IN THE SUPREME COURT OF FLORIDA

Case No. SC2025-1127

Execution Scheduled: August 19, 2025, at 6:00 p.m.

Kayle Barrington Bates,
Appellant,

v.

State of Florida,
Appellee.

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

Lower Court Case No. 1982-CF-661B

INITIAL BRIEF OF THE APPELLANT

JAMES L. DRISCOLL, JR.
ASSISTANT CCRC-S
Florida Bar No. 0078840

MICHAEL T. COOKSON
Staff Attorney
Florida Bar No. 1057838

JEANINE COHEN
Staff Attorney
Florida Bar No.128309

CAPITAL COLLATERAL
REGIONAL COUNSEL – SOUTH
110 SE 6th Street, Suite 701
Fort Lauderdale, FL 33301

Counsel for Mr. Bates

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REQUEST FOR ORAL ARGUMENT

Mr. Bates respectfully requests oral argument by counsel pursuant to Florida Rule of Appellate Procedure 9.320. The resolution of the issues involved in this action may determine whether Mr. Bates lives or dies. This Court has granted oral argument in other capital cases in a similar procedural posture. A full opportunity to argue the issues at oral argument is appropriate in this case because of the seriousness of the claims at issue and the penalty that the State seeks to impose on Mr. Bates.

CITATIONS TO THE RECORD

References to the record of the direct appeal of Mr. Bates' judgment of conviction and death sentence are of the form: R. [page#]. References to the record on appeal from the May 1995 resentencing are: RS2-[pg.#]. References to the record of the second postconviction proceedings are: PCR. [page#]. References to the record of the post-warrant proceedings are: WR-[page#].

To the extent that records from the previous records on appeal were attached to the warrant postconviction motion, citation is made to the warrant record for the convenience of the Court. All other references are self-explanatory or explained herein.

STATEMENT OF THE CASE AND FACTS

In 1982, Mr. Bates was charged by indictment with first-degree murder, kidnapping, sexual battery, and armed robbery. The case proceeded to trial in 1983. The trial court began jury selection by directing the venire to join the minister of the victim's church in prayer. The minister prayed that the all-white jury would appreciate the grave situation with which they were confronted and asked God to grant "wisdom and guidance." He also prayed that the trial judge, Judge Turner, be given "special wisdom." (R. 1211).

Nobody prayed for Mr. Bates. He was found guilty as charged on three of four counts and guilty of attempted sexual battery. The jury recommended death by a vote of 11 to 1. The trial court concurred and sentenced Mr. Bates to death.

Mr. Bates appealed to this Court and raised the following issues:

> I: The trial court erred in adjudging Mr. Bates guilty of robbery, attempted sexual battery, and kidnapping as the jury acquitted him of first-degree felony-murder in which those crimes formed the underlying felonies.
>
> II: The trial court erred in finding that Mr. Bates committed the murder during the course of a robbery, kidnapping, and attempted sexual battery.

> III: The trial court erred in adjudging Mr. Bates guilty of attempted sexual battery when the evidence shows he abandoned his attempt, in violation of section 777.04, Florida :Statutes (1982).
>
> IV: The trial court erred in denying Mr. Bates' motion for a judgment of acquittal as the state presented no evidence that the victim was placed in fear when the ring was taken from her.
>
> V: The trial court erred in finding that Bates committed the murder for the purpose of preventing or avoiding a lawful arrest.
>
> VI: The trial court erred in finding that the murder was committed during the course of a robbery and for pecuniary gain.
>
> VII: The trial court erred in finding Mr. Bates committed the murder in a cold, calculated, and pre-meditated manner without any pretense or moral or legal justification.

On Issues V and VII, this Court agreed that the evidence was insufficient to support the aggravators and remanded for reconsideration of the sentence, but affirmed Mr. Bates's convictions of guilt. *Bates v. State*, 465 So. 2d 490 (Fla. 1985).

On remand, the trial court re-imposed the death sentence. This Court affirmed. *Bates v. State*, 506 So. 2d 1033 (Fla. 1987). Mr. Bates sought review in the Supreme Court of the United States, which was denied. *Bates v. Florida*, 484 U.S. 873 (Oct. 5,1987).

Mr. Bates successfully challenged his death sentence in postconviction on ineffective assistance of penalty phase counsel grounds. This Court affirmed and remanded for a new penalty phase. *Bates v. Dugger*, 604 So. 2d 457 (Fla. 1992).

On remand, the first attempt at a new penalty phase ended in mistrial. The final penalty phase trial ended on May 25, 1995, with the jury recommending death by a vote of nine to three. The trial court, again, sentenced Mr. Bates to death. In sentencing Mr. Bates to death again, the trial court found three aggravating circumstances: (1) committed during an enumerated felony (kidnapping and attempted sexual battery); (2) pecuniary gain; and, (3) especially heinous, atrocious, or cruel (HAC). As to mitigation, the trial court found:

> [T]wo statutory mitigating circumstances: no significant history of prior criminal history (significant weight); and appellant's age of twenty-four at the time he committed the murder (little weight) [and] eight nonstatutory mitigating circumstances: appellant was under some emotional distress at the time of the murder (significant weight); appellant's ability to conform his conduct to the requirements of the law was impaired to some degree (significant weight); appellant's family background (some weight); appellant's national guard service (little weight); appellant was a dedicated soldier and

> patriot (little weight); appellant's low-average IQ (little weight); appellant's love for his wife and children and being a supportive father (some weight); and appellant was a good employee (little weight).

Bates v. State, 750 So. 2d 6, 9 (Fla. 2000).

On appeal, Mr. Bates raised the following issues:

> I: The sentencing court's refusal to instruct Mr. Bates' capital jury that life without the possibility of parole was a sentencing alternative to death denied him [ ] due process of law and a fundamentally fair capital sentencing proceeding in violation of the Eighth and Fourteenth Amendments.
>
> II: Mr. Bates' jury rendered a death verdict contrary to Florida Statute § 921.141, the sentencing court's instructions, the Florida Constitution and Eighth and Fourteenth Amendments to the U.S. Constitution.
>
> III: Mr. Bates was denied an individualized and reliable sentencing determination when the sentencing court violated the principles of *Lockett v. Ohio*, 438 U.S. 586 (1978), and precluded Mr. Bates from presenting, and the jury from considering relevant mitigating evidence.
>
> IV: Mr. Bates' case is not one of the most aggravated and least mitigated and his death sentence is disproportionate in violation of the Florida Constitution.
>
> V: The sentencing court neglected to evaluate non-statutory mitigation in violation of *Skipper v. South Carolina* and *Campbell v. State* and the

> Eighth and Fourteenth Amendments to the U.S. Constitution.
>
> VI: The sentencing court violated this Court's order staying Mr. Bates' resentencing hearing when jurors were excused outside the presence of Mr. Bates and his counsel and off the record in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments.
>
> VII: Mr. Bates was deprived of his rights to due process and equal protection under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution when the sentencing court denied his request for expert assistance necessary to present his penalty phase defense that he suffered from organic brain damage.
>
> VIII: Mr. Bates' sentencing jury was improperly instructed on the aggravating circumstances, and the aggravating circumstances were improperly argued and imposed, in violation of the Court's precedent and the Eighth and Fourteenth Amendments.
>
> IX: Mr. Bates was denied an individualized and reliable sentencing determination when the sentencing court precluded Mr. Bates from investigating, developing and presenting evidence to his capital resentencing jury that he was innocent of the offenses.

This Court affirmed over dissents. Of particular significance, Justices Anstead, Pariente, and Kogan thought Mr. Bates should have been allowed to waive the possibility of parole, noting:

> When all is said and done, the truth is that no valid public policy reason has been advanced to

> deny the defendant the right to waive his ex post facto rights and give a sentencing jury the option of applying Florida's prevailing public policy in capital sentencing to this case. It is done every day in noncapital cases and should be permitted here.

750 So. 2d at 22, *cert. denied*, 531 U.S. 835 (Oct. 2, 2000).

Mr. Bates again sought postconviction relief in state court, filing a motion under Florida Rule of Criminal Procedure 3.851 and a motion for DNA testing under Rule 3.853. The lower court denied both after granting a limited evidentiary hearing. On appeal, Mr. Bates argued:

> I: The trial court erred in denying Mr. Bates's motion for DNA testing pursuant to Fla. R. Crim. P. 3.853 and Florida Statutes § 923.11.
>
> II: Mr. Bates was denied the effective assistance of counsel during his 1995 resentencing, in violation of the Sixth and Fourteenth Amendments to the United States Constitution.
>
> III: The trial court erred in summarily denying Mr. Bates's Claims.
>
> IV: Other Errors: (a) Juror Interview Ban is unconstitutional; (b) Burden Shifting Claim; (c) Heinous, Atrocious and Cruel Aggravating Factor; (d) Mr. Bates is innocent of the death penalty; (e) Aggravating Circumstances are Vague and Overbroad; (f) Execution by Lethal Injection is Cruel and Unusual; (g) Capital Sentencing Statute is Unconstitutional; (h)

> Change of Venue and Pre-trial Publicity; and, (i) Cumulative Error.

Mr. Bates also petitioned this Court to grant the writ of habeas corpus, arguing:

> I: Mr. Bates was denied effective assistance of counsel on direct appeal to the Florida Supreme Court in violation of his rights under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, and Art. I §§ 9, 16(a), and 17 of the Florida Constitution, and full review by the Florida Supreme Court and the original trial court because the transcript is unreliable and incomplete.
>
> II: Appellate counsel was ineffective for failing to raise on appeal the state's presentation of inadmissible, irrelevant, inflammatory and unfairly prejudicial evidence.

This Court affirmed the denial of postconviction relief and denied the writ of habeas corpus. *Bates v. State*, 3 So. 3d 1091 (Fla. 2009).

Mr. Bates sought federal habeas relief, which the United States District Court in the Northern District of Florida denied. The Eleventh Circuit Court of Appeals affirmed. *Bates v. Sec'y, Fla. Dept. of Corr.*, 768 F.3d 1278 (11th Cir. 2014); *cert. denied*, 577 U.S. 839 (2015).

Again, Mr. Bates sought DNA testing and, again, the state courts denied an opportunity to show his innocence. *Bates v. State*,

218 So. 3d 426 (Fla. 2017).

Mr. Bates challenged his sentence again after the Supreme Court decided *Hurst v. Florida*, 577 U.S. 92 (2016). Here, too, he was denied relief. *Bates v. State*, 238 So. 3d 98 (Fla. 2018); *cert. denied*, 586 U.S. 845 (Oct. 1, 2018).

Finally, Mr. Bates filed a motion to interview jurors in the circuit court, which was denied. This Court affirmed and the Supreme Court denied certiorari. *Bates v. State*, 398 So. 3d 406 (Fla. 2024); *cert. denied*, No. 24-6875, 2025 WL 1787777 (U.S. June 30, 2025).

Governor Ron DeSantis signed a warrant for the execution of Mr. Bates on July 18, 2025. WR-82-83.[1] Following the signing of the warrant, this Court and the Circuit Court for the Fourteenth Judicial Circuit in Bay County ("Warrant Court") issued scheduling orders. WR-84-85, 111-112, 133-39. After Mr. Bates filed his post-warrant record demands, on Wednesday, July 24, 2025, WR-168-

[1] Through his federally appointed counsel, Mr. Bates filed a Fed.R.Civ.Pro.60(b) motion in Case 5:09-cv-00081to reopen his prior federal habeas proceedings. That was denied and Mr. Bates is now seeking a Certificate of Appealability in the Eleventh Circuit Court of Appeals. Case Number 25-12588. He also filed a Section 1983 suit in the Federal District Court for the Northern District of Florida: Case Number: 5:25-cv-00192-TKW-MJF. This is as of 4:28 p.m., August 1, 2025. The filings in these cases have been filed with this Court.

213, the Warrant Court held a public records hearing and sustained all agency objections. WR-340-353, 358-412.

Mr. Bates filed a successive postconviction motion on July 25, 2025. WR-423-757. The State responded to the motion. WR-757-784. The Warrant Court held a case management conference on July 28, 2025. WR-803-844. The Warrant Court denied an evidentiary hearing that same day. WR-798-802. Finally, on July 29, 2025, the Warrant Court denied relief. WR-895-954.

SUMMARY OF ARGUMENTS

Since Mr. Bates's arrest, he has been denied one constitutional right after another. His execution would constitute a final, manifest injustice in a case marred by many injustices. Mr. Bates asks this Court to grant relief for the constitutional violations argued below.

In Argument I Mr. Bates argues that the denial of neuropsychological evidence rendered his death sentence violative of the Eighth Amendment because, when this evidence is properly considered, he falls outside the class of individuals whose execution may be constitutional.

In Argument II Mr. Bates argues that the jury's 9 to 3 vote recommending death was based on a fatal untruth. The jury believed

that Mr. Bates would be released on parole, posing a future danger to the community and escaping prison time befitting the offense. In reality, Mr. Bates would never see the light of day and everyone except the jury knew it.

In Argument III Mr. Bates argues that he was denied meaningful clemency proceedings and the opportunity to respond to findings in clemency reports relied upon in making clemency decisions.

In Argument IV, Mr. Bates argues that the warrant procedures in his case violated Due Process, Access to the Courts, and the Right to Habeas under the United States And Florida Constitutions.

Finally, in Argument V, he appeals the Warrant Court's denial of public records.

Ultimately, this Court has the jurisdiction to correct the gross miscarriages of justice that Mr. Bates has suffered. His execution would be a capstone of manifest justice. This is the Florida Supreme Court, and as such, this Court can grant a remedy if it chooses.

STANDARD OF REVIEW

Because the circuit court denied postconviction relief without an evidentiary hearing, this Court must accept the factual allegations presented in Mr. Bates's motion and in this appeal as true to the

extent that they are not conclusively refuted by the record. *Ventura v. State*, 2 So. 3d 194, 197-98 (Fla. 2009). Further, this Court "review[s] the trial court's application of the law to the facts de novo." *Green v. State*, 975 So. 2d 1090, 1100 (Fla. 2008). A postconviction court's decision whether to grant an evidentiary hearing is likewise subject to de novo review. *Rose v. State*, 985 So. 2d 500, 505 (Fla. 2008).

In the foregoing section, Mr. Bates presents a more elaborate argument on this Court's and the Warrant Court's authority to reach the issues argued herein.

ARGUMENT

Below, pursuant to this Court's scheduling order, Mr. Bates moved for relief from his convictions and sentence of death under Florida Rule of Criminal Procedure 3.851. The warrant court denied relief on July 30, 2025. Through this appeal, Mr. Bates invokes this Court's jurisdiction under Article V, Section 3(b)(9), of Florida's Constitution, which provides: "The supreme court . . . [m]ay, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge."

The Nature Of Postconviction Relief Under Florida Rule Of Criminal Procedure 3.851

> "Historically, habeas corpus and coram nobis proceedings were the only means available to challenge the validity of a conviction and sentence. In 1963, this Court enacted Florida Rule of Criminal Procedure 1, which was the predecessor to current Florida Rules of Criminal Procedure 3.850 and 3.851. The rule was almost identical to its federal counterpart and was adopted to provide a complete and efficacious postconviction remedy to correct convictions where there is a claimed denial of some fundamental or organic right in the course of the trial, and the procedural default of failing to appeal from a judgment of conviction is not equivalent to an express waiver of the constitutional right and will not preclude collateral attack on an unlawful conviction by means of a proceeding brought under the criminal procedure rule."

Allen v. Butterworth, 756 So. 2d 52, 60-61(Fla. 2000).

Habeas corpus is the proper vehicle for raising "error that prejudicially denies fundamental constitutional rights" and urging "this Court [to] revisit a matter previously settled by the affirmance of a conviction or sentence." *Kennedy v. Wainwright*, 483 So. 2d 424, 426 (Fla. 1986). In turn, Rule 3.851 "is a procedural vehicle for the collateral remedy otherwise available by writ of habeas corpus." *Allen*, 756 So. 2d at 61 n.3.

Florida's Constitution empowers this Court to prescribe procedural rules applicable in habeas proceedings. *Allen*, 756 So. 2d

at 61. Accordingly, "[i]t is true that the right to habeas relief, like any other constitutional right, is subject to certain reasonable limitations consistent with the full and fair exercise of the right." *Haag v. State*, 591 So. 2d 614, 616 (Fla. 1992); *Allen*, 756 So. 2d at 62. But these procedural requirements must yield where necessary to ensure habeas relief is "available to all through simple and direct means without needless complication or impediment." *Allen*, 756 So. 2d at 62 (quoting *Haag*, 591 So. 2d at 616).

In construing its authority to regulate habeas practice through the Florida Rules of Criminal Procedural, this Court has insisted that habeas relief "should be fairly administered in favor of justice and not bound by technicality." *Allen*, 756 So. 2d at 62. As Justice Anstead once wrote:

> [W]e must constantly keep in mind that we are dealing with the writ of habeas corpus, the Great Writ, which is expressly set out in Florida's Constitution. That writ is enshrined in our Constitution to be used as *a means to correct manifest injustices* and its availability for use *when all other remedies have been exhausted* has served our society well over many centuries.

Baker v. State, 878 So. 2d 1236, 1246 (Fla. 2004) (Anstead, J. concurring) (emphasis added).

Habeas corpus jurisdiction is basic to our legal heritage. It

> is so basic that the authors of our habeas corpus jurisdiction made it unique with regard to this Court because it states that habeas corpus jurisdiction may not only be exercised by the entire Court, but it may also be exercised by a single justice. It is the only jurisdictional provision that gives authority to an individual justice. The provision also takes particular care to address the problem of resolving substantial issues of fact, a concern of the majority, by allowing the Court or any justice to make the writ returnable to "any circuit judge."

Id. at 1246 (quoting *Harvard v. Singletary*, 733 So. 2d 1020, 1025 (Fla. 1999) (Overton, S.J., dissenting)).

Mr. Bates asks this Court to exercise its inherent and explicit authority to vindicate his rights and liberties guaranteed by the United States and Florida Constitutions. This Court should remedy the manifest injustices set forth in this petition.

Stare Decisis

Mr. Bates acknowledges this Court's caselaw limiting the relief traditionally available through *habeas corpus* and *coram nobis*, whether sought from this Court in habeas or from a circuit court under Rule 3.851. Nevertheless, *stare decisis* should not prevent this Court from granting postconviction relief or reversing the denial thereof here. If prior decisions of this Court preclude relief despite the multitude of errors raised here and littered throughout these

proceedings, then those decisions should be abrogated or construed otherwise.

Recently, this Court has been more than willing to set aside precedent, new and longstanding alike. For example, in *State v. Poole*, this Court "recede[d] from *Hurst v. State*[2] except to the extent that it held that a jury must unanimously find the existence of a statutory aggravating circumstance beyond a reasonable doubt." 297 So. 3d 487, 491 (Fla. 2020) Addressing *stare decisis*, this Court said:

> *Stare decisis* provides stability to the law and to the society governed by that law. Yet *stare decisis* does not command blind allegiance to precedent. "Perpetuating an error in legal thinking under the guise of stare decisis serves no one well and only undermines the integrity and credibility of the court."

Id. at 506 (quoting *Shepard v. State*, 259 So. 3d 701, 707 (Fla. 2018)).

This Court noted that erroneous decisions are susceptible to overruling: "The doctrine of *stare decisis* bends . . . where there has been an error in legal analysis" and "we will abandon a decision that is 'unsound in principle.'" 297 So. 2d at 507 (quoting *Puryear v. State*, 810 So. 2d 901, 905 (Fla. 2002); *Robertson v. State*, 143 So. 3d 907, 910 (Fla. 2014)). However, "a conclusion that the earlier Court erred

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[2] *Hurst v. State*, 202 So. 3d 40 (Fla. 2016).

must be based on a searching inquiry, conducted with minds open to the possibility of reasonable differences of opinion." 297 So. 2d at 507. Overruling *Hurst v. State* notwithstanding *stare decisis*, this Court said:

> In this case we cannot escape the conclusion that, to the extent it went beyond what a correct interpretation of *Hurst v. Florida* required, our Court in *Hurst v. State* got it wrong. We say that based on our thorough review of *Hurst v. Florida*, of the Supreme Court's Sixth and Eighth Amendment precedents, and of our own state's laws, constitution, and judicial precedents. Without legal justification, this Court used *Hurst v. Florida*—a narrow and predictable ruling that should have had limited practical effect on the administration of the death penalty in our state as an occasion to disregard decades of settled Supreme Court and Florida precedent. Under these circumstances, it would be unreasonable for us *not* to recede from *Hurst v. State*'s erroneous holdings.

Id. at 506.

Likewise, in *Phillips v. State*, this Court receded from *Walls v. State*.[3] 299 So. 3d 1013 (Fla. 2020). Mirroring its discussion of *stare decisis* in *Poole*, this Court said:

> We cannot escape the conclusion that this Court in *Walls* clearly erred in concluding that *Hall* applies retroactively. We say that based on our review of *Hall*, our state's judicial precedents regarding retroactivity, and the decisions of federal habeas courts concluding that *Hall* does not apply retroactively. Based on its incorrect legal analysis, this

[3] *Walls v. State*, 213 So. 3d 340 (Fla. 2016).

> Court used *Hall*—which merely created a limited procedural rule for determining intellectual disability that should have had limited practical effect on the administration of the death penalty in our state—to undermine the finality of numerous criminal judgments. As in *Poole*, "[u]nder these circumstances, it would be unreasonable for us not to recede from [Walls'] erroneous holdings."

Id. 1023.

Likewise, in *Bush v. State*, this Court abandoned the heightened standard of review applied by Florida appellate courts evaluating the sufficiency of evidence "[w]here the only proof of guilt is circumstantial." 295 So. 3d 179, 200 (Fla. 2020). This Court had applied this standard "[f]or more than one hundred years." *Id.* at 216 (Labarga, J. concurring in part and dissenting in part). But, in abandoning it, this Court declined to offer a searching inquiry and, instead, adopted a lower court's reasoning: "[T]he Fifth District fully explained why this standard is confusing and incorrect as both a jury instruction and an appellate standard of review and we see no need to repeat that explanation here." *Id.* at 200 (citing *Knight v. State*, 107 So. 3d 449, 457-61 (Fla. 5th DCA 2013)).

In *Lawrence v. State*, this Court abandoned a half-century of comparative proportionality review and Florida Rule of Appellate

Procedure 9.142(a)(5), finding "our precedent is erroneous and must yield to our constitution." 308 So. 3d 544, 549 (Fla. 2020). *State v. Maisonet-Maldonado* abandoned the "single homicide rule," overruling its precedent "prohibit[ing] dual convictions for a single homicide under two different statutes." 308 So. 3d 63, 66 (Fla. 2020) (overruling *State v. Chapman*, 625 So. 2d 838 (Fla. 1993)); *see also*, *Roughton v. State*, 185 So. 3d 1207 (Fla. 2016) (receding from *Gibbs v. State*, 698 So. 2d 1206 (Fla. 1997)).

If overcoming *stare decisis* was correct in these cases, then it should present no barrier to relief here. All precedent that restricts this Court from doing justice should be overcome.

Manifest Injustice

Mr. Bates's assertion of a manifest injustice is twofold. First, his death sentence was obtained without the critical fact-finding being made by a jury, unanimous or otherwise. Mr. Bates's death sentence was obtained contrary to evolving standards of decency, in both the lack of consideration of critical mitigation and the arbitrary and capricious nature of the fact that he faces imminent execution without any of the protections that would ensure his case is truly one of the most aggravated and least mitigated. He faces death with none

of the certainty of a unanimous jury recommendation. The second point, as pleaded above, is that this Court denied relief when relief should have been granted. This Court's earlier decisions, as explained below, were wrong. There can be no greater manifest injustice than Mr. Bates's execution in violation of the United States Constitution.

This Court should exercise its authority to self-correct in avoidance of manifest injustice, which has long be recognized as follows:

> We think it should be made clear however, that an appellate court should reconsider a point of law decided on a former appeal only as a matter of grace, and not as a matter of right; and that an exception to the general rule binding the parties to the "law of the case" at the retrial and at all subsequent proceedings should not be made except in unusual circumstances and for the most cogent reasons—and always, of course, only where "manifest injustice" will result from a strict and rigid adherence to the rule.

Strazzulla v. Hendrick, 177 So. 2d 1, 4 (Fla. 1965); *W. Virginia Oil & Gas Co. v. George E. Breece Lumber Co.*, 213 F.2d 702, 704 (5th Cir. 1954) (identifying "two principles of judicial administration founded on sound public policy, namely, that litigation must finally and

definitely terminate within a reasonable time and that justice must be done unto the parties").

Here, justice was never done. Pervasive, systemic failures at every procedural stage prevented any meaningful vindication of Mr. Bates's constitutional rights. This Court has "exclusive jurisdiction to review all types of collateral proceedings in death penalty cases." *Farina v. State*, 191 So. 3d 454, 454-55 (Fla. 2016). Accordingly, it is incumbent upon this Court to remedy extreme malfunctions and avert manifest injustices in death penalty proceedings. In light of this responsibility, this Court should revisit its prior decisions in Mr. Bates's case and avert his manifestly unjust execution.

Argument I

Mr. Bates's Penalty Phase Was Inadequate To Determine Whether His Case Was One Of The Most Aggravated And Least Mitigated Because The Sentencers Were Denied Critical Mitigation In Violation Of The Eighth and Fourteenth Amendments.

"Because the death penalty is the most severe punishment, the Eighth Amendment applies to it with special force." *Roper v. Simmons*, 543 U.S. 551, 568 (2005) (citing *Thompson v. Oklahoma*, 487 U.S. 815, 856 (1988) (O'Connor, J., concurring)). Constitutional

error prevented the sentencing court and jury from considering compelling neuropsychological mitigation that would have shown that Mr. Bates's case is not amongst the most aggravated and least mitigated. *See Beck v. Alabama*, 447 U.S. 625, 638 (1980) (noting invalidation of "procedural rules that tended to diminish the reliability of the sentencing determination"). Resultantly, Mr. Bates's death sentence is arbitrary, capricious, and excessive. *See Gregg v. Georgia*, 428 U.S. 153, 188 (1976) (citing *Furman v. Georgia*, 408 U.S. 238, 313 (1972)).

Furman held that the death penalty, as applied throughout the country, violated the prohibition on cruel and unusual punishment effected by the Eighth and Fourteenth Amendments. 408 U.S. at 314. Although *Furman* did not find capital punishment unconstitutional *per se*, "it did recognize that the penalty of death is different in kind from any other punishment" and "could not be imposed under sentencing procedures that created a substantial risk that it would be inflicted in an arbitrary and capricious manner." *Accord. Gregg,* 428 U.S. at 188.

In the half-century after *Furman*, the Supreme Court identified myriad substantive and procedural safeguards applicable to the

death penalty. *Roper* concisely summarized these safeguards:

> Capital punishment must be limited to those offenders who commit "a narrow category of the most serious crimes" and whose extreme culpability makes them "the most deserving of execution." This principle is implemented throughout the capital sentencing process. States must give narrow and precise definition to the aggravating factors that can result in a capital sentence. In any capital case a defendant has wide latitude to raise as a mitigating factor "any aspect of [his or her] character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." There are a number of crimes that beyond question are severe in absolute terms, yet the death penalty may not be imposed for their commission. The death penalty may not be imposed on certain classes of offenders, such as juveniles under 16, the insane, and the mentally retarded, no matter how heinous the crime. These rules vindicate the underlying principle that the death penalty is reserved for a narrow category of crimes and offenders.

543 U.S. at 568–69 (citations omitted).

Only after scrupulous adherence to these rules can a State take a person's life in punishment. Mr. Bates relies on these well-established principles to show that his execution, predicated on their persistent violation, will constitute a manifest injustice.

The penalty phase jury recommended death by a vote of only

nine to three after hearing mitigation evidence summarized as follows:

> Eighteen character witnesses testified concerning Mr. Bates' life history and good character. These witnesses were all hardworking, responsible citizens who cared very deeply for Mr. Bates. Their cumulative testimony covered Mr. Bates' entire twenty-four years of life up to the time of this tragic crime. Their testimony went unchallenged. Mr. Bates' school, military and work records were also entered into evidence. Finally, two eminently qualified mental health experts testified concerning Bates' life history and his cognitive and emotional functioning. Both experts provided their expert opinion concerning these matters and how they related to the facts of the offense. The State presented it[s] own mental health expert in rebuttal.

Initial Brief of Appellant at 7, *Bates v. State*, 750 So.2d 6 (Fla. 1999) (No. 86-180), 1997 WL 33491741.

Of course, under Florida's capital sentencing scheme, the jury made no specific findings as to aggravation or mitigation. Rather, the sentencing court found:

> [T]wo statutory mitigating circumstances: no significant history of prior criminal history (significant weight); and appellant's age of twenty-four at the time he committed the murder (little weight). The court found eight nonstatutory mitigating circumstances: appellant was under some emotional distress at

> the time of the murder (significant weight); appellant's ability to conform his conduct to the requirements of the law was impaired to some degree (significant weight); appellant's family background (some weight); appellant's national guard service (little weight); appellant was a dedicated soldier and patriot (little weight); appellant's low-average IQ (little weight); appellant's love for his wife and children and being a supportive father (some weight); and appellant was a good employee (little weight).

Bates, 750 So. 2d at 9.

Although significant mitigation existed, the trial court did not find the two most important statutory mitigators. WR-61. The cause of this denial has been litigated on direct appeal and in postconviction. This claim, however, argues that these errors led to a much deeper and profound error that invalidates Mr. Bates's death sentence. Beyond the individual errors raised previously, Mr. Bates argues that the failure to meaningfully consider his organic brain damage at resentencing constitutes a manifest injustice.

At his first trial, Mr. Bates received ineffective assistance of counsel. Although this Court eventually remanded for a new penalty phase trial, his ineffective counsel had done nothing to investigate or document Mr. Bates's mental status at the time of offense. This critical period was lost. An expert would have documented Mr.

Bates's status and interviewed the people who knew him best.

Further, the dearth of records allowed the trial court's blanket acceptance of Dr. McLaren's speculative opinions. *See* WR-60-62. Resultantly, the trial court unreasonably discounted Mr. Bates's mitigation to irrelevance. *See Porter v. McCollum*, 558 U.S. 30, 44 (2009) (quoting *Porter v. State*, 788 So. 2d 917, 937 (Fla. 2001)) (Anstead, J., concurring in part and dissenting in part) (noting "there exists too much mitigating evidence that was not presented to now be ignored").

Five days before Mr. Bates's resentencing, the trial court granted funds to allow Mr. Tom Dunn, Mr. Bates's trial counsel, to retain Dr. Barry Crown, a forensic neuropsychologist. WR-557. The next day, Dr. Crown visited Mr. Bates at Bay County Jail. WR-663. Dr. Crown evaluated Mr. Bates for organic brain damage using his own testing and testing performed previously by Dr. James Larson. WR-558.

In his opening statement, Mr. Dunn told the jury Dr. Crown would testify as one of three mental health experts. RS2. V9, 48. But, Mr. Dunn forgot to list Dr. Crown as a witness. WR-559. After the State objected for lack of notice, Dr. Crown gave a deposition in

which he described Mr. Bates's neuropsychological impairments and his basis for believing that they were present at the time of the offense:

> Q: All right, collectively, with all of Dr. Larson's tests and your tests, what conclusions did you draw regarding his [Mr. Bates's] mental ability on June 14, 1982?
>
> Crown: I believe that this man had a diminished capacity at that time.
>
> Q: And why do you believe that?
>
> Crown: Because this gentleman, apart from the stress of any situation, currently displays problems in the [sic] number of neuropsychological areas and has a number of neuropsychological deficits. These deficits are consistent with findings that go back to 1971 which were the earlier records that I had seen.

WR-708.

During the trial, the State ordered an MRI for Mr. Bates and delivered a report to Mr. Dunn that revealed no abnormalities. Although organic brain damage would not appear on an MRI, at the time, Mr. Dunn did not know how to rebut the State's report without a neurologist. Mr. Dunn spoke with Dr. Crown, but felt he was not an expert in imaging and radiology. WR-562. Ultimately, Mr. Dunn

did not call Dr. Crown and abandoned presenting organic brain damage as a mitigating factor altogether.

Mr. Dunn failed to consider that he had already told the jury about Mr. Bates's organic brain damage and Dr. Crown. WR-562. Mr. Dunn believed organic brain damage was a significant and compelling mitigator and testified that he had no strategic reason for not calling Dr. Crown:

> Q: Had you had information that showed organic brain damage that you were able to rebut the [court] neurologist would you have presented that?
>
> Dunn: Well, I think today I know I had it. I just didn't realize that I had it at the time and, yeah, I would have presented it.

WR-565.

Mr. Dunn understood that organic brain damage was extremely mitigating, but only later came to understand that Mr. Bates's MRI would not have detected organic brain damage or neuropsychological impairment. WR-563. It was a horrible mistake that resulted in Mr. Bates being sentenced to death without full consideration of mitigation compelling enough to remove his case from the most

aggravated and least mitigated cases for which death is reserved.

Additionally, Mr. Dunn never developed testimony from the people whom Mr. Bates interacted throughout his life, people who were familiar with how he reacted to stress. WR-565. This would have corroborated the effect that Mr. Bates's organic brain damage had on his reactions to stress. In turn, glaring contradictions in Dr. McLaren's opinion would have been exposed.

At the postconviction evidentiary hearing, mitigation witnesses corroborated Dr. Crown's opinions. Mr. Gary Scott testified about his military training with Mr. Bates in the Florida National Guard and their unit's activation to quell race riots in Liberty City near Miami in 1980. WR-507. Mr. Tunnell testified that, when Mr. Bates first approached him at the crime scene, he was talking fast and sweating as if he had exerted himself. He described the wooded area around the crime scene as "jungle-like." *See* WR-473-478. Mr. Bates's responses to Mr. Tunnell's questions were quick and rapid. They were inconsistent and did not make sense.

Similarly, trial attorney Anthony Bajoczky testified that, when he saw Mr. Bates in the jail for the first time, his responses were

"bizarre." WR-497. They made no sense and were internally inconsistent and contradictory. He would have moved for a mental health evaluation if he had continued on the case.

Mr. Bates's father, Jackie Bates, testified that he visited Mr. Bates in the Bay County Jail on the day of his arrest. WR-521. Mr. Bates was "going out of his mind." WR-521 He was babbling and talking so fast it was like a machine gun. WR-522. Jackie could barely understand him and thought there was something physically or mentally wrong with Mr. Bates because he was "out of it," shaking and trembling. WR-522. To Jackie, Mr. Bates's reaction did not seem like typical fear or excitement caused by the serious charges. He had never seen Mr. Bates this extreme before. WR-522. Mr. Bates seemed overwhelmed and it was "really bad." WR-522

Mr. Bates also presented the testimony of CCRC investigator, Staci Brown. WR-604. During the course of her investigation, Brown spoke with Ranita Bates, Mr. Bates's ex-wife. WR-604. Ranita failed to appear at the hearing, so counsel proffered her testimony through Brown. Brown had spoken with Ranita for three hours in June, 2005. WR-610. Ranita said that,

after Mr. Bates served in the National Guard in Miami and Panama, his behavior changed. WR-610. Mr. Bates would wake Ranita with his nightmares, screaming very loudly. He would "act crazy" and did not recognize where he was. Mr. Bates would break out in cold sweats. WR-611. Ranita said Mr. Bates did not speak in detail about serving in Miami, but she knew he did not want to go down there in the first place. WR-611.

The relevant sentencer heard none of this. Mr. Dunn did not make the connection or provide the necessary background materials to experts who would have shown that death was not a constitutional punishment for Mr. Bates. The nightmares Ranita described corroborated Dr. Crown's findings, but Mr. Dunn failed to make her available for Dr. Crown to interview. WR-565. Ranita's description was also consistent with the Jackie's testimony about Mr. Bates's behavior post-arrest. Both accounts also corroborated Mr. Bates's self-reporting to Dr. Crown. As Jackie recounted, Mr. Bates was babbling and talking fast, like he was "going out of his mind." WR-522.

Notwithstanding the trial court's finding to the contrary, Dr. Crown's testimony was not cumulative because neither Dr. Larson

nor Dr. McMahon testified to these incidents. At the resentencing, both testified that Mr. Bates would become "unwrapped" in stressful situations and under stress when his emotional controls broke down. They both testified that he would react impulsively without evaluating alternatives or consequences. But, neither doctor supported their conclusions with Dr. Crown's neuropsychological evaluation. Nor had either spoken to Ranita or Jackie Bates or connected Mr. Bates's mental status to the time of the offense.

Dr. Crown testified at the 2006 evidentiary hearing that neuropsychological testing revealed Mr. Bates's organic brain damage. There are three levels of organic brain damage: anatomic, metabolic, and electrical. Dr. Crown explained that Mr. Bates's brain damage would not show up on an MRI. Mr. Bates has specific impairments in problem solving related to language-based critical thinking, understanding "if-then" relationships, memory, storage and retrieval of information, and auditory selective attention. The deficits in Mr. Bates's brain function relationally impact his behavior, meaning he has a low stress threshold and difficulties processing information.

Together, these deficits would severely impact Mr. Bates's

reaction to being sprayed with mace. Dr. Crown opined that the effect of a chemical deterrent on a person with a low brain threshold would most likely cause disinhibition rather than inhibition. Dr. Crown summarized:

> He had impairments in problem solving, particularly related to language based critical thinking, understanding if-then relationships. He had difficulties with memory and retrieval of information, storage of information and the retrieval of that information. And he had some specific problems with auditory selective attention, meaning that when there were distractions in the background or in the environment he had difficulty focusing in and listening to what the important aspects of something were.

WR-589.

According to Dr. Crown, precursors of this behavior existed before the offense:

> There were micro situations that had occurred within his family, his relationships with family members, relationships with his wife, reactions to being in the National Guard and serving in Miami during or after those McDuffy riots. So there were indicators, I don't know that anyone would have necessarily picked up the thread, but he had nightmares that [he] acted out, [and he] had been described as not being the same.

WR-603

The trial court was also implicated in what amounted to a denial

of Mr. Bates's rights under the Eighth Amendment. Although raised as a claim under *Ake v. Oklahoma*, 470 U.S. 68 (1985), this had far greater impact because it caused the organic brain damage to not be considered by the relevant sentencers. If the State was going to attack Mr. Bates with a neurologist holding an irrelevant, "normal" MRI, the Constitution guaranteed him a meaningful opportunity to respond, both as a matter of confrontation and due process under *Ake*. No competent neurologist would say that an MRI, which shows anatomical damage only, was sufficient to prove the absence of organic brain damage. If Mr. Dunn had access to a competent neurologist, they would have explained that the "normal" MRI was irrelevant to Dr. Crown's neuropsychological findings. This would have allowed the jury to hear the full extent of Mr. Bates's impairment. The jury's nine to three vote for death would have been different.

Given Mr. Bates's precarious neuropsychological condition at the time of offense, the trial court would have been unable to sentence Mr. Bates to death. First, the opinion of Dr. McLaren would have been discredited and no credibility would have been due to his findings. Looking to the sentencing order, all of Dr. McLaren's

reasons for discounting mitigation were contradicted by Dr. Crown's neuropsychological findings. Moreover, if the testimony of Jackie Bates and Bajocsky were considered properly, the trial court would see that Mr. Bates was mentally ill at the time of the offense. His behavior post-arrest indicated distress well beyond that which would be expected of a healthy person under the same circumstances. Finally, Ranita would have provided the experts and the relevant sentencer with detailed accounts of Mr. Bates reacting to stress.

Mr. Bates was sentenced to death based on a false narrative and without consideration of his organic brain damage, rendering his execution unconstitutional. Through experts and individual observations, the relevant sentencer would have heard that Mr. Bates was specifically unable to react well to stress. It is not hard to see that, although Mr. Bates was proud of his young family, the stress of supporting them would have been magnified by his organic brain damage. Mr. Bates was doing the best that he could with his limited resources. The stress of maintaining a family would have been overwhelming to him. He was also struggling with the effects of his National Guard service. After his jungle training and service following the McDuffy incident, Mr. Bates was not the same. His wife reported

acute symptoms, showing that his service affected him profoundly. Mr. Bates was trying his best, but, ultimately, it was not enough.

Then, when the offense for which he was convicted occurred, Mr. Bates's organic brain damage would have caused him to react horribly in a panic. He would have made one bad decision after another, each influenced by his organic brain damage. His ability to control his impulses and his panic-stricken reactions would inevitably lead to a tragic outcome. This evinces the lessened moral culpability that makes his death sentence unconstitutional.

Mr. Bates struggles with the effects of organic brain damage to this day. Neuropsychologist, Robert Ouaou, Ph.D., evaluated Mr. Bates on July 25, 2025. Dr. Ouaou summarized his findings:

> Kayle Bates is a 67-year-old male who underwent a neuropsychological evaluation. The findings of this evaluation demonstrate significant cognitive impairments. He has significant memory defects that have worsened with age since previous testing and are significantly below what would be expected by his IQ. Currently, he scores in the 1st and below the 1st percentiles, respectively. This represents a significant decline taking into account his ages at each time.
>
> In addition to diminishment in memory functioning, Mr. Bates also demonstrated impairments on tests of executive functioning

> that are consistent, in addition to memory declines, with brain damage.
>
> Prior neuropsychological and cognitive testing, including testing from childhood, unequivocally has demonstrated neuropsychological defects consistent with the current evaluation. As stated above, Dr. Crown's deposition testimony on 05/21/1995 explained that Mr. Bates had neuropsychological deficits directly related to the 1982 crime. The same deficits that were found by Dr. Crown in 1995 are consistent with current neuropsychological test findings. Had Dr. Crown been called to testify by trial counsel at that time, his testimony likely would have provided the court with pivotal mitigating evidence.
>
> These opinions are given with a reasonable degree of neuropsychological certainty.

WR-752.

The Warrant Court found that this claim was untimely as there was no established exception to the one-year filing deadline of 3.851, and procedurally barred. WR-899. The Warrant Court found that this claim was raised in 2005 and 2007 and that Mr. Bates was using a different argument to relitigate a previously raised issue. WR-899. Additionally, the Warrant Court found:

> Defendant's claim as to his trial counsel's failure to call Dr. Crown is subject to dismissal under Rule 3.851(e)(2). Fifth, to the extent Defendant raises new and different grounds for relief, the claim is subject to dismissal under

> Rule 3.851(e)(2). Because Defendant could have raised the instant claim's new and different grounds for relief in his previous postconviction motion, this claim is still procedurally barred. *Barwick*, 361 So. 3d at 795 ("Even if this claim had not been raised in a prior proceeding, it is still procedurally barred because it could have been raised previously." (citations omitted)).

WR-899-900.

In considering the manifest injustice argument, the Warrant Court found:

> [T]his Court does not find any manifest injustice to have occurred which would overcome clearly established legal principles that otherwise compel denial of this claim. Instead, the law of the case doctrine, collateral estoppel, and res judicata should be applied here. Because there are timeliness and procedural bars to this claim, it fails. Accordingly, Defendant's first claim should be denied.

Id. at 900.

Mr. Bates presents here a plea to overcome a manifest injustice that occurred in his case. Although some of the facts raised here have been raised before, much more is at issue that renders it such an injustice. Mr. Bates was sentenced to death without consideration of his organic brain damage. This was not a missed objection or a failure to ask a question. It was an utter lack of consideration for a compelling form of mitigation that has long been used to find capital

punishment inappropriate. This lack of consideration is a manifest injustice—a profound constitutional violation that must be remedied.

Florida courts may overcome the law of the case doctrine, collateral estoppel, and res judicata when necessary to avoid a manifest injustice. This is an optimal case for this Court to exercise this authority. This Court explained in *State v. Owen*:

> Generally, under the doctrine of the law of the case, "all questions of law which have been decided by the highest appellate court become the law of the case which must be followed in subsequent proceedings, both in the lower and appellate courts." However, the doctrine is not an absolute mandate, but rather a self-imposed restraint that courts abide by to promote finality and efficiency in the judicial process and prevent relitigation of the same issue in a case. This Court has the power to reconsider and correct erroneous rulings in exceptional circumstances and where reliance on the previous decision would result in manifest injustice, notwithstanding that such rulings have become the law of the case.

696 So. 2d 715 (Fla. 1997).

Denying relief based on the previous decisions in Mr. Bates's case is a manifest injustice that cannot stand. This Court has also found that a manifest injustice can overcome collateral estoppel and res judicata. In *State v. McBride*, this Court acknowledged the clear

principle "that res judicata will not be invoked where it would defeat the ends of justice" and "[t]he law of the case doctrine also contains such an exception." 848 So. 2d 287, 291 (Fla. 2003) (citations omitted). Although no similar precedent yet applied to collateral estoppel, the Court "held that collateral estoppel will not be invoked to bar relief where its application would result in a manifest injustice." *Id.* at 292. As with the law of the case, the manifest injustice in this case would overcome any procedural bar.

Mr. Bates faces the gravest manifest injustice if he is executed on the date set. It will be arbitrary, capricious, and excessive in violation of the Eighth Amendment and Due Process Clause. Mr. Bates was denied overwhelming evidence that he did not deserve to die.

This Court should grant all appropriate relief.

Argument II

The State Obtained Mr. Bates's Death Sentence in Violation of the Eighth Amendment and Due Process Clause of the Fourteenth Amendment Because The Jury Was Misled To Believe Mr. Bates Could Be Released On Parole In Twelve Years Unless Sentenced To Death.

Mr. Bates was denied a constitutional sentencing. The trial

court and the State denied the jury truthful information necessary to a realistic understanding of Mr. Bates's potential sentences. Already having two consecutive life sentences and a 15-year sentence, Mr. Bates would never be released and the trial court knew it. First, no parole board would ever release Mr. Bates. Second, the possibility of parole was so remote that its consideration presented a false choice.

The life or death decision must be firmly grounded in truth, and truth alone. Anything less renders a death sentence unconstitutional. In Mr. Bates's case, this Court knows the truth and should grant relief and vacate his illegal, unconstitutional, and illegitimate death sentence.

After deliberating for about two hours, Mr. Bates's 1995 penalty phase jury sent the following note to the trial court:

> Are we limited to the two recommendations of life with minimum 25 years or death penalty? Yes. No.
>
> Or can we recommend life without a possibility of parole? Yes. No."

(RS2. V11, 67).

The jury's question reflected a concern that was well understood at the time—the possibility that Mr. Bates would be released and pose a danger to the community. *See Simmons v. South Carolina*, 512 U.S.

154, 164 (1994) ("[T]he actual duration of the defendant's prison sentence is indisputably relevant" to jury "assessing future dangerousness"). If Mr. Bates were eligible for parole after 25 years imprisonment, then, given his time served, he could have been free in about 12 years. *See id.* (noting "it is entirely reasonable for a sentencing jury to view a defendant who is eligible for parole as a greater threat to society than a defendant who is not"). Twelve years imprisonment would hardly befit the offense or assuage fears of future dangerousness.

This, however, was an unrealistic understanding of the sentencing alternatives. Mr. Bates would *never* be free. *See* (R2. V11, 69). As Mr. Dunn argued to the trial court pretrial, "Mr. Bates will never be released from prison . . . [h]e has three [sic], two life sentences already and a fifteen year sentence that is consecutive to whatever sentence he gets for this charge." (R2. V11, 69).

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." (R2. V11, 16-17); *see Hitchcock v. State*, 673 So. 2d 859, 863 (Fla. 1996) (finding capital defendant who served almost 25 years

imprisonment between initial conviction and resentencing was "prejudiced by the State's argument that if given a life sentence, he would be eligible for parole after twenty-five years"). In doing so, the State painted Mr. Bates as a future danger to the community at large. 673 So. 2d at 860. Likewise, the trial court understood that Mr. Bates's consecutive life sentences meant he would never be free. Although the judicial imagination might conceive of a future where Mr. Bates secured his freedom despite multiple consecutive life sentences, (R2. 337), it was obvious to learned counsel that the chances of this were nil. Any fairminded jurist could see that Mr. Bates would spend the rest of his life in Florida prison.

The same could not be said for jurors who were not instructed on the improbability of parole or on Mr. Bates's consecutive sentences. Accordingly, Mr. Dunn repeatedly sought permission "to inform Mr. Bates's jury that he had been sentence to a life sentence on the kidnapping charge, a life sentence on the attempted sexual battery charge, and a fifteen-year sentence on the robbery charge, all three of those sentences to run consecutive to whatever sentence Mr. Bates" received at his resentencing. The goal was clear—show the jury that life imprisonment was a meaningful alternative to death. *Cf.*

Beck, 447 U.S. at 637-38.

Under the sentencing statute applicable at the time of the offense, two sentences were authorized upon conviction for first-degree murder: life imprisonment with the possibility of parole after 25 years or death. However, between the vacatur of Mr. Bates's initial death sentence and his resentencing, the Legislature amended the statute, "add[ing] the sentencing option of life imprisonment without the possibility of parole." (R2. 273). Although Mr. Bates would spend the rest of his days in prison either way, he asked the trial court to apply this harsher statute retroactively. (R2. 274). This would close the apparent gap between available sentences and accurately inform the jury that life meant life.

The State objected, arguing that Mr. Bates could not elect to be sentenced to life imprisonment without the possibility of parole, because his sentence would then be illegal under the Ex Post Facto Clause, notwithstanding his offer to waive any such claim on the record. (R2. 274, 336). The trial court adopted the State's Ex Post Facto argument and refused Mr. Bates's request to be sentenced under the new statute. (R2. 335-38). Likewise, the trial court repeatedly refused Mr. Bates's requests to inform the jury of his

consecutive sentences to assuage any fears of future dangerousness or inadequate punishment predictably caused by the theoretical possibility of parole—even after the jury's question indicated that this issue may be dispositive.

The trial court's "refusal to apprise the jury of information so crucial to its sentencing determination, *particularly when the prosecution alluded to the defendant's future dangerousness* . . . cannot be reconciled with . . . the Due Process Clause." *Simmons*, 512 U.S. at 164 (emphasis added). Likewise, the trial court violated the Due Process Clause by denying Mr. Bates any opportunity to clarify that he would not, in fact, be released from prison in 12 short years. *See id.* at 165 n.5 (noting prohibition on "placing a capital defendant in a straitjacket by barring him from rebutting the prosecution's arguments of future dangerousness with the fact that he is ineligible for parole under state law"). Because Mr. Bates was on trial for his life, these Due Process Clause requirements were at their zenith, requiring the trial court to accurately instruct the jury on the true nature of the sentencing alternatives. *See Mills v. Maryland*, 486 U.S. 367, 376-77 (1988) (holding "the risk that the death penalty will be imposed in spite of factors which may call for a

less severe penalty is unacceptable and incompatible with the commands of the Eighth and Fourteenth Amendments") (quoting *Lockett v. Ohio*, 438 U.S. 586, 605 (1978)); *see also*, *Andres v. United States*, 333 U.S. 740, 752 (1948). In other words, the jury must be provided with alternate sentences that are meaningful. *Cf. Beck*, 447 U.S. at 637-38.

Because the jury was misled to believe that Mr. Bates could be granted parole in only 12 years, its verdict is wholly unreliable. *See Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (recognizing "qualitative difference" between life and death sentences and "corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case"). Additionally, no valid Ex Post Facto argument necessitated this circumstance. Justice Anstead addressed this point at length:

> What then is a possible reason that waiver would not be permitted where the waiver would be perfectly consistent with prevailing public policy and the only one affected by the more severe sentencing option is the defendant? One can only speculate that it would be to deprive the defendant of the benefit of the appeal to be made to sentencing juries and judges under the 1994 sentencing scheme that if they choose a life sentence over death they can be assured that life means life and the convicted murderer

> will not be eligible for parole. In other words, it is apparent that the defendant wishes to waive any speculative entitlement to parole under the old law in exchange for the calculation that the appeal of a defendant to a jury and judge for his life through the imposition of a life sentence might be slightly enhanced. The issue is especially important here where the defendant has been in prison since 1982 and his eligibility for parole would not be delayed for twenty-five years, but for less than half that. That is hardly an attractive sentencing option for a jury in a first-degree murder case. Surely that is why the jury in this case asked for the option of a life sentence without parole, an option the defendant is willing to accept but the majority rejects.
>
> When all is said and done, the truth is that no valid public policy reason has been advanced to deny the defendant the right to waive his ex post facto rights and give a sentencing jury the option of applying Florida's prevailing public policy in capital sentencing to this case. It is done every day in noncapital cases and should be permitted here.

Bates v. State, 750 So.2d 6, 21-22 (Fla. 1999) (Anstead, J. dissenting).

Additionally, Mr. Bates offers the cases of Paul H. Evans, WR-753, and Charles Anderson, WR-757, to show that defendants may waive time served. He also submits that waiver of parole has occurred since Mr. Bates was denied.

In the case of Carlos Bello, Mr. Bello was sentenced to life without parole despite having committed the offense during the operative period of life with the possibility of parole. WR-788. See also, Paul Beasley Johnson's case, in which this Court denied certiorari. 2020 WL 7693133 Supreme Court of Florida. *State of Florida, Petitioner(s) v. Paul Beasley Johnson, Respondent(s) Case No.*: SC19-1994. December 28, 2020 and State's appendix filed in that case reproduced at WR-845, et seq.

Together, these cases exemplify the ease and viability of fashioning sentences that remedy the dilemma Mr. Bates faced without running afoul of the Ex Post Facto Clause. Much like the jury in Mr. Bates's case, the State wanted to sentence these defendants to less than death, but wanted to ensure that they would not be released. In *Evans*, *Johnson* and *Anderson*, this took the form of waiving credit time. In *Bello* it involved the wholesale waiver of parole, which Mr. Bates was forbidden from doing. In *Johnson*, the State continued to seek death, seeking an unfair advantage in its Mr. Johnson's death sentence. When the trial court allowed Mr. Johnson to waive credit time, the State sought a writ from this Court to retain its advantage, in highlighting for the jury Mr. Johnson's future

dangerousness if granted paroled.

The Warrant Court found this claim to be untimely and procedurally barred because it was previously raised on direct appeal and no exception to Rule 3.851's one-year filing deadline was established. WR-901. As to manifest injustice the Warrant Court simply repeated the language cited *supra* in Argument I. WR-901-902. If the Warrant Court could not grant relief to avert a manifest injustice, this Court must.

Mr. Bates presents here a plea to overcome a manifest injustice that occurred in his case. Mr. Bates cannot be executed based on the gross untruth that, in his case, life meant anything but life. This Court has the inherent authority to revisit and correct injustices of the sort that Mr. Bates suffered. It is conceded that Mr. Bates has raised this claim in both State and Federal court. However, his pending execution has created an injustice that is no mere abstraction. Without intervention from the courts, the State of Florida will execute Mr. Bates pursuant to an unconstitutionally obtained sentence.

The above issues were raised before but the manifest injustice was not remedied. The denial of Mr. Bates's waiver and the refusal to

provide the jury with accurate sentencing information rendered his death sentence wholly unreliable. Much like the omission of neuropsychological evidence discussed *supra*, here, the jury was unable to determine whether death was appropriate because it lacked even the basic information required. The Ex Post Facto Clause protects important interests, but it must yield when its beneficiary so chooses. This is particularly true where, as here, enforcement of the Ex Post Facto Clause advanced only the State's gamesmanship.

The Due Process Clause and the Eighth Amendment prohibit arbitrary, capricious and excessive punishment. There can be nothing more arbitrary or capricious than receiving a death sentence because the jury mistakenly thought itself required to choose between 11 years more imprisonment and death. Ample evidence shows that Mr. Bates posed no future danger—certainly not to the community at large. But further, he has not been convicted of any further crimes since his arrest. He has lived a peaceful life, practicing his religion, and contributing to his community in prison for over 40 years. Mr. Bates has shown that life in prison was adequate to protect the community and allow his positive contribution to others. It should also be considered that Mr. Bates received only two

disciplinary reports during his nearly 40 years in prison. Life imprisonment has indeed, been adequate punishment for Mr. Bates. He has spent the bulk of his years in solitary confinement, sweltering in the extreme heat of Florida summers. He has had time to reflect on his life, complete with deep regrets and missed opportunities. Adequate punishment has been, and will continue to be, served until the end of Mr. Bates's days. Although unnecessary to the merits of this claim, Mr. Bates's clear lack of future dangerousness highlights the injustice wrought by the denial of any meaningful opportunity to accurately rebut the State's suggestions to contrary.

Concluding, Mr. Bates submits the authority of *State v. Owen*, 696 So. 2d 715 (Fla. 1997); *Strazzulla v. Hendrick*, 177 So. 2d 1, 3 (Fla. 1965); *Preston v. State*, 444 So. 2d 939 (Fla. 1984); *State v. McBride*, 848 So. 2d 287 (Fla. 2003); *DeCancino v. E. Airlines, Inc.*, 283 So. 2d 97, 98 (Fla. 1973); *Universal Constr. Co. v. City of Fort Lauderdale*, 68 So. 2d 366, 369 (Fla. 1953). The violations of Mr. Bates's rights under the Due Process Clause and the Eighth Amendment described herein constitute manifest injustice. This Court should exercise its jurisdiction under Article 1, Section 13, and Article V, Section 3(b)(9). *See* argument *supra*.

This Court should grant all appropriate relief.

Argument III

Mr. Bates Was Denied Meaningful Clemency Proceedings And The Opportunity To Rebut The Clemency Investigation's Findings In Violation Of The Due Process Clause of the Fourteenth Amendment.

Below, the warrant court denied this claim on the merits, finding Mr. Bates "is not entitled to any specific, mandated procedures for clemency . . . includ[ing] (1) an opportunity to review 'the information that the Governor received,' (2) 'an opportunity to explain or deny information used to determine his fate,' and (3) 'any opportunity to rebut the information used to make penalty decisions.'" WR-905. Noting that clemency records are confidential under state statute, the warrant court found itself "prohibited from ordering that Defendant be allowed to receive or review any records generated or gathered as part of the executive's clemency decision-making process." WR-905-906. This flowed from the basic premise that, through the Florida Constitution, "the people of the State of Florida have vested 'sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace,'" namely executive clemency. WR-902 (quoting *Carroll v. State*, 114 So. 3d 883,

888 (Fla. 2013)). At bottom, the warrant court found this claim meritless because this Court's precedent precludes judicial review of executive acts exercising the clemency power as a matter of separation of powers.

This Court should revisit its precedent authorizing the Governor to wield unrestrained and unreviewable executive clemency powers. *See e.g.*, *In re Advisory Opinion of the Governor*, 334 So. 2d 561, 562-63 (Fla. 1976); *Sullivan v. Askew*, 348 So. 2d 312, 315 (Fla. 1977); *Carroll*, 114 So. 3d at 888. Such authority is incompatible with basic principles of Due Process and constitutional governance. More narrowly, the United States Constitution requires that clemency proceedings include minimal procedural safeguards.

Minimal cannot mean *none*. Rather, the Due Process Clause of the Fourteenth Amendment guarantees meaningful notice and a meaningful hearing during the clemency process. *See Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) (noting "[a] fundamental requirement of due process is 'the opportunity to be heard' . . . which must be granted at a meaningful time and in a meaningful manner"); *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*, 442 U.S. 1, 13

(1979) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) (noting "[i]t is axiomatic that due process 'is flexible and calls for such procedural protections as the particular situation demands'").

Mr. Bates was denied meaningful notice and hearing during the clemency process. In 1989, Governor Martinez signed a warrant for Mr. Bates's execution. Attorney, Robert Woolfork, filed some documents related to clemency in the trial court between 1987 and 1988, including requests for payments and examinations. Mr. Woolfork also provided a written statement to the Clemency Board in support of commutation.[4]

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[4] The successive 3.851 motion filed below stated: "Mr. Bates may have received some sort of clemency process at about the time the Governor signed his first death warrant in September, 1989. If, in fact, he did, the record of those proceedings appears lost to time." WR-442. While drafting this Initial Brief, the 1988 documents of Mr. Woolfork were located and brought to the attention of undersigned counsel, James Driscoll. In the interest of candor, undersigned counsel, acknowledges that these filings prove that a clemency process, in fact, took place before the 1989 warrant. Undersigned counsel does not know whether additional documents related to these clemency proceedings, beyond those contained in Mr. Woolfork's files, exist. However, it should be noted that Mr. Bates's demands for public records related to clemency were denied and, to the best of undersigned counsel's knowledge, no records created by FCOR, the Governor, or the Clemency Board, or otherwise related to Mr. Bates's post-resentencing clemency have been produced to undersigned counsel. In any case, undersigned counsel notes that

Nonetheless, any picture of Mr. Bates's case, or of Mr. Bates himself, appearing in the record was necessarily incomplete in 1989. Trial counsel had utterly failed to investigate or present mitigation, stunting the record and denying Mr. Bates effective assistance of penalty phase counsel. *See Bates*, 604 So. 2d at 459 (affirming postconviction grant of resentencing for ineffective assistance of penalty phase counsel). Resultantly, the Clemency Board's decisions prior to the 1989 death warrant were predicated on an unreliable and incomplete record that contained ineffectively challenged aggravation and lacked the relevant mitigation. Thus, the pre-1989 clemency proceedings cannot cure any inadequacy in the post-resentencing clemency process.

In the absence of clemency records, the post-resentencing clemency process appears wholly cursory. Mr. Bates reported that, in 2015, two lawyers visit him at Union Correctional Institution, spoke with him about updated clemency for ten minutes or so, and left.[5] Ten more years passed. Then, Governor Desantis notified Mr.

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the instant claim relates substantively to clemency decisions made after Mr. Bates's resentencing in 1995.

[5] Undersigned counsel received no notice as to what, if anything, these attorneys ultimately submitted to FCOR, which may or may not

Bates that clemency was denied by writing in the instant death warrant: "[E]xecutive clemency for KAYLE BARRINGTON BATES, as authorized by Article IV, Section 8(a), of the Florida Constitution, was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate." WR-82.

Mr. Bates is entitled to an opportunity to respond to the factual bases for the Governor's decision to deny clemency and sign his death warrant. *See Simmons*, 512 U.S. at164. If these decisions were made in accordance with the Rules of Executive Clemency, then they were likely based on findings contained in a report produced by the Florida Commission on Offender Review ("FCOR"). The Rules require the FCOR to produce an investigative reports, which it then forwards to the Governor and the Clemency Board. R. Exec. Clemency 15(B),(D), (E). After reviewing these reports, the Governor or any member of the Clemency Board can request a clemency hearing at which to consider commutation of an inmates death sentence. R. Exec. Clemency 15(E). Mr. Bates never received this hearing. Nor did

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have been included in FCOR's report to the Clemency Board. As relevant to this claim, undersigned counsel does not know what materials were provided to, or considered by, the Governor in relation to his decisions to deny clemency and sign Mr. Bates's death warrant.

he receive an updated clemency interview. Thus, under the Rules, FCOR's investigative report should contain factual information upon which the denial of clemency and of further clemency proceedings was based.

At a minimum, the Due Process Clause requires that Mr. Bates be given notice of the facts contained in FCOR's report and a meaningful opportunity to respond. In *Simmons v. South Carolina*, the Supreme Court held, "sending a man to his death 'on the basis of information which he had no opportunity to deny or explain' violated fundamental notions of due process." 512 U.S. at 164 (quoting *Gardner v. Florida*, 430 U.S. 349, 362 (1977)).

Mr. Bates never received notice of the information upon which the Governor based his decisions to deny clemency and sign his death warrant. This total lack of notice violated Mr. Bates's rights to Due Process under the Fourteenth Amendment. *Simmons*, 512 U.S. at 164 (citing *Gardner*, 430 U.S. at 362) (finding violation of Due Process Clause where "defendant was sentenced to death on the basis of a presentence report which was not made available to him and which he therefore could not rebut"). Naturally then, Mr. Bates received no post-resentencing opportunity to address any factual

issues or inaccuracies upon which the denial of clemency was based. Much like the defendant's death sentence in *Gardner*, here, the denial of clemency and the signing of Mr. Bates's execution warrant are based on "information which he had no opportunity to explain or deny." 430 U.S. at 362.

Unable to call upon the Judiciary for access to public records, Mr. Bates cannot determine whether the Governor denied clemency in reliance on the pre-1989 clemency records, incomplete or erroneous post-1989 records, or entirely impermissible factors. And, as this Court's caselaw currently stands, the state courts would deny relief even if clemency records revealed patently unconstitutional bases for denial. This cannot be the case; the Governor's clemency authority, no matter its historical pedigree, cannot evade judicial review entirely.

This Court should grant all appropriate relief.

Argument IV

The Time Restraints And Wholesale Denial Of Access To Public Records Imposed During These Warrant Proceedings Violated Due Process, Access To The Courts, And The Right To Habeas Under The United States And Florida Constitutions.

The Warrant Court denied this claim as meritless.[6] Finding that "this type of claim has been repeatedly rejected by the Florida Supreme Court," the Warrant Court ruled that "[e]ven though the instant death warrant period is shorter than it could be, Defendant has been afforded the due process to which he is entitled." WR-907 (citing *Tanzi v. State*, 407 So. 3d. 385, 390-391 (Fla. 2025); *Bell v. State*, No. SC2025-0891, 2025 WL 1874574, at *17 (Fla. July 8, 2025); *Barwick v. State*, 361 So. 3d 785, 789-90 (Fla. 2023)).

When the Governor signs a death warrant, numerous individuals are pulled into the case. Participants range from judges and attorneys who were involved for decades to legal assistants who helpfully circulate every pleading to upwards of 65 individuals. Each is a person working hard and trying to do their best. The problem is

[6] The warrant court's order sustaining agency objections to public records production is challenged on an agency-specific basis *infra* in Argument V.

not the hard work that a death warrant precipitates, but the speed at which it must be performed.

Speaking from undersigned counsel's perspective, everyone involved in defending Mr. Bates is dedicated to providing the best representation they can. However, under the draconian deadlines imposed after the execution date was set, the truth is that undersigned counsel cannot be sure that Mr. Bates received their best. The fact remains that the truncated warrant schedule leaves open the possibility that something was missed.

All members of the Florida Bar have taken an oath to uphold the Constitution. If government action violates the Constitution, then our system (or any fair and decent system for that matter) demands that a remedy be obtainable, that attorneys fight to obtain it, and that an independent body stands to enforce it. Nowhere is this more viscerally felt than when the government seeks to take the life of an individual.

Recent history has shown that, too often, the actual innocence of a condemned person remains at issue even after a death warrant is signed. Consider the case of Mr. Robert Roberson, who stands convicted and sentenced to death in Texas based on the now-

debunked "shaken baby syndrome." *See Roberson v. Texas*, 604 U.S. __, 145 S. Ct. 3, 3 (2024) (Sotomayor, J., dissenting from denial of certiorari and stay of execution) (describing "mounting evidence suggest[ing] that [Roberson's child] died from a combination of pneumonia and improperly prescribed medication . . . and that Roberson . . . committed no crime at all"); *but see In re Texas House of Representatives*, 702 S.W.3d 330, 334-36 (Tex. 2024) (describing Roberson's avoidance of execution).

Mr. Roberson's case is not offered to compare injustices, but rather to illustrate the constitutional issues implicated by the timing and duration of death warrant proceedings. In *Roberson*, Texas filed a Motion Requesting Execution Date on June 17, 2024. On July 1, 2024, the Texas trial court scheduled Mr. Roberson's execution for October 17, 2024. *Ex parte Roberson*, No. WR-63,081-04, 2024 WL 4143552 (Tex. Crim. App. Sept. 11, 2024) (denying habeas petition and stay of execution). On October 15, 2024, Mr. Roberson petitioned the Supreme Court for certiorari and applied for a stay of execution. Petition for a Writ of Certiorari at 37, *Roberson v. Texas*, 604 U.S. __, 145 S. Ct. 3 (October 15, 2024) (No. 24-5753).

Mr. Roberson had 108 days between the signing of the death

warrant and the scheduled execution in which to litigate.[7] Mr. Bates has 30. The point is that critical issues must often be litigated post-warrant, ranging from actual innocence to deprecated scientific knowledge or the balance of interbranch authority. But the consideration and investigation of these issues requires time to litigate meaningfully. Under Florida's typical 30-day warrant schedule, such meaningful litigation is essentially precluded.

Consider also *Glossip v. Oklahoma*, in which Mr. Glossip's attorneys proved under death warrant that Oklahoma had violated Mr. Glossip's rights under *Napue*.[8] 145 S. Ct. 612, 633 (2025). Mr. Glossip had time to litigate and access to records. After Mr. Glossip managed to obtain a stay of execution in 2015, Oklahoma produced

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[7] It is worth noting that, by requiring the prosecution to move in open court to schedule an execution date, Texas's procedure gave defense counsel prior notice of the impending warrant. During this time, counsel had time to prepare for the rigors of warrant litigation. In contrast, defense counsel in Florida has no notice whatsoever as to when the Governor will sign a warrant for their client's execution. Although undersigned counsel fully accept their responsibility to drop everything and represent their clients, unavoidable practical difficulties arise. It is easy to imagine situations in which a condemned person's meaningful access to counsel while on death watch could be undermined by happenstance. A person's access to counsel should not depend on, for example, whether their attorney is ill, grieving, pregnant, or just vacationing abroad.

[8] *Napue v. Illinois*, 360 U.S. 264 (1959).

"Box 8," which contained the evidence used to prove that Oklahoma violated *Napue* in obtaining his sentence. In contrast, Mr. Bates lacks time and records—both basic necessities of a meaningful hearing under warrant.

Florida must provide post-warrant proceedings that are consistent with the Due Process Clause of the Fourteenth Amendment before executing Mr. Bates. "A fundamental requirement of due process is 'the opportunity to be heard' . . . which must be granted at a meaningful time and in a meaningful manner." *Armstrong*, 380 U.S. at 552 (quoting *Grannis*, 234 U.S. at 394); *see Ford v. Wainwright*, 477 U.S. 399 (1986). "It is axiomatic that due process 'is flexible and calls for such procedural protections as the particular situation demands.'" *Greenholtz*, 442 U.S. at 13 (quoting *Morrissey*, 408 U.S. at 481). "The process due in any given instance is determined by weighing the private interest that will be affected by the official action against the Government's asserted interest, including the function involved and the burdens the Government would face in providing greater process." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (quoting *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976)) (quotations omitted).

Florida's death warrant process violates the Due Process Clause in light of Mr. Bates's continuing life interest and Florida's lack of any legitimate interest in maintaining the current system of unpredictable and truncated warrant timing. *See Boumediene v. Bush*, 553 U.S. 723, 781 (2008) (citing *Mathews*, 424 U.S. at 335) (applying the due process test requiring "assessment of, *inter alia*, "the risk of an erroneous deprivation of [a liberty interest;] and the probable value, if any, of additional or substitute procedural safeguards" in habeas proceeding). Neither Mr. Bates's sentence of death nor the impossibility of his freedom extinguish his life interest. *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 288 (1998) (O'Connor, J. concurring); *id.* at 291 (Stevens, J. concurring) ("There is no room for legitimate debate about whether a living person has a constitutionally protected interest in life. He obviously does."). Thus, the Due Process Clause demands a meaningful procedure, including a fair hearing at which "to substantiate a claim before it is rejected." *Ford*, 477 U.S. at 411 (quoting *Solesbee v. Balkcom*, 339 U.S. 9, 23 (1950) (Frankfurter, J. dissenting)).

The truncated warrant period and rote denial of discovery preclude any meaningful hearing at which Mr. Bates could

substantiate a claim. For example, Mr. Bates needs public records to enforce *inter alia* his federal right to be free from the infliction of cruel and unusual punishment. This requires two fact-intensive showings: (1) whether "the method presents a risk that is 'sure or very likely to cause serious illness and needless suffering," *Glossip v. Gross*, 576 U.S. 863, 877 (2015), and (2) whether there is "a feasible and readily implemented alternative method of execution that would significantly reduce a substantial risk of severe pain . . . that the State has refused to adopt without a legitimate penological reason." *Bucklew v. Precythe*, 587 U.S. 119, 134 (2019). Mr. Bates cannot make these showings without access to discovery. But, he cannot access discovery without first making these showings. The obvious result is the complete unavailability of discovery.

Undersigned counsel acknowledges that this Court has rejected much of this argument in recent decisions, finding *inter alia* that lethal injection records are unrelated to a colorable claim, limited post-warrant discovery is constitutional, and challenges to the warrant period are meritless. Nevertheless, undersigned counsel is duty-bound to protect Mr. Bates's federal constitutional rights and preserve his ability to seek relief from unconstitutional state action

in the federal courts. Additionally, undersigned counsel is obligated to seek and obtain every public record related to his case because the failure to do so will result in a procedural default. *Porter v. State*, 653 So. 2d 375 (Fla. 1995). The State bears a concomitant burden to furnish records. *Ventura v. State*, 673 So. 2d 479 (Fla. 1996). The signing of a death warrant relieves none of these obligations, nor should it.

"[A]ccess to public records is an essential ingredient in any meaningful postconviction review." *Sims v. State*, 753 So. 2d 66, 71 n.10 (Fla. 2000) (Anstead, J., concurring). The setting of an execution date did not extinguish Mr. Bates's Due Process rights or right to access public records under Florida's Constitution. Rule 3.852 "was never intended to, and, indeed, [can]not, diminish a citizen's constitutional right to access to public records." *In re Amendment to Fla. R. Crim. P.—Capital Postconviction Records Production*, 683 So. 2d 475, 477 (Fla. 1996) (Anstead, J., specially concurring); *Sims*, 753 So. 2d 71-72 (Anstead, J., concurring) ("We need to be very careful that we not end up with an outcome where a death-sentenced defendant, whose life may literally be affected, is barred from enforcing his constitutional right as a citizen to access to public

records that any other citizen could routinely access."). Rather, "[t]he language of section 119.19 and of rule 3.852 clearly provides for the production of public records after the governor has signed a death warrant." *Sims*, 753 So. 2d at 70.

The truncated warrant itself denied Mr. Bates Due Process. The severely limited time Mr. Bates had to formulate the litigation strategy that he would be bound to in both the state and Federal courts for every claim, not just lethal injection.

Mr. Bates faces imminent execution. Fundamental notions of dignity and fairness demand that he be able to challenge his death sentence and the State's intended method of execution through meaningful collateral proceedings. Else, he will be denied his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and corresponding provisions of the Florida Constitution. Although Mr. Bates may not receive relief from any court, the historical record will show that Florida extinguished any meaningful way to challenge imminent executions and refused to recognize the fundamental dignity of every individual.

This Court should grant all appropriate relief.

Argument V

The Lower Court Abused Its Discretion In Denying Mr. Bates's Demands For Additional Public Records Pursuant To Florida Rule Of Criminal Procedure 3.852(i), Violating The Fifth, Eighth, And Fourteenth Amendments And Corresponding Provisions Of Florida's Constitution.

Article I, Section 24, of the Florida Constitution codifies the fundamental right of access to public records for "[e]very person"—"regardless of whether that access is sought by a death row inmate, a disinterested citizen or a member of the media." *Sims*, 753 So. 3d 71 (Anstead, J., concurring). While, for all other citizens, this "'self-executing' right to open records is enforced through the Public Records Law, chapter 119 of the Florida Statutes" *Rhea v. Dist. Bd. Trs. of Santa Fe College*, 109 So. 3d 851, 855 (Fla. 1st DCA 2013), this Court promulgated Florida Rule of Criminal Procedure 3.852 to govern the production of public records for capital postconviction defendants. Fla. R. Crim. P. 3.852(a).

Rule 3.852, however, "was never intended to, and, indeed, [can]not, diminish a citizen's constitutional right to access to public records." *In re Amends. to Fla. R. Crim. P.–Cap. Postconviction Recs. Prod.,* 683 So. 2d at 477 (Fla. 1996) (Anstead, J., concurring); *Sims*, 753 So. 3d at 71-72 (Anstead, J., concurring) ("We need to be very

careful that we not end up with an outcome where a death-sentenced defendant, whose life may literally be affected, is barred from enforcing his constitutional right as a citizen to access to public records that any other citizen could routinely access.") Rather, Rule 3.852 was designed "to promote the prompt and efficient processing of capital cases in a fair, just, and constitutionally sound manner." *In re Amends. to Fla. R. Crim. P. 3.851, 3.852, et. seq.*, 797 So. 2d 1213, 1216 (Fla. 2001).

"[A]ccess to public records is an essential ingredient in any meaningful postconviction review," *Sims*, 753 So. 3d at 71 n.10 (Anstead, J., concurring), and in safeguarding a death-sentenced individual's due process rights under both the federal and state constitutions. *See Evitts v. Lucey*, 469 U.S. 387, 401 (1985). The setting of an execution date does not vitiate these fundamental rights, as "[t]he language of section 119.19 and of rule 3.852 clearly provides for the production of public records *after* the governor has signed a death warrant." *Sims*, 753 So. 3d at 70.

Lethal Injection Records

Mr. Bates filed Rule 3.852(i) demands to the Department of Corrections, the Florida Department of Law Enforcement, and the

Office of the Medical Examiner, District 8. These demands were limited in scope, seeking public records related to Florida's lethal injection protocol, including, records concerning the review process that led to the current three-drug protocol; the sourcing, manufacturing, storage, and expiration information for each drug; the training, education, licensure, and/or professional experience of the two members of the execution team; and records from the recent executions under the current lethal injection protocol. Each agency objected to Mr. Bates's demands, asserting, *inter alia*, that the records he sought were unrelated to a colorable claim for postconviction relief and are exempt from disclosure.[9]

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[9] In addition to demands pursuant to Rule 3.852(i), Mr. Bates also made 3 Demands for Additional Public Records Pursuant To Florida Rule of Criminal Procedure 3.852(h)(3) to 3 agencies that had previously produced records: the Office of the State Attorney, Lynn Haven Police, and Bay County Sheriff's Office. Despite raising objections, those agencies produced records or otherwise indicated that they had complied with Mr. Bates's demands. While not at issue in this appeal, the agencies' knee-jerk responses and objections to the (h)(3) demands are, at best, disingenuous. Despite the agencies' objections claiming that these demands were "overly broad," Mr. Bates's (h)(3) demands were limited to records "that were received or produced by your agency since Mr. Bates's previous request for public records, or were, for any reason, not produced previously." These are precisely the records contemplated by (h)(3) that the agencies "shall produce." Fla. R. Crim. P. 3.852(h)(3). Contrary to the agencies' claims, and the court's findings, that the (h)(3) demands

The court made almost the identical ruling as to each (i) demand:

> Defendant fails to show good cause for not requesting these records until after the death warrant was signed. Defendant also fails to show *how* the records relate to a colorable claim for postconviction relief. Furthermore, Florida Supreme Court precedent is crystal clear that lethal injection records themselves do not relate to a colorable claim for relief. For those reasons, the Defendant fails to meet its burden under Florida Rule of Criminal Procedure 3.852 *See Tompkins*, 872 So. 2d at 244; *Sims*, 753 So. 2d at 70; *Muhammad*, 132 So.3d at 200; *Dailey*, 283 So. 3d at 792; *Asay*, 224 So. 3d at 700; *Tanzi*, 407 So. 3d at 391–92; *Zakrzewski*, No. SC2025-1009, 2025 WL 2047404, at *7 (Fla. July 22, 2025); *Rogers v. State*,409 So. 3d 1257, 1266–67 (Fla. 2025); *Hutchinson v. State*, No. SC2025-0517, 2025 WL 1198037 (Fla. April 25, 2025); *Cole v. State*, 392 So. 3d 1054, 1065–66 (Fla. 2024).

WR-340-47.

To obtain public records under 3.852(i), collateral counsel must file an affidavit in the trial court that "attests . . . [he] has made a

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were "unduly burdensome," Bay County Sheriff's Office timely responded to the demands by producing the *minimal* records it had, and Lynn Haven Police responded that their records had been destroyed in a hurricane. And while the State Attorney Office's claimed that producing records was "unduly burdensome," they had no problem promptly producing more than 1,700 pages of records in response.

timely and diligent search of the records repository"; that "identifies with specificity those public records not at the records repository"; and that establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to the lead to the discovery of admissible evidence." Fla. R. Crim. P. 3.852(i)(1). Mr. Bates did just that. The lower court abused its discretion in sustaining DOC, FDLE and MEO-8's objections to Mr. Bates's demands. As a result, Mr. Bates is being deprived of his right to a full and fair postconviction proceeding, in contravention of his rights under the Eighth and Fourteenth Amendments and the corresponding provisions of the Florida Constitution.

Timeliness

While Rule 3.852(i) demands may be filed at any time during postconviction proceedings, this Court has held that an individual facing imminent execution must "'show how the requested records relate to a colorable claim for postconviction relief and good cause as to why the public records request was not made until after the death warrant was signed.'" *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019) (quoting *Asay v. State*, 224 So. 3d 695, 700 (Fla. 2017)). Rule 3.852(i)

demands for records relating to Florida's lethal injection process satisfy this standard because the issues were not ripe until his execution date was set.

Mr. Bates could not seek the records and plead a lethal injection claim earlier because it was unknown what the procedure would be and what medical condition Mr. Bates would present. If thwarted in this effort by this Court and this Court's prior decisions, Mr. Bates will be denied the most fundamental rights guaranteed by the Eighth Amendment.

Moreover, the court's reasoning requires Mr. Bates not only to demonstrate a "colorable claim," but to *prove* his claim before he can obtain the very records necessary to establish it. Rule 3.852 is foremost a discovery rule intended to ensure that capital defendants have access to records so that they can investigate and plead claims for relief. The court's reasoning reduces the promises of rule 3.852 to the kind Faustian reality Justice Anstead warned of in *Sims.* 753 So. 3d at 71-72 (Anstead, J., concurring).

Colorable Claims

Unlike the demands for lethal injection records in other cases, Mr. Bates's demands were limited, particularized, and identified the

records he sought with specificity. The demands identified the requested records with great specificity and the requests were limited in scope and time to only those records which may lead to the discovery of admissible evidence. Mr. Bates made limited and particularized demands for records that would allow him to consult with an expert to ensure that his execution would not be unconstitutionally cruel and unusual. To plead such a claim, Mr. Bates needs information regarding the methods, means, and instrumentalities intended to cause his death. He requires historical information about past executions to establish that Florida's etomidate lethal injection procedure has resulted in adverse consequences for other inmates that would be repeated when he is executed using the same protocol.

Undersigned counsel acknowledges this Court's precedent that lethal injection records requests do not relate to a colorable claim for postconviction relief after this Court upheld the constitutionality of the current protocol in *Asay*, 224 So. 3d 695. Undersigned counsel further acknowledges that this Court most recently reiterated this stance in *Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404 (Fla. July 22, 2025). Notwithstanding the series of cases stemming

from *Asay*, Mr. Bates urges this Court to reconsider its carte blanche rejection of any subsequent adversarial testing of Florida's lethal injection procedures.

While Mr. Bates acknowledges the precedent the Warrant Court used to deny him records, he respectfully submits that an as-applied lethal injection claim remains a colorable claim so long as the United States Supreme Court has not overruled *Glossip*, *Baze*, and *Bucklew*. While the standards for proving an Eighth Amendment violation may be high, they can be met to challenge unconstitutional protocols if a defendant is provided with the necessary information.

Florida's discovery rules may not impede Mr. Bates's fundamental right to be free from cruel and unusual punishment and a torturous death by hiding the relevant facts behind a veil of secrecy.

Clemency Records

Mr. Bates filed (i) demands to the Office of Executive Clemency, the Florida Commission on Offender Review, and the Executive Office of the Governor related to clemency proceedings and the Governor's decision to sign Mr. Bates's death warrant. The demands were limited in time and scope and pertained only to Mr. Bates.

Both agencies objected to production. In sustaining the objections, the circuit court determined that the demands were "overbroad and unduly burdensome" and untimely because "Defendant fails to show good cause for not requesting these records until after the death warrant was signed." The court also found that Mr. Bates "does not show *how* the request relates to a colorable claim for relief," and that "clemency records are statutorily confidential." The court emphasized that "clemency power also reposes exclusively in the executive." Order, July 22, 2025. Mr. Bates acknowledges this Court's precedents as cited to by the circuit court in its Order, but respectfully submits that the court abused its discretion in denying access to the requested records.

As to the timeliness of the demands for clemency records, Mr. Bates submits that can be no claim challenging the denial of clemency and the Governor's decision to sign a warrant until clemency is denied and a warrant is signed. Obtaining such records before a warrant is signed is a legal and factual impossibility.

Moreover, while this Court has repeatedly affirmed the denial of access to such records, Mr. Bates submits that the facts and circumstances under which he was denied clemency and chosen for

execution are unique and troubling. As argued *supra* in Argument III, the initial clemency investigation was conducted prior to Mr. Bates's 1995 resentencing and postconviction hearing. Under these unique circumstances, Mr. Bates had no opportunity to confront or correct the information that the Governor relied on when deciding to deny clemency and sign his death warrant.

Defendants facing execution are entitled to some measure of due process in clemency proceedings, even if it is "*minimal*." *Woodard*, 523 U.S. at 289 (O'Connor, J., concurring). Regardless of statutory exemptions and rules limiting postconviction discovery, Mr. Bates submits that allowing him to be executed based on false information would violate his right to due process.

CONCLUSION AND RELIEF SOUGHT

This Court should grant all appropriate relief to do justice.

Respectfully Submitted

/s/JAMES L. DRISCOLL JR.
JAMES L. DRISCOLL, JR.
Assistant CCRC-South
Florida Bar No. 0078840
driscollj@ccsr.state.fl.us

MICHAEL T. COOKSON
Staff Attorney
Florida Bar No. 1057838
cooksonm@ccsr.state.fl.us

JEANINE COHEN
Staff Attorney
Florida Bar No. 128309
cohenj@ccsr.state.fl.us

CAPITAL COLLATERAL
REGIONAL COUNSEL – SOUTH
110 SE 6th Street, Suite 701
Fort Lauderdale, FL 33301
Phone: (954) 713-1284
Fax: (954) 713-1299

Counsel for Mr. Bates

CERTIFICATE OF COMPLIANCE AND FONT

Pursuant to Fla. R. App. P. 9.045, I hereby certify that the Initial Brief of the Appellant has been produced in Bookman Old Style 14-point font. Pursuant to Fla. R. App. P. 9.210(a)(2)(D), this brief complies with the word count limit, containing 16,339 of 20,000 words.

/s/JAMES L. DRISCOLL JR.
JAMES L. DRISCOLL, JR.
Assistant CCRC-South
Florida Bar No. 0078840

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to opposing counsel through the Florida Courts E-Filing Portal on August 1, 2025.

/s/ JAMES L. DRISCOLL JR.
JAMES L. DRISCOLL, JR.
Assistant CCRC-South
Florida Bar No. 0078840

Copies provided to:

Charmaine Millsaps,
charmaine.millsaps@myfloridalegal.com
capapp@myfloridalegal.com

Janine D. Robinson,
janine.robinson@myfloridalegal.com

Jason W. Rodriguez,
jason.rodriguez@myfloridalegal.com

Larry Basford, State Attorney
larry.basford@sa14.fl.gov
bay.county@sa14.fl.gov

Florida Supreme Court
warrant@flcourts.org