Case No. SC2025-1686
Lower Court No. 1979-CF-773

IN THE SUPREME COURT OF FLORIDA

BRYAN FREDRICK JENNINGS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM A FINAL ORDER
OF THE EIGHTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR BREVARD COUNTY, FLORIDA

DEATH WARRANT SIGNED
Execution Scheduled for Nov. 13, 2025, at 6:00 p.m.

ANSWER BRIEF OF APPELLEE

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FACTS AND PROCEDURAL HISTORY

I. Convictions and Death Sentence.

Petitioner, Bryan Fredrick Jennings, is a death-sentenced inmate who is currently under an active death warrant for his 1979 kidnapping, rape, and murder of six-year-old Rebecca Kunash. The horrific crimes for which Jennings was sentenced to death were recounted as follows in the trial court's sentencing order:

> In the early morning hours of May 11, 1979, Rebecca Kunash was asleep in her bed. A nightlight had been left on in her room and her parents were asleep in another part of the house. [Jennings] went to her window and saw Rebecca asleep. He forcibly removed the screen, opened the window, and climbed into her bedroom. He put his hand over her mouth, took her to his car and proceeded to an area near the Girard Street Canal on Merritt Island. He raped Rebecca, severely bruising and lacerating her vaginal area, using such force that he bruised his penis. In the course of events, he lifted Rebecca by her legs, brought her back over his head, and swung her like a sledge hammer onto the ground fracturing her skull and causing extensive damage to her brain. While she was still alive, [Jennings] took her into the canal and held her head under the water until she drowned.

Jennings v. State, 512 So. 2d 169, 175-76 (Fla. 1987).

Jennings was tried, convicted, and sentenced to death for the murder three times: in 1980, 1982, and 1986. Jennings' first two

convictions and death sentences were reversed on appeal.[1] At his third trial in 1986, Jennings was again convicted of first-degree murder, as well as kidnapping with intent to commit sexual battery, sexual battery, and burglary.[2] *Id.* at 171. This Court affirmed the third conviction and death sentence on direct appeal. *Id.* at 176. Jennings' death sentence became final on February 22, 1988, when the United States Supreme Court denied his petition for a writ of certiorari. *Jennings v. Florida*, 484 U.S. 1079 (1988).

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[1] This Court vacated Jennings' first conviction and death sentence and remanded for a new trial on the ground that Jennings' counsel was unable to cross-examine a witness due to a conflict of interest. *Jennings v. State*, 413 So. 2d 24, 25-26 (Fla. 1982). After Jennings' second trial in 1982, this Court affirmed the conviction and death sentence. *Jennings v. State*, 453 So. 2d 1109 (Fla. 1984). On Jennings' petition for writ of certiorari, however, the United States Supreme Court vacated the judgment and remanded the case to this Court for reconsideration in light of *Shea v. Louisiana*, 470 U.S. 51 (1985), and *Smith v. Illinois*, 469 U.S. 91 (1984). *Jennings v. Florida*, 470 U.S. 1002 (1985). On remand, this Court ordered a new trial. *Jennings v. State*, 473 So. 2d 204 (Fla. 1985).

[2] As one court later noted in denying one of Jennings' petitions for collateral relief: "The evidence against Mr. Jennings was vast, including three witnesses to whom he confessed. . . . Additionally, Mr. Jennings' fingerprints were found on the bedroom window; there was testimony that a nearby shoe print was consistent with his shoes; there was evidence that his clothes were wet on the morning of the crime; and he had abrasions on his penis." *Jennings v. Crosby*, 392 F. Supp. 2d 1312, 1324 (N.D. Fla. 2005).

II. State and Federal Collateral Proceedings.

In 1989, Jennings filed his first motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. Jennings was represented in that proceeding by Larry Helm Spalding, Martin J. McClain, and Jerome H. Nickerson of the Office of the Capital Collateral Representative ("CCR"). *See Jennings v. State*, 583 So. 2d 316, 317 (Fla. 1991). The postconviction court denied the motion. On appeal, this Court affirmed the lower court's denial of the claims raised in the rule 3.850 motion, but it agreed with Jennings that he was entitled to certain portions of the State Attorney's files as public records. This Court therefore directed that, on remand, Jennings would be given 60 days to file any new *Brady*[3] claims that arose from the files. *See id.* at 319, 323. This Court also denied Jennings' petition for writ of habeas corpus. *Id.* at 323.

Jennings raised new *Brady* and *Strickland*[4] claims on remand. In the proceedings on remand, Jennings continued to be represented by McClain as registry counsel. *See Jennings v. State*, 782 So. 2d

[3] *Brady v. Maryland*, 373 U.S. 83 (1963).

[4] *Strickland v. Washington*, 466 U.S. 668 (1984).

853, 855 (Fla. 2001); *see also* § 27.710, Fla. Stat. (providing for the maintenance of a statewide registry of attorneys in private practice who are qualified to represent capital defendants in postconviction proceedings). On October 30 and 31, 1997, the circuit court held an evidentiary hearing. A final order denying postconviction relief was entered on March 18, 1998. This Court affirmed the circuit court's decision. *See Jennings*, 782 So. 2d at 855-65. Jennings then filed a certiorari petition in the Supreme Court, which denied review. *Jennings v. Florida*, 534 U.S. 1096 (2002).

Thereafter, Jennings, who continued to be represented by McClain, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Northern District of Florida. On September 29, 2005, the district court denied the petition. *Jennings v. Crosby*, 392 F. Supp. 2d 1313 (N.D. Fla. 2005). The United States Court of Appeals for the Eleventh Circuit affirmed that decision. *Jennings v. McDonough*, 490 F.3d 1230 (11th Cir. 2007). The Supreme Court denied certiorari review on March 31, 2008. *Jennings v. McNeil*, 552 U.S. 1298 (2008).

Since the conclusion of his initial state postconviction and federal habeas proceedings, Jennings has filed four successive

motions for postconviction relief under Florida Rule of Criminal Procedure 3.851, all of which were unsuccessful. Jennings was represented in each of those proceedings by McClain. *See Jennings v. State*, 36 So. 3d 84 (Fla. 2010) (affirming denial of first successive postconviction motion); *Jennings v. State*, 91 So. 3d 132 (Fla. 2012) (affirming denial of second successive postconviction motion), *cert. denied*, 568 U.S. 1100 (2013); *Jennings v. State*, 192 So. 3d 38 (Fla. 2015) (affirming denial of third successive postconviction motion), *cert. denied*, 580 U.S. 857 (2016); *Jennings v. State*, 265 So. 3d 460 (Fla. 2018) (affirming denial of fourth successive postconviction motion), *cert. denied*, 139 S. Ct. 2019 (2019).

On September 12, 2015, the federal district court appointed the Capital Habeas Unit of the Federal Public Defender's Office ("CHU") to represent Jennings. The district court's order stated that McClain would remain as co-counsel. *See Jennings v. Moore*, No. 5:02-cv-174 (N.D. Fla. Sept. 12, 2015). On December 28, 2018, McClain and CHU jointly filed a second petition for writ of habeas corpus in federal court. The district court subsequently dismissed the petition for lack of jurisdiction. *See Jennings v. Inch*, No. 5:18-cv-281 (N.D. Fla. Mar. 6, 2020). Jennings appealed, and the Eleventh Circuit affirmed the

dismissal of the successive petition. *Jennings v. Sec'y, Fla. Dep't of Corr.*, 108 F.4th 1299 (11th Cir. 2024).

In March 2022, while Jennings' second appeal to the Eleventh Circuit was still pending, McClain passed away. However, Jennings continued to be represented in his appeal by CHU. *See id.* at 1300 (noting that Jennings was represented by John Abatecola, Terri L. Backhus, and Linda McDermott of CHU). After the Eleventh Circuit affirmed the dismissal of the second habeas petition, Jennings, through his CHU counsel, filed a certiorari petition in the Supreme Court seeking review of the Eleventh Circuit's decision. *See* Petition for a Writ of Certiorari, *Jennings v. Dixon*, No. 24-6406 (U.S. Jan. 21, 2025) (petition filed by CHU attorneys McDermott and Abatecola). Jennings' second federal habeas proceeding recently concluded on March 31, 2025, when the Supreme Court denied certiorari review. *See Jennings v. Dixon*, 145 S. Ct. 1472 (2025).

III. Proceedings Under Warrant.

On October 10, 2025, Governor Ron DeSantis signed Jennings' death warrant, and his execution is scheduled to occur on Thursday, November 13, 2025, at 6:00 p.m. (R:105-23). On the same day, the State filed an emergency motion in the circuit court to appoint the

Capital Collateral Regional Counsel – Middle Region ("CCRC-M") as Jennings' state collateral counsel. (R:38-44); *see* § 27.701, Fla. Stat. (creating the offices of the capital collateral regional counsel and designating CCRC-M as the office for the Eighteenth Judicial Circuit); § 27.702(2), Fla. Stat. (providing that each CCRC office "shall represent persons convicted and sentenced to death within the[ir] region in collateral postconviction proceedings, unless a court appoints or permits other counsel to appear as counsel of record"). Shortly thereafter, this Court entered its scheduling order directing that any proceedings in the circuit court be completed no later than October 29, 2025, at 11:00 a.m. (R:103-04).

On October 12, 2025, prior to its appointment as Jennings' counsel, CCRC-M filed a motion to vacate the death warrant or, alternatively, to stay the proceedings on the ground that Jennings "has been unrepresented for over three years," meaning that his "mental and physical health went unmonitored" and his "case went without investigation" during that time. (R:49-51). CCRC-M further argued that Jennings would be denied due process under the Fifth Amendment and his right to "adequate representation" under the

Sixth Amendment if the warrant proceedings went forward on this Court's schedule with CCRC-M as his counsel. (R:51-55).

The State filed a response in opposition to the motion to vacate or stay, in which it first pointed out that Jennings has not, in fact, been unrepresented for three years, but has been actively litigating his case in federal court with the assistance of his federal counsel. (R:83-87). The State further explained that under this Court's precedent, neither the appointment of new state counsel upon the signing of a death warrant nor the 34-day warrant period violate the Fifth or Sixth Amendments. (R:87-94) (citing, among other cases, *Asay v. State*, 210 So. 3d 1, 27-29 (Fla. 2016), *Barwick v. State*, 361 So. 3d 786, 790-91 (Fla. 2023), and *Jones v. State*, No. SC2025-1422, 2025 WL 2717027, at *4 (Fla. Sept. 24, 2025)).

On October 13, 2025, the circuit court appointed CCRC-M as Jennings' counsel and scheduled a case management conference for the next morning. (R:81-82, 95-96). After CCRC-M was appointed as Jennings' counsel, Jennings, through CCRC-M, filed a motion to strike the State's motion for scheduling order, which repeated the arguments from his motion to vacate or stay. (R:97-102). At the conference, the circuit court orally denied the motion to strike, set

deadlines for public records matters, and ruled that any post-warrant rule 3.851 motion would be due by the following Tuesday, October 21, 2025, at 12:00 p.m. The circuit court also scheduled a hearing on the motion to vacate or stay the death warrant for Wednesday, October 15, 2025. (R:1015-44). After the case management hearing, the circuit court entered a scheduling order. (R:124-31).

At the subsequent hearing on Jennings' motion to vacate or stay, the circuit court heard argument from counsel for both parties and reserved ruling. (R:1045-77). The next day, October 16, 2025, the circuit court entered an order denying the motion. (R:201-07). The circuit court's order, after recounting the procedural history of the case and the parties' arguments, concluded as follows:

> The Court finds that, although the records involved in this case are substantial, Capital Collateral Counsel is not directed, nor is it permitted, to begin postconviction proceedings anew. Fla. R. Crim. P. 3.851(h)(5). [Jennings] has been continually represented by counsel in the subject case, either in state or federal court given the posture of the case at any time. Thus, any gap in state representation does not provide a basis on which to vacate the death warrant or stay the warrant proceedings. Further, [Jennings] has already been provided the opportunity to subject the State's case to meaningful adversarial testing during trial and other appellate proceedings. Ultimately,

> [Jennings'] due process rights to notice and an opportunity to be heard have been satisfied. *Jones* at *4.

(R:204).

A few hours after that order was entered, Jennings filed a motion for reconsideration of the circuit court's scheduling order on the same grounds as the motion to vacate or stay, which the circuit court also denied. (R:208-13, 322-25). The next day (October 17), Jennings filed a motion for reconsideration of this Court's scheduling order, which this Court denied. (R:354). The day after that (October 18), Jennings filed a petition for review in this Court of the circuit court's non-final order denying his motion to vacate or stay. *See* Fla. R. App. P. 9.142(c). The State filed a response in opposition. The petition for review remains pending as of the filing of this response. *See Jennings v. State*, No. SC2025-1642.

In the circuit court, Jennings also filed demands for public records under Florida Rule of Criminal Procedure 3.852 to multiple agencies. (R:142-95). Each agency filed a response and objection. (R:217-321). After a hearing on October 17, 2025. The circuit court sustained the objections. (R: 346-52, 1078-1128).

On October 21, 2025, Jennings filed his fifth successive motion for postconviction relief under rule 3.851, raising three claims: (1) the Governor's denial of executive clemency in his case and failure to conduct a new clemency proceeding before signing the warrant violate the Fifth, Sixth, Eighth, and Fourteenth Amendments; (2) the post-warrant appointment of new state counsel and denial of a stay of the proceedings violate the Fifth, Sixth, Eighth, and Fourteenth Amendments, and the corresponding provisions of the Florida Constitution; and (3) Florida's current capital sentencing scheme violates the Eighth and Fourteenth Amendments. (R:359-86). The State filed a response in opposition. (R:387-411).

While his proceedings were still pending in the circuit court below, Jennings, through his federal counsel, also filed a complaint in federal district court under 42 U.S.C. § 1983, along with an accompanying emergency motion for a stay of execution, on the grounds that the post-warrant appointment of state counsel and denial of a stay of execution in state court violated his federal constitutional rights to due process and equal protection. The federal district court ordered the defendants to respond to the emergency stay motion and, after receiving the response, denied the request for

a stay of execution, finding that Jennings had failed to establish a substantial likelihood of success on the merits and that a stay was not warranted on equitable grounds. *See Jennings v. DeSantis*, No. 4:25-cv-443, slip. op. (N.D. Fla. Oct. 30, 2025).

Back in state court, the circuit court held a *Huff*[5] hearing on Jennings' fifth successive rule 3.851 motion on October 23, 2025, and thereafter entered an order finding that an evidentiary hearing was not needed to resolve Jennings' claims. (R:413-16, 1129-68). On October 28, 2025, the circuit court entered its final order finding each of Jennings' claims to be meritless and denying postconviction relief. (R:417-998). This appeal follows. (R:1010-14).

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

SUMMARY OF THE ARGUMENT

Issue I

In Claim 1 below, Jennings argued that the Governor's signing of his death warrant without conducting a renewed clemency review is unconstitutional. This claim was facially untimely, procedurally barred, and meritless. As to timeliness, the information Jennings cites as purportedly warranting a new clemency proceeding has long been known to him. He could have but did not request a new clemency proceeding, and he pled no new facts or law to satisfy any exception to the one-year limitation period of rule 3.851(d). The claim is procedurally barred for the same reasons: Jennings could have but did not raise this issue previously. And even if the claim had been properly raised, it fails on the merits. Clemency lies wholly within the Governor's discretion, and this Court has held that the failure to conduct an updated clemency proceeding does not bar the Governor from signing a death warrant. Consequently, this claim warrants no relief and was correctly summarily denied.

Issue II

In his second claim, Jennings argued that the post-warrant appointment of new state counsel and the circuit court's denial of his

motion for a stay of execution render the post-warrant proceedings unconstitutional. Jennings previously raised the same arguments in his petition for review of the circuit court's non-final order denying his motion to vacate or stay, and in his petition for writ of habeas corpus, both of which remain pending in this Court. *See* Case Nos. SC2025-1642, SC2025-1687. The circuit court correctly determined that this claim was facially meritless for the same reasons it correctly denied the motion to vacate or stay. To begin with, this Court has held that neither the post-warrant appointment of new state counsel nor purportedly truncated warrant proceedings violate a capital defendant's constitutional rights. Moreover, Jennings has never, in fact, been without counsel, since he continued to be represented by his federal counsel even after his former state counsel passed away in 2022. Jennings could have requested new state counsel by having his federal counsel bring the issue to the State's or the trial court's attention, but he never did so. Ultimately, Jennings' claim is facially meritless and was likewise correctly summarily denied.

Issue III

In his third and final claim, Jennings raised four untimely, procedurally barred, and meritless challenges to Florida's capital

sentencing scheme. Jennings' first two subclaims—challenging the statutory change allowing death sentences to be imposed on non-unanimous jury recommendations and this Court's elimination of comparative proportionality review—have been repeatedly rejected by this Court. Additionally, Jennings' jury unanimity subclaim is procedurally barred because it was raised and rejected in a prior postconviction motion, and his proportionality subclaim does not apply to his case because his death sentence was, in fact, reviewed for proportionality on direct appeal. Jennings' third and fourth subclaims—challenging the Governor's signing of his death warrant without an updated clemency proceeding and the post-warrant appointment of new state collateral counsel—merely repeated Claims 1 and 2 of his successive postconviction motion and were correctly rejected by the circuit court for the same reasons.

Accordingly, none of Jennings' claims warranted an evidentiary hearing, and his fifth successive motion for postconviction relief was correctly summarily denied in full.

STANDARD OF REVIEW

On appeal from the summary denial of a successive motion for postconviction relief, this Court "review[s] the postconviction court's decision de novo." *Cole v. State*, 392 So. 3d 1054, 1061 (Fla. 2024). "Summary denial . . . is appropriate '[i]f the motion, files, and records in the case conclusively show that the movant is entitled to no relief.'" *Id.* at 1060 (second alteration in original) (quoting *Bogle v. State*, 322 So. 3d 44, 46 (Fla. 2021) (quoting Fla. R. Crim. P. 3.851(f)(5)(B))). Postconviction courts may properly summarily deny claims that are untimely, procedurally barred, not cognizable, not retroactive, or meritless as a matter of law under controlling precedent. *See, e.g.*, *Rogers v. State*, 409 So. 3d 1257, 1262 (Fla. 2025) (stating that a postconviction court may "appropriately summarily dismiss untimely or procedurally barred claims"); *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020) (affirming summary denial of successive postconviction claims as untimely); *Bogle v. State*, 288 So. 3d 1065, 1069 (Fla. 2019) (affirming summary denial of successive postconviction claim on non-retroactivity grounds); *Mann v. State*, 112 So. 3d 1158, 1162 (Fla. 2013) (holding that because the defendant's claims were "purely

legal claims that have been previously rejected by this Court, the circuit court properly summarily denied relief").

With respect to timeliness, "postconviction claims in capital cases must generally be filed within one year after the judgment and sentence become final." *Cole*, 392 So. 3d at 1061 (citing Fla. R. Crim. P. 3.851(e)(2)). A claim filed outside the one-year period is untimely 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). "For an otherwise untimely claim to be considered timely [under the first exception] as newly discovered evidence, it must be filed within a year of the date the claim became discoverable through due diligence." *Mungin*, 320 So. 3d at 625-26. The defendant bears the burden to "establish the timeliness of a successive postconviction claim." *Id.* at 626.

A successive postconviction claim is procedurally barred when it either was raised or could have been raised in a prior proceeding. *See* Fla. R. Crim. P. 3.851(e)(2) ("A claim raised in a successive motion must be dismissed if the trial court finds that it fails to allege new or different grounds for relief and the prior determination was on the merits; or, if new and different grounds are alleged, the trial court finds that the failure to assert those grounds in a prior motion constituted an abuse of the procedure; or, if the trial court finds there was no good cause for failing to assert those grounds in a prior motion . . . ."); *see also Allen v. State*, 416 So. 3d 291, 302 (Fla. 2025) ("[I]f a claim could have been brought on direct appeal, it is procedurally barred in postconviction, and thus does not warrant an evidentiary hearing.") (cleaned up); *Rogers*, 409 So. 3d at 1263 ("[I]n an active warrant case, a postconviction claim that could have been raised in a prior proceeding is procedurally barred."); *Ford v. State*, 402 So. 3d 973, 981 (Fla. 2025) (affirming summary denial of claim as procedurally barred and meritless where the same claim was raised and rejected in a prior postconviction motion).

AUTHORITY OF THE LOWER COURT

For the first time in his Initial Brief, Jennings argues that the circuit court lacked the authority to enter its final order denying his fifth successive rule 3.851 motion because his petition for review of the circuit court's non-final order denying his motion to vacate or stay is still pending in this Court. In support, Jennings relies upon rule 9.142(c)(9)(B), which states: "During the pendency of a review of a nonfinal order, unless a stay is granted by the supreme court, the lower tribunal may proceed with all matters, except that the lower tribunal may not render a final order disposing of the cause pending review of the nonfinal order."

This argument is unpreserved. Jennings never argued in the circuit court that a final order could not be entered on his fifth successive rule 3.851 motion due to his pending interlocutory petition in this Court. Therefore, he cannot raise the issue for the first time here. *See Rogers*, 409 So. 3d at 1266 ("In order to preserve an issue for appeal, the issue must be presented to the lower court and the *specific legal argument* or grounds to be argued on appeal must be part of that presentation.") (original emphasis) (quoting *State v. Poole*, 297 So. 3d 487, 494 (Fla. 2020)).

Even so, Jennings' argument is meritless. In its scheduling order of October 10, 2025, this Court ordered the circuit court to complete any proceedings and enter any orders "as expeditiously as possible, but by no later than 11:00 a.m., Wednesday, October 29, 2025." This Court denied Jennings' motion for reconsideration of its scheduling order. Consequently, the circuit court was obligated to enter its final order no later than the deadline set by this Court. *See Jimenez v. Bondi*, 259 So. 3d 722, 762 (Fla. 2016) (explaining that this Court has the inherent power to enter post-warrant scheduling orders pursuant to its constitutional authority in death penalty cases). Additionally, because a proceeding brought under rule 9.142 is an original proceeding and not an appeal, *see* Fla. R. App. P. 9.142(c)(2), it did not affect the circuit court's jurisdiction. *See* Philip J. Padovano, *Florida Appellate Practice* § 1:6 (2025 ed.) ("Generally, in original proceedings, the lower tribunal has continuing jurisdiction until the appellate court has entered an order that prevents further action."). Thus, Jennings' challenge to the circuit court's authority to enter the final order on appeal must be rejected.

ARGUMENT

I. Jennings' Clemency Proceedings Were Constitutional and Adequate to Support the Signing of the Warrant.

In Claim 1 of his fifth successive rule 3.851 motion, Jennings argued that the Governor's signing of his death warrant without an updated clemency review violated his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments. (R:371-76). The circuit court correctly found that this claim was time-barred and meritless as a matter of law under controlling precedent. (R:434-37).

As to timeliness, Jennings raised this argument for the first time more than 36 years after his clemency application was denied, and nearly four decades after his judgment and sentence became final. In his motion, however, Jennings made no effort to show how the claim satisfied rule 3.851(d)(1)'s one-year filing requirement or qualified for any exception under subsection (d)(2). Instead, he recited a list of social, political, legal, scientific, and personal developments since 1989—facts that were either publicly available or known by Jennings and required no diligence to uncover. (R:372-76). Indeed, Jennings expressly stated that the purportedly mitigating aspects of his life were "known at the time of his [first] clemency application." (R:373).

Jennings also acknowledged that he "could have reapplied for clemency five (5) years after his denial of clemency" in 1989, and every five years thereafter, but he never did so. (R:376).

Consequently, the circuit court correctly found that Jennings failed to meet his burden to establish that this claim was filed in a timely manner, rendering it time-barred. (R:435); *see Ferguson v. State*, 101 So. 3d 362, 366 (Fla. 2012) (finding clemency-related claim untimely when the defendant could have raised the claim earlier). The circuit court also correctly pointed out that to the extent Jennings was claiming that his clemency counsel was ineffective for failing to reapply for clemency after the initial denial in 1989 (which Jennings did not expressly allege but seemed to imply in his motion), Jennings "has no constitutional right to raise such a claim." (R:435-36) (citing *Rogers*, 409 So. 3d at 1264).

In his Initial Brief, Jennings attempts to overcome the circuit court's timeliness finding by arguing that (1) he was not "permitted" to reapply for clemency due to the death of his clemency attorney, and (2) it was "impossible to predict" that a death warrant would be signed without an updated clemency proceeding. Init. Br. at 15, 27-

28.[6] However, Jennings never raised these arguments in his rule 3.851 motion below and, as a consequence, they are unpreserved for appellate review. *See Poole*, 297 So. 3d at 494.

Regardless, Jennings' new arguments are meritless. As to the first point, Jennings' prior state counsel, McClain, did not pass away until 2022, and even after McClain's death, Jennings continued to be represented by his federal counsel. Through either his federal or state counsel, Jennings could have alerted the Governor's office that he wanted an updated clemency review at any time in the more than three decades following his initial clemency denial. As to the second point, Jennings has been on notice for years that he is eligible for a death warrant. Jennings' convictions and death sentence have been final since 1988. And in 2016, the State filed a notice of finality in

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[6] In support of his first point, Jennings relies on an Appendix to his Initial Brief containing clemency letters from his case and other cases that were not submitted to the circuit court below. Because these documents were not submitted to the circuit court, they may not be considered here. In other circumstances, the State would have moved to strike the Initial Brief and Appendix. Due to the time constraints of the instant warrant proceedings, however, the State will forego filing a formal motion to strike, and simply requests that the Court strike the Appendix and note in its forthcoming opinion that these documents were not presented to the circuit court and cannot form the basis for any relief. *See Gudinas v. State*, 412 So. 3d 701, 708 n.5 (Fla. 2025); *Rogers*, 409 So. 3d 1267 n.11.

this Court pursuant to rule 3.851(j) advising that Jennings' direct appeal, initial state postconviction proceedings, and federal habeas corpus proceeding and appeal therefrom had all been completed. *See* Attorney General Notification to Clerk of the Florida Supreme Court, *Jennings v. State*, No. SC1960-68835 (Fla. Oct. 14, 2016). "Thus, in addition to the thirty-[seven] years of notice since the imposition of his death sentence[], [Jennings] has been on notice for [over nine] years that he is 'warrant-eligible,' meaning 'the [G]overnor could sign a warrant for his execution.'" *Jones*, 2025 WL 2717027, at *4 (quoting *Silvia v. State*, 228 So. 3d 1144, 1146 (Fla. 2013)). Accordingly, even if these new arguments had been raised in the circuit court, they would not have rendered Claim 1 timely.

Additionally, although not addressed in the circuit court's final order,[7] Claim 1 is also procedurally barred for the same reasons, *i.e.*, it could have been raised previously, and Jennings makes no showing of good cause. *See* Fla. R. Crim. P. 3.851(e)(2). As illustrated above,

[7] Under the tipsy coachman doctrine, "[t]his Court may affirm a judgment on any basis supported in the record." *Pryor v. State*, No. SC2023-0593, 2025 WL 2670838, at *1 n.1 (Fla. Sept. 18, 2025) (citing *Marquardt v. State*, 156 So. 3d 464, 482 (Fla. 2015), and *Dade Cty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644-45 (Fla. 1999)).

Jennings has had access to the information that he asserts supports his argument for decades. He provides no good cause for why he failed to reapply for clemency in the 36 years between the initial denial and the signing of the death warrant, or why he waited to raise this claim until after the warrant was signed.

Even if this claim had been properly raised, it is meritless as a matter of law under controlling precedent. The Florida Constitution vests "sole, unrestricted, [and] unlimited discretion in the executive" to grant or deny clemency. *Sullivan v. Askew*, 348 So. 2d 312, 315 (Fla. 1997). Accordingly, this Court has repeatedly held that courts may not second-guess the Governor's exercise of that discretion in capital cases. *Zakrzewski v. State*, 415 So. 3d 203, 211 (Fla. 2025); *see also Gudinas*, 412 So. 3d at 717 ("[T]his Court has . . . consistently held that Florida's established clemency proceedings and the Governor's absolute discretion to issue death warrants do not violate the Florida or United States Constitutions.").

Further, consistent with United States Supreme Court precedent, no "specific procedures" are required in clemency proceedings. *Zakrzewski*, 415 So. 3d at 211. As this Court has explained, "[i]n *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272[]

(1998), five justices of the United States Supreme Court concluded that some minimal procedural due process requirements should apply to clemency proceedings. But none of the opinions in that case required any specific procedures or criteria to guide the executive's signing of warrants for death-sentenced inmates." *Id.* (quoting *Marek v. State*, 14 So. 3d 985, 998 (Fla. 2009)).

Applying these principles, this Court has repeatedly held that the Governor's signing of a death warrant without a recently updated clemency review violates neither the United States Constitution nor the corresponding provisions of the Florida Constitution. *See, e.g.*, *id.* at 211-12 (rejecting claim that signing of death warrant without a recently updated clemency review violates rights to due process and equal protection, as well as Fifth, Eighth, and Fourteenth Amendment rights); *Dailey v. State*, 283 So. 3d 782, 787 (Fla. 2019) ("[T]o the extent Dailey asserts that his execution would be arbitrary because he was not granted an additional clemency proceeding at which to present newly discovered evidence, his claim is foreclosed by our caselaw."); *Pardo v. State*, 108 So. 3d 558, 568 (Fla. 2012) (rejecting claim that a "long time lapse between a defendant's clemency proceeding and the signing of his death warrant renders

the clemency process inadequate or entitles the defendant to a second proceeding"). Accordingly, Jennings' claim that the Governor could not lawfully sign his death warrant without an updated clemency review is facially without merit.

Finally, Jennings' successive postconviction motion and the death warrant itself conclusively refute any argument that he did not have the benefit of a constitutionally adequate clemency proceeding. Jennings acknowledged in his rule 3.851 motion that he initiated clemency proceedings in 1988, was represented by counsel, and participated in two clemency interviews. (R:372-73). Further, the death warrant expressly states that clemency was considered under article IV, section 8(a) of the Florida Constitution and denied. (R:121). Under controlling precedent, these proceedings satisfy any and all constitutional requirements. *See Zakrzewski*, 415 So. 3d at 211-12 (citing *Valle v. State*, 70 So. 3d 530, 551 (Fla. 2011)).

II. The Post-Warrant Appointment of New State Counsel and the Circuit Court's Denial of Jennings' Motion to Stay Do Not Render the Warrant Proceedings Unconstitutional.

In Claim 2, Jennings reasserted his prior request for a stay of execution based on the post-warrant appointment of new state collateral counsel and argued that, without such a stay, the warrant

proceedings are unconstitutional. Notably, Claim 2 did not seek relief from Jennings' convictions or death sentence but asked only that the circuit court grant a stay of execution. (R:376-78). But the circuit court correctly denied Jennings' first stay request, and it correctly denied Claim 2 for the same reasons. (R:437-39).

As this Court has stated, "[a] stay of execution on a successive motion for postconviction relief is warranted only where there are substantial grounds upon which relief might be granted." *Barwick*, 361 So. 3d at 791 (quoting *Dillbeck v. State*, 357 So. 3d 94, 103 (Fla. 2023)). In Claim 2, Jennings specifically argued that unless a stay was granted, his execution would violate the Fifth, Sixth, Eighth, and Fourteenth Amendments and the corresponding provisions of the Florida Constitution. These arguments, however, are facially meritless under the controlling precedents of this Court and the United States Supreme Court. Moreover, Jennings has never, in fact, been without counsel, since he continued to be represented by his federal counsel even after his state counsel died in 2022. Thus, the circuit court correctly summarily denied this claim.

As to the Fifth Amendment aspect of Jennings' claim, this Court has held that the appointment of state counsel after a death warrant

has been signed following a lapse in state counsel does not violate due process. As the State pointed out in its response to Jennings' first stay motion, this Court addressed that exact issue in *Asay*. In that case, Asay argued that he was "denied due process, equal protection, and the right to effective collateral representation . . . when his death warrant was signed while no [collateral] counsel was in place and had not been in place for over a decade." *Asay*, 210 So. 3d at 27. As this Court recounted, Asay's state counsel withdrew in 2005, and Asay was not represented by collateral counsel again until his death warrant was signed in 2016. *Id.*

This Court rejected Asay's claim that these circumstances deprived him of due process, stating:

> Due process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided. *Huff* [*v. State*], 622 So. 2d [982,] 983 [(Fla. 1993)]. While Asay argues that his lack of registry counsel violated his right to due process, he fails to state when he was denied notice or opportunity to be heard at any stage of his postconviction proceedings. Asay appears to suggest that postconviction counsel was required to actively investigate his case for the preceding ten years and continuously bring forth new arguments. However, this is not mandated by section 27.710, Florida Statutes. Instead, counsel is only required to represent the defendant "until the sentence is reversed, reduced, or carried out or until released by order of the trial court." § 27.710(4), Fla. Stat.

> Here, Asay was represented by counsel at every stage of his postconviction proceedings. Steve Kissinger represented Asay during the initial postconviction proceedings, and Dale Westling represented Asay during the successive postconviction proceedings. In 2005, Mr. Westling filed a motion to withdraw when the case moved from state court to federal court. The trial court granted the motion. In federal court, at least two attorneys represented Asay at various stages of the proceedings. When the death warrant was signed in January of 2016, the trial court appointed new registry counsel. At no point was Asay not represented by counsel. Furthermore, Asay had notice of each postconviction proceeding and the opportunity to have counsel argue his claims before the court. Thus, his due process argument fails.

Id. at 27-28.

Similarly, Jennings has been represented at every stage of his proceedings. Although Jennings' counsel in his prior postconviction proceedings, Martin McClain, passed away in 2022, Jennings was at the time litigating his second federal habeas proceeding in the Eleventh Circuit through the representation of his federal counsel. That proceeding only recently concluded in March 2025. If Jennings had wanted new state counsel appointed upon McClain's death or at any time prior to the signing of the death warrant, or if he became aware of any new information that could have formed the basis for a new collateral claim, he could have raised that issue through his

federal counsel or the trial court. At no point has Jennings been deprived of notice or an opportunity to be heard.

Nor does the 34-day warrant period infringe on his right to due process. This Court has consistently rejected such arguments. *See, e.g.*, *Jones*, 2025 WL 2717027, at *4; *Windom v. State*, 416 So. 3d 1140, 1149-50 (Fla. 2025); *Bates v. State*, 416 So. 3d 312, 321 (Fla. 2025). As in *Jones*, Jennings has been on notice that a death warrant could be issued at any time since at least 2016, when the State filed its notice of finality in this Court, and arguably long before that when his death sentence became final in 1988. *See Jones*, 2025 WL 2717027, at *4. Moreover, Jennings has had nearly *four decades* to raise any claims in opposition to his death sentence and execution—which he has done, repeatedly, through numerous state and federal proceedings. Again, if Jennings had wanted more time for his state counsel to investigate claims that could be raised in a new collateral motion, he could have asked for the appointment of such counsel years before the death warrant was signed.

Furthermore, the claims that Jennings can raise at this late state of the proceedings are strictly limited. Importantly, the issuance of a death warrant does not entitle Jennings to a new investigation of

the facts of the case as if the prior appellate and collateral proceedings had not occurred. Rule 3.851(h)(5) states that "[a]ll motions filed after a death warrant is issued must be considered successive motions and subject to the content requirement of subdivision (e)(2) of this rule." Subdivision (e)(2), in turn, provides that claims raised in a successive motion must be dismissed if they were previously raised and decided on the merits, could have been but were not raised in a prior motion, or fail to meet any of the exceptions to the one-year limitations period for collateral claims set forth in subdivision (d)(2). *See* Fla. R. Crim. P. 3.851(e)(2). And under subdivision (d)(2), a claim raised more than one year after the death sentence became final may proceed only under three limited circumstances: (A) newly discovered evidence that could not have been previously ascertained with due diligence; (B) new retroactive constitutional rights; or (C) a motion that postconviction counsel, through neglect, failed to file. *See* Fla. R. Crim. 3.851(d)(2).

It bears repeating that Jennings has had nearly four decades to investigate his case and raise challenges to his conviction and death sentence, which he has done repeatedly. Any information that could have been learned by reviewing the records of Jennings' prior

proceedings could clearly have been discovered earlier through the exercise of due diligence and, thus, would be procedurally barred. The only question, for purposes of a post-warrant rule 3.851 motion, is whether Jennings had any new claims that he could not have previously raised with the use of due diligence.

Jennings' argument that his state collateral counsel, CCRC-M, could not properly represent him under these circumstances is meritless. Jennings was given notice of the warrant proceedings and the opportunity to consult with his counsel—state and federal—as to whether any such claims exist. Nothing more was required to protect Jennings' right to due process in this *fifth* successive postconviction proceeding. *See Dist. Att'y's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009) (stating that the defendant's right to due process in postconviction "is not parallel to a trial right but rather must be analyzed in light of the fact that he has already been found guilty at a fair trial, and has only a limited interest in postconviction relief"). Moreover, Jennings' federal counsel, CHU, has represented him continuously for 10 years. If there had been any new development in Jennings' case that could have been the subject of a new collateral claim, there is no valid reason why Jennings' federal counsel should

have been unaware of it or unable to communicate that information to CCRC-M. *See, e.g.*, *Bell v. State*, 415 So. 3d 85, 95 (Fla. 2025) (recounting testimony from Bell's federal CHU counsel that, after learning of the signing of Bell's death warrant, she contacted Bell's state collateral counsel and advised him of potential claims that could be raised in a state postconviction motion).

The United States Supreme Court has also rejected the claim that the denial of state postconviction counsel violates due process. In *Pennsylvania v. Finley*, 481 U.S. 551 (1987), the court "ruled that neither the Due Process Clause of the Fourteenth Amendment nor the equal protection guarantee of 'meaningful access' required the State to appoint counsel for indigent prisoners seeking state postconviction relief." *Murray v. Giarratano*, 492 U.S. 1, 7 (1989). As this Court has also noted, *Finley* "refused to extend a due process requirement for effective collateral counsel to situations where a state, like Florida, has opted to afford collateral counsel to indigent inmates." *Barwick*, 361 So. 3d at 790 (quoting *Zack v. State*, 911 So. 2d 1190, 1203 (Fla. 2005)); *see Finley*, 481 U.S. at 559. And in its subsequent decision in *Giarratano*, the Supreme Court held that the rule stated in *Finley* applies "no differently in capital cases than in

noncapital cases." *Giarratano*, 492 U.S. at 10. The *Giarratano* Court observed that "[s]tate collateral proceedings are not constitutionally required as an adjunct to the state criminal proceedings and serve a different and more limited purpose than either the trial or appeal." *Id.* The Supreme Court therefore "decline[d] to read either the Eighth Amendment or the Due Process Clause" to require the appointment of collateral counsel in capital cases. *Id.*

In summary, Jennings' right to due process has been fully protected. As the circuit court correctly explained when it denied Jennings' motion to vacate or stay, there has been no denial of due process in light of the limited nature of the claims that can be raised at this juncture under rule 3.851(h)(5), Jennings' continuous and uninterrupted representation by his federal counsel, and Jennings' opportunity to subject the state's case to meaningful adversarial testing at trial and on appeal, as well as in numerous subsequent state and federal collateral proceedings. (R:204).

Jennings' due process argument is further undermined by his failure to request the appointment of new state counsel following his prior state counsel's death. Jennings repeatedly faults the State for failing to seek to have new counsel appointed sooner, but Jennings

himself never brought the matter to either the State's or the trial court's attention. As the federal district court observed when it denied Jennings' federal stay motion:

> Mr. Jennings's argument is, in effect, that you can sit on your rights, pocket a motion to stay execution, and under the theory that there may be a nonfrivolous collateral challenge that you could have filed, move to stay your execution based on the failure to appoint state counsel sooner. This is not the law.

Jennings v. DeSantis, slip. op. at *4 n.2.

In his Initial Brief, Jennings attempts to brush off the fact that he had federal counsel—which he calls "inapposite and of no moment"—by citing section 27.711(2). Init. Br. at 31. That provision states that registry counsel appointed under section 27.710 must "file a notice of appearance with the trial court indicating acceptance of the appointment to represent the capital defendant throughout all postconviction capital collateral proceedings, including federal habeas corpus proceedings, in accordance with this section or until released by order of the trial court." § 27.711(2), Fla. Stat. Jennings, however, did not have any proceedings pending in state court from 2018 until the death warrant was signed in 2025. (R:31) (trial court docket showing no state-court activity in Jennings' case from 2018

to 2025). At no point was Jennings unrepresented in any collateral proceeding. *See Asay*, 210 So. 3d at 27-28 (finding that "Asay was represented by counsel at every stage of his proceedings" where he was represented by counsel in his initial and successive state postconviction proceedings and, despite a subsequent 10-year lapse in state counsel, new state collateral counsel was appointed after Asay's death warrant was signed in 2016). Further, section 27.711(2) only concerns the notice of appearance and does not set out any procedure to be followed upon the attorney's death.

Regardless, Jennings misses the point. His claim is that he was denied due process due to the lapse in state counsel. Yet Jennings clearly had the ability to correct that lapse by having his federal counsel bring the issue to the State's or the trial court's attention. But Jennings never did so, and instead chose to wait until after the death warrant was signed to complain about the fact that new state counsel was not appointed sooner. As the federal district court explained, Jennings cannot "sit on his rights" for years and then complain that his rights were violated. *Jennings v. DeSantis*, slip. op. at *4 n.2. The federal district court continued:

> Mr. Jennings does not contend that he lacked notice that his original state counsel had died in 2022, nor that he requested and was denied the appointment of new state postconviction counsel following his lawyer's death. Nor does he explain why it took over three years to seek relief from this Court for his deprivation of state counsel while he was simultaneously represented by federal habeas counsel. In short, this does not a due process claim make.

Id. at *5. For the same reasons, the circuit court correctly held that Jennings failed to establish any due process violation in Claim 2 of his fifth successive rule 3.851 motion.

Jennings fares no better with his claims of additional constitutional violations. His assertion in Claim 2 that the post-warrant appointment of counsel violated his rights under the Sixth Amendment is similarly facially meritless.[8] This Court rejected that exact argument in *Asay*. *See* 210 So. 3d at 28. As the United States Supreme Court has made clear, "[t]here is no constitutional right to

[8] Although Jennings references the Sixth Amendment in the title of Issue II in his Initial Brief, he does not make any argument on that point in the text of his brief, and he has therefore waived it. *See Brown v. State*, 304 So. 3d 243, 267 (Fla. 2020) ("[A]n argument not raised in an initial brief is waived.") (original alteration) (quoting *Shelly v. State*, No. SC2016-1195, 2019 WL 102481, at *1 (Fla. Jan. 4, 2019)); *see also Reynolds v. State*, 99 So. 3d 459, 485 (Fla. 2012) (holding that a point made "in passing" without any "argument, analysis, or elaboration" was waived). Nonetheless, the State addresses the point here in an abundance of caution.

an attorney in state post-conviction proceedings. Consequently, a petitioner cannot claim constitutionally ineffective assistance of counsel in such proceedings." *Coleman v. Thompson*, 501 U.S. 722, 752 (1991) (citations omitted); *see also Davila v. Davis*, 582 U.S. 521, 524 (2017); *Lawrence v. Florida*, 549 U.S. 327, 336-37 (2007). This Court has likewise held that there is "no constitutional right in Florida" to the "[]effective assistance of postconviction counsel." *Rogers*, 409 So. 3d at 1264. Indeed, Jennings' argument that he has a statutory right to effective collateral counsel under Florida law is directly refuted by the statutory text. *Id.* ("[C]hapter 27 specifically disavows providing a statutory right to raise ineffective assistance claims.") (citing § 27.7002(1), Fla. Stat. ("This chapter does not create any right on behalf of any person, provided counsel pursuant to any provision of this chapter, to challenge in any form or manner the adequacy of the collateral representation provided.")).

Jennings also summarily alleged in Claim 2 that the post-warrant appointment of counsel violated his rights under the Eighth Amendment. (R:378). However, he made no specific argument on that point, and it was unclear from the motion how he believed the Eighth Amendment had been violated. Thus, that aspect of Jennings' claim

was insufficiently pled. *See, e.g.*, *Miller v. State*, 161 So. 3d 354, 383 (Fla. 2015) (argument consisting of a single conclusory statement was insufficiently presented).[9] To the extent Jennings was arguing that the Eighth Amendment's prohibition on cruel and unusual punishments renders the warrant period unconstitutional, this Court rejected that argument in *Jones*. *See* 2025 WL 2717027, at *4 n.5. And as noted above, the Supreme Court held in *Giarratano* that the Eighth Amendment does not require states to provide capital inmates with postconviction counsel at all. *See* 492 U.S. at 8-10.

Finally, Jennings asserted in Claim 2 that he has been denied "access to the courts since prior counsel passed away, in violation of the Fourteenth Amendment and Article I, § 21 of the Florida Constitution." (R:377). But Jennings has never been denied access to the courts. He has had nearly 40 years to challenge his conviction and death sentence and, in that time, he has raised numerous state and federal collateral challenges in which he was represented by counsel in each proceeding. And as discussed, even after his prior

[9] Again, Jennings has waived this point on appeal by failing to make any specific argument regarding the Eighth Amendment in his Initial Brief. *See* footnote 8, *supra*. The State again addresses the point on the merits only in an abundance of caution.

state collateral counsel passed away in 2022, Jennings continued, and continues, to be represented by his federal counsel. Indeed, Jennings' federal counsel filed a certiorari petition on his behalf in the Supreme Court in January of this year, and they filed a complaint in federal district court only a few days ago while Jennings' fifth successive rule 3.851 motion was still pending. And Jennings has had meaningful access to counsel and the courts after his death warrant was signed through his CCRC-M counsel, with whom he and his federal counsel have had the ability to consult and provide information about any potential collateral claims. *See Bell*, 415 So. 3d at 95; *see also Zakrzewski*, 415 So. 3d at 210-11 (rejecting Zakrzewski's claim that the 30-day warrant period "deprived him of meaningful access to counsel and the courts"). Tellingly, despite the fact that he has been represented by his federal counsel for the last 10 years, Jennings identifies no specific claim that he was unable to present in his post-warrant rule 3.851 motion.

Accordingly, Jennings has failed to establish any "substantial grounds upon which relief might be granted," as required for a stay of execution. *Barwick*, 361 So. 3d at 791. Claim 2 of Jennings' motion was therefore correctly summarily denied.

III. Florida's Capital Sentencing Scheme and the Execution of the Sentence in Jennings' Case Are Constitutional.

In his third and final claim, Jennings argued that Florida's overall capital sentencing scheme violates the Eighth and Fourteenth Amendments because it "lacks essential safeguards against the arbitrary and capricious imposition of the death penalty." (R:378). Jennings specifically argued that the sentencing scheme is now unconstitutional because: (1) death sentences may be imposed on non-unanimous jury recommendations of 8-4; and (2) this Court eliminated proportionality review in *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020). (R:378-79). Jennings further argued that his sentence cannot be constitutionally carried out because: (3) he did not have state counsel from the time his prior counsel died in 2022 until the signing of the death warrant; and (4) the process by which the Governor decided to sign his death warrant is "opaque" and "arbitrary." (R:379-82). The circuit court correctly found that none of these subclaims warrant relief. (R:439-41).

Jennings' first point is both untimely and procedurally barred. Jennings previously challenged the jury's 11-1 recommendation in his case as violative of *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), in

his fourth successive rule 3.851 motion. This Court rejected that claim, holding that "*Hurst* does not apply retroactively to Jennings' sentence of death." *Jennings*, 265 So. 3d at 461. Jennings cited no new facts or law in his rule 3.851 motion that would render this claim timely. *See* Fla. R. Crim. P. 3.851(d)(2)(A)-(B). Further, the claim is procedurally barred by this Court's prior rejection of the claim on the merits. *See* Fla. R. Crim. P. 3.851(e)(2).

Jennings' argument is also without merit. In *State v. Poole*, 297 So. 3d 487, 504 (Fla. 2020), this Court receded from *Hurst* and held that unanimous jury recommendations are not constitutionally required. Since that decision, this Court has "repeatedly declined invitations to reconsider *Poole*." *Ford*, 402 So. 3d at 982 (collecting cases). Further, the United States Supreme Court has held that jury recommendations are not required at all in capital sentencing proceedings. *See McKinney v. Arizona*, 589 U.S. 139, 144 (2020) ("[I]n a capital sentencing proceeding just as in an ordinary sentencing proceeding, a jury (as opposed to a judge) is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant sentencing range."). "*McKinney* confirms that [this Court] correctly interpreted

Hurst v. Florida[,] [577 U.S. 92 (2016),] in *Poole* and supports [its] decision to recede from the additional requirements imposed by *Hurst v. State*." *Owen v. State*, 304 So. 3d 239, 241-42 (Fla. 2020).

Jennings' second challenge to the capital sentencing scheme, the elimination of proportionality review, has no bearing here. This Court considered the proportionality of Jennings' sentence the second time he was sentenced to death for the murder of Rebecca Kunash and found no error. *See Jennings*, 453 So. 2d at 1116 ("We have reviewed appellant's sentence and considered it in light of similar cases to determine its appropriateness and note that we have affirmed the imposition of the death sentence in cases involving similar murders of children in which the defendants were of youthful age."). After Jennings was sentenced to death again following his third trial, this Court rejected Jennings' argument "that the death penalty was imposed upon inappropriate aggravating circumstances and that certain mitigating circumstances should have been found which would outweigh the aggravating circumstances." *Jennings*, 512 So. 2d at 175. Although this Court did not expressly label the latter ruling as proportionality review, "proportionality review [was] inherent in this Court's direct appellate review" during that time

period "regardless of whether it [was] discussed in the opinion . . . ." *Patton v. State*, 878 So. 2d 368, 380 (Fla. 2004). In any event, this Court has held that the elimination of proportionality review in *Lawrence* did not render Florida's overall capital sentencing scheme unconstitutional. *See Fletcher v. State*, 415 So. 3d 147, 162-63 (Fla. 2025), *cert. petition filed*, No. 25-5923 (U.S. Oct. 21, 2025).

Jennings' third and fourth points are not directed toward the capital sentencing scheme in general, but toward the execution of the capital sentence in Jennings' specific case based on the purportedly "arbitrary" warrant selection process and Jennings' lack of state counsel from 2022 until the signing of the warrant. (R:379-82). These arguments are largely restatements of Claims 1 and 2 and are meritless for the same reasons addressed above. As to Claim 1, this Court has "consistently rejected the assertion that the warrant selection process is arbitrary because there are no standards that constrain the Governor's discretion in determining which warrant to sign." *Dailey*, 283 So. 3d at 787; *see also Zakrzewski*, 415 So. 3d at 210-11. As to Claim 2, Jennings has been continuously represented throughout all of his state and federal proceedings, and he continued to be represented by his federal counsel even after his state counsel

died in 2022. The temporary lack of state counsel did not infringe on any of Jennings' state or federal constitutional rights.

For all of the reasons discussed above, Claim 3 was time-barred, procedurally barred, or facially meritless as to all four of Jennings' subclaims. Thus, the circuit court correctly summarily denied that claim. In turn, Jennings' fifth successive motion for postconviction relief was correctly summarily denied in full.

CONCLUSION

The State of Florida respectfully requests that this Honorable Court affirm the lower court's order denying Jennings' successive motion for postconviction relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of November 2025, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Filing Portal System which will send a notice of electronic filing to the following: the Honorable Melanie Chase, Chief Circuit Judge, Eighteenth Judicial Circuit, Harry T. and Harriette V. Moore Justice Center, 2825 Judge Fran Jamieson Way, Viera, Florida 32940, **jennifer.biron@flcourts18.org**; the Honorable Kelly J. McKibben, Circuit Judge, Eighteenth Judicial Circuit, Harry T. and Harriette V. Moore Justice Center, 2825 Judge Fran Jamieson Way, Viera, Florida 32940, **tracie.orman@flcourts18.org**; Will Scheiner, State Attorney, Eighteenth Judicial Circuit, 2725 Judge Fran Jamieson Way, Viera, Florida 32940, **wscheiner@sa18.org**; Eric C. Pinkard, Chief, Assistant CCRC-M, Tracy M. Henry, Courtney L. Hackett, Arielle Jackson, Assistants CCRC-M, Office of Capital Collateral Regional Counsel-Middle, 12973 North Telecom Parkway, Temple Terrace, Florida 33637, **pinkard@ccmr.state.fl.us**, **henry@ccmr.state.fl.us, hackett@ccmr.state.fl.us, jackson@ccmr.state.fl.us**, **support@ccmr.state.fl.us**; Linda

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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 9,527 words in compliance with Fla. R. App. P. 9.210(a)(2)(D).

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