No. 24-6775

In the
Supreme Court of the United States

EDWARD THOMAS JAMES,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR MARCH 20, 2025 AT 6:00 P.M.

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CAPITAL CASE

QUESTIONS PRESENTED

Question I: Whether this Court should grant certiorari to review a decision of the Florida Supreme Court rejecting a claim that the Eighth Amendment requires jury sentencing in capital cases, and which raises a federal constitutional challenge to Florida's conformity clause that was not addressed in the court's opinion.

Question II: Whether this Court should grant certiorari to review a claim that the application of a postconviction procedural bar to a competency claim violates the Due Process Clause when the issue was not raised in post-warrant postconviction litigation, was previously argued in a 2021 petition for writ of certiorari, and where James knowingly and voluntarily declined to pursue an earlier postconviction motion over two decades ago.

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OPINION BELOW

The decision below of the Florida Supreme Court appears as *James v. State*, No. SC2025-0280, 2025 WL 798376 (Fla. March 13, 2025).

STATEMENT OF JURISDICTION

On March 13, 2025, the Florida Supreme Court affirmed the state postconviction court's summary denial of a successive postconviction motion in this active warrant case. *James v. State*, No. SC2025-0280, 2025 WL 798376 (Fla. March 13, 2025). The Florida Supreme Court issued the mandate immediately. On March 17, 2025, James filed a petition for a writ of certiorari in this Court. Petitioner invokes the jurisdiction of this Court based upon 28 U.S.C. § 1257. Respondent agrees that this statutory provision sets out the scope of this Court's certiorari jurisdiction. However, Respondent submits that because the issue relating to the second question before this Court was never presented to the state court below, this Court's jurisdiction fails on that claim. Even if this Court has jurisdiction over the federal questions presented in Petitioner's petition, this would be an inappropriate case for the exercise of this Court's discretionary jurisdiction.

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are the Sixth Amendment right-to-a-jury-trial provision, the Eighth Amendment cruel and unusual punishment provision, and the Fourteenth Amendment.

The Sixth Amendment to the United States Constitution, provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein

> the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. Amend. VI.

> The Eighth Amendment to the United States Constitution, provides:
>
> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. Amend. VIII.

> The Fourteenth Amendment to the United States Constitution, provides:
>
> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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.

U.S. Const. Amend. XIV.

STATEMENT OF THE CASE AND FACTS

On September 19, 1993, James raped and strangled to death an eight-year-old girl. *James v. State*, 695 So. 2d 1229, 1231 (Fla. 1997). He then stabbed to death the child's grandmother, Betty Dick, while another of her grandchildren watched. *Id.* James stole her purse, jewelry and car and then drove across the country, selling her property along the way. *Id.* Eventually, he was arrested in California and gave two videotaped confessions. *Id.*

Plea and Penalty Phase

James pleaded guilty to two counts of first-degree murder, one count of aggravated child abuse, one count of attempted sexual battery, one count of kidnapping, one count of grand theft, and one count of grand theft of an automobile. *Id*. at 1230. He also entered pleas of no contest to two counts of sexual battery charged in a separate information. *Id.* At the penalty-phase trial, James testified that he felt ashamed of what he had done. *Id.* at 1233. The jury returned an advisory recommendation for a sentence of death for each of the first-degree murder convictions. *Id.* The trial court followed the jury's recommendation and sentenced James to death on both first-degree murder convictions. *Id.*

Direct Appeal

The Florida Supreme Court affirmed the judgments and sentences of death. *Id.* at 1238. This Court denied James' petition for a writ of certiorari on December 1, 1997. *James v. Florida*, 522 U.S. 1000 (1997).

Pre-Warrant State Postconviction Proceedings

James, through counsel, filed his initial motion for postconviction relief on May 27, 1998. *James v. State*, 974 So. 2d 365, 366 (Fla. 2008). The trial court scheduled an evidentiary hearing, however, on March 10, 2003, James filed a *pro se* motion to voluntarily dismiss postconviction proceedings. *Id.* The trial court held a hearing and engaged in a colloquy with James to ensure that he understood the consequences of his actions. *Id.* It discharged James' counsel and allowed him to withdraw his postconviction motion after determining that he understood the consequences of his

actions. *Id*.

Two years later, James wrote discharged postconviction counsel, stating that he had changed his mind and requested the reappointment of counsel and the reinstatement of postconviction proceedings. *Id.* Counsel filed a motion seeking reinstatement of the proceedings, which the trial court denied after holding a hearing. *Id*. The Florida Supreme Court affirmed the trial court's order. *Id.* at 368.

On December 18, 2018, James, through counsel, petitioned for federal habeas relief. He sought and was granted a stay of habeas proceedings while he exhausted claims in state court. *James v. Sec'y, Dep't of Corr.*, No. 25-10683, 2025 WL 796324, at *1 (11th Cir. Mar. 13, 2025). The state trial court summarily dismissed James' successive postconviction motion. The Florida Supreme Court affirmed that decision, and this Court denied James' petition for a writ of certiorari. *James v. State*, 323 So. 3d 158, 161 (Fla. 2021), *cert. denied*, 142 S. Ct. 1678 (2022).

28 U.S.C. Section 2254 Proceedings

In 2022, the district court lifted the stay, and James filed an amended habeas petition. James proffered a series of affidavits and medical records in an attempt to persuade the district court that it should excuse his decades-long delay in seeking habeas relief. *James*, 2025 WL 796324, at *1. The district court held that the habeas petition was barred by the statute of limitations. *Id.*, at *2. James was not entitled to equitable tolling, because he had failed "(1) to show a causal connection between his mental impairments and his ability to timely file a § 2254 petition" and he had failed "(2) to demonstrate reasonable diligence." *Id.* The district court further concluded

that the actual innocence gateway was inapplicable, because there was "no reasonable likelihood that the new mental health evidence provided by Petitioner would prevent any reasonable juror from finding him guilty." *Id.* As such, the district court denied the amended habeas petition as untimely and denied a certificate of appealability. It denied James' motion for reconsideration on November 18, 2024. *Id.*

James appealed to the Eleventh Circuit Court of Appeals on December 17, 2024. *James*, 2025 WL 796324, at *2. On February 3, 2025, an Eleventh Circuit judge denied James' application for a certificate of appealability, finding that jurists of reason would not debate the district court's holding. *Id.* On February 24, 2025, six days after Florida Governor Ron DeSantis signed a death warrant and scheduled James' execution for March 20, 2025, James filed a motion for reconsideration and an emergency motion for a stay of execution, which an Eleventh Circuit three-judge panel denied. *Id.*

On the same day he filed his motion for reconsideration in the Eleventh Circuit, February 24, 2025, James filed a motion to amend his habeas petition, or alternatively, a motion for relief from judgment under Federal Rule of Civil Procedure 60(b) in the district court. *James,* 2025 WL 796324, at *2. He argued that relief was warranted on the grounds of new evidence, *i.e.*, newly received CT scans and expert reports about those scans, warranting the application of equitable tolling or actual innocence. *Id.*

The district court denied James' Rule 60(b) motion, holding that the new evidence would not warrant the application of equitable tolling or the actual

innocence gateway. *James*, 2025 WL 796324, at *2. It denied James' alternative motion to amend his petition on the grounds that it lacked jurisdiction to allow an amendment after it had entered final judgment on the petition. *Id.*

James then filed a second motion for a stay of execution with the Eleventh Circuit as well as a notice of appeal and a motion for a certificate of appealability. *James*, 2025 WL 796324, at *2. On March 13, 2025, the Eleventh Circuit denied James' motion for a stay of execution. *Id.*, at *3. It found that he had not established a substantial likelihood of success on the merits. *Id.*, at *2-3. Namely, the newly offered medical evidence and James' previous evidence failed to establish a connection between any mental impairment and the time before, during, or after his waiver of collateral proceedings and through the end of his AEDPA limitations period. *Id.*, at *3. Further, the new evidence did not explain James' lack of reasonable diligence during the same timeframe and his later decision to attempt to reinstate postconviction proceedings, or during the ten-year period between the Florida Supreme Court's affirmance of the denial of such reinstatement and his initiation of federal habeas proceedings in 2018. *Id.* Finally, it held that a stay of execution would not be equitable, because James voluntarily abandoned his postconviction challenges years ago. *Id.*

Post-Warrant State Court Litigation

James filed a successive postconviction motion on February 23, 2025, raising three claims: (1) his execution would violate the Eighth Amendment due to the length of his incarceration, the conditions of his incarceration and his physical and mental

decline; (2) recently received brain scans from 2023 would render his execution violative of the Eighth and Fourteenth Amendments; and (3) his execution would violate the Eighth Amendment because the jury's death recommendations were not unanimous. The postconviction court summarily denied relief, finding claims one and three untimely, procedurally barred and meritless and claim two untimely. *James v. State*, No. SC2025-0280, 2025 WL 798376, *5 (Fla. March 13, 2025).

Post-Warrant Florida Supreme Court Litigation

James appealed to the Florida Supreme Court, raising all three claims. The Florida Supreme Court affirmed the postconviction court's summary denial of relief. *James v. State*, No. SC2025-0280, 2025 WL 798376 (Fla. March 13, 2025). He also filed an accompanying stay of execution, which the court denied holding that he had failed to raise substantial grounds upon which relief might be granted. *James*, 2025 WL 798376, at *9.

Post-Warrant State Habeas Petition

On March 2, 2025, James filed a petition for writ of habeas corpus in the Florida Supreme Court, arguing that the court should revisit its 2021 holding that his 2019 successive postconviction motion was untimely under state procedural law. He asserted that reconsideration was warranted because: (1) an amendment to state procedural law no longer permits the waiver of postconviction counsel; (2) similarly situated defendants had been permitted to reinstate postconviction proceedings; (3) newly received CT scans undermine his waiver of postconviction proceedings; and (4) manifest injustice. On March 13, 2025, the court denied the petition. *James,* 2025 WL

798376, at *9. It also denied James' accompanying motion for a stay of execution, holding that he had failed to raise substantial grounds upon which relief might be granted. *Id*.

On March 17, 2025, James, represented by Capital Collateral Regional Counsel – North ("CCRC-N"), filed a petition for a writ of certiorari in this Court raising two questions.

REASONS FOR DENYING THE WRIT

ISSUE I

Whether this Court should grant review of a decision of the Florida Supreme Court rejecting a claim that the Eighth Amendment requires jury sentencing in capital cases and which raises a federal constitutional challenge to Florida's Conformity Clause that was not addressed in the Court's opinion.

A. Jury Unanimity

James first seeks review of the Florida Supreme Court's decision rejecting a claim that the Eighth Amendment mandates unanimous jury sentencing in capital cases. Pet. at 6. The Florida Supreme Court found the Eighth Amendment claim to be procedurally barred. The finding is an independent and adequate state law ground precluding review in this Court. Furthermore, it is the Sixth Amendment right-to-a-jury-trial provision that governs the jury's role in sentencing, not the Eighth Amendment. As this Court explained in *McKinney v. Arizona*, 589 U.S. 139 (2020), a jury in a capital case is required to find one aggravating circumstance but a jury is not required to weigh the aggravation against the mitigation or to make the ultimate sentencing decision.

Even viewing the matter as an Eighth Amendment issue, there is no conflict between this Court's Eighth Amendment jurisprudence and the Florida Supreme Court's decision in this case. This Court's long-standing precedent is that the Eighth Amendment does not require jury sentencing in capital cases. *Spaziano v. Florida*, 468 U.S. 447 (1984); *Harris v. Alabama*, 513 U.S. 504 (1995). And this Court recently denied review of this same question in the Florida capital cases of *Dillbeck v. Florida*, 143 S. Ct. 856 (2023) (No. 22-6819), and *Zack v. Florida*, 144 S. Ct. 274 (2023) (No. 23-5653). Nor is there any significant conflict between the Florida Supreme Court's decision in this case and that of the lower appellate courts. Therefore, review of this question should be denied.

The Florida Supreme Court's decision in this case

The Florida Supreme Court affirmed the postconviction court's summary denial of the claim that the Eighth Amendment requires unanimous jury sentencing in capital cases. *James*, 2025 WL 798376, at *8. The court found that James' Eighth Amendment claim was an attempt to avoid a procedural bar, because he had argued in an earlier appeal that his nonunanimous death sentence violated the Sixth Amendment pursuant to *Hurst v. Florida*, 577 U.S. 92 (2016). *Id.* It held that even if James framed the issue as one of "evolving standards of decency" under the Eighth Amendment, this Court's Eighth Amendment precedent, by which the Florida Supreme Court is bound, does not require a unanimous jury recommendation for death during the penalty phase. *Id.*

Independent and adequate state law grounds

This Court lacks jurisdiction over cases that do not present federal questions. 28 U.S.C. § 1257; *Johnson v. Williams*, 568 U.S. 289, 309 (2013) (Scalia, J., concurring) (noting that 28 U.S.C. § 1257 imposes a federal-question requirement as a condition of this Court's appellate jurisdiction). In *Michigan v. Long*, 463 U.S. 1032 (1983), this Court explained that it lacks jurisdiction over a case if a state court's decision rests upon two grounds: a state law ground and a federal ground, provided the state law ground is independent and adequate itself. *Id*. at 1038, n.4 (quoting *Fox Film Corp. v Muller*, 296 U.S. 207, 210 (1935)). Provided the state law is not "interwoven" with federal law, this Court's jurisdiction "fails." *Id*. (citing *Enter. Irrigation Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157, 164 (1917)); *see also Foster v. Chatman*, 578 U.S. 488, 497 (2016) (noting that this Court lacks jurisdiction to review a state court judgment if that judgment rests on state law citing *Harris v. Reed*, 489 U.S. 255, 260 (1989)).

The Florida Supreme Court found the Eighth Amendment claim to be procedurally barred. *James*, 2025 WL 798376, at *8. The court was interpreting a Florida rule of court to determine whether the successive postconviction claim was successive and, thus, procedurally barred. There is no federal constitutional aspect to such determinations. The determination of being procedurally barred was not interwoven with federal constitutional law. This is an independent and adequate ground to deny review and this Court should decline review[1].

[1] This case would also present a very poor vehicle to address this issue as it comes to

The Sixth Amendment, not the Eighth Amendment

The Eighth Amendment prohibits cruel and unusual punishment; it does not address a jury's proper role in capital sentencing. The Eighth Amendment does not speak to what findings a penalty phase jury must make regarding the death sentence. It is the Sixth Amendment right-to-a-to-jury-trial provision that applies to those types of issues. As the Nebraska Supreme Court observed, the Eighth Amendment is not even "pertinent" to the issue of whether a panel of judges may make the ultimate sentencing decision in a capital case. *State v. Trail*, 981 N.W.2d 269, 310 (Neb. 2022). When a specific constitutional provision applies, this Court employs that provision rather than a more general or inapplicable provision. The Sixth Amendment, not the Eighth Amendment, governs this question. *See City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520, 542-43 (2024) ("The Cruel and Unusual Punishments Clause focuses on the question what "method or kind of punishment" a government may impose after a criminal conviction, not on the question whether a government may criminalize particular behavior in the first place or how it may go about securing a conviction for that offense.") (citation omitted).

No conflict with this Court's jurisprudence

There is no conflict between this Court's Sixth Amendment or Eighth

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this Court in the postconviction context and therefore this Court would have to address the predicate issue of retroactivity. Certainly, any new procedural rule mandating a unanimous penalty phase jury would not be retroactive. *Edwards v. Vannoy*, 593 U.S. 255 (2021) (abolishing the watershed exception*); Schriro v. Summerlin*, 542 U.S. 348, 353 (2004) (stating that *Ring v. Arizona*, 536 U.S. 584 (2002) was "properly classified as procedural and holding *Ring* was not retroactive).

Amendment jurisprudence and the Florida Supreme Court's decision in this case. As a Sixth Amendment claim, it is meritless under this Court's decision in *McKinney*. As this Court explained, the Sixth Amendment right-to-a-jury trial provision only requires jury findings regarding the aggravating circumstances, not perform the weighing or make the final decision. This Court stated that capital defendants are entitled to a jury determination of at least one aggravating circumstance for the defendant to be eligible for a death sentence. *Id*. at 141, 144. But the *McKinney* Court also explained that defendants are not constitutionally entitled to a jury determination of weighing or to a jury determination of the "ultimate sentencing decision." *Id.* at 144. This Court stated that "States that leave the ultimate life-or-death decision to the judge may continue to do so." *Id.* at 145. Neither *Ring* nor *Hurst*, requires jury weighing of the aggravation against the mitigation. *McKinney*, 589 U.S. at 145. Constitutionally, judges, including appellate judges, may perform the weighing function and may also be the ultimate sentencer.

This Court has repeatedly observed that it is aggravators that are elements of the greater offense of capital murder. *Ring*, 536 U.S. at 609 (stating that because aggravating factors "operate as the functional equivalent of an element of a greater offense" of capital murder, "the Sixth Amendment requires that they be found by a jury"); *Sattazahn v. Pennsylvania*, 537 U.S. 101, 111 (2003) (plurality opinion) (explaining, that "for purposes of the Sixth Amendment's jury-trial guarantee, the underlying offense of 'murder' is a distinct, lesser included offense of 'murder plus one or more aggravating circumstances'" which "increases the maximum permissible

sentence to death" and therefore, a jury, and not a judge, must find the existence of any aggravating circumstances beyond a reasonable doubt). So, because it is the aggravator that increases the penalty to death, it is only the aggravating factor that must be found by the jury, under this Court's Sixth Amendment jurisprudence.

The petition does not cite, acknowledge, or attempt to distinguish *McKinney*. Petitions for writ of certiorari that do not account for this Court's most relevant decisions do not warrant this Court's serious consideration.

The Sixth Amendment does not require jury sentencing in capital cases according to this Court's decision in *McKinney*. There is no conflict between this Court's Sixth Amendment jurisprudence and the Florida Supreme Court's decision in this case.

As an Eighth Amendment claim, it is meritless under this Court's decisions in *Spaziano,* and *Harris*. In *Spaziano*, this Court rejected an Eighth Amendment challenge to a judge overriding a penalty phase jury's recommendation of a life sentence. *Id*. at 459-65. This Court was not persuaded that a judge having the ultimate responsibility to impose a death sentence in a capital case was "so fundamentally at odds with contemporary standards of fairness and decency" that Florida must be required to "give final authority to the jury to make the life-or-death decision." *Id*. at 465. This Court concluded that "there is no constitutional imperative that a jury have the responsibility of deciding whether the death penalty should be imposed." *Id*. The dissent in *Spaziano* would have required jury sentencing in capital cases, as a matter of Eighth Amendment law, believing that a jury was more attuned

to the community's moral sensibility; more accurately reflects the composition and experiences of the community as a whole; and were more likely to express the conscience of the community. *Id*. at 469 (Stevens, J., dissenting); *see also Hurst*, 577 U.S. at 103 (Breyer, J., concurring) (expressing the view that the Eighth Amendment requires a jury, not a judge, make the decision to sentence a defendant to death citing *Ring*, 536 U.S. at 613 (Breyer, J., concurring) (quoting the dissent in *Spaziano*)).

And, in *Harris*, this Court held the Eighth Amendment does not require that a capital sentencing judge assign a capital jury's recommendation of a sentence any particular weight. This Court rejected the notion that any "specific method for balancing mitigating and aggravating factors" was "constitutionally required." *Id*. at 512. Nor did the Constitution require a State to ascribe any specific weight to any particular aggravating or mitigating factor. *Id*. This Court stated the "Constitution permits the trial judge, acting alone, to impose a capital sentence." *Id*. at 515.

While this Court's decision in *Hurst,* overruled the Sixth Amendment aspects of *Spaziano*, it did not overrule the Eighth Amendment aspects of *Spaziano*. *Hurst*, 577 U.S. at 101. The *Hurst* Court overruled both *Spaziano* and *Hildwin v. Florida*, 490 U.S. 638 (1989), but only "to the extent" they allowed "a sentencing judge to find an aggravating circumstance." *Hurst*, 577 U.S. at 102; *see also State v. Poole*, 297 So. 3d 487, 497 (Fla. 2020) (explaining that this Court retreated from the Sixth Amendment concept of aggravators being sentencing factors rather than elements of capital murder starting with *Apprendi v. New Jersey*, 530 U.S. 466 (2000), then in *Ring v. Arizona*, 536 U.S. 584 (2002), and finally in *Hurst v. Florida*, 577 U.S. 92

(2016)); *Poole*, 297 So. 3d at 500 (noting *Hurst v. Florida* "overruled *Spaziano* and *Hildwin* 'to the extent they allow a sentencing judge to find an aggravating circumstance, independent of a jury's factfinding, that is necessary for the imposition of the death penalty'" but noting that the United States Supreme Court did not address the Eighth Amendment arguments raised by the petitioner in its *Hurst* decision). Furthermore, this Court's decision in *Hurst* did not speak to the holding of *Harris* at all. Indeed, *Harris* was never even cited in the *Hurst* decision.

Spaziano remains good law regarding the issue of the Eighth Amendment not requiring jury sentencing in capital cases, just as the Florida Supreme Court concluded in this case. And the view that *Spaziano* remains good law was reinforced by the reasoning of this Court's recent decision in *McKinney*, albeit on Sixth Amendment grounds. *Spaziano* and *Harris* remain valid Eighth Amendment precedent which the Florida Supreme Court properly followed.

James' counsel relies on the fact that since *Hurst* only four states have executed a defendant who was sentenced after the jury was not unanimous to establish that unanimous jury sentencing in capital cases is the widespread practice in the United States. Pet. at 8. But jury sentencing in capital cases was the norm when *Spaziano* was decided in 1984, as well as when *Harris* was decided in 1995.

James' counsel insists that the decision to impose a death sentence "belonged" to the jury at the time of the founding of the nation in support of an argument that jury sentencing was part of the original understanding of the Eighth Amendment. Pet. at 9. But that statement is directly contrary to this Court's observation that at

the time the "Eighth Amendment was adopted in 1791, the States *uniformly* followed the common-law practice of making death the exclusive and mandatory sentence for certain specified offenses." *Woodson v. North Carolina*, 428 U.S. 280, 289 (1976) (holding mandatory death sentences were unconstitutional) (emphasis added). Mandatory death sentences were the norm from the founding until *Furman v. Georgia*, 408 U.S. 238 (1972). And it was only in the wake of *Furman* that mandatory death sentences were declared unconstitutional. *Roberts v. Louisiana*, 428 U.S. 325 (1976) (holding a mandatory death sentence statute was unconstitutional even under a narrower definition of first-degree murder). James' counsel's argument is not historically accurate.

Furthermore, contrary to opposing counsel's basic assertion that jury sentencing was part of the original understanding of the Eighth Amendment, the original understanding of the Eighth Amendment was limited to bail, fines, and types of punishments. The drafters of the Eighth Amendment, who adopted the English phrasing, were "primarily concerned" with "proscribing tortures and other barbarous methods of punishment." *Gregg v. Georgia*, 428 U.S. 153, 170 & n.17 (1976) (plurality) (quoting *Furman v. Georgia*, 408 U.S. 238, 316-27 (1972) (Marshall, J., concurring)); *Baze v. Rees*, 553 U.S. 35, 97 (2008) (Thomas, J., concurring) (observing that evidence from the debates on the Constitution confirms that "the Eighth Amendment was intended to disable Congress from imposing torturous punishments."); *Glossip v. Gross*, 576 U.S. 863, 894-95 (2015) (Scalia, J. concurring) ("Historically, the Eighth Amendment was understood to bar only those punishments that added 'terror, pain,

or disgrace' to an otherwise permissible capital sentence."). That the Eighth Amendment extends into other areas, such as to a jury's role in sentencing, is a modern invention flowing from the discussion of the dignity of man in *Trop v. Dulles*, 356 U.S. 86, 100 (1958) ("The basic concept underlying the Eighth Amendment is nothing less than the dignity of man."). But it is openly acknowledged in the caselaw that that was not the original understanding of the Eighth Amendment. *See, e.g., Hall v. Florida*, 572 U.S. 701, 708 (2014) (stating that the Eighth Amendment is "not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice" and the amendment's "protection of dignity reflects the Nation we have been, the Nation we are, and the Nation we aspire to be.").

James counsel points to the jury's power of nullification as support for the assertion that common law juries determined the sentence without even attempting to establish that it was even a common phenomenon for a jury to acquit a defendant of a crime to avoid the death penalty. And regardless of the prevalence of such acquittals, a jury's power of nullification does not change the law. Mandatory death sentences imposed by the judge were the norm at the time the Eighth Amendment was adopted and for more than a century afterwards, not jury sentencing. Jury sentencing in capital cases was not the historical practice.

This Court recently denied review of this exact same Eighth Amendment question in two Florida capital cases. *Dillbeck v. Florida*, 143 S. Ct. 856 (2023) (No. 22-6819); *Zack v. Florida*, 144 S. Ct. 274 (2023) (No. 23-5653). Much the same arguments made in the *Dillbeck* and Zack petitions, also under active warrants,

regarding this question are repeated in this petition.

There is no conflict with this Court's Sixth Amendment or Eighth Amendment jurisprudence and the Florida Supreme Court's decision in this case rejecting the claim that the Eighth Amendment requires unanimous jury sentencing in capital cases.

No conflict with the lower appellate courts

There is also no conflict between the decision of any federal appellate court or any state court of last resort and the Florida Supreme Court's decision in this case. As this Court has observed, a principal purpose for certiorari jurisdiction "is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." *Braxton v. United States*, 500 U.S. 344, 347 (1991); *see also* Sup. Ct. R. 10(b) (listing conflict among federal appellate courts and state supreme courts as a consideration in the decision to grant review). Issues that have not divided the courts or are not important questions of federal law do not merit this Court's attention. *Rockford Life Ins. Co. v. Ill. Dep't of Revenue*, 482 U.S. 182, 184 n.3 (1987). In the absence of such conflict, certiorari is rarely warranted.

James counsel cites no federal circuit court case holding that jury sentencing in capital cases is constitutionally required by the Eighth Amendment. The federal circuit courts follow *McKinney*, *Harris*, and *Spaziano*. Nor is there any conflict between the Florida Supreme Court's decision in this case and any decision of any other state supreme court. Various state supreme courts have followed this Court's decision in *McKinney* explaining that the ultimate sentencing decision in a capital

case may be made by the judge. *See, e.g., Trail*, 981 N.W.2d at 309 (holding Nebraska's sentencing scheme, which leaves to the three-judge panel the ultimate life-or-death decision as well as the determinations of whether the aggravating circumstances justify the death penalty and weighing the aggravation against the mitigation and concluding judge sentencing in capital cases "does not violate the Sixth Amendment right to a jury trial" citing *McKinney*); *State v. Whitaker*, 196 N.E.3d 863 (Ohio 2022) (rejecting an argument that a capital defendant is entitled to a jury determination of the mitigation and weighing citing *McKinney*); *People v. McDaniel*, 493 P.3d 815, 851, 859 (Cal. 2021) (stating a penalty phase jury's sentencing decision "is not a traditional factual determination in any relevant sense" and observing that under *McKinney*, the Constitution does not require a jury to perform the weighing or they make the ultimate sentencing decision in a capital case), *cert. denied, McDaniel v. California*, 142 S. Ct. 2877 (2022) (No. 21-7455). Opposing counsel does not even attempt in the petition to establish any conflict between the Florida Supreme Court's decision and that of any other state supreme court after this Court's observation that states that leave the "ultimate life-or-death decision to the judge may continue to do so." *McKinney*, 589 U.S. at 145. There is no conflict between the Florida Supreme Court's decision and that of any federal circuit court of appeals or that of any state court of last resort.

Because there is an independent and adequate state law ground, as well as the claim being meritless under this Court's existing precedent of *McKinney*, *Spaziano* and *Harris*, review of this question regarding jury sentencing in capital cases should

be denied.

B. Florida's Conformity Clause

James next argues that Florida's constitution conformity clause -- requiring its interpretation of cruel and unusual punishment to conform to this Court's Eighth Amendment jurisprudence -- is a violation of James' rights under the Eighth and Fourteenth Amendments. This issue was not passed upon by the Florida Supreme Court.

Poor vehicle to decide the question presented

In addition to this issue not being passed upon by the Florida Supreme Court, it likewise involves no conflict. Sup. Ct. R. 10(b). Because the Florida Supreme Court did not decide this issue, it certainly does not conflict with the decision of another state court of last resort, United States court of appeals, or this Court.

It is this Court's general practice to wait until an issue has sufficiently developed with conflicting opinions before granting certiorari. *See California v. Carney*, 471 U.S. 386, 400 & n.11 (1985) (Stevens, J., dissenting). That way, this Court has the benefit of deep analysis on both sides of the issue and can bring its best, most-informed judgment to bear on the constitutional question. *See id.* at 400 ("To identify rules that will endure, we must rely on the state and lower federal courts to debate and evaluate the different approaches to difficult and unresolved questions of constitutional law."). James has not identified any conflict or opinion supporting his position, and the Florida Supreme Court did not engage in analysis of this issue. This Court should not depart from its normal practice to review this issue now

without the benefit of any conflict or lower-court analysis, particularly on the eve of an execution.

In addition, James fails to show how the Florida Supreme Court's reliance on the state's conformity clause violates his federal constitutional rights. Nothing in the Eighth Amendment forces state courts to expand this Court's Eighth Amendment jurisprudence into areas where this Court has not. James does not establish how the state court's adoption of this Court's Eighth Amendment jurisprudence violates his rights in any way.

What is more, lower courts are required to follow this Court's precedents. The United States Constitution mandates that "the Laws of the United States . . . shall be the supreme Law of the Land" that judges in every state are bound by. *See* U.S. Const. art. 6. Likewise, this Court has long acknowledged that lower courts are bound to adhere to its precedent. *See, e.g., Hohn v. United States*, 524 U.S. 236, 252–53 (1998) ("Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality."); *Bosse v. Oklahoma*, 580 U.S. 1, 3 (2016) ("[I]t is this Court's prerogative alone to overrule one of its precedents."); *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533, 535 (1983) ("Needless to say, only this Court may overrule one of its precedents."); *see also Hutto v. Davis*, 454 U.S. 370, 375 (1982) ("[U]nless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts.").

It is absurd to suggest that any lower court bound to this Court's interpretation

of the Eighth Amendment could overrule *McKinney*, *Spaziano* and *Harris* and require jury sentencing. It simply cannot violate the Eighth Amendment to refuse to expand this Court's Eighth Amendment jurisprudence. This question is altogether not worthy of this Court's attention.

ISSUE II

Whether this court should grant certiorari to review a claim that the application of a postconviction procedural bar to a competency claim violates the due process clause when the issue was not raised in post-warrant litigation, was previously argued in a 2021 petition for writ of certiorari, and where James knowingly and voluntarily declined to pursue an earlier postconviction motion over two decades ago.

James' next question presented to this Court involves whether the procedural default of a postconviction substantive mental competency claim violates the Sixth, Eighth and Fourteenth Amendments. James did not present this claim below in his post-warrant litigation, thus precluding this Court's review. To the extent that he raised a similar, if not identical, claim in his January 27, 2022, petition for writ of certiorari, his current argument constitutes an untimely and improper motion for rehearing of this Court's earlier denial. Further, fundamental fairness does not mandate relitigation of his competency in 2003 to waive state postconviction proceedings. Therefore, review of this question should be denied.

Issue not presented in state court

This Court's jurisdiction to review a case from a state court of last resort is premised on the state court *deciding* an important federal question. Sup. Ct. R. 10(b)(c). If a federal question has not first been presented to a state court, this Court has "no power to consider it." *Street v. New York*, 394 U.S. 576, 581–82 (1969); *see*

also Hill v. California, 401 U.S. 797, 805 (1971) (finding an issue was not properly before this Court when it was never raised, briefed, or argued in the state appellate court).

James never raised the instant claim that there is a lack of consensus in state and federal courts regarding whether a substantive claim of a defendant's mental incompetency can be subject to a time or procedural bar in either his post-warrant successive postconviction motion or in his post-warrant habeas petition. Rather, he argued that the Florida Supreme Court should revisit its earlier timeliness rulings because: (1) an amendment to state procedural law no longer permits the waiver of postconviction counsel; (2) similarly situated defendants had been permitted to reinstate postconviction proceedings; (3) newly received CT scans undermine his waiver of postconviction proceedings; and (4) manifest injustice.

As to his instant argument, James' Petition makes no reference to the Florida Supreme Court's latest decision. James is silent on the Florida Supreme Court not addressing the instant claim. Indeed, James has made no effort to show that this issue was properly raised, nor does he show that the Florida Supreme Court's failure to consider it was for a reason other than lack of presentation. James' failure to raise this instant claim below precludes this Court's jurisdiction, and certiorari must be denied.

Untimely motion for rehearing of denial of petition for a writ of certiorari

On January 27, 2022, James filed a Petition for a Writ of Certiorari with this Court following the Florida Supreme Court's 2021, denial of his successive

postconviction motion. *James v. State*, 323 So. 3d 158 (Fla. 2021). Citing "compelling evidence of his substantive mental incompetency to plead guilty," he argued that this Court should grant review because the lower court's decision presented the important issue of whether a court may refuse to review a capital defendant's substantive incompetency. Petition for Writ of Certiorari at 4; *Id*. He also urged this Court to grant review to resolve a lack of consensus regarding whether a state procedural bar is applicable to substantive competency claims. *Id.* at 10. This Court denied James' Petition for a Writ of Certiorari on April 18, 2022. *James v. Florida*, 142 S. Ct. 1678 (2022).

A petition for the rehearing of an order denying a petition for writ of certiorari must be filed within 25 days after the order of denial. Sup. Ct. R. 44-2. The time for filing a petition for the rehearing of an order denying a petition for a writ of certiorari will not be extended. *Id*. Further, its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. *Id*. Finally, the petition shall be presented together with a certification of counsel that it is restricted to the grounds specified in Rule 44-2 and that it is presented in good faith and not for delay. *Id*.

Here, James did not file a petition for rehearing of this Court's denial of his Petition for a Writ of Certiorari in 2022. However, his current argument, made over three years later, is essentially that. As such, it fails to comply with Rule 44-2 in multiple ways. It is untimely. With the exception of opinions based on newly received CT scans, which in reality are cumulative to the expert opinions on which he relied

in 2021, it cites no intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. Finally, counsel has not filed a certificate stating that his argument is restricted in any way to intervening circumstances of a substantial or a controlling effect. James' untimely and improper petition for rehearing of this Court's 2022 ruling should be denied.

Fundamental fairness and relitigation of competency twenty-two years ago

There is no federal constitutional right to state postconviction proceedings. *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987). States have no obligation to provide postconviction relief and when a state does, it is only fundamental fairness that governs such proceedings. *Id.* A convicted defendant's due process rights "must be analyzed in light of the fact that he has already been found guilty at a fair trial and has only a limited interest in postconviction relief." *Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009). Only if the state's postconviction procedures violate fundamental fairness may they be challenged in federal court. *Id.* at 69 (citing *Medina v. California*, 505 U.S. 437, 446, 448 (1992)).

The State agrees that a defendant must be competent under *Dusky v. United States*, 362 U.S. 402 (1960), and *Drope v. Missouri*, 420 U.S. 162 (1975), to waive postconviction proceedings and counsel in Florida. *Durocher v. Singletary*, 623 So. 2d 482, 485 (Fla. 1993) (holding the waiver of collateral proceedings and collateral counsel must be "knowing, intelligent, and voluntary" and mandating a waiver colloquy be held); *James*, 974 So. 2d at 367 ("[W]e have consistently held that the right to counsel and to prosecute postconviction claims may be waived so long as the

waiver is made voluntarily, knowingly, and intelligently.").

But James was found to be competent by the lower court in 2003. *James*, 974 So. 2d at 366 (noting the postconviction court "held a hearing to determine whether James was competent and fully understood the consequences of dismissing the postconviction motion" in the appeal of his motion to reinstate). Indeed, as the Florida Supreme Court noted, James' postconviction attorney did not challenge the validity of the original waiver in that appeal. *Id*. at 368.

Opposing counsel is really arguing that fundamental fairness mandates that James must be allowed to relitigate his competency in 2003 to waive state postconviction proceedings, based on new evidence of his cerebral atrophy, discovered 20 years later, and to do so on the eve of a warrant. Fundamental fairness does not mandate relitigation, and certainly not based on new evidence that has not been shown to relate back in time to 2003, much less on the eve of a warrant.

CONCLUSION

James has advanced no compelling reason for this Court to grant his petition for writ of certiorari. On the contrary, there is an independent and adequate state law ground for the denial of his Eighth Amendment claim, which is meritless under this Court's existing precedent of *McKinney*, *Spaziano* and *Harris*. Further, the conformity clause challenge was not passed upon below. Finally, the competency claim was neither presented nor passed upon below. This case is an exceptionally poor vehicle for this Court's review. Accordingly, Respondent respectfully requests that this Honorable Court deny the petition for a writ of certiorari.

Respectfully submitted,

JAMES UTHMEIER
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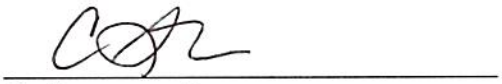

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