

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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EDWARD THOMAS JAMES,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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*On Petition for a Writ of Certiorari to the  
Florida Supreme Court*

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**PETITION FOR A WRIT OF CERTIORARI**

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**THIS IS A CAPITAL CASE**

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**CAPITAL CASE**  
**QUESTION PRESENTED**

1. Whether a court may refuse to review a capital defendant's substantive incompetency claim?

## **PARTIES TO THE PROCEEDINGS**

Petitioner, Edward Thomas James, a death-sentenced Florida prisoner, was the appellant in the Florida Supreme Court.

Respondent, the State of Florida, was the appellee in the Florida Supreme Court.

## LIST OF DIRECTLY RELATED PROCEEDINGS

Per Supreme Court Rule 14.1(b)(iii), the following cases relate to this petition:

### Underlying Trial:

Circuit Court of Seminole County, Florida

*State of Florida v. Edward Thomas James*, Case No. 1993-CF-3237

    Judgment Entered: August 18, 1995

### Direct Appeal:

Florida Supreme Court (Case No. 86834)

*James v. State*, 695 So.2d 1229 (Fla. 1997) (affirming)

    Judgment Entered: April 24, 1997, *reh'g denied* June 20, 1997

### Petition for Writ of Certiorari Denied:

Supreme Court of the United States (Case No. 97-6104)

*James v. Florida*, 522 U.S. 1000 (1997)

    Judgment Entered: December 1, 1997

### Initial Postconviction Proceedings:

Circuit Court of Seminole County, Florida

*State of Florida v. Edward Thomas James*, Case No. 1993-CF-3237

    Judgment Entered: April 18, 2011 (dismissing proceedings)

Florida Supreme Court (Case No. SC06-426)

*James v. State*, 974 So.2d 365 (Fla. 2008) (affirming)

    Judgment Entered: January 24, 2008, *reh'g denied* October 21, 2008

### Second Postconviction Proceedings:

Circuit Court of Seminole County, Florida

*State of Florida v. Edward Thomas James*, Case No. 1993-CF-3237

    Judgment Entered: Initial Denial: March 17, 2020; Motion for Rehearing granted April 13, 2020; Final Denial: June 8, 2020

Florida Supreme Court (Case No. SC20-1036)

*James v. State*, 323 So.3d 158 (Fla. 2021) (affirming)

    Judgment Entered: July 8, 2021, *reh'g denied* August 30, 2021

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## **DECISION BELOW**

The Florida Supreme Court's decision is available at *James v. State*, 323 So.3d 158 (Fla. 2021), *reh'g denied James v. State*, 2021 WL 3855703 (Fla. Aug. 30, 2021), and is reprinted in the Appendix (App.) at 412-421.<sup>1</sup>

## **JURISDICTION**

The judgment of the Florida Supreme Court was entered on July 8, 2021. App. at 412. Rehearing was denied on August 30, 2021. App. at 420. This Court has jurisdiction under 28 U.S.C. § 1257(a).

## **CONSTITUTIONAL PROVISIONS INVOLVED**

The Eighth Amendment provides, in relevant part:

Excessive bail shall not be required...nor cruel and unusual punishments inflicted.

The Fourteenth Amendment provides, in relevant part:

No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## **STATEMENT OF THE CASE**

Petitioner Edward James suffers from a nearly lifelong history of substance abuse, clear signs of mental illness, and memory impairment including indicators of early-onset dementia. Nevertheless, in 1995, he pleaded guilty to two counts of murder and related offenses, despite a glaring lack of memory of the crimes. *James v. State*, 695

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<sup>1</sup> Citations to non-appendix material from the record below are as follows: R. – record from original trial; T – transcript of original trial; PCR – record from postconviction proceeding; PSCR – supplemental record from postconviction proceeding; SPCR – record from successive postconviction motion giving rise to the instant petition.

So. 2d 1229 (Fla. 1997). Despite the fact that Mr. James' plea agreement contained no sentencing agreement or other benefit, no psychological competency evaluation was performed prior to entry of the plea and commencement of a capital penalty phase. An advisory jury recommended death on both murder counts by a vote of 11-1 (T. 1076), after which the trial court made findings of fact and imposed a death sentence. *James*, 695 So. 2d at 1233. The Florida Supreme Court affirmed the death sentence, *id.* at 1238, and this Court denied a writ of certiorari, *James v. Florida*, 522 U.S. 1000 (1997).

Mr. James was appointed state postconviction counsel, who filed and twice amended a motion for state postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850. *See James v. State*, 974 So. 2d 365, 366 (Fla. 2008).<sup>2</sup> In March 2003, prior to an evidentiary hearing, Mr. James filed a pro se notice of voluntary dismissal of his postconviction proceedings. *Id.* The trial court held a hearing pursuant to *Durocher v. Singletary*, 623 So. 2d 482, 485 (Fla. 1993), purportedly to determine whether Mr. James was competent to waive postconviction litigation and discharge his counsel. At this hearing, Mr. James expressed a desire for the State to "go ahead" and execute him. *James*, 974 So. 2d at 367-78. Again, no comprehensive psychological evaluation was performed to determine whether Mr. James was competent to end his litigation. In April 2003, the trial court entered an order allowing Mr. James to withdraw his postconviction motion, cancelling the evidentiary hearing, and discharging counsel. *James*, 974 So. 2d at 366. Although Florida law permitted an appeal, and the trial court's order advised of

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<sup>2</sup> The motion was filed in May 1998, and amended in November 2001 and September 2002.

this fact, neither Mr. James nor his counsel filed an appeal.

In November 2003, Mr. James contacted his former counsel asking for assistance with reinstating his postconviction proceedings, but the trial court denied that request in January 2006. *James*, 974 So. 2d at 366; *see also* PCR. Vol. 1, 522-26. The Florida Supreme Court reappointed counsel for the sole purpose of representing Mr. James on appeal, but affirmed the trial court's order of denial in January 2008. *Id.* at 367-68. The Florida Supreme Court concluded that Mr. James had not attacked the validity of the original waiver hearing but had “simply changed his mind,” which was an invalid basis for setting aside a waiver. *Id.* at 368. Mr. James was without counsel for the next decade.

On December 18, 2018, the Capital Habeas Unit (“CHU”) of the Federal Public Defender’s Office, Northern District of Florida, filed a habeas corpus petition in the Middle District of Florida on behalf of Mr. James pursuant to 28 U.S.C. § 2254, which included allegations that Mr. James was not competent to plead guilty or face a capital sentencing proceeding, and that he received ineffective assistance of counsel at trial and on state postconviction review based on the failure to reasonably investigate and raise the competency issue.. *James v. Sec'y, Dep't of Corrs.*, Case No. 6:18-cv-993-PGB-KRS, ECF No. 23. The district court ordered a stay of federal proceedings pending exhaustion of the issues in state court. *Id.*, ECF No. 25. The state Capital Collateral Regional Counsel – North (“CCRC-N”) was appointed as Mr. James’s state counsel on February 11, 2019 (PCR Vol. 2, 275). At that time, Mr. James had not been meaningfully represented by counsel in state court since 2003.

On November 14, 2019, Mr. James, through CCRC-N, filed a motion for

postconviction relief, including claims that Mr. James' federal constitutional rights were violated because he was incompetent at the time of his guilty plea and jury waiver, penalty phase, sentencing, and postconviction waiver. (See App. 240). The motion also raised claims of trial and postconviction counsels' ineffectiveness for failing to properly investigate and raise issues of Mr. James' incompetency. (See App. 240).

The trial court summarily dismissed Mr. James' motion as untimely, without holding the case management hearing required by Florida law (PCR Vol. 2, 481-514). After Mr. James filed an unopposed motion for rehearing, the trial court heard argument from counsel (PCR Vol. 2, 661-708), but again entered an order summarily dismissing Mr. James' motion, finding that his incompetency claims were time-barred. *See App. 377.* The Florida Supreme Court affirmed. *James v. State*, 323 So.3d 158 (Fla. 2021).

## **REASONS FOR GRANTING THE WRIT**

This Court has jurisdiction to hear Mr. James' case, because it presents an important question of federal law and the state court's grounds for denying Mr. James' claim were not "adequate" to support the judgment and "independent" of federal law. *See Michigan v. Long*, 463 U.S. 1032. This case also involves a lack of consensus among states and federal circuits regarding the applicability of a procedural bar to substantive competency claims, and requires this Court's resolution.

- I. The Court Should Grant Review Because This Case Presents the Important Issue of Whether a Court May Refuse to Review a Capital Defendant's Substantive Incompetency Claim.**
  - A. The State Time Bar Is Not a Barrier to Review of the Federal Question Presented.**

Mr. James' case involves important federal constitutional challenges to the

validity of his guilty pleas, penalty phase, sentencing proceeding, and postconviction waiver. Mr. James filed a postconviction motion containing compelling evidence of his incompetency within one year of being appointed state court counsel. This was a timely filing under the circumstances of Mr. James' case, and all claims related to his substantive incompetency should not be subject to a bar. Although the Florida Supreme Court purported to apply a state time-bar, that ruling is not an obstacle to this Court reaching the federal constitutional questions presented in this petition.

**1. Mr. James Could Not Litigate His Own Incompetency *Pro Se*.**

The state courts ruled that Mr. James' competency claims were time-barred, because they were not raised within one year of his state postconviction waiver. App. 377 and 412. However, Mr. James was without counsel during this time.<sup>3</sup> A "timely" filing under the state courts' reasoning would have required an incompetent defendant to raise and litigate the issue of his own incompetency. This cannot be as a matter of federal constitutional law.

State court counsel was appointed for Mr. James on February 11, 2019, and filed the appropriate competency challenge just over nine months later on November 14, 2019. Thus, the litigation is timely as it was raised within a year of when the state court claim could reasonably have been discovered.

**2. Substantive Mental Competency Claims Should Not Be Subject to a State Procedural Bar.**

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<sup>3</sup> Although Mr. James was represented on appeal of denial of his request to reinstate postconviction proceedings, this was a limited appointment that did not allow for investigation or litigation regarding competency.

As this Court has made clear, a waiver of constitutional rights that is not competently made is void and violates due process. *Boykin v. Alabama*, 395 U.S. 238, 243-44 (1969). Similarly, the criminal trial of an incompetent defendant violates due process. *Drope v. Missouri*, 420 U.S. 162, 171 (1975). This is a due process right that cannot be waived. *Pate v. Robinson*, 383 U.S. 375, 384 (1966). As this Court explained,

[A] person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial. . . . [T]he prohibition is fundamental to an adversary system of justice.

*Drope*, 420 U.S. at 171-72. A defendant is competent if he “has sufficient present ability to consult with his lawyers with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402, 402 (1960).

Florida state law recognizes that “[a]n important distinction exists between procedural and substantive incompetency claims.” *Thompson v. State*, 88 So. 3d 312, 316 (Fla. 4th DCA 2012). Although Florida purports to only allow substantive incompetency claims to be raised on direct appeal and not in postconviction, it recognizes an exception for claims of ineffective assistance of counsel for failure to raise a defendant’s incompetency, as Mr. James presented in his postconviction motion. *Id.* (citing *Jackson v. State*, 29 So.3d 1161, 1162 (Fla. 1st DCA 2010)). Additionally, the Florida Supreme Court appears to suggest that substantive incompetency claims are viable in postconviction if the circumstances strongly suggest actual incompetency. *See Thompson*, 88 So. 3d at 317 n. 1 (citing *Jones v. State*, 478 So. 2d 346, 347 (Fla. 1985);

*Bush v. Wainwright*, 505 So. 2d 409, 410-11 (Fla. 1987); *James v. State*, 489 So. 2d 737, 739 (Fla. 1986)). And, *Thompson* explicitly says capital postconviction proceedings are different. *Thompson*, 88 So.3d at 319 n. 2 (citing *Thompson v. State*, 3 So.3d 1237 (Fla. 2009)).

Additionally, in *Nelson v. State*, 43 So. 3d 20 (Fla. 2010), the Florida Supreme Court, while acknowledging the substantive competency claim would be barred for not having been raised on direct appeal, still reached the merits of the claim. *Id.* at 33. In doing so, the Florida Supreme Court relied on federal law from the Eleventh Circuit. *Id.* at 33 (citing *James v. Singletary*, 957 F.2d 1562, 1571 (11th Cir. 1992)). Thus, it is appropriate to look to such case law for guidance.

Federal case law in the Eleventh Circuit has explained that although procedural competency claims can be defaulted, a “substantive [competency] claim, however, is not subject to procedural default and must be considered on the merits.” *Medina v. Singletary*, 59 F.3d 1095, 1111 (11th Cir. 1995); *see also Wright v. Sec'y Dep't of Corr.*, 278 F.3d 1245, 1258-59 (11th Cir. 2002) (finding of default as to substantive due process mental competency claim is contrary to law of the circuit); *Lawrence v. Sec'y, Fla. Dep't. of Corr.*, 700 F.3d 464, 481 (11th Cir. 2012) (substantive incompetency claims not subject to procedural default); *Battle v. U.S.*, 419 F.3d 1292, 1298 (11th Cir. 2005) (same); *Pardo v. Sec'y, Fla. Dep't of Corr.*, 587 F.3d 1093, 1101 n.3 (11th Cir. 2009) (reiterating this standard); *Raheem v. GDPC Warden*, 995 F.3d 895 (11th Cir. 2021) (same).

To the extent that Florida state law allows such a claim to be barred, it contravenes the spirit of this Court’s precedent. This Court should intervene and clarify

that a state court may not bar a capital defendant from receiving at least one round of merits review for a substantive incompetency claim.

**3. Mr. James Presented Compelling Evidence to the State Courts That Creates a Real, Substantial, and Legitimate Doubt as to His Competence.**

Mr. James' postconviction motion and attached documents presented compelling evidence of his substantive mental incompetency to plead guilty, have penalty phase proceedings and sentencing imposed upon him, or waive postconviction review.

Dr. Julie Kessel, M.D., cast significant doubt on Mr. James' competency to plead guilty. See SPCR 226; reprinted for convenience at App. 422. She observed that he is "a poor historian" with "impairments of memory." *Id.* at 1. She made multiple findings, including that:

- [Mr. James has] difficulty finding words and frequently lost his train of thought in the middle of a sentence, or in general conversation in which he engaged. He had problems organizing his thoughts, problems expressing his thoughts clearly, and he acknowledged that he had gaps in his memory and sometimes could not tell if he actually recalled something or if someone told him about that same thing and he was recalling the report of what happened. (App. 422 at 1).
- The deficits he described appear to be longstanding, possibly as the result of organic brain damage, his history of head injuries, and his extensive prior alcohol and drug abuse....It is possible that Mr. James's cognitive functioning is deteriorating. His cognitive deficits are longstanding; the worsening of his cognitive functioning is likely also longstanding, may have become manifest prior to his offense in 1993, and continues through today. (App. 422 at 2).
- Mr. James, for the foreseeable past, has likely been impaired in abstract thinking, memory, taking initiative, and discerning relevant information. A cognitive disorder – including one that may be the result of head trauma, chronic drug and alcohol use, and/or the presence of a seizure disorder – would likely interfere with Mr. James' ability to use and organize information in a meaningful way, consider consequences, and manage his behavior, particularly in an unstructured situation or under the influence of drugs. (App. 422 at 2).

- [I]t is likely [Mr. James] experienced mood instability during the critical times of his legal entanglements, including around the time of his arrest, guilty plea, and state post-conviction waivers....[P]rior to his guilty plea and post-conviction waivers, Mr. James developed a nihilistic preoccupation that he should be executed. The coupling of cognitive dysfunction and brain damage may very well aggravate Mr. James's depression, particularly given his memory impairments around the time of the offense. (App. 422 at 2).

Dr. Kessel expressed significant concerns about Mr. James' competency because, as she noted, at the time of his pleas and penalty phase proceedings, Mr. James was unable to manage his behavior, fully understand his legal circumstances, assist his legal team, and act in his own best legal interests. *See* App. 422 at 3. These same issues have persisted to the present day, equally implicating the competency of Mr. James' postconviction waivers.

Likewise, Dr. Regnier, M.S.W., M.A., Ph.D., found that despite Mr. James' intelligence, he has noticed "a significant decline in cognitive functioning." SPCR 230, reprinted for convenience at App. 426 at 2. He documented Mr. James' poor concentration, word-finding difficulty, recall problems, and emotional lability. App. 426 at 2. Dr. Regnier found that Mr. James "presents with multiple red flags for cognitive impairment, such as dementia"<sup>4</sup> dating all the way back to the time of the crime and implicating his competency:

- [O]ver the course of his life, he has suffered multiple head injuries for which he never received medical treatment. When he was fourteen years old he was hit in the back of the head while on a boat. He suffered a concussion and was taken to the hospital, but was released shortly after with no treatment. He was also hospitalized with a loss of consciousness and concerns of a skull fracture after he was involved in a rollover car accident at age fourteen or fifteen...he has been in fights and suffered multiple injuries to the head...he was stabbed during a bar fight [and] hospitalized for two weeks and had to have abdominal surgery due to

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<sup>4</sup> App. 426 at 4.

a collapsed lung. He had over one hundred staples to seal the wound. (App. 426 at 2).

- At the time of his crime he was very intoxicated from abusing a large number of drugs, including LSD, PCP, and alcohol. He has poor recall about the murder. (App. 426 at 4).
- He gets angry and cries without control for any recognizable reasons...easily loses track of conversations and has difficulty recalling things that happened the day before. His short-term recall has become a problem that affects his daily living. (App. 426 at 4).

Mr. James proffered sufficient evidence of his incompetency to the lower courts.

The state courts should have allowed development of this evidence and considered it in adjudication of Mr. James' postconviction motion. The failure to do so undermines reliability of his death sentences, and necessitates correction by this Court. The only remedy that can protect Mr. James' rights to due process, reliable and individualized sentencing, and equal protection within the criminal justice system, is a remand to the lower courts for an evidentiary hearing in accordance with Florida law,<sup>5</sup> in which Mr. James may present evidence of how his incompetency rendered his pleas, penalty phase and sentencing, and initial postconviction waivers invalid.

## **II. The Court Should Also Grant Review to Resolve a Lack of Consensus Regarding Whether a State Procedural Bar is Applicable to Substantive Competency Claims.**

Although this Court has made clear that the criminal trial of an incompetent defendant violates due process, *Drope v. Missouri*, 420 U.S. 162, 171 (1975), and that

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<sup>5</sup> See *Gaskin v. State*, 737 So. 2d 509, 516 (Fla. 1999) ("While the postconviction defendant has the burden of pleading a sufficient factual basis for relief, an evidentiary hearing is presumed necessary absent a conclusive determination that the defendant is entitled to no relief.").

this due process right cannot be waived, *Pate v. Robinson*, 383 U.S. 375, 384 (1966), courts have struggled with implementation of these principles. There is a present lack of consensus in state and federal courts alike regarding whether a substantive claim of a defendant's mental incompetency can be subject to a time or procedural bar. This jurisprudential split has significant consequences for some of the most vulnerable criminal defendants—those who are incompetent—and calls for intervention by this Court.

As discussed above, Florida state law purports to apply a procedural bar to substantive competency claims, but is inconsistent in its application of such a bar to consideration of a freestanding substantive competency claim. *See Nelson v. State*, 43 So.3d 20 (Fla. 2010). In addressing substantive competency on the merits despite finding it barred, the Florida Supreme Court in *Nelson* cited with approval and utilized federal case law from the Eleventh Circuit.

Federal circuit courts have split over whether a substantive mental competency claim can be procedurally defaulted. As discussed, Eleventh Circuit precedent is clear that a substantive competency claim is not subject to procedural bar. *See, e.g., Medina v. Singletary*, 59 F.3d 1095, 1111 (11th Cir. 1995); *Wright v. Sec'y Dep't of Corr.*, 278 F.3d 1245, 1258-59 (11th Cir. 2002); *Lawrence v. Sec'y, Fla. Dep't. of Corr.*, 700 F.3d 464, 481 (11th Cir. 2012); *Battle v. U.S.*, 419 F.3d 1292, 1298 (11th Cir. 2005); *Pardo v. Sec'y, Fla. Dep't of Corr.*, 587 F.3d 1093, 1101 n.3 (11th Cir. 2009); *Raheem v. GDCP Warden*, 995 F.3d 895 (11th Cir. 2021) (same).

Likewise, the Tenth Circuit has found that substantive mental competency claims

cannot be defaulted. *See, e.g., Rogers v. Gibson*, 173 F.3d 1278, 1289 (10th Cir. 1999) (although procedural competency claim may be barred, substantive competency claim may not); *Nguyen v. Reynolds*, 131 F.3d 1340, 1346 (10th Cir. 1997) (general rules of default do not apply to substantive mental competency claims).

Other circuits, however, allow a procedural bar of substantive competency claims. *See, e.g., Martinez-Villareal v. Lewis*, 80 F.3d 1301, 1306-07 (9th Cir. 1996) (expressly disagreeing with the Eleventh Circuit and finding substantive incompetence claim to be procedurally defaulted); *Burket v. Angelone*, 208 F.3d 172, 191 (4th Cir. 2000) (accepting state court procedural bar as adequate and independent ground). The Eighth Circuit has internally conflicting case law. In *Vogt v. U.S.*, it ruled that substantive competency claims cannot be procedurally defaulted. 88 F.3d 587, 590-91 (8th Cir. 1996). An earlier panel, however, found that such claims could be barred. *Weekley v. Jones*, 56 F.3d 889, 894-95 (8th Cir. 1995), *reh'g granted and opinion vacated on other grounds*, 73 F.3d 763 (8th Cir. 1995) *and on reh'g*, 76 F.3d 1459 (8th Cir. 1996). The Eight Circuit, en banc, ultimately adopted a portion of the *Weekley* panel decision allowing a procedural bar. *Weekley v. Jones*, 76 F.3d 1459, 1461 (8th Cir. 1996) (en banc). Nevertheless, *Vogt* remains ostensibly good law.

Among the state courts, there is also a lack of consensus. Aside from Florida's inconsistent application, Nebraska also has internal legal inconsistency. Although *State v. Painter*, 426 N.W.2d 513 (Neb. 1988) stated that a postconviction substantive competency claim could not be a basis for relief because it could have been raised on direct appeal, it did not impose a procedural bar, but considered the merits.

Furthermore, *State v. Johnson*, 551 N.W.2d 742 (Ct. App. Neb. 1996), examined multiple postconviction cases in which substantive competency was at issue before the Nebraska Supreme Court, finding that “in none of those cases was a procedural bar used to avoid consideration of issues in postconviction proceedings dealing with competency to stand trial or enter a plea.” *See id.* at 800 (listing string cite of cases in which competency was not subject to procedural bar). The court in *Johnson* concluded, “we do not believe the law is that there is a procedural bar in postconviction proceedings of issues relating to competency to stand trial.” *Id.* at 801.

*Burket v. Angelone* indicates that Virginia state courts allow substantive competency claims to be barred. 208 F.3d at 191. Mississippi, however, “has held unequivocally that ‘errors affecting fundamental constitutional rights are excepted from [a procedural bar].’ *Smith v. State*, 149 So. 3d 1027, 1031 (Miss. 2014) (overruled on other grounds); *see also Jones v. State*, 174 So.3d 902, 907 (Miss. Ct. App. 2015) (citing *Smith* and nothing that “claims regarding mental competency are not subject to procedural bars”). In support of these decisions, the Mississippi Supreme Court specifically referenced *Drope*’s language that the prohibition against trying an incompetent defendant is fundamental to an adversarial system of justice. *Smith*, 149 So. 3d at 131.

This Court should review this case in order to resolve the confusion among state and federal authorities. This issue is important because it implicates who can and cannot obtain relief of convictions and sentences obtained when they were incompetent. This Court should grant review to address the question Mr. James presents, which is closely

related to the central divergence among the above state and federal courts.

## CONCLUSION

This Court should grant a writ of certiorari to review the Florida Supreme Court's decision.

Respectfully submitted,

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