

ACTIVE WARRANT CASE No. SC2026-0112
EXECUTION SCHEDULED FOR FEBRUARY 10, 2026, AT 6:00 P.M.

In the
Supreme Court of Florida

RONALD PALMER HEATH,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE EIGHTH JUDICIAL CIRCUIT COURT IN AND FOR
ALACHUA COUNTY, FLORIDA

APPELLEE'S ANSWER BRIEF

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INTRODUCTION

A death warrant is not an invitation to litigate issues previously raised or variations of issues previously raised. Nor is it an invitation to litigate issues that could have been raised in prior proceedings. Like other capital defendants, Ronald Heath was provided decades of taxpayer funded counsel to challenge his conviction and death sentence in state and federal court. That enormous expense of judicial and public resources is a complete waste unless issues previously decided are given finality and those that could have been raised before are barred.

The trial evidence showed that Heath and his brother robbed and ultimately murdered Michael Sheridan. But Heath was the mastermind and the primary participant. A jury, a judge, and now the Governor have determined that Heath deserves death for his crime. Heath's execution is currently scheduled for February 10, 2026.

Victims in Florida are constitutionally entitled to finality at this stage of the litigation. *See* Art. I, § 16(b)(10), (d), Fla. Const. By contrast, Heath has no constitutional right to challenge his death sentence again. *See* § 924.051(8), Fla. Stat; *Jones v. Hendrix*, 599

U.S. 465, 482–87 (2023) (no constitutional right to two rounds of postconviction review). And he certainly has no right to abuse the judicial process by raising or re-raising claims that could have been, or were, asserted long ago.¹

This Court should reject Heath’s claims. Three of his four claims are untimely and procedurally barred. This Court should reaffirm that capital defendants cannot successfully raise untimely and barred claims after the signing of a warrant. *See Gudinas v. State*, 412 So. 3d 701, 710-11 (Fla. 2025). Heath has had two rounds of state postconviction review and one round of federal review. The time has come to carry out his long-final death sentence. *See Calderon v. Thompson*, 523 U.S. 538, 556–58 (1998) (recognizing “finality acquires an added moral dimension” after one round of state and federal postconviction review given the State’s and victims’ powerful interests in punishing the guilty).

¹ *See Spenkelink v. Wainwright*, 372 So. 2d 927, 927 (Fla. 1979) (Alderman, J., concurring specially) (noting the “questionable practice of waiting until a death warrant is signed by the governor to file petitions raising matters which could have been brought to the Court’s attention months or even years before the warrant is signed” and opining doing so “is an abuse of the judicial process”).

ORAL ARGUMENT OBJECTION

The State opposes Heath's oral argument request. The issues on appeal are straightforward, and it is against this Court's policy to grant an oral argument in successive capital appeal cases. *See Fla. S. Ct. Internal Op. Proc. II.A.3.(a)* (Successive capital postconviction appeals are treated "in the same manner as" cases "in which review is granted without oral argument."). This Court has not held an oral argument in any recent warrant case over the past three years and should not hold an oral argument in this one either.

STATEMENT OF THE CASE AND FACTS

Thirty-six years ago, Ronald Heath and his brother murdered Michael Sheridan just months after Heath was released from prison for a different murder he committed when he was sixteen years old. Heath has since spent the last three-and-a-half decades unsuccessfully litigating and relitigating his judgment and death sentence. That litigation has included a direct appeal, an initial and two successive motions for state postconviction relief, and a petition for federal habeas corpus relief. This appeal stems from the trial court's denial of Heath's post-warrant motion for postconviction relief, raising four claims.

Factual Background

As a sixteen-year-old, Heath murdered Michael Green in 1977. *Heath v. State*, 3 So. 3d 1017, 1026 (Fla. 2009) (*Heath II*). For that murder, Heath spent eleven years in prison and was released just months before he murdered Sheridan in May 1989 *Id.* at 1030. The events that led to Sheridan's murder began when Heath and his girlfriend, Penny Powell, travelled to Jacksonville to visit Heath's grandmother. *Heath v. State*, 648 So. 2d 660, 662 (Fla. 1994) (*Heath*

1). After an argument with Heath, Powell returned to Douglas, Georgia, where she and Heath lived together. *Id.*

“Heath and his younger brother, Kenneth, drove to Gainesville to visit some of Heath’s friends.” *Id.* On the night of the murder, they went to the Purple Porpoise Lounge in Gainesville where two of Heath’s friends were waitresses. *Id.* While there, the brothers conversed with Sheridan, who was a travelling salesman. *Id.* “Sheridan bought the brothers a drink” and asked if they got high or had marijuana. *Id.* Heath told Kenneth they should “take Sheridan somewhere and rob him,” to which Kenneth agreed. *Id.*

The brothers left with Sheridan in Kenneth’s vehicle, “which Heath drove to an isolated area,” and the three of them smoked marijuana outside the car. *Id.* Heath gestured with his hand and asked Kenneth, “did you get it?” *Id.* In response, Kenneth grabbed a handgun from under a car seat and while pointing it at Sheridan, told him he was being robbed. *Id.* When Sheridan “balked” at handing anything over, “Heath told Kenneth to shoot Sheridan.” *Id.* Kenneth shot Sheridan in the chest when he lunged at Kenneth. *Id.* After being shot, Sheridan sat down and said, “it hurt.” *Id.*

As Sheridan was removing his possessions, Heath struck him, stabbed him in the neck, and unsuccessfully attempted to slit his throat. After he failed to slit Sheridan's throat, Heath "instructed Kenneth to kill Sheridan with the gun, and Kenneth shot him twice in the head." *Id.* The brothers then moved Sheridan's body "further into the woods," returned to the Purple Porpoise, and took Sheridan's rental car to a remote area and burned it. *Id.*

The following day, the brothers used Sheridan's credit cards to purchase miscellaneous items, such as clothes and shoes, at a Gainesville mall. *Id.* Kenneth signed all the slips for those purchases, but various store clerks who testified about the purchases identified Heath in a photo lineup. *Id.* The brothers "returned to Jacksonville and tossed the handgun into the St. John's River," where it was never recovered. *Id.* Heath eventually returned home to the trailer he lived in with Powell in Georgia. *Id.*

About a week after the murder, the medical examiner examined Sheridan's body and determined that Sheridan's death "was caused by multiple gunshot wounds and a sharp force injury to the neck." *Id.*

Several weeks after Sheridan’s murder, officers arrested Heath at his trailer on charges related to using the stolen credit cards. *Id.* After Powell consented to a search of the trailer and her car, officers found “some of the clothes purchased in Gainesville and Sheridan’s watch.” *Id.*

Procedural History

In July 1989, a grand jury indicted Heath and Kenneth for the first-degree murder and armed robbery of Sheridan. *Heath I*, 648 So. 2d at 662.² Kenneth agreed to testify against Heath pursuant to a plea agreement where he pled guilty to the charges and was sentenced for the murder to life imprisonment without the possibility of parole for twenty-five years. *Heath I*, 648 So. 2d at 662. At Heath’s trial, “the primary evidence linking Heath to the crime was the testimony of Kenneth, Heath’s possession of a watch which could be traced to Sheridan through its serial number, and Heath’s possession of certain merchandise acquired in Gainesville with Sheridan’s stolen credit cards.” *Id.*

² That case was eventually consolidated with another case where Heath and Kenneth were charged with crimes related to the use of Sheridan’s credit cards. *Id.*

The jury convicted Heath of first-degree murder, armed robbery, and several counts related to the credit cards. (DARTS11: 2158-62.)³ The jury then recommended death by a 10-2 vote, and the trial court, following that recommendation, sentenced Heath to death. (DAR3: 427, 452-71; DARTS13: 2385.) The trial court also sentenced Heath to life imprisonment as a habitual offender for the armed robbery conviction, six months with credit for time served for the conspiracy convictions, and consecutive ten-year prison sentences as a habitual offender for the forgery and uttering-a-forgery convictions. *Heath II*, 3 So. 3d at 1019 n.1.

On direct appeal, this Court affirmed Heath's murder conviction and death sentence, along with his life sentence for armed robbery as a habitual offender, which became final in June 1995. *Heath I*, 648 So. 2d at 666, *cert. denied*, 515 U.S. 1162.

Over the next few decades, Heath unsuccessfully sought state postconviction relief and federal habeas relief. *Heath II*, 3 So. 3d at

³ The State will cite the 3-volume direct-appeal record as DAR[Volume]:[page]; the 17-volume direct-appeal transcript record as DARTS[volume]:[page]; and the record in this post-warrant appeal as WPCR:[page number].

1021-35 (affirming denial of initial state postconviction motion); *Heath v. Sec’y, Fla. Dep’t of Corr.*, 717 F.3d 1202, 1204-05 (11th Cir. 2013) (affirming denial of federal relief); *Heath v. State*, 237 So. 3d 931, 931-32 (Fla. 2018) (*Heath III*) (affirming denial of first successive state postconviction motion).

Governor Ron DeSantis signed Heath’s death warrant on January 9, 2026, with the execution scheduled for February 10, 2026. Shortly thereafter, Heath unsuccessfully sought clemency-related records from the Executive Office of the Governor (EOG), Florida Commission on Offender Review (FCOR), and the Office of the Attorney General (OAG), and lethal-injection records from the Florida Department of Corrections (DOC), Florida Department of Law Enforcement (FDLE), and the District 8 Medical Examiner (Eighth ME). (WPCR: 228-32, 249-54, 256-62, 263-68, 269-72, 277-82).

Heath filed his post-warrant state postconviction motion raising four claims: (1) an Eighth Amendment method-of-execution claim alleging DOC violated its lethal-injection protocol during prior executions *and* a Fourteenth Amendment claim that the denial of lethal-injection records violates due process; (2) a Fourteenth Amendment claim that the denial of clemency-related records

violates due process; (3) an exemption-from-execution claim that Heath's childhood incarceration stunted his brain development and exempts him from execution; and (4) a claim that the Eighth Amendment requires juror unanimity for death sentence recommendations. (WPCR: 437-62).

The State answered the motion and urged summary denial. (WPCR: 562-86). The circuit court summarily denied all of Heath's claims after holding a *Huff*⁴ hearing (WPCR: 588-99), and Heath then timely appealed to this Court.

⁴ *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

ARGUMENT SUMMARY

Issue 1:

The postconviction court was correct to summarily deny Heath's Eighth Amendment manner-of-execution claim. The heavily redacted documents Heath attached to his motion do not support his speculative claim that DOC deviated from its protocol in past executions. Heath has not alleged sufficient facts to overcome the presumption that DOC will follow its protocol in Heath's execution.

Moreover, Heath does not satisfy either of the two required prongs to establish an Eighth Amendment manner-of-execution claim. His single-sentence footnote below stating the firing squad is available did not come close to pleading "sufficient facts" demonstrating "how" it is "readily implemented" and that it would reduce a very likely risk of substantial pain. Heath's attempt to elaborate on that single-sentence footnote on appeal comes too little too late because it was inadequately presented below. Heath also failed to demonstrate that he is sure or very likely to suffer serious illness and needless suffering. Therefore, this Court should affirm.

Issue 2:

The postconviction court was correct to summarily deny Heath's second claim attacking the constitutionality of Florida's clemency process. The claim was untimely, procedurally barred, and legally insufficient under this Court's long-settled precedent holding that Florida's clemency process comports with due process.

Issue 3:

The postconviction court was correct to summarily deny Heath's dual claims that he is exempt from execution because his juvenile incarceration for a previous murder stunted his brain development and the failure to present that evidence to the jury violated the Eighth Amendment. Both claims are untimely, procedurally barred as variations of claims previously raised or claims that could have been raised, and legally insufficient to warrant relief.

Florida courts lack authority under the conformity clause to extend the category of individuals exempt from execution beyond the boundaries the United States Supreme Court has set. Moreover, this Court has previously rejected arguments claiming the conformity clause itself violates the Eighth Amendment. And regardless of the conformity clause, this Court has previously declined to extend the

United States Supreme Court's exemption-from-execution class to individuals who, like Heath, are over the age of eighteen but claim to have a mental or developmental age below eighteen years.

Issue 4:

The postconviction court was correct to summarily deny Heath's claim contending that the Eighth Amendment requires unanimous death recommendations. The claim was untimely, procedurally barred as a variation of claims twice raised before or that could have been raised before, and legally insufficient.

On the merits, both the United States Supreme Court and this Court have held that the Eighth Amendment does not require unanimous death recommendations. And this Court has repeatedly affirmed the summary denial of such claims. Therefore, this Court should affirm.

STANDARD OF REVIEW

This Court reviews the summary denial of a postconviction claim *de novo*. *Hutchinson v. State*, 416 So. 3d 273, 279 (Fla. 2025). Under that standard, this Court will affirm summary denial of claims that are: “[1] untimely, [2] procedurally barred, [3] legally insufficient,⁵ or [4] refuted by the record.” *Id.* Further, “mere conclusory allegations do not warrant an evidentiary hearing.” *Cole v. State*, 392 So. 3d 1054, 1061 (Fla. 2024).

⁵ A claim is legally insufficient when it fails “as a matter of law.” See *Owen v. State*, 986 So. 2d 534, 544 (Fla. 2008).

ARGUMENT

1. THE POSTCONVICTION COURT CORRECTLY SUMMARILY REJECTED HEATH'S CLAIM THAT FLORIDA'S PURPORTED MALADMINISTRATION OF ITS OWN LETHAL INJECTION PROTOCOL VIOLATES THE EIGHTH AMENDMENT, AND THAT THE DENIAL OF HIS DEMAND FOR LETHAL INJECTION RECORDS VIOLATES THE FOURTEENTH AMENDMENT.

In his first issue, Heath raises both a manner-of-execution claim and a due process right to investigate claim. As to the former, he argues DOC has previously deviated from its lethal injection protocol and that the risk of it deviating from its protocol during Heath's upcoming execution violates the Eighth Amendment. Regarding the latter, Heath argues the Due Process Clause provides him with a discovery-like right to demand additional records in search of a claim.

Heath's manner-of-execution claim was poorly pled and legally insufficient. It also failed to overcome the presumption that DOC will follow its protocol. Heath's due process claim is meritless because there is no due process right to discovery, particularly in postconviction proceedings.

Relevant Facts and the Ruling Below

Heath's manner-of-execution claim is based on alleged protocol deviations in prior executions. His postconviction motion alleged the

following seven facts to support his manner-of-execution claim: (1) it is “unknown whether Walls, or any of the other prisoners executed by Florida since the documented errors began” felt any unconstitutional level of pain; (2) DOC documents removing execution drugs after executions take place, indicating the logs are inaccurate; (3) for the executions of Thomas Gudinas, Anthony Wainwright, and Michael Bell, DOC documented removing the lethal-injection drugs after the execution and did not log etomidate as being removed for Bell’s execution at all; (4) etomidate was present in Bell’s system postmortem; (5) DOC recorded preparing incorrect dosages for the Gudinas and Wainwright executions; (6) DOC logs show use of lidocaine for the Edward James and Michael Tanzi executions; (7) for four executions in August and September 2025 (Victor Jones, David Pittman, Curtis Windom, and Kayle Bates), DOC recorded preparation of etomidate with an expiration date of January 2025. (WPCR: 438-41).

Heath’s allegations stemmed from heavily redacted records he attached to his motion. He relied on pages 23-63 of his “Appendix C” to support his allegations. (WPCR: 485-525). Specifically, Heath cited pages 4, 5, 7, 25, and 27 of Appendix C. (WPCR: 489, 490, 492, 510,

512). Notably, none of those pages contain the names of any executed inmate or indicate use during any execution. They simply contain lines for “drug name,” “package size,” and “NDC#,” and columns for “date,” “invoice name/#,” “Lot #,” “Exp. Date,” “MFR,” “Received/Used (+/-),” and “balance.” (WPCR: 489, 490, 492, 510, 512). The “Received/Used (+/-)” column contains numbers with either the + or - symbol. (Id.) Heath’s repeated assertions that these records show the drugs used for a given execution (IB. 14, 15, 37) is simply not true. Contrary to Heath’s contention, the records are not clear and do not show what he alleges.

Heath’s motion also alleged that “according to Dr. Zivot, it is ‘unknown’ whether an expired drug will work as intended by FDOC during a lethal injection protocol given the unpredictable chemical properties of those drugs, leaving each execution carried out with such a dosage completely up to chance.” (WPCR: 441). Dr. Zivot generally concluded that DOC errors contribute to “a substantial likelihood of a drawn-out, torturous death.” (WPCR: 440).

The postconviction court denied Heath’s claim, concluding that his “claim ‘that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and

needless suffering’ is both speculative and conclusory.” (WPCR: 591). The postconviction court also concluded that Heath failed to sufficiently allege that his proposed alternative method—the firing squad—is “feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain.” (WPCR: 591).

Merits

The postconviction court properly denied Heath’s Eighth Amendment method-of-execution claim because it was legally insufficient. The Eighth Amendment provides that “cruel and unusual punishment” shall not “be inflicted.” U.S. Const. amend. VIII. Capital defendants who challenge a method of execution must: “(1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain.” *Tanzi v. State*, 407 So. 3d 385, 392 (Fla. 2025); *see also Bucklew v. Precythe*, 587 U.S. 119, 134, 140 (2019) (holding “all Eighth Amendment method-of-execution claims” must “meet the

Baze-Glossip^[6] test”).

In addition to meeting the two-part *Baze-Glossip* test, method-of-execution claims asserting that DOC fails to follow protocol must allege legally sufficient facts to pierce the well-established presumption that DOC follows protocol before a court may grant an evidentiary hearing. *Hannon v. State*, 228 So. 3d 505, 509 (Fla. 2017) (affirming summary denial of a claim “DOC is inconsistent with its protocol” because the allegations were insufficient to “overcome the presumption” DOC complies “with the protocol”). That is because both this Court and the United States Supreme Court have held prison staff are entitled to a strong presumption that they follow their method-of-execution protocol. *E.g.*, *Baze*, 553 U.S. at 53-54; *Cole*, 392 So. 3d at 1065.⁷

There is no such thing as a standalone failure-to-follow-protocol Eighth Amendment claim exempted from these three requirements.

⁶ *Baze v. Rees*, 553 U.S. 35 (2008) (plurality opinion); *Glossip v. Gross*, 576 U.S. 863 (2015).

⁷ *See also, e.g.*, *Valle v. State*, 70 So. 3d 530, 545-49 (Fla. 2011); *Davis v. State*, 742 So. 2d 233, 236 (Fla. 1999); *Provenzano v. State*, 739 So. 2d 1150, 1153 (Fla. 1999).

See *Baze*, 553 U.S. at 53-54 (rejecting the argument that the risk of state officials not properly following a lethal injection protocol constitutes an Eighth Amendment violation).⁸ The question is not whether protocol deviations occurred but whether the deviations are likely to cause needless suffering and a readily-implemented alternative execution method is proposed. *Baze*, 553 U.S. at 49-51; *Hamm v. Comm’r, Ala. Dep’t of Corr.*, 725 F. App’x 836, 842 (11th Cir. 2018).

With the above framework in mind, Heath’s allegations did not pierce the presumption that DOC will follow its method-of-execution protocol. But even if Heath’s allegations pierced that presumption, his claim does not satisfy either prong of the *Baze-Glossip* test.

⁸ *E.g.*, *Lightbourne v. McCollum*, 969 So. 2d 326, 341 (Fla. 2007) (noting, despite concerns DOC repeatedly failed to follow protocol in prior executions, the court refused to stay an execution when nothing established the prior executions “caused unnecessary and wanton pain” or involved “torture or a lingering death”); *Jordan v. Mississippi State Executioner*, No. 25-70013, 2025 WL 1752391, at *2 & n.2, *3 (5th Cir. June 24, 2025) (denying a stay of execution despite officials admitting they had not performed required consciousness checks in prior executions).

A. Heath's Speculative Allegations Did Not Overcome the Presumption that DOC Follows its Method-of-Execution Protocol

Neither Heath's speculative allegations nor his proffered evidence in the form of highly redacted records are sufficient to overcome the presumption that DOC follows its protocol. See *Hannon*, 228 So. 3d at 509. A capital defendant asserting a lethal-injection claim "cannot rely on conjecture or speculation." *Depravine v. State*, 146 So. 3d 1071, 1104 (Fla. 2014). Heath's motion did nothing more than speculate about a slew of protocol deviations in prior executions and include heavily redacted records that did not support those allegations without reliance on conjecture, imagination, and speculation. Notably, his records did not show that the logs were related to the executions he referenced. It was pure postulation for Heath to conclude that DOC was using expired drugs or incorrect dosages of drugs based on logs that are not specific to any individual execution. Heath's allegations were insufficient to overcome the presumption that DOC will follow its protocol. See *Cole*, 392 So. 3d at 1065 (speculative lethal-injection allegations insufficient).

Heath's allegations, based on ambiguous records that do not

clearly show protocol deviations, do not overcome the presumption DOC will follow its protocol.⁹ And Heath’s attempt to demonstrate an Eighth Amendment violation by alleging inadequate or inaccurate record keeping is not persuasive. *See e.g., Troy v. State*, 57 So. 3d 828, 839 (Fla. 2011) (holding the protocol’s failure “to require adequate record-keeping” did not give rise to an Eighth Amendment claim). By calling these records “inaccurate” Heath seems to admit that these records do not show what was actually done in prior executions.¹⁰ (IB. 14). He therefore has no support for his Eighth Amendment claim.

Heath also alleges a protocol deviation in the form of using lidocaine, which he contends is a deviation from the protocol. But the records Heath relies on do not show lidocaine was used in any prior

⁹ Heath’s allegations demonstrate that he has either misread the records in question or they do not capture DOC’s adherence to its execution protocol. For example, Heath contends DOC failed to log its removal of etomidate for Michael Bell’s execution even though he acknowledges etomidate was found in Bell’s system postmortem. (WPCR: 439).

¹⁰ Specifically, Heath said “This indicates that FDOC’s drug supply records are inaccurate—therefore, during an execution, *there is no way of knowing the source or quantity of the drug being administered.*” (IB. 14) (emphasis added).

execution. He simply speculates that it was because DOC previously produced a log of lidocaine in response to a request in a different case. Just because DOC either received or used lidocaine at some point close to when executions were occurring does not in any way show that lidocaine was being used during executions.

Nothing Heath asserted in his motion suggested that any deviations would occur in his execution. Heath did not allege that any current or prospective member of the execution team would intentionally or unintentionally deviate from or ignore the written protocol. *See e.g., Clemons v. Crawford*, 585 F.3d 1119, 1127 (8th Cir. 2009) (rejecting prisoners' claim that they faced a substantial risk of severe pain in upcoming executions based on a series of mistakes in administering the protocol in prior executions because they "set forth absolutely no factual allegations suggesting incompetence, lack of necessary qualifications, or inadequate training on the part of any current or prospective member of Missouri's execution team. The prisoners' complaint makes no factual allegations suggesting any current or prospective member of Missouri's execution team would intentionally or unintentionally deviate from or ignore the written protocol.").

Therefore, even if Heath’s conclusory allegations somehow demonstrated past protocol deviations in some executions, the speculation that it could happen again is not enough to state an Eighth Amendment manner-of-execution claim. The United States Supreme Court has expressly rejected the argument that the risk of state officials not properly following a lethal injection protocol amounts to an Eighth Amendment violation. *Baze*, 553 U.S. at 53-54.¹¹

Heath failed to overcome the presumption that DOC will follow its protocol. Contrary to Heath’s contention, he has not established protocol deviations in prior executions. But even if he did, Heath’s motion did not contain necessary allegations concerning his prospective execution team.

¹¹ See also *Cooley v. Strickland*, 589 F.3d 210, 225 (6th Cir. 2009) (observing that “speculations, or even proof, of medical negligence in the past or in the future are not sufficient” to successfully challenge a facially constitutional manner of execution and that “permitting constitutional challenges to lethal injection protocols based on speculative injuries and the possibility of negligent administration is not only unsupported by Supreme Court precedent but is also beyond the scope of our judicial authority.”).

B. Heath Failed to Sufficiently Plead a Feasible and Readily Implemented Alternative Method of Execution that Would Significantly Reduce a Substantial Risk of Severe Pain

The State will address the second prong of *Baze-Glossip* before addressing the first prong because Heath’s motion below was so inadequately pled that this Court need not address the first prong where the second prong is clearly not satisfied. *See e.g., Randolph v. State*, 422 So. 3d 166, 173 (Fla. 2025) (“While we have significant doubts about the legal sufficiency of the first prong, we need not address that here because Randolph fails on the second prong.”)

Applying the second prong of *Baze-Glossip*, this Court has required a defendant to show “how” a proposed alternative method of execution “could be ‘readily implemented’” and that it “reduces the substantial risk of severe pain.” *E.g., Tanzi*, 407 So. 3d at 393. In other words, the defendant must plead “sufficient facts” demonstrating that the proposed alternatives are “feasible” and “readily implemented methods of execution” that would “significantly reduce a substantial risk of severe pain.” *Boyd v. Warden, Holman Corr. Facility*, 856 F.3d 853, 859 (11th Cir. 2017) (“Boyd has not come close to pleading *sufficient facts* to render it plausible that hanging and firing squad are feasible, readily implemented methods of

execution for Alabama that would significantly reduce a substantial risk of severe pain.”) (emphasis added).

In this case, Heath did not plead a single fact below demonstrating how his proposed alternative method of execution—firing squad—could be “readily implemented” let alone how it would significantly reduce a substantial risk of severe pain. He relegated his proposed alternative method to the following sentence in a footnote: “In the event that Florida is still unable to demonstrate competency in administering lethal injection, Heath proffers another alternative method of execution that would entail less risk of error and severe pain, the firing squad, a method that other states have recently adopted.” (WPCR: 448 n.3).¹² That does not come close to the requirement that he plead “sufficient facts” demonstrating “how” his

¹² Rather than plead “sufficient facts,” Heath sought a pause in executions along with an “independent review” and reforms. But the *Baze-Glossip* standard, which “all Eighth Amendment method-of-execution claims” must satisfy, required Heath to provide a “feasible and readily implemented alternative method of execution.” *Bucklew*, 587 U.S. at 134. Proposing a pause and review does not meet that standard. See *Nance v. Ward*, 597 U.S. 159, 169 (2022) (explaining that, if “the inmate obtains” relief on a method-of-execution claim, “it is because he has persuaded a court that the State could readily use his proposal to execute him”).

proposed alternative could be “readily implemented” and that it significantly reduces a substantial risk of severe pain.

In apparent recognition that his one-sentence footnote in the motion inadequately pled a proposed alternative method of execution, Heath elaborates on the firing squad in his Initial Brief. Unfortunately for Heath, it is too late. He was required to properly present an alternative method of execution below. He is not entitled to reversal on appeal because he decided to provide details he did not provide to the postconviction court. *See Hutchinson v. State*, 408 So. 3d 752, 755 (Fla. 2025) (“We agree with the State that the claim was not properly presented below. Indeed, the *paragraph* discussing the Eighth Amendment is conclusory.”) (emphasis added). Heath did not even devote a paragraph to his alternative method of execution. He relegated it to a single-sentence footnote. That is not good enough. *See e.g., Randolph v. State*, 422 So. 3d 166, 173 (Fla. 2025) (holding that Randolph’s proposed alternatives of a different drug combination or a firing squad could not be readily implemented, nor did the proposed alternatives significantly reduce the risk of severe pain); *Rogers v. State*, 409 So. 3d 1257, 1268 (Fla. 2025) (rejecting firing squad as a proposed alternative).

Courts cannot properly compare the risks or readily implementable nature of a proposed alternative with the current method unless the capital defendant provides more than a naked assertion. *Cf. Owens v. Stirling*, 904 S.E.2d 580, 600 (2024) (noting the potential for firing squad to cause prolonged pain if “each member of the firing squad simply misses the inmate’s heart”). That is why capital defendants need to provide sufficient detail in proposing an alternative to survive *Baze-Glossip*’s second prong. Requiring additional detail also prevents capital defendants from turning around and arguing the method they proposed constitutes cruel and unusual punishment if the State takes them up on it. *See Stewart v. LaGrand*, 526 U.S. 115, 118-120 (1999) (“By declaring his method of execution, picking lethal gas over the State’s default form of execution-lethal injection-Walter LaGrand has waived any objection he might have to it.”).

Heath did not plead “sufficient facts” demonstrating “how” his proposed alternative could be “readily implemented” and that it significantly reduces a substantial risk of severe pain. This Court should affirm for that reason alone.

C. Heath Failed to Sufficiently Plead a Substantial and Imminent Risk That He is Sure or Very Likely to Suffer Serious Illness and Needless Suffering

Heath's claim fares no better under the first prong of *Baze-Glossip*. His claim essentially boils down to his contention that because DOC purportedly deviated from its protocol in past executions, it will deviate from that protocol in Heath's execution in a way that is very likely to cause needless suffering. But "speculation cannot substitute for evidence" a course of action is "sure or very likely" to cause "serious illness and needless suffering." *Valle*, 70 So. 3d at 549; *Pardo v. State*, 108 So. 3d 558, 561 (Fla. 2012).

This Court has repeatedly affirmed Florida's execution protocol and relied on the fact that the massive dose of etomidate administered will render the condemned insensate for the execution. *E.g.*, *Rogers v. State*, 409 So. 3d 1257, 1268 (Fla. 2025) (noting "the well-established fact that the administration of etomidate will render him unconscious likely within one minute"). Florida's protocol includes safeguards and checks to ensure "the condemned is unconscious throughout the execution." *Long v. State*, 271 So. 3d

938, 945 (Fla. 2019).¹³

Heath's claim fails the first prong of *Baze-Glossip* for multiple reasons. First, his motion conceded "it is unknown" whether any executed inmate experienced an unconstitutional level of pain despite the protocol deviations he alleges. (WPCR: 438). He also does not know the effectiveness of the supposedly expired etomidate. (WPCR: 441). In fact, the records do not even show expired etomidate was used absent speculation. And he does not know whether or how lidocaine was used but, without that knowledge, speculates it could contribute to a torturous death. (WPCR: 441). All Heath presented in the way of specificity was Dr. Zivot's unelaborated conclusion that "timing, quantity, and quality of the drugs matter" and DOC's

¹³ The administration of the second and third drugs in Florida is only made after a determination that the first drug has the desired effect and the inmate is unconscious. *See Howell v. State*, 133 So. 3d 511, 522 (Fla. 2014) (noting that a consciousness check, which included a painful pinch of the trapezius would "ensure that Howell is unable to perceive any noxious stimuli"); *Schwab v. State*, 995 So. 2d 922, 930 (Fla. 2008) (detailing the steps of a consciousness check that included a shake and shout and eyeball tap); *Valle v. Singer*, 655 F.3d 1223, 1233 (11th Cir. 2011) (noting that under Florida's protocol, a consciousness check is required and "the execution cannot proceed until the individual is rendered unconscious."). *See also Glossip*, 576 U.S. at 877-78 (explaining the Supreme Court upheld a protocol even without a "consciousness check"); *Baze*, 553 U.S. at 120 (Ginsburg, J., dissenting) (praising Florida's consciousness checks).

supposed errors contribute to a “substantial likelihood of a drawn-out, tortuous death.” But Dr. Zivot could not opine on the effectiveness of the supposedly expired etomidate. (WPCR: 440-41)

These conclusory and speculative allegations were legally insufficient to show a very likely risk of severe pain or require evidentiary development. *See Rogers*, 409 So. 3d at 1266-69; *Cole*, 392 So. 3d at 1065 & n.18. Likewise, Heath’s speculation that something went wrong for Bryan Jennings’ twenty-minute execution provides no basis for further review of this claim. (See IB. 24 (Dr. Zivot speculating that the twenty-minute execution and alleged movement “could” be explained by an issue with drug potency). A twenty-minute execution is hardly cause for concern from an Eighth Amendment perspective. *Cf. Barber v. Ivey*, 143 S. Ct. 2545, 2545-46 (2023) (Sotomayor, J., dissenting) (dissenting from the Court’s refusal to stay an execution despite, in two recently preceding executions, Alabama officials “spent multiple hours digging for prisoners’ veins in an attempt to set IV lines” and could not carry out the execution)).

Heath has simply never explained why the consciousness checks would be insufficient to either ensure he is unconscious or

alert DOC staff to the need for more etomidate. *See Schwab v. State*, 995 So. 2d 922, 929 (Fla. 2008) (“The constitutional focus is unconsciousness, not the duration of the execution following unconsciousness.”); *Baze*, 553 U.S. at 64 (Alito, J., concurring) (“The first step in” these “lethal injection protocols” is “the anesthetization of the prisoner. If this step is carried out properly,” the “prisoner will not experience pain during the remainder of the procedure.”). Etomidate, plus Florida’s consciousness checks, vitiate any Eighth Amendment claim based on *Baze-Glossip*’s first prong.

Nor does Heath persuasively distinguish his case from *Baze*, 553 U.S. at 53-54, which rejected the argument that the future possibility of improper implementation of an execution protocol gives rise to an Eighth Amendment claim. (IB. 28). Recognizing that an “isolated mishap” does not give rise to an Eighth Amendment method-of-execution claim, Heath likens his case to those involving “a series of abortive attempts.” (IB. 28). This is not a persuasive argument. First, there was no “series of abortive attempts” because all the inmates executed in 2025 were executed on schedule. *Cf. Smith v. Hamm*, 144 S. Ct. 414, 414 (2024) (Sotomayor, J., dissenting) (dissenting from the Supreme Court’s refusal to stay an

execution despite the fact Alabama failed to execute this inmate once before and was attempting a novel nitrogen hypoxia method this time).

Second, and perhaps more to the point, Heath is not the first person to attempt to distinguish his case from *Baze* on the basis of alleging prior maladministration of an execution protocol to support allegations of prospective maladministration. *E.g.*, *Clemons*, 585 F.3d at 1127 (“The prisoners in this case emphasize that their allegations state a claim for violation of the Eighth Amendment because they have alleged previous improper preparation and administration of lethal chemicals by *incompetent* medical personnel.... We reject the prisoners’ attempt to distinguish their case from *Baze* on the basis of alleged past incompetence on the part of Missouri’s medical personnel.”) (emphasis in original). Heath’s attempt at distinguishing *Baze* is just as unpersuasive as the attempt in *Clemons*.

Heath’s speculative allegations did not overcome the presumption DOC will follow its protocol. But even if they did, Heath did not satisfy either prong of *Baze-Glossip*. Therefore, this Court should affirm the summary denial of his claim.

D. The Denial of Heath’s Demands for Lethal Injection Records Did Not Violate the Due Process Clause

Heath’s contention that the postconviction court’s denial of his demands for lethal injection records violated his Fourteenth Amendment right to due process is meritless. The United States Supreme Court has long rejected the notion of a constitutional right to discovery founded on access to the courts or due process. *Lewis v. Casey*, 518 U.S. 343, 354 (1996) (rejecting a constitutional claim that “the State must enable the prisoner to *discover* grievances, and to *litigate effectively* once in court”) (emphasis in original); *Gray v. Netherland*, 518 U.S. 152, 168 (1996) (noting the Supreme Court’s repeated admonitions that due process has “little to say regarding the amount of discovery which the parties must be afforded” and that there is “no general constitutional right to discovery” even for criminal defendants at trial). *See also Wellons v. Comm’r, Ga. Dep’t of Corr.*, 754 F.3d 1260, 1267 (11th Cir. 2014) (relying on *Lewis* to reject a due process right to lethal-injection discovery and collecting cases).

Heath thus had no due process right to demand lethal injection records in search of a claim. And for the reasons argued in the preceding sections, Heath did not present a colorable method-of-

execution claim. Therefore, the postconviction court did not abuse its discretion when it denied Heath's demand for lethal injection records. *E.g., Tanzi*, 415 So. 3d at 391 (applying the abuse of discretion standard to the denial of a demand for additional records and concluding that the postconviction court did not abuse its discretion or violate due process in denying a demand for such records because the records did not relate to a colorable claim). This Court should affirm.

2. CAPITAL DEFENDANTS HAVE NO DUE PROCESS RIGHT TO REBUT INFORMATION IN CONFIDENTIAL CLEMENCY MATERIALS.

In his second issue, Heath raises a constitutional attack on Florida's rules of executive clemency. Specifically, Heath claims the postconviction court's denial of his request for clemency-related records, which was based on Florida law's exempting those records from public disclosure, violated due process. Heath takes aim at the confidential nature of Florida's clemency process and argues it prevented him "from knowing whether his clemency denial comported with due process." (WPCR: 448-49).

Ruling Below

The postconviction court summarily denied Heath's claim that the confidential nature of clemency violated his right to due process as legally insufficient and observed that it was "based on nothing more than speculation and conjecture." (WPCR: 594).

Untimely

Heath goes to great lengths to argue that his clemency-related claim did not ripen until the Governor signed his death warrant, relying on *Barwick v. Governor of Florida*, 66 F.4th 896, 902 (11th Cir. 2023). (WPCR: 448). But this Court has previously rejected that

argument. *E.g.*, *Ferguson v. State*, 101 So. 3d 362, 366 (Fla. 2012) (rejecting the defendant’s argument that “clemency is only ripe and/or relevant ‘close to the time a death warrant is signed,’ when the ‘snapshot’ of the inmate is current and with a significant history on death row to evaluate” and holding instead that clemency claims ripen after initial state and federal remedies are exhausted).

Capital defendants can, and have, challenged the confidential nature of Florida’s clemency process years before the signing of a death warrant while the clemency process was ongoing. *E.g.*, *Rose v. State*, 774 So. 2d 629, 637 n.12 (Fla. 2000) (rejecting a clemency claim raised in a pre-warrant successive postconviction motion because it was “without merit.”); *Sullivan v. Askew*, 348 So. 2d 312, 313-14, 316 (Fla. 1977); *id.* at 318-19 (England, J., concurring specially).

Heath’s current challenge to the confidential nature of Florida’s clemency process is untimely. *See Ferguson*, 101 So. 3d at 366 (holding that a post-warrant clemency claim was untimely because the defendant had spent “thirty (30) years on death row” and could have raised the claim earlier). He effectively asserts section 14.28, Florida Statutes, and the Florida Rules of Executive Clemency, are

facially unconstitutional under due process. But that type of challenge could have been raised long before now. *See Sullivan*, 348 So. 2d at 313-14, 316 (Fla. 1977) (noting the capital defendants argued the “scheduled” clemency “hearings deny due process” while rejecting numerous pre-warrant due process challenges to Florida’s clemency process, including its confidentiality, on the merits). This claim is therefore untimely because Florida law permitted Heath to raise it long before now.

Procedurally Barred

Heath’s argument that exempting clemency records from disclosure violates due process is procedurally barred because it could have been raised in a prior proceeding. *E.g.*, *Trotter v. State*, 10 So. 3d 633 at *1 (Fla. 2009) (unpublished table decision) (“In his second claim, Trotter challenges the constitutionality of section 945.10, Florida Statutes (2006), which exempts from disclosure as public record the identity of the members of the execution team and the executioners. This claim is procedurally barred because it could have been raised in a prior proceeding.”) As demonstrated by *Rose* and *Sullivan*, a claim challenging the confidential nature of Florida’s clemency process or the discretion it vests in the Governor could have

been raised previously and is now barred.

Merits

Heath's argument that due process requires that he be given a right to access confidential clemency records, akin to discovery, in search of a claim fails to state a due process claim "as a matter of law." *See Owen*, 986 So. 2d at 544 (legally insufficient claims should be summarily denied). The Fourteenth Amendment's Due Process Clause provides: "No State" shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

A capital defendant does not have a right "to review and rebut the evidence pertaining to his clemency proceedings." *Bates v. State*, 416 So. 3d 312, 320 (Fla. 2025). And as previously explained in the first issue above, the United States Supreme Court has long rejected the notion of a constitutional right to discovery founded on access to the courts or due process. *Lewis*, 518 U.S. at 354 (rejecting a constitutional claim that "the State must enable the prisoner to *discover* grievances, and to *litigate effectively* once in court") (emphasis in original); *Gray*, 518 U.S. at 168 (noting the Supreme Court's repeated admonitions that due process has "little to say

regarding the amount of discovery which the parties must be afforded” and that there is “no general constitutional right to discovery” even for criminal defendants at trial). *See also Wellons*, 754 F.3d at 1267 (relying on *Lewis* to reject a due process right to lethal-injection discovery and collecting cases).

Indeed, the amount of process owed to a criminal defendant diminishes after trial. As such, Heath’s “right to due process is not parallel to a trial right, but rather must be analyzed in light of the fact that he has already been found guilty at trial, and has only a *limited* interest in postconviction relief.” *Dist. Attorney’s Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009).

In *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998), five justices agreed that some minimal level of due process applies to clemency. *See id.* at 289 (O’Connor, J., concurring in part and concurring in the judgment) (“Some *minimal* procedural safeguards apply to clemency proceedings.”); *id.* at 292 (Stevens, J., concurring in part and dissenting in part) (“If a State adopts a clemency procedure as an integral part of its system for finally determining whether to deprive a person of life, that procedure must comport with

the Due Process Clause.”). Justice O’Connor’s controlling¹⁴ concurrence concluded that the process the petitioner received—notice of the hearing and an opportunity to participate in an interview—satisfied “whatever limitations the Due Process Clause may impose on clemency proceedings.” *id.* at 290. Though four justices did not decide whether clemency proceedings are subject to due process requirements, Chief Justice Rehnquist’s plurality opinion made clear that even if minimal due process was required, the four justices in the plurality concurred with Justice O’Connor’s conclusion that notice and the opportunity to participate in an interview satisfied those minimal requirements.

Justice O’Connor concluded that Ohio’s clemency procedure satisfied minimal due process even though that procedure gave the capital defendant “3 days’ notice of his interview and 10 days’ notice of the hearing,” excluded his counsel from the interview, left counsel’s participation in the hearing to the “discretion of the parole board chair,” and prohibited evidence at the hearing. *Id.* at 289-90.

¹⁴ See *Barwick*, 66 F.4th at 902 (observing that “Justice O’Connor’s concurring opinion provides the holding in *Woodard*” and that the “key word” in that holding is “minimal.”).

The only “tangible” examples of what might violate minimal clemency-related due process are “truly outrageous ones” where “(1) a scheme whereby a state official flipped a coin to determine whether to grant clemency, or (2) a case where the State arbitrarily denied a prisoner any access to its clemency process.” *Barwick*, 66 F.4th at 904. “Outside of similarly ‘extreme situations,’ the federal Due Process Clause does not justify judicial intervention into state clemency proceedings.” *Gissendaner v. Comm’r, Georgia Dep’t of Corr.*, 794 F.3d 1327, 1331 (11th Cir. 2015). “The Supreme Court has never recognized a case in which clemency proceedings conducted pursuant to a state’s executive powers have implicated due process.” *Schad v. Brewer*, 732 F.3d 946, 947 (9th Cir. 2013).

Heath’s claim that the confidential nature of Florida’s clemency process violates due process does not come close to approaching the “truly outrageous” examples of state officials flipping a coin or denying an inmate any access to the clemency process. *See Barwick*, 66 F.4th at 904. Minimal, clemency-related due process did not entitle Heath to discover confidential clemency materials. *E.g.*, *Kormondy v. Scott*, 160 So. 3d 896, *1-2 (Fla. 2015) (unpublished

table decision) (holding that confidential clemency processes do not violate “minimal due process”).

Nor is there any merit to Heath’s contention that there were “indications” that his clemency denial “may not have comported with due process” based on his allegation of “influence from politicians and family members of victims other than the victim in this case.” (WPCR: 449). This Court has already rejected as meritless claims that the Governor’s selection of an inmate for a death warrant was tainted by public input. *E.g., Mann v. State*, 112 So. 3d 1158, 1163 (Fla. 2013) (affirming denial of demand for additional records sought to substantiate allegation that the Governor’s selection of Mann was tainted by public input because “even if the records Mann sought could have helped him accurately support his allegation, the claim is not cognizable.”).

Additionally, this Court has repeatedly rejected the argument that the breadth of the Governor’s discretion to decide which death warrants to sign, and when to sign them, violates the constitution. *E.g., Hutchinson*, 416 So. 3d at 280 (“We have repeatedly held that the Governor’s broad discretion does not contravene constitutional norms” and “Hutchinson has failed to show that a discretionary

standard in warrant selection (regardless of the decisionmaker) offends a discrete provision of the state or federal constitution.”).

Finally, Heath’s other miscellaneous complaints about Florida’s clemency process, such as his complaints about “clemency counsel,” the fact that capital collateral counsel cannot participate, and “no specific procedures” govern clemency, are not persuasive. None of those complaints amount to flipping a coin or completely denying him access to clemency. *See Barwick*, 66 F.4th at 904. So, they are irrelevant. Moreover, the Eleventh Circuit Court of Appeals has repeatedly rejected those types of attacks on Florida’s clemency process. *E.g., Zack v. Governor of Fla.*, No. 23-13021, 2023 WL 6376654, at *6 (11th Cir. Sept. 26, 2023) (“Finally, Zack argues that the State's assertion about the ongoing nature of clemency overlooks the fact that there are no additional financial resources available to Zack's clemency counsel and that Zack's state-court counsel is prohibited from assisting with his clemency application. . . . But since there is no constitutional right to clemency counsel ... we cannot conclude that the challenges associated with Zack's divided representation violate the Due Process Clause.”) (internal citation omitted).

The postconviction court was correct to summarily deny Heath's clemency-related claim. Therefore, this Court should affirm.

3. THE POSTCONVICTION COURT CORRECTLY SUMMARILY REJECTED HEATH'S CLAIM THAT HE CANNOT BE EXECUTED BECAUSE HIS TRAUMATIC CHILDHOOD INCARCERATION FOR MURDER STUNTED HIS BRAIN DEVELOPMENT.

In his third issue, Heath raises an exemption-from-execution claim in which he contends the Eighth Amendment prohibits execution of individuals whose juvenile incarceration stunts their brain development or includes traumatic experiences. He also argues that the failure to consider his traumatic experience as mitigation before imposing sentence amounted to an Eighth Amendment violation. This Court should affirm the postconviction court's summary denial of this claim because it is untimely, procedurally barred, and legally insufficient to warrant relief.

Relevant Facts and the Ruling Below

At the age of sixteen, Heath murdered Michael Green in 1977. *Heath II*, 3 So. 3d at 1026. He was incarcerated for that murder until his release from prison in October 1988, months before Sheridan's murder in May 1989. *Id.* at 1030. In his initial postconviction motion, Heath argued his trial counsel was ineffective for failing to present

evidence “he had been the victim of sexual assaults while in prison.” *Heath II*, 3 So. 3d at 1033 (rejecting this claim).

In his post-warrant motion for postconviction relief, Heath pointed to “new research” that demonstrated his incarceration “stunted” his brain development and that he should therefore be exempt from execution because his “psychological age was younger than his chronological age.” (WPCR: 453). Heath also argued that the failure to consider the impact of his youth-incarceration before executing him violates the Eighth Amendment. (WPCR: 453-56)

The postconviction court summarily denied this claim as untimely, procedurally barred, and legally insufficient because Florida courts lack authority under the conformity clause to extend the class of individuals exempt from execution beyond the boundaries set by the United States Supreme Court. (WPCR: 594-97).

Untimely

Both parts of Heath’s claim are untimely. “Postconviction claims in capital cases must generally be filed within one year after the judgment and sentence become final.” *Wainwright v. State*, 411 So. 3d 392, 398 (Fla. 2025) (citing Fla. R. Crim. P. 3.851(d)(1)). The “new

research” Heath points to does not satisfy the newly discovered evidence exception to that time limitation. *See Barwick v. State*, 361 So. 3d 785, 793 (Fla. 2023) (“This Court has routinely held that resolutions, consensus opinions, articles, research, and the like, do not constitute newly discovered evidence.”).

In an attempt to satisfy the newly discovered evidence exception, Heath distinguishes his evidence from the “research” this Court has held does not constitute newly discovered evidence and instead argues that his evidence came from a new expert who provided his counsel with a report. Heath’s attempt is not persuasive. This Court has long rejected the argument that “new reports or studies, based on previously available information” make a claim timely. *Sparre v. State*, No. SC2024-1512, 2025 WL 3481670, at *2 (Fla. Dec. 4, 2025). *See also Booker v. State*, 336 So. 3d 1177, 1182 n.5 (Fla. 2022) (“Additionally, Beckert’s report merely offers a new expert opinion on studies that have been available for decades. This Court has found that such new opinions do not constitute newly discovered evidence.”).

And contrary to Heath’s contention that exemption-from-execution claims are not subject to bars, this Court has repeatedly

rejected untimely exemption-from-execution claims. *E.g.*, *Ford v. State*, 402 So. 3d 973, 978-79 (Fla. 2025) (rejecting as untimely an exemption from execution claim raised nearly twenty-three years after the convictions and sentences became final, and nearly twenty years after the Supreme Court decision on which it was based).

Heath's contention that exemption-from-execution claims cannot be barred runs afoul of two lines of Supreme Court precedent. *See Jones v. Hendrix*, 599 U.S. 465, 488 (2023) ("By its terms, the Cruel and Unusual Punishments Clause expresses a substantive constraint on the kinds of punishments governments may 'inflic[t].' It creates no freestanding entitlement to a second or successive round of postconviction review."); *Stewart v. LaGrand*, 526 U.S. 115, 118-20 (1999) (holding capital defendant's claim that execution by lethal gas violated the Eighth Amendment was waived *and* procedurally defaulted while also recognizing that to "hold that Eighth Amendment protections cannot be waived in the capital context, would create and apply a new procedural rule in violation of" this Court's retroactivity precedents). Notably, in *LaGrand*, the Supreme Court emphatically rejected the Ninth Circuit's view that "Eighth Amendment protections may not be waived, at least in the

area of capital punishment.” *LaGrand*, 526 U.S. at 118.

Moreover, even if such research constituted newly discovered evidence, Heath’s claim would still be untimely because by his own admission, “journals have published studies between 2023-2025 establishing the multitude of ways in which adolescents placed in adult prisons are disadvantaged.” (WPCR: 453). As such, even if this research could reset the clock, Heath should have raised this claim in 2024, not in 2026. Therefore, the claim is untimely.

Procedurally Barred

Both parts of Heath’s claim are procedurally barred because they are variations of his previously rejected claim that counsel rendered ineffective assistance for failure to present evidence Heath was sexually abused as a juvenile while in prison. *See Heath II*, 3 So. 3d at 1033; *Barwick*, 361 So. 3d at 792 (“The circuit court was correct in concluding that this claim is procedurally barred because it is a variation of claims that were raised in prior proceedings.”). Moreover, Heath could have raised both claims during his 2017 postconviction litigation since the idea that juveniles suffer adverse effects from incarceration is not new. *See Rogers*, 409 So. 3d at 1263 (“As we have said, in an active warrant case, a postconviction claim that could

have been raised in a prior proceeding is procedurally barred.”).

Since procedural bars apply to exemption-from-execution claims, *Pittman v. State*, 417 So. 3d 287, 292 (Fla. 2025), Heath’s dual claims are procedurally barred.

Merits

Heath’s claim that his stunted brain development, which allegedly occurred while serving a prison sentence for another murder, exempts him from execution for a murder he committed as an adult is meritless for two reasons. First, Florida courts lack authority under the conformity clause to extend the United States Supreme Court’s caselaw, which exempts from execution those who committed their crimes before turning eighteen, to those eighteen or older when they committed their crimes. *Barwick*, 361 So. 3d at 794-95 (“This Court simply does not have the authority to extend *Roper*^{15]} to *Barwick* based on his age of nineteen at the time of the murder.”); *Zack*, 371 So. 3d at 335 (“This Court lacks authority to extend

¹⁵ *Roper v. Simmons*, 543 U.S. 551 (2005) (holding that Eighth Amendment bars the execution of offenders who were under the age of eighteen when they committed their crimes).

Atkins^[16] to individuals who ‘are not intellectually disabled as provided in *Atkins*”). Heath’s claim thus fails under Florida’s conformity clause.

Recognizing that his claim cannot succeed due to the conformity clause, Heath argues Florida’s conformity clause violates the Eighth Amendment. This claim is also unpersuasive, and this Court has rejected it. *Walls v. State*, No. SC2025-1915, 2025 WL 3550358, at *7 (Fla. Dec. 11, 2025).

Second, regardless of the conformity clause, this Court has repeatedly refused to extend categorical exemption from execution to those with similar deficits to the ones Heath alleges. *E.g.*, *Ford*, 402 So. 3d at 978-79 (rejecting an extension-of-*Roper* claim for a defendant with “a mental and developmental age below eighteen years” and collecting cases). Heath’s attempt to expand Eighth Amendment exemption-from-execution beyond the boundaries the United States Supreme Court has set is meritless. Therefore, this Court should affirm.

¹⁶ *Atkins v. Virginia*, 536 U.S. 304 (2002) (holding the Eighth Amendment bars the execution of the intellectually disabled).

4. THE EIGHTH AMENDMENT DOES NOT REQUIRE UNANIMOUS JURY RECOMMENDATIONS TO IMPOSE THE DEATH PENALTY.

In his fourth issue, Heath contends the Eighth Amendment requires jury unanimity of death recommendations and that the jury's 10-2 death recommendation in this case violates that requirement. But this claim is untimely, procedurally barred, and legally insufficient. Therefore, the postconviction court correctly denied the claim.

Relevant Facts and the Ruling Below

Heath's penalty phase jury recommended death by a 10-2 vote. *Heath I*, 648 So. 2d at 663. The trial court followed that recommendation and sentenced Heath to death. *Id.* In both his initial and first successive postconviction motions, Heath argued that death recommendations must be unanimous and that his 10-2 death recommendation was unconstitutional. This Court rejected the argument both times. *Heath II*, 3 So. 3d at 1035 (rejecting *Ring v. Arizona*, 536 U.S. 584 (2002) claim); *Heath III*, 237 So. 3d at 931-32 (rejecting *Hurst v. State*, 202 So. 3d 40 (Fla. 2016) claim).

Heath's post-warrant motion for postconviction relief argued the Eighth Amendment requires that death recommendations be

unanimous and that his 10-2 recommendation violated that requirement. (WPCR: 457-61). The postconviction court rejected Heath's claim as procedurally barred and legally insufficient. (WPCR: 597-99).

Untimely

Heath's claim is untimely because it was filed well over one year after his judgment and sentence became final. *See* Fla. R. Crim. P. 3.851(d)(1). Heath did not try to invoke any exceptions to the one-year time limitation provided in Rule 3.851(d)(2). Therefore, his claim is untimely.

Procedurally Barred

"Claims raised and rejected in prior postconviction proceedings are procedurally barred from being relitigated in a successive motion." *Hendrix v. State*, 136 So. 3d 1122, 1125 (Fla. 2014). Heath has twice raised a jury unanimity claim in postconviction proceedings and this Court rejected it both times. *Heath II*, 3 So. 3d at 1035 (rejecting *Ring*-based jury unanimity claim); *Heath III*, 237 So. 3d at 931-32 (rejecting *Hurst*-based jury unanimity claim). Heath is not entitled to relitigate this claim.

In an attempt to overcome the bar on relitigating claims

previously raised, Heath argues that his prior jury unanimity claims differ from the one he raises now. Specifically, Heath contends that his first jury unanimity claim was based on *Ring* while his second was based on *Hurst*. That is a distinction without significance. Whether Heath's prior jury unanimity claims are identical or variations of the one he raises now, the issue raised is barred. See *Rogers*, 409 So. 3d at 1263 ("As we have said, in an active warrant case, a postconviction claim that could have been raised in a prior proceeding is procedurally barred."); *Barwick*, 361 So. 3d at 792 (holding "a variation of claims that were raised in prior proceedings" is also barred).

Merits

Heath argues the Eighth Amendment requires a unanimous jury vote for death and that his nonunanimous 10-2 jury recommendation violated that requirement. Not so.

The conformity clause of article I, section 17 of the Florida Constitution requires Florida courts to follow the decisions of the United States Supreme Court that interpret the Eighth Amendment prohibition on cruel and unusual punishment. "This means that the Supreme Court's interpretation of the Eighth Amendment is both the

floor and the ceiling for protection from cruel and unusual punishment” in Florida. *Barwick*, 361 So. 3d at 794.

With the conformity clause in mind, Heath’s argument is foreclosed by *Spaziano v. Florida*, where the United States Supreme Court held the Eighth Amendment does not require a jury recommendation to impose a death sentence. 468 U.S. 447, 465 (1984).¹⁷ Consistent with *Spaziano*, this Court has held the “Eighth Amendment does not require *any* recommendation as to whether to impose life or death.” *Fletcher v. State*, 415 So. 3d 147, 159 (Fla. 2025) (emphasis in original); *Jackson v. State*, SC2023-1298, 2025 WL 3673716 at *5 (Fla. Dec. 18, 2025) (“the Eighth Amendment does not require a jury’s favorable recommendation before a death penalty can be imposed.”). As a result, “there is no support for the argument that the Eighth Amendment requires a unanimous jury

¹⁷ The Supreme Court later overruled *Spaziano* “only to the extent that it allows a judge, rather than a jury, to find a necessary aggravating circumstance.” *Poole v. State*, 297 So. 3d 487, 504 (2020) (citing *Hurst v. Florida*, 577 U.S. 92, 101 (2016)). In other words, *Hurst* overruled *Spaziano* on Sixth Amendment grounds but did not affect its Eighth Amendment holding. Thus, *Spaziano* “is still good law” for Eighth Amendment purposes. *Dillbeck v State*, 357 So. 3d 94, 104 (Fla. 2023).

recommendation.” *Hunt v. State*, No. SC2024-0096, 2025 WL 3673695, at *8 (Fla. Dec. 18, 2025).

Additionally, the right to a jury comes from the Sixth Amendment, not the Eighth, so Heath incorrectly invokes that provision. In any event, the Sixth Amendment does not require unanimous death recommendations. *See Ford*, 402 So. 3d at 982 (quoting *McKinney v. Arizona*, 589 U.S. 139, 144 (2020) as evidence the Sixth Amendment does not require a unanimous death recommendation). The Eighth Amendment does not provide more jury protections than the Sixth Amendment. *Cf. Sattazahn v. Pennsylvania*, 537 U.S. 101, 116 (2003) (declining the “invitation to hold that the Due Process Clause provides greater double-jeopardy protection than does the Double Jeopardy Clause”). *Cf. also Graham v. Connor*, 490 U.S. 386, 395 (1989) (“Because” the indictment clause of Florida’s Constitution “provides an explicit textual source of constitutional protection” for indictments, that provision, “not the more generalized notion of substantive due process, must be the guide for analyzing these claims.”).

Unsurprisingly, then, this Court has repeatedly affirmed the summary denial of this claim. *E.g., Zack v. State*, 371 So. 3d 335,

350 (Fla. 2023) (“Because the Supreme Court’s Eighth Amendment precedent to which we are bound does not require a unanimous jury recommendation for death during the penalty phase, the postconviction court properly found this claim to be meritless.”). Heath’s jury unanimity argument is just as meritless now as each other time this Court has rejected it over the years. Therefore, this Court should affirm.

CONCLUSION

This Court should affirm the postconviction court's summary denial of all claims Heath raised in his postconviction motion.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of January 2026, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Sonya Rudenstine, Attorney at Law, **srudenstine@yahoo.com**; Brian Kramer, State Attorney for the Eighth Judicial Circuit, **kramerb@sao8.org**; Danielle Kelley, Senior Attorney, Florida Department of Corrections, **danielle.kelley@fdc.myflorida.com**; and the Florida Supreme Court Clerk, **warrant@flcourts.org**.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Bookman Old Style in compliance with Florida Rule of Appellate Procedure 9.045. This brief contains **10,289** words and complies with the 20,000-word limit in Florida Rule of Appellate Procedure 9.210(a)(2)(D), (a)(2)(E).

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