Case No. SC2025-0110
Lower Court No. 1997-CF-351

In the Supreme Court of Florida

JAMES DENNIS FORD,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR CHARLOTTE COUNTY, FLORIDA

DEATH WARRANT SIGNED
Execution Scheduled for February 13, 2025, at 6:00 p.m.

ANSWER BRIEF OF APPELLEE

JOHN M. GUARD
ACTING ATTORNEY GENERAL

CHRISTINA Z. PACHECO
Senior Assistant Attorney General
Florida Bar No. 71300

JONATHAN S. TANNEN
Assistant Attorney General
Florida Bar No. 70842

STEPHEN D. AKE
Senior Assistant Attorney General
Florida Bar No. 14087

COUNSEL FOR APPELLEE

Office of the Attorney General
3507 E. Frontage Rd., Ste. 200
Tampa, FL 33607-7013
Telephone: (813) 287-7910
capapp@myfloridalegal.com
christina.pacheco@myfloridalegal.com
jonathan.tannen@myfloridalegal.com
stephen.ake@myfloridalegal.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

PRELIMINARY STATEMENT

Citations in this brief to the relevant records will be as follows: the record from Ford's direct appeal (SC1960-95972) will be cited as "DAR"; the record from Ford's first postconviction appeal (SC2004-1611) will be cited as "PCR1"; the record from Ford's second postconviction appeal (SC2014-1011) will be cited as "PCR2"; the record from Ford's third postconviction appeal (SC2017-0859) will be cited as "PCR3"; and the record on appeal that has been filed in the present case (SC2025-0110) will be cited as "PCR4".

STATEMENT REGARDING ORAL ARGUMENT

The State respectfully submits that oral argument is not necessary on the appeal from the denial of Ford's successive motion to vacate. The claims raised in this successive motion for postconviction relief were denied because they were untimely, procedurally barred, or meritless as a matter of established Florida law. Accordingly, argument will not materially aid the decisional process.

STATEMENT OF THE CASE AND FACTS

On April 6, 1997, Defendant, James D. Ford, murdered Gregory and Kimberly Malnory, a husband and wife, in the presence of their 22-month-old daughter, Maranda. Ford was Gregory's coworker at a sod farm in Charlotte County and had accompanied the family on a fishing trip. According to the evidence presented at Ford's trial, Ford killed Gregory by shooting him with a shotgun (which disabled but did not kill him), beating him in the head and face with a blunt-force object, and slitting his throat. *See Ford v. State*, 802 So. 2d 1121, 1125 (Fla. 2001). The evidence further showed that Ford inflicted numerous blunt-force injuries to Kimberly's head (one of which penetrated her skull), raped her, and finally executed her by putting the shotgun in her mouth and pulling the trigger. *Id.* at 1125-26. The baby, Maranda, was left alone at the scene of her parents' murder strapped into a car seat with the car doors open, where she was not discovered for more than 18 hours. She was eventually found with mosquito bites covering most of her body and her mother's blood on the front and back of her clothes. *Id.* at 1126.

Ford was convicted of sexual battery with a firearm, child abuse, and two counts of first-degree murder. The jury recommended death

on each murder count by an 11-to-1 vote, and the trial court followed the jury's recommendations. *Id.* at 1126-27; (DAR:2715-32). This Court affirmed Ford's convictions and death sentences on direct appeal. *See Ford*, 802 So. 2d at 1127-36. Ford then filed a petition for writ of certiorari with the United States Supreme Court, which was denied. *See Ford v. Florida*, 535 U.S. 1103 (2002).

In 2003, Ford filed his first motion for postconviction relief under Florida Rule of Criminal Procedure 3.851. The postconviction court denied the motion after an evidentiary hearing, and this Court affirmed that decision on appeal. *See Ford v. State*, 955 So. 2d 550 (Fla. 2007); (PCR1:1-45, 359-77). Ford next, in 2007, filed a petition for writ of habeas corpus in federal court, which was later dismissed as untimely. *See Ford v. Sec'y, Dep't of Corr.*, No. 2:07-cv-333, 2012 WL 113523 (M.D. Fla. Jan. 13, 2012). In 2013 and 2017, Ford filed his first and second successive rule 3.851 motions. Both motions were summarily denied by the postconviction court, and the denials were affirmed on appeal by this Court. *See Ford v. State*, 168 So. 3d 224 (Fla. 2015); *Ford v. State*, 237 So. 3d 904 (Fla. 2018); (PCR2:1-27, 223-72, 450-56); (PCR3:1-70, 189-96).

On January 10, 2025, Governor Ron DeSantis signed Ford's

death warrant setting his execution for February 13, 2025, at 6:00 p.m. In response, this Court entered a scheduling order under case number SC1960-95972 directing that any proceedings in the trial court be concluded by Friday, January 24, 2025.

On January 18, 2025, Ford filed his third successive motion for postconviction relief under rule 3.851, raising two claims: (1) his death sentences are unconstitutional under *Roper v. Simmons*, 543 U.S. 551 (2005), and the Eighth and Fourteenth Amendments because he has a mental and developmental age below 18 years old; and (2) his execution would violate the Fifth, Sixth, Eighth, and Fourteenth Amendments because the jury's recommendations for death at his penalty phase were not unanimous. (PCR4:251-89). The State filed its response on January 20, 2025, arguing that Ford's claims should be summarily denied. (PCR4:290-316).

The postconviction court held a *Huff*[1] hearing on January 21, 2025, and afterward ruled that an evidentiary hearing was not required. (PCR4:317-54). On January 23, 2025, the postconviction court entered its final order denying Ford's third successive rule

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

3.851 motion, finding that both of Ford's claims are untimely, procedurally barred, and meritless. (PCR4:355-654).

Regarding Ford's first claim, the postconviction court initially observed that Ford—who was 36 years old when he committed the murders for which he was sentenced to death—was not claiming that he was entitled to relief under *Roper* itself, which applies only to persons who committed their capital crimes when they were under 18 years old. Instead, Ford was arguing that the "class of offenders subject to the death penalty *should be narrowed again* to preclude the execution of individuals with a mental and developmental age less than 18." (PCR4:364) (postconviction court's emphasis).

Ford further argued that his claim did not become ripe until the signing of his death warrant, which had prompted him to obtain a new expert evaluation that occurred on January 16, 2025. (PCR4:364). The postconviction court disagreed and ruled that Ford's claim was untimely. It pointed out that one of the defense's experts, Dr. Mosman, had testified during Ford's penalty phase that Ford has a mental and developmental age of 14 years old. "In fact, the trial court agreed and explicitly found in its Sentencing Order rendered June 3, 1999, that it was proven that [Ford]'s developmental age was

fourteen (14) years old." (PCR4:364). Consequently, the postconviction court found that Ford had presented no new facts that could be considered "newly discovered" evidence. (PCR4:364-65).

Additionally, the postconviction court noted that Ford, who has never been found to be intellectually disabled, had twice attempted to raise intellectual disability claims. Ford raised an intellectual disability claim for the first time in his initial rule 3.851 motion that was filed in 2003, before expressly abandoning the claim at the evidentiary hearing on that motion. Ford later attempted to reraise the claim in his first successive rule 3.851 motion, where he argued that his former postconviction counsel was ineffective for abandoning the claim. That claim was rejected as untimely. (PCR4:365-67). The postconviction court concluded that, insofar as Ford was attempting to recast his prior intellectual disability claims "by now arguing that the prohibition against imposing the death penalty on persons under the age of eighteen (18) years old 'should be narrowed,'" it was "unable to find any exception to the time limits established by rule 3.851 or any cause for this claim not being raised until after the issuance of the death warrant." (PCR4:367-69).

Regarding Ford's second claim, challenging his non-unanimous

death recommendations, the postconviction court noted that Ford principally relied on *Hurst v. Florida*, 577 U.S. 92 (2016). However, Ford had raised that exact argument in his second successive rule 3.851 motion, and this Court determined that *Hurst* does not apply retroactively to Ford's sentences. (PCR4:370-71) (citing *Ford*, 237 So. 3d at 904). This Court had also rejected a jury unanimity argument in Ford's first successive rule 3.851 motion. (PCR4:371 n.7) (citing *Ford*, 168 So. 3d at 224). And while Ford argued, in his current motion, that the Supreme Court's more recent decision in *Erlinger v. United States*, 602 U.S. 821 (2024), constitutes a "newly discovered" basis for his jury unanimity claim, the postconviction court rejected that argument as well, explaining that *Erlinger* was not a capital case and contains nothing that would change this Court's prior rejections of Ford's jury unanimity claim. (PCR4:372-75).

Ultimately, both of Ford's claims in his third successive rule 3.851 motion were rejected as untimely, procedurally barred, and meritless. Ford's request for a stay of execution was also denied. (PCR4:376). Ford timely appealed. (PCR:655-56).

SUMMARY OF THE ARGUMENT

Claim I: Ford argues that the time and procedural bars

applicable to successive postconviction motions should dissolve for a defendant once a warrant for his execution is signed. Ford recognizes that he has spent years on death row exhausting his claims, but he maintains that because his execution is scheduled, he should be provided additional time beyond the warrant period to develop and present claims without limitation and without consideration of whether they have been previously exhausted or timely raised. According to Ford, the failure to give him full rein amounts to a denial of due process and a denial of access to the courts. This claim is procedurally barred for not having been presented below in addition to being unsound, legally incorrect, and completely contrary to the rules of criminal procedure, Florida Statute's "terms and conditions" clause, and the principles of finality. Ford is entitled to no relief.

Claim II: Although Ford was 36 years old when he committed the murders, he argues that his developmental and mental age exempts him from execution under *Roper*. His low developmental and mental age was known to him at the time of his trial and offered as mitigation during his penalty phase. Therefore, his *Roper*-extension claim is procedurally barred and untimely.

In addition, Ford's claim is foreclosed by binding precedent. *See*

Barwick v. State, 361 So. 3d 785, 794 (Fla. 2023) (explaining that Florida courts lack authority to extend *Roper* given the conformity clause of the Florida Constitution). The lower court's summary denial of this claim requires affirmance.

Claim III: Ford's jury unanimity claim was correctly denied. This Court has repeatedly held that a unanimous death recommendation is not constitutionally required to make a defendant eligible for the death penalty. What is required, rather, is that the jury must have found at least one statutory aggravating circumstance to have been proven beyond a reasonable doubt. Here, as this Court already held the first time Ford raised this issue, there is no deficiency in Ford's death sentences because the jury, at his guilt phase, unanimously found him guilty of other crimes—the contemporaneous first-degree murder and sexual battery with a firearm—that satisfy the prior or contemporaneous violent felony aggravator. And while Ford argues otherwise, the Supreme Court's recent decision in *Erlinger* neither changes the law of capital sentencing nor provides grounds for him to raise this issue again. Accordingly, the postconviction court's summary denial of this claim must be affirmed.

STANDARD OF REVIEW

"Summary denial of a successive postconviction motion is appropriate '[i]f the motion, files, and records in the case conclusively show that the movant is entitled to no relief.'" *Cole v. State*, 392 So. 3d 1054, 1060 (Fla. 2024) (original alteration) (quoting *Bogle v. State*, 322 So. 3d 44, 46 (Fla. 2021)) (quoting Fla. R. Crim. P. 3.851(f)(5)(B)). A postconviction court may properly deny claims that are untimely, not retroactive, procedurally barred, not cognizable, or meritless as a matter of law under controlling precedent. *See, e.g.*, *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020) (affirming summary denial of claims raised in successive postconviction motion as untimely); *Bogle v. State*, 288 So. 3d 1065, 1069 (Fla. 2019) (affirming summary denial of successive postconviction claim on non-retroactivity grounds); *Morris v. State*, 317 So. 3d 1054, 1071 (Fla. 2021) (stating that a court may summarily deny a postconviction claim that is procedurally barred); *Mann v. State*, 112 So. 3d 1158, 1162 (Fla. 2013) (holding that because defendant's postconviction claims were "purely legal claims that have been previously rejected by this Court, the circuit court properly summarily denied relief").

With respect to timeliness, "postconviction claims in capital

cases must generally be filed within one year after the judgment and sentence become final." *Cole*, 392 So. 3d at 1061 (citing Fla. R. Crim. P. 3.851(e)(2)). A claim filed outside the one-year period is untimely unless one of the following circumstances exists:

> (A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or
>
> (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or
>
> (C) postconviction counsel, through neglect, failed to file the motion.

Fla. R. Crim. P. 3.851(d)(2). "It is incumbent upon the defendant to establish the timeliness of a successive postconviction claim." *Mungin*, 320 So. 3d at 624. When a claim relies on purported newly discovered evidence, the defendant bears the burden to establish "that the newly discovered evidence was unknown by the trial court, by the party, or by counsel at the time of trial and it could not have been discovered through due diligence." *Cole*, 392 So. 3d at 1061 (quoting *Dillbeck v. State*, 357 So. 3d 94, 100 (Fla. 2023)).

Furthermore, postconviction claims that either were or could have been raised on appeal or in prior postconviction proceedings are

not properly raised in a successive motion. *See Hendrix v. State*, 136 So. 3d 1122, 1125 (Fla. 2014) ("Claims raised and rejected in prior postconviction proceedings are procedurally barred from being relitigated in a successive motion."); *King v. State*, 597 So. 2d 780, 782 (Fla. 1992) (holding that claims were "barred because they could have been, should have been, or were raised" in a prior proceeding). "The burden is on the defendant to establish a prima facie case, based upon a legally valid claim." *Cole*, 392 So. 3d at 1061 (citing *Franqui v. State*, 59 So. 3d 82, 96 (Fla. 2011)).

"In reviewing a trial court's summary denial, 'this Court must accept the defendant's allegations as true to the extent that they are not conclusively refuted by the record.'" *Id.* (quoting *Tompkins v. State*, 994 So. 2d 1072, 1081 (Fla. 2008)). "However, mere conclusory allegations do not warrant an evidentiary hearing." *Id.* (citing *Anderson v. State*, 220 So. 3d 1133, 1142 (Fla. 2017); *LeCroy v. Dugger*, 727 So. 2d 236, 238 (Fla. 1998)). On appeal from the summary denial of a successive postconviction motion, this Court "review[s] the postconviction court's decision de novo." *Id.* (citing *Marek v. State*, 8 So. 3d 1123, 1127 (Fla. 2009)).

ARGUMENT

ISSUE I

CONSTITUTIONAL CHALLENGE TO THE TIME AND PROCEDURAL BARS

In his first claim, Ford argues death row inmates filing successive postconviction motions after a death warrant has been signed should be exempted from the time and procedural bars applicable to successive postconviction motions. Ford, however, failed to raise this claim in his third successive (fourth) postconviction motion. Instead, Ford's counsel made a variation of this argument orally during the case management conference in response to the State's argument that Ford's *Roper* claim was untimely. (PCR4:335-36). The lower court rejected the argument "not only because it was not further discussed or supported by law in the written motion and/or the hearing, but also because it is untenable." (PCR4:369). This Court should affirm.

This Court has long recognized that for an argument to be cognizable on appeal, it must first be presented to the lower court. *Steinhorst v. State*, 412 So. 2d 332, 338 (Fla. 1982). Here, Ford failed to preserve this claim because he did not raise it in his third

successive (fourth) postconviction motion. *See Deparvine v. State*, 146 So. 3d 1071, 1094 (Fla. 2014) (issue not raised in postconviction motion was not preserved for appellate review); *Wickham v. State*, 124 So. 3d 841, 853-56 (Fla. 2013) (various appellate claims not raised in postconviction motion were unpreserved). Even if Ford's counsel's brief reference to due process and access to courts during the *Huff* hearing somehow preserved the issue, Ford's counsel did not articulate many of the arguments now raised in the brief. This claim is altogether unpreserved. *See Farina v. State*, 937 So. 2d 612, 628 (Fla. 2006) (finding an issue unpreserved because the issue on appeal was not based on the "specific contention asserted as legal ground" below). In addition, this claim is, as the lower court properly found, untenable.

A. Ford Was Provided Notice, an Opportunity to be Heard, and Access to the Lower Court.

Ford's argument on appeal conflates the denial of an evidentiary hearing with the denial of due process. Specifically, due process "requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided." *Barwick v. State*, 361 So. 3d 785, 790 (Fla. 2023) (quoting *Asay v. State*, 210 So. 3d 1, 27 (Fla.

2016)). Ford was provided both notice of his proceedings and an opportunity to be heard in the court below. Ford filed his third successive (fourth) postconviction motion, and Ford's counsel made legal argument during the *Huff* hearing. The postconviction court thoughtfully considered Ford's claims and rejected them as untimely, procedurally barred, and meritless. (PCR4:319-377).

The lower court's denial of Ford's request for an evidentiary hearing in no way amounts to a denial of due process. *See Barwick*, 361 So. 3d at 790 (where Barwick failed to identify any matter on which he was denied notice or an opportunity to be heard before his postconviction motion was summarily denied by the circuit court). Ford was afforded his due process rights under the Fourteenth Amendment and the Florida Constitution. Ford has failed to establish a violation of his constitutional rights. *See e.g. McCleskey v. Zant*, 499 U.S. 467, 491 (1991) (rejecting capital defendant's successive pleading, noting the importance of finality and the heavy burden that successive collateral review places on the system).

On the other hand, the victims' family members have a constitutional right for Ford's proceedings to be "free from unreasonable delay," and they also have a right "to a prompt and

final conclusion of" his "postjudgment proceedings." Art. 1 § 16(b)(10), Fla. Const. These rights are to be "protected by law in a manner no less vigorous than protections afforded to criminal defendants." Art. 1 § 16(b), Fla. Const. The granting of an evidentiary hearing for Ford to develop barred claims and/or the issuance of a stay so that Ford could have more time to investigate and present his untimely, procedurally barred, and altogether meritless claims would surely have violated the victims' rights.

Moreover, the "terms and conditions of appeals and collateral review in criminal cases" provides that "all terms and conditions of direct appeal and collateral review be strictly enforced, including the application of procedural bars, to ensure that all claims of error are raised and resolved at the first opportunity." § 924.051(8), Fla. Stat. In addition, "all procedural bars" to collateral review are to "be fully enforced by the courts of this state." *Id.* Thus, the lower court was required to enforce the bars to Ford's claims. Ford's arguments to the contrary are in conflict with Florida law.

Ford's access-to-court argument fails for the same reason that his due process one fails—the denial of an evidentiary hearing does not equate to a denial of access. The Florida Constitution provides

that "courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Art. I, § 21, Fla. Const. Ford was granted access to the lower court for postconviction proceedings which included numerous hearings, the filing of public records demands, the filing of a successive postconviction motion, hearings on the demands and motion, and swift resolution of Ford's claims. Ford has failed to establish that his access to the court was violated. *See, e.g., Mitchell v. Moore*, 786 So. 2d 521, 525 (Fla. 2001) (citing *Lewis v. Casey*, 518 U.S. 343, 355 (1996)) ("States must only provide a reasonably adequate opportunity to file nonfrivolous legal claims challenging their convictions or conditions of confinement.").

Contrary to Ford's assertion, death row inmates are not "barred from raising claims" once a death warrant is signed. Init. Brf. at 18. Ford, and every other death row inmate facing execution, was provided the opportunity to raise successive postconviction claims. Ford was not prevented from seeking postconviction relief in any way. Warrant litigation, however, is not a wholesale invitation for death row defendants to reraise previously adjudicated claims or to raise frivolous or untimely claims. As Ford recognizes, defendants like him

have "understandably spent decades exhausting claims for relief[.]" Init. Brf. at 18. The signing of a death warrant does not entitle a defendant to reraise those exhausted claims.

B. Ford Received Individualized Sentencing and Effective Representation.

Ford next argues that his claims entitle him to the benefit of a new penalty phase proceeding. Init. Brf. at 19. He contends that "he currently has weighty mitigation, but the time limitations of warrant litigation, and the procedural bar, is preventing the final factfinder from evaluating Ford's mitigation[.]" Init. Brf. at 20. But Ford received an individualized sentencing. Indeed, the trial court thoroughly considered five statutory mitigating circumstances and seventeen nonstatutory mitigating circumstances. *Ford*, 802 So. 2d 1121 at n2., n3. Many of those circumstances are cumulative of the evidence that Ford seeks to (re)introduce during a postconviction evidentiary hearing, including "the young mental age of the defendant," "Ford is learning disabled," "developmental age of fourteen," and "the school system failed to help." *Id.* As will be addressed in more detail in the sections below, Ford's two claims in his third successive (fourth) 3.851 motion are time-barred and procedurally barred.

The signing of a death warrant does not mean that the rules of criminal procedure are no longer applicable. By the same token, effective counsel is not transformed into ineffective counsel just by following the rules of criminal procedure applicable to successive postconviction proceedings. "It is incumbent upon the defendant to establish the timeliness of a successive postconviction claim." *Dillbeck v. State*, 357 So. 3d 94, 101 (Fla. 2023) (quoting *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020)). This is true even after a death warrant is signed. *Id.; see also Barwick,* 361 So. 3d at 795 (rejecting argument that procedural bars do not apply to claims of categorical exemption from execution); *see also Ferguson v. State*, 101 So. 3d 362, 365 (Fla. 2012) (rejecting an argument that a method-of-execution claim is not ripe until a death warrant is signed). The lower court properly denied Ford's requests for a stay and an evidentiary hearing. Ford is not entitled to postconviction relief, or a new penalty phase for that matter.

This claim must be denied.

ISSUE II

ROPER CLAIM

A. Ford's Claim is Untimely.

Ford alleges that although he was 36 years old when he committed the murders, his mental and developmental age was closer to a 14-year-old. He argues that because of his low mental and developmental age, he should be exempted from execution under *Roper* and the Eighth and Fourteenth Amendments.

The lower court properly determined that this claim is untimely. The tardiness of this claim is readily apparent by the 1999 evaluation and testing conducted by Dr. Mosman that Ford relies on to establish his low mental and developmental age. Dr. Mosman opined that Ford had a developmental age of fourteen, and Ford presented the evidence of his low mental and developmental age as mitigation during his 1999 penalty phase. *See Ford*, 802 So. 2d at 1135 (affirming the trial court's determination that Ford's learning disability and developmental age of fourteen were not mitigating under the facts of the case given "extensive testimony" showing that Ford functions well as a mature adult). As the postconviction court recognized, "the trial court . . . explicitly found in its Sentencing

Order rendered June 3, 1999, that it was proven that [Ford]'s developmental age was fourteen (14) years old." (PCR4:365).

Given that Ford has known the results of the testing for nearly 25 years, this claim is clearly untimely. *See, e.g., Cole*, 392 So. 3d at 1064 (finding Cole's argument untimely when it was based on a diagnosis known to him since at least 2017, but the claim was not raised until after the Governor signed the death warrant in 2024); *Long v. State*, 271 So. 3d 938, 942 (Fla. 2019) (affirming the trial court's denial of a claim that Long "waited more than 30 years and until after the issuance of his death warrant to first raise."). Ford's effort to recycle this evidence in an attempt to bar his impending execution is misguided and simply too late.

Even assuming that Ford could not have raised the legal basis of this claim until *Roper* was issued in 2005, Ford would have had until March 1, 2006, to timely[2] raise the claim. *See* Fla. R. Crim. P.

[2] The State notes that even if this claim were considered timely raised after *Roper* issued, it still would not be properly raised under rule 3.851(d)(2), because it is not based on a newly recognized constitutional fundamental right that is retroactive to Ford. Instead, Ford seeks this Court's recognition of a new fundamental constitutional right that is not recognized in *Roper*. Under every scenario, this claim fails.

3.851(d)(2). Ford is more than 18 years late. Nothing excuses Ford's delay in waiting until the Governor signed his death warrant in 2025 to raise this claim. Realizing this flaw, Ford contends that the Governor's signing of the warrant itself is a "new circumstance" that necessitates additional collateral review. Not so. The rules guiding successive postconviction claims are not rendered irrelevant when a death warrant is signed—any new claim Ford raises must be timely. Fla. R. Crim. P. 3.851(d); *see also Cole*, 392 So. 3d at 1063 (rejecting Cole's contention that the "time constraints under [the] expedited warrant" prevented him from establishing the timeliness of his claim). Ford has failed to raise a new, timely claim.

To the extent that Ford's claim also relies upon recent testing by Dr. Eisenstein, that testing does not make this claim timely. As Ford concedes, Dr. Eisenstein's testing corroborates the previous 1999 testing to show that "Ford still suffers from impairments in his mental functioning." (PCR4:368). Accordingly, the postconviction court properly determined that "any such testimony from Dr. Eisenstein . . . would simply be cumulative or corroborative since Dr. Mosman already testified as such in 1999, plus it has been undisputed since Defendant's original sentencing that Defendant

had a developmental age of fourteen (14)." (PCR4:368-69). Ford makes no attempt to assert that Dr. Eisenstein's testing is "newly discovered evidence," nor could he, as this Court's precedent clearly rejects any such notion. *See Zack v. State,* 371 So. 3d 335, 346 (Fla. 2023) (explaining that this Court has repeatedly held that new opinions based on a compilation or analysis of previously existing data are not newly discovered evidence); *Barwick*, 361 So. 3d at 793 (consensus opinions and research do not constitute newly discovered evidence). Simply retaining a new expert does not circumvent procedural bars or constitute "newly discovered" evidence. *Grossman v. State*, 29 So. 3d 1034, 1041 (Fla. 2010).

Ford's claim is altogether untimely, and the lower court's summary denial requires affirmance. *Cole*, 392 So. 3d at 1063 (affirming the summary denial of Cole's untimely claim); *see also Dailey v. State*, 283 So. 3d 782, 790 (Fla. 2019) (affirming the summary denial of a claim based on information known to Dailey "since at least 1999"); *Branch v. State*, 236 So. 3d 981, 986 (Fla. 2018) (finding Branch's extension-of-*Roper* claim waived for not having been previously raised).

B. *Roper* cannot be extended to Ford.

Even if this claim were not untimely, Ford still would not be entitled to relief. At its core, this is a claim that *Roper*, which held that the Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed, should be extended to individuals over the age of 18 who had a "mental and developmental age" of someone under the age of 18 when they committed the crime. Claims attempting to expand the scope of *Roper* have been squarely rejected by this Court. *See, e.g., Branch*, 236 So. 3d at 985 (affirming the summary denial of Branch's claim that he was ineligible for the death penalty because individuals who committed murder in their late teens and early twenties should be treated like juveniles under *Roper*); *Carroll v. State*, 114 So. 3d 883, 887 (Fla. 2013) (rejecting Carroll's invitation to extend *Roper* and *Atkins* and noting that it has rejected similar claims on the merits in the past); *Barwick v. State,* 88 So. 3d 85, 106 (Fla. 2011) (rejecting claim that *Roper* should extend to Barwick, who was 19 when he committed the crimes, because his mental age was less than 18); *Hill v. State*, 921 So. 2d 579, 584 (Fla. 2006) (finding *Roper* does not apply to Hill, who was

23 when he committed the crimes); *see also Sheppard v. State*, 338 So. 3d 803, 831 (Fla. 2022) (rejecting an argument that appellate counsel was ineffective for not raising claim that *Roper* extends to individuals under 21 because the claim is meritless).

As this Court has acknowledged, Florida courts lack authority to extend *Roper* given the conformity clause of the Florida Constitution requiring courts to interpret the ban on cruel and unusual punishment in conformity with decisions from the United States Supreme Court. *Barwick*, 361 So. 3d at 794 (explaining that the Supreme Court's interpretation of the Eighth Amendment is both the floor and the ceiling). The Supreme Court "has continued to identify eighteen as the critical age for purposes of Eighth Amendment jurisprudence." *Branch*, 236 So. 3d at 987.

Because the Supreme Court has interpreted the Eighth Amendment to bar execution to those whose chronological age (rather than mental age) was less than eighteen years at the time of the crimes, "this Court is bound by that interpretation and is precluded from interpreting Florida's prohibition against cruel and unusual punishment to exempt individuals eighteen or more years old from execution on the basis of their age at the time of their

crimes." *Barwick*, 361 So. 3d at 794. As Ford concedes, he was in his thirties when he committed the murders in this case. (PCR4:257). Given that Ford was not under the age of eighteen when he committed the murders, *Roper* does not, and cannot, apply to him.

Ford's reliance on *Atkins v. Virginia*, 536 U.S. 304 (2002), fares no better. In *Atkins*, the Supreme Court held that the Eighth Amendment prohibits the execution of intellectually disabled individuals. *Atkins,* 536 U.S. 304. Ford does not claim that he is intellectually disabled, and he further concedes that he does not qualify as a "vulnerable or disabled adult." (PCR4:265).

Notably, Ford raised an intellectual disability claim during his original postconviction proceeding but ultimately waived it because his postconviction counsel could not find an expert to opine that Ford was intellectually disabled.[3] *Ford*, 955 So. 2d at 552 & n.4;

[3] The lower court in the current proceedings properly determined that this claim was procedurally barred because Ford had previously raised a variation of this claim. (PCR4:366-67). After Ford raised and waived an intellectual disability claim in his original postconviction motion, (PCR1:3-4, 258-62, 345-51, 376), he filed a successive postconviction motion asserting that he found additional mental mitigation and that his previous postconviction counsel was ineffective for abandoning his intellectual disability claim. (PCR2:1-24, 451-55).

(PCR1:258-59). Ford's trial counsel further admitted that he had not suspected that Ford was intellectually disabled, but he had Ford evaluated anyway, and every doctor that tested him rendered evaluations refuting intellectual disability. *Ford*, 955 So. 2d at 552 & n.4; (PCR1:308-10). Thus, even if his *Atkins* claim were not barred, *Atkins* is inapplicable because Ford is not intellectually disabled.

This Court has "long held that the categorical bar of *Atkins* that shields the intellectually disabled from execution does not apply to individuals with other forms of mental illness or brain damage." *Zack*, 371 So. 3d at 347; *Barwick*, 361 So. 3d at 795; *see also Dillbeck,* 357 So. 3d at 100 (rejecting as meritless Dillbeck's assertion that his mental illness and neurological impairments caused him to experience the same deficits in reasoning, understanding and processing information, learning from experience, exercising good judgment, and controlling impulses as those experienced by the intellectually disabled).

Like the case in *Roper*, Florida's Eighth Amendment conformity clause prevents this Court from extending the Supreme Court's holding in *Atkins* to individuals with alleged mental deficiencies other than intellectual disability. *Barwick*, 361 So. 3d at 795. Because Ford

is not intellectually disabled, this Court cannot apply *Atkins* to him. Thus, even if true, Ford's alleged "mental impairments" do not exempt him from execution.

Ford is not entitled to relief under *Roper* when he committed the crime in his thirties, nor is he entitled to relief under *Atkins* because he is not intellectually disabled. *Zack*, 371 So. 3d 348; *Barwick*, 361 So. 3d at 795; *Dillbeck,* 357 So. 3d at 99-100; *Branch*, 236 So. 3d at 985; *Carroll*, 114 So. 3d at 887; *Hill*, 921 So. 2d at 584. This Court should affirm the lower court's denial of this claim.

ISSUE III

JURY UNANIMITY CLAIM

In Claim Two of his third successive rule 3.851 motion, Ford argued that his death sentences are unconstitutional under *Hurst v. Florida*, 577 U.S. 92 (2016) ("*Hurst I*"), and *Erlinger v. United States*, 602 U.S. 821 (2024), based on his jury's non-unanimous, 11-to-1 death recommendations at his penalty phase. Significantly, this is Ford's *third* attempt to challenge his sentences based on the lack of jury unanimity. Ford raised this issue for the first time in his amended first successive rule 3.851 motion filed on November 4, 2013. (PCR2:268-72). The postconviction court summarily denied

relief on December 20, 2013. (PCR2:450-56).

Ford appealed that decision, and this Court affirmed. *Ford*, 168 So. 3d at 224. In affirming the summary denial, this Court held that Ford's claim was both untimely and meritless. As to timeliness, the Court observed that Ford had failed to meet any exception to the general requirement that "a postconviction motion [may not be] filed more than one year after the judgment and sentence become final." *Id.* On the merits, this Court first stated that it had "repeatedly rejected" challenges to its "general jurisprudence that nonunanimous jury recommendations of the death sentence are constitutional." *Id.* (citing *McLean v. State*, 147 So. 3d 504, 514 (Fla. 2014); *Kimbrough v. State*, 125 So. 3d 752, 754 (Fla. 2013); *Mann*, 112 So. 3d at 1162). Continuing, the Court found that there was no constitutional deficiency in Ford's sentences in this specific case because, at his guilt phase, "the jury unanimously found that Ford committed another capital felony, the contemporaneous murder, and the fact that both murders were committed during the commission of a sexual battery, satisfying the constitutional requirements." *Id.* (citing *Parker v. State*, 904 So. 2d 370, 383 (Fla. 2005); *Doorbal v. State*, 837 So. 2d 940, 963 (Fla. 2003)).

Ford raised the issue again in his second successive rule 3.851 motion, which he filed on January 12, 2017. In that motion, Ford argued that he was entitled to relief under *Hurst v. State*, 202 So. 3d 40 (Fla. 2016) ("*Hurst II*"). (PCR3:1-70). In *Hurst II*, this Court held, on remand from *Hurst I*, that a jury must "unanimously recommend a sentence of death." *Hurst II*, 202 So. 3d at 57-58. However, this Court subsequently determined—in *Asay v. State*, 210 So. 3d 1, 15-22 (Fla. 2016), and *Hitchcock v. State*, 226 So. 3d 216, 216-17 (Fla. 2017)—that *Hurst I* and *Hurst II* do not apply retroactively to any death sentence that became final before the Supreme Court decided *Ring v. Arizona*, 536 U.S. 584, 609 (2002) (finding Arizona's capital sentencing statute unconstitutional "to the extent that it allows a sentencing judge, sitting without a jury, to find an aggravating circumstance necessary for imposition of the death penalty").

On March 9, 2017, the postconviction court summarily denied Ford's second successive rule 3.851 motion, holding that because his sentences became final before *Ring* was decided, the *Hurst* decisions did not apply. (PCR3:189-96). On appeal, this Court approved that reasoning and affirmed the summary denial of postconviction relief, stating: "Ford's sentences of death became final on May 28, 2002.

Thus, *Hurst* does not apply retroactively to Ford's sentences of death." *Ford*, 237 So. 3d at 905 (citation omitted).

Three years later, this Court receded from *Hurst II* "except to the extent it requires a jury unanimously to find the existence of a statutory aggravating circumstance beyond a reasonable doubt." *State v. Poole*, 297 So. 3d 487, 507-08 (Fla. 2020). In that case, this Court upheld Poole's death sentences, despite his jury's 11-to-1 recommendation in favor of death, because the same jury during the guilt phase had found Poole guilty of other crimes that satisfied the contemporaneous violent felony aggravator. *Id.* at 493, 508.[4] More recently, this Court reached the same conclusion in *Herard v. State*, 390 So. 3d 610 (Fla. 2024), *cert. petition docketed*, *Herard v. Florida*, No. 24-5939 (U.S. Nov. 7, 2024). There, the same jury that found Herard guilty of the murder that resulted in his death sentence also found him guilty of other violent felonies, including another first-degree murder. *Id.* at 622-23. The Court held that Herard's "contemporaneous and prior violent felony convictions amply

[4] Ford briefly asserts that "the *Poole* decision should not apply to his unique circumstances," but he does not elaborate on that statement or explain what he means. Init. Brf. at 58 n.12. Factually, *Poole* is directly on point with Ford's case and clearly applies.

'satisfied the [Sixth Amendment] requirement that a jury unanimously find a statutory aggravating circumstance beyond a reasonable doubt.'" *Id.* at 623 (quoting *Poole*, 297 So. 3d at 508) (original alteration). The Court also expressly declined *Herard*'s invitation to recede from *Poole*. *Id.*

Based on the foregoing history and precent, the postconviction court correctly determined that Ford's latest jury unanimity claim is procedurally barred, untimely, and meritless. (PCR4:370-75). As such, the summary denial of Ford's claim must be affirmed.

A. This Claim is Procedurally Barred and Untimely.

"Claims raised and rejected in prior postconviction proceedings are procedurally barred from being relitigated in a successive motion." *Reynolds v. State*, 373 So. 3d 1124, 1126 (Fla. 2023) (quoting *Hendrix*, 136 So. 3d at 1125); *see* Fla. R. Crim. P. 3.851(e)(2) ("A claim raised in a successive motion shall be dismissed if the trial court finds that it fails to allege new or different grounds for relief and the prior determination was on the merits[.]"). This principle extends to attempts to raise variations of the same claim. *See Sireci v. State*, 773 So. 2d 34, 40 & n.10 (Fla. 2000) (finding claims barred and observing that even if a defendant "uses a different argument to

relitigate the same issue, the claims remain procedurally barred"); *Mills v. State*, 684 So. 2d 801, 805 (Fla. 1996) (holding that a claim was barred where it was merely a "variation" of a prior postconviction claim). Claims that could have been raised on direct appeal or in prior postconviction motions, but were not, are also procedurally barred. *See Reynolds*, 373 So. 3d at 1126-27 (finding claim procedurally barred because it could have been raised in a prior postconviction motion); *Branch*, 236 So. 3d at 986 (finding claim procedurally barred because it could have been raised on direct appeal).

Here, Ford's claim that he is entitled to a unanimous jury finding in favor of the death penalty was raised and rejected in two previous motions for postconviction relief. In Ford's first successive rule 3.851 motion, this Court rejected Ford's argument as both untimely and meritless. On the merits, this Court held that because Ford was contemporaneously convicted of other violent felonies during the guilt phase, the jury made the necessary findings to render him eligible for the death penalty, and his sentences are not unconstitutional. *See Ford*, 168 So. 3d at 244. Ford thereafter raised the same argument—this time relying on *Hurst II*—in his second successive rule 3.851 motion. Again, this Court rejected the claim,

finding that *Hurst II* did not apply retroactively to Ford's case because his death sentences became final before *Ring* was decided. *See Ford*, 237 So. 3d at 905. Because Ford's jury unanimity claim has twice been raised and rejected on the merits, it is barred under the clear and express language of rule 3.851(e)(2).

Moreover, even if Ford's current claim could be considered a new claim, it would long since be time-barred. Ford's sentences became final on May 28, 2002, when the Supreme Court denied certiorari in his direct appeal. *See Ford*, 237 So. 3d at 905 (citing *Ford*, 535 U.S. at 1103). Thus, any postconviction claims were due no later than May 28, 2003, unless one of the three exceptions in rule 3.851(d)(2) was satisfied. As this Court concluded when Ford raised his jury unanimity claim in his first successive rule 3.851 motion, none of the exceptions were met. *See Ford*, 168 So. 3d at 224. Indeed, since the facts underlying the claim—the jury's 11-to-1 recommendations—were known to Ford at the time of his sentencing, he could easily have raised this issue on direct appeal or in his first postconviction motion, which was timely filed in 2003.

In his third successive (fourth) rule 3.851 motion, Ford asserted that his most recent jury unanimity claim is a new claim that did not

become "fully ripe" until the Supreme Court issued its July 2024 decision in *Erlinger*. (PCR4:254). The postconviction court correctly rejected that argument. Initially, the postconviction court observed that Ford "dedicated exactly one (1) single page of [his] entire [jury unanimity] argument to *Erlinger*," while "proceed[ing] for the next eleven (11) pages to argue *Hurst*, never again citing or referencing back to *Erlinger*, except for a single conclusory and unsupported final statement." (PCR4:372). The postconviction court further pointed out that *Erlinger* is not "a capital case . . . and contributes nothing of any significance, substance, or merit to [Ford]'s claim or argument." (PCR4:372). After discussing the *Erlinger* opinion in more detail, the postconviction court concluded that it was not a "newly discovered" basis for Ford's jury unanimity claim. (PCR4:372-74).

The postconviction court was right. In *Erlinger*, the Supreme Court addressed the federal Armed Career Criminal Act (ACCA), which provides for an enhanced prison sentence when a defendant has three or more prior convictions for qualifying offenses that were "committed on occasions different from one another." *Erlinger*, 602 U.S. at 825 (quoting 18 U.S.C. § 922(g)). Finding that the case was "as nearly on all fours with *Apprendi* [*v. New Jersey*, 530 U.S. 466

(2000),] and *Alleyne* [*v. United States*, 570 U.S. 99 (2013),] as any we might imagine," the Supreme Court held that whether the prior offenses "occurred on at least three separate occasions" is a factual issue that must be decided by a jury, rather than a judge, before an ACCA enhancement can be applied. *Id.* at 834-35. That conclusion, the Supreme Court explained, flowed from *Apprendi*'s holding that "[v]irtually 'any fact' that 'increase[s] the prescribed range of penalties to which a criminal defendant is exposed' must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea)." *Id.* at 834 (quoting *Apprendi*, 530 U.S. at 490).

As the postconviction court correctly observed, *Erlinger* did not address capital sentencing. On the contrary, the Supreme Court expressly limited its holding to the ACCA, stating, "While recognizing Mr. Erlinger was entitled to have a jury resolve the ACCA's occasions inquiry unanimously and beyond a reasonable doubt, *we decide no more than that*." (PCR4:373) (quoting *Erlinger*, 602 U.S. at 835) (postconviction court's emphasis). The postconviction court added:

> It becomes obvious by the arguments made by [Ford] in the current successive motion that the strongest case in support of [Ford]'s argument is *Hurst*, which involves a capital case and to which *Erlinger* contributes nothing. Though [Ford] vehemently disagrees, it has been

> determined by the Florida Supreme Court that *Hurst* does not apply retroactively to [Ford]'s sentence, and [Ford] has presented no "newly discovered" case law that would change that finding.

(PCR4:373-74).

The postconviction court noted, as well, that even if *Erlinger* applied to capital sentencing, Ford made no argument that it should be applied retroactively.[5] Further, this Court has held that earlier cases in the same line of authority do not apply retroactively, and there is no reason why a different result should be reached for *Erlinger*. (PCR4:374); *see State v. Johnson*, 122 So. 3d 856, 857 (Fla. 2013) (holding that the rules regarding sentencing enhancements announced in *Apprendi* and *Blake v. Washington*, 542 U.S. 296 (2004), do not apply retroactively); *see also Asay*, 210 So. 3d at 15-22 (holding that *Hurst I* does not apply retroactively).

As this Court explained in *Poole*, the Supreme Court has never receded from its holding in *Spaziano v. Florida*, 468 U.S. 447, 465 (1984), that "the Sixth Amendment . . . does not require any jury

[5] In fact, Ford concedes in this Court that he is not asking for *Erlinger* to be retroactively applied to his case. He states, rather, that he is merely citing *Erlinger* as a "reminder . . . of the need for a unanimous jury recommendation for death." Init. Brf. at 55.

recommendation of death, much less a unanimous one." *Poole*, 297 So. 3d at 504. Rather, the Supreme Court in *Hurst I* "overruled *Spaziano* only to the extent it allows a judge, rather than a jury, to find a necessary aggravating circumstance." *Id.* Moreover, the Supreme Court has confirmed, since *Poole* was decided, that this Court's interpretation of its precedent is correct. *See McKinney v. Arizona*, 589 U.S. 139, 144 (2020) ("Under *Ring* and *Hurst*, a jury must find the aggravating circumstance that makes the defendant death eligible. But importantly, in a capital sentencing proceeding just as in an ordinary sentencing proceeding, a jury (as opposed to a judge) is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant sentencing range."); *Owen v. State*, 304 So. 3d 239, 241-42 (Fla. 2020) ("*McKinney* confirms that we correctly interpreted *Hurst* [*I*] in *Poole* and supports our decision to recede from the additional requirements imposed by *Hurst* [*II*].").

Quite simply, nothing in *Erlinger* disturbs either this Court's or the Supreme Court's precedent regarding capital sentencing. Ford's current jury unanimity claim, which relies overwhelmingly on *Hurst I*, is the same claim that Ford raised in his two previous successive

postconviction motions, and which was rejected on the merits on both occasions. Thus, the postconviction court correctly ruled that, as raised in Ford's current rule 3.851 motion, Ford's jury unanimity claim is procedurally barred and untimely.

B. This Claim Must Be Rejected Under Binding Precedent.

However, even if Ford's claim had been properly raised, it would still fail on the merits. As explained above, this Court receded in *Poole* from *Hurst II*'s holding that "the Eighth Amendment requires a unanimous jury recommendation of death." *Poole*, 297 So. 3d at 504. The Court concluded, consistent with its pre-*Hurst II* case law, that "there is only one eligibility finding required: the existence of one or more statutory aggravating circumstances." *Id.* at 502-03. And it further held, as it has done in subsequent cases, that a defendant is lawfully eligible for the death penalty when the jury, during the guilt phase, unanimously finds the defendant guilty of other crimes that satisfy the prior or contemporaneous violent felony aggravator. *Id.* at 508; *Herard,* 390 So. 3d at 622-23; *see* § 921.141(5)(b), Fla. Stat. (1997) (identifying as an aggravator: "The defendant was previously convicted of another capital felony or of a felony involving the use or

threat of violence to the person."). That interpretation of *Hurst I* was confirmed to be correct by the Supreme Court's later decision in *McKinney*. *See McKinney*, 589 U.S. at 144; *Owen*, 304 So. 3d at 241-42; *see also Dillbeck*, 357 So. 3d at 104 ("[W]e are 'bound by Supreme Court precedents that construe the United States Constitution,' and the Supreme Court's precedent establishes that the Eighth Amendment does not require a unanimous jury recommendation of death. . . . To the extent that our prior decision rejecting Dillbeck's Eighth Amendment challenges to his death sentence does not foreclose relief, *Spaziano* is still good law and requires denying Dillbeck's claim.") (quoting *Poole*, 297 So. 3d at 504).

Ford asks this Court to recede from *Poole* and to reinstate its interpretation of the law from *Hurst II*. But this Court rejected that exact invitation only seven months ago in *Herard*, and Ford, like Herard before him, "has offered no good reason for [the Court] to do so." *Herard*, 390 So. 3d at 623. Although Ford argues otherwise, *Poole* correctly determined "that (1) the weighing of aggravating and mitigating factors is not a factual determination or 'element' for purposes of the federal or state jury trial guarantee; and (2) neither the Eighth Amendment nor any provision in our state constitution

requires jury sentencing in capital cases, or a unanimous jury recommendation, or indeed any jury recommendation at all." *Id.* at 622-23 (citing *Poole*, 297 So. 3d at 503-05); *see also Wells v. State*, 364 So. 3d 1005, 1014-15 (Fla. 2023) (declining to revisit *Poole*); *McKenzie v. State*, 333 So. 3d 1098, 1105-06 (Fla. 2022) (same). As this Court also explained in *Dillbeck*—who, like Ford, was attempting to challenge his sentence under an active death warrant—the Court is bound by "the Supreme Court's precedent[,] [which] establishes that the Eighth Amendment does not require a unanimous jury recommendation of death." *Dillbeck*, 357 So. 3d at 104.

Ford's invocation of the concept of "manifest injustice" as a basis for relief likewise falls flat. This Court has stated that it "has the power to reconsider and correct *erroneous rulings* in exceptional circumstances and where reliance on the previous decision would result in manifest injustice, notwithstanding that such rulings have become the law of the case." *State v. Owen*, 696 So. 2d 715, 720 (Fla. 1997) (emphasis added). But the Court's ruling in *Poole* was not erroneous, and Ford has no right to the benefit of a decision, *Hurst II*, that was wrongly decided. *See LoCascio v. State*, 49 Fla. L. Weekly D2104 (Fla. 3d DCA Oct. 16, 2024) ("[M]erely incanting the term

['manifest injustice'] does not make it so. Instead, a movant must demonstrate an error so patently unfair and tainted that it is manifestly clear to all who view it.") (cleaned up).

Nor was there any injustice in Ford's sentences. Ford brutally murdered two people, Gregory and Kimberly Malnory, and raped Kimberly during the fatal attack. *See Ford*, 802 So. 2d 1125-26. Ford's jury unanimously found him guilty of both murders, as well as the contemporaneous felony of sexual battery with a firearm. (DAR:2100-03) (verdict form). Those jury findings satisfied the prior or contemporaneous violent felony aggravator, making Ford eligible for the death penalty under the Sixth and Eighth Amendments. *See* § 921.141(5)(b), Fla. Stat. (1997). At that point, it was properly left to the trial judge, not the jury, to "weigh the aggravating and mitigating circumstances [and] make the ultimate sentencing decision within the relevant sentencing range." *McKinney*, 589 U.S. at 144.

Ultimately, it is clear from both the Supreme Court's and this Court's precedents that Ford's two death sentences were lawfully imposed. As this Court concluded the first time Ford raised his jury unanimity claim, "[A]t the guilt phase the jury unanimously found that Ford committed another capital felony, the contemporaneous

murder, and the fact that both murders were committed during the commission of a sexual battery, satisfying the constitutional requirements." *Ford*, 168 So. 3d at 224. Nothing more was required. Thus, Ford's claim necessarily fails on the merits, in addition to being procedurally barred and untimely. There was no error in the lower court's denial of postconviction relief on this claim.

CONCLUSION

The State of Florida respectfully requests that this Honorable Court affirm the lower court's order denying Ford's third successive (fourth) motion for postconviction relief.

Respectfully submitted,

JOHN M. GUARD
ACTING ATTORNEY GENERAL

/s/ Christina Z. Pacheco
CHRISTINA Z. PACHECO
Senior Assistant Attorney General
Florida Bar No. 71300
Office of the Attorney General
3507 East Frontage Road, Suite 200
Tampa, Florida 33607-7013
capapp@myfloridalegal.com [and]
christina.pacheco@myfloridalegal.com

/s/ Jonathan S. Tannen
JONATHAN S. TANNEN
Assistant Attorney General
Florida Bar No. 70842
jonathan.tannen@myfloridalegal.com

/s/ Stephen D. Ake
STEPHEN D. AKE
Senior Assistant Attorney General
Florida Bar No. 14087
stephen.ake@myfloridalegal.com

COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January 2025, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Filing Portal System which will send a notice of electronic filing to the following: the Honorable Lisa S. Porter, Circuit

Judge, Charlotte County Justice Center, 350 E. Marion Avenue, Punta Gorda, Florida 33950, **lsharder@ca.cjis20.org**; Bianca Bentley, Assistant State Attorney, Lee County State Attorney's Office, 2000 Main Street, Floor 6, Fort Myers, Florida 33901, **bbentley@sao20.org**; Ali Shakoor and Adrienne Shepherd, Assistants CCRC-M, Capital Collateral Regional Counsel-Middle Region, 12973 No. Telecom Parkway, Temple Terrace, Florida 33637, **shakoor@ccmr.state.fl.us**, **support@ccmr.state.fl.us, shepherd@ccmr.state.fl.us**; and the Florida Supreme Court at **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 Fla. R. App. P. 9.045(b), and that the word count is 8667 words in compliance with Fla. R. App. P. 9.210(a)(2)(D).

/s/ Christina Z. Pacheco
Christina Z. Pacheco
COUNSEL FOR APPELLEE