DOCKET NO. 21-7015

IN THE SUPREME COURT OF THE UNITED STATES

EDWARD THOMAS JAMES,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

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QUESTION PRESENTED

[Capital Case]

Whether the Florida Supreme Court's holding that Petitioner's claim of incompetency to stand trial—a claim raised 22 years after his case became final, and which Petitioner had knowingly and voluntarily waived when he declined to pursue an earlier postconviction motion—was procedurally barred violates the Due Process Clause.

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STATEMENT OF THE CASE

Petitioner was convicted for the September 19, 1993, rape and murder of eight-year-old Toni Neuner, and the murder of her grandmother, Betty Dick. After fleeing the state, he was eventually captured on October 6, 1993. He gave two taped confessions and ultimately pleaded guilty to two counts of first-degree murder, aggravated child abuse, attempted sexual battery, kidnapping, grand theft, grand theft of an automobile, and two counts of capital sexual battery. He then proceeded to a penalty phase with a jury.

The record shows that on the night of the murders Petitioner attended a party at Todd Van Fossen's house. *James v. State*, 695 So. 2d 1229, 1230 (Fla. 1997). While there for a few hours, Petitioner drank between six and twenty-four beers and appeared intoxicated by the time he left. *Id.* On his way home to Betty's house, where he was renting a room, one witness testified to seeing Petitioner consume LSD, although Petitioner himself testified he did not remember doing so and always had good experiences with LSD when he did. *Id.* at 1230; 1233. After returning home he drank some gin, ate a sandwich, and retired to his room. *Id.* at 1231.

Later in the night he came into the living room where Betty's four grandchildren were asleep and grabbed one, Toni, by the neck and strangled her, hearing bones pop in her neck. *Id.* Believing her to be dead, he then removed her clothes and had vaginal and anal intercourse with her before tossing her behind his bed. *Id.* Petitioner then went to Betty's room to have sex with her, and when he

arrived, he hit her in the back of the head with a pewter candlestick. *Id.* Betty woke and started screaming, "Why, Eddie, Why?" *Id.* This awakened another of Betty's granddaughters, Wendi Neuner, who witnessed Petitioner stabbing Betty with a knife. *Id.*

When Petitioner spotted Wendi, he tied her up and stashed her in a bathroom. *Id.* He then grabbed a butcher knife from the kitchen and stabbed Betty in the back in case she was not already dead. *Id.* He removed her pajama bottoms but ultimately did not also rape her. *Id.* As he was covered in blood, he showered in the bathroom where he'd left Wendi before gathering some clothes and stealing Betty's purse, jewelry, and car. *Id.* He drove across the country, stopping periodically to sell jewelry for money, before being captured in California. *Id.*

Dr. Shashi Gore performed the autopsy on the two victims. *Id.* Betty suffered twenty-one stab wounds to the back, which penetrated organs and fractured ribs, and more stabs to her neck, face, and ear. *Id.* She died within a few minutes due to massive bleeding and shock from her injuries. Toni died from asphyxia due to strangulation, however the amount of blood pooled in her pelvic cavity indicated she was still alive when Petitioner raped her. *Id.*

Following deliberations, the jury recommended a sentence of death for each murder. The trial court found the existence of three aggravating factors for each murder: 1) each murder was especially heinous, atrocious, or cruel; 2) Petitioner was contemporaneously convicted of another violent felony; and 3) each murder was committed during the course of a felony. The court found sixteen mitigating factors.

After finding the aggravating factors outweighed the mitigators, the trial court followed the jury's recommendation and sentenced Petitioner to death for each murder.

Petitioner's convictions and sentence were affirmed by the Florida Supreme Court on direct appeal and this Court denied review on December 1, 1997. *James v. Florida*, 118 S.Ct. 569 (1997).

Petitioner filed his first motion for postconviction relief on May 27, 1998. That motion did not assert that Petitioner was incompetent to proceed at the time he entered his plea, or at any time. After subsequent amendments the trial court set an evidentiary hearing. However, on March 10, 2003, Petitioner filed a pro se motion to voluntarily dismiss his postconviction proceedings. *James v. State*, 974 So. 2d 365, 366 (Fla. 2008). The trial court held a hearing to ensure Petitioner was competent to proceed and understood the consequences of dismissal, following a procedure mandated by the Florida Supreme Court in *Durocher v. Singletary*.[1] *Id.* at 366–67 (requiring that, before a court may dismiss a capital postconviction proceeding at the defendant's request, the court must find that "the waiver is made voluntarily, knowingly, and intelligently," meaning that the defendant "has the capacity to 'understand the consequences of waiving collateral counsel and proceedings'").

During that hearing, the trial court explained that dismissing his postconviction motion would result in an end to further challenges to his conviction

[1] *See* 623 So. 2d 482, 483 (Fla. 1993).

and sentence, and Petitioner said that he did not wish to contest his execution:

> THE COURT: And that means that this case is basically going to be over.
>
> [PETITIONER]: I'm sort of hoping that that's going to be the outcome of this hearing here . . . . It will be all said and done with and the State can go ahead and proceed in carrying out its sentence.

Id. at 367–68.

After a "comprehensive *Durocher* inquiry," the trial court found that Petitioner was competent to waive his right to postconviction counsel and proceedings. *Id.* at 367. On April 22, 2003, the trial court entered an order dismissing Petitioner's motion and discharging collateral counsel.

In 2005, Petitioner contacted his previous attorneys requesting to reinstate his postconviction motion. After a hearing with the trial court his request was denied, and he appealed to the Florida Supreme Court. That court found that the trial court "conducted a comprehensive *Durocher* inquiry in 2003...in complete accord with our opinion in *Durocher*," and affirmed the trial court's ruling that Petitioner had been competent to waive his postconviction proceedings. *Id.* at 367-68. Petitioner did not seek certiorari from that decision.

Thirteen years later, in August 2018, the Capital Habeas Unit for the Office of the Federal Public Defender for the Northern District of Florida was appointed to represent Petitioner in relation to federal habeas claims. That office filed an initial federal habeas petition on December 18, 2018, which prompted Capital Collateral Regional Counsel ("CCRC") to move for reappointment to exhaust Petitioner's state-

court claims. CCRC Middle filed the motion, and simultaneously raised a conflict of interest. The motion was granted, and the trial court appointed CCRC North to represent Petitioner.

On November 14, 2019, Petitioner filed a motion for postconviction relief alleging in part that he was incompetent at the time he pleaded guilty, during his penalty phase and sentencing, and when he waived postconviction counsel. Following briefing by the parties and a case management conference, the circuit court denied Petitioner's motion because his claims were untimely under Florida state criminal rules of procedure. It explained:

> At the case management conference, the Court first addressed the timeliness of the [instant successive] motion. For the first time, the Defendant argued that he was incompetent to enter his plea or waive his rights to pursue collateral relief in 2003. Defendant's argument regarding this issue fails. The Defendant has not given any legal justification for waiting nearly seventeen years after the voluntary dismissal of his motion to claim he was incompetent to enter that waiver. The initiation of a federal petition does not constitute newly discovered evidence that would authorize a defendant to override a prior voluntary waiver or overcome the time bar. "To be considered timely filed as newly discovered evidence, the successive rule 3.851 motion was required to have been filed within one year of the date upon which the claim became discoverable through due diligence." *Jimenez v. State*, 997 So. 2d 1056, 1064 (Fla. 2008), as revised on denial of reh'g (Sept. 29, 2008), as revised on denial of reh'g (Dec. 18, 2008). He asserts that he was incompetent to dismiss his collateral motion, but issues relating to his competence to waive his rights would have been discoverable within one year of that waiver. *See id.*; Fla. R. Crim. P. 3.851(d)(2). Notably, he did not claim that he was incompetent to make the decision in his 2006 action to rescind his waiver or at any time until 2019. This Court finds that ground 3 is untimely. Accordingly, the other substantive claims raised in grounds 1, 2, and 5 are also untimely.

James v. State, 323 So.3d 158, 160 (Fla. 2021).

The Florida Supreme Court affirmed the ruling that the claims were untimely. *Id.* at 160–61. In doing so, it wrote that "James's convictions and sentences have been final for more than twenty-three years, and James makes no argument as to why he believes these claims were timely or why the trial court erred in dismissing them as untimely." *Id.* The court likewise found that "because the issue of James's competency to waive his state postconviction proceedings was raised and resolved in a prior postconviction proceeding, it is procedurally barred and not subject to relitigation in the instant proceeding." *Id.* at 161.

REASONS FOR DENYING THE WRIT

The Court should deny certiorari.

Petitioner asks this Court to review the Florida Supreme Court's decision affirming the denial of his postconviction motion. In support, he points to a perceived lack of consensus among federal courts as to whether a state procedural bar is applicable in cases like his. But the facts of his case do not implicate that circuit split; his case would be a poor vehicle for resolving it in any event; and the courts that recognize that a defendant can procedurally default a claim of substantive competency are correct.

A. Petitioner's case does not implicate the circuit split he alleges, which is illusory in any event.

1. Petitioner identifies an alleged federal circuit split on the question whether a defendant's failure to raise a substantive competency claim in state court procedurally bars him from raising that claim in a federal habeas corpus proceeding. *Compare Medina v. Singletary*, 59 F.3d 1095, 1111 (11th Cir. 1995); *Rogers v. Gibson*, 173 F.3d 1278, 1289 (10th Cir. 1999), *with Martinez-Villareal v. Lewis*, 80 F.3d 1301, 1306–07 (9th Cir. 1996); *Weekley v. Jones*, 76 F.3d 1459, 1461 (8th Cir. 1996) (en banc); *Burket v. Angelone*, 208 F.3d 172, 191 (4th Cir. 2000); *Sawyer v. Whitley*, 945 F.2d 812, 823–24 (5th Cir. 1991). For several reasons, his case does not implicate that perceived split.

First, the cases on Petitioner's preferred side of the split address the circumstance where a defendant has actively challenged his conviction and sentence

in state court but merely failed to present the state courts with a substantive competency challenge. In that circumstance, the Tenth and Eleventh Circuits say, the defendant's failure to raise the claim in state court should not bar him from raising it in a federal habeas proceeding under 18 U.S.C. § 2254.

But the trial court and Florida Supreme Court in Petitioner's case did not base their finding of procedural default on the mere failure to raise a substantive competency claim in state court. Rather, they pointed to Petitioner's extreme delay in bringing the claim in state court. *See James*, 323 So. 3d at 160–61. Indeed, as the Florida Supreme Court observed, not only had Petitioner's "convictions and sentences been final for more than twenty-three years," Petitioner "ma[de] no argument as to why he believes these claims were timely or why the trial court erred in dismissing them as untimely." *Id.* It is one thing when a defendant fails to raise a claim in state court but otherwise promptly raises the claim in federal court; it is quite another when the defendant engages in a decades-long, unexplained failure to present the claims for timely adjudication.[2]

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[2] The Eleventh Circuit decisions Petitioner cites at page 7 of the Petition involve varying degrees of procedural defaults in the state courts, but none involved a claim of lengthy and unexcused delay. *See Medina v. Singletary*, 59 F.3d 1095, 1111 (11th Cir. 1995) (considering a substantive competency claim even though defendant did not raise it on direct appeal); *Wright v. Sec'y Dep't of Corr.*, 278 F.3d 1245, 1258–59 (11th Cir. 2002) (same); *Battle v. United States*, 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) (same); *Lawrence v. Sec'y, Fla. Dep't. of Corr.*, 700 F.3d 464, 481 (11th Cir. 2012) (considering a substantive competency claim even though defendant did not raise the claim either on direct appeal or in state habeas); *Raheem v. GDCP Warden*, 995 F.3d 895, 929 (11th Cir. 2021) (same, but where defendant raised his mental health throughout the state-court proceedings).

Second, the courts on Petitioner's preferred side of the split were not presented with another unique feature of this case: that Petitioner himself voluntarily, knowingly, and intelligently waived his right to challenge his conviction and sentence in state postconviction proceedings. Florida law guaranteed Petitioner a full and fair opportunity to present postconviction challenges to his sentence, including the claim that newly discovered evidence established his incompetency to proceed at the trial stage. Fla. R. Crim. P. 3.851 (d)(2)(a). But in 2003, Petitioner announced that he wished to waive his pending postconviction proceedings. *James v. State*, 974 So. 2d 365, 366 (Fla. 2008). Following a hearing at which Petitioner was thoroughly colloquied on that decision, the trial court found that Petitioner was competent and understood the rights he was giving up. *Id.* at 367–68. The Florida Supreme Court affirmed that ruling, and Petitioner did not seek certiorari. *Id.*

Though Petitioner asserts that he would be entitled to raise his substantive competency claim in the Eleventh Circuit, that is not the case. True enough, the Eleventh Circuit has said that a defendant's failure to raise a competency claim in state court will "generally" not preclude him from raising a substantive competency claim on federal habeas review. *Wright*, 278 F.3d 1245, 1259. But Petitioner ignores the Eleventh Circuit's decision in *Thomas v. Wainwright*, 788 F.2d 684 (11th Cir. 1986), which carves out an exception to that general rule. In *Thomas*, the court of appeals refused to entertain the same type of claim Petitioner raises here, distinguishing its earlier cases on the ground that the defendant in *Thomas* (1) failed to raise the claim on direct appeal; (2) failed to raise the claim in his first

rounds of state and federal habeas corpus petitions; and (3) failed to adequately explain those earlier failures. *Id.* at 688. Because a "defendant is [not] free to drop the [competency] issue or later pick it up as it suits his purposes," the Eleventh Circuit held that the defendant's claim was procedurally defaulted. Moreover, the court pointed to the weakness of the defendant's factual support for the claim, noting that—not unlike in Petitioner's case—"[p]resent counsel have employed experts who, nine years after the fact on the eve of the scheduled execution, have concluded that Thomas was incompetent to stand trial." *Id.*

Based on that ruling, it is likely that the Eleventh Circuit, were it to consider Petitioner's theories, would reject them. Even now, Petitioner has offered no credible explanation for why, at some earlier point in the proceedings, he could not have raised his competency claim. And as explained in depth below, the factual support for his current claim is equal parts scant and late-breaking.

It makes sense that the reasoning of Petitioner's preferred cases does not stretch so far as to cover these facts. When a defendant is in fact incompetent, the Tenth and Eleventh Circuits appear to reason that it is unfair to hold him accountable for the failure to challenge the conditions under which his conviction and sentence were obtained. Those cases therefore turn on the assumption that the defendant may have been incompetent at all times throughout direct appeal and postconviction proceedings, thus excusing the failure to litigate the claim. But that is decidedly not true in Petitioner's case. The trial court in 2003 carefully adjudicated the question of Petitioner's mental fitness for the materially identical

purpose of waiving his right to counsel and his right to level a postconviction challenge. That court and the Florida Supreme Court found that Petitioner *was* competent. From then on, no conceivable justification could exist for Petitioner's failure to litigate any alleged concern for his competency at the trial stage.

In other words, the unique facts of Petitioner's case do not implicate the split he alleges because he would lose even in the jurisdictions where the law in this area is most favorable.

Third, at any rate, the split is largely illusory. Though Petitioner touts two circuits that allow defendants to raise substantive competency claims, he produces no case in which a defendant actually obtained habeas relief. Rather, every case he cites addressing the merits of a procedurally defaulted substantive competency claim holds that the claim warranted no ultimate relief; in each, the defendant failed to meet his burden of offering clear and convincing evidence of his incompetency at the time of trial. As a result, none of those discussions of procedural default mattered to the outcome, and it is far from clear that those cases involve anything more than dicta. *See* "Obiter dictum," Black's Law Dictionary (11th ed. 2019) (defining dicta as "[a] judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive)").

As for a couple of state-court decisions that Petitioner asserts as part of his alleged split, none resulted in a ruling in favor of the defendant, and none hold that the Due Process Clause forbids states from imposing procedural bars in the

competency context. Though Petitioner cites (Pet. 12–13) *State v. Painter*, 426 N.W.2d 513 (Neb. 1988), as a case that goes his way, it actually goes the opposite. The Nebraska Supreme Court there declined to consider the defendant's freestanding competency claim based on its "longstanding rule that a motion for postconviction relief may not be used to obtain review of issues which could have been raised on direct appeal." *Id.* at 280. It considered only the defendant's ineffective-assistance-of-counsel claim predicated on counsel's failure to timely investigate the defendant's competency—a claim which, under state rules of procedure, need not have been raised on direct appeal. *See id.* at 280, 283–84. The court ultimately denied relief. *Id.* at 284; *see also State v. Rehbein*, 455 N.W.2d 821, 287 (Neb. 1990).

Petitioner also relies on cases from Mississippi, Pet. 13, but those appear to be based not on any constitutional requirement that state courts consider procedurally defaulted substantive competency claims, but on Mississippi's interpretation of its own statute governing postconviction proceedings. *See Smith v. State*, 149 So.3d 1027, 1031 (Miss. 2014); *Rowland v. State*, 42 So.3d 503, 506–08 (Miss. 2010) (interpreting Mississippi's Uniform Post–Conviction Collateral Relief Act to permit defaulted claims involving "fundamental rights"). And even assuming those cases recognize a constitutional rule in the State of Mississippi, it is unlikely to apply in the case of Petitioner's extreme delay and knowing, voluntary, and intelligent waiver of the right to seek postconviction relief.

B. This case is a poor vehicle.

If this case implicates a split, it is a poor vehicle for other reasons. To begin with, Petitioner has presented no meaningful evidence in support of his substantive competency claim, and thus no reason to believe that he could prevail on remand even if the Florida courts were required to consider his claim on the merits. *See Coleman v. Thompson*, 501 U.S. 722, 730 (1991) ("When this Court reviews a state court decision on direct review pursuant to 28 U.S.C. § 1257, it is reviewing the judgment; if resolution of a federal question cannot affect the judgment, there is nothing for the Court to do."). As this Court explained in *Herb v. Pitcairn*, its "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights." 324 U.S. 117, 125–126 (1945). Consequently, the Court is "not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." *Id.* at 126.

Here, had the Florida Supreme Court addressed the merits of Petitioner's competency claim the outcome of the proceedings would not have been different. Petitioner was seeking an evidentiary hearing on the issue of his competency at the time of his guilty pleas, penalty phase hearing and sentencing, and postconviction waivers. "A defendant is considered competent to stand trial if 'he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and [if] he has a rational as well as factual understanding of the proceedings against him.'" *James v. Singletary*, 957 F.2d 1562, 1574 (11th Cir.1992)

(quoting *Dusky v. United States*, 362 U.S. 402 (1960)). To show entitlement to a postconviction evidentiary hearing on a substantive competency claim, "the standard of proof is high [and] the facts must positively, unequivocally, and clearly generate the legitimate doubt." *Medina*, 59 F.3d at 1106 (citations omitted). "[T]he petitioner must present a preponderance of 'clear and convincing evidence' of 'positive', 'unequivocal', and 'clear' facts 'creating a real, substantial and legitimate doubt' as [to] his competence." *Pardo v. Sec'y, Fla. Dep't of Corr.* 587 F.3d at 1101 (quoting *Medina*, 59 F.3d at 1106).

Despite his arguments to the contrary, Petitioner fell well short of presenting the required clear and convincing evidence that would give rise to a real, substantial, and legitimate doubt as to his competency at any part of the proceedings. The crime in this case occurred in 1993 and Petitioner pleaded guilty in 1995. He waived his postconviction counsel in 2003 and—following a proceeding governed by the Florida Supreme Court's decision in *Durocher v. Singletary*, 623 So. 2d 482 (Fla. 1993)—the circuit court found that he was competent to waive both his right to counsel and his right to postconviction proceedings. That finding was affirmed by the Florida Supreme Court on appeal. *James v. State*, 974 So. 2d 365 (Fla. 2008).

At no time during any of these proceedings, from 1993 to 2008, did any of Petitioner's trial, appellate, or postconviction attorneys, prosecutors, or judges ever express any concern as to his competency to proceed. To this day, current counsel has been unable to produce a statement from any of those attorneys expressing such

concerns. In fact, the only testimony from any of his attorneys is the opposite: One of his trial attorneys testified in 2001 that he did not observe any mental health issues when he would meet with Petitioner, but that he had made such observations with other clients. Resp. App. at 19—20. To the contrary, Petitioner was helpful and "seemed to be very intelligent." Resp. App. at 21. He was even interviewed by a psychiatrist prior to his penalty phase trial, Dr. E. Michael Gutman, who never exhibited any concerns as to Petitioner's competency.

The two experts Petitioner cites now did not see him until 2018, *23 years* after he pled guilty. Importantly, neither expert claims that Petitioner was incompetent when they evaluated him or that he was incompetent at the time of his pleas or postconviction waivers; they instead merely express concern as to his current cognitive impairments. Pet. App. at 425; 430. They also both note that his currently impaired condition is a result of cognitive decline over time, meaning he was in worse condition when they saw him in 2018 than he would have been in 1995 or 2003. Pet. App. at 424; 428. And yet, even in 2018 neither expert found him incompetent to proceed. Indeed, despite these alleged impairments, when one expert administered an IQ test, he determined that Petitioner had a 105 IQ, which is above the average of 100.

This case is also a poor vehicle for resolving any purported split because of the numerous other avenues Petitioner himself claims to possess to litigate his substantive competency claim. As Petitioner points out, Florida law itself affords defendants the right to present otherwise procedurally barred substantive

competency claims if the circumstances strongly suggest actual incompetency. *See Thompson v. State*, 88 So.3d 312, 317 n.1 (Fla. 2012) (citing *Jones v. State*, 478 So. 2d 346, 347 (Fla. 1985); *Hill v. State*, 473 So. 2d 1253 (Fla.1985)). That Petitioner failed to meet that exception does not mean that Florida's procedural rules unconstitutionally preclude him from litigating a valid incompetency claim. And even if Petitioner had raised such a claim in the state court and sought to challenge the state court's denial on that basis, "[p]ostconviction claims of incompetency are extremely fact-dependent." *Id.* The law is well-settled that this Court does not grant a certiorari "to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925); *Texas v. Mead*, 465 U.S. 1041 (1984).

More than that, Petitioner claims to have the right to raise his substantive competency claim in the Eleventh Circuit despite his procedural default in state court. Pet. 7. If he is correct (which he is not), then this Petition is largely irrelevant—whatever the outcome here, he will be allowed to raise his claim in federal court. By Petitioner's own reasoning, then, this issue is unimportant in the context of this case.

C. Petitioner's due process claim fails on the merits.

Finally, Petitioner fails to demonstrate any constitutional infirmity in the procedural bar applied by the Florida Supreme Court or the Fourth, Fifth, Eighth, and Ninth Circuits. In a concurring opinion, Judge Briscoe of the Tenth Circuit Court of Appeals gave a breakdown of the differences between waiver and procedural default, and offered good policy reasons why substantive competency

claims should be subject to procedural default:

> The problem with our using the Supreme Court's statement in *Pate* as our guide, as some of our sister circuits have aptly noted, is that the defenses of waiver and procedural default are very different. The waiver doctrine rests upon a defendant's "voluntary knowing relinquishment of a right." *Green v. United States*, 355 U.S. 184, 191, 78 S.Ct. 221, 2 L.Ed.2d 199 (1957); see *United States v. Curtis*, 344 F.3d 1057, 1066 (10th Cir. 2003). In contrast, the procedural default rule is designed "to ensure that state prisoners not only become ineligible for state relief before raising their claims in federal court, but also that they give state courts a sufficient opportunity to decide those claims." *O'Sullivan v. Boerckel*, 526 U.S. 838, 853, 119 S.Ct. 1728, 144 L.Ed.2d 1 (1999). Moreover, the procedural default rule relies solely on the fact that a "claim was rejected by the state court on independent and adequate state grounds." *Martinez–Villareal v. Lewis*, 80 F.3d 1301, 1307 (9th Cir. 1996). Given this distinction, some of our sister circuits have reasonably held that substantive competency claims, while not subject to waiver, are subject to the usual procedural default rules that apply to most other constitutional issues. *E.g.*, *Hodges v. Colson*, 727 F.3d 517, 540 (6th Cir. 2013) ("Although it is true that substantive competency claims cannot be waived, they can be procedurally defaulted. We hereby hold that substantive competency claims are subject to the same rules of procedural default as all other claims that may be presented on habeas."); *Smith v. Moore*, 137 F.3d 808, 819 (4th Cir. 1998); *Martinez–Villareal*, 80 F.3d at 1306–07.

Lay v. Royal, 860 F.3d 1307, 1318-19 (10th Cir. 2017, Briscoe, concurring).

Judge Briscoe went on to explain that circuit courts that do not recognize these state procedural bars run counter to the restrictions Congress placed on federal habeas review under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). *Id.* at 1319. AEDPA was enacted not only to "afford the appropriate respect for the finality of state court proceedings," but also "to conserve judicial resources and to streamline the federal habeas process." *Id.* (quoting *Case v. Hatch*, 731 F.3d 1015, 1045 (10th Cir. 2013)). Petitioner's proposed approach—which lends

him no support in any event—undermines those interests. It also puts federal courts in an odd procedural posture because it would allow a court to grant federal habeas relief based on a claim that was never addressed on the merits by state courts. *Id.*

The sweeping rule Petitioner apparently advances—that a state defendant can procedurally default a substantive competency claim under no set of circumstances, including circumstances as extreme as his own—makes little sense. Even granting that the Due Process Clause requires some limited exception to normal rules of procedural default, that exception would apply only insofar as the defendant nevertheless raised the substantive competency claim at the earliest practicable moment. For example, under the best-case scenario for Petitioner, the Due Process Clause might have afforded him some limited window after he regained competency within which to challenge his conviction and sentence. Further delay *after* that point would be unjustifiable. But Petitioner has not shown that he acted swiftly upon reattaining competency (again, the State disputes that he was ever incompetent to begin with); as the Florida Supreme Court noted, Petitioner failed so much as to *attempt* to explain why it took him 22 years to raise his current claim, and never alleged that he filed his most recent claim within a year of reattaining competency, as Florida Rule of Criminal Procedure 3.851 would otherwise demand. *James*, 323 So. 3d at 160–61; *see* Fla. R. Crim. P. 3.851(d)(1), (2) (requiring postconviction motions to be filed within one year after the judgment and sentence become final unless the "facts on which the claim is predicated were

unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence"); *Jimenez v. State*, 997 So. 2d 1056 (Fla. 2008) (1-year statute of limitations governing claims of newly discovered evidence in the capital habeas context runs from the "date upon which the claim became discoverable through due diligence").

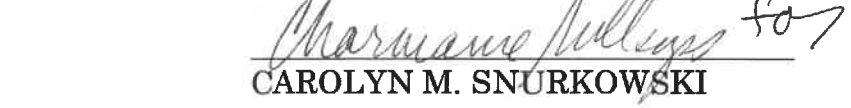
Thus, whatever the merits of the rule in the Tenth and Eleventh Circuits, the rationale of cases like *Medina* and *Rogers* affords defendants no right to flout indefinitely the rules that states have created to ensure the orderly administration of justice and the finality of criminal convictions.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Court deny the petition for writ of certiorari.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL



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