

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

REPLY BRIEF OF THE APPELLANT

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ARGUMENTS IN REPLY

Mr. Bates was denied evidentiary development and access to public records. Despite these restraints, his pleadings and arguments below presented facts sufficient to warrant relief. Mr. Bates laid a path to justice consisting of this Court's long-established precedent, the principles enshrined in Florida's Constitution, and the guarantees made by the Constitution of the United States. This Court should follow that path and grant all relief necessary to do justice.

The Nature And Scope Of Habeas Corpus In Florida

The State argues: "The Great Writ has no application to Bates' case because he was convicted and sentenced to death by a court of competent jurisdiction." AB-17.¹ To support this position, the State relies primarily on *Brown v. Davenport*, AB-14-17, in which the Supreme Court of the United States held: "[A] federal court cannot grant habeas relief unless a state prisoner . . . satisfies both [the United State Supreme] Court's equitable precedents and Congress's statute [28 U.S.C. § 2254(d)]." *Brown v. Davenport*, 596 U.S. 118

¹ References to the State's Answer Brief are: AB-[page#].

(2022). The State’s reliance on caselaw construing the federal courts’ habeas authority is misplaced. *See Allen v. Butterworth*, 756 So. 2d 52, 63-64 (Fla. 2000).

“[T]here are significant distinctions between the balance of power in the federal system and the balance of power in this state.” *Id.* at 63. As a general matter, the Federal Judiciary draws the bulk of its authority, not from the federal Constitution, but from Congressional statute. *Patchak v. Zinke*, 583 U.S. 244, 254 (2018) (noting as to federal courts “with limited exceptions, a congressional *grant* of jurisdiction is a *prerequisite* to the exercise of judicial power) (first emphasis added). As this Court noted in *Allen v. Butterworth*, “although the federal constitution grants the United States Supreme Court limited original jurisdiction,” its appellate jurisdiction “is derived from the authority of Congress.” 756 So. 2d at 63. In contrast, “the original and appellate jurisdiction of the courts of Florida is derived entirely from article V of the Florida Constitution.” *Id.* In other words, whereas the federal courts draw their authority primarily from statute, Florida courts derive judicial authority solely from Florida’s Constitution. *Id.*; *State ex rel. Buckwalter v. City of Lakeland*, 150 So. 508, 512 (Fla. 2000) (noting “as a general rule . . . whatever power is

conferred upon the courts by the Constitution cannot be enlarged or abridged by the Legislature”).

As to habeas jurisdiction specifically, “the United States Supreme Court has recognized that ‘the power to award the writ [of habeas corpus] by any of the courts of the United States, must be given by law’ and ‘judgements about the proper scope of the writ are normally for Congress to make.’” *Allen*, 756 So. 2d at 63 (quoting *Felkner v. Turpin*, 518 U.S. 651, 664 (1996)). Contrast Florida, where “article V of the Florida Constitution explicitly grants circuit courts, district courts, and this Court the authority to issue writs of habeas corpus.” *Allen*, 756 So. 2d at 63. Again, the federal courts exercise only such habeas authority as Congress permits, whereas the Florida Courts derive their habeas authority directly from Florida’s Constitution.

The upshot is this: The federal courts’ habeas authority and the Florida Courts’ habeas authority are profoundly dissimilar. Respectfully, as it did in *Allen v. Butterworth*, this Court should reject the State’s attempt to graft federal habeas doctrine onto Florida’s habeas doctrine. 756 So. 2d at 63-64 (emphasis added) (finding “the

State's reliance on the [Antiterrorism and Effective Death Penalty Act of 1996] is *clearly without merit*").

As to the remainder of the State's arguments, Mr. Bates relies on his Initial Brief and pleadings.

This Court should grant relief and reverse.

Manifest Injustice

Briefly, notwithstanding the State's efforts to minimize and distract, Mr. Bates submits that all of the grounds submitted show that his conviction and death sentence are constitutionally unreliable. Mr. Bates had an unfair judge, an unfair trial, ineffective counsel, and stunted review of his constitutional claims as raised throughout these post-warrant proceedings. Mr. Bates cannot be executed legitimately in light of these myriad constitutional failures. This Court has the authority to overcome procedural hurdles to reach the merits and do justice.

As to the remainder of the State's arguments, Mr. Bates stands on his Initial Brief and pleadings.

This Court should grant relief and reverse.

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.

In his initial brief and below, Mr. Bates argued that his penalty phase trial was inadequate to determine whether his case stood amongst the most aggravated and least mitigated cases for which death is reserved. The jury, the trial court, and this Court were all denied evidence of Mr. Bates's neuropsychological impairment, which jurors and courts have found to carry overwhelming support for life over death. Instead, Mr. Bates's neuropsychological impairment was presented in postconviction as a tangential component of an ineffective assistance of counsel claim.

The Warrant Court found that this claim was untimely and procedurally barred. WR-899. The State agrees, but adds that "it is also legally insufficient because the Eighth Amendment rule Bates relies on for this issue does not exist and is contrary to current caselaw." AB-20. The State explicitly limits its merits analysis to one issue: Whether "the Eighth Amendment [is] violated by the omission

of substantial brain-damage mitigation in a capital penalty phase.”
AB-24.

The State thinks not, relying primarily on *Blystone v. Pennsylvania*, 494 U.S. 299 (1990), for the proposition that “the Eighth Amendment permits a *mandatory* imposition of a death sentence where the State proves aggravation and the defendant presents no mitigation.” AB-31 (citing 494 U.S. at 301, 304-309, 306 n.4). From this general proposition, the State infers that the omission of any particular piece of mitigation must be constitutional, too. Venturing further, the State asserts that this is true “without regard to the reason mitigation was omitted.” AB-32. The State is wrong.

First, *Blystone* is inapposite. Unlike Pennsylvania’s capital sentencing statute at issue in *Blystone*, Florida’s statute did not *require* that Mr. Bates be sentenced to death under any circumstance. The sentencing judge could have imposed life over death even if the State proved multiple aggravators and Mr. Bates presented no mitigation. Either way, Mr. Bates *did* present and prove mitigating circumstances. His contention here is based on his inability to obtain review of particularly compelling mitigation, namely his neuropsychological impairments caused by organic brain

damage. Finally, *Blystone* is distinguishable on numerous grounds, including *inter alia*: *Blystone* involved a capital sentencing jury, whereas Florida relied on a capital sentencing judge; *Blystone* involved a defendant's waiver of mitigation, 494 U.S. at 306 n.4, whereas, here, no waiver occurred; and, the issue addressed in *Blystone* related to a *statutory* limitation on the sentencing jury's discretion, whereas, here, there is no claimed statutory limitation. At bottom, the State's reliance on *Blystone* is misplaced.

The State also argues that the omission of mitigators is constitutional "*without regard to the reason mitigation was omitted.*" AB-32. *Blystone* does not stand for this broad proposition. The Supreme Court has clarified that *Blystone* applies when "the reason mitigation was omitted" was the sentencing statute's language. In *Kansas v. Marsh*, the Court said that *Blystone* (and the related case *Boyde*) "plainly turned on the fact that *the mandatory language of the respective statutes* did not prevent the sentencing jury from 'consider[ing] and giv[ing] effect to all relevant mitigating evidence.'" *Kansas v. Marsh*, 548 U.S. 163, 178 n.4 (2006). But further, the State's argument would create patently absurd results, allowing

relevant, compelling mitigation to be excluded through arbitrary rulings, misconduct, and gamesmanship.

As to the remainder of the State's arguments, Mr. Bates stands on his pleadings and Initial Brief.

This Court should grant relief and reverse.

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.

Everybody except the jury knew that Mr. Bates would, realistically, never be released from prison. At his 1983 guilt phase, Mr. Bates was sentenced to consecutive life sentences for his non-capital convictions. Notwithstanding these additional sentences, the 1995 resentencing jury was asked to choose between two sentences: life imprisonment with the opportunity for parole in 25 years and death. Cognizant that these alternatives presented a false disparity between potential sentences, resentencing counsel moved to inform the jury that Mr. Bates agreed to waive parole, guaranteeing that life meant life. But the State fought to prevent the jury from learning this.

And, even when the jury asked for clarification during deliberations, the trial court failed to correct its apparent misunderstanding. Accordingly, the jury never heard that life imprisonment could be sufficiently punitive and still ensure the safety of the community at large. The jury was left to choose between a death sentence and the possibility Mr. Bates might be released shortly after his resentencing.

The State asserts that “this claim is untimely, procedurally barred, and legally insufficient.” AB-40. As to the bulk of the State’s arguments, Mr. Bates stands on his Initial Brief and pleadings below. This argument was properly pleaded. The State’s Answer evinces sufficient notice of issues, even if the exigencies of this warrant have limited counsel’s ability to fully develop the issues with the detail that all would prefer. However, Mr. Bates will briefly address the State’s retroactivity argument, which asserts: “Even if this Court decided in 2025 that its 1999 decision in Bates’ case was wrong, Bates would not be entitled to retroactive application of that decision under either state or federal law.” AB-51. Contrary to the State’s suggestion, if this Court grants relief to Mr. Bates, then that relief would, of course, apply to Mr. Bates even if it did not apply in other collateral cases.

As to the remainder of the State's arguments, Mr. Bates stands on his pleadings and Initial Brief.

This Court should grant relief and reverse.

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.

Mr. Bates was denied meaningful clemency proceedings. The Warrant Court denied Mr. Bates access to the reports upon which the Governor based his decision to deny clemency. If there were omissions, inaccuracies, or untruths in FCOR's report, Mr. Bates had the right to correct them and meaningfully plead for commutation.

The State argues that this claim is untimely, procedurally barred, and meritless. Although Mr. Bates acknowledges that this Court has previously rejected this argument as to ripeness, he maintains that any clemency claim remains speculative until clemency is denied. Until the Governor signed his warrant, Mr. Bates's execution and the denial of clemency were possibilities, not concrete occurrences. The factual bases for any challenges to the clemency process would be speculative. Further, because nothing

requires clemency proceedings to begin when federal habeas proceedings end, the Executive can easily evade review by waiting at least one year before initiating clemency.

What is more, the warrant itself raises concerns about whether the Governor received complete and accurate information in making his decision. Notably, the Attorney General did not inform the Governor about Mr. Bates's pending federal litigation in the Less than one month before the Governor signed his warrant, Mr. Bates filed a motion for relief from judgement under Federal Rule of Civil Procedure 60(b), through which he sought to reopen his federal habeas action based on *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).² See WR-69-70.

As to the remainder of the State's arguments, Mr. Bates stands on his Initial Brief and pleadings below. He reiterates, however, that unreviewable state action in any form is incompatible with basic

² The pleadings filed in Mr. Bates's federal litigation after his death warrant was signed have been forwarded to this Court throughout these warrant proceedings. The same is true for Mr. Bates's civil rights action under 48 U.S.C. § 1983 in the Federal District Court for the Northern District of Florida. Case Number: 5:25-cv-00192-TKW-MJF.

notions of democratic governance and the rule of law.

As to the remainder of the State's arguments, Mr. Bates stands on his pleadings and Initial Brief.

This Court should grant relief and reverse.

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.

Mr. Bates maintains that Florida's death warrant process violates the Due Process Clause of the Fourteenth Amendment, notwithstanding the State's suggestion that Mr. Bates "has been afforded far more process than he was ever constitutionally due." AB-84. Neither Mr. Bates's sentence of death nor the impossibility of his freedom extinguishes the continuing interest he has in living. *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,

Mr. Bates has the right to hold the State to account until his last breath.

Mr. Bates stands on his Initial Brief and pleadings below.

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.

Maintaining his innocence, Mr. Bates has litigated diligently throughout these postconviction proceedings, seeking relief and records at every opportunity. Naturally, he also sought public records when the Governor signed his death warrant and the State proposed a scheduling order that provided multiple days for records litigation. The prompt responses of the State Attorney's Office and the Bay County Sheriff's Office undermines the Warrant Court's findings that Mr. Bates's requests were overly broad, unduly burdensome, or indicative of a fishing expedition. Modern discovery production and record retention technology significantly reduces the burdens of providing public records within the time constraints of a death warrant. The Sheriff's Office and the State Attorney proved this. Gone

are the days of clerks feeding documents by hand into mimeographs for hours. In most cases, agency personnel might enter a few search terms, download responsive records, and transfer them via email. Redaction may be required. But this, too, is expedited by modern tools.

Either way, agencies bear the burden of showing an undue burden. This showing should require some consideration for the actual burden imposed in light of the processes and technologies the agency would employ. Mr. Bates's access to discovery should not be undermined by unexplained assertions of undue burden. This is particularly true when, as here, the records are necessary for meaningful constitutional review of state action. *See Glossip v. Gross*, 145 S. Ct. 612 (2025); *see also*, Appellant's Initial Brief, Argument V.

Public records related to lethal injection are particularly relevant to Mr. Bates's ability to evaluate the risk of a tortuous death he may face if executed using Florida's lethal injection protocol. The Supreme Court has indeed made lethal injection claims difficult to prove, demanding 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*, 576 U.S. at 877; 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). Difficult to overcome or not, the existence of these requirements confirms that lethal injection protocols *can* violate the United States Constitution and warrant postconviction relief on federal grounds.

The Supreme Court’s precedent on these points preempts this Court’s. Mr. Bates cannot make these showings without access to discovery. But, he cannot access discovery without first making these showings. State discovery rules cannot preclude federal constitutional challenges by hiding the relevant facts behind a veil of secrecy. Nor would such a result be consistent with Rule 3.852, which “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 475, 477 (Fla. 1996) (Anstead, J., concurring); *Sims v. State*, 753 So. 2d 66, 71-72 (Fla. 2000) (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.”).

Mr. Bates was required to show that under Rule 3.852(i), his demands related to colorable claims. He was not required to prove his colorable claim just to access the necessary discovery. The Warrant Court should have granted Mr. Bates’s requests and this Court should overrule any adverse precedent that kept these records from Mr. Bates.

As to the remainder of the State’s arguments, Mr. Bates stands on his pleadings.

CONCLUSION AND RELIEF SOUGHT

This Court should grant relief. This Court has the ability to correct the manifest injustice in Mr. Bates’s case and prevent his unjust and unconstitutional execution.

Respectfully Submitted

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CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.045, I hereby certify that the Reply 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 complied with the word count (3,591 Total of 6,500).

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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to opposing counsel through the Florida Courts E-Filing Portal on August 5, 2025.

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