

Case No. SC2025-1320
Polk County Lower Court No. 1990-CF-2242

In the Supreme Court of Florida

DAVID JOSEPH PITTMAN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

DEATH WARRANT SIGNED
Execution Scheduled for September 17, 2025, at 6:00 p.m.

ANSWER BRIEF OF APPELLEE

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TABLE OF CONTENTS

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT REGARDING ORAL ARGUMENT 1

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 8

ARGUMENT 8

CONCLUSION 19

CERTIFICATE OF SERVICE 20

CERTIFICATE OF COMPLIANCE 21

TABLE OF AUTHORITIES

Cases

Amendments to Fla. R. Crim. P. & Fla. R. App. P.,
875 So. 2d 563 (Fla. 2004) 11, 13

Atkins v. Virginia,
536 U.S. 304 (2002) 13, 14, 15

Barwick v. State,
361 So. 3d 785 (Fla.),
cert. denied, 143 S. Ct. 2452 (2023) 14

Bogle v. State,
288 So. 3d 1065 (Fla. 2019) 10

Bowles v. State,
276 So. 3d 791 (Fla. 2019) 14

Brady v. Maryland,
373 U.S. 83 (1963) 4

Carroll v. State,
114 So. 3d 883 (Fla. 2013) 14

Dillbeck v. State,
357 So. 3d 97 (Fla. 2023) 14

Downs v. State,
740 So. 2d 506 (Fla. 1999) 13

Foster v. State,
614 So. 2d 455 (Fla. 1992) 13

Freeman v. State,
300 So. 3d 591 (Fla. 2020) 12

Giglio v. United States,
405 U.S. 150 (1972) 4

Hall v. Florida,
572 U.S. 701 (2014) 12, 14, 15

<i>Hamilton v. State</i> , 236 So. 3d 276 (Fla. 2018)	11
<i>Huff v. State</i> , 622 So. 2d 982 (Fla. 1993)	4
<i>In Re Bowles</i> , 935 F.3d 1210 (11th Cir. 2019)	14
<i>In Re Henry</i> , 757 F.3d 1151 (11th Cir. 2014)	15
<i>King v. State</i> , 597 So. 2d 780 (Fla. 1992)	10
<i>Mann v. State</i> , 112 So. 3d 1158 (Fla. 2013)	10
<i>Morris v. State</i> , 317 So. 3d 1054 (Fla. 2021)	10
<i>Mungin v. State</i> , 320 So. 3d 624 (Fla. 2020)	10, 11
<i>Phillips v. State</i> , 299 So. 3d 1013 (Fla 2020)	8, 19
<i>Pittman v. Florida</i> , 514 U.S. 1119 (1995)	4
<i>Pittman v. Jones</i> , 586 U.S. 839 (2018)	7, 15
<i>Pittman v. Sec’y, Fla. Dep’t of Corr.</i> , 871 F.3d 1231 (11th Cir. 2017)	7, 15
<i>Pittman v. State</i> , 337 So. 3d 776 (Fla. 2022)	7, 9
<i>Pittman v. State</i> , 646 So. 2d 167 (Fla. 1994)	3, 4

<i>Pittman v. State</i> , 90 So. 3d 794 (Fla. 2011)	5, 12
<i>Rodgers v. State</i> , 288 So. 3d 1038 (Fla. 2019)	10
<i>Rogers v. State</i> , 409 So. 3d 1257 (Fla. 2025)	9
<i>Scull v. State</i> , 569 So. 2d 1251 (Fla. 1990)	18
<i>Zeigler v. State</i> , 632 So. 2d 48 (Fla. 1993)	13
Other Authorities	
Fla. R. App. P. 9.045(b)	21
Fla. R. App. P. 9.210(a)(2)(D)	21
Fla. R. Crim. P. 3.203.....	13
Fla. R. Crim. P. 3.203(d)(4)(c) (2004).....	11
Fla. R. Crim. P. 3.203(f).....	11
Fla. R. Crim. P. 3.851.....	11, 12
Fla. R. Crim. P. 3.851(d)(2)	9, 11

STATEMENT REGARDING ORAL ARGUMENT

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

STATEMENT OF THE CASE AND FACTS

On July 12, 1990, a Polk County grand jury indicted David Joseph Pittman on three counts of first-degree murder for the murders of Bonnie Knowles, Barbara Knowles, and Clarence Knowles—the sister, mother and father of Pittman's estranged wife, Marie. Pittman was also charged with arson, burglary and grand theft. With the exception of the burglary charge, Pittman's jury trial resulted in guilty verdicts on April 19, 1991. Following the penalty phase, the jury returned death recommendations by a vote of 9 to 3. The trial court sentenced Pittman to death for the murders of the three Knowles victims.

Direct Appeal

The essential facts are drawn from this Court's opinion on direct appeal:

Shortly after 3 a.m. on May 15, 1990, a newspaper deliveryman in Mulberry, Florida, reported that he had seen a burst of flame on the horizon. When the authorities arrived they found the home of Clarence and Barbara Knowles engulfed in fire. After the fire was extinguished, the police entered the house and found the bodies of Clarence and Barbara, along with the body of their twenty-year-old daughter, Bonnie. A medical examiner determined that the Knowles family had died not from the fire but from massive bleeding resulting from multiple stab wounds. Bonnie Knowles' throat had been cut. An investigator determined that the fire was the result of arson, that the phone line to the house had been cut, and that Bonnie Knowles' brown Toyota was missing.

At 6:30 a.m. on the morning of the fire, a construction worker noticed a brown Toyota in a ditch on the side of the road near his job site about one-half mile from the Knowles residence. A few minutes later the worker saw a homemade wrecker, which he later identified as belonging to Pittman, pull up to the Toyota and, shortly thereafter, a cloud of smoke coming from that direction. Another witness who lived near the construction site saw a man running away from the burning car. She identified Pittman from a photo array as the man she saw that morning. Investigators determined that the car fire, like the earlier house fire, was the work of an arsonist.

Pittman knew the Knowles well. At the time of the murders, another of the Knowles' daughters, Marie, was going through a contentious divorce with Pittman. During the process, Pittman had made several threats against Marie and her family. Adding to the strain, Pittman had

recently discovered that Bonnie Knowles was attempting to press criminal charges against him for an alleged rape that had occurred five years earlier.

Carl Hughes, a jailhouse informant, testified that Pittman had confessed to him that he had committed the murders. As Pittman told it, he went to the Knowles' house intending to speak with Bonnie Knowles. She let Pittman in and they talked but when Bonnie resisted his sexual advances, he killed her to stop her cries for help. Pittman then murdered Bonnie's mother Barbara Knowles in the hallway outside Bonnie's bedroom and then killed Clarence Knowles as the father tried to use the phone to call for help. Hughes said that Pittman also admitted to burning down the house and stealing the Toyota before setting it aflame.

Pittman v. State, 646 So. 2d 167, 168 (Fla. 1994).

In its sentencing order of April 25, 1991, the trial court found the following aggravators: 1) Prior conviction of a felony involving the use or threat of violence—Aggravated Assault; 2) Commission of two previous capital felonies as to each of the three murders; 3) HAC as to the murder of Bonnie Knowles; 4) HAC as to the murder of Barbara Knowles; 5) HAC as to the murder of Clarence Knowles.

In mitigation, the trial court found the following: 1) Murders were not committed while Pittman was under the influence of extreme mental or emotional disturbance; 2) Pittman's capacity to conform his conduct to the requirements of the law was not substantially impaired; 3) Pittman did not suffer from brain damage.

On direct appeal, the Florida Supreme Court affirmed Pittman's multiple convictions and sentences. *Pittman v. State*, 646 So. 2d 167 (Fla. 1994). Pittman filed a petition for writ of certiorari which was denied by the United States Supreme Court on May 15, 1995. *Pittman v. Florida*, 514 U.S. 1119 (1995).

Postconviction Proceedings

Pittman filed his initial postconviction motion on March 24, 1997, and after multiple amendments eventually incorporated 17 claims.

Following a second *Huff*¹ hearing/case management conference held on January 20, 2006, the trial court granted an evidentiary hearing on the following postconviction claims: 1) Brady²/Giglio³ & "Newly Discovered" Evidence; 2) Brady/Giglio/IAC-Guilt Phase; 3) IAC-Guilt Phase; and 7) IAC-Penalty/Sentencing. Evidentiary hearings were conducted May 8–11, 2006 on claims 1, 2, 3, and 7. On February 15, 2007, a limited evidentiary hearing was held on the prosecutor's handwritten notes of his pre-trial interview with Barbara

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

² *Brady v. Maryland*, 373 U.S. 83 (1963).

³ *Giglio v. United States*, 405 U.S. 150 (1972).

Marie Pridgen [Marie], Pittman's estranged wife. On March 8, 2007, Pittman filed an Amendment to Second Amended Motion to Vacate, alleging a lethal injection claim based on the December 2006 execution of Angel Diaz. A case management hearing was held on April 23, 2007; and the trial court summarily denied this claim in its final order of November 5, 2007.

On June 1, 2007, Pittman filed a Second Amendment to his Second Amended Motion to Vacate, this time seeking to add a hearsay witness, Chastity Eagan, as alleged "newly discovered" evidence. An evidentiary hearing was held on July 27, 2007, concerning Pittman's alleged "newly discovered" hearsay witness. On November 5, 2007, the postconviction court entered a 113-page written order denying postconviction relief.

Pittman filed his appeal in this Court on February 4, 2008. His state habeas petition was filed on December 29, 2008. This Court affirmed the denial of postconviction relief and denied Pittman's habeas petition. *Pittman v. State*, 90 So. 3d 794 (Fla. 2011).

Federal Habeas Proceedings

Pittman's federal habeas petition was filed August 31, 2012, and raised eight grounds. The Response was filed on December 6,

2012, and the United States District Court–Middle District, Tampa denied Pittman’s petition on February 20, 2015; the judgment was entered on February 23, 2015. The court did not grant a Certificate of Appealability (COA). Pittman’s motion to alter or amend the judgment was denied on March 26, 2015.

Pittman appealed to the Eleventh Circuit Court of Appeals on April 23, 2015, and asked the Eleventh Circuit to issue a COA. On June 28, 2016, the court granted the application in part, finding that a COA was warranted as to two issues: 1) whether trial counsel was constitutionally ineffective during the penalty phase; and 2) whether Pittman’s constitutional right to present a defense was violated. Pittman filed a motion for reconsideration of the Eleventh Circuit’s order denying a COA on the three other grounds. The motion was denied on August 29, 2016.

On September 22, 2017, subsequent to briefing and oral argument, the Eleventh Circuit issued an opinion affirming the denial of Pittman’s federal habeas petition. *Pittman v. Sec’y, Fla. Dep’t of Corr.*, 871 F.3d 1231 (11th Cir. 2017). Pittman moved for rehearing *en banc* and panel rehearing. Pittman’s motion was denied on December 19, 2017. Pittman’s petition for writ of certiorari filed May

18, 2018, was denied by the United States Supreme Court on October 1, 2018. *Pittman v. Jones*, 586 U.S. 839 (2018).

Additional Successive Postconviction Proceedings

Pittman filed a successive postconviction motion in the lower court on May 27, 2015, alleging, among other things, that his intellectual disability rendered him ineligible for a death sentence. The postconviction court ultimately found Pittman's intellectual disability claim to be untimely and denied relief as to all claims.

This Court affirmed. *Pittman v. State*, 337 So. 3d 776 (Fla. 2022). Pittman's petition for writ of certiorari to the United States Supreme Court was rejected for being out of time on September 9, 2022.

Warrant Litigation

On August 15, 2025, Governor Ron DeSantis signed Pittman's death warrant. Pittman's execution is scheduled for September 17, 2025, at 6:00 p.m. An initial case management hearing was held on August 18, 2025, before the Honorable Jalal Harb, Circuit Judge, who was standing in for the unavailable Judge J. Kevin Abdoney who had been assigned by the chief judge but who was out of town.

On August 29, 2025, the lower court, following argument by the

parties at a case management conference, entered its order denying Pittman's successive motion for postconviction relief, and Pittman filed his Notice of Appeal. On August 30, 2025, Pittman filed his Initial Brief, to which this responds.

SUMMARY OF THE ARGUMENT

Pittman's claim is untimely, procedurally barred, and meritless. He relies on information he has known for years and repackages a previously raised claim as a new one, encompassing arguments this Court has previously rejected.

ARGUMENT

The lower court's order should be affirmed.

Pittman argues that he is exempt from execution because he is intellectually disabled, asserts that this Court erred in deciding *Phillips v. State*, 299 So. 3d 1013 (Fla 2020) and also suggests that his third successive postconviction motion, filed in 2015, was wrongly dismissed as untimely. The lower court found that Appellant's most recent Motion repeated the same argument, summary denial of which was affirmed by this Court in *Pittman v. State*, 337 So. 3d 776 (Fla. 2022) and entered summary denial of relief because it was untimely and procedurally barred (R. 417-418)

The lower Court's Order should be affirmed.

Successive postconviction motions are untimely if filed more than one year after a conviction becomes final, unless one of the following circumstances exists:

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

Fla. R. Crim. P. 3.851(d)(2). Furthermore, claims that either were or could have been raised on direct appeal or in prior postconviction proceedings are not properly raised in a successive postconviction motion. *See Rogers v. State*, 409 So. 3d 1257, 1263 (Fla. 2025) (“[I]n an active [death] warrant case, a postconviction claim that could have been raised in a prior proceeding is procedurally barred.”); *see also King v. State*, 597 So. 2d 780, 782 (Fla. 1992) (holding that defendant's postconviction claims were procedurally barred because

they “could have been, should have been, or were raised on direct appeal”).

It was proper for the postconviction court to summarily deny Pittman’s postconviction motion because it was both untimely and procedurally barred under controlling precedent. *See Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020); *see also Rodgers v. State*, 288 So. 3d 1038, 1039 (Fla. 2019) (affirming the summary denial of a successive postconviction claim as untimely); *Bogle v. State*, 288 So. 3d 1065, 1069 (Fla. 2019) (affirming the summary denial of a successive postconviction claim on non-retroactivity grounds); *Morris v. State*, 317 So. 3d 1054, 1071 (Fla. 2021) (stating a court may summarily deny a postconviction claim that is procedurally barred); *Mann v. State*, 112 So. 3d 1158, 1162 (Fla. 2013) (noting that because the claims were purely legal claims that were previously rejected by this Court, the circuit court’s summary denial of relief was proper). Summary denial was warranted in this case, and there was no error in the postconviction court granting it.

A. Pittman’s claim is time barred.

Appellant has the burden of showing his claims are timely. *Mungin*, 320 So. 3d at 626 (“It is incumbent upon the defendant to

establish the timeliness of a successive postconviction claim.”). In this case, Pittman has made no effort to establish the timely filing of his successive motion. He fails to meet any of the exceptions set forth in rule 3.851(d)(2).

Subject to certain exceptions, a motion filed pursuant to rule 3.851 must be filed within one year after the judgment and sentence become final. Pittman’s conviction and death sentence became final in 1995 upon the Supreme Court's denial of certiorari review. *Hamilton v. State*, 236 So. 3d 276 (Fla. 2018). Claims of newly discovered evidence must be filed within one year of when the information was discovered or could have been discovered through the use of due diligence. *Id.* Similarly, where a claim of intellectual disability is not timely filed, rule 3.203(f) requires a showing of "good cause."⁴ Pittman fails in this regard.

Pittman’s first motion for postconviction relief was filed in 1997 with additional claims being added in 2001, 2005 and 2007. This Court affirmed the lower court's denial of relief. *Pittman v. State*, 90

⁴ Because Pittman had an active postconviction motion in 2004, his intellectual disability claim is governed by rule 3.203(d)(4)(c) (2004). *See Amendments to Fla. R. Crim. P. & Fla. R. App. P.*, 875 So. 2d 563 (Fla. 2004).

So. 3d 794 (Fla. 2012). Despite the fact that during the ten years while his initial postconviction motion was being litigated and Pittman was permitted multiple times to amend his motion to incorporate new claims, he never asked for relief because of intellectual disability. He nevertheless asserts that he should be excused from rule 3.851's diligence requirement because counsel was not "alerted" to Pittman's intellectual disability claim until the decision in *Hall*.⁵ (Initial Brief p. 28). This argument ignores the plain language of the rule in effect at the time Pittman's first postconviction motion was pending and fails to explain why the present law that such claims are now untimely should not apply here. *Freeman v. State*, 300 So. 3d 591 (Fla. 2020). Accordingly, the lower court's conclusion that Pittman's ID claim is untimely was proper and should be affirmed.

B. Pittman's claim is procedurally barred.

It is well established that available claims that were not advanced in the initial postconviction proceeding may not be raised in a successive motion. *Downs v. State*, 740 So. 2d 506, 512 (Fla.

⁵ *Hall v. Florida*, 572 U.S. 701 (2014).

1999); *Zeigler v. State*, 632 So. 2d 48, 51 (Fla. 1993); *Foster v. State*, 614 So. 2d 455, 458 (Fla. 1992). Pittman could have, but did not, raise the instant claim in his initial postconviction motion which was being actively litigated from 1997 through 2007; his failure to do so renders it procedurally barred.

After the United States Supreme Court decided *Atkins v. Virginia*, 536 U.S. 304 (2002), the Florida Supreme Court promulgated Fla. R. Crim. P. 3.203 which became effective on October 1, 2004. *Amendments to Fla. R. Crim. P. & Fla. R. App. P.*, 875 So. 2d 563 (Fla. 2004). The rule created a new procedure allowing intellectual disability claims pursuant to *Atkins*. Defendants (like Pittman) who had an initial postconviction motion pending were given, under the new rule, sixty days to amend—in other words, no later than December 1, 2004. *Id.* at 570. Pittman, while authorized to advance an *Atkins* claim in 2004, made no effort to do so; indeed, he has *never* mentioned intellectual disability until after the Supreme Court decided *Hall* in 2015. Accordingly, the lower court correctly concluded that his present ID claim is procedurally barred.

To the extent that Appellant contends that intellectual disability is a "categorical bar" to execution which should not be subject to any

procedural bar, Florida has regularly applied procedural bars to exemption-from-execution claims. See *Dillbeck v. State*, 357 So. 3d 97, 100 (Fla. 2023) (holding that the Court's precedent “flatly refutes Dillbeck's contention that no time limits apply to categorical exemption claims”) and *Barwick v. State*, 361 So. 3d 785, 795 (Fla.), *cert. denied*, 143 S. Ct. 2452 (2023) (same); *Carroll v. State*, 114 So. 3d 883 (Fla. 2013) (same).

Similarly, the Eleventh Circuit has declined to consider arguably meritorious intellectual disability claims on strictly procedural grounds. In *In Re Bowles*, 935 F.3d 1210 (11th Cir. 2019), the defendant had marginal IQ scores—an earlier one of 80 and a more recent one of 74. Like Pittman, he failed to raise his *Atkins* claim prior to the 2004 deadline and instead waited until *Hall*; the Florida Supreme Court affirmed summary denial because Bowles' intellectual disability claim was not timely filed. *Bowles v. State*, 276 So. 3d 791 (Fla. 2019). And the Eleventh Circuit rejected his request for permission to file a second federal habeas petition on procedural grounds. Regardless of whether his intellectual disability claim had merit, Bowles, the court reasoned, could have filed a timely *Atkins* claim in his initial habeas petition, but AEDPA did not permit a

second petition where the claim was previously available. The State notes that Pittman's initial federal habeas petition was affirmed by the Eleventh Circuit⁶ and certiorari denied by the United States Supreme Court.⁷

The Eleventh Circuit has also declined to find retroactive application of *Hall*. In *In Re Henry*, 757 F.3d 1151 (11th Cir. 2014), the Eleventh Circuit noted that *Hall* did nothing more than create "a procedural requirement that those with IQ test scores within the test's standard of error would have the *opportunity* to otherwise show intellectual disability. *Hall* guaranteed only a chance to present evidence, not ultimate relief." *Id.* at 1161. Pittman was given that opportunity in 2004; the lower court's ruling that Appellant's claim is procedurally barred does not violate the Eighth Amendment.

In short, wishing does not make it so. Pittman is bound by the well-established law governing how and when such claims must be brought, and the lower court's rejection of his ID claim should be affirmed.

⁶ *Pittman v. Secretary, Fla. Dep't of Corr.*, 871 F.3d 1231 (11th Cir. 2017).

⁷ *Pittman v. Jones*, 586 U.S. 839 (2018).

C. Pittman's IQ is 95, and his present claim of intellectual disability lacks merit.

In denying Pittman's 2015 intellectual disability motion, the Court rejected Pittman's assertion that he could not have advanced a claim of intellectual disability earlier because evidence supporting it was unavailable prior to Dr. Taub's 2015 report, saying:

[S]chool records from Defendant's childhood were available and indicated a possibility that Defendant had an intellectual disability. Jean Wesley testified in 2006 at the evidentiary hearing on the initial motion for postconviction relief, that while employed as a teacher aid, Defendant was in her class for emotionally handicapped students and functioned at a lower level than his age. Hr'g Tr. 224-225. Tillie Woody testified at the same hearing that she was Defendant's teacher when he was in sixth, seventh, and eighth grade. Hr'g Tr. 129-130. Defendant was in special education classes, classified as "educable mentally handicapped," and during these years Defendant functioned on a low elementary level. Hr'g Tr. 132-133. Such classification was accomplished through psychological examination. *Id.* Dr. Dee himself testified at this hearing, that "...[Defendant] was thought to be retarded, as a matter of fact, and was even put in special education, but he's got a 95 IQ, which makes little sense. He was learning disabled also." Hr'g Tr. 291. Dr. Taub reviewed Defendant's school records, and in his report attached to the successive motion for postconviction relief, noted that Defendant obtained an IQ score of 70 at the age of 6-years old. The author of the report indicating that score, dated November 11, 1967, noted "IQ of 70 must be considered as a minimal estimate of his ability, although it may represent a fair appraisal of his typical, daily functioning level." The report concluded, "[t]he findings of this testing in conjunction with his kindergarten teacher's

comments should be used to decide if [Defendant] would be better off in a primary special class program (for EMR) [e.g. Intellectual Disability] or if a regular first grade would suit his needs better." Dr. Taub's report also noted that on June 3, 1975, Defendant was evaluated with "Weschler Intelligence Scale for Children- Revised" and obtained a score of 71.

(R. 455-456).

The Court concluded that this evidence was available to Pittman at the time of his 1997 postconviction motion. And because trial counsel was aware that Dr. Dee had found Pittman's IQ at the time of trial to be 95, any claim alleging ID would have been rejected on that basis alone. While a motivated defendant can easily secure an IQ score low enough to support an ID claim, the opposite is not necessarily true; it is not possible to pretend to be smarter than one is.⁸

⁸ Nor do the circumstances of these offenses or Pittman's life support a viable intellectual disability claim regardless of the procedural hurdles to such a claim. The record shows that Pittman methodically planned the murders—he cut the telephone lines before entering the house in the middle of the night, stabbed and killed all three victims, and then set fire to the residence to destroy any evidence of his presence. He worked and lived independently at a motor vehicle scrap yard and built his own tow truck out of spare parts. In short, any claim that Pittman is intellectually disabled would run headlong into strong evidence of adaptive function; aside from his criminality, Pittman showed no difficulty in managing an independent lifestyle.

D. Pittman’s claim does not violate Due Process.

Pittman’s claim that the lower court’s refusal to address the merits of his intellectual disability claim violates due process fails as a matter of law. “The essence of due process is that fair notice and a reasonable opportunity to be heard must be given to interested parties before judgment is rendered.” *Scull v. State*, 569 So. 2d 1251, 1252 (Fla. 1990). Pittman was given the opportunity to litigate his ID claim during his initial postconviction motion, but because he elected not to do so, his claim was waived and forever barred from consideration. Application of a procedural bar does not violate due process; to the contrary, it is the essence of due process to provide a defendant with a set of rules with consequences in the event of failure.

E. Changes in Florida law are neither arbitrary nor capricious.

Finally, Pittman asserts that this Court’s decision to recede from its earlier conclusion that *Hall* was retroactive amounts to an Eighth Amendment violation as being arbitrary and capricious. He urges this Court to find that *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020) was wrongly decided. While Pittman is free to voice his opinion about the validity of *Phillips*, he presents this Court with no legal

reason for revisiting that controlling precedent. A simple reading of this Court's decision in *Phillips* demonstrates that this was no arbitrary or capricious decision. Rather, *Phillips* was a necessary correction of a previous ruling that was, unfortunately, incorrect.

In sum, Mr. Pittman's IQ is 95. He had the opportunity to challenge his ID years ago but did not; his subsequent attempts to claim the disability were untimely, barred by Florida's procedural rules, and in any event without merit. The Eighth Amendment does not preclude the imposition of procedural bars mandating that a challenge arising out of a categorical bar must be made prior to a given deadline. The lower court's decision should be affirmed.

CONCLUSION

WHEREFORE, this Court should affirm the lower court's summary denial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of September 2025, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Julissa Fontan, Megan Montagno, and John Lobianco, Assistants CCRC-M, Office of Capital Collateral Regional Counsel-Middle, 12973 North Telecom Parkway, Temple Terrace, Florida 33637, **fontan@ccmr.state.fl.us**, **montagno@ccmr.state.fl.us**, **lobianco@ccmr.state.fl.us**, **support@ccmr.state.fl.us**; and the Florida Supreme Court, 500 South Duval Street, Tallahassee, Florida 32399, **warrant@flcourts.org**, **canovak@flcourts.org**.

/s/ Timothy A. Freeland
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Bookman Old Style in compliance with Fla. R. App. P. 9.045(b), and that the word count is 3943 words in compliance with Fla. R. App. P. 9.210(a)(2)(D).

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