

IN THE SUPREME COURT OF FLORIDA
CASE NO. SC 2025-1915

FRANK ATHEN WALLS

Appellant,

v.

STATE OF FLORIDA,

Appellee.

**ON APPEAL FROM THE CIRCUIT COURT OF THE FIRST
JUDICIAL CIRCUIT, IN AND FOR OKALOOSA COUNTY, STATE
OF FLORIDA**

REPLY BRIEF OF APPELLANT

**EXECUTION SCHEDULED FOR DECEMBER 18, 2025 AT 6:00
P.M.**

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**ARGUMENT I:
THIS COURT SHOULD REACH A MERITS DETERMINATION ON
MR. WALLS' INTELLECTUAL DISABILITY.**

Atkins v. Virginia, 536 U.S. 304 (2002), established an absolute prohibition against the execution of those with “mental retardation”¹ due to the Court’s view that the execution of those with such intellectual disabilities violated the Eighth Amendment’s ban on “cruel and unusual punishment.” While the *Atkins* Court left it to the States to find their own way to implement this categorical ban, the Court was silent as to any bars, procedural or otherwise when establishing this absolute bar to the death penalty. *Id.* This Court has never reached a merits determination on Mr. Walls’ intellectual disability and has, instead, used illegal barriers to keep them from reaching such a determination.

A. *Hall* applied the *Atkins* definition of Intellectual Disability and has never suggested that the prohibition on executing an intellectually disabled person be subject to any sort of waiver or procedural bar.

Following *Atkins*, the United State Supreme Court rendered the *Hall*² decision. The *Hall* Court restated “[t]he Eighth Amendment

¹ The term “mental retardation” is outdated and is not referred to as “intellectual disability.”

²*Hall v. Florida*, 572 U.S. 701 (2014).

prohibits certain punishment as a categorical matter...[a]nd, as relevant for this case, persons with intellectual disability may not be executed.” *Hall*, 572 U.S. at 708. The United States Supreme Court has never suggested that the Eighth Amendment prohibition on executing an intellectually disabled person is subject to any sort of waiver or procedural bar or default.

The question before the United States Supreme Court in *Hall* was unambiguously stated in the opinion: “[t]he questions this case presents is how intellectual disability must be defined in order to implement...this holding of *Atkins*.” *Hall*, 572 U.S. at 709.” If the States were to have complete autonomy to define intellectual disability as they wished, *The Court’s decision in Atkins could become a nullity, and the Eighth Amendment’s protection of human dignity would not become a reality. Id.* at 720-21 (emphasis added). It has been acknowledged repeatedly that *Atkins* “did not give States unfettered discretion to *define the full scope of constitutional protection.*” *Id.* at 719 (emphasis added). In Mr. Walls’ case, the fears expressed by the *Atkins* and *Hall* courts will become certain reality in mere days. The State of Florida is set to execute Mr. Walls, who is intellectually disabled.

Despite unequivocal language from the United States Supreme Court that the executions of intellectually disabled persons are categorically exempt via the Eighth Amendment, the State of Florida is set to execute Mr. Walls, who has an intellectual disability. There is no indication in the United States Supreme Court jurisprudence that Mr. Walls should be subject to any type of procedural bar or waiver. No state-law waiver can stand in the way of this important constitutional function.

B. Mr. Walls has an intellectual disability.

Mr. Walls has demonstrated by clear and convincing evidence that he has significantly subaverage general intellectual function. Mr. Walls has two scores on individualized, standardized intelligence testing instruments – the Weschler Adult Test Revised (“WAIS-R”) and the Weschler Adult Intelligence Test – Third Edition (“WAIS-III”) – that fall in the accepted range of intellectual disability. T350-351. The Full Scale IQ (“FSIQ”) scores that Mr. Walls obtained on these tests – 72 and 74, respectively – meet the legal definition of significantly subaverage general intellectual functioning. *Id.*

There is evidence that these impairments were present from birth, but after Mr. Walls contracted meningitis in his youth, his conceptual skills diminished even further. T639³. Mr. Walls was referred for “possible mental deficient or possible minimal brain damage” at age 5. T641-42. R4617. Mr. Walls was “delayed in learning to walk at one and a half years, that he only began to say words at two and a half years, and that he was late to speak in complete sentences.” T641-642. These are some of Mr. Walls’ earliest deficits noted.

When Mr. Walls demonstrated significant delays in school. He was sent for an evaluation as part of an Individualized Education Plan (“IEP”). T644. At this time, Mr. Walls was functioning at a full grade level lower in reading, spelling, and math. After Mr. Walls suffered from his first bout of meningitis in 1979, he was tested at age 12. At this time, Mr. Walls’ “spelling was at the third-grade level, his arithmetic was at the fourth-grade level, and his reading was at the fifth-grade level, so was *still* at least a full school year behind in each area.” T645 (emphasis added).

³ References to the record on appeal for Mr. Walls’ ID successive are designated as “R.#” for court filings and “T.# for transcripts of proceedings. References to the record on appeal for the death warrant litigation will be designated as “W.#.”

Hall recognizes that intellectual disability “is a condition, not a number.” *Hall*, 572 U.S. at 723 (2014). This Court found that *Hall* requires courts to consider all three prongs on intellectual disability in tandem and that no single factor should be dispositive of the outcome. *See Oats v. State*, 181 So. 3d 457, 459 (Fla. 2015). Thus, an intellectual disability claim may not be legally insufficient or refuted by the record if the defendant’s IQ scores are higher than 70. The State’s argument that Mr. Walls’ claim of intellectual disability being refuted by the record must fail.

While there is ample evidence of Mr. Walls’ intellectual disability, This Court has never reviewed the evidence to Mr. Walls’ intellectual disability to make a merits determination on his diagnosis. As a result of this Court ignoring this evidence and shirking their responsibility in favor of imaginary procedural bars, Mr. Walls will be executed.

C. This Court’s holding in *Phillips* is erroneous and its application will result in the arbitrary and capricious imposition of the death penalty.

It was error on the part of this Court to reverse the decision in *Walls v. State*, 213 So. 3d 340 (Fla. 2016), that *Hall v. Florida*, 572 U.S. 701 (2014) must be applied retroactively.

“The Eighth Amendment prohibits certain punishments as a categorical matter...persons with intellectual disability may not be executed.” *Hall*, 572 U.S. at 705. The United States Supreme Court in *Hall* ruled that Florida’s strict cut-off of a 70 or below IQ in determining whether an individual is intellectually disabled “creates an unacceptable risk that persons with intellectual disability will be executed and thus is unconstitutional.” *Id.* at 704. In spite of the United States Supreme Court’s warnings over a decade ago, this Court made this “unacceptable risk” more likely when ruling that *Hall* does not apply retroactively.

**ARGUMENT II:
CONTRARY TO THE STATE’S ARGUMENTS, MR. WALLS’S *ROPER* CLAIM IS BASED ON NEWLY DISCOVERED EVIDENCE THAT COULD NOT HAVE BEEN ASCERTAINED BEFORE 2025, COULD NOT HAVE BEEN RAISED IN A LEGAL CHALLENGE BEFORE 2025, AND IS NOT FORECLOSED BY THE FLORIDA CONSTITUTION’S CONFORMITY CLAUSE BECAUSE THAT CLAUSE IS UNCONSTITUTIONAL.**

The State raises three arguments against Mr. Walls’s *Roper*, 543 U.S. 551 (2005), claim. First, that the claim relies on evidence that does not fall within Fla. R. Crim. P. 3.851(d)(2)(A)’s newly discovered evidence exception so it is untimely; second, that the claim should have been brought earlier so it is now procedurally barred; and finally

that the claim is meritless because art. 1, section seventeen of the Florida Constitution (the “conformity clause”) forbids Florida courts from providing Eighth Amendment protections that have not been explicitly endorsed by black letter Supreme Court law. The State misunderstands the arguments presented in Mr. Walls’s initial brief explaining how the circuit court erred in its ruling and why he is entitled to relief under *Roper*, as well as the newly discovered evidence that gives rise to Mr. Walls’s *Roper* claim.

A. The State wrongly argues that Mr. Walls’s *Roper* claim is untimely and procedurally barred; it could not have been brought before the instant legal challenge because the scientific evidence and landmark legal decisions that it is based on did not exist before 2025.

Mr. Walls’s claim that the principles of *Roper* categorically prohibit his execution is based on the current consensus of neuroscience’s understanding of late adolescent brain development, which has only now reached a sociolegal tipping point indicating that the death penalty is inappropriate and ineffective punishment for 19-year-olds.

The State mistakes Mr. Walls’s use of the word consensus for the same kind of consensus report or collective statement relied upon by death-sentenced prisoners’ whose *Roper* claims were found

untimely by this Court. See Answer Brief (“AB”) at 57-58 (citing *Dillbeck v. State*, 357 So. 3d 94 (Fla. 2023), *Barwick v. State*, 361 So. 3d 785 (Fla.2023), and *Zack v. State*, 371 So. 3d 335 (Fla. 2023)). But these prisoners relied on individual or a small collection of scientific articles, or collective position statements of professional medical and psychological associations declaring the death penalty an inappropriate punishment for late adolescents. Mr. Walls instead relies on a combination of landmark state high court decisions issued this year establishing that the legal community now recognizes the scientific community’s consensus on late adolescent brain development, and the expert report of Dr. Steinberg, also issued this year, explaining what that consensus is, how it formed, and how similar the brains of late adolescents are to adolescents. This is not the same as a handful of scientific articles or a professional association’s public statement; it is newly discovered evidence of the kind that the *Roper* court itself looked to when conducting its Eighth Amendment analysis, as explained further below.

In *Sliney v. State*, 362 So. 3d 186 (2023), this Court did reject a death-sentenced prisoner’s *Roper* claim using the 2021 version of the Association of Intellectual and Developmental Disabilities’

Intellectual Disability Manual as newly discovered evidence. The State incorrectly argues that this is the same evidence Mr. Walls relies on. AB at 58-59. Mr. Walls made only a passing reference to this manual in his initial brief on appeal before this Court and did not rely on it as newly discovered evidence in any of his briefing in the circuit court. Instead, Mr. Walls's claim is premised on newly discovered evidence; specifically, Dr. Steinberg's new expert report reflecting a sufficiently established contemporary consensus amongst the scientific community that supports a categorical prohibition on executing 19-year-olds.

Dr. Steinberg's report does indeed note developments in the scientific landscape over the last decade, but this is simply how science works; generally, it takes time and multiple studies for science to reach a sufficient consensus establishing a majority opinion on a scientific issue. Mr. Walls could not have raised a *Roper* claim on any one of these individual reports discussed by Dr. Steinberg because, alone, they do not constitute the objective indicia of society that *Roper* asks courts to examine. And this is why in 2005, the *Roper* court cited to an article that was then thirteen years old to analyze whether a then-contemporary consensus existed that

adolescent brains were not sufficiently developed to legally or morally merit the ultimate punishment of death. *See Roper*, 543 U.S. 551, 569 (2005) (citing Arnett, Reckless Behavior in Adolescence: A Developmental Perspective, 12 *Developmental Rev.* 339 (1992)).

The *Roper* court understood that scientific discovery does not appear out of thin air, and that scientific developments build off one another, so that a consensus established in 2005 may have begun developing in 1992. Mr. Walls's newly discovered evidence is no different; Dr. Steinberg's expert report written in 2025 explains that, based on recently developing science that Dr. Steinberg examined, a consensus has been established this year that late adolescents' brains are sufficiently similar to adolescents' brains so as to be categorically prohibited from execution under *Roper*.

Finally, the State relies on this Court's recent decision in *Sparre v. State*, No. SC2024-1512, 2025 WL 3481670, (Fla. Dec. 4, 2025), but this case is inapplicable to Mr. Walls's case. In *Sparre*, the defendant brought a postconviction challenge against his jury selection process, arguing that a recent expert study of Duval County cases between 2010 and 2018, including his own, demonstrated significant racial bias on the part of the State. *Id.* at *5. Because the

expert report in that case relied on cases that occurred between 2010 and 2018, “the underlying factual basis for the study was available several years before *Sparre* filed the current motion.” *Id.* The same is not true for Mr. Walls’s newly discovered evidence, which relies not on a set of discrete events that occurred in a set time – i.e., jury selection in Duval County trials between 2010 and 2018 – that he could have discovered before this year, but instead the current scientific consensus, that science has arrived at over time through developing studies. Mr. Walls could not have discovered his evidence before this year because, as Dr. Steinberg explains in his report, the scientific consensus giving rise to Mr. Walls’s *Roper* claim did not exist before this year, unlike the events of the jury trials in *Sparre* that concluded in 2018.

Additionally, Mr. Walls also relies on recent landmark legal decisions by state high courts recognizing the lack of brain development in late adolescents. *See, e.g., People v. Taylor*, Nos. 166428 and 166654, 2025 WL 1085247 at *16 (Mich. Apr. 10, 2025). This is further reflected by state laws enacted within the last year as well. *See Conn. Gen. State. §54-125a* (2024) (Connecticut legislation prohibiting life without parole sentences for those under 21); 730

ILCS 5/5-4.5-115 (2025 State Bar Edition) (Illinois doing same). The State does not address these cases in its argument regarding newly discovered evidence. Like the scientific consensus of 2025, Mr. Walls could not have reasonably discovered or ascertained state high court decisions before were created. Accordingly, Mr. Walls's *Roper* claim is timely raised under Fla. R. Crim. P. 3.851(d)(2)(A)'s newly discovered evidence exception and not procedurally barred because he could not have raised it before 2025.

B. The State misunderstands Mr. Walls's challenge to the constitutionality of the conformity clause, the thrust of which is that Florida Courts must comply with Supreme Court precedent and engage in Eighth Amendment analysis instead of opting out entirely under the conformity clause.

The State misapprehends Mr. Walls's argument that the conformity clause is unconstitutional, first arguing that this Court has previously held in *Gudinas v. State*, 412 So. 3d, 701, 714 (Fla. 2025), 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." AB. at 70. But this is nonresponsive to Mr. Walls's argument

and *Gudinas* is likewise inapplicable to this case. Mr. Walls does not argue that the federal constitution requires states to expand Eighth Amendment protections. Instead, Mr. Walls argues that under binding Supreme Court precedent interpreting the Eighth Amendment, state courts may not abdicate their duty to engage in Eighth Amendment analyses at all, regardless of the outcome, and measure American society’s “evolving standards of decency” to determine if and when a challenged punishment becomes cruel and unusual. *See Trop v. Dulles*, 356 U.S. 86, 100 (1958).

However, under the State’s reading of the conformity clause, Florida courts consistently abandon their constitutional duty, the Supreme Court’s command in *Trop*, and simply opt out of engaging with Eighth Amendment challenges at all. This is the crux of Mr. Walls’s argument that the conformity clause is unconstitutional; not that the federal constitution demands state courts expand Eighth Amendment rights, but that they must serve as on-the-ground arbiters measuring the evolving standards of decency in ways that the Supreme Court simply cannot. The conformity clause allows Florida courts to abdicate their crucial role in evaluating Eighth Amendment challenges. Whether these challenges are ultimately

successful or not is irrelevant to Mr. Walls' argument here; the issue is whether Mr. Walls may meaningfully make that challenge at all. Under the federal constitution and *Trop*, he is entitled to do so, but the conformity clause conflicts with this right and must therefore yield.

The State next attempts to minimize the impact of *Commonwealth v. Bredhold*, 2017 WL 8792559, at *3 (Ky. Cir. Ct. 2017)), by pointing out that it is only persuasive authority, not binding. AB at 71. But the State did not challenge the merits of the *Brehold* court's finding that the late adolescents are categorically prohibited from execution. *See id.* *Bredhold* remains persuasive authority, and particularly persuasive authority at that, in light of the other state high court decisions cited by Mr. Walls in his initial brief recognizing the lack of brain development in late adolescents, this Court should consider the analysis of the *Bredhold* court.

The State, citing a lone dissent from a single Justice that does not have any binding authority on this Court, ignores the significant changes in the reality of the late adolescent penalty in America, which demonstrates a clear national consensus has formed against its use, regardless of whether a statute forbidding it exists. *See* IB at 41-42

(collecting data demonstrating that late adolescent executions make up a shrinking fraction of executions across America). In *Roper* itself, the Court noted that while only a few states explicitly outlawed the adolescent death penalty explicitly, that was no obstacle to the Supreme Court's determination that the objective indicia of 2005 demonstrated contemporary standards of decency rejected the adolescent death penalty. *Roper*, 543 at 566 (observing that the same "consistency of direction of change has been demonstrated" by the growing abandonment of the adolescent death penalty). The direction of change is clearly demonstrated by the data on the late adolescent death penalty today. The State "cannot show national consensus in favor of capital punishment for [late adolescents] but still resists the conclusion that any consensus exists against it." *Id.* at 565.

The State also repeatedly argues that Mr. Walls seeks the expansion of *Roper* to categorically prohibit the execution of defendants who committed their offense at age 22. See AB at 70. Again, the State misunderstands Mr. Walls; nowhere in his initial brief or circuit court briefing did he ever argue that *Roper* should extend to 22-year-olds. His position has always only been that *Roper*

should apply to late adolescents closest in age to adolescents, 19-year-olds. *See generally* IB.

The State then completely ignores the actions of Florida's legislative and executive branches demonstrating that Florida is no longer interested in conforming to the Supreme Court's Eighth Amendment precedent, failing to address this entirely in its Answer Brief. If, as the State argues, legislation passed by elected representatives is the only measure of a population's consensus, AB at 71, then the Florida statutes designed to give rise to Eighth Amendment legal analyses with no regard for the conformity clause indicate that Floridians no longer consider the conformity clause a valid limit on the Eighth Amendment protections the State offers to its citizens. As Mr. Walls has previously explained, this Court should not be the only branch of Florida government bound by a state constitutional provision that conflicts with the federal Constitution, declare the conformity clause unconstitutional, and meet its constitutional obligation to consider the merits of Mr. Walls's *Roper* claim. *See* IB at 55-57 (collecting recent Florida statutes facially unconstitutional under the Eighth Amendment and statements by Governor Ron DeSantis that acknowledge their unconstitutionality).

Finally, the state provides a laundry list of this Court's cases denying *Roper* claims seeking to expand the age of those categorically prohibited from execution by the Eighth Amendment. See AB at 72-73. Mr. Walls's *Roper* claim is uniquely positioned for review by this court. None of the prisoners in those cases had the overwhelming scientific consensus of 2025 establishing the similarities between late adolescent and adolescent brains. None of the prisoners in those cases had the landmark state high court legal decisions indicating that the legal community has begun to recognize this science and that the Eighth Amendment requires the law to treat late adolescents differently from adults, especially in the death penalty context. And none of these prisoners had the combination of recent Florida statutes and Florida Governor's statements demonstrating that Florida law no longer conforms to the Eighth Amendment, in violation of the conformity clause. In sum, Mr. Walls's case presents an ideal vehicle for this Court to evaluate the merits of his *Roper* claim without touching its prior precedent and complying with its constitutional obligation to engage in the development of Eight Amendment jurisprudence.

CERTIFICATE OF COMPLIANCE AND FONT

I hereby certify that the foregoing was generated in Bookman Old Style 14-point font and otherwise formatted in compliance with Florida Rules of Appellate Procedure 9.045 and 9.210, and the Florida Supreme Court’s Scheduling Order. Counsel further certifies that this entire Brief contains 3403 words.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief has been electronically filed with the Clerk of the Florida Supreme Court, and electronically served upon Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com, capapp@myfloridalegal.com) on December 8, 2025.

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