**ACTIVE WARRANT CASE NO. SC2025-1127**

**EXECUTION SCHEDULED FOR AUGUST 19, 2025, AT 6:00 P.M.**

In the

# Supreme Court of Florida

**KAYLE BARRINGTON BATES**,

*Appellant*,

*v.*

**STATE OF FLORIDA**,

*Appellee*.

ON APPEAL FROM THE FOURTEENTH JUDICIAL CIRCUIT COURT IN AND FOR BAY COUNTY, FLORIDA

## APPELLEE'S ANSWER BRIEF

JAMES UTHMEIER
*Florida Attorney General*

JASON W. RODRIGUEZ
*Senior Assistant Attorney General*
Florida Bar No. 125285
jason.rodriguez@myfloridalegal.com

FLORIDA ATTORNEY GENERAL'S OFFICE
PL-01, The Capitol
Tallahassee, FL 32399
Capapp@myfloridalegal.com
(850) 414-3300

*Counsel for the State of Florida*

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### Constitutional Provisions



### Cases

**Statutes**



**Rules**

## INTRODUCTION

A death warrant is not an invitation to litigate or relitigate every issue in a capital case. Capital defendants are provided decades of taxpayer funded counsel to challenge their convictions and sentences in state and federal court. That enormous expense of judicial and public resources is a complete waste unless the issues previously determined are afforded finality and those that could have been raised before are barred.

At trial, overwhelming evidence established Kayle Bates kidnapped, robbed, attempted to sexually batter, and stabbed J.W., a young woman, to death in 1982. Over the years, twenty jurors, two judges, and two Florida governors determined Bates deserved to die for his crimes. The State scheduled its second attempt to carry out Bates' long-final sentence for August 19, 2025.

Florida's victims are constitutionally entitled to finality at this stage of the litigation. *See* Art. I, § 16(b)(10), (d), Fla. Const. Bates, on the other hand, has no constitutional right to challenge his death sentence again. *See* § 924.051(8), Fla. Stat. *Jones v. Hendrix*, 599 U.S. 465, 482–87 (2023) (no constitutional right to two rounds of postconviction review). And he certainly has no right to abuse the

judicial process by raising or re-raising claims that could have been, or were, asserted long ago.[1]

This Court should wholly reject Bates' claims and reaffirm capital defendants cannot successfully raise untimely and barred claims after a warrant has been signed. *See Gudinas v. State*, No. SC2025-0794, 2025 WL 1692284, at *7–8 (Fla. June 17, 2025). The only manifest injustice possible in this case would be allowing Bates to delay a long-final death sentence yet again. *See Calderon v. Thompson*, 523 U.S. 538, 556–58 (1998) (recognizing "finality acquires an added moral dimension" after one round of state and federal postconviction review given the State's and victims' powerful interests in punishing the guilty).

[1] *See Spenkelink v. Wainwright*, 372 So. 2d 927, 927 (Fla. 1979) (Alderman, J., concurring specially) (noting the "questionable practice of waiting until a death warrant is signed by the governor to file petitions raising matters which could have been brought to the Court's attention months or even years before the warrant is signed" and opining doing so "is an abuse of the judicial process"); *Card v. Dugger*, 512 So. 2d 829, 831 (Fla. 1987) (holding a second state habeas petition raising issues that could have been raised in the first petition was an abuse of the writ).

## ORAL ARGUMENT OBJECTION

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

## RECORD CITATIONS

The State will cite: (1) the direct-appeal record of Bates' operative guilt phase in SC1960-63594; as GuiltDA[volume number]:[page number]; (2) the direct-appeal record of Bates' operative penalty phase in SC1960-86180 as SentenceDA[volume number]:[page number]; (3) the initial postconviction record in SC2007-611 as PCR[volume number]:[page number]; and (4) the record in this post-warrant appeal as WPCR:[page number].

## STATEMENT OF THE CASE AND FACTS

Bates has exhaustively litigated and relitigated his judgment and death sentence for the 1982 murder of J.W. for the past forty-three years. He obtained two remands for sentence reconsideration before and now, on the eve of his second scheduled execution, he wants a third.

In 1982, a grand jury indicted Bates for first-degree murder, kidnapping, sexual battery, and armed robbery. (GuiltDA1:1–3.) "The evidence of guilt presented against Bates during the three-day trial was overwhelming" and included:

> Bates was arrested at the scene of the crime just *minutes* after the victim's death. He had the victim's diamond ring in his pocket, and he tried to conceal it from law enforcement officers. A watch pin consistent with Bates' watch was found inside the victim's office, and Bates' watch was missing a watch pin. Footprints consistent with Bates' shoes were found behind the State Farm office building. Bates' hat was found near the victim's body. Two green fibers were found on the victim's clothing—one on her blouse and one on her skirt—that were consistent with the material that Bates' pants were made of. A knife case was found near the victim's body, and that case was identified by various witnesses as being the exact type that Bates wore. The victim's two fatal stab wounds were consistent with the type of buck knife that Bates carried in that case. The consistency between the stab wounds and Bates' knife was striking; the wounds were four inches deep, and Bates' knife was four inches long; the width of the wounds was consistent

> with the width of Bates' knife; and as was testified to at the resentencing, there were abrasions at the bottom of the wound that were consistent with marks that Bates' knife would have made. Bates' statements to investigators and at his trial also placed him either at the scene of the crime or directly involved in the victim's murder. Bates stated during a telephone call to his wife after his arrest that he killed a woman.

*Bates v. Sec'y, Fla. Dep't of Corr.*, 768 F.3d 1278, 1284–85 (11th Cir. 2014) (block quoting this Court's recitation of the facts in *Bates v. State*, 3 So. 3d 1091, 1099 (Fla. 2009)).[2] A jury unanimously convicted Bates of first-degree murder, kidnapping, attempted sexual battery, and armed robbery, and recommended death by an 11-1 vote. (GuiltDA2:202–03, 210.)

The court then imposed the following four sentences: (1) death for first-degree murder (GuiltDA2:202–03, 221–25); (2) a consecutive life sentence for kidnapping (GuiltDA2:220); (3) a consecutive fifteen-year sentence for attempted sexual battery; (GuiltDA2:226); and (4) a consecutive life sentence for armed robbery (GuiltDA2:227).

This Court affirmed Bates' convictions and non-capital

[2] See the Secretary's contemporaneously filed response to Bates' third state habeas petition in SC2025-1128 for a detailed description of the crime.

sentences but struck two aggravators and remanded for reweighing of aggravation and mitigation. *Bates v. State*, 465 So. 2d 490, 492–93. (Fla. 1985). On remand, the court permitted Bates to introduce more mitigation, reweighed the aggravation and mitigation, and again imposed death. *Bates v. State*, 506 So. 2d 1033, 1034–35 (Fla. 1987). This Court affirmed Bates' death sentence. *Id.*

Florida's Governor signed a death warrant for Bates in 1989. *Bates v. Dugger*, 604 So. 2d 457, 458 (Fla. 1992). But the circuit court found counsel ineffectively investigated and presented mitigation. *Id.* at 458–59. This Court affirmed that decision and remanded for resentencing. *Id.*

Bates' operative resentencing occurred in May 1995. (SentenceDA9:1–SentenceDA15:838.) The jury recommended death by a 9-3 vote. (SentenceDA3:485.) The court agreed and imposed death after evaluating three aggravating[3] and ten mitigating[4]

---

[3] (1) murder committed during an enumerated felony (kidnapping and attempted sexual battery); (2) murder committed for pecuniary gain; and (3) heinous, atrocious, or cruel. (SentenceDA3:548–551.)

[4] (1) no significant history of prior criminal history (significant weight); (2) some emotional disturbance (significant weight); (3) some inability to conform his conduct to law (significant weight); (4) age (little weight); (5) family background (some weight); (6) volunteer

circumstances and finding "as did the advisory jury, that the aggravating factors outweigh all of the mitigating factors." (SentenceDA3:548–559.) This Court affirmed Bates' sentence, which became final in October 2000. *Bates v. State*, 750 So. 2d 6, 8 (Fla. 1999), *cert. denied*, 531 U.S. 835 (2000).

Over the next decades, Bates unsuccessfully sought both state postconviction relief, including through two state habeas petitions, and 28 U.S.C. § 2254 relief. *Bates v. State*, 3 So. 3d 1091, 1107 (Fla. 2009) (affirming denial of initial state postconviction and initial state habeas relief); *Bates v. Sec'y, Fla. Dep't of Corr.*, 768 F.3d 1278, 1284 (11th Cir. 2014) (affirming denial of federal relief); *Bates v. State*, 238 So. 3d 98, 99 (Fla. 2018) (affirming denial of *Hurst*[5] relief and denying Bates' second state habeas petition).

This Court also rejected his postconviction requests for DNA testing and to interview a juror. *Bates v. State*, 218 So. 3d 426, 427–28 (Fla. 2017) (affirming denial of second request for DNA

---

national guard service (little weight); (7) dedicated solider and patriot (little weight); (8) low-average IQ (little weight); (9) loves wife, children, and was a supportive father (some weight); and (10) good employee (little weight). (SentenceDA3:551–559.)

[5] *Hurst v. Florida*, 577 U.S. 92 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016).

testing while recounting the first request); *Bates v. State*, 398 So. 3d 406, 408 (Fla. 2024) (affirming denial of juror interview request).

Governor Ron DeSantis signed Bates' second death warrant on July 18, 2025, with the execution scheduled for August 19, 2025. Shortly thereafter, Bates unsuccessfully sought clemency-related records from the Executive Office of the Governor (EOG), Florida Commission on Offender Review (FCOR), and lethal-injection records from the Florida Department of Corrections (DOC), Florida Department of Law Enforcement (FDLE), and District 8 Medical Examiner (8ME). (WPCR:168–213, 309–21, 324–332, 340–53.)

Bates filed his post-warrant state postconviction motion raising four claims: (1) his operative penalty phase in 1995 violated the Eighth Amendment because substantial evidence of brain damage was never presented in 1995; (2) his operative penalty phase in 1995 violated due process and the Eighth Amendment because the jury was misled into believing its only recommendation options were life with parole and death; (3) his clemency process violated minimal due process because he had no opportunity to discover and rebut information in the clemency materials; and (4) the short warrant period and denial of access to lethal injection

records violated numerous constitutional rights. (WPCR:423–48.)

The State answered the motion and urged summary denial. (WPCR:760–84.) The circuit court summarily denied all Bates' claims after holding a *Huff*[6] hearing, and Bates then timely appealed to this Court. (WPCR:895–910, 955.)[7]

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

[7] The State will recount additional facts as they are relevant to the legal analysis of each issue Bates presents below.

## ARGUMENT SUMMARY

### Issue 1: Substantial-Omitted-Mitigation Claim

The postconviction court properly summarily denied Bates' first post-warrant claim that the failure to consider unpresented, substantial evidence of brain damage violates the Eighth Amendment. This claim untimely relates to events occurring in 1995 and manifest injustice is not a timeliness exception. Bates' litigation and relitigation of variations of this claim before also renders it procedurally barred, and it does not fall within the manifest injustice exception to that bar. Finally, the claim is legally insufficient because the Eighth Amendment does not require consideration of evidence not presented in a capital penalty phase under controlling United States Supreme Court precedent.

This Court should affirm the summary denial of claim 1.

### Issue 2: Misleading-the-Jury Claim

The postconviction court also properly summarily denied Bates' second post-warrant claim that it violated due process and the Eighth Amendment for the jury to mistakenly believe he would be paroled if given life. This untimely claim relates to events well known in 1995 and is barred by prior litigation.

But it is also legally insufficient for two reasons. First, Bates' request that this Court overturn its prior decision in his case on constitutional grounds means he is relying on new rules of constitutional law that did not exist when his sentence became final. Those new rules are not retroactive under federal or state law, so his claim is legally insufficient.

Second, Bates did not demonstrate this Court's prior decision in his case is clearly erroneous, and the State's and victims' reliance interests counsel against receding from it anyway.

This Court should affirm the summary denial of claim 2.

**Issue 3: Clemency Claim**

Bates' third claim challenging the clemency process he received was properly summarily denied as well. The claim was untimely raised, procedurally barred, and legally insufficient under this Court's long-settled precedent holding confidential clemency proceedings comport with due process.

This Court should affirm the summary denial of claim 3.

**Issue 4: 31-Day-Warrant and Record-Denial Claim**

Bates' argument that the summary denial of his claim alleging the 31-day warrant period and denial of access to lethal injection

records violated a slew of constitutional rights fails as a matter of law. This Court has repeatedly rejected these claims. Further, Bates raised a previous lethal injection challenge and does not explain how the warrant period precluded him from investigating and raising another one pre-warrant. Capital defendants cannot wait until a warrant to timely raise lethal injection challenges under this Court's precedent.

This Court should affirm the summary denial of claim 4.

**Issue 5: Lethal-Injection and Clemency-Related Records Denial**

The circuit court did not abuse its discretion by denying Bates' demands for lethal-injection and clemency-related records. This Court has repeatedly rejected constitutional attacks on Florida Rule of Criminal Procedure 3.852 and held neither clemency nor lethal injection records relate to colorable claims for relief absent unusual circumstances. Bates also failed to timely seek these records or show good cause for waiting until after his death warrant to do so.

This Court should affirm because the circuit court did not abuse its discretion in denying Bates these records.

## STANDARD OF REVIEW

**Issues 1–4**: This Court reviews the summary denial of a postconviction claim *de novo*. *E.g.*, *Tanzi v. State*, 407 So. 3d 385, 390 (Fla. 2025). Summary denial is proper when the claim is: "[1] untimely, [2] procedurally barred, [3] legally insufficient,[8] or [4] refuted by the record." *Hutchinson v. State*, No. SC2025-0517, 2025 WL 1198037, at *3 (Fla. Apr. 25, 2025). Further, "mere conclusory allegations do not warrant an evidentiary hearing." *Cole v. State*, 392 So. 3d 1054, 1061 (Fla. 2024).

**Issue 5**: This Court reviews the denial of public records demands for abuse of discretion. *Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404, at *6 (Fla. July 22, 2025). "Discretion is abused only when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable person would take the view adopted by the trial court." *Id.* at 7.

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

## THE GREAT WRIT

Bates relies on the rhetorical power of the Great Writ to exalt his first two repetitive and abusive claims into something more sacred. But his arguments misuse and trivialize the Great Writ enshrined in our State Constitution. The issues pending before this Court have absolutely nothing to do with the Great Writ. Bates' arguments are based on a complete misunderstanding of what the Great Writ protects and constitute an abuse of the writ anyway.

The habeas corpus provision of the Florida Constitution, Article I, section 13, provides:

> The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety.

This provision was first adopted in 1838 and reflects the common law understanding of the Great Writ. Art. I, § 11, Fla. Const. (1838).[9] Its purpose was "to obtain immediate relief from unlawful

[9] *State ex rel. Deeb v. Fabisinski*, 111 Fla. 454, 460, 152 So. 207, 209 (Fla. 1933) (stating "habeas corpus ad subjiciendum et recipiendum," commonly known as the Great Writ, was a "high prerogative writ" the object of which was the "liberation of those imprisoned without sufficient cause"); *Skipper v. Schumacher*, 124 Fla. 384, 402, 169 So. 58, 66 (Fla. 1936) (explaining that the

imprisonment without sufficient legal reasons." *Henry v. Santana*, 62 So. 3d 1122, 1125 (Fla. 2011). The same Great Writ is enshrined in both state and federal constitutions. *Id.*

Historically, the Great Writ was limited to prisoners "confined by the King without trial." *Edwards v. Vannoy*, 593 U.S. 255, 284 (2021) (Gorsuch, J., concurring). If, however, the prisoner was confined after being convicted of a crime, "the inquiry was usually at an end." *Id.* at 284. "Custody pursuant to a final judgment was proof that a defendant had received the process due to him." *Id. See also DHS. v. Thuraissigiam*, 591 U.S. 103, 119 (2020) (explaining habeas is, at its core, a remedy for unlawful detention).

The United States Supreme Court recently explained that the "Great Writ," enshrined in the U.S. Constitution under Article 1, section 9, clause 2, and the habeas statute, 28 U.S.C. § 2254, enacted in 1867, are not the same. *Brown v. Davenport*, 596 U.S. 118, 127–28 (2022). The Court explained that the writ of habeas

---

function of the writ of habeas corpus is not to determine whether a person has committed the crime or the justice of his detention on the merits, but to determine whether he is illegally imprisoned); *Allison v. Baker*, 152 Fla. 274, 275, 11 So. 2d 578, 579 (1943) (stating the writ of habeas corpus is a high prerogative "writ of ancient origin" designed to obtain immediate relief from unlawful imprisonment without sufficient legal reasons).

corpus ad subjiciendum, often called the "Great Writ," applied when "English monarchs jailed their subjects summarily and indefinitely." *Davenport*, 596 U.S. at 128. Common-law courts employed the writ to compel the crown to explain its actions—and, if necessary, ensure adequate process, such as a trial, before allowing further detention. *Id.*

The Court also explained that a prisoner could not use the Great Writ "to challenge a final judgment of conviction issued by a court of competent jurisdiction." *Davenport*, 596 U.S. at 128. The purpose of the Great Writ "was to ensure due process attended an individual's confinement," and "a trial was generally considered proof he had received just that." *Id.* This same understanding of the Great Writ's role applied in America: a "judgment of conviction after trial was conclusive on all the world" and "*itself* sufficient cause" for detention. *Id.* (citing *Ex parte Watkins*, 3 Pet. 193, 202–03 (1830) with emphasis). The Great Writ's role therefore ended the moment a judgment issued after trial. *Davenport*, 596 U.S. at 128–29.

By contrast and unlike the Great Writ, the federal habeas statute had been enacted by Congress in the wake of the Civil War, to allow federal courts to issue habeas writs to state custodians. *Id.*

at 127-28. The constitutional Great Writ and federal habeas review under the statute are quite different. *Id.* at 127–31.

The Great Writ has no application to Bates' case because he was convicted and sentenced to death by a court of competent jurisdiction. (SentenceDA3:548–59.) This judgment and sentence is "itself" sufficient cause for Bates' detention. *See Davenport*, 596 U.S. at 129. The Great Writ's office has therefore ended and provides no vehicle for Bates to attack his long-final judgment yet again. *See Jones v. Hendrix*, 599 U.S. 465, 482–88 (2023) (rejecting the argument that failing to allow federal prisoners to a second chance at postconviction relief violates the suspension clause).

Bates' appellate claims sound only in Florida's postconviction system, which is substantively governed by statutory law and procedurally governed by Florida Rule of Criminal Procedure 3.851. These sources of law, while by no means either toothless or unimportant, should never be confused with the Great Writ enshrined in Article I, section 13 of the Florida Constitution.

But even if Bates could properly invoke the Great Writ, all he could prove is an abuse of it. He filed two habeas petitions, denied

by this Court in 2009[10] and 2018[11] respectively, and his attacks on his 1995 penalty phase could have been pursued in either of those petitions. That renders his first two issues, even improperly clothed in Great Writ garb, an abuse of the writ. *See Card v. Dugger*, 512 So. 2d 829, 831 (Fla. 1987) (holding a second state habeas petition raising issues that could have been raised in the first petition was an abuse of the writ).

[10] *Bates v. State*, 3 So. 3d 1091, 1107 (Fla. 2009).

[11] *Bates v. State*, 238 So. 3d 98, 99 (Fla. 2018).

## ARGUMENT

In 1982, Bates kidnapped, robbed, attempted to sexually batter, and brutally stabbed J.W. to death. He received exhaustive judicial review over the past decades, including two prior remands for reconsideration of his death sentence. Each remand simply yielded another death sentence. Florida Governor Ron DeSantis signed Bates' death warrant on July 18, 2025, with the execution scheduled for August 19, 2025.

Bates appeals to this Court raising five issues surrounding the lower court's summary denial of his four post-warrant claims and denial of access to public records. The State will address each issue in turn, but not one warrants relief. Bates forfeited his right to live when he brutally stabbed a young woman to death after kidnaping, robbing, and attempting to sexually batter her.

The simple truth is Bates has been living on borrowed time for decades while his victims awaited the justice they are now entitled to under our Constitution. *See* Art. I, § 16(b)(10), (d), Fla. Const. There is no more time left for Bates to borrow. This Court should affirm all issues raised and allow true finality in this case.

1. THE POSTCONVICTION COURT CORRECTLY SUMMARILY REJECTED BATES' CLAIM THAT A CAPITAL SENTENCE IMPOSED WITHOUT CONSIDERATION OF SUBSTANTIAL MITIGATION VIOLATES THE EIGHTH AMENDMENT.

Bates' first issue asserts that the absence of what he deems substantial mitigation regarding brain damage from his 1995 penalty phase violated the Eighth Amendment. He seeks to create a new Eighth Amendment rule that invalidates capital sentences imposed without consideration of substantial mitigation. This rule, in his view, applies regardless of the reason the mitigation went unpresented.

The circuit court correctly rejected this claim as untimely and procedurally barred. But it is also legally insufficient because the Eighth Amendment rule Bates relies on for this issue does not exist and is contrary to current caselaw.

***Relevant Facts***

On May 22, 1995, after deposing Dr. Crown in the middle of Bates' 1995 penalty phase, the State sought an MRI to counteract his testimony that Bates had brain damage. (SentenceDA11:320–25.) Defense counsel objected, in part, that none of the "functional deficits" or "impairments" Dr. Crown found would "likely show up

on an MRI or a CAT Scan and, in fact, we would contend that either of those test results would basically serve no purpose for this jury or the court." (SentenceDA11:325, 329.)

After the MRI showed no evidence of brain damage, counsel unsuccessfully requested additional testing and experts. (SentenceDA13:506–09.) Later, counsel objected to the court's denial of his request on constitutional grounds and argued he was being forced to abandon Dr. Crown's testimony because the court denied him the "money" and "expertise" to "rebut" the State's MRI. (SentenceDA13:529–34.) The court overruled the objection and noted the defense had argued that "certain things that Dr. Crown would testify to such as functional deficits would not show up on an MRI or a CAT Scan and they were functional matters as opposed to something that would show up on tangible testing, alone." (SentenceDA13:533–34.)

Dr. Crown did not testify at Bates' 1995 penalty phase.

Bates subsequently raised an ineffective-assistance-of-counsel claim regarding the failure to call Dr. Crown. *See Bates v. State*, 3 So. 3d 1091, 1100–02 (Fla. 2009). This Court held counsel's failure to call Dr. Crown did not constitute deficient performance and

Bates suffered no prejudice anyway because Dr. Crown's testimony was not important enough. *Id.*

***Ruling Below***

The circuit court summarily denied Bates' claim that failure to present Dr. Crown's brain-damage-mitigation testimony at Bates' penalty phase violated the Eighth Amendment as untimely, procedurally barred, and outside the manifest-injustice exception. (WPCR:898–900.)

***Appellate Presentation***

Bates' only properly presented issue is whether his 1995 penalty phase violated the Eighth Amendment because brain-damage mitigation was not introduced. As he did below, Bates throws several complaints into this issue that are not clearly tied to the legal issue he presents. That includes, for instance, an argument that his first penalty phase counsel (who was later held ineffective) "had done nothing to investigate or document Mr. Bates's mental status at the time of offense. This critical period was lost." (IB:24). But Bates does not explain how the various randomly asserted facts matter in the analysis of his Eighth Amendment claim. *See Allen v. State*, No. SC2023-1662, 2025 WL 1830814, at

*10 (Fla. July 3, 2025) (holding an issue "inadequately briefed" when it failed to engage with the correct legal analysis).

Likewise, the first issue in Bates' Initial Brief is chock full of conclusory references to constitutional error. For example, he references "*Ake v. Oklahoma*, 470 U.S. 68 (1985)," the confrontation clause, and due process to argue he should have been entitled to an expert to rebut the State's MRI. (IB:33). But he does not engage with the legal analysis for any of these sources of law. Throwing conclusory assertions in a brief does not properly present an issue. *Cole v. State*, 392 So. 3d 1054, 1065–66 & n.18 (Fla. 2024).

That is doubly true since, to the extent these are separate claims, Bates was required to separately plead and enumerate them below. *See* Fla. R. Crim. P. 3.851(e)(1) (requiring that each claim be separately pleaded and sequentially numbered)*; Brown v. State*, 304 So. 3d 243, 272 (Fla. 2020).[12] *See also Hutchinson v. State*, 408 So. 3d 752, 755 (Fla. 2025) (agreeing with the State that an improperly pleaded and conclusory claim was insufficiently presented to the

[12] *See also Raulerson v. Warden*, 928 F.3d 987, 1005 (11th Cir. 2019) (explaining a claim is an operative factual basis tied to a specific source of law); *Green v. Sec'y, Dep't of Corr.*, 28 F.4th 1089, 1159 (11th Cir. 2022) (recommending Florida Courts require "more straightforward post-conviction pleading" to prevent abuses).

trial court). This Court should not tolerate the tiresome tact of capital defendants throwing numerous separate claims of constitutional error into a single claim in violation of Florida Rule of Criminal Procedure 3.851(e)(1).

For its part, the State will solely analyze Bates' only properly presented issue: is the Eighth Amendment violated by the omission of substantial brain-damage mitigation in a capital penalty phase?

***Untimely***

The circuit court properly summarily denied Bates' Eighth Amendment claim as untimely. Dr. Crown's brain-damage testimony, and the failure to present it to the jury, has been known and litigated since Bates' 1995 penalty phase two decades ago. Bates makes no attempt to fit this claim into Rule 3.851(d)(2)'s exceptions.[13]

Bates relies on the manifest injustice exception to circumvent the time-bars to this claim. *See generally State v. McBride*, 848 So.

[13] Dr. Ouaou's post-warrant evaluation does not make this claim timely. *E.g.*, *Davis v. State*, No. SC2024-1128, 2025 WL 1970014, at *5 (Fla. July 17, 2025) ("merely obtaining a new expert" is not enough to establish timeliness); *Gudinas v. State*, No. SC2025-0794, 2025 WL 1692284, at *3–4 (Fla. June 17, 2025) (rejecting the argument a post-warrant evaluation revealing brain damage was timely).

2d 287, 291 (Fla. 2003). But he cites no authority suggesting manifest injustice permits a defendant to wait to litigate (or relitigate) a claim until after his warrant is signed. He would be hard pressed to do so since manifest injustice is an equitable remedy[14] and equity is not on the side of capital defendants who wait to litigate, or relitigate, claims until after a warrant is signed.[15]

This Court has affirmatively recognized that the time limits in Rule 3.851 do not disappear once a warrant is signed. *Gudinas v. State*, No. SC2025-0794, 2025 WL 1692284, at *7–8 (Fla. June 17, 2025). It has also repeatedly rejected post-warrant, brain-damage claims on untimeliness grounds.[16]

---

[14] *See Spear v. MacDonald*, 67 So. 2d 630, 635 (Fla. 1953) ("The complaint in this case presents a classic example of a situation where equity not only has the power to but should afford relief in order to prevent a manifest injustice never contemplated by a single soul to the transaction.").

[15] *Bucklew v. Precythe*, 587 U.S. 119, 151 (2019) (encouraging courts to invoke their "equitable powers" to "dismiss or curtail suits that are pursued in a dilatory fashion or based on speculative theories").

[16] *E.g.*, *Gudinas*, 2025 WL 1692284, at *4 (holding newly discovered evidence claim relating to brain damage was untimely); *Owen v. State*, 364 So. 3d 1017, 1025–27 (Fla. 2023) (holding a brain damage mitigation claim untimely).

Rule 3.851(d)(2) contains no timeliness exception for manifest injustice. Instead, it commands: "*No* motion may be filed or considered under this rule if filed beyond the time limitation provided in subdivision (d)(1)" unless it meets one of three enumerated timeliness exceptions. Fla. R. Crim. P. 3.851(d)(2) (emphases added). *Cf. Cuffy v. State*, 190 So. 3d 86, 87 (Fla. 4th DCA 2015) (noting Rule 3.850—the non-capital version of Rule 3.851—"contains no 'manifest injustice' exception" to time limits).

Manifest injustice is not a timeliness exception recognized by Rule 3.851 and does not allow a capital defendant to litigate (or relitigate) untimely, long-known claims challenging a penalty phase that occurred thirty years ago. If a manifest injustice occurred, the proper time to raise it was decades ago and certainly not after the signing of a warrant. The State has been marshaling its resources for decades and the victims have endured the prolonged pain of waiting for justice. The only manifest injustice here would be allowing Bates to raise a long-untimely claim. *See Calderon v. Thompson*, 523 U.S. 538, 556–58 (1998).

"Protecting against abusive delay *is* an interest of justice." *Martel v. Clair*, 565 U.S. 648, 662 (2012). The time limits in Rule

3.851 ensure that claims are timely raised or not at all. A post-warrant capital defendant's desire to relitigate every aspect of a decades' old proceeding does not create a manifest injustice, which is not an exception to Rule 3.851's time limits or the Legislature's express intent anyway. *See* § 924.051(8), Fla. Stat. (requiring "all terms and conditions" of "collateral review be strictly enforced, including the application of procedural bars, to ensure that all claims of error are raised and resolved at the first opportunity" instead of the last); *Jones v. Hendrix*, 599 U.S. 465, 482–87 (2023) (holding there is no constitutional right to have a second shot at postconviction review).

This Court should affirm the summary denial on untimeliness grounds and hold manifest injustice is no exception to timeliness under Rule 3.851. Manifest injustice arguments must be timely raised or not at all.

***Procedurally Barred***

The circuit court also properly summarily denied this claim as procedurally barred. The failure to present Dr. Crown's brain-damage mitigation has been a feature of Bates' unsuccessful claims over the years. *See Bates v. State*, 750 So. 2d 6, 15–17 (Fla. 1999)

(rejecting the argument that "the trial court's refusal to appoint the additional experts compelled him to abandon a significant mental health defense involving organic brain damage"); *Bates v. State*, 3 So. 3d 1091, 1100–02 (Fla. 2009) (rejecting Bates' claims that "he was deprived of a competent mental health expert in violation of *Ake v. Oklahoma,* 470 U.S. 68 (1985)" and that counsel ineffectively failed to present Dr. Crown). That renders it procedurally barred now. *See Gudinas v. State*, No. SC2025-0794, 2025 WL 1692284, at *4 (Fla. June 17, 2025) (procedurally barring a claim related to "brain impairment" as a variation of a prior claim that counsel failed to present evidence that the defendant had a brain impairment).

Procedurally barring claims related to Bates' supposed brain damage does not constitute a manifest injustice. *Owen v. State*, 364 So. 3d 1017, 1026–27 (Fla. 2023) (procedurally barring a brain-damage-mitigation claim did not constitute a manifest injustice).[17] This Court has already concluded Dr. Crown's evidence was

[17] *See also James v. State*, 404 So. 3d 317, 328 (Fla. 2025) (rejecting a manifest injustice argument); *Ford v. State*, 402 So. 3d 973, 983 (Fla. 2025) (same); *Dillbeck v. State*, 357 So. 3d 94, 105 (Fla. 2023) (rejecting manifest injustice argument based on an allegedly invalid aggravator).

insignificant considering the rest of Bates' mitigation. *Bates*, 3 So. 3d at 1102. Bates' speculative and overstated assertions about the impact of Dr. Crown's testimony do not show a manifest injustice occurred back in 1995 when his testimony was not presented.

At their core, Bates' manifest-injustice arguments are simply a rehash of the twice-rejected argument that bars to merits' review should not apply after a warrant is signed because executing a defendant whose prior proceedings were tainted with any error is a grave injustice that should be evaluated without procedural hurdles. *See Gudinas v. State*, No. SC2025-0794, 2025 WL 1692284, at *7–8 (Fla. June 17, 2025) (citing *Ford v. State*, 402 So. 3d 973, 977 (Fla. 2025)). The manifest-injustice exception Bates seeks would swallow the rule, utterly defeat the Legislature's intent, and encourage capital defendants to hold back claims until a warrant is signed to obtain a stay. *See McCray v. State*, 699 So. 2d 1366, 1368 (Fla. 1997) (emphasizing the importance of bars to prevent capital defendants from abusing the judicial process and clogging court dockets with belated claims); § 924.051(8), Fla. Stat.

This Court should affirm the summary denial of Bates' first claim as procedurally barred.

***Merits***

Bates' first claim below failed to raise a valid Eighth Amendment issue and was therefore properly summarily denied as legally insufficient. The Eighth Amendment provides that "cruel and unusual punishment" shall not "be inflicted." U.S. Const. amend. VIII.[18] In Florida, "the Eighth Amendment is both the floor and the ceiling for protection from cruel and unusual punishment." *Barwick v. State*, 361 So. 3d 785, 794 (Fla. 2023). This Court lacks authority to extend Eighth Amendment jurisprudence beyond the Supreme Court's limits. *Gudinas v. State*, No. SC2025-0794, 2025 WL 1692284, at *6 (Fla. June 17, 2025).

The Eighth Amendment generally guarantees capital defendants the right to present—and have the sentencer consider—relevant mitigation that is not unduly prejudicial, confusing, or misleading. *United States v. Tsarnaev*, 595 U.S. 302, 317–24 (2022) (Capital penalty phases are not "evidentiary free-for-alls."). But it does not require consideration of mitigation or evidence a defendant

[18] This prohibition is incorporated against the States under the Fourteenth Amendment's Due Process Clause. *E.g.*, *Jones v. Mississippi*, 141 S. Ct. 1307, 1314 (2021); *United States v. Georgia*, 546 U.S. 151, 157 (2006).

did not present in his penalty phase. *See Blystone v. Pennsylvania*, 494 U.S. 299, 301, 304–09 & n.4 (1990); *Bell v. State*, 336 So. 3d 211, 216–18 & n.9 (Fla. 2022).[19] *Cf. Hutchinson v. State*, No. SC2025-0517, 2025 WL 1198037, at *5 (Fla. Apr. 25, 2025) (There is no "absolute right to present mitigating evidence at any time.").

The Supreme Court has affirmatively held the Eighth Amendment permits the *mandatory* imposition of a death sentence where the State proves aggravation and the defendant presents no mitigation. *Blystone*, 494 U.S. at 301, 304–09 & n.4. In *Blystone*, the Supreme Court held that the mitigation-related "dictates of the Eighth Amendment" were satisfied "by allowing the jury to consider all relevant mitigating evidence" despite the defendant choosing to present zero mitigation. *Id.* at 307–08. Under *Blystone*, the mere failure to present mitigation, even substantial mitigation, at Bates'

[19] *See also Silagy v. Peters*, 905 F.2d 986, 1008 (7th Cir. 1990) (rejecting the argument that a capital defendant's "decision not to present mitigating evidence during the sentencing phase of his trial so undermined the reliability of his sentence that it cannot stand under the guarantees of the" Eighth Amendment); *United States v. Roof*, 10 F.4th 314, 356 (4th Cir. 2021) (recognizing "the Supreme Court has not indicated that the Eighth Amendment, or any other Amendment, requires mitigation evidence" as opposed to just the option to present mitigation).

1995 penalty phase cannot violate the Eighth Amendment.[20]

Bates' attempt below to distinguish *Blystone* away as a mitigation-waiver case misreads the case and completely misunderstands its holding. The question in *Blystone* was whether the Eighth Amendment permitted mandatory imposition of a death sentence when effectively no mitigation was presented. The Supreme Court answered yes as a matter of Eighth Amendment law and without regard to the reason mitigation was omitted. That holding stands directly contrary to Bates' assertion that the Eighth Amendment precludes imposition of a death sentence without consideration of substantial mitigation.

*Blystone*'s holding did not turn on a waiver of Eighth Amendment protections. Instead, the Court held the Eighth Amendment's mitigation-related constraints were *satisfied* by the untaken opportunity to admit mitigation. The defendant's failure to present mitigation was simply background to the holding that the

---

[20] *Cf. also Hannon v. State*, 941 So. 2d 1109, 1125 (Fla. 2006) (the Sixth Amendment "does not require defense counsel to present mitigating evidence at sentencing in every case"); *Chandler v. United States*, 218 F.3d 1305, 1319 (11th Cir. 2000) (en banc) (counsel has no absolute duty to introduce all available mitigating evidence); *Jenkins v. Comm'r, Ala. Dep't of Corr.*, 963 F.3d 1248, 1268 (11th Cir. 2020) (same).

Eighth Amendment permitted automatic imposition of a death sentence when effectively no mitigation was presented. The Eighth Amendment rule the Court applied did not depend on any mitigation waiver and does not change in non-waiver cases.

*Blystone* defeats the basic premise of Bates' argument that a capital sentence imposed without consideration of substantial, unpresented mitigation violates the Eighth Amendment. Under *Blystone*, a capital sentence can be automatically imposed when effectively no mitigation is presented without regard to whether substantial mitigation exists.

In a similar vein, this Court held that a penalty phase court's failure to investigate unpresented mitigation does not violate the Eighth Amendment. *See Bell*, 336 So. 3d at 216–18 & n.9 (holding the court was not required to investigate unpresented mitigation after a *pro se* capital defendant presented some mitigation).

This well-established precedent squarely contradicts Bates' argument that a sentence imposed without consideration of substantial (in his view) mitigation violates the Eighth Amendment. Bates' view would have required the Supreme Court in *Blystone* to remand for investigation of whether there was substantial

outstanding mitigation. But the Supreme Court did not do so. It instead affirmed and held the completely untaken opportunity to present mitigation satisfied the Eighth Amendment and permitted mandatory imposition of a death sentence. *Blystone*, 494 U.S. at 301, 304–09 & n.4. *See also Bell*, 336 So. 3d at 216–18 & n.9.

At its core, Bates' arguments seek to constitutionalize the procedures employed by this Court in *Muhammad*,[21] expand them beyond mitigation-waiver cases to all capital cases, mandate court-appointment of special counsel in every capital case, require special counsel to discover and admit "substantial" mitigation even over the objection of a defendant or his counsel, and require vacation of capital sentences if these procedures failed to capture substantial mitigation. His position is contrary to both *Blystone* and *Bell*.

Indeed, Bates' unwarranted attempt to expand and constitutionalize *Muhammad* is further undermined by the fact that the procedures *Muhammad* established lack any sound basis in law. This Court referred to the *Muhammad* procedures as "policy" requirements when adopting them and cited no constitutional basis

[21] *Muhammad v. State*, 782 So. 2d 343, 363 (Fla. 2001), *modified by Marquardt v. State*, 156 So. 3d 464 (Fla. 2015).

(state or federal) in support. *See Muhammad*, 782 So. 2d at 363.

These "policy" requirements were adopted to facilitate a generalized "constitutional imperative" to conduct proportionality review stemming from Florida constitutional law alone rather than the Eighth Amendment. *See id.* at 365; *Urbin v. State*, 714 So. 2d 411, 416 (Fla. 1998) (exclusively citing two provisions of the Florida Constitution as the basis for comparative proportionality review).[22]

Since *Muhammad*'s "policy" requirements were founded in the need to conduct proportionality review under state constitutional law (not the Eighth Amendment), they are no longer valid. *See Cruz v. State*, 372 So. 3d 1237, 1240–44 (Fla. 2023) (eliminating relative-culpability as a subset of proportionality, which the court eliminated in *Lawrence v. State*, 308 So. 3d 544, 552 (Fla. 2020)).

"Given the shaky foundation on which" *Muhammad* rests, the last thing this Court should consider is constitutionalizing and expanding it based on vague and not directly applicable Eighth Amendment principles when controlling precedent points the other

[22] The Eighth Amendment does not require comparative proportionality review at all. *See Lawrence v. State*, 308 So. 3d at 544, 548–52 (Fla. 2020); *Pulley v. Harris*, 465 U.S. 37, 50- 51 (1984) (holding "comparative proportionality review" is not required by the "Eighth Amendment").

way. *See generally Wolf v. State*, No. SC2023-1077, 2025 WL 1901412, at *16 (Fla. July 10, 2025) (Sasso, J., concurring).

And despite "his invocation of vague constitutional principles," Bates cites nothing in support of the idea that the Eighth Amendment is violated by the sentencers' failure to consider substantial unpresented mitigation. *See Hutchinson*, 2025 WL 1198037, at *5. Instead, he seeks an unwarranted expansion of Eighth Amendment caselaw contrary to controlling precedent from the highest courts in this state and country. *See Blystone*, 494 U.S. at 304–09 & n.4; *Bell*, 336 So. 3d at 216–18 & n.9. That renders his claim legally insufficient, especially because this Court lacks authority to grant more Eighth Amendment protection than the United States Supreme Court provided in *Blystone*. *Barwick v. State*, 361 So. 3d 785, 794 (Fla. 2023) (explaining the Florida Constitution's conformity clause prohibits this Court from extending Eighth Amendment jurisprudence beyond the bounds set by the United States Supreme Court).

Further, "to the extent that" Bates "is arguing that his brain damage categorically exempts him from the death penalty, he is wrong." *See Hutchinson*, 2025 WL 1198037, at *6 & n.10; *Dillbeck v.*

*State*, 357 So. 3d 94, 100 (Fla. 2023) (explaining individuals with brain damage are not exempt from execution).

Below, Bates protested that he is not raising an exemption-from-execution claim but rather attempting to show his case is not among the most aggravated and least mitigated of cases. His arguments seem to suggest the death penalty is disproportionate in his case after consideration of his omitted mitigation. The State analyzes this argument that way.

At the outset, it is important to recognize there are two types of proportionality review: (1) "an abstract evaluation of the appropriateness of a sentence for a particular crime" (gross disproportionality analysis) and (2) an evaluation of whether a capital sentence is "disproportionate to the punishment imposed on others convicted of the same crime" (comparative proportionality analysis). *Pulley v. Harris*, 465 U.S. 37, 43 (1984). Capital litigants often confuse these two types of proportionality analysis. *E.g., Hughes v. Johnson*, 191 F.3d 607, 622 (5th Cir. 1999) (explaining a claim that a sentence is disproportionate in a particular case based on mitigation falls into the second category and not the first).

Gross disproportionality analysis is constitutionally required

and of no help to Bates here because his jury convicted him of premeditated first-degree murder and his capital sentence is supported by three aggravators. (GuiltDA2:202; SentenceDA3:549–51.) Capital punishment is indisputably proportionate to aggravated and premeditated first-degree murder when the defendant falls into none of the three exemption-from-execution categories.[23] *See Tison v. Arizona*, 481 U.S. 137, 155–58 (1987) (holding death sentences are proportionate to the crime of felony murder when imposed on a major participant who acted with "reckless indifference to human life"); *United States v. Aquart*, 912 F.3d 1, 53 (2d Cir. 2018) (explaining settled Supreme Court precedent holds the death penalty is proportionate to "intentional murder" crimes). Since the death penalty is proportionate to aggravated, premeditated murder, Bates cannot rely on gross disproportionality analysis.

Instead, his argument fits within the category of comparative proportionality analysis. So analyzed, Bates' argument has a pair of individually dispositive problems. For one, this Court already

[23] (1) The intellectually disabled under *Atkins v. Virginia*, 536 U.S. 304, 311 (2002); (2) Individuals who commit murder while before the age of 18 under *Roper v. Simmons*, 543 U.S. 551, 574 (2005); and (3) Individuals incompetent to be executed under *Ford v. Wainwright*, 477 U.S. 399, 418 (1986).

conducted comparative proportionality review, determined Bates' sentence was proportionate, and later determined Bates' proposed mitigation was not substantial. *See Bates v. State*, 750 So. 2d 6, 12–13 (Fla. 1999) (rejecting Bates' proportionality argument); *Bates v. State*, 3 So. 3d 1091, 1101 (Fla. 2009) (holding failure to call "Dr. Crown at the resentencing did not prejudice Bates"). Regardless, however, comparative proportionality is *not* constitutionally required and offers Bates no relief from his death sentence. *Lawrence v. State*, 308 So. 3d at 544, 548–52 (Fla. 2020) (citing *Pulley v. Harris*, 465 U.S. 37, 50–51 (1984)). As a result, Bates' disguised attempt to escape his death sentence under a comparative proportionality analysis fails.

This Court should affirm summary denial because Bates' first claim was legally insufficient under the Eighth Amendment.

2. THE POSTCONVICTION COURT CORRECTLY SUMMARILY REJECTED BATES' CLAIM THAT MISLEADING HIS 1995 PENALTY PHASE JURY VIOLATED THE EIGHTH AMENDMENT AND DUE PROCESS.

Bates next issue contests the lower court's summary denial of his claim that it violated the Eighth Amendment and due process for his operative penalty phase jury in 1995 to mistakenly believe it could only recommend either life with parole or death.

He seeks a ruling from this Court that the Federal Constitution gave him the right to: (1) inform the jury of the consecutive sentences for his other crimes; (2) waive parole and tell the jury he was parole ineligible; and/or (3) elect sentencing under the then-recently amended first-degree murder statute, which precluded parole, and tell the jury he was parole ineligible.

This claim is untimely, procedurally barred, and legally insufficient.

***Relevant Facts***

In 1983, the court imposed three consecutive sentences for Bates' non-capital convictions: (1) life for kidnapping; (2) fifteen years for attempted sexual battery; and (3) life for armed robbery. (GuiltDA2:220, 226–227). This Court affirmed those sentences and they remain in effect to this day. *See Bates v. State*, 465 So. 2d 490,

492–93. (Fla. 1985).

During his operative resentencing proceedings, Bates unsuccessfully moved to waive eligibility for parole and/or apply a newly amended statute precluding parole for capital offenses to his penalty phase. (SentenceDA2:273–78, 335–38; SentenceDA4:637–43; SentenceDA7:1124; SentenceDA9:3; SentenceDA14:723.) He also, unsuccessfully, asked the court to instruct the jury about his consecutive sentences. (SentenceDA4:639; SentenceDA7:1124–28; SentenceDA15:771, 832.)[24]

At the outset of jury selection, the State told the prospective jurors that there were two possible sentences: Death or life in prison with eligibility for parole after twenty-five years. (SentenceDA7:1131.) Likewise, after jury selection, the court told the jury that the punishment was either death or life without parole eligibility for twenty-five years. (SentenceDA9:15.)

In closing argument, the State defined mitigation as evidence weighing in favor of a "sentence of life imprisonment with a minimum mandatory of twenty-five years before" the defendant

[24] These issues also came up at a prior penalty phase. (SentenceDA27:1451–64, 1496–1518; SentenceDA29:4–21.)

would be parole eligible instead of death. (SentenceDA15:779–80.) Bates' closing argument repeatedly emphasized that he would spend the rest of his life in prison and that death was not the appropriate penalty. (SentenceDA15:784, 788–90, 807, 820.) The court instructed the jury that its recommendation options were death and life without the possibility of parole eligibility for twenty-five years. (SentenceDA15:824, 829.)

Later, the jury asked: (1) "are we limited to the two recommendations of life with minimum 25 years or death penalty?" and (2) "can we recommend life without a possibility of parole?" (SentenceDA15:830.) The parties and court discussed the questions, with the State noting defense counsel's continual references to Bates spending the rest of his life in prison may have confused the jury and Bates' counsel asserting his arguments were proper due to Bates' other sentences. (SentenceDA15:830–33.) The court referred the jury to its instructions to answer the question. (SentenceDA15:833.)

After the jury announced it had a recommendation, Bates renewed his objection to the refusal to instruct the jury he would waive parole and spend the rest of his life in prison.

(SentenceDA15:834–35.) The jury recommended death by a 9-3 vote. (SentenceDA15:836.)

The State's sentencing memorandum urged the court to give the jury's recommendation great weight and impose death, but acknowledged the court must independently weigh the aggravating and mitigating circumstances. (SentenceDA3:525–32.) Bates argued the court could not sentence him to death because the jury's recommendation was based on an incorrect belief that Bates would be paroled at some point. (SentencingDA3:534–37, 543.) Bates also argued the jury's recommendation should be given no weight because of its incorrect belief. (SentencingDA3:535–37.)

The court imposed a death sentence after evaluating the aggravating and mitigating circumstances. (SentencingDA3:535–58.) Notably, the order does not indicate the court gave *any* weight to the jury's recommendation and only states the court agreed with the "advisory" jury that "the aggravating factors outweigh all of the mitigating factors." (SentencingDA3:557.)

On appeal, Bates asserted four relevant errors: (Issue 1) the court's failure to instruct the jury that "life without the possibility of parole was a sentencing alternative" violated the "Eighth and

Fourteenth Amendments"; (Issue 2) Bates' jury "rendered a death verdict" contrary to law; (Issue 3) "Bates was denied an individualized and reliable sentencing determination" because the court excluded evidence of his parole waiver and other sentences as mitigation; and (Issue 4) the totality of the circumstances required imposition of a life sentence on proportionality grounds. *Bates v. State*, SC1960-86180, Appellant's Initial Brief filed October 31, 1997, at ii–iv, 34–83.

This Court rejected each issue. *Bates v. State*, 750 So. 2d 6, 9–13 (Fla. 1999). It determined, as a matter of state law, the amended first-degree murder statute that mandated death or life without parole for first-degree murder convictions did not apply to Bates because "a law is presumed to apply prospectively" and there was no evidence the Legislature intended otherwise. *Id.* at 9–10. Bates' offer to waive any ex post facto challenge was "of no consequence" because the statute did not apply to him. *Id.* at 10.

This Court also rejected Bates' contention that he should be allowed to waive parole and inform the jury he was parole ineligible because a "defendant cannot by agreement confer on the court the authority to impose an illegal sentence." *Id.* at 11 (citing *Williams v.*

*State*, 500 So. 2d 501, 503 (Fla.1986)).

On Bates' argument the State inserted future dangerousness into his penalty phase, this Court held it unpreserved. *Id.* But the Court also reviewed the record and simply did "not agree that the State's cross-examination or" closing "argument raised the specter of appellant's future dangerousness." *Id.* Later, it again reiterated that "our review of the record causes us to find that the State did not violate *Hitchcock v. State*, 673 So. 2d 859, 860 (Fla. 1996), by injecting appellant's future dangerousness into its evidence or argument." *Bates*, 750 So. 2d at 11.

Bates' assertion that he should have been allowed to inform the jury of his three consecutive sentences (two for life and one for fifteen years) fared no better. *Id.* at 11. This Court noted that the "length of actual prison time is affected by many factors other than the length of the sentence imposed by the sentencing court." *Id.* Further, the "introduction of this evidence would open the door to conjecture and speculation as to how much time a prisoner serves of a sentence and distract jurors from the relevant issue of what is

the appropriate sentence for the murder conviction." *Id.*[25]

This Court thus affirmed the denial of Bates' attempt to tell the jury he was parole ineligible and inform it of his consecutive sentences. *Id.* at 9–13. Later, in initial state postconviction, Bates argued his counsel ineffectively litigated the parole-eligibility issue. *Bates v. State*, 3 So. 3d 1091, 1105 & n.11 (Fla. 2009). This Court rejected his attempt to relitigate the parole-eligibility issue as both procedurally barred and meritless. *Id.*

Bates relitigated these issues all the way to the Eleventh Circuit, which also rejected them. *Bates v. Sec'y, Fla. Dep't of Corr.*, 768 F.3d 1278, 1300–06 (11th Cir. 2014). The Eleventh Circuit summarized Bates' position as:

> his right to a fair capital sentence proceeding, as articulated in *Simmons v. South Carolina,* was violated at his 1995 resentencing by the trial court's refusal to instruct the jury either that: (1) it could impose a

[25] Prior to the "Stop Turning Out Prisoners Act" of 1995, prisoners could obtain gain time in a variety of ways and did not need to serve "a minimum of 85% of" the imposed sentence before release. See *West v. State*, 789 So. 2d 1123, 1124 (Fla. 3d DCA 2001). This Court held DOC could not apply the 85% rule to prisoners who committed crimes prior to the Act's effective date. *Gwong v. Singletary*, 683 So. 2d 109, 111–14 & n.1, n.2 (Fla. 1996). Prisoners could also obtain release via an "Emergency Gain Time statute" based on overcrowding. *See Gomez v. Singletary*, 733 So. 2d 499, 500–08 (Fla. 1998).

> sentence of life without the possibility of parole under the 1994 amendment to Fla. Stat. § 775.082; (2) he had agreed to waive parole eligibility under the pre-amendment version of that statute; or (3) he had already been sentenced to two life terms plus fifteen years on his other counts of conviction, all of which would run consecutively to any sentence he received for murder.

*Id.* at 1300.

The Eleventh Circuit addressed Bates' claims that the capital sentencing statute precluding parole eligibility applied to him and that he should have been entitled to tell the jury about his consecutive sentences. *See Bates*, 768 F.3d at 1301–06. It held that this Court's state-law determination "that the 1994 amendment to § 775.082 does not apply retroactively to Bates' criminal conduct and that he had no right under state law to waive his parole eligibility" defeated his parole-eligibility claim. *Id.* at 1303.

Governing federal law only required a "sentencing jury be informed of a defendant's parole ineligibility" when "the defendant is, as a matter of state law, absolutely ineligible for parole and the State places his future dangerousness at issue." *Id.* at 1302 (citing *Ramdass v. Angelone*, 530 U.S. 156, 166 (2000)). The court did not analyze whether the State's argument actually put future dangerousness at issue because Bates was not entitled to relief

even if the State did. *Bates*, 768 F.3d at 1303 n.11.

Regarding the consecutive sentences, the Eleventh Circuit explained Bates' contention on that issue failed too. "*Ramdass* rejected the functional approach to parole eligibility that" Bates "urges us to adopt here." *Bates*, 768 F.3d at 1304–06 (citing *Ramdass*, 530 U.S. at 169). But the court also noted Bates could not "colorably claim that his other consecutives sentences functionally barred him from ever being paroled" because at "the time Bates was sentenced for his non-homicide offenses, Florida law provided that he would be eligible for parole on his two life sentences within 5 years after the initial date of confinement" on those sentences, and "would be eligible for parole on his remaining fifteen-year sentence within 24 months of that same date." *Id.* at 1305. If Bates received a life sentence instead of death, the Eleventh Circuit calculated he would be parole eligible on all convictions within "25 years after his 1995 resentencing proceeding." *Id.*

The Eleventh Circuit ended by noting this Court had good reason not to give the jury information about Bates' consecutive sentences; that information was not relevant to what the jury was supposed to consider and would open the door to conjecture and

speculation. *Id.* at 1305–06.

***Ruling Below***

The circuit court summarily denied Bates' misleading-the-jury claim as untimely and procedurally barred while also ruling Bates failed to establish manifest injustice. (WPCR:900–02.)

***Untimely***

The circuit court properly summarily denied Bates' misleading-the-jury claim as decades untimely. All Bates' complaints revolve around facts he has known and litigated before, during, and after his 1995 penalty phase, and he does not try and allege an exception to Rule 3.851(d)(2)'s time-bar. Nor could he. Further, as discussed in the prior untimeliness section, manifest injustice provides him no escape from the fact that this claim is decades late. This Court should affirm the summary denial of this untimely claim.

***Procedurally Barred***

The circuit court also properly summarily denied Bates' misleading-the-jury claim as procedurally barred. Bates has litigated and relitigated variations on this claim on direct appeal, initial state postconviction, and federal litigation under 28 U.S.C.

2254. *E.g.*, *Bates v. Sec'y, Fla. Dep't of Corr.*, 768 F.3d 1278, 1300–06 (11th Cir. 2014).

There is no manifest injustice in procedurally barring this claim now when Bates raised it three times before without success and this Court has already invoked a procedural bar to it once. *See Bates v. State*, 3 So. 3d 1091, 1105 & n.11 (Fla. 2009).

***Merits***

Bates' misleading-the-jury claim based on due process and the Eighth Amendment warranted only summary denial. Aside from the time and procedural bars invoked above, this Court should affirm the summary denial of this claim as legally insufficient for two alternative reasons. First, Bates relies on a not-retroactive rule of law that he should have been constitutionally allowed to waive parole and inform the jury of both that waiver and his consecutive sentences.[26] Second, Bates has failed to establish this Court should recede from its prior decision in his case.

---

[26] The State did not raise non-retroactivity below, but may do so on appeal because it prevailed before the circuit court. *See Sexton v. State*, 221 So. 3d 547, 555 (Fla. 2017) (explaining the "tipsy coachman" doctrine); *Cohen v. Mohawk, Inc.*, 137 So. 2d 222, 225 (Fla. 1962) (appellate courts are obligated to affirm "if upon the pleadings and evidence before the trial court, there was *any* theory or principle of law which would support the trial court's judgment").

### A. Bates' Proposed New Constitutional Rule Is Not Retroactive Under Either Federal or Florida Law.

In support of this issue, Bates relies on constitutional arguments that have been rejected by every court to evaluate them thus far. *See Bates v. State,* 750 So. 2d 6, 9–11 (Fla. 1999); *Bates v. Sec'y, Fla. Dep't of Corr.*, 768 F.3d 1278, 1300–06 (11th Cir. 2014). He urges this Court to recede from its decision and hold that he was constitutionally entitled, under the Eighth Amendment and due process, to waive parole and inform the jury of both that waiver and his other three consecutive sentences.[27]

Even if this Court decided in 2025 that its 1999 decision in Bates' case was wrong, Bates would not be entitled to retroactive application of that decision under either state or federal law. This Court should affirm the summary denial by holding any decision receding from *Bates*, 750 So. 2d at 9–11 would not retroactively apply to Bates now. *See Caspari v. Bohlen*, 510 U.S. 383, 389 ("If the State does argue that the defendant seeks the benefit of a new rule of constitutional law," then retroactivity must be decided before

[27] The waivability of parole is an issue of state law, *Bates*, 768 F.3d at 1303, but Bates' attempt to constitutionalize it brings the issue within a retroactivity framework for new rules of constitutional law.

the merits.); *Graham v. Collins*, 506 U.S. 461, 466–67 (1993) (treating retroactivity as a "threshold matter").

In trying to overturn this Court's prior decision in his case, Bates is indisputably seeking a new rule of constitutional law from this Court. A rule is new unless it was "*dictated* by precedent existing at the time the defendant's conviction became final." *Edwards v. Vannoy*, 593 U.S. 255, 265 (2021) (emphasis added). The Eleventh Circuit reviewed this Court's rejection of Bates' misleading-the-jury claim and determined it was not contrary to Supreme Court precedent in 1999. *See Bates*, 768 F.3d at 1300–06. This Court's prior decision could not have been contrary to Florida law on the issue given this Court is the final arbiter of state law. *E.g.*, *Exxon Corp. v. Wisconsin Dep't of Revenue*, 447 U.S. 207, 226 n.9 (1980) (A state supreme court is the "final arbiter" of state law); *LeFrere v. Quezada*, 582 F. 3d 1260, 1262 (11th Cir. 2009).

The "starkest example of a decision announcing a new rule is a decision that overrules an earlier case." *Edwards*, 593 U.S. at 265. Receding from *Bates v. State*, 750 So. 2d 6 (Fla. 1999) would create an even more stark new rule than usual given this Court has repeatedly reaffirmed that decision and refused to "adopt the

dissenting opinion in *Bates*." *See Orme v. State*, 25 So. 3d 536, 546–47 (Fla. 2009) (affirming the refusal to allow a capital defendant to waive his right to parole while refusing to recede from *Bates*).[28]

Bates' request for this Court to reconsider its prior holding and impose a new rule of constitutional law must therefore go through the gauntlet of retroactivity before Bates can obtain any relief on it. The Supreme Court has explained that applying "constitutional rules not in existence at the time a conviction became final seriously undermines the principle of finality which is essential to the operation of our criminal justice system." *Edwards v. Vannoy*, 593 U.S. 255, 263 (2021). "Retroactive application of constitutional rules frustrates the state's enforcement of its criminal law despite the state's careful adherence to the federal constitutional standards that governed at the time of the prisoner's conviction." *Solem v. Stumes*, 465 U.S. 638, 654 (1984) (Powell, J., concurring).

As such, the cost of retroactively applying new constitutional rules in postconviction "generally far outweigh the benefits of this

[28] *Lowe v. State*, 259 So. 3d 23, 54–56 (Fla. 2018) (relying on *Bates* to reject a similar issue); *Lebron v. State*, 799 So. 2d 997, 1019 (Fla. 2001) (same).

application," especially because doing so "*continually* forces the States to marshal resources in order to keep in prison defendants whose trials and appeals conformed to then-existing constitutional standards." *Teague v. Lane*, 489 U.S. 288, 310 (1989) (plurality opinion). "Without finality, the criminal law is deprived of much of its deterrent effect." *Id.* at 309.

The importance of finality takes center stage in capital cases because the twin rationales for the death penalty are "retribution and" the "deterrence of capital crimes by prospective offenders." *See Atkins v. Virginia*, 536 U.S. 304, 319 (2002). There is evidence that capital punishment does deter crimes. *See Glossip v. Gross*, 576 U.S. 863, 897 (2015) (Scalia, J., concurring) (collecting sources).

But capital punishment can hardly deter anything if any errors in the labyrinthian procedures required to impose death sentences will permit a defendant to escape on the eve of execution. "When society promises to punish by death certain criminal conduct, and then the courts fail to do so, the courts not only lessen the deterrent effect of the threat of capital punishment, they undermine the integrity of the entire criminal justice system." *Coleman v. Balkcom*, 451 U.S. 949, 959 (1981) (Rehnquist, J.,

dissenting from denial of certiorari). There are few more violent enemies to public confidence in the judiciary than a lack of finality. *See Bucklew v. Precythe*, 587 U.S. 119, 150 (2019).[29]

To protect finality, both this Court and the United States Supreme Court have established retroactivity frameworks to determine whether a new rule will apply in postconviction proceedings. *See Edwards v. Vannoy*, 593 U.S. 255, 262–76 (2021); *Dettle v. State*, 395 So. 3d 1054, 1057–61 (Fla. 2024). "Substantive rules" setting "forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose" are retroactive. *Phillips v. State*, 299 So. 3d 1013, 1022 (Fla. 2020); *see also Edwards*, 593 U.S. at 276; *Beard v. Banks*, 542 U.S. 406, 416–17 (2004).

"Procedural rules, by contrast," that "regulate only the *manner*

---

[29] *See also Custis v. United States*, 511 U.S. 485, 497 (1994) (discussing the importance of finality to public confidence); *Calderon v. Thompson*, 523 U.S. 538, 555, 557 (1998) ("Finality is essential to both the retributive and the deterrent functions of criminal law" and disturbing it inflicts "profound injury" on the State's and victims' "powerful and legitimate interest in punishing the guilty."); *United States v. Timmreck*, 441 U.S. 780, 784 (1979) ("Every inroad on the concept of finality undermines confidence in the integrity of our procedures; and, by increasing the volume of judicial work, inevitably delays and impairs the orderly administration of justice.").

*of determining* the defendant's culpability" are not retroactive under federal law. *Welch v. United States*, 578 U.S. 120, 129–130 (2016); *Edwards*, 593 U.S. at 272 ("New procedural rules do not apply retroactively" in postconviction proceedings).

This Court should hold Bates' proposed new constitutional rule that capital defendants must be allowed to waive parole and inform the jury both of that waiver and their consecutive sentences is not retroactive under state or federal law.

i Not Retroactive Under Federal Law

Federal retroactivity under *Teague* requires answering three questions: (1) When did Bates' judgment become final? (2) Is the rule Bates seeks to apply actually new when viewed from the legal landscape existing when his judgment became final? (3) If so, is the new rule substantive, and therefore automatically retroactive, or procedural, and therefore not retroactive? *See Beard*, 542 U.S. at 411 & n.3 (2004); *Edwards*, 593 U.S. at 264–75 & n.3.

Bates' judgment finalized when the United States Supreme Court denied certiorari in October 2000. *See Bates v. Florida*, 531 U.S. 835 (2000); *Beard*, 542 U.S. at 411 (explaining a judgment is final for *Teague* purposes when the Supreme Court denies certiorari

on direct appeal).

On *Teague*'s second question, the rule Bates seeks is indisputably new. *See Beard*, 542 U.S. at 411 (explaining newness is judged on the legal landscape existing at the time of finality). This Court's decisions were correct under state law and did not violate any clearly established federal law in 1999. *See Bates v. State*, 750 So. 2d 6, 9–11 (Fla. 1999); *Bates v. Sec'y, Fla. Dep't of Corr.*, 768 F.3d 1278, 1300–06 (11th Cir. 2014). Bates cites no pre-finality precedent this Court and the Eleventh Circuit did not account for in reaching those decisions. He seeks a new rule.

*Teague*'s final question is easy. A new constitutional rule requiring capital defendants be allowed to waive parole and inform the penalty phase jury of both that waiver and any consecutive sentences they have is not substantive because it does not prohibit the imposition of the death penalty on a class of defendants based on their status or the offense. *See Beard*, 542 U.S. at 416-17; *Edwards*, 141 S. Ct. at 1554–62 & n.3. *See also Jones v. Mississippi*, 141 S. Ct. 1307, 1317–18 & n.4 (2021) (correcting a court-created aberration on procedural vs. substantive rules).

In line with this analysis, the Supreme Court has already

determined the main precedent Bates relied on in his resentencing direct appeal, and again relies on now, is not retroactive. *See O'Dell v. Netherland*, 521 U.S. 151, 157–68 (1997) (holding the rule announced in the various opinions in *Simmons v. South Carolina*, 512 U.S. 154, 161 (1994) (plurality opinion) was not retroactive).

Bates seeks to create and benefit from a new rule of constitutional law that is not federally retroactive to his sentence. That renders his claim legally insufficient as a matter of federal law. The same result occurs under state law.

ii Not Retroactive Under Florida Law

Bates' proposed new rule is also not retroactive under Florida law. *See Witt v. State*, 387 So. 2d 922, 926, 931 (Fla. 1980) (establishing Florida's retroactivity test).[30] Current Florida

[30] The State adheres to its position in *Dettle v. State*, 395 So. 3d 1054 (Fla. 2024) that this Court should recede from *Witt* and adopt *Teague*. *Witt*, which was adopted before the Florida Constitution included victims' rights to prompt finality, does not sufficiently protect victims' rights, leads to inconsistent results, and requires this Court to engage in duplicative judicial labor when determining retroactivity because it must always determine federal retroactivity before determining state retroactivity. But given Bates' proposed new rule is clearly not retroactive under *Witt*, the State reserves properly presenting these arguments for a future case. *See Brown v. State*, 304 So. 3d 243, 277 (Fla. 2020) (declining to revisit precedent based on the State's footnote argument).

retroactivity under *Witt* requires this Court to perform a multi-layered analysis that begins with three questions: (1) Does the new rule emanate from this Court or the U.S. Supreme Court? (2) Is the new rule constitutional? And (3) Is the new rule a development of "fundamental significance?" *Phillips v. State*, 299 So. 3d 1013, 1018-19 (Fla. 2020).

Bates' proposed new rule for this issue fails *Witt*'s third prong because it is not a development of fundamental significance. *See Phillips*, 299 So. 3d at 1018-21. A rule is of "fundamental significance" when it is either substantive under *Teague* or "is of sufficient magnitude to necessitate retroactive application." *See id.* If the new rule falls into the former fundamental-significance category, it is automatically retroactive. *Id.* Determining whether the new rule falls into the latter category requires evaluation of three factors. *Id.* at 1021.

Finding due process and the Eighth Amendment require permitting capital defendants to unilaterally waive parole and inform the jury of both their waiver and any consecutive sentences they have is not a substantive rule under *Teague* for the reasons addressed in the prior section. Florida retroactivity therefore

requires consideration of the following three factors: "(a) the purpose to be served by the new rule; (b) the extent of reliance on the old rule; and (c) the effect on the administration of justice of a retroactive application of the new rule." *Id.* at 1021.

All three of these factors weigh against retroactivity. The purpose of permitting capital defendants to waive parole and inform the jury of consecutive sentences would, seemingly, be to assure the jury that capital defendants would remain in prison and not be a danger to the community.

But, especially in 1995, the penalty phase judge operated as a check on the jury to ensure its death recommendation was sound. *See Fletcher v. State*, No. SC2023-0058, 2025 WL 1970018, at *9 (Fla. July 17, 2025) (alternatively holding a judge's mitigation findings and agreement with the jury's recommendation "cured" any error in the jury's rejection of mitigating evidence); *White v. State*, 616 So. 2d 21, 24–26 (Fla. 1993) (penalty phase judges are not allowed to abdicate their role in determining the proper sentence by only determining whether the jury reasonably recommended

death).[31] Indeed, in this case, seemingly at Bates' behest, the penalty phase judge did not give any weight to the jury's recommendation. (See SentencingDA3:557.)

Further, all Bates' new rule gets him is more review of whether death is appropriate after he has been litigating that issue for decades. And Bates' new rule also injects issues into Florida penalty phases, where future dangerousness is not proper aggravation,[32] that distract jurors from what they should be focusing on. *See Ramdass v. Angelone*, 530 U.S. 156, 169 (2000); *Bates v. State*, 750 So. 2d 6, 11 (Fla. 1999). The purpose behind Bates' new rule is not important enough to merit retroactive application.

The State's reliance interests strongly support non-retroactivity. The State has relied on the still-settled rule in *Bates* both here and in other capital cases for decades. *See Orme v. State*, 25 So. 3d 536, 546–47 (Fla. 2009). In this case alone, the State has expended enormous resources litigating Bates' postconviction case

---

[31] *Cf. Espinosa v. Florida*, 505 U.S. 1079, 1082 (1992) ("By giving 'great weight' to the jury recommendation, the trial court indirectly weighed the invalid aggravating factor").

[32] *See Allen v. State*, 137 So. 3d 946, 961 (Fla. 2013) (Future dangerousness "is not a proper aggravating circumstance in Florida.").

in reliance on this Court's direct-appeal decision. The victims, who now have a constitutional right to prompt finality, have also relied on this Court's decisions that Bates' just sentence would be carried out. *See* Art. I, § 16(b)(10), (d), Fla. Const. This reliance, particularly viewed in light of the victims' constitutional right to prompt finality, weighs heavily against retroactive application.

Finally, this Court has recognized that mandating retroactive application of new standards for "procedural fairness" like this issue would "destroy the stability of the law, render punishments uncertain and therefore ineffectual, and burden the judicial machinery of our state, fiscally and intellectually, beyond any tolerable limit." *Witt*, 387 So. 2d at 929. This Court has held these concerns counsel against retroactive application of procedural rules designed to determine whether a defendant is exempt from execution. *Phillips*, 299 So. 3d at 1021.

Those same concerns are present here. Under Bates' theory, any legal change giving capital defendants more procedural protection would be retroactive. *See id.* (noting "the ongoing threat of major disruption to application of the death penalty resulting from giving retroactive effect to *Hall* as well as similar future

changes in the law regarding aspects of the definition of intellectual disability").

Bates seeks to retroactively apply an evolutionary refinement in Eighth Amendment and due process law to invalidate a capital sentence imposed in 1995 and finalized in 2000. But the new rule he seeks is not retroactive under state or federal law. This Court should therefore reject this issue as legally insufficient on non-retroactivity grounds. *See Bogle v. State*, 288 So. 3d 1065, 1069 (Fla. 2019) (affirming summary denial of claim based on a not-retroactive rule of law); *Owen v. State*, 986 So. 2d 534, 544 (Fla. 2008) (legally insufficient claims that fail as a matter of law should be summarily denied).

### B. Bates Has Failed to Demonstrate *Bates v. State*, 750 So. 2d 6, 9–11 (Fla. 1999) Is Clearly Erroneous, and There Are Valid Reasons Against Receding from It.

Bates has not made the necessary showing to warrant receding from *Bates v. State*, 750 So. 2d 6, 9–11 (Fla. 1999). This Court will only recede from precedent if it is: (1) clearly erroneous and (2) there is no valid reason against receding from it. *See State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020). Bates' arguments fail to meet this Court's *stare decisis* framework and this Court should

therefore adhere to its prior decision in his case.

i *Bates v. State*, 750 So. 2d 6, 9–11 (Fla. 1999) Is Not Clearly Erroneous.

Bates "has not demonstrated that the precedent" he seeks to overturn is "clearly erroneous." *See Tanzi v. State*, 407 So. 3d 385, 392 (Fla. 2025). Precedent is clearly erroneous where it lacks any fair support in governing law or clearly misconstrues or conflicts with the controlling authorities. *See State v. Poole*, 297 So. 3d 487, 501–07 (Fla. 2020) (receding from a decision that misconstrued United States Supreme Court precedent, misread Florida statutory law, and broke with long-settled Florida precedent); *Steiger v. State*, 328 So. 3d 926, 932 (Fla. 2021) (receding from a decision inconsistent with Florida statutory law); *State v. Penna*, 385 So. 3d 595, 601 (Fla. 2024) (receding from a categorical rule with no support in either caselaw or constitutional text).

Merely arguing a precedent was wrongly decided is not enough. *See Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec'y, Fla. Dep't of State*, No. SC2023-1671, 2025 WL 1982762, at *9 (Fla. July 17, 2025); *Ritchie v. State*, 344 So. 3d 369, 387 (Fla. 2022). "A conclusion that the earlier Court erred must be based on a

searching inquiry, conducted with minds open to the possibility of reasonable differences of opinion." *Poole*, 297 So. 3d at 506. After all, "*stare decisis* means sticking to some wrong decisions." *Id.* at 507.

Correctly performing the *stare decisis* analysis here requires determining exactly what Bates argues this Court got wrong in its prior decision. Distilling his arguments to their most simple form, Bates argues this Court incorrectly: (1) denied him his due process and Eighth Amendment right to inform the jury of his parole ineligibility; and (2) denied him his due process and Eighth Amendment right to inform the jury of his consecutive sentences. To grant Bates' request and recede from the prior precedent in his case, this Court must determine its prior decision "clearly erred in its understanding" of those constitutional issues.

Bates' first argument this Court clearly erred in rejecting his request for a parole-ineligibility instruction fails. Initially, this argument has a rather simple factual problem. It is well-established—both in 1999 and now—that defendants are *only* entitled to such an instruction when the State puts *future* dangerousness at issue. *See Lynch v. Arizona*, 578 U.S. 613, 613–

17 (2016); *Kelly v. South Carolina*, 534 U.S. 246, 248, 252–56 (2002); *Ramdass v. Angelone*, 530 U.S. 156, 165 (2000). Otherwise, the "decision whether or not to inform the jury of the possibility of early release is generally left to the States." *Simmons v. South Carolina*, 512 U.S. 154, 176 (1994) (O'Connor, J., concurring with Kennedy, J., and Rehnquist, C.J.).[33]

This is the whole of Bates' argument that the State injected future dangerousness into his penalty phase: "Regardless, the State told the jury that it could impose only death or 'the sentence of life imprisonment with a minimum mandatory of twenty-five years before the defendant is eligible for parole.' In doing so, the State painted Mr. Bates as a future danger to the community at large." (IB:41–42.)

And this is what the State actually said in closing argument: "There are non-statutory mitigating circumstances. There are statutory mitigating circumstances. These are the things you take into consideration. As to go towards the sentence of life

[33] Justice O'Connor's concurrence set the controlling precedent for *Simmons*. *O'Dell v. Netherland*, 521 U.S. 151, 158 (1997) (noting Justice O'Connor and the Justices joining her opinion provided "the dispositive votes necessary to sustain" the decision).

imprisonment with a minimum mandatory of twenty-five years before the defendant is eligible for parole. They don't have to be proven the same way the aggravating circumstances are proven. No, they just have to be shown from the evidence." SentenceDA15:779–80.

Any fair reading of the State's closing argument cited by Bates belies his argument that the State put future dangerousness at issue. As this Court in *Bates* did not clearly err by holding the State never put Bates' future dangerousness at issue, it could not clearly err in denying him a parole-ineligibility instruction. *See Bates*, 750 So. 2d at 11 (twice rejecting Bates' argument the state injected future dangerousness into his penalty phase); *Simmons*, 512 U.S. at 176 (O'Connor, J., concurring) (If "the prosecution does not argue future dangerousness, the State may appropriately decide that parole is not a proper issue for the jury's consideration even if the only alternative sentence to death is life imprisonment without possibility of parole.").

But Bates' legal arguments that this Court clearly erred in denying him a parole-ineligibility instruction are no more persuasive. He cites isolated cases where defendants have been

allowed to waive parole or time served, but no published opinions affirming any of those decisions. The mere fact that errors may have been made in those cases, or that different rules apply in different circumstances, is no reason to recede from this Court's precedent. *See James v. State*, 404 So. 3d 317, 328 (Fla. 2025) (refusing to recede from precedent based on allegedly contradictory opinions from lower courts and holding "other inmates' waiver proceedings are not, without more, a viable basis for relief").

The heart of this Court's refusal to allow Bates to waive parole and so inform the jury was long-settled Florida law that defendants cannot agree to illegal sentences or apply inapplicable statutes to their crimes. *See Bates*, 750 So. 2d at 10–11. Bates provides no analysis of why this Court must *constitutionally* allow defendants to opt into statutes that the Legislature has not applied to them or agree to illegal sentences, much less a compelling argument that this Court's analysis of those issues was clearly erroneous.

Bates' request for this Court to recede from its parole-eligibility decision and hold the Constitution *required* allowing him to inform the jury of his parole-ineligibility therefore fails the first prong of the *stare decisis* test on multiple levels. This Court should reject Bates'

invitation to recede from its prior decision on so thin a reed.

Bates secondarily asks this Court to recede from its holding that he was not allowed to tell the jury about his prior consecutive sentences. This Court rejected Bates' consecutive-sentence issue in 1999 because of the difficulty determining how long Bates would actually remain in prison on those sentences and the risk of distracting the jurors from the relevant issue. *Bates*, 750 So. 2d at 11.

Again, Bates fails to demonstrate this Court's prior decision is clearly erroneous. It is worth noting at the outset that this Court is not well placed to determine how much time Bates would have actually served based on his consecutive sentences. Gain time operated very differently for 1982 crimes like Bates' than the more straightforward system employed today. *See Gomez v. Singletary*, 733 So. 2d 499, 500–08 (Fla. 1998); *Gwong v. Singletary*, 683 So. 2d 109, 111–14 & n.1, n.2 (Fla. 1996). Nothing in Bates' argument demonstrates the length of time he would actually remain in prison on his consecutive sentences. Indeed, the Eleventh Circuit calculated that, under Florida law, Bates would be parole eligible in 2030 if given life. *Bates*, 768 F.3d at 1305.

But Bates has also failed to demonstrate any constitutional provision clearly entitles him to inform the jury of his consecutive sentences even if they did constitute a de facto life sentence. As in the prior discussion, Bates cannot demonstrate the State put his future dangerousness at issue. And even if it had, the *Simmons* rule he relies on does not apply to functional life sentences without parole. *See Ramdass v. Angelone*, 530 U.S. 156, 169 (2000) (rejecting "a functional approach" to the *Simmons*' rule that "evaluates whether it looks like the defendant will turn out to be parole ineligible"). "If the *Simmons* rule is extended beyond when a defendant is, as a matter of state law, parole ineligible at the time of his trial, the State might well conclude that the jury would be distracted from the other vital issues in the case." *Id.* at 169.

As the Eleventh Circuit recognized, this Court's concerns in *Bates* mirrored the Supreme Court's concerns in *Ramdass*. *Bates*, 768 F.3d at 1305–06. It is hard to argue this Court clearly erred in 1999 by refusing to permit the jury to learn of Bates' consecutive sentences when a United States Supreme Court decision issued a year later—which remains controlling precedent today—came to a similar conclusion for similar reasons. *See Ramdass*, 530 U.S. at

166–72 (explaining *Simmons*' rule that the jury must be instructed on parole-ineligibility when the State puts future dangerousness at issue only applies "where, as a legal matter, there is no possibility of parole if the jury decides the appropriate sentence is life in prison").

Like his first, Bates' second overarching request for this Court to recede from its prior decision in his case fails to demonstrate that prior decision is clearly erroneous. This Court should therefore reject both of his invitations to recede from its 1999 decision in his case. *See Tanzi v. State*, 407 So. 3d 385, 392 (Fla. 2025) (refusing to recede from precedent in a post-warrant case where the condemned failed to demonstrate the precedent was "clearly erroneous").

ii The State's and Victims' Reliance on *Bates v. State*, 750 So. 2d 6, 9–11 (Fla. 1999) Are Valid Reasons to Retain It for Now.

Even if Bates could show this Court's prior decision was clearly erroneous, there are valid reasons to leave *Bates v. State*, 750 So. 2d 6, 9–11 (Fla. 1999) intact for now. "The critical consideration is reliance." *See State v. Penna*, 385 So. 3d 595, 601 (Fla. 2024). "In evaluating reliance interests, courts consider legitimate expectations of those who have reasonably relied on the precedent." *Id.* While capital defendants usually have no reliance

interests in any particular procedure, "victims and the State have strong interests in this Court's upholding death sentences." *Lawrence v. State*, 308 So. 3d 544, 551 (Fla. 2020).

The State has reasonably and legitimately relied on this Court's decision affirming Bates' operative capital sentence for decades. Through the decades, the Fourteenth Judicial Circuit State Attorney's Office and Florida Attorney General's Office have expended enormous resources extensively litigating Bates' case in both state and federal court. The Governor and his subordinates have spent time and resources evaluating Bates' candidacy for clemency and ultimately deciding to sign a warrant and schedule his execution. State and federal taxpayers have spent untold sums on Bates' postconviction defense over the years. All these actions and resources were reasonably expended in express reliance on this Court's rejection of Bates' constitutional claims back in 1999.

The victims' constitutional right to prompt finality and legitimate expectation of justice should also be considered in this calculus. The recently amended Florida Constitution provides Bates' victims with the right to prompt finality in a capital sentence. *See* Art. I, § 16(b)(10), (d), Fla. Const. Bates' victims have suffered

through two remands for reconsideration of his sentence and over forty years waiting for justice while Bates has been surrounded by "procedural protections unheard of for other crimes." *Coleman v. Balkcom*, 451 U.S. 949, 960 (1981) (Rehnquist, J., dissenting from the denial of certiorari); *Middlebrooks v. Parker*, 22 F.4th 621, 626–27 (6th Cir. 2022) (Thapar, J., statement respecting denial of rehearing en banc) (describing the toll delayed justice in capital cases takes on the victims).

"As this ordeal" passes "its fourth decade, we must not forget that every delay delivers a fresh denial of closure to" J.W.'s family. *See id.* Their right to finality, now at its peak with a warrant signed and an execution scheduled after decades of review, weighs heavily against receding from this Court's resentencing direct-appeal opinion in *Bates*. *See Calderon v. Thompson*, 523 U.S. 538, 556–58 (1998) (recognizing "finality acquires an added moral dimension" after one round of state and federal review given the State's and victims' powerful interests in punishing the guilty).

These reliance interests are magnified by the fact that nothing stopped Bates from seeking to overturn *Bates v. State*, 750 So. 2d 6, 9–11 (Fla. 1999) before his warrant was signed. *Cf. Sawyer v.*

*Whitley*, 505 U.S. 333, 341 n.8 (1992) (condemning "any efforts on the part of habeas petitioners to delay their filings until the last minute with a view to obtaining a stay" and noting courts "may resolve against such a petitioner doubts and uncertainties as to the sufficiency of his submission"). Instead, he waited till his death warrant to raise the issue.

As there is no real dispute about Bates' guilt given the overwhelming evidence against him, the State's and victims' reliance interests should trump Bates' belated attempt to overturn this Court's prior decision in his case and secure yet another penalty phase. Therefore, even if this Court determines its prior precedent in Bates' case is clearly erroneous, it should not recede from it on the eve of Bates' execution in view of the State's and victims' justifiable reliance on that decision for over two decades.

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

For his third issue, Bates argues the Governor's consideration of confidential clemency materials, which he had no opportunity to rebut, violated his right to federal due process. The circuit court properly rejected this issue as legally insufficient, but it is also untimely and procedurally barred. A challenge to the confidential nature of clemency could have been raised long before now as demonstrated by this Court's pre-warrant rejection of this claim in *Sullivan v. Askew*, 348 So. 2d 312, 316 (Fla. 1977); *id* at 318–19 (England, J., concurring specially).

#### ***Ruling Below***

The circuit court summarily denied Bates' claim that the confidential nature of clemency violated his right to due process as legally insufficient. (WPCR:902–06.)

#### ***Untimely***

Bates untimely raised his challenge to the confidential nature of clemency. *See Ferguson v. State*, 101 So. 3d 362, 366 (Fla. 2012) (holding a post-death-warrant, clemency claim untimely because defendant had spent "thirty (30) years on death row" and could

have raised the claim earlier). Neither below nor on appeal did Bates explain how his claim fits within an exception to Rule 3.851(d)(2)'s time-bar or any of the facts giving rise to his challenge other than the confidential nature of Florida's clemency.

This Court has specifically rejected the argument that clemency claims are not ripe until a warrant is signed. *See Ferguson*, 101 So. 3d at 366 (rejecting the defendant's argument "clemency is only ripe and/or relevant 'close to the time a death warrant is signed,' when the 'snapshot' of the inmate is current and with a significant history on death row to evaluate" and holding instead that clemency claims ripen after initial state and federal remedies are exhausted).

Capital defendants can, and have, raised challenges to the confidential nature of Florida's clemency years before a death warrant while the clemency process is ongoing. *Sullivan v. Askew*, 348 So. 2d 312, 313–14, 316 (Fla. 1977); *id* at 318–19 (England, J., concurring specially); *Sullivan v. State*, 441 So. 2d 609, 611–12 (Fla. 1983) (noting the Governor signed Sullivan's first death warrant around 1979 and second in 1983); *see also Rose v. State*, 774 So. 2d 629, 637 n.12 (Fla. 2000) (rejecting a clemency claim brought in

a pre-warrant successive Rule 3.851 motion as without merit). Bates' challenge to his confidential clemency proceedings is untimely. *See Ferguson*, 101 So. 3d at 366.

***Procedurally Barred***

Rule 3.851 bars claims that could have been raised in prior proceedings. *E.g.*, *Rogers v. State*, 409 So. 3d 1257, 1263 (Fla. 2025) ("As we have said, in an active warrant case, a postconviction claim that could have been raised in a prior proceeding is procedurally barred."). As demonstrated by *Sullivan*, a claim that the Governor was constitutionally required to allow Bates to inspect and rebut information gathered during the clemency investigation could have been raised previously and is barred now. *Cf. Ferguson*, 101 So. 3d at 366. Bates simply could have requested the Governor allow him to inspect and rebut clemency materials and then raised this claim in a pre-warrant Rule 3.851 motion if denied access.

***Merits***

This issue fails to state a due process claim "as a matter of law." *See Owen v. State*, 986 So. 2d 534, 544 (Fla. 2008) (legally insufficient claims should be summarily denied). The Fourteenth Amendment's due-process clause provides: "No State" shall "deprive

any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Full due process generally requires defendants be allowed to deny or explain information relied on to initially *impose* a death sentence. *See Simmons v. South Carolina*, 512 U.S. 154, 156 (1994) (plurality opinion); *Gardner v. Florida*, 430 U.S. 349, 362 (1977) (plurality opinion).

But the level of process constitutionally due goes down after trial. *Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009) (only "limited" due process applies in postconviction proceedings). Under Justice O'Connor's controlling concurrence in *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998), capital defendants are only entitled to "minimal" due process protection in clemency proceedings. *See Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404, at *6 (Fla. July 22, 2025); *Barwick v. Governor of Florida*, 66 F.4th 896, 902–03 (11th Cir. 2023) (recognizing "Justice O'Connor's concurring opinion provides the holding in *Woodard*" and the "key word" for clemency-related due process is "minimal").

Justice O'Connor determined Ohio's clemency system comported with minimal due process despite the fact "the capital

defendant was afforded only "3 days' notice of the interview," "10 days' notice of the hearing," and claimed he did not have a "meaningful opportunity to prepare his clemency application." *Id.* at 289-90. Minimal due process also permitted the state to exclude Woodard's counsel from the interview and only participate in the hearing at the discretion of the parole board chair. *Id*. And minimal due process allowed the state to preclude Woodard "from testifying or submitting documentary evidence at the hearing." *Id*.

The only "tangible" examples of what might violate minimal clemency-related due process are: "(1) a scheme whereby a state official flipped a coin to determine whether to grant clemency, or (2) a case where the State arbitrarily denied a prisoner any access to its clemency process." *Barwick*, 66 F.4th at 904. "Outside of similarly 'extreme situations,' the federal Due Process Clause does not justify judicial intervention into state clemency proceedings." *Gissendaner v. Comm'r, Georgia Dep't of Corr.*, 794 F.3d 1327, 1331 (11th Cir. 2015).

"The Supreme Court has never recognized a case in which clemency proceedings conducted pursuant to a state's executive powers have implicated due process." *Schad v. Brewer*, 732 F.3d

946, 947 (9th Cir. 2013).

Bates' brief seems to raise two challenges to his clemency proceedings. The first is simply that, in his view, they likely did not capture all the available mitigation in his case for clemency to act as a failsafe. This Court has repeatedly rejected this argument, and Bates provides no reason to recede from that caselaw.[34]

Next, Bates argues the Governor's use of confidential materials[35] a defendant has no ability to rebut violates minimal due

---

[34] *E.g.*, *Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404, at *6 (Fla. July 22, 2025) (collecting cases rejecting this argument); *Pardo v. State*, 108 So. 3d 558, 568 (Fla. 2012) (rejecting an argument the "long time lapse between a defendant's clemency proceeding and the signing of his death warrant renders the clemency process inadequate or entitles the defendant to a second proceeding"); *Johnston v. State*, 27 So. 3d 11, 24-26 (Fla. 2010) (rejecting an argument that a 1987 clemency proceeding was inadequate because it was held long before the active-warrant, capital defendant's "mental health issues and life history were fully developed for consideration in the clemency process").

[35] Clemency materials are confidential under a statute and the Florida Rules of Executive Clemency. *See Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404, at *7 (Fla. July 22, 2025) ("Clearly, records relating to the clemency process are confidential and exempt from public records requests under section 14.28, Florida Statutes, and the Florida Rules of Executive Clemency."); *Gudinas v. State*, No. SC2025-0794, 2025 WL 1692284, at *8–9 (Fla. June 17, 2025) (explaining clemency records are exempt even from the Florida Constitution and only the Governor has discretion to release them).

process. He is wrong. *Sullivan v. Askew*, 348 So. 2d 312, 316 (Fla. 1977); *id* at 318–19 (England, J., concurring specially).

This Court rejected a *Gardner*-based attack on Florida's confidential clemency process almost fifty years ago. *Id.* In that case, three death-sentenced defendants challenged Florida's clemency process on numerous grounds and the lower court dismissed the suit as legally meritless. *Id.* at 313 (majority summarizing several grounds); *id.* at 318 & n.7 (concurrence setting out grounds in greater detail). On appeal, the defendants raised several arguments, including that Florida's clemency process "conflicts with the minimum standard required by *Gardner*" because the Executive Branch could consider confidential materials that capital defendants have no opportunity to counter. *Id.* at 318 (concurrence).

This Court rejected all arguments raised—including the *Gardner* argument—by holding: "In the exercise of the exclusive power to grant or withhold clemency, the executive has adopted procedures that accord with the specific constitutional grant in Article IV, Section 8, Florida Constitution, and do not impose constitutionally objectionable conditions." *Id.* at 316. Justice

England, separately, elaborated further and explained *Gardner* simply does not apply to clemency procedures utilized after a death sentence is imposed at sentencing. *Id.* at 318–19 (concluding "the use of confidential materials in clemency proceedings is permissible" under *Gardner*). *See also Kormondy v. Scott*, 160 So. 3d 896, *1–2 (Fla. 2015) (unpublished table decision) (holding confidential clemency processes do not violate "minimal due process").

Bates' claim that the confidential nature of his clemency process violated minimal due process fails as a matter of law under *Sullivan* and warranted summary denial as legally insufficient. Nothing in Bates' brief comes close to demonstrating *Sullivan* was clearly erroneous enough to warrant receding from it.

More importantly, *Sullivan*'s holding is compelled by the controlling precedent on clemency-related due process. *See Woodard*, 523 U.S. at 289 (1998) (O'Connor, J., concurring) (finding Woodard's allegations that "he was precluded from testifying or submitting documentary evidence at the hearing" did not amount to a "due process violation"). Minimal, clemency-related due process could not entitle Bates to discover and rebut clemency materials

when he had no clemency-related due process right to testify or submit documentary evidence at a clemency hearing. *See id.*

This Court should affirm the summary denial of this issue as legally insufficient under long-settled precedent governing clemency-related due process.

### 4. Denying Lethal-Injection Records and Imposing a 31-Day Warrant Period in 2025 to Execute a 1995 Death Sentence Does Not Violate the Federal or State Constitution.

Bates' fourth issue asserts that the 31-day warrant and denial of access to lethal-injection-related public records violates a smorgasbord of constitutional rights. This Court rejected this issue for the fifth time almost two weeks ago. *See Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404, at *5 (Fla. July 22, 2025) (affirming summary denial of due process, access to courts, and access to counsel claims related to a 30-day warrant period). Bates provides no reason to recede from this Court's previous holdings.

But it is worth noting here that Bates' focus on what he deems the "truncated" warrant proceedings is wholly misplaced and misleading. Bates has had no less than *twenty-five years* with taxpayer paid counsel to litigate and relitigate claims in both state and federal courts. He can hardly complain about a 31-day warrant period after being granted decades to engage in repetitive litigation. By giving him decades with publicly funded counsel to litigate claims, he has been afforded far more process than he was ever constitutionally due.

By the time the Governor signs a warrant, capital litigants should have already litigated effectively all substantive claims. There are procedures in place for the very few that could not have been raised pre-warrant, such as incompetency to be executed. Bates fails to give any reason or explanation why the 31-day warrant period prevented him from raising any claim that could not have been raised sooner. Due process is not whatever process a capital defendant believes is due.

***Relevant Facts***

CCRC-S has represented Bates since 2001. (PCR1:60–65.) Bates' initial Rule 3.851 motion raised two unsuccessful lethal injection claims. (PCR4:598–601, 694); *Bates v. State*, 3 So. 3d 1091, 1106 & n.18 (Fla. 2009) (summarily rejecting Bates' lethal injection challenge).

***Ruling Below***

The circuit court summarily denied Bates' claim that the 31-day warrant period and denial of lethal-injection records violated the federal constitution as legally insufficient. (WPCR:906–09.)

***Appellate Presentation***

The only properly presented issue here is whether the short

warrant period and denial of access to public records violates the Fourteenth Amendment's due process clause.

Bates' heading, however, asserts denials of his right to access the courts and his right to habeas relief under the Federal and State Constitutions. Complaining about a constitutional violation in an issue heading does not properly present the issue for appellate review. *See Shere v. State*, 742 So. 2d 215, 217 n.6 (Fla. 1999) (declining to address issues presented in a brief's headings); *United States v. Ayala-Landor*, 994 F.3d 73, 75 n.2 (1st Cir. 2021) (holding appellant waived claims "mentioned in his issue headings on appeal" but not developed in the brief). *See also Cole v. State*, 392 So. 3d 1054, 1065–1066 & n.18 (Fla. 2024).

That said, Bates' perfunctory claims are also meritless. He was not denied access to courts. Bates has had twenty-five years in postconviction to litigate his claims at the proper time, demanded public records and raised four post-warrant claims below, and appealed to this Court. *See Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404, at *5 (Fla. July 22, 2025); *Gudinas v. State*, No. SC2025-0794, 2025 WL 1692284, at *6–7 (Fla. June 17, 2025). The right to access the courts is not the right to obtain a favorable

result. Bates has not been denied access to the courts, which he has accessed repeatedly before and is currently still accessing now.

Bates' suspension clause claims can also be easily dismissed. As discussed in the Great Writ Section above, Bates cannot properly invoke the state or federal habeas clauses and his attempts to do so constitute an abuse of the writ. The United States Supreme Court recently rejected a habeas-clause-suspension argument to the statutory bar on federal relief imposed after just the first round of federal postconviction. *See Jones v. Hendrix*, 599 U.S. 465, 482–88 (2023) (rejecting the argument that failing to allow federal prisoners a second chance at postconviction relief violates the suspension clause). The suspension-clause claims are meritless on their face.

Bates' perfunctory claims of constitutional error in his heading for this issue are both inadequately briefed and wholly without merit. This Court should reject them for each reason independently.

***Merits***

Bates has failed to demonstrate any constitutional violation occurred because of the 31-day warrant period and denial of access to lethal-injection records. This Court has repeatedly, recently, and without exception held warrant periods of the same or shorter

duration than this one do not create a constitutional issue.[36] The denial of access to lethal-injection records does not change this calculus given this Court has routinely affirmed the denial of access to these records. *E.g.*, *Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404, at *6–7 (Fla. July 22, 2025).

Those holdings make good sense. Postconviction counsel have a duty to monitor and raise as-applied lethal injection challenges prior to a warrant.[37] Absent unusual circumstances, post-warrant requests for such records are properly denied because they do not relate to a colorable claim. *E.g.*, *Zakrzewski*, 2025 WL 2047404, at *6–7 (holding "all-encompassing requests for records relating to Florida's lethal injection protocol bear no relation to a colorable

---

[36] *Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404, at *5 (Fla. July 22, 2025) (affirming summary denial of due process, access to courts, and access to counsel claims related to a 30-day warrant period); *Bell v. State*, No. SC2025-0891, 2025 WL 1874574, at *17 (Fla. July 8, 2025) (same for a 32-day warrant); *Hutchinson v. State*, No. SC2025-0517, 2025 WL 1198037, at *4 (Fla. Apr. 25, 2025) (same for a 31-day warrant); *Tanzi v. State*, 407 So. 3d 385, 390–91 (Fla. 2025) (same for a 29-day warrant); *Barwick v. State*, 361 So. 3d 785, 789–91 (Fla. 2023) (same for a 30-day warrant).

[37] *Rogers v. State*, 409 So. 3d 1257, 1266–69 (Fla. 2025) (rejecting a lethal injection challenge as both untimely and on the merits); *Tanzi v. State*, 407 So. 3d 385, 392–93 (Fla. 2025) (same); *Cole v. State*, 392 So. 3d 1054, 1064–65 (Fla. 2023) (same).

postconviction claim for relief"). Bates also does not identify any specific records he believes he should have received.

Bates' claim that the 31-day warrant period and denial of access to lethal-injection-related public records prevented him from investigating and raising a lethal-injection challenge is legally insufficient. Bates could not wait until the Governor signed his warrant to investigate and timely raise an as-applied lethal injection challenge. *See Rogers*, 409 So. 3d at 1267–69 (holding a post-warrant, as-applied, lethal injection claim untimely). Bates himself raised a lethal injection challenge to the prior protocol over a decade ago. *Bates v. State*, 3 So. 3d 1091, 1106 & n.18 (Fla. 2009). And three other capital defendants have recently raised such challenges in similar warrant timeframes. *See id.* (collecting cases).

As for lethal injection records, Bates is not entitled to them. *E.g.*, *Zakrzewski*, 2025 WL 2047404, at *7. This Court has repeatedly rejected constitutional challenges to the limitations imposed by Rule 3.852. *E.g.*, *Dailey v. State*, 283 So. 3d 782, 792–93 (Fla. 2019) (affirming the refusal to provide lethal injection records and rejecting constitutional challenges to that decision). These limitations "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" and "reasonable in the context of capital postconviction claims." *Id.* at 793.

In any event, speculative assertions that providing more time or records would have enabled a meritorious lethal injection challenge can only be summarily denied. *See Dillbeck v. State*, 357 So. 3d 94, 103 (Fla. 2025) (postconviction "relief cannot be based on speculative assertions"). CCRC-S has represented Bates for over two decades and raised a prior lethal injection challenge. *Bates*, 3 So. 3d at 1096, 1106 & n.18. It is difficult to see how these post-warrant proceedings prevented CCRC-S from raising another pre-warrant lethal injection claim after the protocol changed. *Cf. Rogers v. State*, 409 So. 3d 1257, 1267 (Fla. 2025) (explaining Florida's current lethal injection protocol "is not materially different" than "the protocol that has been in effect since 2017"); *Jimenez v. State*, 265 So. 3d 462, 473 (Fla. 2018) (Lethal injection records do not relate to a colorable claim because the current protocol "was fully considered and approved of" by then.).

This Court should affirm this issue.

5. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DENYING BATES' CLEMENCY-RELATED AND LETHAL-INJECTION-RELATED PUBLIC RECORDS DEMANDS.

Bates' final issue argues the circuit court abused its discretion in denying his demands for: (1) clemency-related public records and (2) lethal-injection-related public records. But the circuit court's denial of his demands was well within its discretion under this Court's clear-cut caselaw.

***Relevant Facts***

CCRC-S has represented Bates since 2001 and raised unsuccessful, pre-warrant, lethal-injection claims. (PCR4:598–601, 694); *Bates v. State*, 3 So. 3d 1091, 1106 & n.18 (Fla. 2009).

Bates filed post-warrant demands for clemency-related records on the EOG and FCOR and lethal-injection records on DOC, FDLE, and the 8ME. (WPCR:168–213.) All five agencies objected to Bates' demands. (WPCR:216–224 (FCOR), 282–95 (8ME), 296–305, (FDLE), 309–21 (DOC), 324–332 (EOG).) The circuit court held a hearing on the demands and issued a written order denying them. (WPCR: 358–412 (hearing), 344–47 (denial order).)

***Ruling Below***

The circuit court denied Bates' lethal-injection-records

demand on DOC as "overbroad and unduly burdensome," not related to a colorable claim for relief, and also ruled the records were statutorily exempt from disclosure under "§ 945.10, Florida Statutes." (WPCR:344.) It denied the demands on the FDLE and 8ME as overbroad and unduly burdensome, lacking good cause to excuse the delayed request, and failing to relate to a colorable claim. (WPCR:343–44.) For FDLE, the court additionally determined the records were exempt from disclosure. (WPCR:344.)

The court denied the demands for clemency-related records targeted at FCOR and EOG because they were "overbroad and unduly burdensome," statutorily exempt from disclosure, and Bates failed to show either good cause for not requesting them before a warrant or how they related to a colorable claim. (WPCR:345–47.)

***Appellate Presentation***

The only properly presented issues here are whether Rule 3.852 is constitutional under Article I, Section 24, of the Florida Constitution, and whether the circuit court abused its discretion in this case.

Bates, however, cites a smorgasbord of constitutional rights he claims were violated by the denial of access to public records. Each

of these rights has a distinct source of law and analytical framework. He discusses none of that and simply throws a laundry list of complaints and, in conclusory fashion, concludes his complaints show violations of at least eight distinct constitutional rights (four federal and four state) in the heading alone. (IB:67.)

As Bates well knows, conclusory assertions of constitutional violations like these do not properly present an issue. *Bates v. Sec'y, Fla. Dep't of Corr.*, 768 F.3d 1278, 1300 n.10 (11th Cir. 2014) (invoking and discussing one constitutional rule does not raise other constitutional issues implicated by the same fact pattern even if there is a passing reference to the other issue); *Cole v. State*, 392 So. 3d 1054, 1065–66 & n.18 (Fla. 2024) (rejecting due process, equal protection, access to courts, and Eighth Amendment claims as inadequately briefed).

"A litigant cannot require constitutional adjudication by incanting magic spells or pointing a finger at a particular clause." *Max M. v. New Trier High Sch. Dist. No. 203*, 859 F.2d 1297, 1300 (7th Cir. 1988). Citations to broad principles of law will not do the trick either. *Allen v. State*, No. SC2023-1662, 2025 WL 1830814, at *10 (Fla. July 3, 2025). Proper presentation requires the litigant to

correctly and clearly identify the constitutional issue he seeks reversal on and then thoroughly analyze why a constitutional violation occurred on the asserted facts. *See Allen*, 2025 WL 1830814, at *10; *Wainwright v. State*, No. SC2025-0708, 2025 WL 1561151, at *7 n.16 (Fla. June 3, 2025). That requires more than simply laying out the facts and asserting a constitutional violation occurred. *Id.*

This Court can hardly bring its full considered judgment to bear when all a litigant asserts is a scattered, but detailed, fact pattern and a conclusory proclamation that the facts show a slew of constitutional violations.[38] Since Bates has forgone any attempt to develop the constitutional framework undergirding his claims and apply it to the facts he describes, this Court should reject this all but the two issues he properly presented as inadequately briefed.

[38] These issues are endemic in capital litigation and not unique to warrant litigation. *E.g.*, *Brown v. State*, 304 So. 3d 243, 267 n.11, 272 (Fla. 2020) (noting a capital defendant's "noncompliance" with Rule 3.851's organizational requirements in initial postconviction was a "recurring theme below that delayed this case for years" and the final motion was still "disorganized").

***Merits***

The circuit court did not abuse its discretion in denying Bates' public-records demands on the EOG, FCOR, and DOC. Rule 3.852(i)(2) provides that this Court may order production of "additional public records only upon finding *each* of the following":

> (A) collateral counsel has made a timely and diligent search of the records repository;
>
> (B) collateral counsel's affidavit identifies, with specificity those additional public records that are not at the records repository;
>
> (C) the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851, or appear reasonably calculated to lead to the discovery of admissible evidence; and
>
> (D) the additional public records request is not overly broad or unduly burdensome.

Fla. R. Crim. P. 3.852(i)(2)(A)-(D). Rule 3.852(i) demands made after a warrant is signed must additionally show "good cause as to why the public records request was not made until after the death warrant was signed." *Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404, at *6 (Fla. July 22, 2025). This Court has repeatedly rejected constitutional challenges to Rule 3.852. *E.g.*, *Dailey v. State*, 283 So. 3d 782, 792–93 (Fla. 2019). *See also Zakrzewski*,

2025 WL 2047404, at *6 (noting the defendant raised constitutional challenges to Rule 3.852(i) while affirming the denial of records).

Bates' oft-repeated arguments provide no reason for this Court to recede from its well-settled holdings that Rule 3.852 is constitutional. The only remaining questions are therefore whether the circuit court abused its discretion in applying the Rule to Bates' demands for lethal-rejection and clemency-related records. The State will analyze each category separately and only focus on a few reasons to affirm given this Court has repeatedly rejected these issues in recent warrant cases.

**A. Lethal-Injection Demands**

The circuit court was within its discretion to deny Bates' post-warrant demands for lethal injection records. The demand was not timely made under Rule 3.852(i)(A), and Bates did not establish good cause for waiting until after a warrant was signed to pursue these records. CCRC-S, which has had access to Bates' medical records and raised a pre-warrant lethal injection challenge over a decade ago, could not wait until his warrant was signed to investigate another lethal injection challenge. *See Rogers v. State*, 409 So. 3d 1257, 1266–69 (Fla. 2025) (rejecting a lethal injection

challenge as untimely); *Tanzi v. State*, 407 So. 3d 385, 392–93 (Fla. 2025) (same); *Cole v. State*, 392 So. 3d 1054, 1064–65 (Fla. 2023) (same). Contrary to Bates' contention, as-applied, lethal-injection claims do not only ripen after a warrant is signed. *See Ferguson v. State*, 101 So. 3d 362, 365 (Fla. 2012) (rejecting the argument that a lethal injection claim "is not ripe until a death warrant is signed because otherwise a prisoner cannot be certain under which protocol he is to be executed").

This Court has also repeatedly upheld the denial of lethal-injection records as unrelated to a colorable claim for relief under Rule 3.852(i)(C). *E.g.*, *Zakrzewski*, 2025 WL 2047404, at *6. Bates does not point to anything in his case that would make an as-applied challenge more colorable than the others this Court has routinely rejected. The circuit court properly denied this demand.

**B. Clemency-Related Demands**

Likewise, the circuit court was within its discretion to deny Bates' post-warrant demands for clemency-related records. These records were not timely sought under Rule 3.852(i)(A) because capital defendants cannot wait to raise clemency-related claims until after a warrant is signed. *See Ferguson v. State*, 101 So. 3d

362, 366 (Fla. 2012) (rejecting the argument "clemency is only ripe and/or relevant 'close to the time a death warrant is signed,' when the 'snapshot' of the inmate is current and with a significant history on death row to evaluate" and holding instead that clemency claims ripen after initial state and federal remedies are exhausted).

These records also do not relate to a colorable claim under Rule 3.852(i)(C) as this Court has repeatedly held. *E.g.*, *Gudinas v. State*, No. SC2025-0794, 2025 WL 1692284, at *9 (Fla. June 17, 2025) (collecting cases). Bates' demand failed to overcome the presumption that the Governor acted constitutionally before denying him clemency. *See Hannon v. State*, 228 So. 3d 505, 512 (Fla. 2017) (affirming denial of a public records' demand for failure to overcome the presumption the Executive Branch properly performed its duties).[39] Speculative allegations of constitutional error are not enough, particularly when there is slim constitutional room for challenges to clemency proceedings. Bates failed to establish his clemency-related demands related to a colorable claim for relief.

[39] *Cf. United States v. Bass*, 536 U.S. 862, 863 (2002) (One "who seeks discovery on" a selective prosecution claim "must show some evidence of both discriminatory effect and discriminatory intent.").

Finally, it is well-settled that clemency-related records are completely exempt from disclosure. *E.g.*, *Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404, at *7 (Fla. July 22, 2025).

The bottom line is the circuit court did not abuse its discretion in denying Bates access to lethal-injection or clemency-related records. This Court should affirm.

## CONCLUSION

This Court should affirm and bring true finality to the victims, the State of Florida, and Kayle Barrington Bates.

Respectfully submitted and certified,

JAMES UTHMEIER
ATTORNEY GENERAL OF FLORIDA

*/s/ Jason W. Rodriguez*
JASON W. RODRIGUEZ
SENIOR ASSISTANT ATTORNEY GENERAL
Florida Bar No. 125285

Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399–1050
(850) 414–3300
jason.rodriguez@myfloridalegal.com
E-Service: capapp@myfloridalegal.com

Counsel for the State of Florida

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of August 2025, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: **James Driscoll**, **Scott Gavin**, and **Jeanine Cohen**, Capital Collateral Regional Counsels-Southern Region, **driscollj@ccsr.state.fl.us, gavins@ccsr.state.fl.us,** and **cohenj@ccsr.state.fl.us;** and the **Florida Supreme Court Clerk, warrant@flcourts.org**.

## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Bookman Old Style in compliance with Florida Rule of Appellate Procedure 9.045. This brief contains **19,153** words and complies with the 20,000-word limit in Florida Rule of Appellate Procedure 9.210(a)(2)(D), (a)(2)(E).

*/s/ Jason W. Rodriguez*
Attorney for the State of Florida