IN THE SUPREME COURT OF FLORIDA

RICHARD BARRY RANDOLPH,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

SC2025-1722
ACTIVE DEATH WARRANT
EXECUTION SCHEDULED
November 20, 2025, 6:00 pm

ON APPEAL FROM THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT, IN AND FOR PUTNAM COUNTY, FLORIDA

LOWER TRIBUNAL CASE NO.: 1988-CF-1357

ANSWER BRIEF

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STATEMENT OF THE CASE AND FACTS

I. Convictions and Death Sentence

Appellant, Richard Barry Randolph, is under an active death warrant for the first-degree murder of Minnie Ruth McCollum. *Randolph v. State*, 562 So. 2d 331 (Fla. 1990). Facts established that on the morning of August 15, 1988, Minnie Ruth McCollum, manager of a Handy-Way convenience store in Palatka, was brutally beaten, strangled, stabbed, and sexually assaulted by Randolph, a former employee of the same store. *Randolph,* 562 So. 2d at 332-33.

Responding deputies forced entry into the store and found McCollum lying on her back, naked from the waist down, with blood pooling from the back of her head and neck and a knife beside her head. *Id.* She was still alive but only barely breathing and moaning when officers arrived. *Id.*

At the hospital, medical personnel documented extensive trauma to her head, neck, and face. *Id.* Her head was "massively beaten and contused," with multiple lacerations across the scalp, face, and neck, and a fractured jawbone. *Id.* Knife wounds to the left side of the neck caused a hematoma around the heart, and there was also a stab wound near the left eye. *Id.* Despite emergency treatment,

McCollum remained in a coma for six days before dying from her injuries. *Id.*

After Randolph was apprehended, he confessed to the attack, providing a graphic and detailed account of the assault. *Id.* at 333-34. He admitted that he rode his bicycle to the store intending to rob it with a toy gun, knowing from his prior employment that approximately $1,000 was in the safe. *Id.* at 334. When McCollum unexpectedly returned and caught him, he attacked her. Randolph said that she was "a lot tougher than he had expected." *Id.* Randolph forced her into the back room and beat her with his hands and fists until she "quieted down," but when she began to move again, he strangled her with the drawstring from his sweatshirt until she stopped struggling. *Id.*

When the victim made noise, Randolph beat her again, then stabbed her, and again tightened the string around her neck to silence her. *Id.* And to make the crime appear as though it had been committed by "a maniac," Randolph then raped the dying woman. *Id.* Before leaving, he donned a Handy-Way uniform, ripped the store's video camera from its mount, and locked the store door behind him, taking Mrs. McCollum's keys and car. *Id.*

The jury found Randolph guilty of first-degree murder, armed robbery, and sexual battery and recommended the death penalty by a vote of eight to four. *Id.* at 332. The judge accepted the jury recommendation and imposed the death penalty. The trial court found four aggravating factors: (1) the crime was committed while engaged in the commission or flight after commission of a sexual battery; (2) the crime was committed for the purpose of avoiding or preventing a lawful arrest; (3) the crime was committed for pecuniary gain; and (4) the crime was especially heinous, atrocious, or cruel. *Id.* The trial court rejected proposed statutory mitigation *Id.* The court found two non-statutory mitigating factors: (1) Randolph possesses an atypical personality disorder; and (2) Randolph expressed shame or remorse for his conduct but determined that "said factors even if proven would not outweigh any one of the aggravating factors standing alone." *Id.* at 334.

This Court affirmed Randolph's convictions and sentence. *Id.* at 339. Thereafter, Randolph filed a petition for writ of certiorari with the United States Supreme Court, which was denied. *Randolph v. Florida*, 498 U.S. 992 (1990).

II. State and Federal Collateral Proceedings

On April 6, 1992, Randolph filed a motion for postconviction relief, which was amended several times. *Randolph v. State,* 853 So. 2d 1051, 1055 (Fla. 2003). The circuit court granted an evidentiary and ultimately denied relief. *Id.* Randolph appealed, presenting seven issues for review before this Court along with a companion habeas petition that raised five claims. *Id.* at 1055.

This Court found several of Randoph's claims to be either procedurally barred, facially or legally insufficient, or clearly without merit as a matter of law and declined to address them. *Id.* at 1055. This Court affirmed the denial of postconviction relief and denied the petition for a writ of habeas corpus. *Id.* at 1069.

On June 16, 2003, Randolph filed another habeas petition in in this Court, asserting a claim under *Ring v. Arizona,* 536 U.S. 584 (2002). This Court denied relief in an unpublished opinion. *Randolph v. Crosby,* 861 So. 2d 430 (Fla. 2003).

Randolph subsequently sought federal habeas relief in the United States District Court for the Middle District of Florida, which denied the petition. *Randolph v. McNeil,* No. 3:04-CV-1206-J-33, 2008 WL 11438125 (M.D. Fla. Feb. 19, 2008). The United States

Court of Appeal for the Eleventh Circuit affirmed the denial of relief, *Randolph v. McNeil,* 590 F.3d 1273 (11th Cir. 2009), and the United States Supreme Court denied certiorari. *Randolph v. McNeil,* 562 U.S. 1006 (2010).

On November 23, 2010, Randolph filed a successive motion for postconviction relief alleging the decision in *Porter v. McCollum,* 130 S. Ct. 447 (2009), created a change in Florida's *Strickland* jurisprudence that required consideration and granting of Randolph's postconviction claims. On March 7, 2011, the circuit court denied the motion as untimely, successive, procedurally barred, and failing to raise any new retroactive claims. This Court affirmed the denial of relief. *Randolph v. State,* 91 So. 3d 782 (Fla. 2012) (mem.).

On January 10, 2017, Randolph filed a second successive motion for postconviction relief raising four claims based on *Hurst v. Florida,* 577 U.S. 92 (2016) *(Hurst I),* and *Hurst v. State,* 202 So. 3d 40 (Fla. 2016). Randolph later amended the motion to include a fifth claim, alleging his sentence violated the Eighth Amendment. *Randolph v. State*, 320 So. 3d 629, 630 (Fla. 2021). On December 31, 2019, the trial court summarily denied relief, and this Court affirmed

the denial of relief. *Id.* at 631. The United States Supreme Court denied certiorari. *Randolph v. Florida*, 142 S. Ct. 905 (2022).

Randolph filed a third successive postconviction motion claiming that the identities of his birth parents constituted newly discovered mitigation evidence. *Randolph v. State*, 403 So. 3d 206, 208 (Fla. 2024). The trial court summarily denied Randolph's motion, and this Court affirmed the denial of relief. *Id.*

III. Proceedings Under Warrant

On October 21, 2025, Governor Ron DeSantis signed Randolph's death warrant, scheduling the execution for November 20, 2025. (PCR5 25).[1] This prompted Randolph to file his fourth successive postconviction motion and a motion to stay his execution. (PCR5 396). In addition, Randolph filed demands for additional public records on agencies. (PCR5 94-161). The Department of Corrections provided updated records as requested. The other agencies responded by filing objections, and following a public

[1] The record on appeal to this Court will be referred to as "PCR5" followed by the applicable page number. Appellant's brief will be referred to as "IB" followed by the page number.

records hearing, the circuit court entered an order sustaining the objections. (PCR5 307).

Randolph's successive motion raised the following three claims: (1) an as-applied challenge to the method of execution because of the progression of his lupus; (2) Florida's warrant process violated his substantive and due process rights under the Fifth and Fourteenth Amendments; and (3) the clemency proceedings violated his due process and equal protection rights under the Fourteenth Amendment. (PCR5 396). The State filed its response to the successive postconviction motion and motion to stay on October 30, 2025. (PCR5 483). The Case Management/*Huff*[2] hearing was held that same day, and the circuit court determined that an evidentiary hearing was not required. (PCR5 520). On October 31, 2025, the circuit court issued its final order denying relief, finding the claims untimely, procedurally barred, and without merit. (PCR5 525). The court also denied the motion for stay.

The instant appeal followed. Along with his initial brief, Randolph filed a motion to stay his execution. He also filed a

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

successive state habeas petition and motion to stay his execution in case number SC2025-1732, which the State will respond to in a separate pleading.

SUMMARY OF THE ARGUMENT

Issue I- Randolph's lethal injection challenge based on lupus, which he has had his entire life, was untimely raised after Randolph's death warrant was signed. What is more, Randolph failed to link his lupus to any specific pain or injury that would constitute cruel and unusual punishment under the Eighth Amendment. And even if he had, he failed to allege a readily available and feasible alternative that entails a significantly less severe risk of pain in light of his lupus. For all these reasons, the postconviction court's summary denial of this claim should be affirmed.

Issue II- A compressed warrant period does not violate Randolph's due process rights. Nor has it deprived him of a meaningful opportunity to be heard. The circuit court correctly determined that Randolph's argument fails as a matter of law. "Due process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided." *Tanzi v. State,* 407 So. 3d 385, 390 (Fla. 2025). This argument has consistently been

rejected by this Court. *See Tanzi*, 407 So. 3d at 390-91; *Zakrzewski v. State*, 415 So. 3d 203 (Fla. 2025); *Barwick v. State*, 361 So. 3d 785 (Fla. 2023).

Issue III– Randolph claims he was denied a meaningful clemency proceeding because he did not have an opportunity to provide additional information since his clemency interview in 2014. As the circuit court properly found, this claim is meritless and fails as a matter of law. There is no constitutional right to clemency. Clemency is an executive function and need not be reopened prior to a new warrant. This Court has consistently rejected similar claims. *See Pardo v. State,* 108 So. 3d 558, 568 (Fla. 2012); *Valle v. State*, 70 So. 3d 530, 551 (Fla. 2011); *see also Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 276 (1998).

Issue IV- The lower court acted within its sound discretion in denying Randolph's requests for public records where he was unable to show that the information sought would likely lead to discoverable evidence. This Court has consistently determined that no abuse of discretion occurred when postconviction courts denied similar public records requests related to the lethal injection procedure and previous executions. *Cole v. State*, 392 So. 3d 1054, 1065 (Fla. 2024);

see also Zakrzewski, 415 So. 3d at 213; *Tanzi*, 407 So. 3d at 391; *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019); *Long v. State*, 271 So. 3d 938, 948 (Fla. 2019). "And clearly, records relating to the clemency process are confidential and exempt from public records requests under section 14.28, Florida Statutes, and the Florida Rules of Executive Clemency." *Zakrzewski*, 415 So. 3d at 213. Randolph is entitled to no relief here.

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, 1060 (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 (Fla. 2024) (original alteration) (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 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 claims raised in successive postconviction motion 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).

Finally, this Court reviews rulings on public records under the abuse of discretion standard of review. *Hannon v. State*, 228 So. 3d 505, 511 (Fla. 2017).

ARGUMENT

I. Randolph's Eighth Amendment Claim Challenging Florida's Lethal Injection Protocol Due to Lupus is Untimely and Meritless, and The Postconviction Court's Summary Denial Should be Affirmed.

Randolph waited until his death warrant was signed to challenge Florida's lethal injection protocol that has been in effect since 2017—and he based his challenge on a lifelong disease. On top of that, Randolph failed to link that disease to any specific symptom or condition to show how it would allegedly interfere with the lethal injection protocol. Given that the claim was untimely, insufficiently pled, and meritless, the lower court appropriately denied this claim

without an evidentiary hearing. The denial of relief requires affirmance.

A. The Postconviction Court Properly Found This Claim Untimely and Procedurally Barred.

Randolph's Eighth Amendment challenge is based on his lupus diagnosis, but his motion failed to disclose when he was diagnosed with lupus. It did, however, state that "[l]upus has had a profound effect on [Randolph's] life." (PCR5 403). And Randolph has had "many years of pain." (PCR5 403). During the case management conference, Randolph's attorney admitted that Randolph was born with lupus; he has had it his entire life. (PCR5 550).

Rule 3.851(d)(1) of the Florida Rules of Criminal Procedure requires that "[a]ny motion to vacate judgment of conviction and sentence of death shall be filed by the defendant within 1 year after the judgment and sentence become final." Randolph's motion was filed long after this one-year deadline. Thus, to be considered timely, an exception under rule 3.851(d)(2)(A)-(C), must apply. Randolph has none.

Randolph alleged that he could not have previously raised this claim because "the progression of his lupus due to improper medical

care only became a constitutional issue as his condition deteriorated within approximately the last year[.]" (PCR5 401). Randolph's attempt to distinguish his "progression" of lupus from the existence of the disease is a distinction without a difference because Randolph cannot explain how (even in the progressed stage) his lupus will interfere with the lethal injection protocol in violation of the Eighth Amendment. Tellingly, during the case management conference Randolph's attorney explained that while Randolph has had lupus, they raised the claim now[3] "because it mattered at the time that he faces execution, not any previous time." (PCR5 558). And during the public records hearing, Randolph's attorney advised that the "recent spree of warrants" had prompted the defense to work on all their cases, and they "had been developing the [lethal injection] claim" for Randolph prior to his warrant being signed because "we were actually acting ahead in order to prepare for a potential warrant[.]" (PCR5 366).

[3] When the court questioned why the claim was not raised sooner given counsel's admission that the disease was progressive, counsel responded that it's not just the progressive part of the disease. It's the "intermittent nature of the disease." (PCR5 364-65).

The postconviction court properly deemed this claim untimely. The court noted that "[e]ven if Defendant's lupus diagnosis has worsened throughout the years. . . Defendant had ample time to gather information regarding the interactions between lupus and Florida's execution protocol prior to the signing of his death warrant." (PCR5 532). This Court has consistently rejected similar assertions that claims are not ripe until a death warrant is signed. *See, e.g., Cole v. State*, 392 So. 3d 1054, 1064 (Fla. 2024) (rejecting a method-of-execution claim as untimely when Cole "failed to raise any argument related to the method of execution until after the Governor signed a death warrant"); *Ferguson v. State*, 101 So. 3d 362, 365 (Fla. 2012) (rejecting Ferguson's argument that a method-of-execution claim is not ripe until a death warrant is signed); *see also Gudinas v. State*, 412 So. 3d 701, 712 (Fla. 2025) (finding the defendant's *Atkins* claim procedurally barred for not having been raised previously when it was based on "lifelong mental illnesses"). Indeed, in comparable circumstances, this Court has repeatedly found such claims untimely.

In *Tanzi v. State,* 407 So. 3d 385, 392 (Fla. 2025), this Court found Tanzi's lethal injection claim based on his "present medical

conditions" untimely when his medical conditions were present as early as 2009. An as-applied challenge was also deemed untimely in *Rogers v. State*, 409 So. 3d 1257, 1267 (Fla. 2025), where Rogers could have raised the claim in a prior motion but failed to do so. And in *Cole*, this Court specifically rejected an argument that Cole's method-of-execution challenge was not ripe until after the Governor signed his death warrant. *Cole*, 392 So. 3d at 1064. Notably, Cole's challenge was based on his Parkinson's disease diagnosis, but his motion alleged that he had suffered from Parkinson's disease since at least 2017. *Id.* Here, too, Randolph's claim is untimely. *Id.*; *see also Zack v. State*, 371 So. 3d 335, 345 (Fla. 2023) (finding the defendant's claim about fetal alcohol syndrome and low IQ being a barrier to the execution was time barred because defendant had long known of these conditions prior to filing his successive motion under an active death warrant).

Moreover, this Court has held that "method-of-execution claims are procedurally barred unless the method itself changes or new facts about the current method arise during a prior execution." *Rogers*, 409 So. 3d at 1267. Randolph failed to raise either exception. In fact, "Florida's lethal injection protocol" is not materially different from the

"protocol that has been in effect since 2017." *Id*. The lower court's determination that this claim is procedurally barred as untimely should be affirmed.

B. Randolph's Lethal Injection Claim Was Properly Denied as Meritless.

Randolph claimed that lupus would cause him to suffer a "tortuous death" under the current lethal injection protocol, but he failed to provide any details of how that would allegedly occur. (PCR5 538). Randolph's nonspecific, conclusory allegations did "not warrant an evidentiary hearing." *Cole*, 392 So. 3d at 1061.

Instead of identifying specific conditions caused by lupus that would impact the effect of the lethal injection drugs, Randolph's motion cited Dr. Zivot's generalized complaints about the lethal injection procedure. Despite Randolph's assertion that this is an as-applied lethal injection challenge, it appears to be more of a facial challenge to the protocol itself, which this Court has outright rejected. *See Asay v. State* (*Asay VI*), 224 So. 3d 695, 700-02 (Fla. 2017); *Hannon v. State*, 228 So. 3d 505, 508-09 (Fla. 2017); *see also Jimenez v. State*, 265 So. 3d 462, 474-75 (Fla. 2018) (noting that in

Asay VI it "fully considered and approved of the current lethal injection procedure"); *Long v. State*, 271 So. 3d 946 (2019).

To challenge a method of execution under the Eighth Amendment's prohibition of cruel and unusual punishment, Randolph must "(1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain." *Asay*, 224 So. 3d at 701 (citing *Glossip v. Gross*, 576 U.S. 863, 877 (2015)); *see also Bucklew v. Precythe*, 587 U.S. 119, 139-40 (2019). Randolph failed to establish either of the two required elements, and the postconviction court properly found this claim meritless.

1. Randolph Never Identified a Substantial and Imminent Risk that is Sure to Cause Needless Suffering.

This standard imposes a "heavy burden" upon the inmate to show that lethal injection procedures violate the Eighth Amendment. *Baze v. Rees*, 553 U.S. 35, 53 (2008). Randolph did not even come close to meeting this burden. Regarding specific pain, Dr. Zivot's affidavit stated that Randolph must "reposition himself frequently

during sleep and complains of significant neck pain when he lies on his back." (PCR5 404). He concluded that "many severe and painful outcomes" will occur during "any attempt to execute" Randolph, and "[p]ositioning him will lead to an immediate state of severe pain." (PCR5 404). This is not unconstitutional pain.

As the United States Supreme Court has recognized, the Eighth Amendment does not require "the avoidance of all risk of pain" in any method of execution. *Bucklew*, 587 U.S. at 134. Nor does it guarantee a prisoner a painless death. *Id.* (citing *Glossip,* 576 U.S. at 869). "Instead, what unites the punishments the Eighth Amendment was understood to forbid and distinguishes them from those it was understood to allow, is that the former were long disused (unusual) forms of punishment that intensified the sentence of death with a (cruel) superadd[ition] of terror, pain, or disgrace." *Bucklew*, 587 U.S. at 133 (internal citations and quotations omitted).

The possibility that Randolph might experience pain during the lethal injection procedure due to pain that he already has to begin with does not amount to "superadded" pain that would constitute

cruel and unusual punishment.[4] *Bucklew*, 587 U.S. at 130. Michael Tanzi unsuccessfully raised similar medical complaints due to his obesity. *See Tanzi*, 407 So. 3d at 390 (where Tanzi is described as "a morbidly obese man suffering from various unresolved medical conditions").

To the extent that Dr. Zivot might have been implying that etomidate[5] will not fully render Randolph unconscious, the evidentiary hearings in *Asay VI* and *Long* have already disproved such assertions. *See, e.g.*, *Asay*, 224 So. 3d 701 ("Intravenous injection of etomidate produces hypnosis characterized by a rapid onset of action, usually within one minute."); *Long*, 271 So. 3d at 944 (crediting the testimony of the State's expert witness, Dr. Yun, who testified "that the massive dose of 200 milligrams of etomidate would produce such a deep state of burst suppression and

[4] Notably, Dr. Zivot's affidavit fails to address the well-known and established effect of etomidate, an FDA approved hypnotic/anesthetic. Randolph will be rendered unconscious almost immediately by etomidate–within one minute. *See Asay*, 224 So. 3d 701 ("Intravenous injection of etomidate produces hypnosis characterized by a rapid onset of action, usually within one minute.") (quoting package insert).

[5] To make clear, Randolph never asserted that his lupus would somehow interfere with the functioning of etomidate.

unconsciousness that it would. . . render a person. . . unaware of noxious stimuli"); *see also Cole,* 392 So. 3d at 1064-65 (noting that the "etomidate protocol. . . includes safeguards to ensure the condemned is unconscious throughout the execution") (citations omitted). The postconviction court was bound by Florida precedent that "fully considered and approved of the current lethal injection procedure." *Jimenez,* 265 So. 3d at 474-75. Accordingly, the postconviction court appropriately concluded that Randolph "fails to explain how his speculative pain during the injections 'overcomes the well-established fact that the administration of etomidate will render him unconscious likely within one minute.' *Rogers,* 409 So. 3d at 1268." (PCR5 533-34).

Now Randolph confuses the postconviction court's recognition that it is bound by this Court's precedent approving the current protocol and he claims that the court made improper "factual determinations" without an evidentiary hearing. IB at 32. He also seems to imply that this constitutes a prohibition of as-applied lethal injection challenges. IB at 32. This is entirely incorrect. The court made no factual determinations; it merely made a legal conclusion that it was bound by Florida precedent, and it was not going to allow

the re-litigation of the effectiveness of etomidate. The postconviction court's decision rested on binding precedent rather than on the need to develop facts about whether etomidate would render Randolph unconscious. This in no way prohibits an as-applied challenge. It is just the opposite; it speaks only to facial challenges reraising the efficacy of etomidate. Randolph was not entitled to a hearing on this issue.

2. Randolph's Alternative Methods Fail Under *Baze*, *Glossip*, and *Bucklew*.

Randolph proposed a two-drug protocol consisting of fentanyl and pentobarbital as well as a firing squad as his alternative methods of execution, but neither are readily available, easily implementable alternatives that significantly reduce a substantial risk of severe pain. Randolph was required to show that the State could carry out his proposed alternative methods "relatively easily and reasonably quickly." *Bucklew*, 587 U.S. at 141 (internal quotations omitted). He failed to do so.

Alternative methods naming pentobarbital have been consistently rejected due to difficulty acquiring the drug. *See, e.g., Correll*, at 490 (rejecting the defendant's claims that Florida can

obtain pentobarbital from other states or that it could license a compounding pharmacy to make it); *Long*, 271 So. 3d at 945 (holding that competent, substantial evidence supports the postconviction court's finding that Long failed to identify a known and available alternative method of execution by naming pentobarbital and fentanyl as his proposed alternative methods of lethal injection). The firing squad proposed alternative has also been recently rejected by this Court. *See Tanzi*, 407 So. 3d at 393 (where Tanzi did not show how the firing squad could be "readily implemented," or that it "significantly reduces the substantial risk of severe pain, given the physical conditions he describes").

Notably, Randolph has failed to show how his proposed methods result in a "clear and considerable" difference in reducing pain compared to the use of etomidate within a three-drug protocol. *Bucklew*, 587 U.S. at 141. One of Dr. Zivot's chief concerns is that p]ositioning Randolph for execution "will lead to an immediate state of severe pain." (PCR5 404). But Randolph failed to explain how positioning him for lethal injection using different drugs—fentanyl and pentobarbital—will cause a clear difference in pain. It is likely

that the preparation for lethal injection drugs and intravenous line insertion will be similar regardless of the actual drugs used.

The same is true for Randolph's other proposed alternative of a firing squad. While it presumably would not involve intravenous line placement, execution by firing squad would nevertheless require Randolph to be restrained and remain in the same position for the execution to be successful. Simply put, if positioning is reason for Randolph's alleged pain, Randolph failed to show that his alternative methods would constitute a clear and considerable difference in reducing pain associated with positioning during the execution. Accordingly, Randolph failed to meet his burden of a showing an alternative method that "entails a significantly less severe risk of pain." *Glossip*, 576 U.S. at 877.

For all these reasons, the summary denial of Randolph's untimely, procedurally barred, and meritless lethal injection claim should be affirmed.

II. Florida's Warrant Process Conforms with Constitutional and Statutory Requirements

In his second claim, Randolph alleges Florida's warrant proceedings violated his due process rights under the Fifth and

Fourteenth Amendment. The circuit court rejected Randolph's argument and correctly found his claim failed as a matter of law. (PCR5 535). This Court has repeatedly rejected similar claims and should do so again here. *See, e.*g., *Valle v. State*, 70 So. 3d 530, 549 (Fla. 2011) (holding that the scheduling of an execution within a compressed warrant period does not deny due process or meaningful review); *Gonzales v. State*, 136 So. 3d 1125, 1140 (Fla. 2014) (noting that Florida's warrant procedures provide defendants with ample opportunity for review and do not impair meaningful access to the courts).

Randolph's challenge to the warrant period is untimely and procedurally barred. His convictions and sentence became final decades ago, and he has had extensive opportunities to litigate postconviction and habeas matters. Also, a notice of finality was filed in 2013. Randolph's assertion of surprise at the warrant schedule is inconsistent with the lengthy notice afforded by years of litigation and established law. *See Jones v. State*, No. SC2025-1422, 2025 WL 2717027 (Fla. Sept. 24, 2025); *Barwick v. State*, 361 So. 3d 785, 789–90 (Fla. 2023).

Florida's warrant schedule does not violate due process. This Court has consistently rejected "under warrant" arguments that a compressed warrant period denies meaningful opportunity to be heard. *See Tanzi*, 407 So. 3d at 390-91; *Barwick*, 361 So. 3d at 789; *Zakrzewski v. State*, 415 So. 3d 203 (Fla. 2025). Due process is satisfied when a defendant is provided notice and an opportunity to be heard. *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Randolph received both.

Florida's Constitution expressly provides that all state-level capital appeals and collateral attacks should be completed within five years. Art. I, § 16(b)(10)(b), Fla. Const. Randolph has long exceeded that timeframe and cannot credibly argue surprise at the issuance of a warrant after more than three decades of litigation.

Randolph's claim that the warrant schedule was "arbitrary" or "unfairly truncated" is unfounded because the record reflects that he was notified of the warrant, afforded full access to counsel, and permitted to file all motions within the same timeframe routinely upheld for other capital defendants. In warrant proceedings, "[d]ue process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided." *Windom v. State*, 416

So. 3d 1140, 1150 (Fla. 2025), *cert. denied,* No. 25-5440, 2025 WL 2460118 (U.S. Aug. 27, 2025). Randolph's challenge to the warrant schedule is both procedurally barred and substantively meritless.

Furthermore, Randolph's assertion of prejudice from the warrant period is purely speculative and unsupported by any specific showing of how the schedule impaired a colorable claim. Florida courts have also declined to entertain generalized complaints about the warrant period due to workload, holidays, or staff constraints as grounds for relief. *See Bell v. State*, 415 So. 3d 85 (Fla. 2025); *Windom*, 416 So. 3d at 1149. Like those defendants, Randolph identifies no witness he could not locate, record he could not obtain, or motion he was prevented from filing because of the warrant period. After more than thirty years of state and federal review, Randolph's eleventh-hour challenge to the routine timing of his execution proceedings represents nothing more than an attempt to delay enforcement of his lawful judgment. Randolph has had decades of litigation to raise every conceivable claim, and his compressed-warrant claim is therefore legally insufficient and without merit.

The Governor's signing of a warrant merely activates the final stage of the process. This Court in *Barwick* and *Tanzi* emphasized

that capital defendants cannot convert the warrant period into a new round of litigation or delay, particularly when they have already been afforded exhaustive review.

As the lower court properly found, Randolph's compressed warrant-period claim is untimely, procedurally barred, and without merit. This Court should affirm.

III. Randolph's Clemency Proceedings Were Constitutional and Adequate to Support the Signing of the Warrant.

In Randolph's third claim, he argues that he was denied a meaningful clemency proceeding and opportunity to confront clemency investigation findings in violation of the due process and equal protection clauses of the Fourteenth Amendment. The circuit court correctly found that this claim was time-barred and meritless.

As to timeliness, Randolph raised this claim for the first time after the warrant was signed, nearly four decades since his sentence became final and over a decade since his clemency interview. In his motion, however, Randolph 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, the only reason for not raising the claim that Randolph gave was that there had been no

communications from the Clemency Board, and his clemency was denied on October 21, 2025. (PCR5 243). Randolph makes no mention of why he did not send updated information to the Clemency Board for over a decade, when he knew a decision on his clemency had not been made. Consequently, the circuit court correctly found that Randolph failed to meet his burden of establishing that this claim was timely. (PCR5 537).

In his Initial Brief, Randolph does not attempt to overcome the circuit court's timeliness bar but instead argues that his character evidence had not developed and would only emerge over time. (IB at 63). Nor did Randolph address a timeliness exception in his rule 3.851 motion below and consequently, the arguments are unpreserved for appellate review. *See State v. Poole*, 297 So. 3d 487, 494 (Fla. 2020); *Ferguson v. State*, 101 So. 3d 362, 366 (Fla. 2012) (finding clemency-related claim untimely when the defendant could have raised the claim earlier).

Clemency in Florida derives solely from the Florida Constitution and is committed to the Governor and Cabinet as an executive function, wholly separate from judicial proceedings. This Court has consistently held that the exercise of clemency power is "an act of

grace" within the sole, unrestricted discretion of the executive branch. *Carroll v. State*, 114 So. 3d 883, 888 (Fla. 2013) (quoting *Sullivan v. Askew*, 348 So. 2d 312 (Fla. 1977)). The Court in *Carroll* reaffirmed that "the people of Florida have vested this power exclusively in the executive," and the judiciary "has no authority to review or control the manner in which that discretion is exercised." *Id.*

Similarly, in *Pardo v. State*, 108 So. 3d 558, 568 (Fla. 2012), this Court rejected claims that the passage of time between a clemency review and the signing of a death warrant invalidated the process, emphasizing that "clemency is a matter of executive grace, not judicial right." The Court reaffirmed that there is no constitutional right to clemency and no requirement for the courts to monitor or supervise the Governor's discretionary decision to deny or defer clemency consideration.

Judicial review of clemency decisions is extremely limited under Florida and federal law. This Court has consistently declined to intrude upon the Governor's prerogative in this area, emphasizing that clemency decisions are nonjusticiable and beyond the reach of

judicial review. *Johnston v. State*, 27 So. 3d 11, 24–26 (Fla. 2010); *Provenzano v. State*, 739 So. 2d 1150, 1153 (Fla. 1999).

As the Court stated in *Carroll*, clemency "is not a right but a privilege," and its exercise is committed to the political, not the judicial, sphere. 114 So. 3d at 888. Florida Rule of Criminal Procedure 3.811 and section 922.07, Florida Statutes, further confirm that questions of mercy, reprieve, or commutation are entrusted to the Governor's discretion. Courts therefore may not compel, supervise, or second-guess the Governor's clemency determinations, even where years have elapsed since the prior review. *Pardo*, 108 So. 3d at 568.

The United States Supreme Court has likewise held that clemency is a traditional executive act, not subject to judicial control except in the most extreme, arbitrary cases. In *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 463–65 (1981), the Court held that prisoners possess no constitutional or inherent right to commutation of a sentence, and that clemency "provides no more than the opportunity to seek mercy."

In *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 281–89 (1998), the Court reaffirmed that while a minimal due process

interest exists to prevent purely arbitrary action, the clemency process itself remains a "grace, not a right." Similarly, *Herrera v. Collins*, 506 U.S. 390, 411–12 (1993), described clemency as the "fail-safe" of the criminal justice system, emphasizing that executive mercy is the traditional means to correct any residual injustices after full judicial review.

Together, these authorities confirm that Randolph's claim concerning alleged inadequacies in the clemency process fails as a matter of law. Clemency rests entirely within the executive's constitutional domain, and the judiciary is neither empowered nor obligated to supervise or second-guess that discretion. The postconviction court properly deemed this claim meritless, and this Court should affirm.

IV. The Postconviction Court Acted Within Its Sound Discretion in Denying Randolph's Requests for Additional Public Records.

Following the signing of Randolph's death warrant, his counsel sought additional public records pursuant to Florida Rule of Criminal Procedure 3.852 from the Florida Attorney General's Office (AGO), the Office of the State Attorney (SAO), the Putnam County Sheriff's Office (PCSO), Florida Department of Corrections (FDOC), Florida

Department of Law Enforcement (FDLE), Florida Commission on Offender Review (FCOR), the Eighth District Medical Examiner's Office (MEO8), and the Executive Office of the Governor. (PCR5 83-161). After conducting a hearing on Randolph's public records requests (PCR5 345-95), the postconviction court sustained the objections from the agencies and denied Randolph's requests. (PCR5 307-15). In doing so, the postconviction court was acting within its sound discretion.

Randolph asserts[6] that he was entitled to public records related to the state's lethal injection protocol and past executions. Randolph specifically requested these records from FDOC, FDLE, and MEO-8. Randolph seems to suggest that the postconviction court abused its discretion by denying the public records request prior to the filing of his successive postconviction motion. He maintains that the court should have reserved ruling on the lethal injection demands so that

[6] Initially, Randolph takes issue with the trial court's ruling on his demands for additional public records made under rule 3.852(h) from the AGO, the SAO, and the PCSO. IB at 80-81. However, as Randolph acknowledges, the agencies asserted there were no additional records to produce. IB at 81. Randolph fails to explain how the court abused its discretion in resolving this claim when the records do not exist.

they could be analyzed in conjunction with his Eighth Amendment challenge raised in his postconviction motion.

Pursuant to Rule 3.852(i), a defendant must establish that "the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence." Given the myriad of Florida caselaw establishing that records relating to Florida's lethal injection protocol and past executions bear no relation to a colorable postconviction claim for relief, the court did not need to reserve ruling on the claim. *See, e.g.*, *Zakrzewski v. State*, 415 So. 3d 203, 213 (Fla. 2025); *Tanzi v. State*, 407 So. 3d 385, 391 (Fla. 2025); *Cole v. State*, 392 So. 3d 1054, 1065 (Fla. 2024); *Long v. State*, 271 So. 3d 938, 948 (Fla. 2019); *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019).

Moreover, this Court has repeatedly affirmed denials of public records demands related to autopsy records from past executions. *See e.g.*, *Branch v. State*, 236 So. 3d 981, 985 (Fla. 2018) (explaining that autopsy records are not likely to lead to a colorable claim because they "would not establish when the inmates became unconscious or whether they experienced pain during their executions"); *Hannon v. State,* 228 So. 3d 505, 512 (Fla. 2017)

(finding that the court properly denied Hannon's request for records of the last eight executions); *Correll v. State*, 184 So. 3d 478, 492 (Fla. 2015) (concluding that the public records request for the autopsy records of twenty-one inmates was unlikely to lead to a colorable claim); *Chavez v. State*, 132 So. 3d 826, 830 (Fla. 2014) (concluding that the public records request for the autopsy records of two executed inmates was properly denied because the autopsy records would not establish when the inmates became unconscious or whether they experienced pain during their executions); *Muhammad v. State*, 132 So. 3d 176, 203 (Fla. 2013) (affirming the trial court's denial of public records request for the autopsy records of an executed inmate because the defendant did not explain "how autopsy photographs and reports concerning [the inmate] could disclose at what point [the inmate] was rendered unconscious or whether he experienced pain").

It is well settled that records regarding to lethal injection are unlikely to lead to a colorable claim once "the challenge to the constitutionality of lethal injection as currently administered in Florida has been fully considered and rejected by the Court." *Walton v. State*, 3 So. 3d 1000, 1013-14 (Fla. 2009). The constitutionality of

the current lethal injection protocol was fully considered and rejected by this Court in *Asay*, 224 So. 3d at 700-702. In *Jimenez v. State*, 265 So. 3d 462 (Fla. 2018), this Court explained that because the current lethal injection protocol was fully considered and approved in *Asay*, production of records relating to lethal injection are unlikely to lead to a colorable claim for relief. The postconviction court did not need to review Randolph's lethal injection claim before determining that his public records would not lead to a colorable claim. What is more, Randolph never explained how obtaining autopsy records from other inmates would lead to a colorable as-applied challenge focused on his lupus.

The defendant in *Long* made similar public records requests prior to raising his as-applied lethal injection challenge, and this Court found no abuse of discretion in the court outright sustaining the objections to the records. *Long*, 271 So. 3d at 948. This Court explained that just because the lower court had authority to review the challenged records in camera does not mean that the court abused its discretion by not doing so when the court sustained the objections to the records. *Id.* Here too, there was no abuse of discretion. Just because the court could have reserved ruling on

Randolph's public records request does not mean that the court abused its discretion by not doing so.

Likewise, the trial court acted within its sound discretion in denying Randolph's requests for records related to clemency. As the postconviction court acknowledged, "[e]ven in an active death warrant proceeding, records related to a clemency investigation are not subject to disclosure and are exempt from production." (PCR5 312). Under section 14.28, of Florida Statutes, all clemency records "shall be confidential and exempt" from production. This Court has determined that "clearly, records relating to the clemency process are confidential and exempt[.]" *Zakrzewski*, 415 So. 3d at 213. There was no abuse of discretion here.

As this Court has long emphasized, public records requests made after a death warrant has been signed are supposed to be used to receive updates of previously discovered information and not to conduct eleventh-hour fishing expeditions. *Sims v. State*, 753 So. 2d 66 (Fla. 2000). Moreover, this Court has held that a defendant who believes he may have a basis to raise a claim in a successive motion need not await the signing of a death warrant to seek records. *Tompkins v. State*, 872 So. 2d 230, 244 (Fla. 2003) ("Thus, a

defendant 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."). In fact, this Court has long recognized that claims that are based on the production of public records that could have been requested earlier are barred. *Zeigler v. State*, 632 So. 2d 48, 50 (Fla. 1993).

To the extent Randolph asserts a due process claim based on the limitations placed on his access to records in this case, such an argument is without merit. This Court has expressly upheld the validity of this rule. *Wyatt v. State*, 71 So. 3d 86, 110-11 (Fla. 2011) (rejecting constitutional challenge to rule 3.852). As noted in *Wyatt*, reasonable restrictions on the access to public records do not offend the constitution. *Id*. The rule was promulgated to provide a remedy for the inordinate delay occasioned by securing public records for purposes of capital postconviction litigation and is reasonably tailored to accomplish its purposes. This Court has further repeatedly held that where a defendant delays requesting public records until after the death warrant has been signed, he must show good cause explaining why the request was not made earlier. *See,*

e.g., *Hannon*, 228 So. 3d at 511; *Asay*, 224 So. 3d at 700. All the records denied by the lower court could have been requested prior to the signing of Randolph's death warrant. No abuse of discretion exists here. Randolph's claim should be denied.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic service to: James Driscoll, Marie-Louise Samuels Parmer, and Jeanine L. Cohen, Assistants CCRC-South, Capital Collateral Regional Counsel-South, 110 SE 6th Street, Fort Lauderdale, Florida 33301, **driscollj@ccsr.state.fl.us**, **marie@samuelsparmerlaw.com**, **ccrcpleadings@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 7th day of November, 2025.

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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 7,685 words in compliance with Rules 9.100(g) and 9.210, Fla. R. App. P.