr. Lawrence's deprived childhood and poor upbringing; (4) Mr. Lawrence was under the influence of alcohol at the time of the murder; and (5) Mr. Lawrence does not

have a violent history. The trial court rejected the following nonstatutory mitigating factors: (1) the murder was the result of a heated domestic dispute, specifically a love triangle; (2) Mr. Lawrence has mental health problems; and (3) there is an equally culpable co-defendant who might receive disparate treatment. (R. 236-38).

On direct appeal, this Court affirmed Mr. Lawrence's convictions and sentences. *Lawrence v. State*, 698 So. 2d 1219 (Fla. 1997). The United States Supreme Court thereafter denied certiorari. *Lawrence v. Florida*, 522 U.S. 1080 (1998).

B. Initial State Postconviction and Federal Habeas Corpus Proceedings

Mr. Lawrence's Rule 3.850 motion for postconviction relief was filed on January 19, 1999. (PCR. 1-19). It was amended on April 22, 1999, and noted that Mr. Lawrence has a "limited intellectual grasp." (PCR. 3, 23). A *Huff*[1] hearing was held on November 8, 1999, and the circuit court entered an order granting a limited evidentiary hearing on the following claims: (1) defense counsel's concession of guilt to lesser included offenses in the guilt phase without Mr. Lawrence's consent; (2) defense counsel's concession of guilt to first-degree murder in the penalty phase without Mr. Lawrence's consent; and (3) defense counsel's failure to advise Mr. Lawrence of his right to testify. (PCR. 102-13). The evidentiary hearing commenced on June 12, 2000, and the circuit court entered its order denying postconviction relief

[1] *Huff v. State*, 622 So. 2d 982 (Fla. 1997)

on October 11, 2000. (PCR. 192-98).

This Court affirmed and denied Mr. Lawrence's Petition for Writ of Habeas Corpus. *Lawrence v. State*, 831 So. 2d 121 (Fla. 2002). The United States Supreme Court denied certiorari. *Lawrence v. Florida*, 538 U.S. 926 (2003).

Mr. Lawrence filed a Petition for Writ of Habeas Corpus by a Person in State Custody in the United States District Court, Northern District of Florida. (Case No. 3:03CV97-RH). His petition was dismissed as untimely by the district court despite appointed counsel's arguments that Mr. Lawrence's intellectual functioning was so low as to prevent him from meaningfully participating in an agency relationship with his attorneys. The Eleventh Circuit affirmed on August 26, 2005. *Lawrence v. Florida*, 421 F.3d 1221 (11th Cir. 2005). The United States Supreme Court granted certiorari and affirmed. *Lawrence v. Florida*, 549 U.S. 327 (2007).

C. Successive State Postconviction Proceedings

On April 5, 2017, Mr. Lawrence filed a successive Rule 3.851 motion for postconviction relief based on *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), and *Hurst v. Florida*, 136 S. Ct. 616 (2016). (HPCR. 18-45). The circuit court summarily denied Mr. Lawrence's motion for postconviction relief (HPCR. 104-6), and this Court affirmed. *Lawrence v. State*, 236 So. 3d 240 (Fla. 2018). The matter is currently in the United States Supreme Court pending consideration of a petition for writ of certiorari. *See Lawrence v. State of Florida*, Docket No. 17-9431 (filed June

14, 2018) (distributed for Conference of September 24, 2018).

On May 2, 2018, Mr. Lawrence filed a successive Rule 3.851 motion for postconviction relief based on *Moore v. Texas*, 137 S. Ct. 1039 (2017), *Hall v. Florida*, 134 S. Ct. 1986 (2014), and *Atkins v. Virginia*, 536 U.S. 304 (2002), asserting that he is ineligible for the death penalty because he meets all three prongs for a finding of intellectual disability under the decisions in *Hall* and *Walls*. (SPCR. 23-95). *See Franqui v. State*, 211 So. 3d 1026, 1028 (Fla. 2017) (requiring Florida defendants claiming intellectual disability to establish (1) significantly subaverage intellectual functioning; (2) deficits in adaptive behavior; and (3) manifestation before the age of eighteen). After the State filed its answer, Mr. Lawrence filed a reply including a proffer of the report of Dr. Jethro Toomer, whom this Court found in *Walls* to be an expert on intellectual disability. Dr. Toomer stated that Mr. Lawrence is intellectually disabled and has an *unadjusted* full-scale IQ score of 75. (SPCR. 170).

The circuit court heard argument at the *Huff* hearing conducted on June 18, 2018. Counsel for Mr. Lawrence discussed Mr. Lawrence's proffer. Counsel explained that Dr. Toomer's administration of the WAIS-IV revealed that Mr. Lawrence has an unadjusted full-scale IQ of 75.[2] (SPCR. 213). Mr. Lawrence's

[2] The Flynn Effect was not applied to Mr. Lawrence's WAIS-IV score. If, however, one did apply the Flynn Effect to Mr. Lawrence's unadjusted score (as

unadjusted score of 75 is within the Standard Error of Measurement (SEM). (SPCR. 214). Counsel spoke to Mr. Lawrence's adaptive deficits, which satisfy the second prong of an intellectual disability diagnosis. To satisfy this prong, an individual must have deficits in one of three categories of adaptive functioning: conceptual, social, and practical. Mr. Lawrence has deficits in all three domains, as explained in Dr. Toomer's report. (SPCR. 216). Dr. Toomer's findings also establish the third and final prong of an intellectual disability diagnosis: that the deficits manifest before the age of 18. (SPCR. 216). Additionally, counsel directed the circuit court to the declaration of Dr. Larson, the original expert from Mr. Lawrence's trial. Like Dr. Toomer, Dr. Larson called for a hearing on the issue of intellectual disability and presented a myriad of causal risk factors in four categories: biomedical, social, behavioral, and educational. (SPCR. 217).

The circuit court summarily denied Mr. Lawrence's motion for postconviction relief on the grounds that his claim was time-barred. (SPCR. 161-63). Mr. Lawrence filed a Motion for Rehearing and Clarification (SPCR. 164-70). The circuit court denied Mr. Lawrence's motion (SPCR. 185-86), and this appeal follows.

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professional norms deem appropriate), that would lower Mr. Lawrence's full-scale IQ score by several points. (SPCR. 213-14).

The State has proffered that, when considering the Flynn effect, Mr. Lawrence's properly corrected IQ from his WAIS-R examination is 69. (SPCR. 118).

SUMMARY OF ARGUMENT

Gary Lawrence is intellectually disabled and categorically ineligible for execution. *Atkins v. Virginia*, 536 U.S. 304 (2002). He has not been afforded the opportunity for an evidentiary hearing or appropriate review of his intellectual disability claim at any time since the decision in *Atkins*. This is through no fault of Mr. Lawrence or his counsel. As early as his trial, pre-*Atkins*, Mr. Lawrence presented evidence of his low IQ.

After *Atkins* was decided, but before the United State Supreme Court decided *Hall v. Florida*, 134 S. Ct. 1986 (2014), Mr. Lawrence could not have proven his intellectual disability, because Florida's pre-*Hall* standard was unconstitutionally restrictive, requiring that a person attempting to establish intellectual disability have "an IQ of 70 or below." *Zack v. State*, 911 So. 2d 1190, 1201 (Fla. 2005) (citing *Cherry v. State*, 781 So. 2d 1040, 1041 (Fla. 2000)); *see also* Fla. Stat. 921.137(1) (2001) (requiring IQ "performance that is two or more standard deviations from the mean"). *Hall* changed the landscape with its declaration that "intellectual disability is a condition, not a number." *Hall*, 134 S. Ct. at 2001. The Court in *Hall* "consider[ed] the psychiatric and professional studies that elaborate on the purpose and meaning of IQ scores to determine how the scores relate to the holding of *Atkins*," *id*. at 1990, and found that it contravenes "established medical practice" to view "an IQ score as final and conclusive evidence of a defendant's intellectual

capacity . . . while refusing to recognize that the score is, on its own terms, imprecise." *Id*. at 1995. When this Court held, in *Walls v. State*, 213 So. 3d 340 (Fla. 2017), that *Hall* is retroactive to defendants whose cases were already final at the time of *Hall*, Mr. Lawrence was finally free to raise a claim of intellectual disability based on his lifelong condition, notwithstanding a score above the prior cutoff.

By the time Mr. Lawrence was able to raise this issue, over twenty years had passed since his trial. Although Mr. Lawrence scored an 81 on the WAIS-R at the time of trial, the professional norms related to diagnosing intellectual disability changed, and the clinically appropriate test is no longer the WAIS-R but the WAIS-IV. (SPCR. 151, 152). Dr. Toomer administered the WAIS-IV, and Mr. Lawrence achieved an unadjusted full-scale score of 75—"within the test's acknowledged and inherent margin of error." *Hall* at 2001. Thus, the circuit court reviewing Mr. Lawrence's claim was constitutionally required to allow Mr. Lawrence to "present additional evidence of intellectual disability, including testimony regarding adaptive deficits." *Id*.

Mr. Lawrence proffered evidence at the *Huff* hearing[3] that satisfies all three prongs of a finding of intellectual disability: he suffers from significant subaverage intellectual functioning; he suffers deficits in adaptive functioning; and the onset of

[3] This hearing, referred to as a case management conference by the circuit court, functioned as a *Huff* hearing to determine whether Mr. Lawrence would receive the constitutionally required evidentiary hearing.

his disability occurred prior to age 18. The trial and appellate records themselves indicate that, were it not for the rigid IQ score cutoff prior to *Hall*, Mr. Lawrence's counsel would have litigated his intellectual disability long ago. Mr. Lawrence filed this claim within one year of the issuance of the corrected opinion in *Walls*, which made *Hall* retroactive to cases that were final before *Hall* was decided. Accordingly, the circuit court's summary denial of Mr. Lawrence's 3.851 motion was an error of law.

This Court's decision in *Rodriguez v. State*, No. SC15-1278, 2016 WL 4194776 (Fla. Aug. 9, 2016), does not control because Mr. Lawrence did not have a qualifying IQ score until *Hall* was decided. *Blanco v. State*, No. SC17-330, 2018 WL 3613388 (Fla. July 19, 2018), was wrongly decided because Mr. Blanco, like Mr. Lawrence, could not have raised his intellectual disability claim after *Atkins*; until *Hall*, he could not make out a *prima facie* case under Florida law. And, under *Atkins* and *Hall*, Mr. Lawrence's intellectual disability renders him categorically ineligible for execution under the Eighth Amendment. No state-law waiver provision can trump this constitutional prohibition. For all of these reasons, no procedural bar precludes merits review of Mr. Lawrence's intellectual disability claim.

ISSUE I

MR. LAWRENCE'S INTELLECTUAL DISABILITY CLAIM IS NOT PROCEDURALLY BARRED AND SHOULD BE REMANDED TO THE CIRCUIT COURT FOR AN EVIDENTIARY HEARING ON THE MERITS.

Pursuant to Fla. R. Crim. P. 3.851(d)(1), motions for postconviction relief must ordinarily be filed within one year of the judgment and sentence becoming final. However, Fla. R. Crim. P. 3.851(d)(2)(B) recognizes an exception: a postconviction motion is timely, even when filed a year after finality, where "the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively." *See also Hamilton v. State*, 236 So. 3d 276, 278 (Fla. 2018) ("The relevant time in which to file a claim based on a new fundamental constitutional right is one year from the date of the decision announcing that the right applies retroactively."). Mr. Lawrence's successive Rule 3.851 motion raising his claim of intellectual disability qualifies for that exception.

In *Hall v. Florida*, the United States Supreme Court held that Florida's strict IQ cutoff of 70 for defendants to file intellectual disability claims created "an unacceptable risk that persons with intellectual disability will be executed and thus [was] unconstitutional." 134 S. Ct. at 1990. Prior to this decision, Mr. Lawrence was unable to pursue a claim of intellectual disability because Florida's pre-*Hall* standard was prohibited it. Now, after *Hall*, a court can find that Mr. Lawrence is

intellectually disabled because his full-scale IQ score of 75 is within the standard error of measurement, he suffers from significant adaptive deficits, and his disability was onset prior to age 18. *See Hall v. State*, 201 So. 3d 628 (Fla. 2016); *Moore v. Texas*, 137 S. Ct. 1039 (2017); *Brumfield v. Cain*, 135 S. Ct. 2269 (2015).

A change in law applies retroactively if it "(a) emanates from [the Florida Supreme] Court or the United States Supreme Court, (b) is constitutional in nature, and (c) constitutes a development of fundamental significance." *Walls v. State*, 213 So. 3d 340, 346 (Fla. 2017). Developments of fundamental significance include "changes of law that . . . place beyond the authority of the state the power to regulate certain conduct or impose certain penalties," such as *Hall*, *Roper v. Simmons*, 543 U.S. 551 (2005), and *Kennedy v. Louisiana*, 554 U.S. 407 (2008). A fundamental change in law typically creates a one-year deadline for a defendant to file a claim under that change in law. The *Walls* opinion, which held *Hall* to be retroactive to cases that were final pre-*Hall*, is the case that removed the impediment to Mr. Lawrence filing an intellectual disability claim. The initial decision was withdrawn, corrected, and reissued on May 4, 2017, and published on May 26, 2017. Docket No. SC15-1449.

Under Rule 3.851(d)(2)(B), and in light of *Walls*, Mr. Lawrence's Rule 3.851 motion is timely. The circuit court improperly dismissed Mr. Lawrence's intellectual disability claim as untimely because the *Walls* mandate was issued on January 25,

2017, and Mr. Lawrence filed his successive Rule 3.851 motion more than one year later on May 2, 2018. This was legal error.

In dismissing Mr. Lawrence's intellectual disability claim as procedurally barred, the circuit court misconstrued this Court's decision in *Dixon v. State*, 730 So. 2d 265, 267 (Fla. 1999). On April 23, 1991, Dixon received consecutive habitual felony offender sentences totaling 60 years in prison for convictions arising from the same criminal episode. *Id.* at 266. On October 14, 1993, this Court decided in *Hale v. State*, 630 So. 2d 521 (Fla. 1993), that the habitual offender statute did not authorize the imposition of consecutive sentences for multiple crimes committed during a single criminal episode. *Id.* On August 12, 1994, Dixon filed a successive motion for postconviction relief from his consecutive habitual offender sentences based on *Hale*. The circuit court summarily denied his motion, and the Third District Court of Appeal affirmed on the grounds that *Hale* was not retroactive. *Id.*

On July 20, 1995, in *State v. Calloway*, 658 So. 2d 983 (Fla. 1995), this Court decided that *Hale* should be applied retroactively to cases that were final pre-*Hale*. The lower appellate courts construed this Court's precedent to mean that the two-year clock to seek *Hale* relief should start from either the date the *Hale* opinion was issued or the date rehearing was denied. *Id.* This Court rejected both views because the "intent in *Calloway* was to provide for retroactive application of *Hale* and to allow eligible defendants reasonable time within which to file for postconviction

relief." *Id.* at 267. This Court's "underlying concerns in *Calloway* were fundamental fairness and uniformity in sentences between fairly situated prisoners." *Id.* The Court concluded that these concerns "compel[led] the conclusion that it is appropriate to utilize the date of our decision announcing retroactivity, specifically the date of this Court's mandate, as the beginning date for calculating the additional two-year window." *Id.*

Significant to the Court's present analysis is the fact that in *Dixon*, the mandate occurred *after* the issuance date and denial of rehearing dates. This Court's goal in *Dixon* was to *maximize* the defendant's time to file a claim under a new retroactive fundamental constitutional right. The mandate was chosen as the triggering date because the mandate was the latest action. *See Beaty v. State*, 701 So. 2d 856, 857 (Fla. 1997).

In Mr. Lawrence's case, where the reissued opinion in *Walls* occurred after the mandate, the circuit court took a restrictive view by finding that the clock for filing Mr. Lawrence's intellectual disability claim started with the issuance of the *Walls* mandate. This is inconsistent with the spirit of *Dixon*, which stands for the premise that fundamental fairness and uniformity in sentencing require that the *final* action that makes a decision binding is the date that starts the clock for a defendant to file a claim based on a new fundamental constitutional right. The reissuance of the corrected opinion in *Walls* on May 4, 2017, was the final action of this Court in

the *Walls* decision announcing that *Hall* applies retroactively. Thus, following the stated logic of *Dixon*, Mr. Lawrence's filing clock began on May 4, 2017. Furthermore, any ambiguity must be resolved in the way which most allows Mr. Lawrence to vindicate his rights. Mr. Lawrence filed his successive Rule 3.851 motion on May 2, 2018, within one year of the *Walls* decision becoming final. Mr. Lawrence's intellectual disability claim is timely filed.

ISSUE II

EVEN IF MR. LAWRENCE HAD NOT FILED HIS INTELLECTUAL DISABILITY CLAIM ON TIME, THE EIGHTH AMENDMENT BAN ON EXECUTING INTELLECTUALLY DISABLED DEFENDANTS IS NOT SUBJECT TO A PROCEDURAL BAR.

As the United States Supreme Court made clear in *Hall v. Florida*, "the Eighth Amendment prohibits certain punishments as a categorical matter." *Hall*, 134 S. Ct. at 1992. Categorically, "persons with intellectual disability *may not be executed*." *Id*. (citing *Atkins*, 536 U.S. at 321) (emphasis added). This is because "[n]o legitimate penological purpose is served by executing a person with intellectual disability. To do so contravenes the Eighth Amendment, for to impose the harshest of punishments on an intellectually disabled person violates his or her inherent dignity as a human being." *Id*. (citation omitted).

The United States Supreme Court has never suggested that the Eighth Amendment prohibition on executing an intellectually disabled person is subject to

any sort of waiver or procedural bar or default. Just as it would be illegal to execute a person who was convicted of committing a murder as a fifteen-year-old and who failed to raise an Eighth Amendment challenge at the "appropriate" time, *see Roper v. Simmons*, 543 U.S. 551 (2005), or to execute a person who was convicted of rape but not murder and failed to raise a challenge at the "appropriate" time, *see Kennedy v. Louisiana*, 554 U.S. 407 (2008), so too it would be illegal to execute an intellectually disabled person who failed to raise his claim at the "appropriate" "procedural" time. *See also Sawyer v. Whitley*, 505 U.S. 333 (1992) (holding that courts may hear claims that would otherwise be defaulted where the petitioner can show "by clear and convincing evidence that, but for a constitutional error," the petitioner would not be eligible for the death penalty); *Dretke v. Haley*, 541 U.S. 386, 393 (2004) (reiterating the principles articulated in *Sawyer*); *McKay v. United States*, 657 F.3d 1190, 1196 (11th Cir. 2011) ("[A] movant's procedural default is excused if he can show that he is actually innocent either of the crime of conviction or, in the capital sentencing context, of the sentence itself.").

Notwithstanding any waiver or provision of Florida law, the Eighth Amendment requires that persons "facing that most severe sanction . . . have a fair opportunity to show that the Constitution prohibits their execution." *Hall*, 134 S. Ct. at 2001; *see also Walls*, 213 So. 3d at 348 (Pariente, J., concurring) ("More than fundamental fairness and a clear manifest injustice, the risk of executing a person

who is not constitutionally able to be executed trumps any other considerations that this Court looks to when determining if a subsequent decision of the United States Supreme Court should be applied."). The Eighth Amendment's categorical bar on executing intellectually disabled individuals does not give way to a procedural rule—rather, the procedure must give way to the constitutional right. Mr. Lawrence is categorically barred from execution based on his intellectual disability. Thus, this Court should find that there is no applicable time bar and that Mr. Lawrence's intellectual disability claim is properly filed and should remand his case to the circuit court for an evidentiary hearing on the merits.

ISSUE III

EVEN IF PROCEDURAL BARS ARE APPROPRIATE IN SOME INTELLECTUAL DISABILITY CASES, FLORIDA'S UNCONSTITUTIONAL PROCEDURAL BAR CANNOT BE IMPOSED ON A DEATH-SENTENCED INDIVIDUAL WITH AN IQ SCORE IN THE RANGE OF 71-75.

This Court has created an unconstitutional time bar for intellectual disability claims that are raised post-*Hall* but were not raised after the Supreme Court decided *Atkins v. Virginia*, 536 U.S. 304 (2002). *See Blanco v. State*, No. SC17-330, 2018 WL 3613388. In *Blanco*, this Court applied *Rodriguez v. State*, No. SC15-1278, 2016 WL 4194776 (Fla. Aug. 19, 2016). In *Rodriguez*, the defendant was denied a hearing on his post-*Hall* claim of intellectual disability because "there was no reason that Rodriguez could not have previously raised a claim of intellectual disability

based on *Atkins*," yet he failed to do so. *Rodriguez*, No. SC15-1278, 2016 WL 4194776 (Fla. Aug. 19, 2016). The Court's application of *Rodriguez* in *Blanco* was erroneous.

Mr. Rodriguez had multiple below-70 IQ scores dating back to the late-1970s. (*Rodriguez v. State*, No. SC15-1278, Initial Brief of Appellant at 6-7 (noting that Mr. Rodriguez obtained two separate full-scale IQ scores of 62 and 58 in 1977)). After *Atkins*, nothing prevented Mr. Rodriguez from litigating that his intellectual disability made him ineligible for execution. Mr. Rodriguez's potential intellectual disability claim was not impacted by the decision in *Hall* because he was already covered by *Atkins*. In contrast, Mr. Blanco and Mr. Lawrence did not have IQ scores below 70; their qualifying scores are all in the newly-opened *Hall* range (between 71-75), and, therefore, they could not have litigated their intellectual disability prior to *Hall*.

Blanco ignores that, prior to *Hall*, the law in Florida imposed a blanket restriction on defendants with IQs above 70, and the application of the *Rodriguez* time bar is inappropriate for defendants like Mr. Blanco and Mr. Lawrence whose qualifying IQ scores are in the 71-75 range. *Rodriguez* simply stands for the proposition that those for whom *Hall* offers no new benefit may not use *Hall* as a trigger to raise an intellectual disability claim. Mr. Lawrence and other defendants with IQ scores within the standard error of measurement (71-75) could not have

made a *prima facie* case of intellectual disability after *Atkins* because Florida had a rigid IQ score cutoff of 70 for defendants to qualify as intellectually disabled.

In fact, this Court had enforced an IQ cutoff of 70 even before *Atkins* was decided. Indeed, in 2007, this Court noted that "[t]he legislature set the IQ cutoff score at two standard deviations from the mean, *and this Court has enforced this cutoff*." *Cherry v. State*, 959 So. 2d 702 713 (Fla. 2007) (emphasis added). *Cherry* quoted from this Court's decision in *Zack v. State*, 911 So. 2d 1190, 1201 (Fla. 2005), which relied upon the Court's 2000 decision in *Cherry v. State*, 781 So. 2d at 1040, 1041 (Fla. 2000):

> The evidence in this case shows Zack's lowest IQ score to be 79. Pursuant to *Atkins v. Virginia*, 536 U.S. 304, 317 (2002), a mentally retarded person cannot be executed, and it is up to the states to determine who is "mentally retarded." Under Florida law, one of the criteria to determine if a person is mentally retarded is that he or she has an IQ of 70 or below. *See* § 916.106(12), Fla. Stat. (2003) [parenthetical omitted]; *Cherry v. State*, 781 So. 2d 1040, 1041 (Fla. 2000) (accepting expert testimony that in order to be found retarded, an individual must score 70 or below on standard intelligence test).

Zack, 911 So. 2d at 1201.

Moreover, the 2007 *Cherry* Court unanimously determined that the plain text of § 921.137 and Rule 3.203 themselves precluded raising a claim of intellectual disability with an above-70 score.

> [T]he statute does not use the word approximate, nor does it reference the SEM. Thus, the language of the statute and the corresponding rule are clear. We defer to the plain meaning of statutes . . . .

Cherry, 959 So. 2d at 713 (citing *Daniels v. Florida Dept. of Health*, 898 So. 2d 61, 64-5 (Fla. 2005)). If the statute and rule were "clear" in 2007 when *Cherry* was decided, they were equally clear when they were originally enacted in 2001 and 2004.

Mr. Lawrence's intellectual disability claim was not available to him prior to *Hall* because it had no possibility of merit. *See In re Cathy*, 857 F.3d 221, 232 (5th Cir. 2017). Such a claim would have been a bad faith pleading and a waste of judicial resources because this Court and the Florida Legislature had made it abundantly clear that an IQ score higher than 70 did not establish intellectual disability under Florida law. If this Court insists on upholding the time bar for intellectual disability claims established in *Blanco*—a time bar that ignores the impact of *Hall*—the floodgates will open; capital defendants will *necessarily* file every possible claim that could one day be the subject of a decision that establishes a new fundamental constitutional right, even if the current law is squarely against the claim. Under *Blanco*, capital defendants who fail to file such claims will be precluded from seeking relief based on a new fundamental constitutional right simply because they failed to file frivolous claims years prior to the new decision granting that right. As discussed *supra* in Issue IV, Mr. Lawrence is intellectually disabled, and, when he finally had the opportunity to raise a meritorious claim after *Hall*, he did so. He should not be punished because he did not file a frivolous claim under *Atkins* when

this Court was adamant that defendants whose IQ exceeded 70 were ineligible for the protection of *Atkins*.

ISSUE IV

MR. LAWRENCE IS INTELLECTUALLY DISABLED, AND THE CIRCUIT COURT ERRED IN SUMMARILY DENYING HIS INTELLECTUAL DISABILITY CLAIM.

The circuit court erred in summarily denying Mr. Lawrence's intellectual disability claim. Mr. Lawrence's factual proffer demonstrates that he is intellectually disabled and, therefore, ineligible for the death penalty under the United States Supreme Court's Eighth Amendment decisions in *Moore v. Texas*, 137 S. Ct. 1039 (2017); *Hall v. Florida*, 134 S. Ct. 1986 (2014); and *Atkins v. Virginia*, 536 U.S. 304 (2002).

> Those [intellectually disabled] persons who meet the law's requirements for criminal responsibility should be tried and punished when they commit crimes. Because of their disabilities in areas of reasoning, judgment, and control of their impulses, however, they do not act with the level of moral culpability that characterizes the most serious adult conduct.

Atkins, 536 U.S. at 306.

The American Psychiatric Association describes the criteria for intellectual disability in the DSM-5:

> A. Deficits in intellectual functions . . . confirmed by both clinical assessment and individualized, standardized intelligence testing.

B. Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility.

C. Onset of intellectual and adaptive deficits during the developmental period.

DSM-5, at 33; AAIDD-11, at 59-60; *Atkins*, 536 U.S. at 318; *Franqui v. State*, 211 So. 3d 1026, 1028 (2017) (stating that a defendant must establish intellectual disability by demonstrating the following three factors: (1) significantly subaverage intellectual functioning; (2) adaptive deficits; and (3) manifestation before age eighteen).

The Supreme Court in *Hall* stated that intellectual disability "is a condition, not a number." *Hall*, 134 S. Ct. at 2001. The Court rejected Florida's use of a hard IQ cutoff score to determine intellectual disability and rebuked the practice of taking "an IQ score as final conclusive evidence of a defendant's intellectual capacity, when experts in the field would consider other evidence." *Id*. at 1995. *Hall* holds that all three prongs of an intellectual disability assessment—an intelligence test result, adaptive deficits, and evidence of pre-18 onsets—should be considered in a holistic manner in cases of intellectual disability. *Id*. The legal determination of intellectual disability "is informed by the medical community's diagnostic framework." *Id*. at 2000.

This Court has held that *Hall* requires the courts to consider all three prongs of intellectual disability in tandem and that no single factor should be dispositive of the outcome. *See Oats v. State*, 181 So. 3d 457, 459 (Fla. 2015); *Walls v. State*, 213 So. 3d 340 (Fla. 2017); *Nixon v. State*, SC15-2309, 2017 WL 462148, at *1 (Fla. Feb. 3, 2017); *Herring v. State*, SC15-1562, 2017 WL 1192999 at *1 (Fla. March 31, 2017). A stronger presentation on one prong will correct for a weaker presentation on another prong. *See Oats*, 181 So. 3d at 467-68 (citing *Hall*, 134 S. Ct. at 2001).

This Court has held that *Hall* constitutes a development of fundamental significance in Florida and should be applied retroactively. *Walls*, 213 So. 3d at 346. In the instant case, the circuit court should have held an evidentiary hearing, as the circuit courts did in *Walls*, *Franqui*, and *Thompson*, and allowed Mr. Lawrence to present evidence in support of his intellectual disability claim. Not only did Mr. Lawrence's proffer support each prong of the intellectual disability test, but the State did not dispute the tendered evidence. "In reviewing a circuit court's summary denial of postconviction relief, this Court must accept the [appellant's] allegation as true to the extent they are not conclusively refuted by the record." *Tompkins v. State*, 994 So. 2d 1072 (Fla. 2008). Mr. Lawrence's unrefuted allegations establish that he has a lifelong intellectual disability.

A. Mr. Lawrence has risk factors for intellectual disability.

The Supreme Court in *Moore v. Texas* stated, "At least one or more of the risk factors described in the [DSM] will be found in every case of intellectual disability." 137 S. Ct. 1039, 1051 (2017) (quoting AAIDD-2010 at 60) (internal brackets and quotation marks omitted)). The AAIDD groups risk factors into four categories: (1) biomedical processes, such as genetics or nutrition; (2) social interactions; (3) potentially causal behaviors; and (4) availability of educational support. *See* AAIDD-2010 at 60. Mr. Lawrence's history is rife with multiple risk factors for intellectual disability across all four categories before he even reached the age of 18.

1. Biomedical Processes

Mr. Lawrence suffered from malnutrition and lack of prenatal care and was exposed to various substances during his childhood, including alcohol and multiple illicit drugs. Mr. Lawrence's mother received no prenatal care when pregnant with Mr. Lawrence. (SPCR. 82). Mr. Lawrence was forced to seek dinner at other children's homes because his parents did not provide food. (SPCR. 79; 89).

Mr. Lawrence became a substance abuser in his childhood. He began drinking at a very young age, putting wine in coke bottles. (SPCR. 90). He started using drugs at age 10. Mr. Lawrence's father gave him alcoholic beverages when he was very young and encouraged him to drink. (T. 496). DOC records indicate that Mr.

Lawrence started using marijuana and LSD twice a week when he was 10 years old. (PP. 467-680).

2. Social and Family Interactions

Mr. Lawrence's experiences with abject poverty and long-term institutionalization affected his social and family interaction. Despite Mr. Lawrence's father having a steady job during his early childhood, the family lived in poverty. (SPCR. 82). For many years, they had no electricity or indoor plumbing, and the only heat source was one fireplace. (SPCR. 80; 82; 91). Windows consisted of open spaces covered with boards and hinges, and the ceiling was not sealed. (SPCR. 79). All of the children slept in one room, using bricks to keep warm. (SPCR. 82; 91).

Mr. Lawrence's parents were both heavy drinkers and fought all the time. (SPCR. 82). His father was violent and extremely abusive to his wife and children. *Id.* Mr. Lawrence's mother eventually abandoned the family when Mr. Lawrence was around 10 or 11 years old, and he was left alone with his violent, erratic father. (SPCR. 79, 92). His father worked nights, and Mr. Lawrence often slept on a neighbor's couch so he would not be alone. (SPCR. 79).

In 1972, Mr. Lawrence was sent to the Arthur G. Dozier School for Boys, a notorious state-run institution known for its harsh conditions and brutal treatment of young boys who were sent there due to their inability to thrive in a formal learning

environment. Mr. Lawrence asked his father to retrieve him from Dozier, but his father refused. After Mr. Lawrence was released from the Dozier School, he never returned to school. Mr. Lawrence was different and slower after Dozier and never talked about what happened there. (SPCR. 85). Months after he was released from Dozier, Mr. Lawrence was sentenced to two years in state prison when he was only 16 years old. This marked the beginning of what amounted to the majority of his life spent within the walls of a correctional institution. As a result, Mr. Lawrence suffered severe social deprivation.

3. Causal Behaviors

Mr. Lawrence's father was an alcoholic since before Mr. Lawrence was born. (SPCR. 82-83). Throughout Mr. Lawrence's childhood, his father's alcoholism progressed to constant heavy drinking. (SPCR. 90). The children were forced to attend bars with their father. (SPCR. 91). Mr. Lawrence's mother was also a heavy drinker, and alcohol abuse contributed to her death. (SPCR. 83; 90; 91). Many of Mr. Lawrence's siblings died as a result of alcohol-related complications. (SPCR. 83).

Mr. Lawrence's father would become wild and abusive when he drank. (SPCR. 82). He was violent toward the children and Mr. Lawrence's mother. (SPCR. 92). He pulled guns on the children, who had to go hide and wait for the police.

(SPCR. 9l; 92). Later in Mr. Lawrence's childhood, his mother's drinking increased, and she abandoned the children. (SPCR. 79; 92).

Not only were his parents heavy drinkers, but Mr. Lawrence's father gave him alcoholic beverages when he was very young and encouraged him to drink. (T. 496). Mr. Lawrence became a substance abuser in his childhood. He began drinking at a very young age and started using drugs at age 10. (PP. 467-68).

4. Educational

Mr. Lawrence's record of academic failure constitutes another risk factor. *See* DSM-V at 39; *see also Moore*, 137 S. Ct. at 1051 (recognizing "record of academic failure" as a risk factor for intellectual disability). Mr. Lawrence had significant learning problems and struggled in school. (SPCR. 82; 89). He could not read or write. (SPCR. 78; 85; 87). School records show that his teachers identified him as "slow." School records also indicate that, although Mr. Lawrence was retained in the second and seventh grades, most teachers socially promoted him because they believed that holding him back would be futile and that his grades would not improve. He was expelled from school approximately 10 or 11 times according to DOC records. In 1972, Mr. Lawrence was sent to the Dozier School for Boys due to his inability to learn in a traditional academic setting. After his release from Dozier, he never returned to school. He was 16 years old and would have been attempting seventh grade for the second time.

B. Mr. Lawrence suffers from significantly subaverage intellectual functioning.

Dr. Jethro Toomer administered the Weschler Adult Intelligence Scale IV (WAIS-IV) and found Mr. Lawrence has an IQ score of 75 without any adjustment for the Flynn effect. (SPCR. 153; 170). The State has offered nothing to rebut this.

At the time of Mr. Lawrence's trial, when he was 38 years old, Dr. James Larson performed the Wechsler Adult Intelligence Scale Revised (WAIS-R), which reflected Mr. Lawrence had a verbal IQ score of 75 and a full-scale IQ score of 81. The State has conceded that when the Flynn effect is applied to his WAIS-R score, Mr. Lawrence has a qualifying score within the standard error of measurement (SEM). (SPCR. 118). According to the State, Mr. Lawrence's properly corrected IQ from the WAIS-R examination is 69. *Id*.

Dr. Larson testified at trial that Mr. Lawrence's full-scale IQ was in the very low average range. (T. 470). Dr. Larson also administered the Mini-Battery of Achievement (MBA) test, and Mr. Lawrence's score fell lower than expected based on his already low IQ. Dr. Larson indicated he never obtained any scores for Mr. Lawrence that indicate anything more than someone in the borderline range of retardation; the scores would be indicative of someone between the ages of 9 and 11 years old. (T. 472).

Dr. Glenn Galloway also testified at trial and described Mr. Lawrence as having an emotional IQ of 70, which is significantly lower than most people. (T.

509). Dr. Galloway testified, "I consider him to be very damaged, very deficient in the stability of his emotional relationships and his capacity for appreciating and participating in healthy, stable, mature, understanding, emotional relationships." *Id.*

Even if this Court were not to use the standard error measurement, Dr. Larson himself has "dispute[d] the accuracy of [Lawrence's] unadjusted [prior] IQ score." (SPCR. 68-76). Dr. Larson updated his evaluation to reflect current medical standards and the information currently available regarding Mr. Lawrence's adaptive deficits. *Id.* In Mr. Lawrence's postconviction proceedings, Dr. Larson stated that his prior evaluation of Mr. Lawrence was conducted in accordance with the standards that "were applicable at the time"—not in accordance with the current standards under which intellectual disability is assessed on the basis of "a holistic consideration" as opposed to the earlier standards that were based on "strict cutoffs or a checklist." *Id*. at 68-69. Dr. Larson also recently stated that the current WAIS-IV test is "more reliable and accurate" and superior to the prior versions. *Id.* at 75. As a result, Dr. Larson concluded that Mr. Lawrence should be given the opportunity to present his claim of intellectual disability at an evidentiary hearing "under the current professional and legal standards for the determination of intellectual disability. *Id*. at 76.

Mr. Lawrence has a full-scale IQ score within the intellectually disabled range. In his recent report, Dr. Toomer concluded that Mr. Lawrence is intellectually

disabled under the current clinical and legal standards. Dr. Larson, the defense mental health expert at trial, has reviewed Mr. Lawrence's case under the current medical standards and also agrees that Mr. Lawrence should be afforded the opportunity to present his intellectual disability claim at an evidentiary hearing. Experts and test scores show Mr. Lawrence has significantly subaverage intellectual functioning and satisfy the first prong of intellectual disability. The State has proffered nothing to the contrary and has, in fact, conceded Mr. Lawrence's subaverage intellectual functioning. (SPCR. 118).

C. Mr. Lawrence suffers deficits or impairments in adaptive functioning.

The second criterion in the DSM-5 refers to adaptive deficits or "how well a person meets community standards of personal independence and social responsibility, in comparison to others of similar age and sociocultural background." DSM-5, at 37. In *Moore*, the Supreme Court reiterated that courts must look to the medical community when considering adaptive deficits. *Moore*, 137 S. Ct. at 1050. Like the medical community, courts must focus on adaptive deficits, not adaptive strengths, and must avoid overemphasizing adaptive strengths developed in a controlled setting, such as a prison. *Id*. This is consistent with the understanding of

the AAIDD-11,[4] the DSM-5,[5] and *Brumfield*. *See* AAIDD-11, at 47 ("[S]ignificant limitations in conceptual, social, or practical adaptive skills [are] not outweighed by the potential strengths in some adaptive skills."); DSM-5, at 33, 38 (explaining that inquiry should focus on "[d]eficits in adaptive functioning" and that deficits in only one of the three adaptive-skills domains are suffice to show adaptive deficits); *Brumfield*, 576 U.S. at 2281 ("[I]ntellectually disabled persons may have 'strengths in social or physical capabilities, strengths in some adaptive skill areas, or strengths in one aspect of an adaptive skill in which they otherwise show an overall limitation.'") (quoting American Association on Mental Retardation, *Mental Retardation Definition, Classification, and Systems of Support* 8 (10th ed. 2002)).

Further, the Court in *Moore* criticized the lower court's conclusion that "Moore's record of academic failure, along with the childhood abuse and suffering he endured, detracted from a determination that his intellectual and adaptive deficits were related." 137 S. Ct. at 1051. Instead, "those traumatic experiences . . . count in the medical community as '*risk factors*' *for* intellectual disability." *Id.* at 1051 (citing AAIDD-11, at 59-60). Thus, "[c]linicians rely on such factors as cause to explore

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[4] American Association on Intellectual and Developmental Disabilities, *Intellectual Disability: Definition, Classification, and Systems of Support – 11th Edition*, AAIDD (2010) ("AAIDD-11").

[5] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013) ("DSM-5").

the prospect of intellectual disability further, not to counter the case for a disability determination." *Id.*

"Adaptive functioning involves adaptive reasoning in three domains: conceptual, social and practical." DSM-V at 37; *see also* AAIDD-2010 at 15 (explaining that adaptive behavior is "the collection of conceptual, social, and practical skills that have been learned and performed by people in their everyday lives"). According to the AAIDD, the adaptive deficits prong is met when there are deficits within one of the three domains. AAIDD-2010 at 43. The DSM-V provides the same standard. DSM-V at 38 (explaining that the adaptive deficit prong is met when at least one domain "is sufficiently impaired that ongoing support is needed in order for the person to perform adequately in one or more life settings at school, at work, at home, or in the community").

From the time Mr. Lawrence was very young he had developmental and adaptive difficulties. Mr. Lawrence struggled in school and often skipped school altogether because he did not understand what was happening in class. (SPCR. 85). He could not read or write. (SPCR. 78, 85, 87, 89). He was held back in the second and seventh grades and dropped out during his second attempt at seventh grade. (SPCR. 79).

Mr. Lawrence had difficulty maintaining his personal hygiene and housekeeping. (SPCR. 93). He was unable to manage alone in the outside world and

needed extensive assistance from others to take care of his basic needs. (SPCR. 86, 87, 90, 93, 94). He was financially dependent on others and often gave what money he had to others because he struggled with managing and using money. (SPCR. 86, 87).

Mr. Lawrence was also easily manipulated by others. (SPCR. 78). He was a follower who did not initiate plans or come up with own ideas. (SPCR. 78, 80, 85, 89). He was eager to please and simply did what others told him to do. (SPCR. 78, 88, 89, 93). He struggled to maintain peer relationships with adults and related better with children.

The following table provides a summary of the evidence of Mr. Lawrence's impaired adaptive functioning.[6]

CONCEPTUAL	
Language, Reading and Writing	Moon: Would read to him because "he couldn't read and struggled in school. (SPCR. 78). Trease: Never saw him read anything. He had "really bad handwriting" and was a "horrible speller." (SPCR. 82).

[6] Full affidavits, summaries, and depositions can be found within the Record on Appeal. Dr. Larson was the defense mental health expert at trial and prepared a declaration for the underlying postconviction proceeding in support of Mr. Lawrence's intellectual disability claim. John Miller was Mr. Lawrence's trial counsel. Mable Trease and Joyce Nichols are Mr. Lawrence's sisters and have known him his entire life. Judy Moon was Mr. Lawrence's neighbor and has known him since birth. Preston Farrington and Steven Coffey have been Mr. Lawrence's friends since childhood. Sharon Roher is Mr. Lawrence's former girlfriend and interacted with him almost every day in the year before his arrest.

	Farrington: "He couldn't read or write the entire time I knew him." (SPCR. 85). Roher: "Gary couldn't read or write. I made fun of him because he could only sign his name in scribble. I used to tell him that one day I was going to teach him how to write. He would say, 'I gotta learn how to read first.' He never learned while I knew him." (SPCR. 87). California Achievement Test: Performed in third, seventh, and sixth percentiles respectively for reading, language and spelling. Department of Corrections: Reading level was grade four at the age of 19 and unable to administer psychometric testing because of poor reading skills, and MMPI score is invalid due to poor reading skills. Coffey: "He didn't do well in school He was a bad reader." (SPCR. 89). Nichols: "He was bad at spelling and reading." (SPCR. 93); "I never saw Gary read anything." (SPCR. 93). Moon: He "just couldn't seem to learn basic elementary school concepts." (SPCR. 79). Miller: "[His intelligence] was very very low." (PCR-S. 56, 57).
Arithmetic	California Arithmetic Test: Teacher thought his ability was much lower than actual score in the fourth grade.
Time and Money	Nichols: "I got Gary up for work every day. He didn't have a watch." (SPCR. 93). Farrington: "If Elbert [his brother] didn't give Gary financial support, I don't know how he would have made it." (SPCR. 86).

	Roher: Gary's brother, Elbert, "financially supported" him. (SPCR. 87).
Abstract Thinking	Dr. Larson: Comments by school teachers state he was "very slow," had "no progress this year," and "just CAN'T do his work." (SPCR. 70). Trease: It seemed like "he had a hard time learning stuff." (SPCR. 82). Farrington: Gary was "slow." (SPCR. 85). Coffey: "Gary was slow." (SPCR. 89). Miller: "As far as reading and writing, and things like that, he was very, very slow." (PCR-S. 56, 57).
Executive Function	Farrington: He skipped school a lot because "I just don't think he understand what was going on in class." (SPCR. 85). Nichols: "Gary never brought schoolbooks home to do homework. He seemed to have trouble learning and figuring things out." (SPCR. 93).
SOCIAL	
Difficulty in accurately perceiving peers' social cues	Coffey: "You could always tell he wasn't bright when you talked to him." (SPCR. 89).
Communication, conversation, language more concrete or immature than expected for age	Roher: "He wasn't much of a talker." (SPCR. 88). Nichols: "Gary was awkward around people. He would not actively engage in conversations." (SPCR. 93).
Difficulties regulating emotion and behavior in age-	Trease: "I think Gary got into so much trouble because I don't think he knew how to handle the outside world." (SPCR. 83).

appropriate fashion; noticed by peers in social situations	Nichols: "He often just sat there quietly . . . . It was like he didn't know how to act around others." (SPCR. 93). Roher: "He wasn't much of a talker. He would really only chime in when people started talking like they were tough. It was like he wanted to show he could compare to them." (SPCR. 88).
Limited understanding of risk in social situations	Farrington: "He would do whatever someone asked him to, whether it was a good thing or not . . . . He never thought about what would happen after." (SPCR. 85-86). Roher: "Gary did really stupid things without thinking about the consequences. I've seen him get in fights for no reason. It was like he didn't have social skills." (SPCR. 87).
Social judgment immature for age	Trease: "I think Gary got into so much trouble because I don't think he knew how to handle the outside worlds." (SPCR. 83). Roher: "Gary couldn't really ever cope with the outside world." (SPCR. 87). Nichols: "I don't know what Gary would do if he weren't in prison. I don't think he was able to function in society normally." (SPCR. 94).
Risk of being manipulated by others (gullibility)	Moon: "Very compliant" and did whatever they wanted him to. "Bossed him around" and assigned him roles like yard worker when playing house. He never questioned it. "Easily . . . manipulated." Always wanted to please others. "Didn't initiate plans." (SPCR. 78). Even as an older kid, Gary "was a follower and didn't seem to have ideas of his own." (SPCR. 80). Farrington: Gary was a follower. (SPCR. 85). Roher: "It was easy for [Brenda] to manipulate Gary . . . . He was a follower and would go along with whatever idea someone else had. I was there when Brenda brought up

	getting Mike Finken's car title transferred into her name. It wasn't Gary's idea." (SPCR. 88). Coffey: Gary was a follower. (SPCR. 89). Nichols: "He was gullible and would do whatever people asked, like roll down hills in oil barrels." (SPCR. 93).
PRACTICAL	
Needs help with grocery shopping and nutritious food preparation	Nichols: "I would cook for him. . . . He didn't know how to do those things." (SPCR. 93).
Needs help with transportation	Nichols: "If he wanted to go somewhere, I drove him." (SPCR. 93).
Needs help with home and child-care organizing and/or raising a family	Farrington: "When Gary would be out of jail, he always found a girl who had a place he could move into . . . . His brother . . . and whatever girlfriend . . . took care of Gary's needs." (SPCR. 86). Roher: "Whatever Gary needed, [his brother] Elbert got him." (SPCR. 87). Coffey: "His brother, Elbert, took care of him. Gary never lived alone." (SPCR. 90). Nichols: "I got Gary up for work every day. He didn't have a watch. I would . . . do his laundry for him. He didn't know how to do those things." (SPCR. 93).
Needs help with banking and money management	Farrington: "If Elbert [his brother] didn't give Gary financial support, I don't know how he would have made it." (SPCR. 86). Roher: Gary's brother, Elbert, "financially supported" him. (SPCR. 87).

Employable only in jobs that not emphasize conceptual skills; Needs help to learn a skilled vocation	Farrington: "He couldn't learn any skills and needed a lot of assistance." (SPCR. 86).
Reduced success in obtaining markers of independent economics (e.g. employment, credit cards, checking accounts, driver's license)	Farrington: "He just wasn't able to manage on his own in the outside world." (SPCR. 86). Roher: "Gary couldn't really ever cope with the outside world." (SPCR. 87).
Low rate of employment and/or career success, incl. low hours, benefits, skill demands	Farrington: "He could never find a steady job. Sometimes, he would get a friend or family member to give him an odd job here and there." (SPCR. 86). Roher: "Gary never had a job." (SPCR. 87). Nichols: Husband got Gary a job doing construction. "Gary basically just hammered things." (SPCR. 93). Coffey: "Gary never had a steady job." (SPCR. 90).
Reduced ability to form and sustain mutually beneficial friendships without assistance	Roher: "Gary hung out with just a few friends and his family." (SPCR. 87).
High rate of loneliness	Farringon: "Gary was different after Dozier . . . . He was closed off." (SPCR. 85).

	Nichols: "I don't remember him having any friends. It was like he was in his own world." "He was withdrawn, and acted lost and disconnected from the world." (SPCR. 93).
Higher risk of behavior problems if behavioral supports not provided	He has been incarcerated most of his life since the age of 16, year after he dropped out of school and less than one month after he was released from the Dozier School for Boys. Nichols: "I almost think he got in trouble because he knew he would be taken care of in prison." (SPCR. 94).
Gullibility and naiveté	Moon: "Very compliant" and did whatever they wanted him to. "Bossed him around" and assigned him roles like yard worker when playing house. He never questioned it. "Easily . . . manipulated." Always wanted to please others. "Didn't initiate plans." (SPCR. 78). Even as an older kid, Gary "was a follower and didn't seem to have ideas of his own." (SPCR. 80). Farrington: "Gary was a follower . . . . He would do whatever someone asked him to, whether it was a good thing or not." (SPCR. 85). Roher: "It was easy for [Brenda] to manipulate Gary . . . . He was a follower and would go along with whatever idea someone else had. I was there when Brenda brought up getting Mike Finken's car title transferred into her name. It wasn't Gary's idea." (SPCR. 88). Coffey: Gary was a follower. (SPCR. 89). Nichols: "He was gullible and would do whatever people asked, like roll down hills in oil barrels." (SPCR. 93).
Societal stigma	Roher: "I made fun of him because he could only sign his name in scribble." (SPCR. 87). Moon: "Gary's favorite game was 'play school.' His sister, Joyce, and I would read to him, because he couldn't read. He really struggled in school, and, when we played, he got a kick

	out of raising his hand and pretending that he knew answers." (SPCR. 78).

D. Mr. Lawrence's deficits and impairments were present prior to age 18.

Mr. Lawrence's intellectual and adaptive deficits have been present since childhood. The State has not refuted this. Consistent with Mr. Lawrence's history and risk factors outlined above, multiple sources of evidence—including school records and the observation of family and community members—demonstrate that Mr. Lawrence has been intellectually disabled since he was very young and satisfies the third prong of intellectual disability.

E. The State cannot overcome the merits of Mr. Lawrence's intellectual disability claim.

Mr. Lawrence presented a *prima facie* case of intellectual disability in his successive Rule 3.851 motion. The State has not contested Mr. Lawrence's factual proffer on the existence of adaptive deficits or the pre-age 18 onset of Mr. Lawrence's disability. As to intellectual functioning, the State acknowledges that Mr. Lawrence's IQ score at trial, corrected by modern norms, is 69. (SPCR. 118). Dr. Toomer tested Mr. Lawrence with the gold standard WAIS-IV, and Mr. Lawrence scored a 75. (SPCR. 153). With these facts in hand, the circuit court erred by summarily denying Mr. Lawrence's postconviction motion. Mr. Lawrence's educational and social history is rife with adaptive deficits beginning in childhood

and persisting into his adulthood, satisfying the second and third prongs of the statutory test.

The sheer wealth of uncontroverted evidence supporting Mr. Lawrence's intellectual disability claim demands review. To execute Mr. Lawrence without affording him an evidentiary hearing on his intellectual disability would be a miscarriage of justice. As Mr. Lawrence's trial and initial postconviction hearing pre-date *Atkins* and *Hall*, when Mr. Lawrence did "not yet ha[ve] the opportunity to develop the record for the purpose of proving an intellectual disability claim," *Brumfield*, 135 S. Ct. at 2281, he previously "had little reason to investigate or present evidence relating to intellectual disability." *Id*.

"In reviewing a trial court's summary denial of postconviction relief, this Court must accept the [appellant's] allegations as true to the extent they are not conclusively refuted by the record." *Tomkins v. State*, 994 So. 2d 1072 (Fla. 2008). In "turn[ing] to the record" in this case, this Court should find that "[Mr. Lawrence] has presented sufficient evidence to establish that he meets the statutory definition of intellectual disability." *Hall v. State*, 201 So. 3d at 635. Just as in *Hall*, "[t]he record evidence in this case overwhelmingly supports the conclusion that '[Mr. Lawrence] has been [intellectually disabled] his entire life.'" *Hall*, 201 So. 3d at 638 (quoting *Hall v. State*, 109 So. 3d 704, 712-14 (Fla. 2012) (Pariente, J., concurring) (first alteration added)).

Mr. Lawrence has never had a hearing on his *Atkins*/*Hall* claim and the circuit court's incorrect application of a procedural bar should not preclude Mr. Lawrence's constitutional and due process rights. This Court should either find Mr. Lawrence intellectually disabled and grant relief on the current record, as in *Hall*, or remand to the circuit court to allow Mr. Lawrence to present his evidence at an evidentiary hearing.

CONCLUSION

For the reasons set forth in this Initial Brief, Appellant, Gary Lawrence, requests that this Court remand his case to the circuit court for imposition of a life sentence, or in the alternative, direct an evidentiary hearing in the circuit court, and any other relief deemed appropriate by this Court.

Respectfully submitted,

ROBERT S. FRIEDMAN
Capital Collateral Regional Counsel-North

/s/ Stacy R. Biggart
STACY R. BIGGART
Assistant CCRC-North
Florida Bar No. 0089388
1004 DeSoto Park Drive
Tallahassee, FL 32301
(850) 487-0922 x. 114
Stacy.Biggart@ccrc-north.org

MATLETHA BENNETTE
Assistant CCRC-North
Florida Bar No. 1003257
Matletha.Bennette@ccrc-north.org

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2018, the foregoing was electronically served via the e-portal to Assistant Attorney General Janine Robinson at janine.robinson@myfloridalegal.com and capapp@myfloridalegal.com.

/s/ Stacy R. Biggart
Stacy R. Biggart

CERTIFICATION OF FONT

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/s/ Stacy R. Biggart
Stacy R. Biggart