In the
Supreme Court of Florida

EXECUTION SCHEDULED FOR
MAY 1, 2025, at 6:00 p.m. EST

JEFFREY GLENN HUTCHINSON,

Appellant,

v.

CASE NO.: 2025-0517
CAPITAL CASE

STATE OF FLORIDA,

Appellee.
_____/

AMENDED ANSWER BRIEF ON THE MERITS

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STATEMENT REGARDING ORAL ARGUMENT

This Court typically does not conduct an oral argument in the appeal of the summary denial of a successive postconviction motion in a capital case.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY[1]

This is an appeal of the summary denial of a fourth successive postconviction motion in a capital case with an active death warrant. Hutchinson was sentenced to three death sentences for the mass murder of three young children.

Facts of the crime

On September 11, 1998, Hutchinson murdered his live-in girlfriend, Renee Flaherty, and her three young children: Logan,

[1] The record on appeal will be referred to as "4th Succ. PCA" followed by the appropriate page number. The trial transcript will be referred to as "T. Vol." followed by the appropriate page number. Appellant, Jeffrey Hutchinson, will be referred to as appellant, defendant, petitioner, movant, or by his name. The initial brief will be referred to as "IB" followed by the appropriate page number. All double underlining is supplied as emphasis.

Amanda, and Geoffrey. *See Hutchinson v. State*, 882 So.2d 943, 948-49 (Fla. 2004). Logan was four years old, Amanda was seven years old, and Geoffrey was nine years old. Hutchinson shot the four victims with his pistol-grip Mossberg shotgun, which was found inside the home on the kitchen counter. *Id.* at 948.

Hutchinson had been living with Renee and her three children immediately prior to the murders. She and Hutchinson had a fight. *Hutchinson*, 882 So.2d at 948. Hutchinson, who had been drinking, loaded his clothes and guns into his truck and drove to a local bar. He told the bartender that Renee was "pissed off" at him, while drinking more beer. *Id.* at 948. Hutchinson's blood alcohol content level was between .21 to .26 on the night of the murders. *Id.* at 959.

Renee called a friend after Hutchinson left and she told her friend that Hutchinson had left for good. *Hutchinson*, 882 So.2d at 948. But Hutchinson returned to the house after leaving the bar and broke down the front door, which had been locked with a dead bolt. *Id.* at 949. In a drunken rage at Renee, he shot her and her three children. Renee was on the bed in the master bedroom with her two

youngest children. Hutchinson shot her once in the head. *Id*. at 948. Hutchinson also shot Amanda once in the head. The deputies found the seven-year-old girl's body on the floor near the bed. Hutchinson shot Logan once in the head as well. The deputies found the four-year-old boy's body at the foot of the bed. Hutchinson shot Geoffrey twice–once in the head and once in the chest. The deputies found the nine-year-old boy's body in the living room between the couch and the coffee table.

A 911 call from 410 John King Road, the victims' home, was received at 8:41 p.m. (T. XXII 728,750). The 911 caller stated: "I just shot my family." (T. XXII 701). Deputies arrived at the home within ten minutes of the 911 call and found Hutchinson on the ground in the garage with the cordless phone nearby. *Hutchinson*, 882 So.2d at 948. The caller identified one of the victims as his girlfriend, not his wife. (T. XXII 706).

One of the child victim's tissue, caused from the blowback of shooting the child with a shotgun, was on Hutchinson's pants. *Hutchinson*, 17 So.3d at 698. The State's DNA expert at trial, Candy

Zuleger, testified that Geoffrey's tissue was on Hutchinson's leg. (T. XXIV 1174; XXVII 1616-1617).

Hutchinson also had gunshot residue on his hands, according to the residue test performed at 10:20 p.m. on September 11, 1998, the night of the murders. (T. XXV 1250).

Hutchinson's shotgun, a Mossberg 12-gauge pistol-grip shotgun, was positively identified as the murder weapon. The murder weapon was located on the kitchen counter in the house. (T. XXII 621; XXVI 1547, 1552, 1557; XXVII 1710); *Hutchinson*, 882 So.2d at 948. All eight expended shells—the five involved in the murders and the three located in the closet of the house—were from this shotgun. (T. XXVI 1557).

Procedural history

On January 18, 2001, the jury convicted Hutchinson of four counts of first-degree murder with a firearm, as indicted. *Hutchinson v. State*, 882 So.2d 943, 948 (Fla. 2004).

Hutchinson waived his right to a penalty phase jury, but

presented mitigation to the trial judge at a bench penalty phase. *Id.*

The sentencing court found two aggravating factors for the murders of Logan and Amanda: (1) previously convicted of another capital felony for the murders of the other children; and (2) the victim was less than 12 years of age. *Hutchinson*, 882 So.2d at 959; *see also State v. Hutchinson*, 2001 WL 36412569 (Fla. Cir. Ct. Feb. 6, 2001) (trial court's sentencing order). The trial court found three aggravating factors for the murder of Geoffrey Flaherty: (1) previously convicted of another capital felony for the murders of the other children; (2) the victim was less than 12 years of age; and (3) the murder was heinous, atrocious, and cruel (HAC). *Id.* at 959. The sentencing court found one statutory mitigator: no significant history of prior criminal activity and gave it significant weight. *Hutchinson*, 882 So.2d at 959. The sentencing court also found 20 non-statutory mitigators. *Id.* at 959-60 (listing the 20 non-statutory mitigators and the weight given to each).

On February 6, 2001, the trial court imposed three death sentences for the murders of each of the three children. *Hutchinson*,

882 So.2d at 949. The trial court also sentenced Hutchinson to life imprisonment for the murder of the children's mother.

On appeal to the Florida Supreme Court, Hutchinson raised ten issues.[2] The Florida Supreme Court affirmed the four convictions of first-degree murder and affirmed the sentences including the three death sentences. *Hutchinson*, 882 So.2d at 961.

Because Hutchinson did not file a petition for writ of certiorari in the United States Supreme Court from his direct appeal, Hutchinson's death sentences became final 90 days after the Florida Supreme Court's opinion, which was Wednesday, September 29,

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[2] The ten issues were: (1) whether the trial court improperly instructed the jury; (2) whether the trial court erred in admitting certain testimony as an excited utterance; (3) whether the trial court erred in repeatedly overruling objections to the State's closing argument; (4) whether the trial court erred in denying Hutchinson's motion for mistrial; (5) whether the trial court erred in denying Hutchinson's motion for judgment of acquittal; (6) whether the trial court erred in denying Hutchinson's motion for a new trial; (7) whether the trial court erred in considering section 921.141(5)(1), Florida Statutes (2000), as an aggravating factor; (8) whether the trial court erred in finding that Hutchinson committed the murder of the children during the course of an act of aggravated child abuse; (9) whether the trial court erred in finding heinous, atrocious, or cruel (HAC) as an aggravating factor in the murder of Geoffrey Flaherty; and (10) whether death is a proportional sentence. *Hutchinson*, 882 So.2d at 949-50.

2004.

Initial state postconviction litigation

On October 20, 2005, Hutchinson filed an initial Rule 3.851 motion for postconviction relief in the state trial court. *Hutchinson v. State*, 17 So.3d 696, 699 (Fla. 2009); *State v. Hutchinson*, 2008 WL 8948638 (Fla. Cir. Ct. Jan. 3, 2008). He filed a second amended initial postconviction motion after his original postconviction counsel withdrew and the trial court appointed new state postconviction counsel. *Id.* at 699. The second amended motion raised four claims and an assertion of actual innocence. *Id.* at 699.

In 2007, the postconviction court summarily denied some of the claims and the assertion of innocence. The postconviction court conducted an evidentiary hearing on October 22, 2007, on three claims: (1) ineffectiveness at the guilt phase on numerous grounds; (2) ineffectiveness at the penalty phase on numerous grounds including for failing to investigate background mitigation further and for advising him to waive a jury recommendation and (3) a claim of cumulative ineffectiveness. Following the evidentiary hearing, the

postconviction court denied the initial postconviction motion. *State v. Hutchinson*, 2008 WL 8948638 (Fla. Cir. Ct. Jan. 3, 2008).[3] The lower court rejected the claim of actual innocence observing that claims of actual innocence that do not contain allegations of newly discovered evidence are not cognizable in postconviction litigation.

In his postconviction appeal to the Florida Supreme Court, Hutchinson raised four issues, including a claim of actual innocence.[4] The Florida Supreme Court rejected the claim of innocence as being "without merit." *Hutchinson v. State*, 17 So.3d 696, 702-03 & n.5 (Fla. 2009) (SC08-0099). On July 9, 2009, the Florida Supreme Court affirmed the denial of postconviction relief. *Hutchinson*, 17 So.3d at

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[3] The state postconviction court's order addresses the claims explored at the evidentiary hearing and contains detailed explanations of the various subclaims of ineffectiveness with extensive citations to the record in the footnotes. *State v. Hutchinson*, 2008 WL 8948638 (Fla. Cir. Ct. Jan. 3, 2008).

[4] The four issues were: (1) trial counsel was ineffective during the guilt phase by failing to present evidence that Hutchinson's voice was not the voice on the 911 audio tape; (2) trial counsel was ineffective during the guilt phase by failing to introduce into evidence the nylon stocking found at the crime scene; (3) a claim of actual innocence; and (4) a claim his trial counsel had a conflict of interest due to their poor relationship and Hutchinson filed a Bar complaint against his lawyer. *Hutchinson v. State*, 17 So.3d 696, 700 (Fla. 2009).

704.

On June 13, 2006, Hutchinson, represented by registry counsel Jeff Hazen, filed a motion pursuant to rule 3.853 for DNA testing. He then filed an amended motion for DNA testing. On July 14, 2006, the State filed an answer to the motion for DNA testing.

On November 3, 2006, the trial court denied the motion for DNA testing. The trial court found that the defendant "has not shown a reasonable probability that he would have been acquitted or would have received a lesser sentence if this DNA evidence had been admitted at trial, in light of the evidence presented at trial." (Order at 2).

Hutchinson did not include the lower court's denial of DNA testing as a issue in the initial postconviction appeal to the Florida Supreme Court. *Hutchinson*, 17 So.3d at 700 (listing issues).

Successive state postconviction litigation

In 2013, Hutchinson filed a pro se successive postconviction motion in the trial court, raising four claims, despite being

represented by counsel. On May 15, 2013, the state postconviction court denied the motion. And, on January 9, 2014, the Florida Supreme Court dismissed the pro se appeal of the successive motion as unauthorized because he was "represented by counsel." *Hutchinson v. State*, 133 So.3d 526 (Fla. 2014) (No. SC13-1005) (citing *Gordon v. State*, 75 So.3d 200, 202 (Fla. 2011)).

On January 11, 2017, Hutchinson, represented by registry counsel Clyde M. Taylor, filed a successive Rule 3.851 motion raising a claim of a violation of the Sixth Amendment right to a jury trial, based on *Hurst v. Florida*, 577 U.S. 92 (2016) (*Hurst v. Florida*), and *Hurst v. State*, 202 So.3d 40 (Fla. 2016) (*Hurst v. State*), in the state trial court. On January 27, 2017, the State filed an answer to the successive motion asserting that, under the Florida Supreme Court's controlling precedent of *Mullens v. State*, 197 So.3d 16, 38-40 (Fla. 2016), *Hurst v. State* did not apply to Hutchinson because he waived his right to a penalty phase jury. The state postconviction court summarily denied the successive postconviction motion.

The Florida Supreme Court affirmed the postconviction court's

summary denial of the *Hurst v. State* claim. The Florida Supreme Court noted that "Hutchinson waived his right to a penalty phase jury and presented mitigation to the trial judge" and then held that "*Hurst* relief is not available for defendants who have waived a penalty phase jury." *Hutchinson v. State*, 243 So.3d 880, 881, 883 (Fla. 2018) (No. SC17-1229).[5]

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[5] The Florida Supreme Court later overruled *Hurst v. State* in *State v. Poole*, 292 So.3d 694 (Fla. 2020). The Florida Supreme Court receded from *Hurst v. State* "except to the extent that it held that a jury must unanimously find the existence of a statutory aggravating circumstance beyond a reasonable doubt." *Poole*, 292 So.3d at 697. The Florida Supreme Court found there was no violation of the Sixth Amendment because the jury unanimously found the felony murder aggravator during the guilt phase by convicting Poole of sexual battery, armed burglary, and armed robbery, which "satisfied the requirement that a jury unanimously find a statutory aggravating circumstance beyond a reasonable doubt." *Id.* at 714. *See also McKinney v. Arizona*, 589 U.S. 139 (2020) (holding the Sixth Amendment requires the finding of an aggravator be made by the jury, not weighing).

The logic of *Poole* applies equally to Hutchinson's three death sentences because his case also includes contemporaneous convictions. Hutchinson was convicted of four counts of first-degree murder with a firearm by the jury. So, his jury unanimously found the prior violent felony aggravator during the guilt phase, which satisfied the constitutional requirement of the jury finding one aggravating factor. Additionally, Hutchinson waived any right to jury findings regarding the death penalty by waiving his right to a penalty phase jury. So, on two grounds, Hutchinson is not entitled to any *Hurst* relief. There was no violation of the Sixth Amendment right to

On July 19, 2018, Hutchinson, represented by his federal habeas counsel, the Capital Habeas Unit of the Office of the Federal Public Defender of the Northern District of Florida (CHU-N), filed a petition for writ of certiorari raising three questions regarding Hutchinson's waiver of a penalty phase jury. The State filed a brief in opposition. CHU-N filed a reply. On October 1, 2018, the United States Supreme Court denied review of the *Hurst* claim. *Hutchinson v. Florida*, 586 U.S. 897 (2018) (No. 18-5377).

On June 12, 2020, Hutchinson, represented by registry counsel Clyde M. Taylor, filed a second successive Rule 3.851 motion in the state trial court raising a claim of newly discovered evidence of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), based on the Federal Bureau of Investigation's file of an unrelated bank robbery and a claim of newly discovered evidence of a violation of *Giglio v. United States*, 405 U.S. 150 (1972).

On June 18, 2020, the State filed an answer to the second successive motion, asserting the *Brady* claim failed on, at least, two

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a jury trial in this case.

of the three prongs of *Brady*.

The state postconviction court summarily denied the *Brady* claim. The postconviction court found the *Brady* claim was untimely. The postconviction court also concluded that Hutchinson failed to show suppression of the FBI file. The postconviction court alternatively concluded that the FBI file was not material. The postconviction court also summarily denied the *Giglio* claim. The postconviction court found the *Giglio* claim to be facially insufficient because the motion did not "identify with any specificity what testimony was false and that the State knew the testimony to be false."

On June 16, 2022, the Florida Supreme Court affirmed the summary denial of the second successive motion for postconviction relief. *Hutchinson v. State*, 343 So.3d 50, 54 (Fla. 2022) (SC2021-0018). Hutchinson was represented on appeal by Capital Collateral Regional Counsel - North (CCRC-N).

On November 2, 2022, Hutchinson, represented by CCRC-N, filed a petition for writ of certiorari raising a question regarding the

pleading requirements for a *Giglio* claim. The State filed a brief in opposition. CCRC-N filed a reply. On January 9, 2023, the United States Supreme Court denied review. *Hutchinson v. Florida*, 143 S.Ct. 601 (2023) (No. 22-6015).

Federal habeas litigation

On July 24, 2009, Hutchinson filed a *pro se* federal habeas 28 U.S.C. § 2254 petition in the Northern District Court of Florida. (N.D. Fla. No. 5:09-cv-00261, Doc. #1). On November 23, 2009, habeas counsel Todd Doss filed an amended federal habeas petition. (Doc. #19). The amended counseled petition raised five grounds: (1) ineffectiveness of trial counsel at the guilt phase regarding the 911 tape and the nylon stocking; (2) the prosecutor's various comments in closing argument violated his due process right to a fair trial; (3) the officer's testimony that he talked with Hutchinson after his arrest, when the trial court granted a motion to suppress part of the conversation, was a violation of his right to remain silent; (4) denial of a fair trial occurred when, during a lunch break at a local restaurant,

a women told three jurors that they should "hang" Hutchinson; and (5) the less-than-12-years-old aggravating factor did not genuinely narrow the class of murders.

On December 13, 2009, Respondent filed a motion to dismiss the 28 U.S.C. § 2254 habeas petition as untimely. (Doc. #28). The district court granted the motion and dismissed the amended habeas petition as untimely. (Doc. #38); *Hutchinson v. Florida*, 2010 WL 3833921 (N.D. Fla. Sept. 28, 2010).

The Eleventh Circuit affirmed the dismissal of Hutchinson's original habeas petition as untimely, finding that equitable tolling did not apply. *Hutchinson v. Florida*, 677 F.3d 1097 (11th Cir. 2012).

Hutchinson then filed a petition for writ of certiorari in the United States Supreme Court raising three issues related to equitable tolling of his untimely federal habeas petition. The State filed a brief in opposition. On October 9, 2012, the High Court denied the petition. *Hutchinson v. Florida*, 568 U.S. 947 (2012) (No. 12-5582).

On March 21, 2013, Hutchinson filed a pro se successive federal habeas petition in the Northern District of Florida raising nine claims.

Hutchinson v. Cannon, No. 3:13-cv-00128 (N.D. Fla.) (Doc. #3). Five days later, on March 26, 2013, Respondent filed a motion to dismiss the successive § 2254 habeas petition for lack of jurisdiction because it was filed without authorization from the Eleventh Circuit. (Doc. #2). Hutchinson also filed a *pro se* Rule 60(b) motion to reopen his capital federal habeas case based on *Martinez v. Ryan*, 566 U.S. 1 (2012). (Doc. #17).

On December 11, 2014, the federal district court appointed CHU-N as federal habeas counsel for Hutchinson. Nearly six years later, on May 26, 2020, the CHU-N filed an amended 60(b)(6) motion to reopen in federal district court based on *Martinez v. Ryan*, as well as asserting an actual innocence claim based on the FBI bank robbery file. *Hutchinson v. Inch*, 3:13-cv-128-MW (Doc. #78). The actual innocence claim relied on *McQuiggin v. Perkins*, 569 U.S. 383 (2013), to lift the time bar.

On June 12, 2020, the State filed an answer to the counseled, amended Rule 60(b)(6) motion to reopen. (Doc. #79).

On January 15, 2021, the district court denied the motion to

reopen. (Doc. #82); *Hutchinson v. Inch*, 2021 WL 6335753, at *9 (N.D. Fla. Jan. 15, 2021). The district court also rejected the innocence claim. *Hutchinson*, 2021 WL 6335753, at *7. The district court denied a certificate of appealability (COA). *Id.* at *10.

On March 24, 2021, the Eleventh Circuit denied a COA, adopting the district court's "thorough and detailed twenty-six page order." *Hutchinson v. Sec'y, Fla. Dep't of Corr.*, 2021 WL 6340256, at *1 (11th Cir. Mar. 24, 2021) (No. 21-10508-P). And, then, on April 29, 2021, the Eleventh Circuit denied a motion for reconsideration of the COA.

Hutchinson filed a petition for writ of certiorari in the United States Supreme Court raising two questions related to the Eleventh Circuit's denial of a COA. On November 16, 2021, the Secretary filed a brief in opposition. On January 10, 2022, the United States Supreme Court denied the petition. *Hutchinson v. Dixon*, 142 S.Ct. 787 (2022) (No. 21-5778).

Third successive state postconviction litigation

On January 15, 2025, Hutchinson, represented by CCRC-N, filed

a third successive Rule 3.851 motion raising two claims: (1) a claim of newly discovered evidence of a mild neurocognitive disorder due to traumatic brain injury (TBI) resulting from his military service during the Gulf War; and (2) a claim of newly discovered evidence of Gulf War Illness.

On January 21, 2025, the State filed an answer to the third successive postconviction motion, arguing that both claims of newly discovered evidence were untimely; the second claim was procedurally barred because the matter of Hutchinson suffering from Gulf War Illness was presented as mitigation at trial; and that neither diagnosis would result in an acquittal of any of the four first-degree murder convictions at a new trial or life sentences at a new penalty phase. The State asserted the third successive postconviction motion should be summarily denied.

On March 6, 2025, the postconviction court held a case management conference, as required by Florida Rule of Criminal Procedure 3.851(f)(5)(B), commonly referred to as a *Huff* hearing,[6]

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

regarding the third successive postconviction motion.

On March 31, 2025, the Governor signed a warrant scheduling the execution on May 1, 2025. The next day, April 1, 2025, a new judge, Judge Clark, was assigned to preside over both the pending third successive postconviction motion and the warrant litigation. On April 4, 2025, the postconviction court summarily denied the third successive postconviction motion finding the claims to be untimely. And, on April 8, 2025, the postconviction court denied the motion for rehearing, again determining the successive claims to be untimely.

Hutchinson's appeal of the summarily denial of his third successive postconviction motion is currently pending in this Court. *Hutchinson v. State*, SC2025-0497.

Fourth successive postconviction motion

On April 7, 2025, after the warrant was signed, and in compliance with the trial court's scheduling order, Hutchinson, represented by CCRC-N, filed a fourth successive postconviction motion raising four claims. (4th Succ. PCA at 57-170). On April 8,

2025, the State filed an answer to the fourth successive postconviction motion urging that the claims be summarily denied. (4th Succ. PCA at 171-197). On April 11, 2025, the postconviction court summarily denied the fourth successive postconviction motion and denied a stay of execution. (4th Succ. PCA at 241-255; 4th Succ. PCA Supp. at 708-744).

Hutchinson now appeals the summary denial of his fourth successive postconviction motion to this Court.

SUMMARY OF THE ARGUMENT

ISSUE I

Hutchinson asserts the postconviction court abused its discretion by denying his public records demands. IB at 23. As part of the warrant litigation, Hutchinson made 11 demands for additional public records on 10 agencies. The lower court properly denied the demands made pursuant to Florida Rule of Criminal Procedure 3.852(h)(3) because that rule does not apply to Hutchinson's case. The postconviction court properly denied the demands made pursuant to Florida Rule of Criminal Procedure 3.852(i) because Hutchinson did not establish how the records related to a colorable claim or show good cause for the delay in making the demands. Hutchinson was simply engaging in an improper fishing expedition. The postconviction court did not abuse its discretion in denying the demands.

ISSUE II

Hutchinson asserts the postconviction court abused its discretion in denying the motion to stay the execution. IB at 28. Trial

courts are not statutorily authorized to enter stays of executions. The postconviction court, instead of granting a stay, followed Rule of Criminal Procedural 3.851(f)(B), and expedited the proceedings. Moreover, there were no substantial grounds raised in either the pending third successive postconviction motion or in the fourth successive postconviction motion that would warrant a stay. The postconviction court did not abuse its discretion in denying the motion to stay the execution.

ISSUE III

Hutchinson asserts the postconviction court improperly summarily denied his successive postconviction claim of a violation of due process from the compressed warrant schedule; the reassignment of the case to a different judge after the warrant was signed; not having advanced and equal notice of the warrant; and the limitations on examination by mental health experts. IB at 31. As the lower court correctly observed, due process at the warrant stage is reduced under *Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52,

69 (2009). The only process that Hutchinson is due is notice of the warrant, after it is signed, and an opportunity to be heard regarding his remaining claims, both of which he received. He is not entitled to advanced or equal notice. This Court has repeatedly rejected due process challenges to compressed warrant schedules. The postconviction court properly denied the due process challenge to the warrant.

ISSUE IV

Hutchinson contends that the postconviction court improperly summarily denied his Eighth Amendment as-applied challenge. IB at 42. He argues that executing an inmate with a mild neurocognitive disorder is arbitrary in violation of *Furman v. Georgia*, 408 U.S. 238 (1972). The claim is procedurally barred because the claim should have been raised in the third successive postconviction motion. The Eighth Amendment does not preclude the execution of a defendant with neurocognitive disorders, much less one with "mild" neurocognitive disorders. Nor does his a "trifecta of vulnerabilities"

prohibit his execution. The postconviction court properly summarily denied the successive postconviction Eighth Amendment claim.

ISSUE V

Hutchinson asserts the Eighth Amendment prohibits his execution due to the length of time he has spent on death row, in restricted confinement, while suffering from mental conditions that resulted from his military service, such as Post-Traumatic Stress Disorder (PTSD), mild neurocognitive disorder, and Gulf War Illness. IB at 48. But such an Eighth Amendment claim based on the length of time spent on death row is not a valid claim under this Court's long-standing precedent. Indeed, no federal or state court has ever held that a prolonged stay on death row constitutes cruel and unusual punishment. Moreover, this Court recently rejected a similar combination claim based on the length of time spent on death row in combination with the defendant's various mental and physical issues in *James v. State*, 2025 WL 798376 (Fla. Mar. 13, 2025), *cert. denied*, *James v. Florida*, 2025 WL 864460 (U.S. Mar. 20, 2025). The

postconviction court properly summarily denied the Eighth Amendment claim based on the length of time spent on death row in combination with mental disorders.

ISSUE VI

Hutchinson asserts an access to court claim regarding his execution. IB at 55. He seeks a court order mandating the Department of Corrections (DOC) to (1) permit his witness to the execution have access to a telephone before and during the execution; (2) permit him to have a second witness; and (3) one of his witnesses be allowed to view the placement of the IV. But the applicable statute limits the number of persons that may be present for an execution. This Court has rejected identical requests in prior executions and the reasoning of this Court's prior cases applies equally to this access to courts challenge. The postconviction court properly denied these requests and properly summarily denied the access to court claim.

ARGUMENT

ISSUE I

Whether the Postconviction Court Abused its Discretion in Denying the Public Record Demands?

Hutchinson asserts the postconviction court abused its discretion by denying his public records demands. IB at 23. As part of the warrant litigation, Hutchinson made 11 demands for additional public records on 10 agencies. The lower court properly denied the demands made pursuant to Florida Rule of Criminal Procedure 3.852(h)(3) because that rule does not apply to Hutchinson's case. The postconviction court properly denied the demands made pursuant to Florida Rule of Criminal Procedure 3.852(i) because Hutchinson did not establish how the records related to a colorable claim or show good cause for the delay in making the demands. Hutchinson was simply engaging in an improper fishing expedition. The postconviction court did not abuse its discretion in denying the demands.

The postconviction court's ruling

Hutchinson filed 11 public records demands on 10 agencies: (1) the Office of the Attorney General; (2) the Office of the State Attorney of the First Judicial Circuit; (3) the Florida Department of Law Enforcement (FDLE); (4) the Florida Department of Corrections (DOC); (5) the Office of the Medical Examiner for the Eighth District; (6) the Florida Commission on Offender Review (FCOR); (7) the Executive Office of the Governor; (8) the Niceville Police Department; (9) the Crestview Police Department; and (10) the Okaloosa County Sheriff's Office. (4th Succ. PCA Supp. at 382-459). The agencies responded. *Id*. Supp. at 493-590; 606-608; 611-643. On April 4, 2025, the lower court held a hearing on the public records demands and the objections from the various agencies. (4th Succ. PCA Supp. at 675-707).

The postconviction court denied all of the public record demands. (4th Succ. PCA Supp. at 664-670). The order denying the demands addressed the demands agency-by-agency. The lower court denied all of the demands made pursuant to Florida Rule of Criminal

Procedure 3.852(h)(3), as "improper" because Rule 3.852(h) did not apply to Hutchinson because his case was final in 2004. *Id.* at 665, 666, 667, 668. The lower court denied the demands on the Attorney General's Office as not related to a colorable claim and because good cause was not shown for the last-minute demands, as well as on the grounds of being a fishing expedition. *Id.* at 665. The trial court denied the demand on FCOR regarding clemency records because clemency records are "confidential." *Id.* at 666 (citing § 14.28, Fla. Stat. (2024); *Chavez v. State*, 132 So.3d 826, 831 (Fla. 2014)).[7] The postconviction court denied the demands made on the Governor's office for clemency records due to confidentiality as well. *Id.* at 667. The trial court denied the demands on DOC and FDLE regarding the lethal injection protocol based on controlling precedent. *Id.* at 666-67 (citing *Dailey v. State*, 283 So.3d 782, 792 (Fla. 2019)). The lower court denied the other demands made on DOC as being a fishing

[7] Additionally, rule 3.852(k)(1) also limits a capital defendant ability to obtain certain records. That rule provides, in part: "unless otherwise limited, the scope of production under any part of this rule shall be that the public records sought are not privileged or immune from production." Under this rule, confidential records are not to be disclosed.

expedition. *Id*. at 667. The lower court denied the demand on the Eighth District Medical Examiner's Office because good cause was not shown and lethal injection claims regarding the current protocol are not colorable claims. *Id*. at 666-67 (citing *Dailey v. State*, 283 So.3d 782, 792 (Fla. 2019)). The lower court denied the demands on the State Attorney's Office as too broad due to the "any and all" language. *Id*. at 668.[8]

Preservation

The issue is preserved. To preserve an issue for appellate review, "the *specific* legal argument or ground upon which it is based must be presented to the trial court." *Cole v. State*, 392 So.3d 1054, 1063 (Fla. 2024) (emphasis in original), *cert. denied*, *Cole v. Florida*, 145 S.Ct. 109 (2024); § 924.051(1)(b), Fla. Stat. (2024) (providing that "'preserved' means that an issue, legal argument, or objection to

[8] The demands on the Niceville Police Department; the Crestview Police Department; and the Okaloosa County Sheriff's Office were denied based on representations of counsel for those agencies that there were no additional records, which opposing counsel agreed was appropriate. (4th Succ. PCA Supp. at 668).

evidence was timely raised before, and ruled on by, the trial court, and that the issue, legal argument, or objection to evidence was sufficiently precise that it fairly apprised the trial court of the relief sought and the grounds therefor."). Furthermore, a party must obtain a ruling from the lower court to preserve the issue. *Ritchie v. State*, 344 So.3d 369, 378 (Fla. 2022) (noting this Court's precedent requires trial counsel obtain a ruling on any objection or motion to preserve the issue for appeal citing *Rhodes v. State*, 986 So.2d 501, 513 (Fla. 2008), *cert. denied*, *Ritchie v. Florida*, 143 S.Ct. 1005 (2023).

Counsel filed 11 public records demands in the lower court and properly obtained a ruling on the demands. The public records issue was preserved.

Standard of review

This Court reviews the denial of public records requests under the abuse of discretion standard. *Tanzi v. State*, 2025 WL 971568, at *2 (Fla. Apr. 1, 2025) (citing *Cole v. State*, 392 So.3d 1054, 1065 (Fla. 2024), *cert. denied*, *Cole v. Florida*, 145 S.Ct. 109 (2024)), *cert. denied*,

Tanzi v. Dixon, 2025 WL 1037494 (U.S. Apr. 8, 2025).

Merits

The postconviction court did not abuse its discretion in denying the public record demands.

Rule 3.852(h)

Rule 3.852(h) does not apply to Hutchinson. This Court recently explained that the rule only applies to capital defendants whose convictions and sentences were final before October 1, 1998. Rule 3.852(h) does not apply to capital defendants, like Hutchinson, whose convictions and sentences were final after October 1, 1998.

In *Tanzi v. State*, 2025 WL 971568, *3 (Fla. Apr. 1, 2025), *cert. denied*, *Tanzi v. Dixon*, 2025 WL 1037494 (U.S. Apr. 8, 2025), this Court relied on the title of the rule to conclude Rule 3.852(h) only applies to defendants whose mandates were issued before October of 1998. *State v. Demons*, 351 So.3d 10, 16 (Fla. 4th DCA 2022) (explaining that the title of a statute or rule are properly considered

as an aid in the interpretation of the statute or rule citing *I.N.S. v. Nat'l Ctr. for Immigrants' Rights, Inc.*, 502 U.S. 183, 189 (1991); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 221 (2012)). The function of the rule as a stopgap also supports this Court's holding in *Tanzi*.

The mandate from the direct appeal in Hutchinson's case in 2004and his convictions and sentences also became final in 2004, which was years after the rule's cut-off line of 1998. *See Hutchinson v. State*, 882 So.2d 943 (Fla. 2004) (No. SC01–500). So, the rule does not apply to Hutchinson and he may not make any demands pursuant to it. The postconviction court properly denied all the demands made pursuant to Rule 3.852(h).

This Court's recent precedent

In *Tanzi*, this Court affirmed the denial of public records demands made on the Attorney General's Office; the State Attorney's Office; the Florida Commission on Offender Review; the Governor's Office; the Eighth District Medical Examiner's Office; FDLE; and DOC.

This Court explained that the "discovery tool of rule 3.852 is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief." *Tanzi*, 2025 WL 971568, at *2 (Fla. Apr. 1, 2025) (citing *Cole v. State*, 392 So.3d 1054, 1066 (Fla. 2024); *Asay v. State*, 224 So.3d 695, 700 (Fla. 2017)). A defendant under an active warrant must "show how the requested records relate to a colorable claim for postconviction relief and good cause as to why the public records demand was not made until after the death warrant was signed." *Id.* at *2 (quoting *Cole*, 392 So.3d at 1066; *Dailey v. State*, 283 So.3d 782, 792 (Fla. 2019)). This Court agreed that Tanzi did not make both showings, as required to obtain additional public records and affirmed.

Hutchinson likewise did not establish how the records related to a colorable claim or establish good cause for the belated demands. Indeed, he did not even attempt to explain why he waited until after the warrant was signed to make these demands. As the lower court properly concluded, Hutchinson did not show either that the requested records related to a colorable claim or good cause for not

making the demands earlier.

Due process and access to courts

This Court in *Tanzi* also rejected an argument that denying a capital defendant with an active warrant public records violated due process and access to the courts under the Eighth and Fourteenth Amendments, as well the corresponding provisions of the Florida Constitution. *Tanzi*, 2025 WL 971568, at *3. This Court first noted that precedent foreclosed his argument regarding public records demands for Florida's lethal injection procedures. *Id.* at *2 (quoting *Dailey v. State*, 283 So.3d 782, 792 (Fla. 2019)). While Tanzi asked this Court to reconsider that precedent, this Court rejected that invitation because Tanzi had not demonstrated that the precedent was "clearly erroneous," as he was required to do under *State v. Poole*, 297 So.3d 487, 507 (Fla. 2020). This Court also noted that it had recently declined similar requests to recede from this precedent, in cases such as *Cole v. State*, 392 So.3d 1054, 1066 (Fla. 2024), and then reaffirmed those prior holdings.

This Court also rejected a constitutional challenge to Rule 3.852(i) in *Dailey v. State*, 283 So.3d 782, 792-93 (Fla. 2019)). Dailey argued that rule 3.852 violates both the Equal Protection and Due Process Clauses. He claimed rule 3.852(i) prevented him from obtaining public records to which he would otherwise be entitled to under Chapter 119. The *Dailey* Court rejected that claim. *Id*. at 793 (citing *Wyatt v. State*, 71 So.3d 86, 111 (Fla. 2011); *Howell v. State*, 133 So.3d 511, 515-16 (Fla. 2014)). This Court observed that the restrictions in rule 3.852(i) are aimed at preventing capital postconviction defendants from engaging in an "eleventh hour attempt to delay the execution rather than a focused investigation into some legitimate inquiry." *Id*. at 793 (quoting *Sims v. State*, 753 So.2d 66, 68 (Fla. 2000)). The *Dailey* Court concluded that the restrictions were "reasonable in the context of capital postconviction claims."

The postconviction court did not abuse its discretion in denying the public records demands.

ISSUE II

Whether the Postconviction Court Abused its Discretion in Denying the Motion to Stay?

Hutchinson asserts the postconviction court abused its discretion in denying the motion to stay the execution. IB at 28. Trial courts are not statutorily authorized to enter stays of executions. The postconviction court, instead of granting a stay, followed Rule of Criminal Procedural 3.851(f)(B), and expedited the proceedings. Moreover, there were no substantial grounds raised in either the pending third successive postconviction motion or in the fourth successive postconviction motion that would warrant a stay. The postconviction court did not abuse its discretion in denying the motion to stay the execution.

The postconviction court's ruling

Hutchinson filed a motion for a stay of the execution. (4th Succ. PCA Supp. at 343-351). The State filed a response to the motion to stay. *Id.* Supp. at 352-364. Hutchinson filed a reply. *Id.* Supp. at 485-490. The postconviction court denied the motion to stay as part of the

final order. (4th Succ. PCA at 253-254). Having denied relief on all the claims, the lower court found that the defendant failed "to raise substantial grounds for relief." *Id*. at 253-54 (citing *Barwick v. State*, 361 So.3d 785, 791 (Fla. 2023), *cert. denied*, *Barwick v. Florida*, 143 S.Ct. 2452 (2023); *Chavez v. State,* 132 So.3d 826, 832 (Fla. 2014)).

Preservation

The issue is preserved. To preserve an issue for appellate review, "the *specific* legal argument or ground upon which it is based must be presented to the trial court." *Cole v. State*, 392 So.3d 1054, 1063 (Fla. 2024) (emphasis in original), *cert. denied*, *Cole v. Florida*, 145 S.Ct. 109 (2024); § 924.051(1)(b), Fla. Stat. (2024). Furthermore, a party must also obtain a ruling from the lower court to preserve the issue. *Ritchie*, 344 So.3d at 378 (*Rhodes*, 986 So.2d at 513, *cert. denied*, *Ritchie v. Florida*, 143 S.Ct. 1005 (2023).

Hutchinson filed a motion to stay and properly obtained a ruling. The stay issue is preserved.

Standard of review

The standard of review for a lower court's denial of a motion to stay an execution is the abuse of discretion standard. *Cf. Swafford v. Dugger*, 569 So.2d 1264, 1267 (Fla. 1990) (finding no abuse of discretion in denying a stay of execution to allow further review of the recently furnished investigatory files); *see also Cromartie v. Shealy*, 941 F.3d 1244, 1251 (11th Cir. 2019) (noting an appellate court reviews the denial of a motion for a stay of execution for abuse of discretion citing *Muhammad v. Sec'y, Fla. Dep't of Corr.*, 739 F.3d 683, 688 (11th Cir. 2014)). The lower court did not abuse its discretion.

Merits

Trial courts are not statutorily authorized to enter stays of executions. Alternatively, there were no substantial grounds raised in either the third successive postconviction motion or in the fourth successive postconviction motion that would warrant a stay.

Statute and rule governing stays of executions

The statute governing stay of execution of death sentence, section 922.06(1), Florida Statutes (2024), provides: "The execution of a death sentence may be stayed only by the Governor or incident to an appeal." Trial courts are not statutorily authorized to enter stays of executions. There must be an appeal for a court to enter a stay of execution under the text of the statute. Obviously, there was no appeal in the trial court. So, in Florida, only the Governor or this Court may enter a stay of execution.

Moreover, the rule of court governing postconviction litigation in capital cases, Rule of Criminal Procedural 3.851(f)(B), specifically provides that if "a death warrant has been signed, the trial court shall expedite these time periods in accordance with subdivision (h) of this rule." The rule directs a lower court to "expedite" the successive postconviction litigation, not to stay the execution, which is exactly what the lower court did. The lower court expedited the successive postconviction litigation rather than granting a stay, as directed by the applicable rule of court. Fla. R. Crim P. 3.851(f)(B). A trial court

following a rule of court instead of granting a stay is not an abuse of discretion.

Substantial grounds for relief

A capital defendant has no constitutional right to a stay of execution. The United States Supreme Court has noted that a stay of execution is an equitable remedy that is not available as a matter of right. *Hill v. McDonough*, 547 U.S. 573, 584 (2006); *see also Long v. Sec'y, Dep't of Corr.*, 924 F.3d 1171, 1176 (11th Cir. 2019) (observing that a stay of execution is "an equitable remedy and all of the rules of equity apply"); *Ex parte Chesser*, 112 So. 87, 89 (Fla. 1927) (stating that a stay of execution is based on public policy and a sense of propriety rather than any right of the convict).

This Court requires a showing that there are "substantial grounds for relief" for a capital defendant to be granted a stay of execution. *James v. State*, ___ So.3d ___, 2025 WL 798376, at *9 (Fla. Mar. 13, 2025) (denying a stay of execution because the defendant failed to raise "substantial grounds upon which relief might be

granted" quoting *Buenoano v. State*, 708 So.2d 941, 951 (Fla. 1998), and *Bowersox v. Williams*, 517 U.S. 345 (1996)), *cert. denied*, *James v. Florida*, 2025 WL 864460 (U.S. Mar. 20, 2025); *Dillbeck v. State*, 357 So.3d 94, 103 (Fla. 2023) (denying a stay of execution because the claim of newly discovered evidence of a new diagnosis was not "substantial" citing *Davis v. State*, 142 So.3d 867, 873-74 (Fla. 2014)); *Barwick v. State*, 361 So.3d 785, 791 (Fla. 2023) (affirming the lower court's denial of a stay because the defendant did not "establish any substantial grounds upon which relief might be granted if a stay had been ordered."), *cert. denied*, *Barwick v. Florida*, 143 S. Ct. 2452 (2023).

Hutchinson failed to raise substantial grounds upon which relief might be granted in either the third successive postconviction motion or in the fourth successive postconviction motion. Hutchinson was required to show substantial grounds for a stay but did not do so. Hutchinson had no substantial grounds warranting a stay and therefore, the postconviction court did not abuse its discretion in denying the stay.

Hutchinson seems to be asserting that the lower court should have granted a stay mainly due to the compressed warrant schedule. IB at 28. But this Court has repeatedly rejected truncated warrant schedule arguments and then denied the associated motions to stay the execution filed in those cases. *Tanzi v. State*, 2025 WL 971568, at *2, *7 (Fla. Apr. 1, 2025) (denying a due process claim regarding the truncated warrant schedule and then denying the motions for a stay of execution filed in this Court), *cert. denied*, *Tanzi v. Dixon*, 2025 WL 1037494 (U.S. Apr. 8, 2025); *Barwick v. State*, 361 So.3d 785, 789, 796 (Fla. 2023) (denying a due process claim regarding the compressed warrant schedule and then denying the motions for a stay of execution filed in this Court), *cert. denied*, *Barwick v. Florida*, 143 S. Ct. 2452 (2023).

The lower court followed this Court's precedent in denying a stay on the basis of a truncated warrant schedule. And the lower court followed this Court's example by denying relief and then denying the motion to stay after determining in detail that there were no substantial grounds.

The postconviction court did not abuse its discretion in denying the motion to stay.

ISSUE III

Whether the Postconviction Court Properly Summarily Denied the Successive Postconviction Claim of a Violation of Due Process from the Compressed Warrant Schedule?

Hutchinson asserts the postconviction court improperly summarily denied his successive postconviction claim of a violation of due process from the compressed warrant schedule; the reassignment of the case to a different judge after the warrant was signed; not having advanced and equal notice of the warrant; and the limitations on examination by mental health experts. IB at 31. As the lower court correctly observed, due process at the warrant stage is reduced under *Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 69 (2009). The only process that Hutchinson is due is notice of the warrant, after it is signed, and an opportunity to be heard regarding his remaining claims, both of which he received. He is not entitled to advanced or equal notice. This Court has repeatedly rejected due process challenges to compressed warrant schedules. The postconviction court properly denied the due process challenge to the

warrant.

The postconviction court's ruling

The postconviction court summarily denied the due process claim. (4th Succ. PCA at 244-249). The postconviction court noted that the right to due process is reduced once a defendant is convicted at trial. (4th Succ. PCA at 249). The lower court, quoting the United States Supreme Court case of *Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 69 (2009), noted the "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 a fair trial, and has only a limited interest in postconviction relief." *Id.* at 249.

The postconviction court concluded that the Governor signing a warrant, despite the pending litigation regarding the third successive postconviction motion, was not a violation of due process observing that other warrants had been signed while there was pending litigation. *Id.* at 246 (citing *Marek v. State*, 8 So.3d 1123 (Fla. 2009); and *Bolin v. State*, 184 So.3d 492 (Fla. 2015)). The judge noted that

she had reviewed the entire record, including the transcript of the *Huff* hearing on the third successive postconviction motion, prior to ruling on that motion. *Id*. at 247. She noted that the third successive postconviction motion was denied on the grounds of timeliness and therefore, no evidentiary hearing was required but summary denials of successive postconviction motions do not violate due process. *Id*. (citing *Kokal v. State*, 901 So.2d 766, 778 (Fla. 2005)).

Regarding the reassignment of the case, the postconviction court noted that "litigants have no right to have" . . ."any particular judge" . . . "hear their cause" and "no due process right to be heard" before the reassignment. (4th Succ. PCA at 247 quoting *Kruckenberg v. Powell*, 422 So.2d 994, 996 (Fla. 5th DCA 1982)).

Regarding the notice of the warrant being delayed by a few hours, the lower court observed that postconviction counsel did not explain how they were prejudiced from the "inadvertent and brief delay." (4th Succ. PCA at 248). The lower court noted that, under *Marek v. State*, 14 So.3d 985, 998 (Fla. 2009), capital defendants are not entitled to advance warning that a warrant will be signed shortly.

Id. at 248. The lower court noted that Hutchinson did not cite any caselaw requiring advance notice of the signing of his death warrant. *Id*.

Regarding the compressed warrant schedule, the postconviction court rejected any due process violation, relying on this Court's decisions in *Barwick v. State*, 361 So.3d 785, 789 (Fla. 2023), *cert. denied*, *Barwick v. Florida*, 143 S. Ct. 2452 (2023), and *Tanzi v. State*, 2025 WL 971568 (Fla. Apr. 1, 2025), *cert. denied*, *Tanzi v. Dixon*, 2025 WL 1037494 (U.S. Apr. 8, 2025). (4th Succ. PCA at 248).

Preservation

The issue is preserved. To preserve an issue for appellate review, "the *specific* legal argument or ground upon which it is based must be presented to the trial court." *Cole v. State*, 392 So.3d 1054, 1063 (Fla. 2024) (emphasis in original), *cert. denied*, *Cole v. Florida*, 145 S.Ct. 109 (2024); § 924.051(1)(b), Fla. Stat. (2024). Furthermore, a party must obtain a ruling from the lower court to preserve the issue. *Ritchie*, 344 So.3d at 378 (citing *Rhodes*, 986 So.2d at 513), *cert.*

denied, *Ritchie v. Florida*, 143 S.Ct. 1005 (2023).

Hutchinson filed a fourth successive postconviction motion in the lower court raising the same due process claim that he is raising on appeal and properly obtained a ruling. The due process claim was properly preserved.

Standard of review

Because the postconviction court summarily denied the successive postconviction claim, the standard of review is de novo. As this Court has explained, a postconviction court's decision regarding whether to grant an evidentiary hearing on a postconviction claim is a pure question of law reviewed de novo. *Dillbeck v. State*, 357 So.3d 94, 98 (Fla. 2023) (quoting *Bowles v. State*, 276 So.3d 791, 794 (Fla. 2019)), *cert. denied*, *Dillbeck v. Florida*, 143 S.Ct. 856 (2023). Under de novo review, this Court decides for itself whether the claim was properly summarily denied without any deference due to the lower court. Addtionallyy, the standard of review for a constitutional challenge is de novo. *Correll v. State*, 184 So.3d 478, 487 (Fla. 2015)

(noting, in a capital case, raising an as-applied Eighth Amendment challenge, the Court reviews "constitutional matters de novo.").

Summary denials of successive postconviction claims

A postconviction court should summarily deny any postconviction claim that is conclusively rebutted by the existing record. Fla. R. Crim. P. 3.851(f)(5)(B). A postconviction court should also summarily deny any claim that is untimely, procedurally barred, or legally insufficient because it is meritless as a matter of law. *Zack v. State*, 371 So.3d 335, 338 (Fla. 2023) (agreeing with the postconviction court summarily denying the claims as "untimely, procedurally barred, and meritless"), *cert. denied*, *Zack v. Florida*, 144 S.Ct. 274 (2023). A postconviction court should summarily deny any postconviction claim where the defendant "has failed to state a facially sufficient claim" or there is "no issue of material fact to be determined," or "the claim should have been brought on direct appeal." *Doty v. State*, ___ So.3d ___, 50 Fla. L. Weekly S5, 2025 WL 209245, at *3 (Fla. Jan. 16, 2025) (SC2023-1123). This Court has

repeatedly affirmed summary denials of successive postconviction motions filed in active warrant cases.[9]

Merits

There was no violation of due process from the compressed warrant schedule; the reassignment of the case to a different judge; the lack of advanced or equal notice; or the limitations on examinations by the mental health experts. None of these considerations, individually or collectively, amount to a violation of due process.

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[9] *See, e.g., Tanzi v. State*, 2025 WL 971568, at *1 (Fla. Apr. 1, 2025) (affirming the summary denial of a successive postconviction motion in an active warrant case), *cert. denied*, *Tanzi v. Dixon*, 2025 WL 1037494 (U.S. Apr. 8, 2025); *James v. State*, 2025 WL 798376, at *1 (Fla. Mar. 13, 2025), *cert. denied*, *James v. Florida*, 2025 WL 864460 (U.S. Mar. 20, 2025); *Ford v. State*, 2025 WL 428394, at *1 (Fla. Feb. 7, 2025), *cert. denied*, *Ford v. Florida*, 2025 WL 467243 (U.S. Feb. 12, 2025); *Cole v. State*, 392 So.3d 1054, 1058 (Fla. 2024), *cert. denied*, *Cole v. Florida*, 145 S. Ct. 109 (2024); *Zack v. State*, 371 So.3d 335, 338 (Fla. 2023), *cert. denied*, *Zack v. Florida*, 144 S. Ct. 274 (2023); *Owen v. State*, 364 So.3d 1017, 1018 (Fla. 2023); *Barwick v. State*, 361 So.3d 785, 788 (Fla. 2023), *cert. denied*, *Barwick v. Florida*, 143 S. Ct. 2452 (2023); *Gaskin v. State*, 361 So.3d 300, 303 (Fla. 2023), *cert. denied*, *Gaskin v. Florida*, 143 S. Ct. 1102 (2023); *Dillbeck v. State*, 357 So.3d 94, 96 (Fla. 2023), *cert. denied*, *Dillbeck v. Florida*, 143 S. Ct. 856 (2023).

Reduced due process rights in warrant litigation

First, due process is reduced in postconviction proceedings from the full due process a capital defendant is entitled to at trial. In *Dist. Attorney's Office for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 67-69 (2009), the United States Supreme Court distinguished between the trial stage of a case and the postconviction stage for purposes of due process. After quoting the Due Process Clause, the Court stated that process "is not an end in itself." *Id.* at 67. Osborne argued that he was entitled to DNA testing "to prove his innocence even after a fair trial has proved otherwise." But, the High Court explained, a court must first examine the asserted liberty interest to determine what process (if any) is due. The *Osborne* Court noted that the due process rights are at their highest prior to a conviction but those full due process trial rights do not extend into postconviction proceedings. *Id.* at 68. "A criminal defendant proved guilty after a fair trial does not have the same liberty interests as a free man" and therefore, does not have the same due process rights. *Id.* "Once a defendant has been afforded a fair trial and convicted of the offense for which he was

charged, the presumption of innocence disappears" and therefore, States have "more flexibility" in deciding what procedures are needed at the postconviction stage. *Id*. at 69. Due process does not dictate the exact form of postconviction rights and procedures. A defendant'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 a fair trial, and has only a limited interest in postconviction relief." *Id*. The Court then held for those reasons, *Brady v. Maryland*, 373 U.S. 83 (1963), which is a due process trial right, did not apply in postconviction litigation. Instead, the lesser standard of "fundamental fairness" from *Medina v. California*, 505 U.S. 437, 446 (1992), applied to postconviction litigation. *See also Shoop v. Twyford*, 596 U.S. 811, 819 (2022) (noting the trial is the "main event," not "a tryout on the road" for later collateral litigation); *Jones v. Hendrix*, 599 U.S. 465, 487 (2023) (observing due process does not mandate even a direct appeal, let alone successive postconviction proceedings).

A capital defendant in Florida with an active warrant has not only had a trial and penalty phase but also had review of that trial

and penalty phase by the Florida Supreme Court, review of his initial state postconviction proceedings by the Florida Supreme Court, as well as federal habeas review by a federal district court judge and then by the Eleventh Circuit, as well as review of any of the successive postconviction motions by Florida Supreme Court, in addition to the United States Supreme Court considering any petitions he filed regarding those various proceedings. So, the due process a capital defendant is entitled to is reduced in postconviction litigation and is reduced even further at the warrant stage.

The only process that Hutchinson is due at this stage is notice of the warrant, after it is signed, and an opportunity to be heard regarding his remaining claims, both of which he received.

Compressed warrant schedule

This Court quite recently rejected a claim that a capital defendant was denied due process in warrant litigation due to the compressed warrant schedule. *Tanzi v. State*, 2025 WL 971568, at *2 (Fla. Apr. 1, 2025). Tanzi argued that the truncated warrant period

denied him due process. But, this Court rejected that argument, stating that "due process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided." *Tanzi*, 2025 WL 971568, at *2 (quoting *Asay v. State*, 210 So.3d 1, 27 (Fla. 2016)).

This Court, once again, reaffirmed that the decision to sign a warrant is the Governor's alone. *Tanzi v. State*, 2025 WL 971568 (Fla. Apr. 1, 2025). Tanzi asserted that the Governor's unchecked authority to determine the length of the warrant litigation rendered the warrant litigation unreliable in violation of the Eighth Amendment. *Tanzi*, 2025 WL 971568, at *4. This Court noted it had "long recognized the Governor's authority and discretion when signing death warrants." *Id.* (citing *Ferguson v. State*, 101 So.3d 362, 366 (Fla. 2012); *Valle v. State*, 70 So.3d 530, 551 (Fla. 2011)).

This Court rejected a similar claim that a truncated warrant schedule necessarily rendered warrant counsel ineffective in violation of due process in *Barwick v. State*, 361 So.3d 785, 789-91 (Fla. 2023), *cert. denied*, *Barwick v. Florida*, 143 S. Ct. 2452 (2023). Barwick

argued that the truncated warrant schedule of 30 days was "very arduous" on his lead counsel because co-counsel was ill, as well as the warrant period including the holidays, and in such circumstances, he was, in effect, deprived of warrant counsel, which amounted to a due process violation. *Id.* at 789. But, this Court rejected that argument, observing that warrant litigation is "arduous," even in the absence of unusual circumstances. *Id.* at 789-90. The *Barwick* Court explained that due process simply "requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided." *Id.* (quoting *Asay*, 210 So.3d at 27). But, the Court noted, the defendant did not identify "any matter on which he was denied notice or an opportunity to be heard before it was decided." Barwick "did not allege that he was ever denied notice or an opportunity to be heard." *Id.* Therefore, there was no denial of due process. And, the Court noted, that it previously denied a similar due process claim raised in the death warrant context in *Asay*, 210 So.3d at 27-28. This Court concluded "because Barwick has failed to state when he was denied notice or an opportunity to be heard, his due process claim

fails." This Court held that the short warrant time frame did not violate due process.

Under *Tanzi*, *Barwick*, and *Asay*, the only process that a capital defendant is due in warrant litigation is notice and an opportunity to be heard. Under the reduced due process that is applicable at the warrant stage, the due process required is notice that a warrant was signed and an opportunity to litigate any remaining claims, after the years of prior litigation.

Hutchinson received both notice and an opportunity to be heard. He and his attorneys received notice of the warrant. All of Hutchinson's current attorneys, both state and federal, received the warrant via email from undersigned counsel on March 31, 2025, at 7:07 p.m. Both sets of his attorneys received the warrant within three hours of it being filed with the Department of State. That the notice was not immediate does not violate the due process notice requirement. And it is certainly not "fundamentally unfair," as required to be a violation of due process in the postconviction context, for there to be a delay of a few hours in that notice.

Hutchinson had the opportunity to be heard in both state and federal court. He and his team of three state postconviction attorneys were able to raise any remaining claims in the fourth successive postconviction motion in the state trial court. They then filed an appeal of both the third and fourth successive postconviction motions in this Court. And they also filed a state habeas petition in this Court raising three issues. His even larger team of federal habeas counsel have filed a motion to reopen his original habeas proceeding in the federal courts and have sought review of the denial of the motion to reopen in the Eleventh Circuit, as well as have the opportunity seek a stay from the Eleventh Circuit. And then both his state and federal counsel may seek review of his various claims in the United States Supreme Court. Hutchinson will have had an opportunity to be heard in both state and federal courts, including in the nation's highest court before any execution. Because he received both notice of the warrant after it was signed and an opportunity to be heard, there is no violation of due process.

Compressed warrant schedules do not violate due process.

Due process and pending litigation

Due process was not violated because there was pending state successive postconviction proceedings when the warrant was signed. IB at 35. This Court has rejected due process claims based on there being pending litigation at the time a warrant was signed. *Bolin v. State*, 184 So.3d 492, 503 (Fla. 2015) (rejecting a due process challenging to issuing a warrant when the first successive postconviction motion was still pending in the lower court). This Court explained that the capital defendant had fully presented his claims to the lower court and this Court had comprehensively reviewed the record and the claims raised. The Court in *Bolin* noted that warrants had been signed in other capital cases involving pending litigation. *Id.* at 503 (citing *Marek v. State*, 8 So.3d 1123 (Fla. 2009)).

Additionally, in *Asay*, a warrant was signed when a petition for writ of certiorari was pending in the United States Supreme Court. *Asay v. State*, 224 So.3d 695, 704 (Fla. 2017) (Pariente, J., dissenting) (advocating the Court stay the execution until the United States Supreme Court addressed his pending petition for a writ of certiorari).

If pending litigation prevented a warrant from being signed, the capital defense bar would file successive postconviction motion after successive postconviction motion endlessly to prevent the signing of any warrant. There is no such prohibition for obvious reasons.

Hutchinson cites to no case from any appellate court holding that signing a warrant while there is pending litigation violates due process. Instead, he merely attempts to distinguish *Bolin* and *Marek*.

Signing a warrant in a case with pending litigation does not violate due process.

Reassignment to a different judge

There is no due process right to any particular judge or to the original judge remaining on the case for the duration of the litigation. IB at 34, 35-36. Litigants have "no right to have any particular judge hear their case." *Rodriguez v. State*, 919 So.2d 1252, 1278 (Fla. 2005); *Sorhegui v. Park E. Home Owners Ass'n, Inc.*,393 So.3d 813, 814 (Fla. 3d DCA 2024) (same quoting *Rodriguez*); *United States v. Pearson*, 203 F.3d 1243, 1256 (10th Cir. 2000) (same quoting *Sinito v. United States*,

750 F.2d 512, 515 (6th Cir. 1984)). While defendants have a constitutional right to an impartial judge, they do not have the right to any particular impartial judge.

Nor does a defendant have a right to have the same judge preside over the case for the duration of the entire case. *United States v. Diaz*, 189 F.3d 1239, 1243-45 (10th Cir.1999) (rejected a due process challenge to a rotating judicial assignment system in which different judges were assigned to various phases of the same case). Judges often preside over different stages of a lengthy case. It is common for one judge or magistrate to preside over the pretrial motion to suppress and other pretrial matters and another judge presides over the trial in the federal district courts. Such a practice certainly is not a violation of due process.

This Court has acknowledged that warrant litigation was "arduous" on both the Bench and Bar, but stated that such obstacles do not result in a denial of due process. *Barwick*, 361 So.3d at 790. Judge Clark, no doubt, faced a more arduous than normal task due to her being newly assigned to the case and having to become familiar

with the extensive record in this case, but a conscientious, hard-working judge is capable of that task. Judges, including United States Supreme Court Justices, often work under extreme deadlines. *TikTok Inc. v. Garland*, 145 S. Ct. 57, 73 (2025) (Gorsuch, J., concurring) (noting the Court had only a "fortnight to resolve" on the merits, "a major First Amendment dispute affecting more than 170 million Americans."). While Judge Clark faced the additional obstacle of becoming familiar with, and ruling on, the prior proceedings, she was still capable of devoting the necessary time to meaningfully review, understand, consider, and decide the issues.

There have been other Florida capital cases where the judge presiding over the warrant litigation was assigned to the case shortly before a warrant was signed, including the recent warrant litigation in *Tanzi v. State*, 2025 WL 971568 (Fla. Apr. 1, 2025) (No. SC2025-0371). *See State v. Tanzi*, 2000-CF- 573 (Monroe Cnty. order of reassignment dated March 11, 2025).

There was no violation of due process from the reassignment of a different judge to preside over the warrant litigation. Judicial

reassignment after a warrant is signed does not violate due process.

Lack of advanced and equal notice

Hutchinson asserts that he is entitled to advanced notice that the Governor is considering signing a warrant in the near future in a particular case. IB at 39. But there is no support in the caselaw for the concept of "advanced" notice and he certainly does not cite any on-point case from any court endorsing that notion as part of due process even at trial, much less as a matter of fundamental fairness in warrant litigation.

Hutchinson and his attorneys received notice years ago that his case was final and under the Timely Justice Act that meant his case was warrant eligible. The Timely Justice Act list of warrant-ready defendants is available on the Florida Supreme Court's website. And, as a practical matter, capital defendants and their attorneys receive informal warning that a warrant is being considered in the particular case via clemency proceedings. Capital defendants and their attorneys are well aware that clemency proceedings are the last step in a capital

case. While capital defendants are appointed a clemency attorney, their state and federal attorneys are often involved to some degree the clemency process. § 940.031, Fla. Stat. (2024) (providing the Clemency board may appoint a capital defendant a clemency attorney); *Bowles v. Desantis*, 934 F.3d 1230, 1236-37 (11th Cir. 2019) (describing federal habeas counsel extensive involvement in clemency proceedings). So, both the capital defendant and his attorneys have informal and tentative notice that a warrant is being considered from the fact that clemency proceedings were initiated.

There is no due process violation from the lack of equal and simultaneous knowledge. The defense simply is not entitled to equal notice. For example, prosecutors often know more details and routinely obtain information about the case at an earlier time than the defense and no one thinks of that as a violation of due process. Prosecutors often know critical information about a case weeks before defense counsel. A prosecutor may tell a FDLE analyst to call him as soon as the DNA results are available, which can be weeks before defense counsel learns of the DNA result by reading the lab report

provided in discovery. And even after the defense deposes the analyst, the prosecutor may still have more information than the defense, depending on the questions asked. Even under *Brady*, there is no requirement that the defense has the same knowledge at the same exact time as the prosecutor.

To the contrary, *Brady* is satisfied if the defense has the information before the trial. Indeed, even if the information is not disclosed until after the trial has started is often found to not violate *Brady*. *See, e.g.*, *United States v. Hankton*, 51 F.4th 578, 603 (5th Cir. 2022) (noting the letters and transcript were not disclosed until the middle of the trial but concluding the evidence "was not suppressed"). And the *Brady* due process standard does not even apply to postconviction proceedings, as the United States Supreme Court held in *Osborne*, much less to warrant litigation.

In *Asay v. State*, 224 So.3d 695, 699 (Fla. 2017), in an active warrant case, the defendant argued the State obtained an unspecified advantage in the warrant litigation by taking an extension to file the brief in opposition in the pending litigation in the United States

Supreme Court. The trial court had declined to consider the argument regarding the extension and alleged advantage obtained by taking an extension, finding "there was no correlation between the Attorney General's action and Asay's due process rights." This Court recounted the lower court's ruling but also declined to address the issue but denied relief.

Hutchinson points to a social media post made by a person who seems to be the aunt of the three children he murdered as evidence of an unfair warrant litigation advantage. IB at 39. He never identifies exactly what significant advantage is gained by the State, especially considering that it is the defense that formulates the issues during warrant litigation, not the State.

Moreover, the victim's family are part of the clemency process. The victim's family and friends write letters to the Florida Commission on Offender Review regarding the impact of the crime on the family to be considered in the final Clemency Report. Fla. R. Exec. Clemency 15D. The defendant's clemency attorney likewise may submit letters from the defendant's family and friends. *See e.g., Barwick*, 66 F.4th at

899 (noting the clemency attorney submitted expert reports and letters to the Commission). The victims may also request a transcript of the interview with the capital defendant conducted by the Commission during the clemency investigation. Fla. R. Exec. Clemency 15G. The Rules of Executive Clemency also provide that after the final clemency report is issued, if any member of the Clemency Board requests a hearing, the Attorney General's Office and the Bureau of Advocacy & Grants notify the victims, so that the victims may testify at the hearing. Fla. R. Clemency 15E (noting the Attorney General's Office and the Bureau "shall then notify the victims of record of any hearing").

Furthermore, the Florida Constitution was amended by the voters in 2018 to provide the victims of crime with a "meaningful role." Art. I, § 16(b), Fla. Const. The state constitution provides that "every victim is entitled to" the

> right to be informed of clemency and expungement procedures, to provide information to the governor, the court, any clemency board, and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made; and to be notified of such decision in advance of any release of the

offender.

Art. I, § 16(h), Fla. Const. The Governor was simply following the state constitution. Basically, the Governor may consult with anyone he so chooses before signing a warrant, including the victim's family, and is not required to inform the defendant's attorneys of his conversations regarding warrants.

Hutchinson's insistence of advance and equal notice would mean courts would have to monitor the Governor's contacts with the victims and the Attorney General. Courts monitoring the Executive Office of the Governor's contacts with the victims or with the Attorney General's Office and mandating disclosures of those contacts would create separation of powers concerns. *Gore v. State*, 91 So.3d 769, 779-80 (Fla. 2012) (noting the separation of powers concerns involving claims relating to the Governor's authority to sign death warrants).

Further, as the postconviction court observed, Hutchinson has not pointed to any prejudice he suffered from the State having earlier notice of the warrant.

A capital defendant has no due process right to advanced or

equal notice.

Limitations on examinations by the mental health experts

Hutchinson asserts that the compressed warrant schedule made it difficult for him to be evaluated by his experts. IB at 41. This Court has rejected similar arguments. *Asay v. State*, 224 So.3d 695, 699 (Fla. 2017) (rejecting a due process claim, in an active warrant, because the defendant was not permitted a continuance to secure an expert witness).

In *Muhammad v. State*, 132 So.3d 176, 189-93 (Fla. 2013), this Court rejected a claim that the evidentiary hearing on the lethal injection protocol was not full and fair, in part, because the defendant was not allowed more time to consult with his expert, Dr. Heath. *Id.* at at 189; 193. This Court affirmed the trial court's denial of the continuance for additional time to consult with the defense expert. *Id.* at 193. This Court found the evidentiary hearing was full and fair, regardless of the time constraints. *Muhammad*, 132 So.3d at 193.

And, here, unlike *Muhammad*, there was no evidentiary hearing.

Both the third successive postconviction motion and the fourth successive postconviction motion were summarily denied. Nor does he identify the particular experts or explain why those experts did not examine him before the third successive postconviction motion was filed months ago, as that motion raised his mental condition.

Additionally, Hutchinson has raised an incompetency to be executed claim under *Ford v. Wainwright*, 477 U.S. 399 (1986), invoking the "proceedings when person under sentence of death appears to be insane" statute. § 922.07, Fla. Stat. (2024). Three psychiatrists will examine him as part of that statutory process. And then he can invoke Florida Rule of Criminal Procedure 3.811(d) and 3.812, to obtain judicial review of his *Ford* claim. So, he will have two additional forums to litigate his mental condition with multiple experts examining him. And that is the only process he is due, regarding his mental state, during a warrant.

The postconviction court properly summarily denied successive postconviction claim of a violation of due process.

ISSUE IV

Whether the Postconviction Court Properly Summarily Denied the Successive Postconviction Claim of a Violation of the Eighth Amendment As-Applied?

Hutchinson contends that the postconviction court improperly summarily denied his Eighth Amendment as-applied challenge. IB at 42. He argues that executing an inmate with a mild neurocognitive disorder is arbitrary in violation of *Furman v. Georgia*, 408 U.S. 238 (1972). The claim is procedurally barred because the claim should have been raised in the third successive postconviction motion. The Eighth Amendment does not preclude the execution of a defendant with neurocognitive disorders, much less one with "mild" neurocognitive disorders. Nor does his a "trifecta of vulnerabilities" prohibit his execution. The postconviction court properly summarily denied the successive postconviction Eighth Amendment claim.

The postconviction court's ruling

The postconviction court summarily denied the as-applied Eighth Amendment claim. (4th Succ. PCA at 249-251). The lower

court rejected the claim of an arbitrary selection process for determining when a warrant is signed, noting that the Governor has "absolute discretion" in signing warrants. (4th succ PCA at 249 (quoting *Gore v. State*, 91 So.3d 769, 780 (Fla. 2012)). The lower court rejected the claim that the diagnosis of mild neurocognitive disorder due to traumatic brain injury (TBI) caused by blast overpressure injuries and Gulf War Illness as meritless and procedurally barred. *Id.* at 250.

As a claim that the diagnosis precluded his execution under the Eighth Amendment, the postconviction court rejected that claim noting, under this Court's precedent, the Eighth Amendment does not impose a categorical bar against the execution of defendant who suffer from mental illness or brain damage citing *Gordon v. State*, 350 So.3d 25, 37 (Fla. 2022). (4th Succ. PCA at 251). The postconviction court, quoting this Court, concluded "the existence of a traumatic brain injury does not reduce an individual's culpability to the extent they become immune from capital punishment." *Id.* at 251 (quoting *Gordon*, 350 So.3d at 37).

Preservation

This Eighth Amendment as-applied challenge is preserved. Hutchinson properly filed a successive postconviction motion raising the same claim in the lower court that is being raised on appeal and properly obtained a ruling from the lower court. *Cole*, 392 So.3d at 1063; § 924.051(1)(b), Fla. Stat. (2024); *Ritchie*, 344 So.3d at 378 (citing *Rhodes*, 986 So.2d at 513), *cert. denied*, *Ritchie v. Florida*, 143 S.Ct. 1005 (2023).[10]

Standard of review

Again, the standard of review for the summary denial of a postconviction claim is de novo. *Dillbeck*, 357 So.3d at 98 (quoting *Bowles*, 276 So.3d at 794). Under de novo review, this Court decides for itself whether an evidentiary hearing should have been held on the claim, without any deference due to the lower court. Constitutional claims are also reviewed de novo. *Correll v. State*, 184 So.3d 478, 487

[10] His Eighth Amendment claim raised in ISSUE IVB regarding executing a defendant with brain damage is also being raised in the state habeas petition. IB at 46

(Fla. 2015) (noting, in a capital case, raising an as-applied Eighth Amendment challenge, the Court reviews "constitutional matters de novo.").

Procedural bar

This Eighth Amendment claim is procedurally barred because the substance of this claim was already raised and ruled on by the lower court. Hutchinson simply took his state-law newly discovered evidence claim of a mild neurocognitive disorder raised in the third successive postconviction motion and wrapped the same diagnosis in federal Eighth Amendment garb and then raised it in the fourth successive postconviction motion. A litigant may not file in seriatim lawsuits based on the same set of facts under different legal theories ad infinitum. *Cole v. State*, 392 So.3d 1054, 1062-63 (Fla. 2024) (concluding a claim raised by a capital defendant with an active warrant in the fourth successive postconviction motion regarding his treatment at the Dozier school was procedurally barred because that treatment had been raised and rejected as an ineffectiveness claim in

prior postconviction motion and raised and rejected as a newly discovered evidence claim in yet another prior postconviction motion), *cert. denied*, *Cole v. Florida*, 145 S.Ct. 109 (2024).

Claims are required by the collateral review statute to be raised at the first opportunity, not the last. § 924.051(8), Fla. Stat. (2024) (mandating courts to enforce procedural bars to ensure claims are "raised and resolved at the first opportunity"); *Ford v. State*, ___ So.3d ___, 50 Fla. L. Weekly S22, 2025 WL 428394,*2 (Fla. Feb. 7, 2025) (citing § 924.051(8), Fla. Stat. (2024)), *cert. denied*, *Ford v. Florida*, 2025 WL 467243 (U.S. Feb. 12, 2025).

If Hutchinson wanted to raise an Eighth Amendment claim based on his mild neurocognitive disorder, he needed to do so as a separate claim in the third successive postconviction motion, but he did not (or at least not properly). The Eighth Amendment claim is procedurally barred.

Merits

The Eighth Amendment does not prohibit the execution of

inmates with neurocognitive disorders or one with a "trifecta of vulnerabilities."

Categorical prohibitions versus as-applied challenges

The Eighth Amendment prohibitions on executions of certain individuals are all categorical prohibitions. Hall v. Florida, 572 U.S. 701, 708 (2014) ("The Eighth Amendment prohibits certain punishments as a categorical matter."). For example, in *Roper v. Simmons*, 543 U.S. 551 (2005), the United States Supreme Court established a bright line prohibition on sentencing defendants under 18 years old to death, due to their youth. *Id.* at 574 ("Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules.").

But as-applied Eighth Amendment claims that do not depend on defined categories are not valid. As-applied Eighth Amendment claims of this sort are not cognizable. Such as-applied challenges are a subterfuge for proportionality review, which is not required by the Eighth Amendment, and is prohibited by the state constitution's

conformity clause. *Pulley v. Harris*, 465 U.S. 37, 44-51 (1984); *Lawrence v. State*, 308 So.3d 544 (Fla. 2020) (holding the state constitutional conformity clause precludes constitutional comparative proportionality review of death sentences, relying on *Pulley v. Harris*). Because as-applied Eighth Amendment claims operate as proportionality review, such challenges are not cognizable.[11]

Eighth Amendment and mental conditions

The Eighth Amendment prohibits the execution of inmates who are incompetent to be executed and inmates who are intellectually disabled. *Ford v. Wainwright*, 477 U.S. 399 (1986); *Atkins v. Virginia*, 536 U.S. 304 (2002). Those two categories are the only two mental conditions that prevent execution of a defendant.

In *Owen v. State*, 364 So.3d 1017 (Fla. 2023), a capital defendant

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[11] *See, e.g., Kearse v. Sec'y, Fla. Dep't of Corr.*, 2022 WL 3661526, at *26 (11th Cir. Aug. 25, 2022) (observing both *Atkins v. Virginia*, 536 U.S. 304 (2002), and *Roper v. Simmons*, 543 U.S. 551 (2005), established "categorical rules" and that moving an Eighth Amendment line "does not extend the categorical rule; it violates it" and refusing to extend the holdings of *Atkins* or *Roper*); *id.* at *29 (Wilson, J., concurring) (misreading *Pulley* and conducting "case-by-case" proportionality review).

in an active warrant case, asserted that his brain damage precluded his execution. But, the Court, yet again, rejected a claim that mental illness should be a categorical bar to execution under the Eighth Amendment. *Id.* at 1027 (citing *Newberry v. State*, 288 So.3d 1040, 1050 (Fla. 2019); *Long v. State*, 271 So.3d 938, 947 (Fla. 2019); *McCoy v. State*, 132 So.3d 756, 775 (Fla. 2013); *Lawrence v. State*, 969 So.2d 294, 300 n.9 (Fla. 2007)); *see also United States v. Sanders*, ___ F.4th ____, 2025 WL 926855, at *24 & n. 438 (5th Cir. Mar. 27, 2025) (rejecting a claim seeking to expand *Atkins* to include defendants with brain damage citing numerous cases).

The Eighth Amendment does not prohibit the execution of inmates with mild neurocognitive disorders. *Barwick v. State*, 361 So.3d 785, 794 (Fla. 2023) (rejecting an Eighth Amendment claim that an inmate with a "trifecta of vulnerabilities," including a "severe" neuropsychological disorder, cognitive impairments, and low mental age could not be executed), *cert. denied*, *Barwick v. Florida*, 143 S. Ct. 2452 (2023).

The Eighth Amendment does not preclude the execution of a

defendant with neurocognitive disorders, much less one with mild neurocognitive disorders. The postconviction court properly summarily denied the Eighth Amendment as-applied challenge.

ISSUE V

Whether the Eighth Amendment Prohibits the Execution of a Condemned Inmate Based on the Length of Time Spent on Death Row?

Hutchinson asserts the Eighth Amendment prohibits his execution due to the length of time he has spent on death row, in restricted confinement, while suffering from mental conditions that resulted from his military service, such as Post-Traumatic Stress Disorder (PTSD), mild neurocognitive disorder, and Gulf War Illness. IB at 48. But such an Eighth Amendment claim based on the length of time spent on death row is not a valid claim under this Court's long-standing precedent. Indeed, no federal or state court has ever held that a prolonged stay on death row constitutes cruel and unusual punishment. Moreover, this Court recently rejected a similar combination claim based on the length of time spent on death row in combination with the defendant's various mental and physical issues in *James v. State*, 2025 WL 798376 (Fla. Mar. 13, 2025), *cert. denied*, *James v. Florida*, 2025 WL 864460 (U.S. Mar. 20, 2025). The postconviction court properly summarily denied the Eighth

Amendment claim based on the length of time spent on death row in combination with mental disorders.

The postconviction court's ruling

The postconviction court summarily denied the combination Eighth Amendment claim. (4th Succ. PCA at 251-253). The postconviction court noted this Court's extensive precedent rejecting Eighth Amendment claims based on the length of time spent on death row. *Id.* at 252 (citing cases).[12] The lower court rejected the reliance on *Muhammad v. State*, 132 So.3d 176, 207 (Fla. 2013), because this Court itself had not departed from its established precedent rejecting such claims in that case. *Id.* at 252. The postconviction court found

[12] *Booker v. State*, 969 So.2d 186, 200 (Fla. 2007); *Tompkins v. State*, 994 So.2d 1072, 1085 (Fla. 2008); *Marek v. State*, 8 So.3d 1123, 1131 (Fla. 2009); *Johnston v. State*, 27 So.3d 11, 27-28 (Fla. 2010); *Valle v. State*, 70 So.3d 530, 552 (Fla. 2011); *Gore v. State*, 91 So.3d 769, 780-81 (Fla. 2012); *Muhammad v. State*, 132 So.3d 176, 206-07 (Fla. 2013); *Lambrix v. State*, 217 So.3d 977, 988 (Fla. 2017); *Long v. State*, 271 So.3d 938, 946 (Fla. 2019); *Dillbeck v. State*, 357 So.3d 94, 103 (Fla. 2023), *cert. denied*, *Dillbeck v. Florida*, 143 S. Ct. 856 (2023); *Gaskin v. State*, 361 So.3d 300, 308 (Fla. 2023), *cert. denied*, *Gaskin v. Florida*, 143 S.Ct. 1102 (2023); *Owen v. State*, 364 So.3d 1017, 1027 (Fla. 2023).

that Hutchinson's veteran status and mental disorders did not provide "a sufficient basis to depart" from this Court's precedent. *Id*. at 252-53.

Preservation

This Eighth Amendment claim is preserved. Hutchinson properly filed a successive postconviction motion raising the same claim in the lower court that is being raised on appeal and properly obtained a ruling from the lower court. *Cole*, 392 So.3d at 1063; § 924.051(1)(b), Fla. Stat. (2024); *Ritchie*, 344 So.3d at 378 (citing *Rhodes*, 986 So.2d at 513), *cert. denied*, *Ritchie v. Florida*, 143 S.Ct. 1005 (2023).

Standard of review

The standard of review of an Eighth Amendment claim is de novo. *Marshall v. State*, 277 So.3d 1149, 1150 (Fla. 1st DCA 2019) (stating the constitutionality of a sentence under the Eighth Amendment is reviewed de novo, but with substantial deference paid

to the broad authority that legislatures possess in determining the types and limits of punishment for crimes, as well as to the discretion that trial courts possess in sentencing convicted criminals quoting *Solem v. Helm*, 463 U.S. 277, 290 (1983)); *United States v. Carthen*, 906 F.3d 1315, 1322 (11th Cir. 2018) (noting an appellate court reviews the constitutionality of a sentence under the Eighth Amendment de novo).

Merits

This type of claim is commonly referred to as a *Lackey* claim stemming from the dissenting opinion from the denial of certiorari in *Lackey v. Texas*, 514 U.S. 1045 (1995) (Stevens, J., dissenting). But such claims are not valid Eighth Amendment claims. Not a single federal or state appellate court has ever granted relief on such a claim. This Court recently rejected a very similar combination *Lackey* claim in *James v. State*, 2025 WL 798376 (Fla. Mar. 13, 2025), *cert. denied*, *James v. Florida*, 2025 WL 864460 (U.S. Mar. 20, 2025).

Not a valid Eighth Amendment claim

This is not a valid Eighth Amendment claim. "No federal or state court has accepted the argument that a prolonged stay on death row constitutes cruel and unusual punishment." *Dillbeck v. State*, 357 So.3d 94, 103 (Fla. 2023), *cert. denied*, *Dillbeck v. Florida*, 143 S. Ct. 856 (2023); *see also Carroll v. State*, 114 So.3d 883, 889 (Fla. 2013) (same); *Booker v. State*, 969 So.2d 186, 200 (Fla. 2007); *Knight v. State*, 746 So.2d 423, 437 (Fla. 1998).

As Justice Thomas observed, there simply is no constitutional support for a *Lackey* claim. *Johnson v. Bredesen*, 558 U.S. 1067 (2009) (Thomas, J., concurring in the denial of certiorari). The federal circuit courts also consistently reject *Lackey* claims. *See, e.g., Thompson v. Sec'y, Fla. Dept. of Corr.*, 517 F.3d 1279, 1283-84 (11th Cir. 2008) (rejecting a *Lackey* claim where the defendant had been on death row for over 31 years and noting the total absence of Supreme Court precedent that a prolonged stay on death row violates the Eighth Amendment); *Creech v. Richardson*, 59 F.4th 372, 393-94 (9th Cir. 2023) (denying a certificate of appealability on a *Lackey* claim and

noting that "neither the Supreme Court nor the Ninth Circuit has ever held that the duration of a death row inmate's confinement prior to execution amounts to cruel and unusual punishment"); *Buntion v. Lumpkin*, 31 F.4th 952, 965 (5th Cir. 2022) (denying a certificate of appealability and stating, in a case where the defendant spent 30 years on death row, "a State does not violate the Constitution by executing an individual after the individual has spent even a very long period of time on death row.").

Lackey combined with mental/physical conditions

This Court recently rejected a very similar combination claim in *James v. State*, 2025 WL 798376 (Fla. Mar. 13, 2025), *cert. denied*, *James v. Florida*, 2025 WL 864460 (U.S. Mar. 20, 2025). James argued that under the "totality of the circumstances," including his having spent 30 years on death row, his cognitive decline over time, his physical and mental decline in the wake of a recent near-fatal heart attack, as well as other hardships, that his execution would violate the Eighth Amendment. *James*, 2025 WL 798376, at *5. This

Court rejected the claim on the merits, in a case where the defendant had spent nearly 30 years on death row, concluding the entire claim was "facially invalid." *Id.* (citing *Owen*, 364 So.3d at 1027; *Dillbeck*, 357 So.3d at 103; *Gaskin v. State*, 361 So.3d 300, 308 (Fla. 2023)).

"Solitary" confinement

Traditionally, "solitary confinement" is defined by the United States Supreme Court as "complete isolation of the prisoner from all human society" and confinement in a cell such that the prisoner has "no direct intercourse with or sight of any human being." *In re Medley*, 134 U.S. 160, 167-68 (1890). Florida's death row is not "solitary confinement" under that traditional definition. Brandon Vines, *Decency Comes Full Circle: The Constitutional Demand to End Permanent Solitary Confinement on Death Row*, 55 COLUM. J.L. & SOC. PROBS. 591, 620-02 & n.147 & n.148 (2022) (referring to Florida's death row as "non-Solitary" and stating that, by contrast, eleven states and the federal government have even more restrictive death rows than Florida's); *Davis v. Dixon*, 2022 WL 1267602, *3 (M.D.

Fla. Apr. 28, 2022) (describing the conditions on Florida's death row after the settlement and, by implication, the previous conditions, when referring to increasing access to materials for their tablets and increasing their access to telephones). The conditions on Florida's death row did not at any time since 2001, when Hutchinson arrived on death row, amount to "solitary confinement" under the traditional definition.

This Court has also rejected a combination *Lackey* claim involving an assertion that the conditions on Florida's death row amounted to solitary confinement. *Dillbeck*, 357 So.3d at 103, n.4. This Court declined to expand the original meaning of the term "solitary confinement" from *In re Medley*, 134 U.S. 160, 167-68 (1890), which was quite narrow, regarding a claim that "is not cognizable under the Eighth Amendment." *Dillbeck*, 357 So.3d at 103, n.4; *see also Gaskin v. State*, 361 So.3d 300, 308 (Fla. 2023) (rejecting a combination *Lackey* and solitary confinement Eighth Amendment claim).

Delay due to own conduct

This Court has observed repeatedly that the main reason capital defendants spend so many years on death row is due to their own actions of "continually challenging" their convictions and sentences. *Dillbeck*, 357 So.3d at 104 (citing *Lambrix*, 217 So.3d at 988; *Valle*, 70 So.3d at 552 (Fla. 2011)); *see also Lambrix v. State*, 217 So.3d 977, 988 (Fla. 2017) (noting the capital defendant "contributed to the lengthy time and delay by continually challenging his convictions and sentences."); *Carroll v. State*, 114 So.3d 883, 890 (Fla. 2013) (noting that "the length of time Carroll has spent on death row was due "in large part to his postconviction motions and habeas petitions"). This Court noted in *Dillbeck* that beyond the normal extensive capital litigation, Dillbeck filed "three successive postconviction motions." *Dillbeck*, 357 So.3d at 104 (emphasis in the original). Hutchinson did Dillbeck one better by filing four successive postconviction motions.

Such delays did not occur at common law when there was little or no appellate review and executions were carried out within days. *McKenzie v. Day*, 57 F.3d 1461, 1467 (9th Cir. 1995) (noting at

common law, executions could be carried out on the dawn following the pronouncement of sentence). Direct appeals, state postconviction proceedings, federal habeas review, successive state postconviction litigation as well as successive federal litigation, which were unknown at common law, cause the delays. When defendants waive these proceedings, they do not spend decades on death row. A good example of this is John Blackwelder, whose conviction and death sentence was affirmed by this Court in the direct appeal in July of 2003, who waived all other proceedings and was executed in May of 2004. *Blackwelder v. State*, 851 So.2d 650 (Fla. 2003). He spent less than one year on death row after his sentence was affirmed by the Florida Supreme Court after its mandatory review.

Hutchinson is seeking to have his three death sentences reduced to life sentences based on his own actions in repeatedly challenging his convictions and sentences, including filing a third and a fourth successive postconviction motion in state court and two motions to reopen the dismissal of his first habeas petition in federal court. Hutchinson's own actions were responsible for much of the delay.

The postconviction court properly summarily denied the combination *Lackey* claim.

ISSUE VI

Whether the Postconviction Court Properly Denied the Request for a Court Order Regarding the Execution and Properly Summarily Denied the Access to Courts Challenge?

Hutchinson asserts an access to court claim regarding his execution. IB at 55. He seeks a court order mandating the Department of Corrections (DOC) to (1) permit his witness to the execution have access to a telephone before and during the execution; (2) permit him to have a second witness; and (3) one of his witnesses be allowed to view the placement of the IV. But the applicable statute limits the number of persons that may be present for an execution. This Court has rejected identical requests in prior executions and the reasoning of this Court's prior cases applies equally to this access to courts challenge. The postconviction court properly denied these requests and properly summarily denied the access to court claim.

The postconviction court's ruling

The postonviction court summarily denied the access to courts claim. (4th Succ. PCA at 253). The lower court followed this Court's

holding in *Dailey v. State*, 283 So.3d 782 (Fla. 2019), and *Long v. State*, 271 So.3d 938 (Fla. 2019). *Id.* at 253. The postconviction court ruled that Hutchinson failed to demonstrate that "DOC's current policies and procedures are unconstitutional." *Id.*

Preservation

This access to courts challenge is preserved. Hutchinson properly filed a successive postconviction motion raising the same claim in the lower court that is being raised on appeal and properly obtained a ruling from the lower court. *Cole*, 392 So.3d at 1063; § 924.051(1)(b), Fla. Stat. (2024); *Ritchie*, 344 So.3d at 378 (citing *Rhodes*, 986 So.2d at 513), *cert. denied*, *Ritchie v. Florida*, 143 S.Ct. 1005 (2023).

Standard of review

The standard of review of an access to courts claim is de novo. *Henry v. State*, 134 So.3d 938, 944 (Fla. 2014) (stating the determination of a statute's constitutionality is a question of law

subject to de novo review); *Correll v. State*, 184 So.3d 478, 487 (Fla. 2015) (noting, in a capital case, raising an as-applied Eighth Amendment challenge, the Court reviews "constitutional matters de novo.").

Merits

This Court has repeatedly rejected identical requests for court orders mandating DOC deviate from the applicable statute and its execution protocol.

Applicable constitutional provision and statute

The access to courts provision of the state constitution, Article 1, section 21, Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

The statute governing the "Regulation of execution," section 922.11(2), Florida Statutes (2024), provides:

> Twelve citizens selected by the warden shall witness the execution. A qualified physician shall be present and

> announce when death has been inflicted. Counsel for the convicted person and ministers of religion requested by the convicted person may be present. Representatives of news media may be present under rules approved by the Secretary of Corrections. All other persons, except prison officers and correctional officers, shall be excluded during the execution.

These requests are contrary to the statute, as well as contrary to DOC's execution protocol.

This Court's precedent regarding executions

This Court has previously rejected identical requests made in prior executions. In *Dailey v. State*, 283 So.3d 782, 791-92 (Fla. 2019), this Court, in an active warrant capital case, rejected a Sixth and Eighth Amendment challenge to the lower court's refusal to order DOC to allow the condemned inmate's legal witnesses access to a telephone before and during the execution; allow him to have a second witness to his execution; and that one of his witnesses be allowed to view the insertion of the IV line. The *Dailey* Court noted that DOC was "entitled to a presumption" that it will perform its duties properly and stated that it was not the role of the judiciary "to micromanage the

executive branch in fulfilling its own duties relating to executions." This Court in *Dailey* relied on the nearly identical claim raised and rejected in *Long v. State*, 271 So.3d 938, 946-47 (Fla. 2019).

In *Long*, this Court held the postconviction court did not err in refusing to direct DOC to comply with Long's requests regarding the execution. *Long*, 271 So.3d at 946-47. This Court quoted the separation of power provision, Article 2, section 3, of the Florida constitution which provides: "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." *Id.* at 946. The *Long* Court noted that it was "mindful that separation of powers principles preclude us from performing the executive function of establishing a procedure to be used for executions." *Id.* at 947.

While both *Dailey* and *Long* were Sixth and Eighth Amendment cases, the reasoning of this Court regarding the presumption that DOC will perform its duties related to the execution properly and the

separation of powers concerns highlighted by this Court applies equally to this access to courts claim. *Cf. Andrew v. White*, 145 S. Ct. 75, 81 (2025) (explaining that a rule or principle that was "indispensable" to a holding is binding precedent as well). For the same reasons this Court rejected the prior requests to deviate from the statute and the protocol, this Court should decline the identical requests made under an access to courts framework.

Access to courts provision does not apply

The access to courts provision of the Florida constitution does not apply because Hutchinson does not identify any valid underlying substantive claim. In *Mills v. Hamm*, 102 F.4th 1245, 1250 (11th Cir.), *cert. denied*, 144 S. Ct. 2601 (2024), the Eleventh Circuit rejected a due process claim and an "access to counsel while in the execution chamber" claim because there is no constitutional right to counsel during an execution. Mills argued he had a right to counsel because otherwise violations of his rights in the execution chamber would be unreviewable. The *Mills* Court concluded the argument

proved "too much" because, if sound, it would create a due-process right for every condemned prisoner to have his counsel in the execution chambers for the purpose of policing and litigating potential violations. The Eleventh Circuit also rejected the access to courts claim explaining it was an ancillary claim to the substantive underlying claim but there was no valid underlying claim. *Id.* at 1250 (citing *Chappell v. Rich*, 340 F.3d 1279, 1283 (11th Cir. 2003); *see also Barbour v. Haley*, 471 F.3d 1222, 1226 (11th Cir. 2006) (noting an access to courts claim vindicates the separate and distinct right to seek judicial relief).

Hutchinson is asserting that he needs additional witnesses to his execution with telephone access to report any problems in real time to the courts. This claim is based on sheer speculation, and unwarranted speculation at that, because the numerous prior executions, under the current lethal injection protocol, have proceeded without incident. *Asay v. State*, 224 So.3d 695, 700-02 (Fla. 2017) (rejecting an Eighth Amendment challenge to the adoption of etomidate as the first drug in Florida's lethal injection protocol, after

an evidentiary hearing). But postconviction relief may not be granted based on mere speculation. *Doty v. State*, ___ So.3d ___, 50 Fla. L. Weekly S5, 2025 WL 209245 (Fla. Jan. 16, 2025) ("It is well established that mere speculation is not sufficient to form the basis for postconviction relief" citing *Gonzalez v. State*, 253 So.3d 526, 528 (Fla. 2018)).

The postconviction court properly denied these requests and properly summarily denied this access to courts challenge to the statute and the protocol.

Accordingly, this Court should affirm the postconviction court's summary denial of the fourth successive postconviction motion.

CONCLUSION

The State respectfully requests this Honorable Court affirm the summary denial of successive postconviction relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Counsel certifies that a true and correct copy of this AMENDED ANSWER BRIEF ON THE MERITS has been furnished via the e-portal system to has been furnished via e-portal to **CHELSEA SHIRLEY**, Assistant Capital Collateral Counsel Regional Counsel – Northern Region, 1004 DeSoto Park Drive, Tallahassee, FL 32301; phone: (850) 487-0922; email: Chelsea.Shirley@ccrc-north.org; **LISA M. FUSARO**, Assistant Capital Collateral Counsel Regional Counsel – Northern Region,1004 DeSoto Park Drive Tallahassee, FL 32301; phone: 850-487-0922; email: Lisa.Fusaro@ccrc-north.org; and **ALICIA HAMPTON**, Assistant Capital Collateral Counsel Regional Counsel – Northern Region,1004 DeSoto Park Drive Tallahassee, FL 32301; phone: 850-487-0922; email: Alicia.Hampton@ccrc-north.org this 17th day of April, 2025.

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