

In the
Supreme Court of Florida

**EXECUTION SCHEDULED FOR THURSDAY, DECEMBER 18,
2025, at 6:00 p.m.**

FRANK ATHEN WALLS,

Appellant,

v.

CASE NO.: SC2025-1915
CAPITAL CASE

STATE OF FLORIDA,

Appellee.

_____ /

ON APPEAL FROM THE FIRST JUDICIAL CIRCUIT
OKALOOSA COUNTY, LOWER TRIBUNAL NO.: 1987-CF-0856

ANSWER BRIEF ON THE MERITS

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TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	iv
STATEMENT REGARDING ORAL ARGUMENT.....	1
STATEMENT OF THE FACTS AND PROCEDURAL HISTORY	1
Facts of the crime.....	1
Procedural history.....	2
Direct appeal of retrial.....	5
Initial state postconviction litigation.....	7
Federal habeas litigation.....	13
Successive state postconviction litigation.....	17
Current warrant litigation in lower court.....	24
SUMMARY OF THE ARGUMENT.....	26
ARGUMENT.....	30
ISSUE I: The Postconviction Court Properly Summarily Denied the Claim of Intellectual Disability Based on <i>Atkins v. Virginia</i> , 536 U.S. 304 (2002), and <i>Hall v. Florida</i> , 572 U.S. 701 (2014).....	30
The postconviction court’s ruling.....	31
Preservation.....	32

Standard of review.....	33
Conclusively rebutted by the record.....	34
Procedurally barred.....	35
Merits.....	38
Statutory Test for Intellectual Disability.....	38
Prior Testimony and Findings.....	40
Averaging Multiple IQ Scores.....	42
<i>Hall v. Florida</i> Does Not Apply.....	46
ISSUE II: The Postconviction Court Properly Summarily Denied the Claim Seeking to Expand to <i>Roper v. Simmons</i> , 543 U.S. 551 (2005), to Include Adult Capital Defendants.....	54
The postconviction court's ruling.....	55
Preservation.....	56
Untimely.....	57
Procedurally barred.....	65
Merits.....	66
<i>Roper v. Simmons</i>	66
State Constitution's Conformity Clause.....	68
This Court's Precedent.....	73
ISSUE III: The Postconviction Court Properly Summarily Denied the Claim that Spending Decades on Death Row Violates the	

Eighth Amendment.....	75
The postconviction court’s ruling.....	76
Preservation.....	76
Merits.....	77
Not a Recognized Eighth Amendment Claim.....	77
State Constitution's Conformity Clause.....	78
Solitary Confinement.....	80
CONCLUSION.....	86
CERTIFICATE OF FONT AND TYPE SIZE.....	87
CERTIFICATE OF PAGE OR WORD COUNT.....	87
CERTIFICATE OF SERVICE.....	88

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
Cases	
<i>Ake v. Oklahoma</i> , 470 U.S. 68 (1985).....	8
<i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000).....	12
<i>Atkins v. Virginia</i> , 536 U.S. 304 (2002).....	passim
<i>Barwick v. State</i> , 361 So. 3d 785 (Fla. 2023).....	passim
<i>Batson v. Kentucky</i> , 476 U.S. 79 (1986).....	14
<i>Blackwelder v. State</i> , 851 So. 2d 650 (Fla. 2003).....	84
<i>Booker v. State</i> , 969 So. 2d 186 (Fla. 2007).....	78
<i>Bouie v. City of Columbia</i> , 378 U.S. 347 (1964).....	22
<i>Bowles v. Sec'y for Dep't of Corr.</i> , 608 F.3d 1313 (11th Cir. 2010).....	15
<i>Branch v. State</i> , 236 So. 3d 981 (Fla. 2018).....	63
<i>Bucklew v. Precythe</i> , 587 U.S. 119 (2019).....	77
<i>Caldwell v. Mississippi</i> , 469 U.S. 879 (1984).....	23
<i>Camreta v. Greene</i> , 563 U.S. 692 (2011).....	72
<i>Carroll v. State</i> , 114 So. 3d 883 (Fla. 2013)), <i>cert. denied</i> , No. 25-5605, 2025 WL 2649015 (U.S. Sept. 16, 2025).....	36
<i>Cf. Ford v. State</i> , 402 So. 3d 973 (Fla. 2025).....	37
<i>Cf. Jones v. Hendrix</i> , 599 U.S. 465 (2023).....	37

<i>Chapman v. California</i> , 386 U.S. 18 (1967).....	7
<i>Clemons v. Comm’r</i> , Ala. Dep’t of Corr., 967 F.3d 1231 (11th Cir. 2020).....	44
<i>Commonwealth v. Bredhold</i> , 2017 WL 8792559, at *3 (Ky. Cir. Ct. 2017).....	72
<i>Commonwealth v. Bredhold</i> , 599 S.W.3d 409 (Ky. 2020)	72
<i>Commonwealth v. Hackett</i> , 99 A.3d 11 (Penn. 2014)	45
<i>Correll v. State</i> , 184 So. 3d 478 (Fla. 2015).....	78
<i>Damren v. State</i> , 397 So. 3d 607 (Fla. 2023).....	64
<i>Davis v. Dixon</i> , No. 3:17-cv-00820, 2022 WL 1267602, *3 (M.D. Fla. Apr. 28, 2022)	81
<i>Davis v. State</i> , 383 So. 3d 743 (Fla. 2024), <i>cert. denied</i> , 145 S. Ct. 248 (2024)..	34
<i>Dillbeck v. State</i> , 357 So. 3d 94 (Fla. 2023).....	passim
<i>Doty v. State</i> , 403 So. 3d 209 (Fla. 2025).....	65
<i>Evans v. State</i> , 995 So. 2d 933 (Fla. 2008).....	74
<i>Ferguson v. State</i> , 101 So. 3d 362 (Fla. 2012).....	78
<i>Fid. & Columbia Tr. Co. v. City of Louisville</i> , 245 U.S. 54 (1917).....	49
<i>Figueroa-Sanabria</i> , 366 So. 3d 1035 (Fla. 2023).....	32, 56, 77
<i>Fla. Dep’t of Transp. v. Juliano</i> , 801 So. 2d 101 (Fla. 2001).....	47
<i>Florida v. Walls</i> , 583 U.S. 906 (2017) (No. 16–1518)	20

<i>Ford v. State</i> , 402 So. 3d 973 (Fla. 2025).....	passim
<i>Foster v. State</i> , 258 So. 3d 1248 (Fla. 2018).....	63
<i>Foster v. State</i> , 395 So. 3d 127 (Fla. 2024).....	48
<i>Franqui v. State</i> , 301 So. 3d 152 (Fla. 2020).....	39
<i>Glossip v. Gross</i> , 576 U.S. 863 (2015).....	85
<i>Graham v. Florida</i> , 560 U.S. 48 (2010).....	67
<i>Gudinas v. State</i> , 412 So. 3d 701 (Fla.), <i>cert. denied</i> , 145 S. Ct 2833 (2025)...	passim
<i>Hall v. Florida</i> , 572 U.S. 701 (2014).....	passim
<i>Hamm v. Smith</i> , No. 24-872.....	42
<i>Hill v. State</i> , 921 So. 2d 579 (Fla. 2006).....	74
<i>Hitchcock v. State</i> , 226 So. 3d 216 (Fla. 2017).....	23
<i>Huff v. State</i> , 622 So. 2d 982 (Fla. 1993).....	8, 18, 24
<i>Hurst v. State</i> , 202 So. 3d 40 (Fla. 2016).....	22, 23
<i>In re Bowles</i> , 935 F.3d 1210 (11th Cir. 2019).....	37
<i>In re Henry</i> , 757 F.3d 1151 (11th Cir. 2014).....	16, 53
<i>In re Medley</i> , 134 U.S. 160 (1890).....	81, 83
<i>In re Walls</i> , 144 S. Ct. 253 (2023) (No. 22-7897).....	17

<i>In re Walls</i> , No. 23-10982-P, 2023 WL 3745103 (11th Cir. Apr. 13, 2023) ...	16, 53
<i>In re: Frank Walls</i> , No. 23-10982-P.....	16
<i>Jackson v. State</i> , 648 So. 2d 85 (Fla. 1994).....	6
<i>Jimenez v. State</i> , 997 So. 2d 1056 (Fla. 2008).....	64
<i>Johnson v. Bredesen</i> , 558 U.S. 1067 (2009).....	78
<i>Jones v. Mississippi</i> , 593 U.S. 98 (2021).....	52
<i>Jones v. State</i> , 231 So. 3d 374 (Fla. 2017).....	39
<i>Kearse v. Sec’y, Fla. Dep’t of Corr.</i> , 2022 WL 3661526, at *26 (11th Cir. Aug. 25, 2022)	67
<i>Kilgore v. Sec’y, Fla. Dep’t of Corr.</i> , 805 F.3d 1301 (11th Cir. 2015).....	53
<i>Lackey v. Texas</i> , 514 U.S. 1045 (1995).....	passim
<i>Lambrix v. State</i> , 217 So. 3d 977 (Fla. 2017).....	82
<i>Lawrence v. State</i> , 308 So. 3d 544 (Fla. 2020).....	69, 80
<i>Long v. State</i> , 271 So. 3d 938 (Fla. 2019).....	78
<i>Lucas v. State</i> , 41 So. 2d 380 (Fla. 2003).....	78
<i>Miller v. Alabama</i> , 567 U.S. 460 (2012).....	51, 52, 72
<i>Montgomery v. Louisiana</i> , 577 U.S. 190 (2016).....	23, 51, 52, 53
<i>Moore v. Texas</i> , 581 U.S. 1, n.1 (2017).....	42

<i>Muhammad v. State</i> , 132 So. 3d 176 (Fla. 2013).....	83
<i>Mungin v. State</i> , 320 So. 3d 624 (Fla. 2020)), <i>cert. denied</i> , 143 S. Ct. 856 (2023).	58
<i>Nixon v. Singletary</i> , 758 So. 2d 618 (2000), <i>overruled by Florida v. Nixon</i> , 543 U.S. 175 (2004)	8, 9, 10
<i>Nixon v. State</i> , 327 So. 3d 780 (Fla. 2021).....	20
<i>Orme v. State</i> , 361 So. 3d 842 (Fla. 2023).....	78
<i>Owen v. State</i> , 364 So. 3d 1017 (Fla. 2023).....	78, 85
<i>Patterson v. State</i> , 513 So. 2d 1257 (1987).....	13
<i>Payne v. Tennessee</i> , 501 U.S. 808 (1991).....	13
<i>Phillips v. State</i> , 299 So. 3d 1013 (Fla. 2020).....	passim
<i>Pittman v. State</i> , 417 So. 3d 287 (Fla. 2025), <i>cert. denied</i> , No. 25-5605, 2025 WL 2649015 (U.S. Sept. 16, 2025)	passim
<i>Rhodes v. State</i> , 986 So. 2d 501 (Fla. 2008).....	passim
<i>Ring v. Arizona</i> , 536 U.S. 584 (2002).....	12
<i>Ritchie v. State</i> , 344 So. 3d 369 (Fla. 2022).....	33, 57, 77
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005).....	passim
<i>Salazar v. State</i> , 188 So. 3d 799 (Fla. 2016).....	39
<i>Schwab v. State</i> , 969 So. 2d 318 (Fla. 2007).....	63
<i>Shell v. Mississippi</i> , 498 U.S. 1 (1990).....	7

<i>Sheppard v. State</i> , 338 So. 3d 803 (Fla. 2022).....	50
<i>Sliney v. State</i> , 362 So. 3d 186 (Fla. 2023), <i>cert. denied</i> , 144 S. Ct. 501 (2023)	passim
<i>Smithers v. State</i> , No. SC2025-1507, 2025 WL 2837399, at *4 (Fla. Oct. 7, 2025).	36, 37
<i>Sparre v. State</i> , 289 So. 3d 839 (Fla. 2019).....	32, 56, 77
<i>Sparre v. State</i> , 391 So. 3d 404 (Fla. 2024).....	58
<i>Sparre v. State</i> , No. SC2024-1512, 2025 WL 3481670, *3 (Fla. Dec. 4, 2025)	passim
<i>State v. Neil</i> , 457 So. 2d 481 (Fla.1984).....	5
<i>State v. Payne</i> , 721 S.W.3d 204 (Tenn. 2025).....	53
<i>Steinhorst v. State</i> , 412 So. 2d 332 (Fla. 1982).....	33, 56
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).....	11, 14
<i>Teague v. Lane</i> , 489 U.S. 288 (1989).....	22, 52
<i>Thompson v. State</i> , 341 So. 3d 303 (Fla. 2022).....	21
<i>Trop v. Dulles</i> , 356 U.S. 86 (1958).....	70, 71, 72, 73
<i>United States v. Gonzalez</i> , 981 F.3d 11 (1st Cir. 2020).....	68
<i>Walls v. Buss</i> , 658 F.3d 1274 (11th Cir. 2011).....	14, 15
<i>Walls v. Florida</i> , 144 S. Ct. 174 (2023) (No. 22-7866).....	22
<i>Walls v. Florida</i> , 513 U.S. 1130 (1995) (No. 94-7005).....	7

<i>Walls v. Florida</i> , 586 U.S. 864 (2018) (No. 17–9510)	24
<i>Walls v. McDonough</i> , 926 So. 2d 1156 (Fla. 2006) (SC2003–1955)	12
<i>Walls v. McNeil</i> , 3:06-cv-00237, 2009 WL 3187066 (N.D. Fla. Sept. 30, 2009).....	14
<i>Walls v. McNeil</i> , 3:06-cv-00237, 2009 WL 3822951, *1 (N.D. Fla. Nov. 16, 2009)	14
<i>Walls v. Sec’y, Fla. Dep’t of Corr.</i> , 3:06-cv-00237	13
<i>Walls v. State</i> , 213 So. 3d 340 (Fla. 2016) (SC2015-1449).....	passim
<i>Walls v. State</i> , 238 So. 3d 96 (Fla. 2018) (SC2017–0959)	23
<i>Walls v. State</i> , 3 So. 3d 1248 (Fla. 2008) (SC2007–2007)	18, 83
<i>Walls v. State</i> , 361 So. 3d 231 (Fla.), <i>cert. denied</i> , 144 S. Ct. 174 (2023)....	passim
<i>Walls v. State</i> , 580 So. 2d 131 (Fla. 1991).....	3, 83
<i>Walls v. State</i> , 641 So. 2d 381 (Fla. 1994).....	passim
<i>Walls v. State</i> , 926 So. 2d 1156 (Fla. 2006).....	passim
<i>Walls v. State</i> , SC2022-0072	35
<i>Walls v. Tucker</i> , 566 U.S. 976 (2012) (No. 11–8965)	16
<i>Waterhouse v. State</i> , 82 So. 3d 84 (Fla. 2012).....	78
<i>Welch v. United States</i> , 578 U. S. 120 (2016).....	52
<i>Windom v. State</i> , 416 So. 3d 1140 (Fla. 2025).....	34
<i>Witt v. State</i> , 387 So. 2d 922 (Fla.1980).....	19

Zack v. State,
371 So. 3d 335 (Fla.), *cert. denied*, 144 S. Ct. 274 (2023) *passim*

Other Authorities

Other Authorities

§ 2244(b)(2)(A)	16
§ 921.137(1), Fla. Stat. (2024)	39
§ 921.137, Fla. Stat. (2005)	11
§ 921.137, Fla. Stat. (2021)	20
§ 921.173, Fla. Stat. (2024)	44
§ 924.051(1)(b), Fla. Stat. (2024)	33, 56, 77
§ 924.051(8), Fla. Stat. (2024)	65
28 U.S.C. § 2244(b)(2)(A)	16
Art. 1, § 17, Fla. Const.	68, 69, 80
Art. I, § 17, Fla. Const.	69, 70, 79, 80
Art. I, 9, Fla. Const.....	3
Brandon Vines, <i>Decency Comes Full Circle: The Constitutional Demand to End Permanent Solitary Confinement on Death Row</i> , 55 COLUM. J.L. & SOC. PROBS. 591, 620-02 & n.147 & n.148 (2022)	81
Fla. R. Crim. P. 3.851(d)(2)(A)	59, 60, 61, 62
Fla. R. Crim. P. 3.851(e)(2)	57, 62
Fla. R. Crim. P. 3.851(f)(5)(B).....	34
Florida Rule of Criminal Procedure 3.851(d)(2)(A)	58
Schneider, <i>Principles of Assessment of Aptitude and Achievement, in The Oxford Handbook of Child Psychological Assessment</i> 286, 289– 291, 318 (D. Saklofske, C. Reynolds, V. Schwean, eds. 2013)	43
Section 921.137(1), Florida Statutes (2024)	38
U.S. Const. amend. VIII.....	77

STATEMENT REGARDING ORAL ARGUMENT¹

This is an appeal of a postconviction court summary denial of a third successive postconviction motion in an active warrant case. This Court's standard policy is to not hold an oral argument in the appeals of successive postconviction motions, including in appeals of successive postconviction motions during warrant litigation.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

This is an appeal of a summary denial of a third successive postconviction motion in an active warrant case. The litigation in this case spans over nearly four decades.

Facts of the Crime

In the early morning of July 22, 1987, Walls broke into the home of Edward Alger and Ann Peterson. Using curtain cords, Walls tied them up. Alger managed to get loose, and a struggle ensued. Walls

¹ Appellant, FRANK A. WALLS, is referred to as Appellant, defendant, movant, or by his proper name. The initial brief is referred to as "IB," followed by the appropriate page number. The record on appeal is referred to as "3rd succ. PC ROA" followed by the appropriate page number.

tackled Alger, slashed his throat, and then shot him in the head three times—killing him. Walls then turned his attention to Peterson, who was helpless and in tears. Although Ann Peterson posed no threat to him, Walls shot her in the head from close range. Peterson began screaming and, in response, Walls forced Peterson’s face into a pillow and shot her in the head from close range. She died as a result of the gunshot wounds. *Walls v. State*, 361 So. 3d 231, 232 (Fla.), *cert. denied*, 144 S. Ct. 174 (2023).

Procedural History

Walls gave a recorded statement to law enforcement, confessing to burglary and felony murder. He later asserted the crime was a burglary gone bad, which was his defense at both trials.

At the first trial, Walls was found guilty of felony murder for the murder of Edward Alger and of both premeditated and felony murder for the murder of Ann Peterson. The first jury recommended a life sentence for the murder of Edward Alger and a death sentence, by a seven to five vote, for the murder of Ann Peterson. The trial court sentenced Walls to life for the murder of Edward Alger and to death for the murder of Ann Peterson.

This Court, however, vacated the convictions and sentences, because of a correctional officer taking detailed notes of her conversations with Walls and giving those notes to the State's mental health experts before the competency hearing. *Walls v. State*, 580 So. 2d 131 (Fla. 1991). This Court held that this practice violated the due process clause of the State constitution. *Id.* at 133 (citing Art. I, 9, Fla. Const.). The Court remanded for a new trial excluding the use of the State's two mental health experts and prohibited any future mental health evaluations from relying on the information that had been obtained by the DOC officer. *Id.* at 135.

Judge G. Robert Barron presided at both the first trial and the retrial.² Walls' defense attorneys at the retrial were Assistant Public Defender Earl Loveless and Chief Assistant Public Defender James Sewell.

At the retrial, the tape of Walls' confession was played for the jury. (IV 667-690). On June 18, 1992, the jury found Walls guilty of

² The prior life sentence imposed for the murder of Edward Alger precluded the State from seeking a death sentence at the retrial, due to double jeopardy principles. *Walls v. State*, 926 So. 2d 1156, 1162 (Fla. 2006) (citing *Walls v. State*, 641 So. 2d 381, 386, n.1 (Fla. 1994)).

unarmed burglary; two counts of first-degree murder; armed burglary; two counts of kidnapping and petit theft. Three defense experts testified in mitigation at the June 19, 1992, penalty phase: (1) psychologist Dr. Edward Chandler, (2) psychiatrist Dr. Eugene Valentine, and (3) neuropsychologist Dr. Karen Hagerott. The jury recommended a death sentence for the murder of Ann Peterson unanimously. (R. 1120).

On July 29, 1992, Judge Barron sentenced Walls to death again, finding six aggravating factors: (1) the prior violent felony aggravator based on the contemporaneous murder of Alger; (2) the felony murder aggravator because the murder was committed during a burglary and kidnaping; (3) the avoid arrest aggravator; (4) the pecuniary gain aggravator; (5) the murder was heinous, atrocious, or cruel (“HAC”) aggravator; and (6) the cold, calculated, and premeditated (“CCP”) aggravator. *Walls*, 641 So. 2d at 386.

The judge found nine mitigating circumstances. *Walls*, 641 So. 2d at 386. Specifically, the judge found two statutory mitigating circumstances: (1) no significant history of prior criminal activity; and (2) his age at the time of the crime (19 years old). The judge specifically rejected the statutory mental mitigators. *Id.* at 386. The

judge found the following non-statutory mitigating circumstances: (3) his classification of being emotionally handicapped; (4) his brain dysfunction and brain damage; (5) his low IQ; (6) he had confessed and cooperated with law enforcement officers; (7) his loving relationship with his parents and a disabled sibling; (8) his being a good worker when employed, and (9) his kindness toward weak, crippled, or helpless persons and animals. *Id.* The judge sentenced Walls to death again for the murder of Ann Peterson.

Direct appeal of the retrial

Walls, represented by Assistant Public Defender McClain, raised nine issues in the direct appeal of the retrial in this Court.

Walls v. State, 641 So. 2d 381 (Fla. 1994) (No. 80364).³ The Court

³ The nine issues were: (1) a potential juror should have been excused for cause during voir dire, or that the trial court should have granted an additional peremptory challenge to the defense to excuse the juror; (2) that two black jurors were excused by the State in violation of *State v. Neil*, 457 So. 2d 481 (Fla.1984); (3) that jurors were improperly kept in session for overtaxing hours; (4) errors in the penalty-phase jury instructions on aggravating and mitigating factors, including the aggravators of heinous, atrocious, or cruel, and cold, calculated, premeditation instructions; (5) the trial court's refusal to provide a more detailed interpretation of emotional disturbance as a mitigating factor; (6) the trial court's findings on aggravating factors including HAC, CCP, during the commission of a

concluded that the jury instructions on the cold, calculated and premediated (CCP) aggravator violated *Jackson v. State*, 648 So. 2d 85 (Fla. 1994), but agreed the murder was, in fact, cold, calculated, and premediated. *Walls*, 641 So. 2d at 387-89. The Court affirmed the trial court's rejection of the statutory mental mitigators, despite the testimony of the three defense mental health experts at the penalty phase. *Id.* at 390. In the end, the Court affirmed all the aggravation and all the mitigation. This Court found the death sentence was proportionate, concluding the murder was "little better than the execution-style slaying of a helpless woman who already had been bound and gagged, who had been terrorized by hearing her boyfriend's murder, who was helpless and in tears, and who obviously posed no threat whatsoever to Walls." *Id.* at 391.

Walls then filed a petition for writ of certiorari in the United States Supreme Court raising two questions: (1) whether the Florida

burglary or kidnapping and the avoid arrest aggravator; (7) the trial court erred by requiring the defendant to prove mitigating factors by a preponderance of the evidence; (8) the trial court improperly rejected expert opinion testimony that he was suffering extreme emotional disturbance and that his capacity to conform his conduct to the requirements of the law was substantially impaired; and (9) proportionality of the death sentence. *Walls v. State*, 926 So. 2d 1156, 1162-63 (Fla. 2006) (listing the issues).

Supreme Court's harmless error analysis of the CCP aggravator violated *Chapman v. California*, 386 U.S. 18 (1967); and (2) whether the HAC jury instruction was vague under *Shell v. Mississippi*, 498 U.S. 1 (1990). The Supreme Court denied review on January 23, 1995. *Walls v. Florida*, 513 U.S. 1130 (1995) (No. 94-7005). Walls' convictions and sentences, including his death sentence, became final on the next day, Tuesday, January 24, 1995.

Initial state postconviction litigation

On March 17, 1997, Walls filed an initial postconviction motion. The initial postconviction motion was amended in April of 1997. On December 19, 2001, Walls filed a second amended initial postconviction motion raising nine claims.⁴ On March 8, 2002, the

⁴ The nine claims were: (1) Walls was denied a fair guilt phase proceeding due to ineffective assistance of counsel, prosecutorial misconduct, and trial court error; (2) trial counsel conceded guilt and eligibility for the death penalty without Walls' consent; (3) he was denied a fair penalty phase proceeding due to ineffective assistance of counsel, prosecutorial misconduct, and trial court error; (4) counsel failed to obtain an adequate mental health evaluation in violation of *Ake v. Oklahoma*, 470 U.S. 68 (1985); (5) his death sentence is unconstitutional because he is intellectually disabled; (6) the trial court did not independently weigh the aggravating and mitigating circumstances; (7) the trial court considered inadmissible victim impact evidence; (8) the jury was improperly instructed on the

State filed an answer to the amended initial postconviction motion agreeing to an evidentiary hearing on Claim 2 regarding trial counsel's concession based on *Nixon v. Singletary*, 758 So. 2d 618, 625 (2000), *overruled by Florida v. Nixon*, 543 U.S. 175 (2004). On May 20, 2002, the state postconviction court held a hearing as required by *Huff v. State*, 622 So. 2d 982, 983 (Fla. 1993), to determine which claims should be explored at the evidentiary hearing. The trial court granted an evidentiary hearing on major parts of claim 1, claim 2, and parts of claim 3, but summarily denied the remaining part of claim 3, as well as claims 4, 5, 6, 7, and 8.

On January 9, 2003, the postconviction court held an evidentiary hearing. (PCR Vol. IV 592-725). At the evidentiary hearing, lead counsel Assistant Public Defender Loveless, testified that by 1992, which was the date of the retrial, he had tried between eight and ten capital cases. (PCR IV 633). Assistant Public Defender Loveless testified that he discussed the strategy of conceding guilt as to burglary and felony murder and based on Walls' "responses, his

aggravating factors; and (9) the cumulative effect of these procedural and substantive errors deprived him of a fair trial. *Walls v. State*, 926 So. 2d 1156, 1163, n.1 (Fla. 2006).

cooperation, his assistance, just his general demeanor, that the great majority of the time, yes, he did understand” the strategy. PCR IV at 606. Co-counsel Chief Assistant Public Defender James Sewell testified he, the investigator, and co-counsel Loveless had numerous conversations with Walls. Walls was involved in making decisions in his case and that his “experience with Frank was that, you know, he knew, he was certainly oriented as to time, place and person to use a psychological term, and he was very much involved” in the retrial.

Walls himself testified at the evidentiary hearing. Walls testified he never agreed to the trial strategy of conceding guilt to the burglary and felony murder in support of the postconviction claim of ineffectiveness asserting a violation of *Nixon v. Singletary*, 758 So. 2d 618, 625 (2000).

On January 27, 2003, the postconviction court denied the amended initial postconviction motion. (Vol. III 448-532). In the order denying relief, the lower court noted that lead counsel, Assistant Public Defender Loveless, had been an Assistant Public Defender since 1977 and had previously represented numerous capital defendants. The court also observed that defense counsel, A.P.D. Loveless, had the “benefit of the collaboration with penalty phase co-

counsel, James Sewell, Esq., who at the time of this retrial was Chief Assistant Public Defender in Okaloosa County with years of felony trial experience.” (PCR Vol. III 450-451). The postconviction court rejected Walls’ testimony regarding the *Nixon* claim as incredible, noting that the same strategy of arguing it was a burglary “gone bad” was used by the same defense attorney at the first trial. The postconviction court was satisfied that Walls “fully understood the discussions with his attorneys and was competent to agree to the defense strategy” and found the “defendant was competent to stand trial; thus, he was competent to agree to and consent to concede his guilt.” (PCR III at 455–56).

In the initial postconviction appeal, Walls, represented by registry counsel Harry Brody of Brody & Hazen, raised two issues, including numerous subclaims. *Walls v. State*, 926 So. 2d 1156 (Fla. 2006) (SC03–0633).⁵ This Court addressed several subclaims of

⁵ The sub-issues were: (1) denying the ineffective assistance of trial counsel claims for “failure to exclude and object to the admission of evidence of a possible sexual battery, failure to object to a lack of remorse argument by the prosecutor during closing argument, concession of guilt to the facts of felony murder and to the aggravating factor of commission during a burglary, and failure to object to a number of other prosecutorial comments and arguments”; and (2) denying Walls an evidentiary hearing on his other five

ineffectiveness of trial counsel claims under *Strickland v. Washington*, 466 U.S. 668 (1984), that were explored at the evidentiary hearing. *Walls*, 926 So. 2d at 1164-69. This Court then addressed several subclaims of ineffectiveness that were summarily denied. *Id.* at 1169-73. The Court rejected the claim asserting that Walls' intellectual disability precluded a death sentence based on the statute enacted in 2001. *Id.* at 1173-74 (citing § 921.137, Fla. Stat. (2005)). This Court determined the statute did not apply to Walls because it was enacted after his death sentence was imposed. *Id.* at 1174.

This Court directed Walls to file a motion under Florida Rule of Criminal Procedure 3.203 raising the issue of intellectual disability. *Walls*, 926 So. 2d at 1174. During the pendency of the postconviction appeal, Walls had filed a motion to relinquish the case to the trial court to file a Rule 3.203 motion raising a claim of intellectual disability under *Atkins v. Virginia*, 536 U.S. 304 (2002). On March 9, 2005, this Court denied the motion to relinquish without prejudice

ineffective assistance of trial counsel claims.

for him to file a Rule 3.203 motion raising the *Atkins* claim in the trial court within 60 days of the court's mandate.

Walls also filed a state habeas petition raising three claims. *Walls v. McDonough*, 926 So. 2d 1156 (Fla. 2006) (SC2003-1955). Claim 1 asserted that Florida's death penalty statute violated the Sixth Amendment right-to-a-jury-trial because the statute did not require specific jury findings on the aggravating factors in violation of *Ring v. Arizona*, 536 U.S. 584 (2002). Claim 2 asserted a violation of due process because the aggravating factors were not alleged in the indictment in violation of *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Claim 3 raised five subclaims of the ineffective assistance of appellate counsel for not raising the following issues in the direct appeal: (1) the prosecutor's comments in the guilt and penalty phase of the retrial as fundamental error; (2) not being able to present the testimony of the three mental health experts, who had found him incompetent before trial, in violation of *Ake v. Oklahoma*, 470 U.S. 68 (1983), as fundamental error; (3) the resentencing court adopting the prosecution's proposed sentencing memorandum in violation of *Patterson v. State*, 513 So. 2d 1257 (1987); (4) the resentencing court's consideration of victim impact statements violated *Payne v.*

Tennessee, 501 U.S. 808 (1991); and (5) the propriety of the penalty phase jury instructions on several of the aggravating factors, as fundamental error. This Court denied the initial state habeas petition. *Walls*, 926 So. 2d at 1174-81.

Federal habeas litigation

On May 26, 2006, Walls, represented by Harry Brody and Jeff Hazen, filed a § 2254 petition in federal district court. *Walls v. Sec’y, Fla. Dep’t of Corr.*, 3:06-cv-00237 (Doc. #1). The petition raised 12 grounds for relief. On July 12, 2006, Walls moved to stay the federal habeas proceedings to exhaust his intellectual disability claim based on *Atkins v. Virginia*, 536 U.S. 304 (2002), in state court, which the district court granted. (Docs. #11, #12). On April 21, 2009, federal habeas counsel notified the federal district court that they did **not** intend to amend the pending habeas petition with the *Atkins* claim. (Doc. #18). On June 29, 2009, the Secretary filed an answer to the petition. (Doc. #23). The Secretary also electronically filed the habeas record. (Doc. #24). On August 29, 2009, Walls filed a reply. (Doc. #32).

On September 30, 2009, the district court denied habeas relief. *Walls v. McNeil*, 3:06-cv-00237, 2009 WL 3187066 (N.D. Fla. Sept. 30, 2009). On November 16, 2009, the district court granted a certificate of appealability on two issues: (1) the claim of ineffective assistance of trial counsel for not moving to redact the reference to a possible rape in Walls' recorded confession; and (2) whether the prosecution's use of a peremptory challenge to exclude prospective juror Garvin, a 24-year-old black man, violated *Batson v. Kentucky*, 476 U.S. 79 (1986). *Walls v. McNeil*, 3:06-cv-00237, 2009 WL 3822951, *1 (N.D. Fla. Nov. 16, 2009).

On appeal, the Eleventh Circuit affirmed the denial of federal habeas relief. *Walls v. Buss*, 658 F.3d 1274 (11th Cir. 2011). The Eleventh Circuit agreed that trial counsel's performance was not deficient for failing to move to redact reference to rape in the confession but did not reach the prejudice prong of *Strickland*. *Walls*, 658 F.3d at 1277-80. The Eleventh Circuit also rejected the *Batson* claim. *Id.* at 1280-82.⁶ The Eleventh Circuit agreed with this Court

⁶ The jury consisted of four black jurors and eight white jurors. *Walls v. State*, 641 So. 2d 381, 386, n.2 (Fla. 1994). The presence of other members of the same racial group on the final jury, while not necessarily determinative, often rebuts any claim of intentional

that the prospective juror had expressed “discomfort” with the death penalty, while also noting that the prospective juror’s response on the death penalty lacked clarity. *Id.* at 1280 & n.7. The Eleventh Circuit observed that the defendant and both victims were white. *Id.* at n.6. The panel noted that United States Supreme Court precedent allows prosecutors to remove prospective jurors “who are not ardent supporters of the death penalty.” *Id.* at 1282 (citing *Bowles v. Sec’y for Dep’t of Corr.*, 608 F.3d 1313, 1317 (11th Cir. 2010)).

On December 23, 2011, Walls filed a petition for writ of certiorari in the United States Supreme Court raising one question of whether the Eleventh Circuit properly affirmed the denial of habeas relief on the claim of ineffective assistance of trial counsel for not filing a motion to redact the references to a possible rape in Walls’ confession. On March 12, 2012, Respondent filed a brief in opposition. On April 30, 2012, the United States Supreme Court denied review. *Walls v. Tucker*, 566 U.S. 976 (2012) (No. 11–8965).

On February 10, 2016, the Capital Habeas Unit of the Office of the Federal Public Defender of the Northern District of Florida (CHU-

discrimination on the part of the prosecutor, if the prosecutor did not seek to remove those jurors.

N) was appointed as federal habeas counsel by the district court. (Doc. #59).

On March 29, 2023, Walls, represented by CHU-N, filed an application for authorization to file a successive federal habeas petition in the Eleventh Circuit, seeking to raise the *Atkins* claim that had been explicitly abandoned during the initial federal habeas proceedings. *In re: Frank Walls*, No. 23-10982-P. On April 13, 2023, by order, the Eleventh Circuit denied the application. *In re Walls*, No. 23-10982-P, 2023 WL 3745103 (11th Cir. Apr. 13, 2023). The Eleventh Circuit relied on their precedent of *In re Henry*, 757 F.3d 1151 (11th Cir. 2014), which had held that *Hall v. Florida*, 572 U.S. 701 (2014), was not retroactive for purposes of § 2244(b)(2)(A).

On June 26, 2023, Walls, represented by CHU-N, filed an original habeas petition in the United States Supreme Court raising a claim that *Hall v. Florida*, 572 U.S. 701 (2014), is retroactive under 28 U.S.C. § 2244(b)(2)(A). On August 7, 2023, the State filed a response to the original petition pointing out *Hall v. Florida* did not apply at all to Walls because his IQ scores as a minor were in the normal range. Walls had IQ scores of 88, 102 at age 12 and 101 at

age 14. On October 2, 2023, the Supreme Court denied the original habeas petition. *In re Walls*, 144 S. Ct. 253 (2023) (No. 22-7897).

Successive state postconviction litigation on intellectual disability

On June 23, 2006, Walls, represented by registry counsel Harry Brody, filed a first successive postconviction motion under Florida Rule of Criminal Procedure 3.203, raising a claim of intellectual disability based on *Atkins v. Virginia*, 536 U.S. 304 (2002).

On July 10, 2007, the state postconviction court held an evidentiary hearing on the *Atkins* claim. At the evidentiary hearing both the defense mental health expert, Dr. Jethro Toomer, and the State's mental health expert, Dr. Harry McClaren, testified Walls did not meet the statutory criteria for intellectual disability. Walls did not establish the first prong of the statute because his IQ score was not under 70. The defense expert also testified regarding Walls' IQ scores as a minor. Walls' full scale IQ score in 1980, when he was 12 years old, was 102 and his IQ score in 1982, when he was 14 years old, was 101. (1st Succ ROA at 159-160; 193).

This Court, in an unpublished decision, affirmed the denial of the Rule 3.203 motion raising the *Atkins* intellectual disability claim.

Walls v. State, 3 So. 3d 1248 (Fla. 2008) (SC2007–2007). This Court concluded that the trial court’s finding that Walls was not intellectually disabled was “supported by competent, substantial evidence.”

On May 26, 2015, Walls, represented by registry counsel Brody, filed a first successive postconviction motion, raising an intellectual disability claim again, based on the new decision in *Hall v. Florida*, 572 U.S. 701 (2014).⁷ The State filed an answer on June 12, 2015, asserting, in part, that Walls was not entitled to another evidentiary hearing on his intellectual disability claim, regardless of *Hall*, due to his normal IQ scores as a minor. The Court held a *Huff* hearing on July 6, 2015. On July 10, 2015, the postconviction court summarily denied the renewed *Atkins* claim relying on Walls’ IQ scores as a juvenile of 102 and 101.

Walls, represented by Baya Harrison appearing on behalf of CCRC-M, appealed the summary denial of his renewed intellectual disability claim, based on *Hall*, to this Court. *Walls v. State*, 213 So.

⁷ On August 25, 2015, the postconviction court allowed registry counsel Brody to withdraw and ultimately appointed Capital Collateral Regional Counsel – Middle (CCRC-M) as substitute state postconviction counsel.

3d 340 (Fla. 2016) (SC2015-1449). The Court held that *Hall* was retroactive under the state law test for retroactivity of *Witt v. State*, 387 So. 2d 922 (Fla.1980). *Walls*, 213 So. 3d at 346. The Court rejected the State’s reliance on the juvenile IQ scores alone, reasoning that “no single factor” is dispositive. *Id.* at 347 (quoting *Hall*, 572 U.S. at 723). This Court remanded the case to the lower court to conduct a full evidentiary hearing on the intellectual disability claim. *Walls*, 213 So. 3d at 347. Justice Canady dissented noting *Walls* had IQ scores of 102 (at age 12) and 101 (at age 14) as a minor. *Walls*, 213 So. 3d at 349-52 (Canady, J., dissenting).

The State filed a petition for writ of certiorari in the United States Supreme Court raising a question of whether *Hall v. Florida*, 572 U.S. 701 (2014) applied in light of *Walls*’ IQ scores as a minor showing his IQ was normal. On October 2, 2017, the United States Supreme Court denied review. *Florida v. Walls*, 583 U.S. 906 (2017) (No. 16–1518).

On June 29, 2021, during COVID, the postconviction court held a six-day evidentiary hearing on the renewed intellectual disability claim. The defense presented the expert testimony of psychologist Mark Cunningham; neuropsychologist Daniel Martell;

neuropsychologist Karen Hagerott; neuropsychologist Robert Ouaou; neuropsychologist Barry Crown; and psychiatrist Mark Mills, M.D. The defense also presented the testimony of Walls' defense trial counsel, James Sewell. The State presented the expert testimony of psychologist Gregory Prichard. After the second evidentiary hearing and extensive briefing, the postconviction court again denied the *Atkins* claim. The court denied the intellectual disability claim on two grounds: (1) that *Hall v. Florida* was not retroactive under the recent Florida Supreme Court precedent of *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020), and *Nixon v. State*, 327 So. 3d 780 (Fla. 2021); and (2) on the merits, Walls failed to prove that he was intellectually disabled under the statutory test for intellectual disability citing § 921.137, Fla. Stat. (2021).

Walls, represented by CCRC-M, appealed the denial of his *Atkins* claim to this Court. *Walls v. State*, 361 So. 3d 231 (Fla. 2023) (SC2022-0072). This Court, however, declined to reach the merits of the *Atkins* claim and simply affirmed the denial of relief on the basis that *Hall v. Florida* was not retroactive under current state law. *Walls*, 361 So. 3d at 233. During the time the intellectual disability claim was pending in the lower court on remand, this Court had overruled

its prior holding and held that *Hall v. Florida* did not apply retroactively to cases that were final before *Hall* had been decided in *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020). This Court reaffirmed its decision in *Phillips* rejecting several challenges to its reasoning, including a due process challenge in a footnote. *Id.* at 233-34 & n.5. The Court noted that it had also affirmed a lower court’s summary denial of an intellectual disability claim in *Thompson v. State*, 341 So. 3d 303, 305 (Fla. 2022), despite the fact that it had previously ordered a new evidentiary hearing be held. This Court concluded that Walls’ intellectual disability claim based on *Hall* failed “regardless of the evidence presented at his evidentiary hearing.” *Id.* at 234.

Walls then filed a petition for writ of certiorari in the United States Supreme Court raising two questions: (1) whether the Florida Supreme Court’s refusal to apply *Hall v. Florida*, 572 U.S. 701 (2014), retroactively to Walls violated *Teague v. Lane*, 489 U.S. 288 (1989); and (2) whether the Florida Supreme Court receding from its prior decision that *Hall v. Florida* was retroactive in *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020), violated *Bouie v. City of Columbia*, 378 U.S. 347 (1964). The United States Supreme Court denied review on

October 2, 2023. *Walls v. Florida*, 144 S. Ct. 174 (2023) (No. 22-7866).

Successive state postconviction *Hurst* litigation

On January 10, 2017, while the intellectual disability claim raised in the first successive postconviction motion based on *Hall* was pending in state court, Walls, represented by Capital Collateral Regional Counsel (CCRC-M), filed a second successive postconviction motion in the state trial court asserting he was entitled to a new penalty phase based on *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). On January 19, 2017, the State filed an answer to the second successive postconviction motion asserting that *Hurst v. State* did not apply retroactively to Walls. On February 20, 2017, the state postconviction court summarily denied the second successive postconviction motion, concluding that *Hurst v. State* did not apply retroactively to Walls.

This Court affirmed the summary denial of *Hurst v. State* relief. *Walls v. State*, 238 So. 3d 96 (Fla. 2018) (SC2017-0959). The Court, relying on *Hitchcock v. State*, 226 So. 3d 216, 217 (Fla. 2017),

explained that *Hurst v. State* did not apply retroactively to Walls because his death sentence became final in 1995.

On June 19, 2018, Walls filed a petition for writ of certiorari in the United States Supreme Court raising three questions: (1) whether the Florida Supreme Court's partial retroactivity test violated the Eighth Amendment or Due Process; (2) whether the Florida Supreme Court's partial retroactivity test violates the Supremacy Clause in light of *Montgomery v. Louisiana*, 577 U.S. 190 (2016); and (3) whether the Florida Supreme Court's holding that any violation of *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), is harmless error, if the jury's recommendation of death was unanimous violates *Caldwell v. Mississippi*, 469 U.S. 879 (1984). On July 23, 2018, the State filed a brief in opposition. On October 1, 2018, the United States Supreme Court denied review. *Walls v. Florida*, 586 U.S. 864 (2018) (No. 17–9510).

Current warrant litigation in the circuit court

On November 18, 2025, Governor DeSantis signed a warrant for Walls' execution scheduling his execution for Thursday, December 18, 2025 at 6:00 p.m. On November 25, 2025, Walls, represented by

CCRC-M, filed a third successive postconviction motion raising three claims and a motion for stay of the execution. (3rd Succ. PC ROA at 170-236; 237-240). On November 26, 2025, the State filed an answer to the third successive postconviction motion asserting all three claims should be summarily denied. (3rd Succ. PC ROA at 246-272). On December 1, 2025, the State filed a response to the motion to stay. *Id.* at 273-278. On December 1, 2025, the postconviction court conducted a *Huff* hearing regarding the claims raised in the successive postconviction motion and in the afternoon, entered an written order denying an evidentiary hearing. *Id.* at 282-305; 279-281. On Wednesday, December 3, 2025, the circuit court entered a final order summarily denying the third successive postconviction motion and denying the motion to stay the execution. (3rd Succ. PC ROA at 306-338).

This appeal follows.

SUMMARY OF ARGUMENT

ISSUE I:

Walls asserts the postconviction court improperly summarily denied his claim of intellectual disability based on *Atkins v. Virginia*, 536 U.S. 304 (2002), and his request for a third evidentiary hearing based on an assertion that *Hall v. Florida*, 572 U.S. 701 (2014), should be applied retroactively to him. The *Atkins* intellectual disability claim is conclusively rebutted by the record, procedurally barred, and meritless under this Court's controlling precedent. The *Atkins* claim is conclusively rebutted by the record of the six-day evidentiary hearing. The *Atkins* claim is also procedurally barred as it was previously raised, and rejected by, this Court following the second evidentiary hearing. Alternatively, the *Atkins* claim is totally meritless. Walls is not intellectually disabled. The average of his three IQ scores as minor is 97, which is in the normal range of intellectual functioning and the average of his two adult IQ scores is 73, which is not significantly subaverage intellectual functioning. Walls fails two of the three prongs of the statutory test for intellectual disability.

The subclaim based on *Hall v. Florida*, 572 U.S. 701 (2014), is procedurally barred. *Hall* does not apply retroactively to Walls, as this Court has previously held. And, regardless of the retroactivity of *Hall*, Walls already received benefit of *Hall* because he was granted a second evidentiary hearing on his intellectually disability claim. Walls was never entitled to a second evidentiary hearing based on *Hall* due to his IQ scores as a minor and he certainly is not entitled to a third evidentiary hearing. The postconviction court properly summarily denied the *Atkins* intellectual disability claim.

ISSUE II:

Walls also asserts the postconviction court improperly summarily denied the claim seeking to expand *Roper v. Simmons*, 543 U.S. 551 (2005), to include defendants under 22 years of age. He relies on the 2021 manual from the American Association on Intellectual and Developmental Disabilities and on a declaration from Dr. Laurence Steinberg, a developmental psychologist, who specializes in adolescence, to assert a new consensus among neuroscientists has emerged that brain development continues until a person is at least 21 years old, to argue that the current science

does not support the bright line rule drawn at age 18 by the *Roper* Court. But the expansion-of-*Roper* claim is untimely, procedurally barred, and meritless. The expansion-of-*Roper* claim is untimely and falls outside the exception for newly discovered evidence. The *Roper* claim is also procedurally barred because it should have been raised in a successive postconviction motion shortly after *Roper* was decided in 2005, not twenty years later during the warrant litigation. On the merits, as this Court has repeatedly held, that it lacks the authority to expand *Roper* beyond minors to include adults under the Eighth Amendment conformity clause of the state constitution. The postconviction court properly summarily denied the expansion-of-*Roper* claim.

ISSUE III:

Walls additionally asserts that his execution after spending over 37 years on death row, in what he characterizes as solitary confinement, violates the Eighth Amendment prohibition on cruel and unusual punishment. Such claims are often referred to as *Lackey* claims because they stem from a dissenting opinion from the denial of certiorari in *Lackey v. Texas*, 514 U.S. 1045 (1995). *Lackey*

claims, however, are “facially invalid” under this Court’s longstanding precedent. This Court has also rejected claims that conditions on Florida’s death row amount to solitary confinement. Walls may not rely on his intellectual disability as an aspect of this claim because he is not intellectually disabled as definitively established at the second evidentiary hearing. The postconviction court properly summarily denied the *Lackey* claim.

ISSUE IV:

Walls asserts the postconviction court abused its discretion in denying the motion to stay the execution. The circuit court properly denied the stay because trial courts are not authorized to enter stays under the applicable statute. Alternatively, the postconviction court did not abuse its discretion by denying a stay because there were no substantial grounds raised in third successive postconviction motion that warranted a stay. And there were no due process concerns with denying the stay because Walls had both notice and an opportunity to be heard regarding his remaining claims. The postconviction court did not abuse its discretion in denying the motion to stay the execution.

ARGUMENT

ISSUE I

The Postconviction Court Properly Summarily Denied the Claim of Intellectual Disability Based on *Atkins v. Virginia*, 536 U.S. 304 (2002), and *Hall v. Florida*, 572 U.S. 701 (2014).

Walls asserts the postconviction court improperly summarily denied his claim of intellectual disability based on *Atkins v. Virginia*, 536 U.S. 304 (2002), and his request for a third evidentiary hearing based on an assertion that *Hall v. Florida*, 572 U.S. 701 (2014), should be applied retroactively to him. The *Atkins* intellectual disability claim is conclusively rebutted by the record, procedurally barred, and meritless under this Court's controlling precedent. The *Atkins* claim is conclusively rebutted by the record of the six-day evidentiary hearing. The *Atkins* claim is also procedurally barred as it was previously raised, and rejected by, this Court following the second evidentiary hearing. Alternatively, the *Atkins* claim is totally meritless. Walls is not intellectually disabled. The average of his three IQ scores as minor is 97, which is in the normal range of intellectual functioning and the average of his two adult IQ scores is 73, which

is not significantly subaverage intellectual functioning. Walls fails two of the three prongs of the statutory test for intellectual disability.

The subclaim based on *Hall v. Florida*, 572 U.S. 701 (2014), is procedurally barred. *Hall* does not apply retroactively to Walls, as this Court has previously held. And, regardless of the retroactivity of *Hall*, Walls already received benefit of *Hall* because he was granted a second evidentiary hearing on his intellectually disability claim. Walls was never entitled to a second evidentiary hearing based on *Hall* due to his IQ scores as a minor and he certainly is not entitled to a third evidentiary hearing. The postconviction court properly summarily denied the *Atkins* intellectual disability claim.

The postconviction court's ruling

The postconviction court summarily denied the intellectual disability claim. (3rd Succ. PC ROA at 310-312). The postconviction court concluded the claim was “procedurally barred and meritless.” *Id.* at 311. The circuit court explained that it had previously rejected the intellectual disability claim “on the merits,” following the 2021 evidentiary hearing, and therefore, Walls was “procedurally barred” from bringing the same intellectual disability claim again. The lower

court rejected the argument that procedural bars should not be applied to *Atkins* claims, observing that the Florida Supreme Court “regularly applied procedural bars to exemption-from-execution claims.” *Id.* at 311-312 (quoting *Pittman v. State*, 417 So. 3d 287, 292 (Fla. 2025), *cert. denied*, No. 25-5605, 2025 WL 2649015 (U.S. Sept. 16, 2025)).

Alternatively, the circuit court concluded the *Atkins* claim was meritless because Florida courts lack the authority to extend *Atkins* to individuals who are not intellectually disabled. *Id.* at 312 (quoting *Gudinas v. State*, 412 So. 3d 701, 713 (Fla.), *cert. denied*, 145 S. Ct. 2833 (2025)); *Zack v. State*, 371 So. 3d 335, 348 (Fla.), *cert. denied*, 144 S. Ct. 274 (2023).

Preservation

To preserve an issue for appeal, a party must raise the same specific issue below that is being raised on appeal and obtain a ruling from the lower court. *Sparre v. State*, 289 So. 3d 839, 848 (Fla. 2019) (citing *Rhodes v. State*, 986 So. 2d 501, 513 (Fla. 2008)); *Figueroa-Sanabria*, 366 So. 3d 1035, 1049 (Fla. 2023) (“The argument on appeal must be the specific contention asserted as legal ground for

the objection, exception, or motion below” quoting *Steinhorst v. State*, 412 So. 2d 332, 338 (Fla. 1982)); § 924.051(1)(b), Fla. Stat. (2024) (“Preserved means that an issue, legal argument, or objection to evidence was timely raised before, and ruled on by, the trial court, and that the issue, legal argument, or objection to evidence was sufficiently precise that it fairly apprised the trial court of the relief sought and the grounds therefor.”).

And the party must obtain a ruling from the lower court because “without a ruling or decision, there is nothing to review.” *Ritchie v. State*, 344 So. 3d 369, 378 (Fla. 2022) (noting the Court’s precedent requires a party to obtain a ruling on any objection or motion quoting *Rhodes v. State*, 986 So. 2d 501, 513 (Fla. 2008)).

Walls filed a third successive postconviction motion raising these same *Atkins* and *Hall* claims below and properly obtained a ruling from the postconviction court. So, both the *Atkins* claim and the *Hall* claim are properly preserved for review.

Standard of review

The standard of review for the summary denial of a successive postconviction motion is de novo. *Windom v. State*, 416 So. 3d 1140,

1146 (Fla. 2025) (stating, in an active warrant case, that this Court reviews de novo the postconviction court’s summary denial of a successive postconviction motion under Florida Rule of Criminal Procedure 3.851), *cert. denied*, No. 25-5440, 2025 WL 2460118 (U.S. Aug. 27, 2025). This Court will affirm the summary denial of successive postconviction claims that are “procedurally barred, untimely, legally insufficient, or refuted by the record.” *Windom*, 416 So. 3d at 1146 (quoting *Hutchinson v. State*, 416 So. 3d 273, 278-79 (Fla. Apr. 25, 2025), *cert. denied*, 145 S. Ct. 1980 (2025)).⁸

Conclusively rebutted by the record

Postconviction claims that are conclusively rebutted by the existing record are required to be summarily denied. *Davis v. State*, 383 So. 3d 743, 759 (Fla. 2024), *cert. denied*, 145 S. Ct. 248 (2024); Fla. R. Crim. P. 3.851(f)(5)(B) (providing: “If the motion, files, and records in the case conclusively show that the movant is entitled to no relief, the motion may be denied without an evidentiary hearing”).

⁸ In the interest of brevity the State will not repeat the same standard of review for the other issues in which the claims that were also summarily denied. ISSUES I, II, and III are all reviewed de novo.

In 2021, the postconviction court held a six-day evidentiary hearing on the intellectual disability claim. (2022 Succ. PCR at 298-1279).⁹ The 981-page transcript of the second evidentiary hearing rebuts any claim of intellectual disability. The existing record conclusively rebuts both the substantive *Atkins* claim and any possible procedural claim based on *Hall v. Florida*, 572 U.S. 701 (2014). The intellectual disability claim is conclusively rebutted by the record, which ends the matter.

Procedurally barred

The claim of intellectual disability is also procedurally barred. The *Atkins* claim was previously raised and rejected by this Court. *Walls v. State*, 361 So. 3d 231 (Fla. 2023) (affirming the denial of relief on the *Atkins* claim, after the second evidentiary hearing, on the basis of the nonretroactivity of *Hall v. Florida*, 572 U.S. 701 (2014)). Claims that have been raised previously may not be reraised in the warrant litigation. *Barwick v. State*, 361 So. 3d 785, 792-93 (Fla. 2023) (concluding a claim that had been raised in the initial postconviction

⁹ The record cites are to the record on appeal in this Court in *Walls v. State*, SC2022-0072.

proceedings and in an earlier state habeas petition was procedurally barred from being relitigated a third time in the warrant litigation), *cert. denied*, 143 S. Ct. 2452 (2023). Walls may not raise the same intellectual disability claim yet again. The signing of a death warrant does not wipe away the prior trial court rulings or holdings from this Court. The *Atkins* claim is procedurally barred.

Claims based on categorical exemptions, like other postconviction claims, are subject to bars such as nonretroactivity, time bars, and procedural bars. This Court has repeatedly rejected the argument that categorical exemption claims, including *Atkins* claims, are not subject to procedural bars. *Pittman v. State*, 417 So. 3d 287, 292 (Fla. 2025) (rejecting the argument that procedural bars should not apply to intellectual disability claims, noting that the court has “regularly applied procedural bars to exemption-from-execution claims” citing *Dillbeck v. State*, 357 So. 3d 94, 100 (Fla. 2023); *Barwick v. State*, 361 So. 3d 785, 795 (Fla. 2023); *Carroll v. State*, 114 So. 3d 883, 886 (Fla. 2013)), *cert. denied*, No. 25-5605, 2025 WL 2649015 (U.S. Sept. 16, 2025); *Smithers v. State*, No. SC2025-1507, 2025 WL 2837399, at *4 (Fla. Oct. 7, 2025) (affirming the denial of a categorical exemption claim based on being elderly as

both untimely and procedurally barred), *cert. denied*, No. 25-5829, 2025 WL 2908776 (U.S. Oct. 14, 2025); *cf. Ford v. State*, 402 So. 3d 973, 978 (Fla. 2025) (rejecting a claim that the application of any procedural bars in warrant litigation amounts to a denial of the right of access to courts), *cert. denied*, 145 S. Ct. 1161 (2025). Intellectual disability claims are subject to retroactivity tests, time bars, and procedural bars.

This Court’s position that categorical exemption claims are not immune from bars and defaults is consistent with the Eleventh Circuit’s position. *Pittman*, 417 So. 3d at 292 (citing *In re Bowles*, 935 F.3d 1210 (11th Cir. 2019)). It is also consistent with the United States Supreme Court’s position. *Cf. Jones v. Hendrix*, 599 U.S. 465, 487 (2023) (explaining that the Eighth Amendment “expresses a substantive constraint on the kinds of punishments governments may inflict” but “creates no freestanding entitlement to a second or successive round of postconviction review.”).

The *Atkins* claim, despite involving a categorical exemption, is procedurally barred.

Merits

Alternatively, the *Atkins* claim is meritless. Walls is not intellectually disabled under the statutory definition of intellectual disability. The average of Walls' three IQ scores as a minor is 97 and the average of his two IQ scores as an adult is 73. Walls is not now intellectually disabled and never was.

Statutory Test for Intellectual Disability

Florida has a statutory definition of intellectual disability for capital cases. The "Imposition of the death sentence upon an intellectually disabled defendant prohibited" statute, section 921.137(1), Florida Statutes (2024), provides:

As used in this section, the term "intellectually disabled" or "intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities. The term "adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The Agency for Persons with Disabilities

shall adopt rules to specify the standardized intelligence tests as provided in this subsection.

§ 921.137(1), Fla. Stat. (2024).

Florida's statutory definition of intellectual disability was derived from the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), which was the standard clinical definition in 2001, when the statute was enacted by the Florida legislature, before *Atkins* had even been decided. *Atkins*, 536 U.S. at 308 n.3 (reciting the definition of intellectual disability in the DSM-IV published in 2000).

If a capital defendant fails to prove any one of the three prongs of the statutory test for intellectual disability, "the defendant will not be found to be intellectually disabled." *Franqui v. State*, 301 So. 3d 152, 154 (Fla. 2020) (quoting *Salazar v. State*, 188 So. 3d 799, 812 (Fla. 2016)); *Phillips v. State*, 299 So. 3d 1013, 1024 (Fla. 2020) ("As we have repeatedly stated, if a defendant fails to prove that he or she meets any one of the three prongs of the intellectual disability standard, he or she will not be found to be intellectually disabled" citing *Jones v. State*, 231 So. 3d 374, 376 (Fla. 2017); *Salazar v. State*, 188 So. 3d 799, 812 (Fla. 2016)).

Walls fails on two of the three prongs of the statutory test, as the lower court previously found following an extensive six-day evidentiary hearing. Walls is not intellectually disabled as defined by the applicable statute.

Prior Testimony and Findings

At the first evidentiary hearing in 2007, the record established that Walls failed the third prong of the statutory test for intellectual disability of onset of the disability as a minor, because his IQ scores as a minor were normal. *Walls v. State*, 213 So. 3d 340, 349-52 (Fla. 2016) (Canady, J., dissenting) (noting Walls had IQ scores of 102 at age 12 and 101 at age 14 and taking the position that no remand for a second evidentiary hearing was required because, regardless of any additional facts proven at a second hearing regarding his intellectual abilities, Walls was not intellectually disabled based on his IQ scores as a minor).

At the second evidentiary hearing in 2021, it was established that Walls' two IQ scores as an adult were 74 and 72. (2022 Succ. PCR at 350, 370, 419, 489, 535, 538, 563, 613, 910, 1043, 1096, 1152-53, 1197, 1203, 1238-39). And it was also established at the

second hearing that Walls' three IQ scores as a minor were 88, 102, and 101. (2022 Succ. PCR at 427, 506, 544, 554, 563, 773, 777, 782-83, 808-09, 854, 1043, 1089, 1202, 1252). So, the testimony established that Walls failed the first prong of the statutory test for intellectual disability of significant subaverage intellectual functioning as an adult and reestablished that Walls failed the third prong of onset of the disability as a minor.

The circuit court held a six-day evidentiary hearing on the renewed intellectual disability claim and concluded Walls failed both the first and second prong. (2022 Succ. PCR at 6262-72). The lower court observed that Walls "consistently obtained average IQ scores as a child." (2022 Succ. PCR 6275) (emphasis in original). The lower court found the State's expert, Dr. Prichard, to be the "most credible" on the matter. (2022 Succ. PCR 6272). Dr. Prichard diagnosed Walls with ADHD, conduct disorder, and antisocial personality disorder, but not with intellectual disability because he did not think Walls' adult IQ scores were valid. (2022 Succ. PCR 6271). The postconviction court's findings following the second evidentiary hearing, which the circuit court attached to the final order in the

current warrant litigation, negates any claim that Walls is intellectually disabled.

Walls was granted a second evidentiary hearing in state court to explore his *Atkins* claim but failed to establish his intellectual disability yet again. The *Atkins* claim is meritless.

Averaging Multiple IQ Scores

The issue of accounting for multiple IQ scores is currently pending in the United States Supreme Court. *Hamm v. Smith*, No. 24-872; *Moore v. Texas*, 581 U.S. 1, 34 n.1 (2017) (Roberts, C.J., dissenting) (noting *Hall* reached “no holding” regarding intellectual disability claims involving multiple IQ scores, and observing that *Hall* “cannot be read to call into question the approach of States that would not treat a single IQ score as dispositive” when there are additional higher IQ scores).

While the *Hall* Court observed, the “analysis of multiple IQ scores jointly is a complicated endeavor,” the majority did not explain why averaging the valid multiple IQ scores was not mathematically sound. *Hall*, 572 U.S. at 714 (citing Schneider, *Principles of Assessment of Aptitude and Achievement*, in *The Oxford Handbook of*

Child Psychological Assessment 286, 289–291, 318 (D. Saklofske, C. Reynolds, V. Schwean, eds. 2013)). Schneider has a complicated formula for accounting for multiple IQ scores called a “composite” score. But he acknowledges that an average is a “rough approximation of a composite score” and only advocates the use of a “composite” score in cases of low and high scorers. *Principles* at 290.

Mathematicians are the true experts when it comes to numbers and how numbers should be considered collectively, not psychologists. The most common method for considering scores collectively that are measuring the same phenomena is a mean or average. Averaging multiple scores is standard mathematical practice. *Hall*, 572 U.S. at 742 (Alito, J., dissenting) (noting the “well-accepted view is that multiple consistent scores establish a much higher degree of confidence”). Indeed, part of the *Hall* Court’s reason for mandating the use of the statistical error of measurement (SEM) to adjust a single IQ score was that the SEM was commonly employed in other contexts by testing professionals. *Hall*, 572 U.S. at 722 (observing that the “SEM is not a concept peculiar to the psychiatric profession and IQ tests,” rather, it “is a measure that is recognized and relied upon by those who create and devise tests of all sorts”).

The use of means and medians is also standard mathematical practice and should be used with multiple IQ scores as well. *See, e.g., Clemons v. Comm’r, Ala. Dep’t of Corr.*, 967 F.3d 1231, 1249 (11th Cir. 2020) (using an average of four IQ scores to determine that the defendant’s IQ was 70.25 and denying the *Atkins* claim), *cert. denied, Clemons v. Dunn*, 141 S. Ct. 2722 (2021) (No 20-1197). Averaging all the valid IQ scores is a perfectly sound method of dealing with multiple IQ scores and a more accurate measure of true IQ than a single IQ score adjusted by the SEM and often adjusted by an overinflated SEM of five points.

Using averages, Walls fails both the first prong of subaverage intellectual functioning and the third prong of onset as a minor under Florida’s statutory test for intellectual disability. § 921.173, Fla. Stat. (2024). In 1991, after the murders, when Walls was 24 years old, he obtained an IQ score of 74. In 2006, when he was 39 years old, he obtained an IQ score of 72. So, his two adult IQ scores were 74 and 72, which is an average of 73. The average of Walls’ adult IQ scores is 73, which is not “significantly subaverage general intellectual functioning.”

If an average of multiple IQ scores is available, no adjustment for the statistical error of measurement (SEM) is required. Adjusting for the SEM is only necessary with single IQ scores because both the SEM and averaging are employed for the same purpose of accounting for numerical anomalies and to better reflect the actual or true IQ score. So, use of both when there are multiple IQ scores is not necessary or warranted. Adjusting an average using the SEM is mathematically unsound. Walls' average IQ of 73 as an adult should not then be adjusted using a SEM.

Walls had three IQ scores as a minor: 88, 102, and 101. The average of these three childhood scores is 97.¹⁰ An IQ score of 97 reflects normal intelligence. And, the third prong, when it involves IQ scores from childhood, is the most objective and reliable of the three prongs, because malingering is rarely an issue with that prong. *Commonwealth v. Hackett*, 99 A.3d 11, 33 (Penn. 2014) (noting

¹⁰ Walls actually had four IQ tests as a minor. When he was seven years old, Walls was tested for the second time but no numerical score was recorded for that particular IQ test, only a notation was made in his records that his IQ was "normal." Because there is no actual number available for that test, only the three IQ scores where numerical scores are available were used to calculate his average IQ as a minor. But that additional IQ test corroborates that Walls' IQ was normal in childhood.

capital defendants have a “powerful incentive to malingering and to slant evidence” after *Atkins*); *Atkins*, 536 U.S. at 353 (Scalia, J., dissenting) (observing that a capital defendant who feigns intellectual disability “risks nothing at all.”). Walls’ average IQ score of 97 as a minor completely negates his *Atkins* claim.¹¹

Walls is not intellectually disabled now as shown by the average of his IQ scores as an adult and never was, as shown by the average of his IQ scores as a minor.

Hall v. Florida Does Not Apply

Walls insists that *Hall v. Florida*, 572 U.S. 701 (2014), applies to him, despite being granted two prior evidentiary hearings on his intellectual disability claim, at which he failed to prove his *Atkins* claim. IB at 5-11. Walls boldly sought a third evidentiary hearing based on *Hall*, despite the circuit court having conducted a six-day

¹¹ Malingering was an issue in this case regarding Walls’ two adult IQ scores. The postconviction court in 2021, following the evidentiary hearing, concluded that Walls “intentionally underperformed” on the 1991 IQ test and the 2006 IQ test, both of which were administered to him after he had been convicted of capital murder, when he had a “powerful” incentive to underperform.

evidentiary hearing on the intellectual disability claim in 2021. (3rd succ. PC ROA at 172-73).

First, any claim based on *Hall* is procedurally barred twice over. The *Hall* claim is procedurally barred by the law-of-the-case doctrine because it was already addressed by this Court. *Walls v. State*, 361 So. 3d 231 (Fla. 2023). See *Fla. Dep't of Transp. v. Juliano*, 801 So. 2d 101, 105 (Fla. 2001). And it is also procedurally barred because Walls already received a second evidentiary hearing in 2021 based on *Hall*. A defendant may not reraise the same claim ad infinitum and certainly not after he was granted the relief he sought of having a second evidentiary hearing regarding his intellectual disability claim. *Pittman v. State*, 417 So. 3d 287, 292 (Fla. 2025) (“because Pittman has already raised his intellectual disability claim, it is procedurally barred”), *cert. denied*, No. 25-5605, 2025 WL 2649015 (U.S. Sept. 16, 2025); *Barwick v. State*, 361 So. 3d 785, 792-93 (Fla. 2023) (concluding a claim that had been raised twice before was procedurally barred from being raised a third time in the warrant litigation). Walls may not raise the same intellectual disability claim yet again, that was extensively litigated both factually in a six-day hearing and legally by way of expanded briefing in the lower court. It

is quite unusual to have a nearly 1000-page record on appeal solely for one postconviction claim.

Second, *Hall* does not apply retroactively to Walls, as this Court has already held. *Walls v. State*, 361 So. 3d 231 (Fla. 2023). This Court, following the second evidentiary hearing, relying on its decision in *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020), held that *Hall* did not apply retroactively to Walls. *Walls*, 361 So. 3d at 233. *Hall* does not apply to Walls because Walls' death sentence was final in January of 1995, decades before *Hall* was decided in 2014. *Id.* This Court rejected the argument that *Phillips* was wrongly decided as part of that appeal. *Id.* at 233-34 & n. 4. And this Court also held that applying *Phillips* to Walls was not a due process violation as part of that appeal. *Id.* at 234, n.5. This Court observed that federal and state courts alike have also concluded that *Hall* is not retroactive. *Id.* at n.5. This Court has repeatedly held that *Hall* is not retroactive since its decision in *Phillips* in 2020 and has also rejected numerous challenges to its holding in *Phillips*, including in recent warrant cases. *Pittman*, 417 So. 3d at 292 (rejecting an argument that *Phillips* was wrongly decided citing *Foster v. State*, 395 So. 3d 127, 130 (Fla. 2024)).

Walls asserts that a court receding from its precedent, as this Court did in *Phillips*, violates equal protection. But the United States Supreme Court held, over a century ago, that a state appellate court receding from its prior precedent does not violate equal protection. *Fid. & Columbia Tr. Co. v. City of Louisville*, 245 U.S. 54, 60 (1917). The Court explained an appellate court is “free to depart” from their precedents, if on further reflection it thinks them wrong. *Id.* at 60. Often when an appellate court recedes from its prior precedent, there is a group of litigants who would have benefitted from the old law but that lose that benefit under the new law. But no court has ever held that equal protection prohibits an appellate court from receding from its prior decisions and opposing counsel certainly does not cite any such case.

And Walls is not in a strong position to assert an equal protection violation regarding *Phillips* anyway, because he received a second evidentiary hearing on his intellectual disability claim and a merits ruling from the trial court on the matter. It was only his appellate review by this Court that *Phillips* affected. And given that the lower court made factual findings on two of the three prongs of the statute and made a credibility determination, finding the State’s

expert more credible, *Walls* was highly unlikely to prevail on appeal regardless of *Hall*. Under the highly deferential standard of review that this Court employs for factual findings and credibility determinations made by trial courts, *Walls* would not have prevailed on appeal. *Sheppard v. State*, 338 So. 3d 803, 825 (Fla. 2022) (noting this Court reviews findings of fact and credibility determinations for competent, substantial evidence). If this Court had reached the merits of the intellectual disability claim, it surely would have accepted the lower court's findings regarding both prongs and affirmed the denial of the *Atkins* claim. So, in the end, *Phillips* cost *Walls* little to nothing.

Regardless of the retroactivity of *Hall*, *Hall* does not apply to *Walls* because *Hall* does not apply to any capital defendant whose IQ scores as a minor definitively establish that they are not intellectually disabled. *Hall* did not involve the third prong. But *Walls*' case does involve the third prong. As Justice Canady noted, the onset prong was not at issue in *Hall*. *Walls v. State*, 213 So. 3d 340, 349 (Fla. 2016) (Canady, J. dissenting). Justice Canady's position was the trial court correctly denied *Walls*' intellectual disability claim because the evidence at the first evidentiary hearing "showed without dispute"

that Walls failed the third prong of the test for intellectual disability. *Id.* at 349. Walls was never entitled to a second evidentiary hearing on his intellectual disability claim based on *Hall* in the first place due to his IQ scores as a minor, but he, in fact, received one.

Furthermore, under *Hall*, all any capital defendant was entitled to was an evidentiary hearing on the claim of intellectual disability because the holding of *Hall* was limited to the remedy of a new evidentiary hearing. *Hall*, 572 U.S. at 724 (“the law requires that he have the opportunity to present evidence of his intellectual disability, including deficits in adaptive functioning”). Walls received the benefit of *Hall* in the sense of being granted another evidentiary hearing on his *Atkins* claim. Walls simply is not entitled to a third evidentiary hearing based on *Hall*, even if *Hall* applied retroactively to him, which it does not.

Contrary to opposing counsel’s assertion, *Hall* is procedural only. IB at 22. *Hall* addressed which capital defendants were entitled to an evidentiary hearing to prove their claim of intellectual disability. It is *Atkins* alone that is the substantive Eighth Amendment claim.

Any reliance *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. 190 (2016), is misplaced. IB at

23-24. The United States Supreme Court has clarified that *Montgomery*, which conflated substantive and procedural rules, will not be followed by the Court in the future for purposes of retroactivity determinations under *Teague v. Lane*, 489 U.S. 288 (1989). *Jones v. Mississippi*, 593 U.S. 98, 111 n.4 (2021). To be a substantive for purposes of *Teague* retroactivity, the case must alter the “range of conduct or the class of persons that the law punishes.” *Jones*, 593 U.S. at 111, n.4 (quoting *Welch v. United States*, 578 U. S. 120, 130-31 (2016)). On the other hand, a case is procedural and therefore not retroactive “if it regulates only the manner of determining the defendant's culpability.” *Id.* at n.4 (citing *Welch*, 578 U. S. at 129). It is *Welch* that is the current controlling precedent regarding retroactivity; not *Miller* or *Montgomery*. And under *Welch*, *Atkins* is substantive, while *Hall* is procedural. *Atkins* is retroactive under *Teague*; *Hall* is not.

Since this Court decided *Hall* did not apply retroactively to Walls in 2023, additional courts have held that *Hall* is not retroactive. *Walls v. State*, 361 So. 3d 231 (Fla. 2023), *cert. denied*, 144 S. Ct. 174 (2023). This Court in *Walls* rejected a claim that this Court’s decision in *Phillips* was “unexpected and indefensible” noting that “federal and

state courts alike have concluded that *Hall* is not retroactive.” *Walls*, 361 So. 3d at 234, n.5 (citing cases). Since then, additional courts have agreed with this Court that *Hall* should not be applied retroactively. *In re Walls*, No. 23-10982-P, 2023 WL 3745103, at *1, *3 (11th Cir. Apr. 13, 2023) (rejecting a claim that *Hall* is retroactive based on *Montgomery* and reaffirming the Eleventh Circuit’s decisions in *In re Henry*, 757 F.3d 1151 (11th Cir. 2014), and *Kilgore v. Sec’y, Fla. Dep’t of Corr.*, 805 F.3d 1301, 1315-16 (11th Cir. 2015), holding that *Hall* is not retroactive, because it is procedural, not substantive); *State v. Payne*, 721 S.W.3d 204, 209 (Tenn. 2025) (holding *Hall* does not apply retroactively). Indeed, the Eleventh Circuit reaffirmed its prior precedent rejecting the same argument based on *Montgomery* that *Walls* is currently making before this Court.

The *Atkins* intellectual disability claim is conclusively rebutted by the record of the two prior evidentiary hearings, procedurally barred, and meritless. *Walls* fails two of the three prongs required to show intellectual disability under Florida’s intellectual disability statute. *Walls* is not intellectually disabled and never was. The

postconviction court properly summarily denied both the *Atkins* claim and the *Hall* claim.

ISSUE II

The Postconviction Court Properly Summarily Denied the Claim Seeking to Expand *Roper v. Simmons*, 543 U.S. 551 (2005), to Include Adult Capital Defendants.

Walls also asserts the postconviction court improperly summarily denied the claim seeking to expand *Roper v. Simmons*, 543 U.S. 551 (2005), to include defendants under 22 years old. IB at 25. He relies on the 2021 manual from the American Association of Intellectual and Developmental Disabilities and on a declaration from Dr. Laurence Steinberg, a developmental psychologist, who specializes in adolescence, to assert a new consensus among neuroscientists has emerged that brain development continues until a person is at least 21 years old, to argue that the current science does not support the bright line rule drawn at the age of 18 by the *Roper* Court. But the expansion-of-*Roper* claim is untimely, procedurally barred, and meritless. The expansion-of-*Roper* claim is untimely and falls outside the exception for newly discovered

evidence. The *Roper* claim is also procedurally barred because it should have been raised in a successive postconviction motion shortly after *Roper* was decided in 2005, not twenty years later during the warrant litigation. On the merits, as this Court has repeatedly held, that it lacks the authority to expand *Roper* beyond minors to include adults under the Eighth Amendment conformity clause of the state constitution. The postconviction court properly summarily denied the expansion-of-*Roper* claim.

The postconviction court's ruling

The postconviction court summarily denied the claim seeking to expand *Roper v. Simmons*, 543 U.S. 551 (2005), to include 19-year-old capital defendants. (3rd Succ. PC ROA at 312-314). The circuit court found the expansion-of-*Roper* claim to be “untimely and without merit.” *Id.* at 313. The lower court determined that the claim was untimely explaining that “consensus opinions, articles, research, and the like do not constitute newly discovered evidence” *Id.* at 313 quoting *Barwick v. State*, 361 So. 3d 785, 793 (Fla. 2023), *cert. denied*, 143 S. Ct. 2452 (2023)). Because Walls “failed to present any evidence that qualified as newly discovered evidence,” his claim was

“untimely.” *Id.* Alternatively, the postconviction court concluded the expansion-of-*Roper* claim was “without merit because this Court lacks the authority to extend *Roper*.” *Id.* at 313-314 (quoting *Barwick*, 361 So. 3d at 794).

Preservation

To preserve an issue for appeal, a party must raise the same specific issue below that is being raised on appeal and obtain a ruling from the lower court. *Sparre v. State*, 289 So. 3d 839, 848 (Fla. 2019) (citing *Rhodes v. State*, 986 So. 2d 501, 513 (Fla. 2008)); *Figueroa-Sanabria*, 366 So. 3d 1035, 1049 (Fla. 2023) (“The argument on appeal must be the specific contention asserted as legal ground for the objection, exception, or motion below” quoting *Steinhorst v. State*, 412 So. 2d 332, 338 (Fla. 1982)); § 924.051(1)(b), Fla. Stat. (2024) (“Preserved means that an issue, legal argument, or objection to evidence was timely raised before, and ruled on by, the trial court, and that the issue, legal argument, or objection to evidence was sufficiently precise that it fairly apprised the trial court of the relief sought and the grounds therefor.”). And the party must obtain a ruling from the lower court because “without a ruling or decision,

there is nothing to review.” *Ritchie v. State*, 344 So. 3d 369, 378 (Fla. 2022) (noting the Court’s precedent requires a party to obtain a ruling on any objection or motion quoting *Rhodes v. State*, 986 So. 2d 501, 513 (Fla. 2008)).

Walls filed a third successive postconviction motion raising the same *Roper* claim that he is raising in this Court and properly obtained a ruling from the postconviction court. So, the expansion-of-*Roper* claim is properly preserved for review.

Untimely

As the postconviction court found, the expansion-of-*Roper* claim is untimely. The applicable rule of court prohibits courts from considering untimely successive postconviction claims in capital cases. Fla. R. Crim. P. 3.851(e)(2); *Sparre v. State*, No. SC2024-1512, 2025 WL 3481670, *3 (Fla. Dec. 4, 2025) (citing Rule 3.851(e)(2)). And it is the capital defendant’s burden to establish the timeliness of any successive postconviction claim. *Dillbeck v. State*, 357 So. 3d 94, 101 (Fla. 2023) (“It is incumbent upon the defendant to establish the timeliness of a successive postconviction claim” quoting *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020)), *cert. denied*, 143 S. Ct. 856

(2023). As this Court has explained, when a newly discovered evidence claim is brought as a successive postconviction claim, the defendant “must demonstrate an exception to the rule’s time limitations.” *Sparre v. State*, 391 So. 3d 404, 405-06 & n.3 (Fla. 2024).

This Court has repeatedly held that claims raised in warrant litigation seeking to expand *Roper* were untimely. *Dillbeck v. State*, 357 So. 3d 94, 99 (Fla. 2023), *cert. denied*, 143 S. Ct. 856 (2023); *Barwick v. State*, 361 So. 3d 785, 793 (Fla. 2023), *cert. denied*, 143 S. Ct. 2452 (2023); *Sliney v. State*, 362 So. 3d 186, 188-89 (Fla. 2023), *cert. denied*, 144 S. Ct. 501 (2023); *Zack v. State*, 371 So. 3d 335, 346 (Fla. 2023), *cert. denied*, 144 S. Ct. 274 (2023).

Despite this unbroken precedent, Walls argues that the claim is timely under Florida Rule of Criminal Procedure 3.851(d)(2)(A) because the consensus among neuroscientists that has emerged during the past decade is a form of newly discovered evidence. But that same argument regarding timeliness has been rejected time and time again by this Court in several capital cases, including in three recent warrant cases. *Dillbeck*, 357 So. 3d at 99 (rejecting a timeliness argument based on a new consensus among the experts

both because the article cited by the defendant relied on older sources and the consensus existed at least a couple of years before the claim was raised); *Barwick*, 361 So. 3d at 793 (rejecting a timeliness argument based on a new consensus among the experts based on a resolution of a professional organization because a resolution which relied on studies published between 1992 and 2022, which in turn relied on data from as early as 1977 does not constitute newly discovered evidence for purposes of Rule 3.851(d)(2)(A)); *Zack*, 371 So. 3d at 346 (rejecting a timeliness argument based on a new consensus among the experts based on articles published years earlier in 2017 and a recent declaration from an expert referencing various studies, because studies based on previously existing data and scientific information are not generally considered newly discovered evidence for purposes of Rule 3.851(d)(2)(A)).

Walls' reliance on the manual from the American Association on Intellectual and Developmental Disabilities published on January 14, 2021, is seriously misplaced as this Court has already held that manual is not newly discovered evidence for purposes of Rule 3.851(d)(2)(A). IB at 27. In *Sliney v. State*, 362 So. 3d 186, 188-89

(Fla. 2023), *cert. denied*, 144 S. Ct. 501 (2023), this Court rejected a timeliness argument based on “newly discovered evidence” of a new consensus among the experts based on the 2021 version of the Intellectual Disability Manual issued by the American Association of Intellectual and Developmental Disabilities (AAIDD). Sliney filed a second successive postconviction motion seeking to expand *Roper* to include capital defendants who were under 22 years of age when they committed the capital crime, asserting that the manual showed “a firm and conclusive recognition by the scientific community that there is no functional difference” between the brain of offenders under 18 years old and those under 22 years old. This Court explained the manual did not constitute newly discovered evidence for purposes of Rule 3.851(d)(2)(A), because similar facts to those in the manual had “long been available.” *Id.* at 189. The *Sliney* Court noted that while the AAIDD manual would provide additional support for his claim seeking to expand *Roper*, the underlying scientific facts had “been available since well before 2021.” *Id.* As this Court observed, if the courts were willing to accept such a timeliness argument, “every new study or publication related to brain development in young adults could be invoked to restart the clock for

filing a successive rule 3.851 motion” which would “be at odds with the finality interests served by the rule.” *Sliney*, 362 So. 3d at 189.

This Court has also rejected claims of newly discovered evidence based on recently written declarations or reports from experts. Indeed, quite recently, this Court found a successive postconviction claim regarding jury selection, in a capital case, to be untimely, rejecting an assertion of newly discovered evidence based on a study and expert report. *Sparre v. State*, No. SC2024-1512, 2025 WL 3481670, *2-*3 (Fla. Dec. 4, 2025). The claim was based on a study of jury selections in capital cases in Duval County from 2010 until 2018, referred to as the Gau study. *Sparre*, 2025 WL 3481670, at *3. Sparre argued that the Gau study was newly discovered evidence under rule 3.851(d)(2)(A). *Id.* at *2. But this Court concluded that the exception to the time limitation in Rule 3.851(d)(2)(A) did not apply. This Court explained that “new reports or studies do not meet the timeliness exception for newly discovered evidence.” *Id.* at *3 (citing *Dillbeck* and *Sliney*). Sparre additionally relied on a recent report from a professor about the Gau study in a vain attempt to make the claim timely, which this Court rejected. *Id.* at n.7.

That is exactly what Walls is also attempting to do with Dr. Steinberg's declaration, which is dated November 18, 2025. (3rd succ. PC ROA at 214-236). Many of the articles cited in the numerous footnotes of Dr. Steinberg's declaration were published years earlier, including circa 2004 and even as early as 1999, and therefore, do not constitute newly discovered evidence. *See, e.g.*, 3rd succ. PC ROA at 220, n.5; n.6; n.7. The declaration also relies on an amicus brief filed on behalf of the American Psychological Association that was submitted circa 2005 in *Roper* itself. (3rd succ. PC ROA at 223, n.11). These materials were known and available decades before this claim was raised in 2025.

As in *Zack*, a declaration from an expert referencing various studies based on previously existing data and scientific information is not newly discovered evidence for purposes of Rule 3.851(d)(2)(A). *Zack*, 371 So. 3d at 346. A capital defendant may not simply hire an expert to provide a recent declaration and thereby avoid the prohibition on considering untimely successive postconviction claims in Rule 3.851(e)(2). Additionally, as in *Slaney*, treating the declaration as newly discovered evidence and restarting the clock "would be at

odds with the finality interests served by the rule.” *Sliney*, 362 So. 3d at 189.

Walls counters that categorical exemptions on executions, such as *Roper*, cannot be rejected as untimely or procedurally barred. IB at 28; 36. But this Court has repeatedly rejected that argument, including in cases raising claims seeking to expand *Roper*. *Barwick*, 361 So. 3d at 795 (“Procedural bars do apply to exemption-from-execution claims” citing *Dillbeck*, 357 So. 3d at 100).

Walls attempts to distinguish the cases of *Barwick v. State*, 361 So. 3d 794 (Fla. 2023); *Foster v. State*, 258 So. 3d 1248 (Fla. 2018), *Branch v. State*, 236 So. 3d 981 (Fla. 2018), and *Schwab v. State*, 969 So. 2d 318 (Fla. 2007), mainly on the basis they involved resolutions. IB at 37-40 & n.7. But he does not distinguish *Sliney*, *Sparre*, or *Zack* and cannot do so because they are directly on point. *Sliney* involved the exact same manual that Walls is relying upon for the first time on appeal. *Zack* involved a similar declaration from an expert allegedly establishing a recent scientific consensus and *Sparre* involved a more recent expert report about an older study.

Furthermore, Walls may not rely the AAIDD manual, which was published in January of 2021, to make this claim timely. Any

successive postconviction claim of newly discovered evidence based on that manual had to be filed by January of 2022, to be timely filed under *Jimenez v. State*, 997 So. 2d 1056, 1064 (Fla. 2008). Even when there is no dispute that the claim is a valid claim of newly discovered evidence, that claim must also be timely filed. *Damren v. State*, 397 So. 3d 607, 612-13 (Fla. 2023) (stating a claim relying on newly discovered evidence to be considered timely “must be filed within one year of the date on which the claim became discoverable through due diligence” quoting *Jimenez*, 997 So. 2d at 1064, and finding the claim was not timely filed because it was discoverable years earlier), *cert. denied*, *Damren v. Florida*, 144 S. Ct. 1398 (2024). This claim relying on a 2021 manual was not filed until November of 2025. The claim was filed over three years late. The *Roper* claim was not timely filed, even if the manual was actually newly discovered evidence, which it is not under this Court’s decision in *Sliney*.

The postconviction court correctly found the expansion-of-*Roper* claim to be untimely.

Procedurally barred

The expansion-of-*Roper* claim is also procedurally barred because it could have, and should have, been raised years earlier, but was not. *Sparre v. State*, No. SC2024-1512, 2025 WL 3481670, *3 (Fla. Dec. 4, 2025) (finding a successive postconviction claim regarding jury selection to be procedurally barred because the claim “could have been raised on direct appeal or in earlier postconviction proceedings” citing *Doty v. State*, 403 So. 3d 209, 214 (Fla. 2025); *Gudinas v. State*, 412 So. 3d 701, 714 (Fla.), *cert. denied*, 145 S. Ct. 2833 (2025)). If Walls wanted to expand *Roper* to include capital defendants who were 19 years old when they committed the murder, he should have raised such a claim shortly after *Roper* was decided, as numerous other capital defendants did.

Under the “terms and conditions that govern criminal appeals and collateral review” statute, claims are required to be raised at the “first opportunity,” not at the last opportunity during warrant litigation. § 924.051(8), Fla. Stat. (2024); *Ford v. State*, 402 So. 3d 973, 977-78 (Fla. 2025) (quoting § 924.051(8), Florida Statutes and observing that if the Legislature wanted to suspend procedural bars in warrant litigation it could have done so), *cert. denied*, 145 S. Ct.

1161 (2025). This Court has held that applying the collateral review statute and procedural bars flowing from failing to follow that statute does not violate due process or the access to courts provision in warrant litigation. *Gudinas v. State*, 412 So. 3d 701, 715 (Fla. 2025), *cert. denied*, 145 S. Ct. 2833 (2025).

Merits

The expansion-of-*Roper* claim is meritless as a matter of law under the state constitution's conformity clause for Eighth Amendment matters as well as under this Court's existing precedent.

Roper v. Simmons

In *Roper v. Simmons*, 543 U.S. 551 (2005), the United States Supreme Court held that defendants under 18 years of age could not be sentenced to death. *Roper* was sentenced to death for a murder he committed when he was seventeen years and five months old. *Id.* at 557-58. The Court concluded that "the death penalty is disproportionate punishment for offenders under 18." *Id.* at 564. The Court pointed to juveniles' lack of maturity and underdeveloped sense of responsibility; their increased vulnerability to outside

influences and peer pressure; and their incompletely formed character. *Id.* at 569-70. The *Roper* Court drew a bright line regarding age. *Id.* at 574 (“The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest.”). The *Roper* Court acknowledged that the bright line of 18 years of age was subject to the objections always raised against categorical rules, noting, some minors “have already attained a level of maturity some adults will never reach.” *Id.* at 574; *see also Graham v. Florida*, 560 U.S. 48, 75 (2010) (adopting a bright line for life sentences for juvenile acknowledging that such bright lines are “imperfect” but also “necessary.”). Moving the bright line established in *Roper* to include adults “does not extend the categorical rule; it violates it.” *Kearse v. Sec’y, Fla. Dep’t of Corr.*, 2022 WL 3661526, at *26 (11th Cir. Aug. 25, 2022).

Nor is the implicit assumption underlying this claim, which is that the *Roper* Court misunderstood the science of brain development, warranted. IB at 35. “Nothing in *Roper* leads us to believe that the Justices drew the line at age eighteen based exclusively on their perception of a scientific certainty that an

individual’s brain and cognitive functions undergo a metamorphosis at precisely that age.” *Sliney*, 362 So. 3d at 189 (quoting *United States v. Gonzalez*, 981 F.3d 11, 20 (1st Cir. 2020)). And the declaration submitted in this case actually lends support to the view that the *Roper* Court drew the line at 18 years of age based on practicalities and the clarity and certainty that flows from bright lines. The declaration is from an expert who aided in preparing an amicus brief filed in *Roper* which refers to studies available at the time *Roper* was decided about juvenile brain development continuing beyond 17 years of age.

State Constitution’s Conformity Clause

Eighth Amendment prohibitions may not be expanded by state courts except as a matter of state constitutional law, but that path is closed in Florida under the conformity clause of the state constitution. Art. 1, § 17, Fla. Const. Under the state’s conformity clause for Eighth Amendment issues, the prohibition against cruel and unusual punishment in the state constitution “shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual

punishment provided in the Eighth Amendment to the United States Constitution.” *Lawrence v. State*, 308 So. 3d 544, 548 (Fla. 2020) (quoting Art. 1, § 17, Fla. Const.). As this Court has explained, “the Supreme Court's interpretation of the Eighth Amendment is both the floor and the ceiling for protection from cruel and unusual punishment in Florida.” *Barwick v. State*, 361 So. 3d 785, 794 (Fla.) (citing Art. I, § 17, Fla. Const.), *cert. denied*, 143 S. Ct. 2452 (2023). This Court “cannot interpret Florida's prohibition against cruel and unusual punishment to provide protection that the Supreme Court has decided is not afforded by the Eighth Amendment.” *Barwick*, 361 So. 3d at 794. Because the issue is a matter of Eighth Amendment law, under the state’s conformity clause, this Court is bound by the United States Supreme Court’s holding that capital punishment is not prohibited for a defendant with a chronological age over 17 years old.

This Court “lacks the authority” under the state constitution to expand *Roper*. *Gudinas v. State*, 412 So. 3d 701, 713 (Fla. 2025) (“as we have explained, this Court lacks the authority to extend *Atkins* or *Roper*”), *cert. denied*, 145 S. Ct. 2833 (2025); *Ford v. State*, 402 So. 3d 973, 979 (Fla. 2025) (“this Court lacks the authority to extend

Roper”), *cert. denied*, 145 S. Ct. 1161 (2025); *Barwick v. State*, 361 So. 3d 785, 794 (Fla. 2023) (holding an expansion of *Roper* claim was “without merit because this Court lacks the authority to extend *Roper*”), *cert. denied*, 143 S. Ct. 2452 (2023).

This Court has explained, that under the state constitutional conformity clause, “the Supreme Court’s interpretation of the Eighth Amendment is both the floor and the ceiling for protection from cruel and unusual punishment in Florida, and this Court cannot interpret Florida’s prohibition against cruel and unusual punishment to provide protection that the Supreme Court has decided is not afforded by the Eighth Amendment.” *Barwick*, 361 So. 3d at 794 (citing Art. I, § 17, Fla. Const.).

This Court lacks the authority to expand *Roper* to include capital defendants under 22 years old. Under the state constitution, this Court may not expand *Roper* to include young adults.

Walls asserts the state constitution’s conformity clause is itself unconstitutional because it prohibits arguments based on the evolving standards of decency from *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958). IB at 45. This Court has rejected this argument previously. In *Gudinas v. State*, 412 So. 3d 701, 714 (Fla. 2025), *cert. denied*,

145 S. Ct. 2833 (2025), this Court found that argument was “meritless.” The Court explained that neither the Eighth Amendment nor the Fourteenth Amendment require states to expand the protections afforded by the Eighth Amendment or to interpret their own corresponding state constitutional prohibitions against cruel and unusual punishment in a more expansive manner than the United States Supreme Court does. *Id.* at 714.

Florida having a conformity clause certainly does not prevent the United States Supreme Court from granting a petition for writ of certiorari on the question of whether *Roper* should be expanded to include defendants who were under 22 years old when they committed the capital crime, including a petition from a Florida capital defendant or indeed from Walls himself. A state conformity clause does not prevent the further development of Eighth Amendment jurisprudence based on *Trop*; it simply limits any expansion of the Eighth Amendment from Florida cases to the nation’s highest court.

Walls points to a Kentucky trial court’s ruling in support of his argument that *Roper* should be expanded to include all defendants under the age of 22 years old based on the evolving standards of

decency from *Trop*. IB at 31, 42 (quoting *Commonwealth v. Bredhold*, 599 S.W.3d 409, 412 (Ky. 2020) (quoting *Commonwealth v. Bredhold*, 2017 WL 8792559, at *3 (Ky. Cir. Ct. 2017))). Not only is that path closed under Florida’s conformity clause, but a trial court ruling is not binding precedent to any court, including Kentucky courts. *Camreta v. Greene*, 563 U.S. 692, 709, n.7 (2011) (explaining that a “decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case” and observing that federal district court decisions unlike decisions from courts of appeals do not settle constitutional standards).

Furthermore, a proper *Trop* analysis is based on legislation enacted by elected representatives, not on other sources, such as resolutions from professional organizations or the ruling of a single trial judge, because other sources simply cannot be said to reflect a national consensus to the extent elected representatives do. *Miller v. Alabama*, 567 U.S. 460, 510 (2012) (Alito, J., dissenting) (characterizing *Trop* as “problematic” unless perhaps based solely on statutes enacted by elected representatives, which “presumably reflects the views of the electorate” and which can be viewed as an

“objective indicia of society’s standards”). But Walls does not point to a single statute from any jurisdiction with the death penalty that has expanded *Roper* to include all defendants under 22 years old, much less a majority of death penalty states, as would be required to establish a solid *Trop* claim.

Walls also oddly asserts Florida’s conformity clause, which requires conformity to the United States Supreme Court’s Eighth Amendment jurisprudence, somehow violates the U.S. Constitution’s Supreme Clause. IB at 51. It is nonsensical to speak of a state court strictly following United States Supreme Court precedent as a violation of the Supremacy Clause. A state conformity clause cannot violate supremacy principles.

The postconviction court properly denied the expansion-of-*Roper* claim based on the conformity clause.

This Court’s Precedent

This Court has consistently rejected attempts to expand the prohibition on the execution of minors established in *Roper* to include adults. *Gudinas*, 412 So. 3d at 712-13 (“We have also repeatedly rejected the argument that *Roper*’s categorical ban on the execution of

individuals who were under eighteen years old at the time they committed their capital offenses should be extended to defendants whose chronological age was over eighteen at the time of their offenses.”); *Ford*, 402 So. 3d at 979 (noting that the Court “has repeatedly rejected the argument that *Roper’s* holding . . . should be extended to defendants whose mental or developmental age was less than eighteen at the time of their offenses”); *Barwick*, 361 So. 3d at 791-94 (rejecting an argument that *Roper* should be expanded to include capital defendants under 21 years old); *Barwick*, 361 So. 3d at 791-94 (rejecting an argument that *Roper* should be expanded to include capital defendants under 21 years old); *Sliney*, 362 So. 3d at 187-89 (rejecting an argument that *Roper* should be expanded to include capital defendants under 21 years old because all defendants under that age have diminished capacity). Indeed, this Court has rejected such attempts for decades. *Hill v. State*, 921 So. 2d 579, 584 (Fla. 2006) (“*Roper* only prohibits the execution of those defendants whose chronological age is below eighteen”); *Evans v. State*, 995 So. 2d 933, 954 (Fla. 2008) (“this Court has consistently held that *Roper* only prohibits the execution of defendants whose chronological age is below eighteen” and because the defendant “was nineteen at the

time of the crime, his death sentence cannot be unconstitutional under *Roper*”) (emphasis in original). This Court has rejected numerous and sundry attempts to expand *Roper* beyond the chronological age of 18 years old and opposing counsel offers no reason for this Court to reconsider that solid wall of precedent.

The expansion-of-*Roper* claim is untimely, procedurally barred, and meritless as a matter of law under *Barwick*, *Ford*, and *Gudinas*. The postconviction court properly summarily denied the expansion-of-*Roper* claim.

ISSUE III

The Postconviction Court Properly Summarily Denied the Claim that Spending Decades on Death Row Violates the Eighth Amendment.

Walls additionally asserts that his execution after spending over 37 years on death row, in what he characterizes as solitary confinement, violates the Eighth Amendment prohibition on cruel and unusual punishment. IB at 57. Such claims are often referred to as *Lackey* claims because they stem from a dissenting opinion from the denial of certiorari in *Lackey v. Texas*, 514 U.S. 1045 (1995). *Lackey* claims, however, are “facially invalid” under this Court’s

precedent. This Court has also rejected claims that conditions on Florida's death row amount to solitary confinement. Walls may not rely on his intellectual disability as an aspect of this claim because he is not intellectually disabled as definitively established at the second evidentiary hearing. The postconviction court properly summarily denied the *Lackey* claim.

The postconviction court's ruling

The postconviction court summarily denied the *Lackey* claim (3rd Succ. PC ROA at 314-315). The circuit court found the claim meritless under this Court's precedent. *Id.* The lower court cited over a dozen of this Court's prior cases rejecting similar claims and noted that none of the additional reasons provided by Walls was a sufficient basis to depart from that "established precedent." *Id.* at 315. The postconviction court rejected Walls' contention that his intellectual disability exacerbated the anguish of the years he has spent on death row because Walls "has not established that he is intellectually disabled." *Id.*

Preservation

To preserve an issue for appeal, a party must raise the same specific issue below that is being raised on appeal and obtain a ruling from the lower court. *Sparre v. State*, 289 So. 3d 839, 848 (Fla. 2019) (citing *Rhodes v. State*, 986 So. 2d 501, 513 (Fla. 2008)); *Figueroa-Sanabria*, 366 So. 3d 1035, 1049 (Fla. 2023); *Ritchie v. State*, 344 So. 3d 369, 378 (Fla. 2022) (quoting *Rhodes v. State*, 986 So. 2d 501, 513 (Fla. 2008)); § 924.051(1)(b), Fla. Stat. (2024).

Walls raised this *Lackey* claim in his third successive postconviction motion and properly obtained a ruling from the postconviction court. So, the issue is preserved.

Merits

A punishment must be both “cruel and unusual” to violate the Eighth Amendment. U.S. Const. amend. VIII. It is difficult, however, to view a delay itself in the execution of a death sentence, which results in the defendant living longer, as a form of “punishment.” And, even if viewed as punishment, it certainly is not “unusual.” Delays in executions are unfortunately all too common. *Bucklew v. Precythe*, 587 U.S. 119, 149 (2019) (noting the “long delays that now

typically occur between the time an offender is sentenced to death and his execution”).

Not a Recognized Eighth Amendment Claim

As Justice Thomas has observed, there simply is no constitutional support for a *Lackey* claim. *Johnson v. Bredesen*, 558 U.S. 1067 (2009) (Thomas, J., concurring in the denial of certiorari). This Court has observed that “no federal or state court has accepted the argument that a prolonged stay on death row constitutes cruel and unusual punishment.” *Dillbeck v. State*, 357 So. 3d 94, 103 (Fla. 2023), *cert. denied*, 143 S. Ct. 856 (2023); *Booker v. State*, 969 So. 2d 186, 200 (Fla. 2007).

The *Lackey* claim is facially invalid. This Court has repeatedly held that *Lackey* claims are “facially invalid.” *Owen v. State*, 364 So. 3d 1017, 1027 (Fla. 2023) (citing *Orme v. State*, 361 So. 3d 842, 845 (Fla. 2023) (citing *Lucas v. State*, 841 So. 2d 380, 389 (Fla. 2003); *Long v. State*, 271 So. 3d 938, 946 (Fla. 2019); *Ferguson v. State*, 101 So. 3d 362, 366 (Fla. 2012); *Correll v. State*, 184 So. 3d 478, 486 (Fla. 2015); *Waterhouse v. State*, 82 So. 3d 84, 87 (Fla. 2012)). Indeed, the

Lackey claim this Court rejected in *Owen* involved a similar 37-year delay in the execution.

This *Lackey* claim is also factually invalid, at least, in part. He asserts the anguish from the delay in his execution was exacerbated by his intellectual disability. IB at 58. But, as explained in detail in ISSUE I, Walls is not intellectually disabled. His average IQ score as a minor was 97. And his average IQ score of 73 as an adult is above even mild intellectual disability. Walls may not rely on his intellectual disability as an aspect of this claim because he is not intellectually disabled which was definitively established at the second evidentiary hearing. The postconviction court properly refused to consider intellectual disability in its determination of the *Lackey* claim.

State Constitution's Conformity Clause

Under the state's conformity clause for Eighth Amendment issues, Article I, section 17, of the Florida Constitution, the prohibition against cruel and unusual punishment in the state constitution "shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment

to the United States Constitution.” *Lawrence v. State*, 308 So. 3d 544, 548 (Fla. 2020) (quoting Art. 1, § 17, Fla. Const.). As this Court has explained, “the Supreme Court’s interpretation of the Eighth Amendment is both the floor and the ceiling for protection from cruel and unusual punishment in Florida.” *Barwick v. State*, 361 So. 3d 785, 794 (Fla.) (citing Art. I, § 17, Fla. Const.), *cert. denied*, 143 S. Ct. 2452 (2023). This Court cannot interpret Florida’s prohibition against cruel and unusual punishment to provide protection that the Supreme Court has decided is not afforded by the Eighth Amendment.” *Barwick*, 361 So. 3d at 794.

Walls seeks to have this Court create an entirely new Eighth Amendment right that is unrecognized by the United States Supreme Court but that path is closed under the state’s conformity clause. *Sparre v. State*, No. SC2024-1512, 2025 WL 3481670, *4, n.8 (Fla. Dec. 4, 2025) (“we must decline” any invitation “to recognize a new Eighth Amendment right” citing *Ford v. State*, 402 So. 3d 973, 978-79 (Fla.), *cert. denied*, 145 S. Ct. 1161 (2025)).

Solitary Confinement

Walls incorrectly asserts the conditions on Florida's death row amount to solitary confinement. Traditionally, "solitary confinement" is defined by the United States Supreme Court as "complete isolation of the prisoner from all human society" and confinement in a cell such that the prisoner has "no direct intercourse with or sight of any human being." *In re Medley*, 134 U.S. 160, 167-68 (1890). Florida's death row is not "solitary confinement" under the United States Supreme Court's definition. Brandon Vines, *Decency Comes Full Circle: The Constitutional Demand to End Permanent Solitary Confinement on Death Row*, 55 COLUM. J.L. & SOC. PROBS. 591, 620-02 & n.147 & n.148 (2022) (referring to Florida's death row as "non-solitary" and stating that, by contrast, eleven states and the federal government have even more restrictive death rows than Florida's). Indeed, the conditions of Florida's death row have improved recently due to a federal consent decree. *Davis v. Dixon*, No. 3:17-cv-00820, 2022 WL 1267602, *3 (M.D. Fla. Apr. 28, 2022) (describing the conditions on Florida's death row currently and referring to increased access to telephones and increased access to

materials for their tablets). Inmates with access to telephones and tablets are not being held in solitary confinement.

In *Dillbeck v. State*, 357 So. 3d 94, 103-04 (Fla. 2023), *cert. denied*, 143 S. Ct. 856 (2023), this Court rejected a similar Eighth Amendment claim involving a defendant who spent 31 years on death row and an assertion that the conditions on death row amounted to solitary confinement. This Court held that the claim was “facially invalid” based on their “longstanding precedent” including cases where the defendant’s stay on death row had “exceeded 30 years.” *Id.* at 103 (citing cases). The *Dillbeck* Court first observed that no court had ever recognized, much less granted relief, on a *Lackey* claim. This Court then reasoned that because the defendant himself had contributed to the delay by continually challenging his convictions and sentences, he could not “now contend that his punishment has been illegally prolonged.” *Id.* at 104 (quoting *Lambrix v. State*, 217 So. 3d 977, 988 (Fla. 2017)). The *Dillbeck* Court also addressed the conditions on death row and rejected the conditions as being a reason not to follow their longstanding precedent rejecting long stays on death row, by relying on a case that actually involved solitary confinement of a particular death row inmate. *Id.* (citing *Muhammad*

v. State, 132 So. 3d 176, 207 (Fla. 2013)). The *Dillbeck* Court also recounted the postconviction court’s observation that Florida death row inmates have multimedia kiosks, telephones, and outdoor exercise, which this Court concluded did not amount to solitary confinement under the traditional definition of having “no direct intercourse with or sight of any human being.” *Id.* at 103, n.4. This Court declined to hold that the postconviction court erred in refusing to expand the traditional meaning of solitary confinement in *In re Medley*, 134 U.S. 160, 167-68 (1890)). *Id.*

All of the reasons given by this Court in *Dillbeck* for rejecting the *Lackey* claim apply equally to Walls. Walls is responsible for the vast majority of the delay in his execution. Walls has repeatedly challenged his convictions and death sentence which is the main source of the delay. Walls challenged his original trial and was granted a new trial. *Walls v. State*, 580 So. 2d 131 (Fla. 1991). He also challenged the finding that he was not intellectually disabled and then challenged that finding again based on *Hall v. Florida* years later and was granted a second evidentiary hearing. *Walls v. State*, 3 So. 3d 1248 (Fla. 2008); *Walls v. State*, 213 So. 3d 340 (Fla. 2016);

Walls v. State, 361 So. 3d 231 (Fla. 2023). And he is challenging those findings yet again in the current warrant litigation.

When capital defendants refuse to challenge their sentence by waiving postconviction proceedings, their executions do not take decades. A good example of this is John Blackwelder, whose conviction and death sentence were affirmed by this Court on direct appeal in July of 2003 and who then waived all other proceedings, including warrant proceedings. *Blackwelder v. State*, 851 So. 2d 650 (Fla. 2003). He was executed in May of 2004. Blackwelder spent less than one year on death row after his death sentence was affirmed by this Court because he did not challenge his conviction or sentence other than in the mandatory direct appeal. Walls, who is the main source of the delay in his execution may not raise an Eighth Amendment claim seeking to reduce his sentence to a life sentence based largely on his own conduct.

Walls contends that he is in effect being blamed for exercising his right to appellate review. But that is not the State's point. It is the remedy that the State is disputing. Walls is certainly entitled to challenge his conviction and sentences repeatedly in state and federal court, but he may not seek the remedy of having his death

sentence vacated from the inevitable delay resulting from his numerous and repetitive challenges. As Justice Scalia once observed, using the delays in capital cases as a reason to reduce a death sentence to a life sentence, or to abolish the death penalty altogether, is reminiscent of a man being sentenced for murdering his parents, who pleads for mercy on the ground that he is an orphan. *Glossip v. Gross*, 576 U.S. 863, 898 (2015) (Scalia, J., concurring). And the remedy for the excessive delays in capital cases is to expediate review of capital cases, not to reduce all death sentences to life sentences.

The *Lackey* claim is meritless as a matter of law under this Court's longstanding precedent, particularly *Owen* and *Dillbeck*. The postconviction court properly summarily denied the Eighth Amendment claim.

Accordingly, this Court should affirm the summary denial of the third successive postconviction motion.

CONCLUSION

The State respectfully requests this Honorable Court affirm the summary denial of third successive postconviction motion and the denial of the motion to stay.

Respectfully submitted,

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Counsel certifies that this brief is less than 17,438 words, which is less than 20,000 word limit for answer briefs in appeals of successive postconviction motions in capital cases, under Florida Rule of Appellate Procedure 9.210(a)(2)(D).

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