

IN THE SUPREME COURT OF FLORIDA

**ACTIVE WARRANT CAPITAL CASE EXECUTION SET FOR
TUESDAY, SEPTEMBER 30, 2025**

**VICTOR TONY JONES,
Appellant,**

v.

SC2025-1422

**STATE OF FLORIDA,
Appellee.**

**ON APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT, MIAMI-DADE COUNTY, FLORIDA**

LOWER TRIBUNAL CASE NO.: 90-50143

ANSWER BRIEF

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STATEMENT OF THE CASE AND PROCEDURAL HISTORY¹

Jones is under an active death warrant based on his conviction for two counts of first-degree murder of Matilda Nestor and Jacob Nestor. *Jones v. State*, 652 So. 2d 346, 348 (Fla. 1995) (*Jones I*). Following his conviction for two counts of first-degree murder and two counts of armed robbery, the jury recommended death for each victim, the trial court imposed two death sentences and life on each robbery count, all to run consecutively, and this Court affirmed. *Id.*

¹ The State will use the following to identify the appellate records: (1) **Direct Appeal – ROA with R for records and T for transcripts** in case number SC1960-81482, *Jones v. State*, 652 So. 2d 346 (Fla. 1995) (*Jones I*), *cert. denied*, 516 U.S. 875 (Oct. 2, 1995); (2) **Original Postconviction Appeal – PCR1** for case number SC01-734, *Jones v. State*, 855 So. 2d 611 (Fla. 2003) (*Jones II*) with related petition for writ of habeas corpus in case number SC02-605; (3) **First Successive Postconviction Appeal/Intellectual Disability – PCR2** for case number SC04-726, *Jones v. State*, 966 So. 2d 319 (Fla. 2007) (*Jones III*); (4) **Second Successive Postconviction Appeal – PCR3** case number SC13-2392, *Jones v. State*, 135 So. 3d 287 (Fla. 2014) (*Jones IV*) raising a claim under *Porter v. McCollum*, 558 U.S. 30 (2009) which was voluntarily dismissed; **Third Successive Postconviction Appeal/Intellectual Disability – PCR4** case number SC15-1549, *Jones v. State*, 231 So. 3d 374 (Fla. 2017) (*Jones V*); **Fourth Successive Postconviction Appeal – PCR5** case number SC18-285, *Jones v. State*, 241 So. 3d 65 (Fla. 2018) (*Jones VI*), *cert. denied*, 586 U.S. 1052 (2018); and **Fifth Successive Postconviction Appeal – PCR6** case number SC2025-1422 (the present appeal under active death warrant). An “S” preceding the record type indicates a supplemental record. Jones’ Petition will be notated as “P.”

at 348-49. Over the approximate thirty-five years since the murders, Jones has litigated his direct appeal, six postconviction motions with two evidentiary hearings, and a federal habeas petition, none of which were successful. *See* footnote 1, *supra*.

On August 29, 2025, the Governor signed a death warrant with the execution set for September 30, 2025. On September 8, 2025, Jones filed a successive postconviction motion, which was summarily denied. He appealed and his initial brief was filed on September 16, 2025.

On direct appeal, this Court set forth the facts of the crime. On December 19, 1990, the bodies of sixty-six-year-old Matilda Nestor and sixty-seven-year-old Jacob Nestor were found in their place of business. *Jones I*, 652 So. 2d at 348. Jones, on his second day working for the Nestors, stabbed Mrs. Nestor in the back severing her aorta and Mr. Nestor in the heart, killing them. *Id.* Before he died, Mr. Nestor was able to remove the knife from his chest, attempt to call for help, and fire five shots from his .22 caliber automatic pistol striking Jones once in the forehead *Id.* After the stabbings, Jones robbed both victims. *Id.*

Following the murders and robberies, Jones locked himself in

the building where he remained until the police knocked down the door. *Id.* The police found Jones slumped over on the couch near Mr. Nestor's body with the butt of a .22 caliber automatic pistol sticking out from under his arm. *Id.* No money or valuables were found on either victim. Mrs. Nestor's purse was discovered on the couch with Jones. *Id.* The evidence also indicated that after Mr. Nestor collapsed, his body was rolled over so items could be removed from his pockets. *Id.* Mrs. Nestor's change purse, keys, lighter, and both victims' wallets were found in Jones' pant pockets. *Id.*

It was not readily apparent that Jones had been shot until he complained of a headache after being handcuffed. *Id.* After noticing blood coming from his forehead, police asked what happened and Jones replied, "the old man shot me." *Jones I*, 652 So. 2d at 348. Jones was transported to the hospital and while in the intensive care unit, he told a nurse that he had to leave because "he had killed those people." *Id.* When the nurse asked him why, Jones responded: "they owed me money, and I had to kill them." *Id.* Upon this evidence, Jones was found guilty of two counts of first-degree murder and two counts of armed robbery. *Id.*

On February 11, 1993, between the guilt and penalty phases, a

competency hearing was held. Jones was found competent to proceed. (ROA-T 2436).

During the penalty phase, the State presented testimony supporting prior violent felony convictions where Jones committed armed robberies and a burglary with an assault. (ROA-T 2514-51, 2564-66, 2576). On November 27, 1990, less than a month before the instant murders, Jones had been conditionally released from imprisonment. (ROA-T 2580).

Jones presented Dr. Jethro Toomer to present mitigation. The doctor evaluated Jones and testified he was just five years old when his mother went to New York, and Jones was left in the care of his mother's sister, Laura Long, who lived in Miami. Jones was raised by the Longs who cared for him and required a high standard of behavior from him. They were demanding in terms of the behavior required and tried to teach Jones right from wrong. (ROA-T 2600-06, 2615). Jones was raised in a middle-class household by a family who took him to church when he was young. (ROA-T 2615). Ms. Long provided Jones with clothing, food, and shelter. His teacher indicated Jones was appropriately dressed and had the proper school supplies when he came to class. (ROA-T 2607). Dr. Toomer also testified that Jones'

aunt was married to a minister who raised Jones along with his two cousins. Mrs. Long indicated her husband loved Jones as he did his two sons. (ROA-T 2663-65).

Around the age of twelve, Jones began to skip school and started using marijuana and committing burglaries. He also ran away several times. (ROA-T 2611). At fourteen-years-old,² Jones made his own way to New York to his mother. (ROA-T 1612). Dr. Toomer testified that Jones stayed with his mother for about two years after 1973 and that he was registered in the New York school system. (ROA-T 2649). After leaving New York, Jones went to Texas, then California where he informed Dr. Toomer he supported himself through employment from 1976 to 1981; Jones told Dr. Toomer he was not committing crimes during that period.³ (ROA-T 2650).

In 1981, Jones moved to Atlanta, Georgia. There, he lived with a “common-law wife” who supported him when Jones stopped

² The testimony varies on the age Jones first ran away to New York; it ranges between eleven and fourteen years of age.

³ Dr. Toomer based that testimony on what Jones disclosed, however, the record shows that Jones had in fact engaged in criminal activity in Atlanta. Likewise, Jones was untruthful with Dr. Toomer when he denied having been referred to drug treatment programs in Atlanta and Florida. (ROA-T 2651-55).

working. Eventually, she demanded Jones leave her house. (ROA-T 2652). Between 1980 and 1990, Jones lived with his grandmother in Miami except for the periods of time he was in Atlanta or in prison. (ROA-T 2667). Dr. Toomer admitted that Jones had a number of disciplinary problems while in state prison and county jail. (ROA-T 2627).

Dr. Toomer informed the jury that Jones was of average intelligence and that he had never been treated for mental disease or defect. Likewise, Jones never had any psychological counselling. There was no evidence of Jones ever exhibiting bizarre or psychotic behavior in prison. (ROA-T 2673). Dr. Toomer opined that Jones suffered from a borderline personality disorder and was a victim of abandonment, whose family was dysfunctional, resulting in his maladaptive behavior. (ROA-T 2608, 2621). Although he did not talk to Jones about the events surrounding the murder or his prior crimes, Dr. Toomer believed the statutory mitigator of “under the influence of extreme mental or emotional disturbance” applied. The doctor did not believe the particular crime facts mattered. (ROA-T 2642-44). Even so, Dr. Toomer conceded that Jones did not suffer from any major mental disorder or psychosis and without a desire to

seek counseling on Jones' part, the probability of Jones altering his behavior was "practically nil." (ROA-T 2628, 2648).

In rebuttal, the State presented Dr. Charles Mutter, a forensic psychiatrist who evaluated Jones. (ROA-T 2682-83). Dr. Mutter was also of the opinion that Jones had average intelligence. The doctor reviewed the Jackson Memorial Hospital records relating to Jones' December 1990 gunshot wound, Dr. Toomer's notes and depositions, the police reports, the July 24, 1992, Minnesota Multiphasic Personality Inventory ("MMPI") report on Jones, the 1987-1990 arrest records, the February 1987 through July 1990 Florida Department of Corrections records including his disciplinary problems and medical status, and Jones' current Dade County jail records. (ROA-T 2687). From his review and evaluation, Dr. Mutter concluded that the statutory mitigator of extreme mental or emotional disturbance was not applicable. (ROA-T 2688). The doctor found no evidence that Jones had ever been psychotic, out of touch with reality, or had a flash back to some traumatic experience. (ROA-T 2689).

Dr. Mutter opined that the Longs taught Jones right from wrong and how to live as an adult. Jones, in fact, knew right from wrong and, without question, made a conscious choice to kill. Since the age

of twenty, Jones' criminal troubles stemmed from his desire to get money for drugs. Dr. Mutter did not believe Jones had an extreme mental or emotional disturbance. The doctor rejected the suggestion that Jones used drugs because of an emotional abandonment as a child. (ROA-T 2690-91). Further, Dr. Mutter saw no evidence Jones was under the influence of alcohol or drugs when he murdered and robbed the Nestors. In discussions with Dr. Mutter, Jones denied being under the influence of those substances at the time of the crimes. (ROA-T 2692). It was the doctor's opinion that Jones had an antisocial personality, which is not considered a major mental disorder, and Jones' antisocial personality became evident around twelve-years of age. Prior to that, Jones did fairly well in school. After that age, Jones made the same errors repeatedly because he seemed more concerned with what he thought was good for himself rather than learning from his mistakes. (ROA-T 2698-99, 2702).

Based on the above evidence, the jury recommended death for the murder of Mrs. Nestor by a vote of ten to two. *Jones I*, 652 So. 2d at 348. For Mr. Nestor's murder, the jurors unanimously recommended death. *Id.*

Additional mitigation evidence was presented to the trial court

alone. Dr. Hyman Eisenstein, a neuropsychologist, primarily testified on Jones' competency. (ROA-T 2793-2815). However, he had no opinion regarding the existence of mitigating circumstances and was unable to opine whether any neurological deficits he diagnosed predated the December 1990 gunshot injury inflicted during the murders. (ROA-T. 2820).

Laura Long, Jones' aunt who raised him, testified that Jones came to live with her when he was two years old⁴ and remained with her until he was fourteen or fifteen years old. (ROA-T 2835). As a child, Jones was very nice and did very well in school. Long explained that she was a teacher and helped Jones and her other children with their schooling. Jones did not have any problems with his lessons or behavior in elementary school. (ROA.T 2836) In fact, Jones' teacher noted he was very well behaved and was an ideal student. When Jones was young, she took him to church. He liked to go with the children, and the children liked Jones. (ROA-T 2837).

It was not until Jones was between twelve and fourteen years of age that he started running away and he and his best friend began

⁴ This is a different date from Dr. Toomer's testimony.

getting into trouble. (ROA-T 2839). After Jones ran away to New York when he was fifteen years-old,⁵ he never lived with Long again, even though she had asked him to return and she loved him very much. (ROA-T 2840).

With respect to Jones' drug use, Long testified that she was very upset the first time Jones came home on drugs. When they spoke about his drug use, Jones said he was doing drugs because most of his peers used drugs. He felt peer-pressure. (ROA-T 2842).

In its sentencing order, the trial court found in aggravation for each murder: (1) under a sentence of imprisonment; (2) prior violent felony convictions; (3) murder committed during the course of a robbery, and merged with, (4) pecuniary gain. *Jones I*, 652 So. 2d at 348–49. The sentencing court found nothing in mitigation and followed the jury's recommendation in sentencing Jones to death for the double homicide. *Id.* at 349. Jones received life sentences for each robbery, with all sentences to run consecutively. *Id.*

On direct appeal, Jones raised five issues: (1) error in denying a judgment of acquittal on the armed robbery counts as the thefts

⁵ The testimony regarding Jones' ages during different events in his life varies between witnesses and various proceedings.

were done posthumously; (2) error in not instructing the jury on merging of the “during the course of a robbery” and pecuniary gain aggravators; (3) error to not remove the “extreme” qualifier from the standard instruction for the statutory mitigator of “under extreme mental or emotional disturbance” at the time of the offense; (4) a new sentencing was required as the mental health experts failed to address the possibility that Jones suffered from fetal alcohol syndrome/effect and the sentencing court refused to consider Jones' abandonment by his mother as mitigation; and (5) error to deny a mistrial based upon various alleged improper prosecutorial comments during the penalty phase closing argument. *Jones I*, 652 So. 2d at 349. This Court denied each claim and affirmed the convictions and sentences. *Id.* at 353. On October 2, 1995, Jones' case became final with the United States Supreme Court's denial of certiorari. *Jones v. Florida*, 516 U.S. 875 (1995).

Represented by Capital Collateral Regional Counsel-South, Jones pursued postconviction relief. His initial motion was filed on March 24, 1997, amended in March 1999, and on October 8, 1999, where he raised over twenty claims. The March 1999 motion was accompanied by a motion to determine competency. (PCR1 93-202;

SR-PCR1 131-34). Pursuant to *Carter v. State*, 706 So. 2d 873 (Fla. 1997), the postconviction court ordered Jones evaluated by two experts, who both found him competent. (SR-PCR1 131-34, 147-56) After an evidentiary hearing at which both doctors testified, the court found him competent. Following that, the postconviction court granted an evidentiary hearing on Jones' claims of ineffective assistance related to failing to raise: (1) voluntary intoxication; (2) mental health and family mitigation history; and (3) competency prior to trial. (PCR1 365). The court held a multi-day evidentiary hearing, then denied relief. Jones appealed. *Jones II*, 855 So. 2d at 614-15. Where relevant, the facts established in the initial postconviction litigation will be included in the argument portion of this response. On appeal, this Court considered and rejected the five claims raised by Jones and discussed whether counsel was ineffective for: (1) failing to investigate and present a voluntary intoxication defense and (2) failing to properly investigate and present available mitigation. *Jones II*, 855 So. 2d at 615-16.

Attendant with his postconviction appeal in *Jones II*, Jones raised claims of ineffective assistance of appellate counsel under case number SC02-605. There he raised:

... (1) trial counsel's conflict of interest and the trial court's denial of trial counsel's motion to withdraw; (2) the denial of appellant's motions to suppress; (3) trial counsel's objection to the substitution of the medical examiner; (4) the voluntariness of Jones's pleas in prior cases; (5) the trial court's denial of Jones's motion to compel psychiatric examination of a witness; (6) the trial court's denial of defense counsel's motion for mistrial based on the prosecutor's "inferential" comment on petitioner's right to remain silent; and (7) the invalidity of the jury instructions under *Caldwell v. Mississippi*, 472 U.S. 320, 105 S. Ct. 2633, 86 L.Ed.2d 231 (1985).

Jones II, 855 So. 2d at 619 n. 5. This Court denied the petition. *Id.*

Next, Jones filed a federal petition for writ of habeas corpus, raising twenty-six claims. Relief was denied. *Jones v. McNeil*, 776 F. Supp. 2d 1323, 1338 (S.D. Fla. 2011). Jones attempted to appeal the denial but a certificate of appealability was denied. The United States Supreme Court denied certiorari. *Jones v. Fla. Dep't. of Corr.*, 568 U.S. 873 (2012).

While litigating his federal claims, on January 25, 2006, Jones filed his first successive motion for postconviction relief alleging intellectual disability under *Atkins v. Virginia*, 536 U.S. 304 (2002), as a bar to his execution. Initially, the postconviction court summarily denied relief, however, this Court remanded for an evidentiary hearing. *Jones v. State*, 966 So. 2d 319, 322 (Fla. 2007)

(*Jones III*). At the hearing, Dr. Hyman Eisenstein testified on Jones' behalf and the State presented Dr. Enrique Suarez and Lisa Wiley, a psychological specialist with the Department of Corrections. *Id.* at 322. This Court noted, “[t]he parties stipulated that evidence from the evidentiary hearing would be considered cumulatively with the evidence from prior proceedings.” *Id.*

Additional facts are included in the argument portion of this response; however, a synopsis of the evidence presented at the intellectual disability evidentiary hearing included that Jones' was born in 1961 and his school records showed he was in “regular classes” where he earned “mostly Cs” in first and second grade “with some As and Bs in English and writing.” *Jones III*, 966 So. 2d at 322. Jones' “third-grade teacher reported that he was of ‘a little above average intelligence’ and did well in school.” *Id.* In the seventh grade, Jones “again earned Cs with Bs in English;” however, in the eighth grade, “he began using drugs, skipping school, and having disciplinary problems, [and] his grades dropped precipitously” before he dropped out of school at sixteen-years-old. *Id.*

Jones ran away from home multiple times including at fourteen-years-old successfully stowing away on an airline and making his

way alone to New York to be with his mother. *Jones III*, 966 So. 2d at 322. In 1978, when Jones was under eighteen-years-old, he worked as a waiter before “hitchhik[ing] alone to Texas, supporting himself by working various jobs and selling drugs,” then flying “to San Francisco, where he supported himself mostly through robberies” before returning to Miami in 1979 and before moving to Atlanta, Georgia “where he lived for several years, working various jobs over time, including bouncer and waiter.” *Id.* at 322. Upon his return to Miami in 1986, Jones again supported himself by mowing lawns for a living and selling drugs. *Id.* at 322-23.

When Jones was fourteen years old, he was admitted to the hospital “for psychiatric evaluation” and the records showed he “had a ‘completely normal mental status’ during his stay” and “was discharged with a diagnosis of ‘unsocialized aggressive reaction of adolescence,’ with no psychiatric treatment needed.” While “[a] hospital document indicated that Jones previously had been labeled at a juvenile facility as having borderline mental retardation,” “no documentation supported the statement.” *Jones III*, 966 So. 2d at 322-23. This Court found that between 1991 and 2005, various doctors “administered either the WAIS–R (Wechsler Adult Intelligence

Scales) or WAIS–III intelligence tests” with Jones obtaining full scale scores between 67 and 75. *Jones III*, 966 So. 2d at 323.

During the evidentiary hearing, the trial court heard testimony from Lisa Wiley and Drs. Eisenstein and Suarez, regarding Jones’ adaptive functioning abilities. The trial court determined that Jones offered “no credible evidence” to support his claim of intellectual disability and concluded that “Jones did not meet even one of the three statutory requirements” for intellectual disability. *Jones III*, 966 So. 2d at 325. This Court found that substantial competent evidence supported the trial court’s conclusion that Jones did not meet the statutory definition of intellectual disability, as necessary to bar the imposition of the death penalty. *Id.* at 325-29.

On November 29, 2010, Jones filed his second successive postconviction relief motion raising a claim under *Porter v. McCollum*, 558 U.S. 30 (2009), seeking reconsideration of the denial of his prior claims of ineffective assistance of counsel. After the trial court summarily denied the motion, Jones appealed. However, he later voluntarily dismissed the action. *Jones IV*, 135 So. 3d at 287 (table).

In his third successive postconviction relief motion, Jones re-raised his claim of intellectual disability following the Supreme

Court's decision in *Hall v. Florida*, 572 U.S. 701 (2014) and requested a new evidentiary hearing. *Jones V*, 231 So. 3d at 374. On appeal following the summary denial of relief, Jones also raised a claim under *Hurst v. Florida*, 577 U.S. 92 (2016). This Court affirmed the denial of Jones' *Hall* claim, concluding "Jones is not entitled to a new hearing in order to present additional evidence of intellectual disability because he was already provided the opportunity to present evidence regarding each of the three prongs of the intellectual disability standard." *Jones V*, 231 So. 3d at 376. Further "*Hall* does not change the fact that Jones failed to establish that he meets the second or third prong" of an intellectual disability claim. *Id.* This Court also denied the *Hurst v. Florida* claim having found it was not retroactive to cases final before *Ring v. Arizona*, 536 U.S. 584 (2002) was decided. *Jones V*, 231 So. 3d at 376.

Jones filed his fourth successive postconviction motion for relief on October 13, 2017, again raising a *Hurst v. Florida* claim but also pointing to this Court's decision in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), *cert. denied*, 581 U.S. 1000 (2017). Again, the trial court denied relief summarily and this Court affirmed noting that *Hurst v. Florida* was not retroactive to cases final before *Ring* and that

included Jones' case. *Jones v. State*, 241 So. 3d 65 (Fla. 2018), *cert. denied*, 586 U.S. 1052 (2018).

On August 29, 2025, Governor Ron DeSantis signed Jones' death warrant scheduling the execution for September 30, 2025. (PCR6 97-98). This prompted Jones to file with the trial court his fifth successive postconviction relief motion, his sixth overall, and to file demands and additional/renewed demands for public records on agencies which had produced records previously and on agencies which were not the subject to a prior demand. (PCR6 192-334, 360-71, 887-98, 905-33, 1196-1224). The agencies responded and following hearings on the demands, (PCR6 335-59, 372-95, 400-02, 433-69, 814-32, 1231-42; S-PCR6 1564-625, 1626-38), multiple orders and amended orders were entered. (PCR6 403-32, 470-73, 1250-73, 1280-84, 1315-19).

On September 8, 2025, Jones filed his corrected successive postconviction motion and a motion to stay his execution. (PCR6 474-886). Therein, he raised three claims: (1) newly discovered evidence related to the Okeechobee School for Boys; (2) newly discovered evidence of discriminatory capital selection prosecution in Miami-Dade County; and (3) the truncated warrant schedule is a denial of

due process. (PCR6 833-59). The following day, the State filed its objection to Jones' motion to stay and its response to the successive postconviction relief motion. (PCR61285-1314). The Case Management/*Huff*⁶ hearing was held on September 10, 2025, following which the trial court determined that an evidentiary hearing was not required. (S-PCR6 1626-95). The trial court issued its order after the hearing and determined an evidentiary hearing was not required. (PCR6 1448-52). The trial court's September 12, 2025, final order on the corrected successive motion denied relief finding the claims untimely, procedurally barred, and without merit. (PCR61471-82). In the same order, the court denied the motion for stay. (PCR6 1483).

The instant appeal followed. Along with his initial brief, Jones filed a motion to stay. He also filed a state habeas petition and motion to stay in case number SC2025-1423. The State filed its response to the habeas petition and objected to the stay request on September 16, 2025.

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

SUMMARY OF THE ARGUMENT

Jones committed two horrific homicides in December of 1990, and his convictions and sentence became final in 1995. *Jones*, 516 U.S. 875 (1995), *cert. denied*. 516 U.S. 875 (1995). Since his conviction, Jones has filed numerous postconviction motions, numerous petitions for writ of certiorari (all denied), and now, only after his death warrant is signed, does he file an eleventh hour postconviction motion claiming newly discovered evidence. Jones alleged in his amended successive postconviction motion filed on September 9, 2025, that after thirty years since his convictions and sentence were final, he has newly discovered evidence.

Issue I - Jones' first claim that a letter from the Office of the Attorney General noting his eligibility for inclusion in the victim compensation fund for the Okeechobee School for Boys is newly discovered evidence is clearly refuted by the record. Jones asserts the letter validates his claims of abuse while a resident at the Okeechobee School. In fact, he never once claimed in the thirty-five years since the murders that he was a victim of abuse at the Okeechobee School. Jones' knowledge of whether he was abused while at the Okeechobee School is not newly discovered evidence. If what Jones says is true,

he has always known whether he was a victim of abuse. Yet he never mentioned any such abuse as mitigation at trial, in his direct appeal, or in any of his many postconviction motions. *See Jones v. State*, 652 So. 2d 346 (Fla. 1995) *cert. denied* 516 U.S. 875 (1995) (*Jones I*). *See also Jones v. State*, 855 So. 2d 611 (Fla. 2003) (*Jones II*); *Jones v. State*, 966 So. 2d 319 (Fla. 2007) (*Jones III*); *Jones v. State*, 135 So. 3d 287 (Fla. 2014) (*Jones IV*); *Jones v. State*, 231 So. 3d 374 (Fla. 2017) (*Jones V*); *Jones v. State*, 241 So. 3d 65 (Fla. 2018) (*Jones VI*), *cert. denied*, 586 U.S. 1052 (2018).

Issue II – The trial court properly assessed and denied the public records demands submitted after a warrant was signed as untimely, overly broad, vague, and not reasonably calculated to lead to a colorable claim.

Issue III - Finally, Jones claims that Florida’s 30-day warrant schedule is a surprise and does not give him a meaningful opportunity to be heard in violation of his due process rights. Jones has had ample meaningful opportunities to be heard since his sentence and convictions became final in 1995. In fact, this present appeal is nothing more than Jones’ attempt to obtain a lesser sentence for claims that were not raised previously and are untimely,

procedurally barred, and legally insufficient.

ARGUMENT

ISSUE I

The Letter Including Jones as a Class Member in the Okeechobee Victim Compensation Fund Is Not Newly Discovered Evidence and the Claim Is Untimely, Procedurally Barred, and Meritless.

Jones argues that the State of Florida's inclusion of him in a class of persons eligible for compensation based on his residency in the Okeechobee Florida School for Boys on four occasions between 1975 and 1978 constitutes newly discovered evidence of abuse at that institution, entitling him to an evidentiary hearing and postconviction relief. This claim is untimely, procedurally barred, and meritless. The purported evidence does not overcome the untimeliness of the motion, nor has Jones met the newly discovered evidence standard. He has not explained why this matter could not have been raised earlier or how his sentence would be mitigated. This Court should affirm the denial of relief.

A. Standard of Review.

Quoting Fla. R. Crim. P. 3.851(f)(5)(B), this Court has reaffirmed that a successive motion may be denied summarily, “[i]f the motion,

files and records in the case conclusively show that the movant is entitled to no relief, the motion may be denied without an evidentiary hearing.” *Harvey v. State*, 260 So. 3d 906, 906-07 (Fla. 2018). “A second or successive motion for postconviction relief can be denied on the ground that it is an abuse of process if there is no reason for failing to raise the issues in the previous motion.” *Owen v. Crosby*, 854 So. 2d 182, 187 (Fla. 2003). While claims which could have been raised in an earlier Rule 3.851 motion are procedurally barred, a defendant may file a successive motion if based on “newly discovered evidence.” *See White v. State*, 664 So. 2d 242, 244 (Fla. 1995).

As this Court has explained:

In order to obtain relief based on newly discovered evidence, a defendant must establish: (1) that the newly discovered evidence was unknown by the trial court, by the party, or by counsel at the time of trial and it could not have been discovered through due diligence, and (2) that the evidence is of such a nature that it would probably produce an acquittal or yield a less severe sentence on retrial. ... Newly discovered evidence satisfies the second prong of the test if it “weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability.”

Dailey v. State, 329 So. 3d 1280, 1285 (Fla. 2021). *See also Zack v. State*, 371 So. 3d 335, 344–45 (Fla. 2023); *Rogers v. State*, 327 So. 3d 784, 787 (Fla. 2021); *Jones v. State*, 709 So. 2d 512, 521 (Fla.

1998). The burden rests on the defendant "to demonstrate that his claims could not have been raised in the initial postconviction motion through the exercise of due diligence." *Rivera v. State*, 187 So. 3d 822, 831–32 (Fla. 2015) (citing *Zeigler v. State*, 632 So. 2d 48, 51 (Fla.1993)).

B. The Claim is Untimely.

Rule 3.851 requires, with few exceptions, that any motion to vacate judgement of conviction and sentence of death shall be filed by the defendant within one year after the judgement and sentence become final. Fla. R. Crim. P. 3.851(d)(1). Jones' judgement and sentence were finalized on October 2, 1995, when the United States Supreme Court denied his petition for certiorari. *Jones v. Florida*, 516 U.S. 875; Fla. R. Crim. P. 3.851(d)(1)(B) (judgement becomes final "on the disposition of the petition for writ of certiorari by the United States Supreme Court"). Rule 3.851 does provide an exception to the one-year limitation when the facts on which the claim is predicated were unknown to the defendant and could not have been ascertained by the exercise of diligence. Fla. R. Crim. P. 3.851(d)(2). It is, however, Jones' burden to demonstrate that the alleged newly discovered evidence qualifies for this exception. See Fla. R. Crim. P.

3.851(d)(2)(A); *Dillbeck v. State*, 357 So. 3d 94, 100 (Fla. 2023). Yet, even if Jones shows that he could not have discovered this information within one year of his judgement and sentence, to be considered timely filed as newly discovered evidence, the motion must be filed within one year of the date upon which the claim became discoverable through due diligence. *Jimenez v. State*, 997 So. 2d 1056, 1064 (Fla. 2008).

To bring a successive postconviction claim outside of the one-year time limitation, the defendant must show either: (1) newly discovered evidence; (2) a new constitutional right held to apply retroactively; or (3) counsel's neglect to file a motion. See Fla. R. Crim. P. 3.851(d)(2); *Owen v. Crosby*, 854 So. 2d 182, 188 (Fla. 2003) (explaining capital defendant failed to establish that his successive motion was predicated on newly discovered evidence, thus, he could not overcome the procedural bar); *Knight v. State*, 784 So. 2d 396, 400 (Fla. 2001); *Francis v. Barton*, 581 So. 2d 583, 584 (Fla. 1991). Absent such a showing, the motion should be summarily denied. Fla. R. Crim. P. 3.851(e)(2).

Successive motions for postconviction relief based on newly discovered evidence must allege the facts upon which the claim is

based “were unknown to the movant or the movant’s attorney and could not have been ascertained by the exercise of due diligence,” and that there is good cause for failing to raise the claim in a prior motion. Fla. R. Crim. P. 3.851(d)(2)(A), (e)(2). If the lower court found the evidence in Jones’ newly discovered evidence claim was previously discoverable, or there is no good cause for failing to assert the claim earlier, it must dismiss the claim under Florida law. *Id.* Jones also 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.”).

Jones argues this exception for newly discovered evidence renders the claim timely because it was not until January 6, 2025, that the State recognized him as a member of the potential compensation class. The Florida legislature passed, and the Governor signed, CS/HB 21 – Dozier School for Boys and Okeechobee School Victim Compensation Program in 2024. (Def. Ex. N). Based on that bill, the State established a victims’ compensation fund administered by the Office of the Attorney General, which wrote Jones the letter referenced in the motion. The fact that he received the letter in 2025 does not render any potential allegations of abuse

“new.” Jones was placed at Okeechobee fifty years ago; he would have known of any abuse at the time of the trial and the initial postconviction motion.

Thus, clearly, Jones’ claim that the evidence of his mistreatment is newly discovered cannot stand. Jones attempts to argue that the January 2025 letter from the State validated his claims of abuse, which he never voiced before the warrant was signed, and thus makes it newly discovered, allowing him to make this claim for the first time despite him knowing about the purported abuse for half a century. This Court has previously determined that the bill establishing the reparations for a particular class of attendees of the Okeechobee School is not considered newly discovered evidence. *Cole v. State*, 392 So. 3d 1054, 1061-62 (Fla. 2024) (“The rationale underlying our decision in cases like *Barwick* applies with equal force to Cole's claim. Like the APA resolution in *Barwick*, CS/HB 21 expresses a public stance predicated on reports, data, and research that have been publicly available for years”); *Barwick v. State*, 361 So. 3d 785, 793 (Fla. 2023) (“This Court has routinely held that resolutions, consensus opinions, articles, research, and the like, do not constitute newly discovered evidence”). This claim is virtually

identical to the types of claims that the Florida Supreme Court recently rejected in *Zack v. State*, 371 So. 3d 335 (Fla. 2023) and *Barwick*, 361 So. 3d 785.

In *Zack*, the defendant argued for an extension of *Atkins v. Virginia*, 536 U.S. 304, (2002), to encompass cases involving Fetal Alcohol Syndrome (“FAS”). *Zack v. State*, 371 So. 3d 335 (Fla. 2023) *cert. denied*. 144 S. Ct. 274 (2023). *Zack* argued that “new scientific consensus” found in several articles now recognized FAS as being equivalent to an intellectual disability. *Id.* at 345.

This Court rejected *Zack*’s argument that the “new scientific consensus” is newly discovered evidence. “This Court has repeatedly held that [n]ew opinions or research studies based on a compilation or analysis of previously existing data and scientific information are not generally considered newly discovered evidence.” *Id.* at 346 (internal quotations deleted), citing *Dillbeck v. State*, 357 So. 3d at 99 (quoting *Henry v. State*, 125 So. 3d 745, 750 (Fla. 2013) (noting that “*Dillbeck* cites a 2021 article for the proposition that the medical and scientific community view ND-PAE as equivalent to intellectual disability, and that article in turn relies on older sources”)).

Furthermore, this Court pointed out that the facts upon which Zack's intellectual disability claim was predicated had long been known to him and his attorneys. *Id.* "He relies on this twenty-year-old-plus information to now claim he should be deemed intellectually disabled and, thus, categorically exempt from execution under *Atkins*. *Id.* at 345. But Zack raises no newly discovered evidence on this point." *Id.* As a result, this Court affirmed the lower court's ruling that the postconviction motion was untimely. *Id.* at 349.

Similarly, this Court should note that the portion of the legislation Jones cites in his motion acknowledges that the legislation is based on a compilation of earlier reports and investigations. Therefore, the new letter, and the compensation fund and legislation that generated it, is not "newly discovered evidence," but a compilation of evidence brought out over the decades, much of which has been available since Jones' trial.

Jones asserts that *Cole*, *Barwick*, and *Zack* are distinguishable. He asserts that Cole could not provide a link between himself and the signing of the Dozier bill, arguing that the letter from the Attorney General's Office recognizing that Jones was in the class of individuals possibly eligible for compensation since he was a resident of the

Okeechobee School during the relevant time period. The State notes that the letter did not acknowledge that any abuse occurred to Jones, just that the State had processed his application. Jones did not present any information to the lower court that he had been compensated from the fund or that he had appealed any decision of the Fund. Jones' position is actually the same as Cole's – both had been at the relevant institutions, but neither could take the additional step of showing any abuse happened to them. Likewise, in *Barwick* the defendant could not show a specific link between him and the APA resolution. Finally, in *Zack* the court found the evidence was not newly discovered, the same as in Jones' case. The lower court properly found Jones' claim untimely.

C. The Claim is Procedurally Barred.

Procedurally barred claims may be denied summarily. *Muhammad v. State*, 603 So. 2d 488, 489 (Fla. 1992) (noting "[i]ssues which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral attack"); *Medina v. State*, 573 So. 2d 293, 295 (Fla. 1990) (holding "[a]llegations of ineffective assistance cannot be used to circumvent the rule that postconviction proceedings cannot serve as a second appeal"); *Harvey v. Dugger*, 656

So. 2d 1253, 1256 (Fla. 1995). All other claims may be summarily denied “when the motion and the record conclusively demonstrate that the movant is entitled to no relief.” *Kennedy v. State*, 547 So. 2d 912, 913 (Fla. 1989). Because this is an appeal of a successive postconviction motion, this Court should find that the trial court correctly summarily denied Jones’ postconviction motion claim which is conclusively rebutted by the existing record. Fla. R. Crim. P. 3.851(f)(5)(B).

Jones was aware of the conditions at the Okeechobee School and his treatment there, both when he originally went to trial and for his initial postconviction motion where he raised multiple claims of ineffective assistance of counsel claims, including not adequately investigating, preparing the experts, and presenting the mitigation during the penalty phase. Indeed, this is the very first instance he ever mentions his treatment at the Okeechobee School in his court filings. He attempts to disguise this fact by saying that his prior claims of childhood abuse somehow incorporated any mistreatment when he was a teen at the school. However, they did not. The only abuse Jones informed his trial counsel of was being beaten by his aunt’s son when he misbehaved. (PCR1 425-27, 593-95). Counsel

had five mental health experts evaluate Jones for the penalty phase; most reevaluated him and testified at the postconviction hearing. None mentioned abuse at the Okeechobee School. (PCR1 553-54, 575-82, 738, 746-48, 843-47, 851-53, 886-87, 910-11, 1014, 1028-29, 1044-45, 1111-12, 1116-21).

Interestingly, Dr. Jethro Toomer testified in postconviction that the hospital records from 1975 indicated that Jones possibly provoked the hospital visit for drugs to get out of juvenile detention but made no mention of abuse within that detention. (PCR 1111-12). Jones cannot create a wholly new claim on evidence which supposedly existed when he brought his earlier challenges to his conviction and sentence.

Since Jones could have raised this issue earlier, he is procedurally barred from doing so now. *Rogers v. State*, 409 So. 3d 1257, 1263 (Fla. 2025) (“[I]n an active warrant case, a postconviction claim that could have been raised in a prior proceeding is procedurally barred.”); *Barwick*, 361 So. 3d 795; *Hojan v. State*, 212 So. 3d 982, 994 (Fla. 2017) (noting claims which could have been raised on direct appeal are procedurally barred in postconviction); *Tanzi v. State*, 94 So. 3d 482, 494 (Fla. 2012) (finding all facts for

postconviction allegation of conflict of interest were known on direct appeal where it could have been raised rendering procedurally barred in postconviction).

D. The Claim is Meritless.

Finally, the circuit court properly denied the claim because Jones failed to show that the evidence met the newly discovered evidence standard set out in the rule. He argues that the court failed to consider this evidence in conjunction with evidence of abuse from prior hearings and then compare that information with what was presented in mitigation at trial to determine if this evidence may have produced a life sentence. That stance fails for two reasons, one being that the court determined the letter did not meet the requirements of being newly discovered. The other reason is that the postconviction court found the witnesses who testified about purported abuse at the evidentiary hearing were not credible. This claim is without merit and was properly denied. This Court should affirm that denial.

In order for a defendant to prevail on a claim of newly discovered evidence, the defendant must prove both that (1) the evidence was not known by him, his counsel, or the trial court at the time of the trial and could not have been known by the use of due diligence, and

(2) that the evidence must be of such a nature that it would probably produce an acquittal on retrial. *Dillbeck*, 357 So. 3d at 100; *Jones*, 709 So. 2d at 52. When challenging a sentence of death, the evidence must be of such a nature that it would result in a different sentence. *Davis v. State*, 26 So. 3d 519, 524 (Fla. 2009). Jones is unable to demonstrate either that: the evidence was not known by him, his counsel, or the trial court at the time of the trial; could not have been known by the use of due diligence; or that the evidence is of such a nature that it would result in a different sentence. Recently, this Court held that the above-mentioned legislation and what ensued from it are neither new nor newly discovered evidence. *Cole*, 392 So. 3d at 1061-62.

Jones has never, including in his post-warrant successive postconviction motion, presented evidence that he was actually abused by the State – a claim he first specifically makes in this initial brief. He only alluded to possible abuse in his motion, attaching a psychological report by Dr. Yenys Castillo written in 2025, which related Jones’ self-reported claim to having seen other residents at the Okeechobee School abuse other boys. Jones himself knew the conditions at the Okeechobee School as well as his treatment there,

both at the trial and in the postconviction proceedings. His counsel would have known as well if Jones had shared that information. The fact that he chose not to raise his treatment, abusive or not, previously as a claim, does not now render it new under the relevant rule. This letter does not state that Jones was abused. The actual evidence is what the conditions and Jones' treatment at the school were between 1975 and 1978, information that was known to Jones or could have been discovered with reasonable diligence prior to now.

Further, this evidence would not have been likely to result in a life sentence instead of a death sentence. This Court determined in *Jones*, 709 So. 2d at 521–22, that when a prior evidentiary hearing has been conducted, “the trial court is required to ‘consider all newly discovered evidence which would be admissible’ at trial and then evaluate the ‘weight of both the newly discovered evidence and the evidence which was introduced at the trial’” in determining whether the evidence would probably produce a different result on retrial.

Despite Jones' assertions to the contrary, this is a highly aggravated case in which the trial court sentenced Jones to death upon finding four aggravators. *Jones*, 652 at 348. These aggravators included convictions for prior violent felonies, committing the

murders during the course of robberies; committing the murder for pecuniary gain (merged with the robbery), and being under a sentence of imprisonment at the time of the murders. *Id.* The prior violent felony aggravator is one of the most weighty aggravators, especially when it is based on a contemporaneous first-degree murder, and on other prior violent felonies. *Bright v. State*, 299 So. 3d 985, 1011 (Fla. 2020) (“[T]his Court has stated that the prior violent felony aggravator is one of the most weighty aggravating circumstances in Florida's statutory sentencing scheme.”); *Bolin v. State*, 117 So. 3d 728, 742 (Fla. 2013); *Armstrong v. State*, 73 So. 3d 155, 175 (Fla. 2011). Given the lack of mitigation found by the trial court, in conjunction with the postconviction court’s finding that the testimonies of Jones’ family members regarding the early childhood abuse were not credible, it is highly unlikely that Jones would have received a life sentence for this unprovoked double murder. Thus, the trial court correctly summarily denied this claim.

ISSUE II

The Trial Court's Resolution of the Public Records Demands Was Proper.

Jones argues that the lower court's denial of his untimely, overbroad, and vague public records demands violates his due process rights. His objections, however, misapprehend Rule 3.852 and contradict well-settled law. Before Jones can establish he has experienced any denial of due process in obtaining public records, he must first demonstrate that he was entitled to those public records. *See Wyatt v. State*, 71 So. 3d 86, 111 (Fla. 2011); *see also Abdool v. Bondi*, 141 So. 3d 529, 544 (Fla. 2014) ("To assess whether a violation of due process has occurred, we must first decide whether the complaining party has been deprived of a constitutionally protected liberty or property interest"). To prevail on his due process claim, Jones had to overcome a mountain of case law which expressly contradicts the claim he asserts. The lower court did not abuse its discretion in denying his public records demands.

Jones makes multiple arguments challenging the trial court's rulings on his public records demands. Initially, he claims that he should not be bound by Fla. R. Crim. P. 3.852(h)(3) but should have

been permitted to seek records from the Okeechobee County Sheriff's Office ("OCSO"), Florida Department of Law Enforcement ("FDLE"), Department of Children and Families ("DCF"), and the Attorney General's Office ("AGO") under Fla. R. Crim. P. 3.852(i). He also asserts that, it was error to find his demands untimely; overly broad and vague; and not calculated to lead to a colorable claim. Additionally, he takes issue with the trial court's failure to conduct an in camera inspection and to not hold an evidentiary hearing to take sworn testimony from the agencies. The State disagrees.

Jones made public record demands on multiple agencies, four of which are the subject of his appellate claim.

OCSO - Twice Jones demanded records from the OCSO. (PCR6 303-12905-15) The agency objected each time. (PCR6 433-37, 1280-82). The first objection asserted that Rule 3.852(i) request during a warrant was untimely and dilatory. *See Tompkins v. State*, 872 So. 2d 230 (Fla. 2003); *Sims v. State*, 753 So. 2d 66, 70 (Fla. 2000). The OCSO also asserted the demand was not proper under Rule 3.852(h)(3) as Jones had not made a demand of the agency during the last thirty years. Likewise, Jones had not shown diligence or specificity under Rule 3.852(i) as he had not searched the repository

or identified any specific case or investigation by the OCSO but merely asked for a generalized search under broad categories. It was OCSO's position that the demand was overly broad and unduly burdensome given that the demand covered potential records from fifty years ago that may be archived and not readily accessible. It was argued by OCSO that some of the records may be subject to confidentiality and exceptions given that juveniles were concerned. The final objection pointed to *Bowles v. State*, 276 So. 3d 791, 795 (Fla. 2019) and *Long v. State*, 271 So. 3d 938, 948 (Fla. 2019) when noting that Jones had not explained how the demand might reasonably be calculated to lead to discovery of admissible evidence for a colorable claim.

OCSO's objection to the second demand raised similar objections to the timing of the demand and that even if considered under Rule 3.852(i), the demand was untimely, lacked specificity, was overly broad and burdensome, and again failed to reference a colorable claim. The reference to a "2015" investigation was vague and failed to reference identifying information in violation of *Wyatt v. State*, 71 So. 3d 86, 111 (Fla. 2011). OCSO asserted that "[i]nvestigations conducted decades later into unrelated institutional

abuse do not satisfy” the standard for making a nexus between the records and a colorable claim. See *Cole v. State*, 392 So. 3d 1054, 1066 (Fla. 2024); *Bowles*, 276 So. 3d at 795; *Long*, 271 So. 3d at 948.

The trial court sustained these objections. (PCR6 422-26, 1255-60) The court’s order on the second demand sustained the objections that the demand was not a proper request; it was burdensome, overbroad, vague and not related to a colorable claim. (PCR6 1256).

The court concluded that:

The title of the Renewed Demand as well as the initial Demand are confusing in that it leads one to believe that the Defendant has requested documents from this agency in the past. And Fla. R. Crim. P 3852(h)(3) clearly contemplates that requests of this nature are for “updated” records from a person or agency to which a previous records request was made. . . . The Respondent asserts, and the Court concludes, that no such request was ever previously made to this Respondent. Consequently, this is not an “update” or “additional” records request as allowed by the Rule, but a completely new request, not permitted by this Rule. See *Jimenez v. State*, 265 So. 3d 462, 472 (Fla. 2018). For that reason, the Demand is untimely and improper under the Rule.

(PCR6 1256-57).

Considering the demand under Rule 3.852(i), the trial court determined that subject matter of the request, the Okeechobee School starting in 1975 some fifty years ago, “can in no way be

considered newly discovered as would furnish colorable grounds for postconviction relief. *Cole v. State*, 392 So. 3d 1054 (Fla. 2024).” (PCR 1257. Continuing, the court stated: “Any defenses or claims in mitigation arising out of or relating to the Defendant’s or anyone else’s presence at the Okeechobee School in the 1970’s would have ripened years ago and should have been made the subject of mitigation or a postconviction motion long before now.” (PCR6 1257). The court also agreed that the request regarding 2015 records would be an unduly burdensome search for records and that OCSO objection that the demand was vague was correct as “no records were sufficiently identified.” (PCR6 1257).

The trial court reiterated the prior order finding “no good cause for the delay in requesting records that were decades old from the Okeechobee School, a school [Jones] previously attended.” (PCR6 1257). In finding the demand untimely, the court noted that the January 6, 2025, letter informing him of his eligibility for the Dozier School/Okeechobee School victim compensation fund had been known by Jones for months and that the compensation fund was enacted in law on June 21, 2024, however, Jones “could not specifically articulate a justification for the delay in the failure to seek

the records from any period – not from 50 years ago, 10 years ago, one year ago or a few months ago.” (PCR6 1257-57)

FDLE – In response to Jones’ “Demand for Additional Public Records,” FDLE objected on the grounds the demand was untimely filed outside the warrant case management order without good cause for the delay shown. Further, Rule 3.852(i) demand did not relate to a colorable claim and that Rule 3.852 demands are not intended as a fishing expedition. (PCR6 1232-35). FDLE also argued that the demand was overly broad and unduly burdensome as the demand was tantamount to seeing “any and all” documents which is improper under *Walton v. State*, 3 So. 3d 1000, 1010 (Fla. 2009). (PCR6 1236-37). The agency also noted that the records requested may contain confidential/exempt records on juveniles and/or victims of crimes. Further, FDLE asserted that Jones’ postconviction claim of newly discovered evidence related to the abuse was recently rejected in *Cole v. State*, 392 So. 3d 1054, 1061 (Fla. 2024) and related cases, thus, Jones was not entitled to records under the instant demand. (PCR6 1238-40).

The trial court sustained the objections FDLE raised finding Jones did not show good cause for the Rule 3.852(i) demand under

Dailey v. State, 283 So. 3d 782, 792 (Fla. 2019). (PCR6 1216-17). Also, the court again noted that the events at issue occurred some fifty-years ago and Jones could have raised mitigation claims regarding events at the school earlier and finding “[a]ny defenses or claims in mitigation arising out of or relating to the Jones’s or anyone else’s presence at the Okeechobee School in the 1970’s would have ripened years ago and should have been made the subject of mitigation or a postconviction motion long before now. Thus, the Demand is untimely.” (PCR6 1317). The demand was also found to be untimely. Given those rulings, the court declined to address the other objections. (PCR6 1317).

DCF – DCF conducted a search and determined it had no record responsive to the demand. (PCR6 1192-94)

AGO – With respect to the Okeechobee School and Dozier School for Boys, Jones demanded records from the AGO regarding memos, reports, and communications related to investigations of those schools as well as reports and memos of the Victims Compensation Fund related to the school. In its Amended Response and Objection, the agency set forth its objections. (PCR6 343-55) This was followed up by a “Clarification” by the AGO. (PCR6 461-66). The court

determined that the demand for records related to Dozier/Okeechobee schools was untimely, good cause was not shown, and the demand did not relate to a colorable claim for postconviction relief. (PCR6 472).

The trial court did not abuse its discretion sustaining the objections and denying the public records demands. This Court should affirm.

A. Standard of Review.

This Court reviews a denial of public records requests for abuse of discretion. See *Tanzi v. State*, 407 So. 3d 385, 391 (Fla. 2025); *Cole v. State*, 392 So. 3d 1054, 1065 (Fla. 2024). The “discovery tool” of Rule 3.852 “is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief.” *Id.* at 1066 (quoting *Asay v. State*, 224 So. 3d 695, 700 (Fla. 2017)). Public records requests 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.” *Id.* (quoting *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019)).

B. Public Record Demands Made Under an Active Warrant Are Circumscribed by Fla. R. Crime. P. 3.852(h)(3).

Jones claims that his public records litigation under a death warrant is not limited by Rule 3.852(h)(3), but that he is permitted to seek records under Rule 3.852(i) irrespective of whether he had made demands of that agency previously. Jones is incorrect. Rule 3.852(h) is specific to demands made under a warrant. The rule provides: “[w]ithin 10 days of the signing of a defendant’s death warrant, collateral counsel may request in writing the production of public records from a person or agency from which collateral counsel has previously requested public records.” Although Rule 3.852(i) references Rule 3.852(h), it is addressed to Rule 3.852(h)(1) and (2) as pertaining to records demands prior to a warrant. Rule 3.852(h)(3) is specific to warrant litigation and therefore controls over the general provision of Rule 3.852(i). Under the rules of statutory construction, the specific controls over the general rule and a provision should not be read to make another provision a nullity. Reading Rule 3.852(i) as Jones would have it would render Rule 3.852(h)(3) irrelevant and a nullity as records could be sought from any person or agency whether records had been produced previously. Jones has not pointed to a

case where a defendant under an active death warrant was able to go on a fishing expedition for records from an agency not the subject of a prior demand.

The State relies on its answer to Issue I to show that Jones knew he was a resident of the Okeechobee School for periods of time between August 1975 and October 1978, yet he never raised any claim of abuse arising from his time there. In spite knowing he had been a resident, Jones did not make demands of OCSO. Although he made public records demands of the AGO during his initial postconviction litigation, he made no demands for records related to the school. Under Rule 3.852(h)(3), the trial court sustained the objection for records from OCSO properly. *See Jimenez v. State*, 265 So. 3d 462, 472 (Fla. 2018) (finding no abuse of discretion in sustaining Rule 3.852(h)(3) objection to public records from agency made under a warrant and where the defendant had not requested records of the agency previously).

C. The Denial of Public Records Was not a Due Process Violation.

None of Jones' conclusory remarks rise to the level of due process concerns. First, Jones has failed to demonstrate what

colorable claim relates to any of his overbroad public records demands. See Fla. R. Crim. P. 3.852(k) (limiting the scope of production to records that are “either relevant to the subject matter of the proceedings under rule 3.851 or are reasonably calculated to lead to the discovery of admissible evidence”); see also *Rutherford v. State*, 926 So. 2d 1100, 1117 (Fla. 2006) (affirming a denial of a public records request under rule 3.852(h) because the records sought were “not related to a colorable claim for postconviction relief”). Second, Jones still has not explained why his requests were not overbroad and unduly burdensome. *Muhammad v. State*, 132 So. 3d 176, 201 (Fla. 2013) (noting this Court will readily affirm a denial of public records requests “if they are overbroad, of questionable relevance, and unlikely to lead to discoverable evidence”); *Mills*, 786 So. 2d at 552 (same). Finally, Jones has not even bothered to justify why he waited until the ink dried upon his death warrant to begin seeking these records. See *Tompkins v. State*, 872 So. 2d 230, 244 (Fla. 2003) (requiring that, for any Rule 3.852 public records request, a defendant must show “good cause as to why the public records request was not made until after the death warrant was signed”). This Court should deny these claimed due process violations as nothing

more than an attempt to forestall his execution. *See Hannon v. State*, 228 So. 3d 505, 512 (Fla. 2017) (“In the past, we have not condoned eleventh hour attempts to delay the execution with records requests, and we will not begin now.”) (internal citation and quotations omitted).

Finally, public records requests under Rule 3.852(i) 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) (internal citations omitted) (quoting *Bowles v. State*, 276 So. 3d 791, 795 (Fla. 2019)). In *Cole* this Court rejected the argument that the denial of access to public records violates due process and access to the courts under the Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution. *Cole*, 392 So. 3d at 1065–66; *see also Heath v. State*, 3 So. 3d 1017, 1029 n.8 (Fla. 2009) (“Vague and conclusory allegations on appeal are insufficient to warrant relief.” (citing *Doorbal v. State*, 983 So. 2d 464, 484 (Fla. 2008))). The postconviction court did not abuse its discretion in denying Jones’ request. This Court should

affirm the denial of public records based on the valid objections that the demands were untimely, overbroad, and vague.

ISSUE III

The Thirty-Two Day Warrant Period Does Not Violate Jones' Due Process Rights; Jones' Capital Proceedings Are Reliable

Jones maintains that Florida's warrant schedule denied him a full and fair postconviction proceeding in violation of the United States and Florida Constitutions. This Court has rejected similar claims repeatedly and should do so here.

A. Standard of Review

A postconviction court's decision whether to grant an evidentiary hearing on a Rule 3.851 motion is ultimately based on written materials before the court, its ruling is tantamount to a pure question of law, subject to de novo review. *Marek v. State*, 8 So. 3d 1123, 1127 (Fla. 2009) *See State v. Coney*, 845 So.2d 120, 137 (Fla.2003).

B. The Claim Is Untimely

Jones' last-minute effort to avoid his sentence and call into question Florida's warrant procedures as a violation of due process is untimely. (IB at 75) In fact, Jones is challenging over thirty years

of factual determinations of this Court in his case. (IB at. 78). Contrary to Jones' assertion that his claim was pled with specificity in the trial court, the record contradicts this statement. (PCR6 at 953-58). Jones complains about the warrant process and in the same breath admits that he does not expect relief on these claims. (IB at 958) This claim is without merit, and this Court has repeatedly rejected it.

C. Florida's Warrant Schedule Did Not Deny Jones Access to Public Records.

Neither the Constitution of the United States nor of the State of Florida afford Jones the right to protest a procedural inconvenience for a situation he brought upon himself by committing a double homicide. Rather, “[d]ue process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided.” *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016); *see also Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Jones has had thirty years to litigate his postconviction claims and the State has afforded Jones several full and fair opportunities to be heard throughout his appeal and postconviction proceedings. *Jones III*, 966 So. 2d 319, 321 (Fla. 2007). Jones' convictions and sentence became final in

1995 and his last postconviction litigation was in 2018 with a retroactive *Hurst* challenge. *Jones VI*, 241 So. 3d 65 (Fla. 2018).

By May 2, 2018, Jones knew he had become death eligible. Jones has been on notice for more than eight years now, and thirty years since his sentence and convictions were final. Jones cannot now claim surprise, that he had no meaningful opportunity to be heard, or lacked ample time to prepare for a warrant when he has been death eligible for a longer time than the Florida Constitution currently envisions for the completion of all postconviction proceedings. *See* Art. I, § 16(b)(10)b Fla. Const. (“All state-level appeals and collateral attacks on any judgment must be complete... within five years from the date of appeal in capital cases.”).

The trial court’s order denying postconviction relief was quite specific detailing Jones’ procedural history and claims before the court. (PCR6 at 1461-82). Jones claims without any documented proof that agencies made false claims of lack of records because the truncated schedule did not allow them time to search. (IB at 84). The timing of the warrant schedule did not prevent Jones from requesting with specificity what records he sought. Instead, Jones made vague, and unduly burdensome requests to most agencies. (PCR6 192-225).

Jones' postconviction motion quibbled about the warrant being a surprise, holidays being interrupted, travel cancelled, the court staff having short notice, and being unable to represent other clients during this period but did not indicate any issue the expedited schedule foreclosed. (PCR6-854-55).

“Due process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided.” *Barwick v. State*, 361 So. 3d 785, 790 (Fla. 2023), *cert. denied*. 143 S. Ct. 2452 (2023) (*quoting Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016)) (*citing Huff v. State*, 622 So. 2d 982, 982 (Fla. 1993)). The defendant in *Barwick* in his pleadings filed in both the circuit court and this Court, made it abundantly clear that the post-warrant litigation in his case had been very arduous for his counsel based on circumstances that happened to coincide with the beginning of the warrant period, such as the occurrence of Holy Week, Passover, and Ramadan, or co-counsel being ill. *Id.* at 789. Similarly, Jones' pleadings in the lower court and this Court complained that two holidays fell within the warrant schedule and that the pace at which the litigation was moving was arduous. (IB at 80-1). A compressed warrant schedule does not violate due process rights. *Tanzi*, 407 So. 3d at 390–91.

Jones cannot deny that he was given notice and an opportunity to be heard. Jones' claims of due process violations are misplaced.

This Court has consistently rejected the argument that a 30-day “compressed warrant litigation schedule” denies a capital defendant “his rights to due process.” *Id.* See also *Barwick*, 361 So. 3d at 789; *Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404 (Fla. July 22, 2025), cert. denied. No. 25-5194, 2025 WL 2155601 (U.S. July 30, 2025). Jones cannot show how the warrant schedule denied him notice or an opportunity to be heard. When making his public records requests in the trial court, Jones failed to indicate how the requested records related to a colorable claim of postconviction relief, nor did he illustrate good cause why the records were not requested until after the warrant was signed. *Id.* at 391. A compressed warrant schedule does not violate Jones' due process rights.

D. Florida's Warrant Procedures Did Not Deny Jones a Meaningful Opportunity to Investigate and Present Claims.

As a reminder, Jones' convictions and sentences became final in 1995. *Jones*, 516 U.S. 875 (1995). Jones never made allegations of being abused at the Okeechobee School throughout the thirty

years of litigation and thirty years is more than adequate to investigate a claim of abuse. See *Jones v. State*, 652 So. 2d 346 (Fla. 1995) *cert. denied* 516 U.S. 875 (1995) (*Jones I*). See also *Jones v. State*, 855 So. 2d 611 (Fla. 2003) (*Jones II*); *Jones v. State*, 966 So. 2d 319 (Fla. 2007) (*Jones III*); *Jones v. State*, 135 So. 3d 287 (Fla. 2014) (*Jones IV*); *Jones v. State*, 231 So. 3d 374 (Fla. 2017) (*Jones V*); *Jones v. State*, 241 So. 3d 65 (Fla. 2018) (*Jones VI*), *cert. denied*, 586 U.S. 1052 (2018). Jones filed five previous postconviction motions and has been consistently represented by CCRC-South. The trial court correctly denied an evidentiary hearing. (PCR6 at 1448). Jones also falsely claims that the court limited its argument at the case management conference (IB at 87). Although the trial court inquired how much time Jones would need, the trial court allowed him access to the record. (PCR6 at 1661). Jones also incorrectly states that the eligibility letter from the Attorney General's Office for the compensation fund is an admission by the State of Florida that he was abused. (PCR6 at 1665). CS/HB 21 created a victim compensation fund and directed it to be administered through the Department of Legal Affairs. (PCR6 at 639). The receipt of a letter does not make evidence newly discovered. To be considered newly

discovered evidence, Jones must meet a two-prong test: 1) the evidence must have been unknown by the trial court, by the party, or by counsel at the time of trial; and 2) it must appear that defendant or his counsel could not have known of it through due diligence. *Jones*, 709 So. 2d at 521. (citing *Torres–Arboleda v. Dugger*, 636 So.2d 1321, 1324–25 (Fla.1994)). Jones fails both prongs of this test and this Court should deny this claim as meritless.

E. An Incomplete Record Does Not Bar Jones From Litigating His Postconviction Claims.

The State respectfully submits that the absence of certain record transcripts in this case did not bar Jones from pursuing his claims especially when he was present at the hearings in question. His presence at the hearings provides him direct knowledge of what occurred and said, and his claim that a compressed warrant schedule foreclosed his ability to accurately make a claim is mere pretext. Missing or incomplete records do not in themselves entitle Jones to relief. And he has not identified any colorable claim that was dependent on the incomplete portion of the record. Nor has Jones cited any case law stating that an incomplete record cannot be developed into a colorable claim. For the foregoing reason this Court

must affirm the trial court's denial of his postconviction motion.

CONCLUSION

Based upon the foregoing, the State requests respectfully this Court affirm the denial of relief.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic service to: Marie-Louise Samuels Parmer, Brittney N. Lacy, and Jeanine L. Cohen, Assistants CCRC-South, Capital Collateral Regional Counsel-South, 110 SE 6th Street, Fort Lauderdale, Florida 33301, **marie@samuelsparmerlaw.com**, **ccrcpleadings@ccsr.state.fl.us**, **lacyb@ccsr.state.fl.us**, **cohenj@ccsr.state.fl.us**; and the Florida Supreme Court, 500 South Duval Street, Tallahassee, Florida 32399, **warrant@flcourts.org**, **canovak@flcourts.org**, on this 17th day of September, 2025.

CERTIFICATE OF FONT AND WORD COUNT COMPLIANCE

I HEREBY CERTIFY that the foregoing Answer Brief has been produced in 14-point Bookman Old Style and that according to the Word program on which this Answer Brief was written the Brief contains 11,503 words in compliance with Rules 9.100(g) and 9.210, Fla. R. App. P.

Respectfully submitted,

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