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IN THE SUPREME COURT OF FLORIDA
CASE NO. SC2024-0273
DEATH PENALTY CASE

RICHARD BARRY RANDOLPH,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ANSWER BRIEF OF APPELLEE

ON APPEAL FROM THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR PUTNAM COUNTY, FLORIDA

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA

DORIS MEACHAM
Senior Assistant Attorney General
Florida Bar No. 63265
Office of the Attorney General
444 Seabreeze Blvd., 5th Floor
Daytona Beach, Florida 32114
Telephone: (386) 238-4990
Facsimile: (386) 226-0457
doris.meacham@myfloridalegal.com
E-Service:
cappapp@myfloridalegal.com

COUNSEL FOR APPELLEE

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PRELIMINARY STATEMENT

This appeal arises from the circuit court's summary denial of Appellant's 3rd successive motion to vacate sentence of death filed pursuant to Florida Rule of Criminal Procedure 3.851.

Appellant, Richard Barry Randolph, the defendant in this case, will be referred to as the "Appellant" or "Randolph". Appellee, the State of Florida, the prosecution below, will be referred to as the "State." The record on direct appeal to this Court will be referred to as "R" and then the page number, i.e., "R pg.1". The initial postconviction record on appeal to this Court will be referred to as "PCR." and then the page number, i.e., "PCR pg.1". The postconviction record on current appeal to this Court will be referred to as "PCR3" and then the page number, i.e., "PCR3 pg.1". Appellant's brief shall be referred to as "IB" followed by the page number.

RESPONSE TO REQUEST FOR ORAL ARGUMENT

The State opposes Randolph's request for oral argument because the issue presented in this appeal is straightforward and would not be materially benefited by oral argument. There is no reason to depart from this Court's practice of refusing to hold oral

argument in successive capital postconviction appeals like this one. *See* Fla. S. Ct. Internal Op. Proc. II.A.3. (a) (explaining successive capital postconviction appeals are treated "in the same manner as" cases "in which review is granted without oral argument").

STANDARD OF REVIEW

A summary denial of a successive 3.851 postconviction motion is reviewed de novo. *Tompkins v. State*, 994 So. 2d 1072 (Fla. 2008). "Rule 3.851(f)(5)(B) permits the denial of a successive postconviction motion without an evidentiary hearing '[i]f the motion, files, and records in the case conclusively show that the movant is entitled to no relief.' " *Id*. at 1080-81.

STATEMENT OF THE CASE AND FACTS

Randolph was convicted of First-Degree Murder, Armed Robbery, Sexual Battery, and Grand Theft of a Motor Vehicle on February 23, 1989. *Randolph v. State*, 562 So. 2d 331, 332-34 (Fla. 1990).

The facts established that Minnie Ruth McCollum managed a Handy-Way store in Palatka, and Randolph was a former employee of the same store. *Id.* at 332. Randolph had ridden his bicycle to the Handy-Way store. He planned to enter the store unseen, open the safe, remove the money, and leave while the manager was outside checking the gas pumps. However, the manager returned and saw him. He rushed her, she panicked, and a struggle ensued. Randolph indicated that she was "a lot tougher than he had expected," but that finally he forced her into the back room where he hit her with his hands and fists until she "quieted down." *Id.*

Randolph tried unsuccessfully to open the store safe. When Mrs. McCollum started moving again, he approached her. He said that she pulled the draw string out of his hooded sweatshirt, which he then wrapped around her neck until she stopped struggling. At this point, the victim started screaming. Randolph again struck her

until "she hushed." Because she continued to make noises, Randolph grabbed a small knife and stabbed her. He again grabbed the string and "tried to cut her wind." To make it appear as if "a maniac" had committed the crime, Randolph said he then raped her. He put on a Handy-Way uniform, grabbed the store video camera out of its mount and put it into the garbage. He took Mrs. McCollum's keys and locked the store before leaving in her car. *Id.* at 333.

Dr. Kirby Bland, a general surgeon, testified that Mrs. McCollum arrived at the emergency room comatose, and with her head massively beaten and contused. She had multiple skin breaks and skin lacerations about the scalp, face, and neck and her left jawbone was fractured. Dr. Bland indicated that Mrs. McCollum had knife lacerations to the left side of her neck that caused a hematoma around the heart. There was also a stab wound in the area of the left eye. Dr. Albert Rhoten, Jr., a neurologist, testified that in twenty years of neurosurgical practice he had not seen brain swelling so diffuse, and he likened it to someone who had been ejected out of a car or thrown from a motorcycle and received multiple hits on the head. Mrs. McCollum died at the hospital six days after the assault. *Id.* at 332-33.

During the penalty phase Randolph presented the testimony of Dr. Harry Krop, a psychologist who examined Randolph. He opined that none of the statutory mitigating circumstances existed, although several nonstatutory circumstances most likely contributed to the offense. He testified that Randolph, who was adopted when he was five months old, had problems getting along with people in school, and his behavior problems caused him to be referred to psychotherapy for a year in the third grade. His mother was emotionally unstable and was hospitalized for psychiatric reasons on a number of occasions, and his father was physically abusive, and administered discipline by tying him and beating him with his hands, a broomstick, and a belt.

Despite his emotional deficiencies, Randolph graduated from high school. He received an honorable discharge from the Army; however, he started using drugs during his service, including marijuana and cocaine. In 1984 he began using highly addictive crack cocaine. Dr. Krop testified that, unlike alcohol intoxication, crack cocaine's effects are not readily apparent from merely looking at a person. When someone regularly uses crack cocaine, the effects of the drug stay in the blood; one's personality and behavior are

affected, not necessarily by an immediate ingestion of the drug, but rather by its use over time. He believed that Randolph's abnormal personality was greatly influenced by his drug addiction at the time of the offense.

Dr. Krop further testified that Randolph regretted what had happened; he was ashamed and embarrassed that he had lost control and was remorseful about what he had done. The psychologist believed that Randolph had nothing against Mrs. McCollum, that he fully intended only to enter the store and steal the money while she was outside, but that things happened that caused him to panic. He concluded that Randolph's criminal behavior was influenced by his drug addiction.

The jury found Randolph guilty of first-degree murder, armed robbery, and sexual battery by a verdict of eight to four. The judge accepted the jury recommendation and imposed the death penalty. The trial court found four (4) aggravating factors: (1) the crime was committed while engaged in the commission or flight after commission of a sexual battery; (2) the crime was committed for the purpose of avoiding or preventing a lawful arrest; (3) the crime was committed for pecuniary gain; and (4) the crime was especially

heinous, atrocious, or cruel (HAC). The trial court rejected proposed statutory mitigation of no significant history of criminal activity and rejected the statutory mitigating factor of extreme mental or emotional disturbance. The court found two (2) non-statutory mitigating factors (1) Randolph possesses an a-typical personality disorder; and (2) Randolph expressed shame or remorse for his conduct but stated that "said factors even if proven would not outweigh any one of the aggravating factors standing alone." *Randolph v. State*, 562 So. 2d 331, 332-34 (Fla. 1990).

Randolph filed an appeal, and his Judgment and Sentence were affirmed with a Mandate on September 14, 1990. *Randolph v. State*, 562 So. 2d 331, 332 (Fla. 1990). Following the denial of certiorari on November 26, 1990, Randolph's case became final. *Randolph v. Florida*, 498 U.S. 992 (1990).

Randolph continued seeking relief from his conviction and sentence through postconviction litigation. On April 6, 1992, Randolph filed a motion to vacate judgments of conviction and sentence, which was amended several times. In total, Randolph presented twenty-one claims. The trial court issued an order on February 24, 1998, denying relief on claims one through nineteen

and twenty-one, and granting an evidentiary hearing on claim twenty. That evidentiary hearing was held on April 24, 1998.

At the evidentiary hearing, Randolph presented testimony from his father, mother, stepmother, and his girlfriend's mother as to mitigation he argued should have been presented during his penalty phase had defense counsel conducted a thorough background investigation. In its order, the postconviction court summarized the evidence Randolph presented at the evidentiary hearing:

> [He] was placed for adoption at birth, spent time in an orphanage; was adopted by Pearl and Timothy Randolph at six months of age; that Pearl Randolph was mentally unstable, was hospitalized for psychiatric care and was an alcoholic who rejected the idea of adoption and said she could never love an adopted child; that Timothy Randolph was abusive, over-demanding, hot-tempered, often absent and promiscuous; that [Randolph] never had a close relationship with his father; that [Randolph] suffered a lifetime of mental illness; that [Randolph] suffered a lifetime of drug addiction; that he suffered drastic mood changes and outbursts as a child often injuring himself; that he spent time in a day care center as a child while his parents worked; that he was under psychiatric care at age ten; that he grew up amid vicious battles between his parents; that he discovered his father's adulterous relationship; that his parents divorced when he was a child; and that he became addicted to drugs while in the military and continued to use drugs up until the time of the murder.

Randolph v. State, 853 So. 2d 1051, 1060 (Fla. 2003).

However, Dr. Krop's testimony at the penalty phase, as summarized by the postconviction court, revealed the following:

> [Randolph] was adopted by Timothy and Pearl Randolph at five months of age; that he had difficulty getting along with others in school; that he received psychiatric counseling in the third grade; that Pearl Randolph was emotionally unstable and was hospitalized on a couple of occasions for psychiatric reasons and was an ineffective parent; that [Randolph] was physically abused by his father when his father would tie him up and hit him with his hand, a broomstick or belt all over the body; that [Randolph] was overly sensitive about his small stature; that he graduated high school and served time in the Army before being honorably discharged; that he used drugs while in the Army; that his drug use progressed from marijuana to cocaine and then crack cocaine; that [Randolph] was more irritable, his mood changed, and he flew off the handle while using drugs; that he was a crack cocaine addict and his personality and lifestyle were affected by his drug use beginning in 1984 and particularly in 1988; that his behavior at the time of the murder was influenced by his drug use; that he suffers from a personality disorder; that he never felt close to anyone except his girlfriend; and that he perceived neither of his parents loved him.

Id.

After considering all the evidence presented at the evidentiary hearing, as well as the prior record, the postconviction court issued an order denying relief on claim twenty. *Id* at 1061.

On appeal, this Court found several of Randolph's postconviction claims to be either procedurally barred, facially or legally insufficient, or clearly without merit as a matter of law. As to Randolph's ineffective assistance of counsel claim regarding mitigating evidence, this Court found competent, substantial evidence to support the postconviction court's determination that "none of the witnesses at the evidentiary hearing offered any mitigation testimony in addition to that presented by Dr. Krop." *Id.* at 1060.

This Court further found that even if Pearl's decision to solely rely on Dr. Krop's testimony was deficient, Randolph had not demonstrated error in the postconviction court's conclusion that no prejudice resulted from Pearl's performance. Considering the four valid aggravators and the cumulative nature of the testimony from the evidentiary hearing,[9] this Court found no error in the postconviction court's finding that Randolph had not demonstrated the prejudice necessary to mandate relief. *Id.* at 1061. *citing Robinson*

v. State, 707 So. 2d 688, 697 (Fla. 1998); *see also Routly v. State,* 590 So. 2d 397, 401 (Fla. 1991) (finding that defendant did not demonstrate reasonable probability that sentence would have been different had trial counsel presented proffered mitigating evidence where much of the evidence was already before the judge and jury in a different form).

On October 1, 2023, Randolph filed his Third Successive Motion to Vacate Judgements of Conviction and Sentence, based on the newly discovered evidence of the identity of his birth parents. PCR3 pg.14-39. On October 23, 2023, the State filed its response. PCR3 pg.67-79. After conducting a *Huff*[1] hearing on November 14, 2023, the postconviction court summarily denied Randolph's motion on December 11, 2023. PCR3 pg.84-96.

This appeal followed.

[1] *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

SUMMARY OF THE ARGUMENT

The postconviction court correctly denied, without hearing, Randolph's third successive motion to vacate and set aside his judgment of convictions and sentence of death. The motion is procedurally barred because the allegations in the motion do not qualify as newly discovered evidence.

The newly discovered evidence proposed in Randolph's motion was the recent discovery of the identity of Randolph's birth parents. Through this discovery, Randolph learned that information provided to the trial court and the jury about Randolph's adoption was not true or accurate. Specifically, Randolph was not placed for adoption by college students, but rather high school students. Randolph also learned that his 17 year old birth mother went to a home for unwed mothers and was later made to give her baby up for adoption. According to Randolph, this "newly discovered" information coupled with testimony from a proposed expert on the net effect of this new evidence, would probably produce a life sentence.

While the identity of Randolph's birth parents and the fact that they were high school students at the time of Randolph's birth could be considered "newly discovered", the additional information

Randolph anticipates presenting at an evidentiary hearing through his expert witness is not. Rather Randolph is attempting to repackage and relitigate the testimony of his abusive childhood that Dr. Krop testified to already. In addition, the "newly discovered" evidence Randolph anticipates presenting at an evidentiary hearing as relevant mitigation, is neither relevant or admissible, nor likely to produce a life sentence at trial

Summary denial was appropriate, and this Court should affirm.

ARGUMENT

THE POSTCONVICTION COURT CORRECTLY DENIED AN EVIDENTIARY HEARING ON RANDOLPH'S THIRD SUCCESSIVE POSTCONVICTION MOTION BECAUSE THE MOTIONS, FILES, AND RECORDS CONCLUSIVELY SHOW THAT HE IS NOT ENTITLED TO ANY RELIEF.

Randolph claims that the lower court erred in denying his successive postconviction motion without an evidentiary hearing. Randolph bases his present challenge on the recent discovery of the identity of his birth parents as well as testimony from a proposed expert on the net effect of this new evidence. Randolph contends both are newly discovered evidence and provide relevant mitigation that would probably produce an acquittal on retrial or result in a less severe sentence. The post-conviction court determined that one was not required because, "simply put, the second prong of *Jones* has not been met". PCR3 pg. 95.

A. Randolph failed to comply with the Rule 3.851 requirement that postconviction motions be filed within one year after a judgment and sentence become final.

Rule 3.851(d)(1), Florida Rules of Criminal Procedure, provides that any motion to vacate a judgment of conviction and sentence shall be filed within one year of the date that judgment and conviction became final. For purposes of this rule, Randolph's conviction and

sentence to death became final on November 26, 1990. *Randolph v. Florida*, 498 U.S. 992 (1990). Randolph filed his Third Successive Motion on October 1, 2023, over 35 years after his sentence and conviction became final. Therefore, on its face, the motion is untimely. Randolph's Rule 3.851 motion could be considered timely filed, if his claim falls within three narrow exceptions to the one-year limitations period outlined in Rule 3.851(d), Florida Rules of Criminal Procedure. One of these exceptions, and the one Randolph seeks to invoke, is a claim of newly discovered evidence pursuant to Rule 3.851(d)(2)(A), Florida Rules of Criminal Procedure.

The law is well established that two requirements must be met for evidence to be deemed newly discovered. First, the asserted facts must have been unknown by the trial court, by the party, or by counsel at the time of the trial, and it must appear that the defendant or his counsel could not have known of them through the use of diligence. Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial or result in a less severe sentence. *See Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998); *see also Brown v. State*, 304 So. 3d 243, 272-77 (Fla. 2020). The due diligence and probability prongs of the newly

discovered evidence test will often require an evidentiary hearing. *Id.* However, no evidentiary hearing is required when the newly discovered evidence "is inherently incredible or obviously immaterial to the verdict and sentence." *Id.* Similarly, summary denial is appropriate where, even with the newly discovered evidence, the "record conclusively demonstrates that [the movant] is not entitled to relief." *Id.* at 531.

To satisfy the first prong of the newly discovered evidence test and to "be considered timely filed as newly discovered evidence, the successive rule 3.851 motion was required to have been filed within one year of the date upon which the claim became discoverable through due diligence." *Jimenez v. State,* 997 So. 2d 1056, 1064 (Fla. 2008). Due diligence requires that if the Appellant is aware of the existence of a record, he must try to obtain that record or request it. *See Tompkins v. State,* 872 So. 2d 230, 239 (Fla. 2003) (defense counsel knew of a police report and could have requested a legible copy).

As to the first prong of *Jones*, Randolph alleged that the claim was not previously raised as the identity of Randolph's birthparents was confidential under New York law. That law, according to

Randolph was changed in 2019.[2] Upon the changing of the law, Randolph, through his counsel, worked to obtain his adoption records and original birth certificate. Randolph, through counsel, received his birth certificate on October 4, 2022, and his adoption records in March of 2023. Thus, Randolph argues the motion was timely filed on October 1, 2023, within one year of the discovery of the birth parents.[3]

1. The "New Information" is not Newly Discovered Evidence

Although the first prong of *Jones* may be met because the identity of the birth parents was not known, or indeed knowable, by Randolph until recently, the "new information" from Randolph's birth

[2] According to Randolph, in 2019, the New York legislature passed, and the Governor signed, Senate Bill 2019- S3419, codified as N.Y. Pub. Health Law § 4138-e ("The Act"), establishing the right of adoptees to receive a certified copy of their original birth certificate upon reaching the age of 18. The Act changed a 78-year-old New York law that had kept adoptions "closed" and shielded birth parents' identities from disclosure. The Act went into effect January 15, 2020.

[3] While the trial court did not deny the motion was timely filed, it questioned whether Randolph's motion was in fact timely. The court noted that other than mentioning the application and reapplication, there was no mention as to why the motion was not filed until 2 years after the Act went into effect. PCR3 pg. 86-87.

parents and Dr. Brodzinsky that Randolph anticipates presenting at an evidentiary hearing is not newly discovered.

Dr. Krop testified at Randolph's trial and told the jury about his childhood, that Randolph was adopted and all the abuses he went through. Therefore, the jury and the judge already heard and considered the mitigation evidence of "how the profound effect Randolph's childhood experiences marred his psychological and emotional development". The evidence Randolph attempts to procure through the identity of his parents is not "newly discovered", but rather an attempt by Randolph "to circumvent the rules by repackaging the prior history of his abusive upbringing predicated on the discovery of the identity of his birth parents and the expert interpretation". PCR3 pg.91.

2. The New Evidence Would Not Probably Produce an Acquittal at Trial.

Even assuming the court were to find that Randolph's claim meets the first prong of *Jones,* Randolph is not entitled to relief as the evidence would not probably produce an acquittal or a lesser sentence. See Fla. R. Crim. P. 3.851(f)(5)(B); *Brown v. State,* 304 So. 3d 243, 274-77 (Fla. 2020).

i. Because the "newly discovered" evidence is not admissible, it could not affect the verdict.

Newly discovered evidence satisfies the second prong of the *Jones II* test if it "weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability." *Jones II*, 709 So. 2d at 526 (*quoting Jones v. State*, 678 So. 2d 309, 315 (Fla. 1996)). In applying this two-prong test, the postconviction trial court must "consider all newly discovered evidence which would be admissible," and must "evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial." *Jones v. State*, 591 So. 2d 911, 916 (Fla. 1991). This determination necessarily includes consideration of:

> whether the evidence goes to the merits of the case or whether it constitutes impeachment evidence. The trial court should also determine whether this evidence is cumulative to other evidence in the case. The trial court should further consider the materiality and relevance of the evidence and any inconsistencies in the newly discovered evidence.

Jones II, 709 So. 2d at 521 (citations omitted).

Randolph proposed three mitigation witnesses. Randolph's biological mother Wanda Faye Branch Kelly was to testify that she is now a retired widow, holds an advanced degree in business, had a

successful career in the banking industry, and a long happy marriage. She never had any children of her own and often wondered what had happened to the baby boy she had given up for adoption. Shortly after Mrs. Kelly married at 29 years old, she began a search looking for Randolph, but was refused any information based on New York law at the time. PCR3 pg. 31-32. Randolph's biological father, Hayves Earl Streeter, Hayves Earl Streeter, was expected to testify that he holds an advanced degree, has had a distinguished career as an engineer, has worked with government agencies and received awards. Mr. Streeter has been married twice, has adult children, and is now retired, working part-time teaching children math. Mr. Streeter Mr. Streeter was to testify that he met Mrs. Kelly as a high school student.[4] Mrs. Kelly's mother and stepfather told him about the pregnancy when he had just started college. Mr. Streeter remembered that Mrs. Kelly's stepfather placed a gun on the table while telling him about the pregnancy. Mr. Streeter felt scared and threatened and interpreted it as a warning to stay far away from Mrs.

[4] Randolph argues that the jury was told something different (that they were college students) and that this new evidence gives a greater significance and weight to the abuse Randolph suffered.

Kelly. Mr. Streeter has had no contact with Mrs. Kelly since that day. He did not know that she had put their son up for adoption until informed by the CCRC-S investigator in July of 2023. PCR3 pg. 33-34. Lastly, David M. Brodzinsky, Ph.D. was expected to testify to the scientific and psychological effects of that information on Randolph.

The Eighth and Fourteenth Amendments require that the sentencer, in all but the rarest kind of capital case, not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death. *Lockett v. Ohio*, 438 U.S. 586, 604 (1978). However, the mitigating evidence must be "relevant to the defendant's character, his prior record, and the circumstances of the offense in issue." *Eaglin v. State*, 19 So. 3d 935, 944 (Fla. 2009). Evidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse." *California v. Brown*, 479 U.S. 538 (1987). The evidence

Randolph anticipates presenting at an evidentiary hearing is inadmissible.

The information about the birth parents' background and character discovered over thirty years after the crime is not relevant to Randolph's character or to the circumstances of the offense. Essentially, the testimony from Mrs. Kelly would be pure speculation as to what type of childhood Randolph may have had, had he been raised by her, as compared to the abusive one he was subjected to. The fact of the matter is she did not raise him, and the jury was already privy to the abuse he suffered at the hands of his adoptive parents. Nor is the reason behind Mrs. Kelly's decision to give Randolph up for adoption and her newfound relationship with him relevant to Randolph's character or to the circumstances of the offense. The relationship Randolph and his birth mother have now created, cannot be used as mitigation for the crime he committed over 30 years earlier. In agreeing with the State, the trial court noted:

> Nor is this the reason behind Mrs. Kelly's decision to give Randolph up for adoption relevant to Randolph's character or to the circumstances of the offense. The strongest evidence is that the newfound relationship with him would be relevant to Randolph's character, echoing evidence that may be permitted in some circumstances on a Defendant's prison record. However, the evidence about the new

> relationship is not related to the circumstances of the offense. The relationship Randolph and his birth mother have now created, over 30 years later, is the thinnest mitigation.

PCR3 pg. 90.

ii. Even if admissible, the "newly discovered" evidence could not affect the verdict.

While the trial court agreed with the State that the evidence Randolph wanted to present was inadmissible, the court found that, at best, the evidence *could* be admissible. As such, the court proceeded with the remaining prongs of the *Jones* analysis to determine if a further evidentiary hearing would otherwise be mandated. In finding that the second prong of *Jones* had not been met, the trial court cited *Randolph v. State,* 853 So. 2d 1051, 1055 (Fla. 2003) and held:

> The new claims, now before the Court, is predicated on only arguably admissible "new" evidence. It is similar to the ground addressed in the Mandate. In the 2003 Mandate, the Court found that the Defendant did not demonstrate a reasonable probability that the sentence would have been different had Trial Counsel presented mitigating evidence where much of the evidence was already in front of the Judge and jury in a different form. In our case, the Court finds the jury and sentencing judge *already heard* about the adoptive childhood and its adverse effect on the Defendant.
>
> The strongest argument the Defendant has on this new evidence is the "impact" evidence proposed to be

presented by the expert. However, that evidence is highly speculative. It is predicated on the proposition that the jury should deduce from the successful lives of the parents that they ordinarily would have a more law-abiding offspring. It then hypothecates that such a law-abiding offspring must have had a truly horrific childhood and other life experiences to end up as the Defendant in a capital murder trial. It further is predicated on the proposition that the jury must have clearly misapprehended the evidence they received about the Defendant's childhood and life experiences. The Court agrees that the information about the birth parents and the Psychologist might be relevant to the Defendant's character, his prior record, and the circumstances of the offense. However, even considering the proposed testimony of the expert in a light most favorable to the Defendant, the Court simply cannot find that this evidence is "probably" going to produce a different outcome.

The Defendant is attempting to repackage and relitigate the testimony of his abusive childhood that Dr. Krop testified to already. The argument by CCRC about Defendant not having a hereditary disposition for criminality or substance abuse from his birth parents and giving greater weight to how the adoptive parents abused him is serves no real purpose other than highlighting what was presented to the jury initially. The connection of this alleged newly discovered evidence to actual crime committed and the sentence is tenuous at best and again speculative.

Finally, balancing this potential new information with the (4) aggravating factors would not, in all probability, alter the sentence. Simply put, the second prong of *Jones* has not been met. The Defendant's Third Successive Motion should **denied** without further evidentiary hearing.

PCR3 pg. 92-94.

Applying the aforementioned legal principles, Randolph was not entitled to an evidentiary hearing on his claim of newly discovered evidence. As no factual development was needed for the claim and the postconviction court was able to decide Randolph's claim based on the law, no evidentiary hearing was needed, and the claims were properly summarily denied.

Accordingly, this claim should be denied.

CONCLUSION

WHEREFORE, The State respectfully requests that this Honorable Court affirm the summary denial of Appellant's 3rd successive motion to vacate sentence of death filed pursuant to Florida Rule of Criminal Procedure 3.851.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA

s/Doris Meacham
DORIS MEACHAM
Senior Assistant Attorney General
Florida Bar No. 63265
Office of the Attorney General
444 Seabreeze Blvd., 5th Floor
Daytona Beach, Florida 32114
Telephone: (386) 238-4990
Facsimile: (386) 226-0457
doris.meacham@myfloridalegal.com

E-Service:
cappapp@myfloridalegal.com

COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Appellee's Answer Brief has been furnished via e-portal to: **Marie-Louise Samuels Parmer**, Special Assistant CCRC-South Florida, **Jeanine Cohen**, Staff Attorney, Capital Collateral Regional Counsel – South, 110 SE 6th Street, Suite 701 Ft. Lauderdale, Florida 33301, marie@samuelsparmerlaw.com, jeanine@jeaninecohen.com, on this 10th day of June 2024.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this Answer Brief is 14-point Bookman Old Style, and word count is 4898 in compliance with Fla. R. App. P. 9.045, 9.210 and 9.045.

s/Doris Meacham
DORIS MEACHAM
Senior Assistant Attorney General
Florida Bar No. 63265

COUNSEL FOR APPELLEE