No. _____

IN THE

Supreme Court of the United States

EDWARD THOMAS JAMES,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE WITH AN EXECUTION SCHEDULED FOR THURSDAY, MARCH 20, 2025, AT 6:00 P.M.

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CAPITAL CASE

QUESTION PRESENTED

Under the threshold certificate of appealability standard, could reasonable jurists debate whether an evidentiary hearing should have been granted to resolve an unrebutted factual proffer that Mr. James' untimely 28 U.S.C. § 2254 filing was attributable to his longstanding mental incapacity?

PARTIES TO THE PROCEEDINGS

Petitioner, Edward Thomas James, a death-sentenced Florida prisoner scheduled for execution on March 20, 2025, was the appellant in the United States Court of Appeals for the Eleventh Circuit.

Respondents, the Secretary of the Florida Department of Corrections and the Attorney General of Florida, were the appellees in the Eleventh Circuit.

NOTICE OF RELATED PROCEEDINGS

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

Trial:
Circuit Court of Seminole County, Florida
State of Florida v. Edward Thomas James, No. 1993-CF-3237
Judgment Entered: August 18, 1995

Direct Appeal:
Florida Supreme Court (No. SC60-86834)
Edward Thomas James v. State, 695 So. 2d 1229 (Fla. 1997)
Judgment Entered: April 24, 1997 (affirming death sentences)
Rehearing Denied: June 20, 1997

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (No. 97-6104)
Edward Thomas James v. Florida, 522 U.S. 1022 (1995)
Judgment Entered: December 1, 1997

Initial Postconviction Proceedings:
Circuit Court of Seminole County, Florida
James v. State, No. 1993-CF-3237
Judgment Entered: April 22, 2003 (allowing withdrawal of postconviction motion)

Florida Supreme Court (No. SC06-426)
James v. State, 974 So. 2d 365 (Fla. 2008)
Judgment Entered: January 24, 2008 (affirming denial of reinstatement motion)
Rehearing Denied: October 21, 2008

First Successive Postconviction Proceedings:
Circuit Court of Seminole Country, Florida
James v. State, No. 1993-CF-3237
Judgment Entered: March 17, 2020 (summarily dismissing postconviction motion)
Rehearing Granted: April 13, 2020
Judgment Entered: June 8, 2020 (summarily dismissing postconviction motion)

Florida Supreme Court (No. SC20-1036)
James v. State, 323 So. 3d 158 (Fla. 2021)
Judgment Entered: July 8, 2021 (affirming summary dismissal)
Rehearing Denied: August 30, 2021

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (No. 21-7015)

Edward Thomas James v. Florida, 142 S. Ct. 1678 (2022)
Judgment Entered: April 18, 2022

State-Court Proceedings Under Warrant:
Circuit Court of Seminole Country, Florida
James v. State, No. 1993-CF-3237
Judgment Entered: February 26, 2025 (summarily denying postconviction relief)

Florida Supreme Court (No. SC25-280)
James v. State, -- So. 3d -- (Fla. 2025) (affirming)
Judgment Entered: March 13, 2025

Florida Supreme Court (No. SC25-281)
James v. Dixon, -- So. 3d -- (Fla. 2025) (denying state habeas relief)
Judgment Entered: March 13, 2025

Federal Habeas Proceedings:
District Court for the Middle District of Florida
James v. Sec'y, Fla. Dep't of Corrs. (No. 6:18-cv-993-WWB)
Judgment Entered: September 9, 2024 (denying petition for writ of habeas corpus and certificate of appealability)
Reconsideration Denied: November 18, 2024

Eleventh Circuit Court of Appeals
James v. Sec'y, Fla. Dep't of Corrs. (No. 24-14162)
Judgment Entered: February 3, 2025 (denying certificate of appealability)
Reconsideration Denied: February 27, 2025

Rule 60(b) Proceedings:
District Court for the Northern District of Florida
James v. Sec'y, Fla. Dep't of Corrs. (No. 6:18-cv-993-WWB)
Judgment Entered: February 27, 2025 (denying motion to amend and Rule 60(b) motion

Eleventh Circuit Court of Appeals
James v. Sec'y, Fla. Dep't of Corrs. (No. 25-10683)
Judgment Entered: March 13, 2025 (denying certificate of appealability and stay motion)

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DECISION BELOW

The Eleventh Circuit's decision is reprinted in the Appendix (App. A1).

JURISDICTION

The Eleventh Circuit denied Mr. James' motion for reconsideration of the order denying a certificate of appealability (COA) on February 27, 2025 (App. A1). This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment provides, in relevant part:

> 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.

28 U.S.C. § 2253 provides, in relevant part:

> (a) In a habeas corpus proceeding…before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
>
> * * * * *
>
> (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
>
> (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court[.]
>
> * * * * *
>
> (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE[1]

I. INTRODUCTION

> *My preliminary examination indicates that, prior to his guilty plea and post-conviction waiver, Mr. James developed a nihilistic preoccupation that he should be executed….His cognitive deficits are longstanding; the worsening of his cognitive function is also likely longstanding, may have become manifest prior to his offense in 1993, and continues through today*. MDFL-ECF 66-1 at 5 (Report of Dr. Julie Kessel).

Edward James is scheduled to die on March 20, 2025, without any meaningful collateral review of his death sentence in the state or federal courts. This is due to a confluence of legal deficiencies that enabled Mr. James—incapacitated and suicidal—to waive postconviction proceedings and languish without counsel for approximately 15 years. Since the time Mr. James was able to reobtain counsel, the lower courts have used his incompetent waivers to impose procedural bars and withhold merits review of his underlying constitutional claims. Now, as Mr. James' execution looms, the Eleventh Circuit has compounded prior injustices by flouting this Court's precedent regarding the low, "threshold" COA standard. *Buck v. Davis*, 580 U.S. 100, 115 (2017). This Court should intervene before Mr. James is executed.[2]

II. PROCEDURAL HISTORY

> *Mr. James consistently indicated that he does not remember the homicides or his behavior leading up to them. However, he desired to be punished and even executed throughout the years. This desire comes from*

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[1] Citations are as follows: "R. __" for the direct appeal record; "S. __" for the supplemental record; and "TT. __" for the separately paginated trial transcript. "PCR. __" refers to the postconviction record following the 2003 waivers, and "SPCR. __" is the supplemental record. "2PCR. __" refers to the 2019 record on appeal. Docket items are cited as "MDFL-ECF __" from the Middle District of Florida, and "CA11-ECF __" from the Eleventh Circuit. Other references are self-explanatory.

[2] Mr. James has filed a separate stay application concurrent with this petition.

> *his attachment and depressive disturbances….It is unclear whether Mr. James truly appreciated the seriousness and finality of being sentenced to die during his initial penalty phase and postconviction proceedings, and these competency concerns persist into the present day.* MDFL-ECF 66-1 at 76-77 (Report of Dr. Yenys Castillo).

In 1995, Mr. James entered guilty and no contest pleas to two counts of first-degree murder and related charges in Seminole County, Florida. *James v. State*, 695 So. 2d 1229, 1230 (Fla. 1997). He was sentenced to death after a nonunanimous jury verdict, and the Florida Supreme Court affirmed. *Id.* at 1233, 1238, *cert. denied*, *James v. Florida*, 522 U.S. 1000 (1997).[3]

In 2003, Mr. James waived postconviction review and discharged his counsel, as Florida law at the time permitted. *James v. State*, 974 So. 3d 365, 366-67 (Fla. 2008). The Florida state courts rejected his later attempts to withdraw the waivers and reobtain counsel, ruling that Mr. James had been "explicitly warned…that he would be precluded from any further relief in the state courts by his waiver." *Id.*

In 2018, the United States District Court for the Middle District of Florida appointed federal counsel for the first time to ascertain the status of Mr. James' federal rights. MDFL-ECF 13. A short time later, counsel filed a § 2254 petition raising multiple constitutional claims. MDFL-ECFs 23, 24. Counsel also filed a procedural memorandum of law containing proffered justifications for the petition's timeliness, and moved for a stay to exhaust the claims in state court. *See* MDFL-ECF 25 at 8-13 (because the petition "demonstrate[s] at least potential merit to Petitioner's

[3] The sentencing scheme under which Mr. James' death sentences were rendered was later found unconstitutional by this Court. *Hurst v. Florida*, 577 U.S. 92 (2016).

claims, and Petitioner has good cause for not previously exhausting those claims, the *Rhines* factors support a stay[.]").[4] The district court granted a stay. MDFL-ECF 29.

The state courts ultimately dismissed Mr. James' postconviction action as untimely. 2PCR. 571-604; *James v. State*, 323 So. 3d 158, 160-61 (Fla. 2021), *reh'g denied*, *James v. State*, 2021 WL 3855703 (Fla. Aug. 30, 2021), *cert. denied*, 142 S. Ct. 1678 (2022). Mr. James returned to federal court, where the district court similarly denied habeas relief on timeliness grounds without any review of the underlying claims. MDFL-ECF 90. Despite its 120-page order, the district court denied a COA. *Id.* at 119. In a single-judge order, the Eleventh Circuit followed suit. CA11-ECF 9-1.

On February 18, 2025, while the time to file a motion for three-judge reconsideration of the Eleventh Circuit's COA denial was pending, the Governor signed Mr. James' death warrant. Within three days of his filing for reconsideration in the Eleventh Circuit, the motion was denied. CA11-ECF 11, 12, 17-1.

III. ADDITIONAL RELEVANT FACTS

> *Mr. James' drug use quickly escalated into a problematic pattern. He frequently took drugs in larger amounts and over longer periods than intended and had a persistent desire to use drugs and unsuccessful efforts to cut down or control his use. . . .Mr. James presented with advanced stages of drug and alcohol abuse [and multiple experts] opined in their respective reports that Mr. James suffered from polysubstance use disorder.* MDFL-ECF 66-1 at 61-62 (Report of Dr. Yenys Castillo).[5]

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[4] *Rhines v. Weber*, 544 U.S. 269, 277 (2005).

[5] Mr. James, who had a genetic predisposition to polysubstance addiction, started sniffing hair spray and glue at a young age. He was introduced to drugs by his father, who had him (at approximately 11 years old) rolling marijuana joints, smoking them, and selling them at school. Mr. James began taking acid and sprinkling PCP on his joints (12 years old), drinking alcohol (13 years old), using cocaine and speed (14 years old), and taking Valium (14-15 years old). Throughout Mr. James' late adolescence

On the night of September 19, 1993, Mr. James was under the influence of hundreds of dollars' worth of crack cocaine, an unknown quantity of tranquilizers and marijuana, and approximately twelve ounces (half a fifth) of gin. With his friends' encouragement, he had been "pounding" beers throughout the day, drank approximately 24 beers (one case) at a party that night, "shot-gunned" an additional two beers after that, and drank one more before leaving. Then, he consumed 10-25 hits of LSD. MDFL-ECF 66 at 131-32.

According to mental health professionals who have evaluated him, Mr. James has no independent memory of the crimes that took place later that night.

A. Mr. James' uncontested pleas and penalty phase proceedings

> *At a minimum, given [Mr. James'] insistence on foregoing his legal rights and admitting to facts he did not seem to remember, the issue of whether he possessed or possesses (1) sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and (2) a factual and rational understanding of the sentence he faces should have been explored….[I]t is possible that a neurocognitive condition coupled with depression rendered him incompetent to proceed in his capital legal proceeding and subsequent appeals[.]* MDFL-ECF 66-1 at 76-77 (Report of Dr. Yenys Castillo).

Although Mr. James could not remember even basic elements of the charged offenses, "mood instability" and "probabl[e]…impaired decisional capacities" prior to his trial led him to plead guilty to two death-eligible crimes without any negotiated sentencing benefit. MDFL-ECF 66-1 at 5, 76; *see also James*, 695 So. 2d at 1230. The

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and adulthood, his self-medication escalated to the point of "having done it all[,]" including smoking, sniffing, and injecting drugs like hashish, hydros, quaaludes, solvents, psychedelic mushrooms, X112 liquid drops, heroin, and an acid known as "Green Monster." Mr. James never received treatment for his substance abuse. MDFL-ECF 66-1 at 5, 9, 15, 26, 35-36, 48, 60-62.

State supplied an unchallenged factual basis for the pleas, and the Court informed Mr. James that he would "never be able to withdraw the pleas…ever again in [his] entire life." S. 368-77. The State sought the death penalty. Mr. James' counsel never challenged his competency to plead.

At the penalty phase, defense counsel again failed to challenge Mr. James' competency to proceed or testify, despite myriad indicia of his amnesia, self-destructive behavior, and suggestibility. R. 178-83; S. 377; TT. 854-99, 913-14; *see also* MDFL-ECF 66-1 at 75-76 (concluding that Mr. James is easily led; highly suggestible; and prone to "forced confabulation," which is the tendency to erroneously incorporate false information into one's memory). Nor did defense counsel object to testimony from the sole eyewitness—a young child with a low IQ and specific deficits in coding, common sense, and seeing relationships among parts—despite red flags that her account had been tainted by suggestive influences predating her first report to law enforcement. TT. 571-89; MDFL-ECF 66-1 at 93-110, 129, 131. The State urged Mr. James' jury to view his extraordinary intoxication as an unenumerated aggravator, not a statutory mitigator. TT. 1020-21; MDFL-ECF 66 at 224. And the judge rejected all mitigation related to the psychoactive effects of Mr. James' LSD ingestion—based largely on an unsupported adverse credibility finding related to behavior of the victims' family. TT. 561-68; MDFL-ECF 66 at 151-59.

B. Mr. James' unchallenged collateral waivers

> *Mr. James' likely cognitive impairments were obvious to me upon initial assessment. I have concerns that Mr. James was operating under these impairments at the time he pled guilty and waived his postconviction*

appeals. Those impairments persist today. MDFL-ECF 66-1 at 5-6 (Report of Dr. Julie Kessel).

In 1998, appointed postconviction counsel filed and later amended Mr. James' state postconviction motion. PCR. 28-55, 261-305, 359-411. The motion focused on trial counsel's ineffectiveness in failing to adequately investigate or present readily available favorable evidence related to Mr. James' mental state.[6] However, despite identifying trial counsel's failure to protect Mr. James from the legal consequences of his mental impairments, postconviction counsel did the same.

Prior to an evidentiary hearing, Mr. James moved pro se to withdraw his postconviction claims and discharge counsel. PCR. 473-74. The trial court held a *Durocher* hearing,[7] at which defense counsel did nothing other than (1) state that Mr. James wished to waive; and (2) recite the governing case and rule for a colloquy under Florida law. SPCR. 619-22. During the hearing—the transcript of which lasts approximately 13 pages—the only inquiry into Mr. James' competency was a handful of questions posed to him by the judge and prosecutor. SPCR. 619-32. When Mr. James alluded to his desire to die, no follow-up questions were asked. SPCR. 630.

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[6] Among other issues, the postconviction motion raised counsel's ineffectiveness for inexplicably abandoning a viable guilt-phase defense related to Mr. James' mental state (PCR. 365); failing to advise him of the ramifications of his pleas and allowing him to plead despite the lack of a factual basis (PCR. 365-70); failing to develop and provide retained mental health experts with critical evidence regarding Mr. James' mental illness and substance use (PCR. 370-73, 380-85, 388-93); and failing to develop and provide retained experts with critical evidence rebutting the presence of statutory aggravators and establishing the presence of a statutory mitigator. PCR. 374-79, 385-86.

[7] *See Durocher v. Singletary*, 623 So. 2d 482 (Fla. 1993) (establishing process for determining capital defendant's competency to waive postconviction).

Based on this minimal exchange, the court canceled the evidentiary hearing, discharged counsel, and dismissed Mr. James' postconviction proceedings. SPCR. 628-31. Counsel had the option to appeal the ruling, but did not. PCR. 495.

In 2005, Mr. James attempted to reobtain counsel and resume his postconviction proceedings, but the state courts refused. PCR 498-504, PCR 505-06, 508-16, 523-26; *see also James*, 974 So. 3d at 366.[8]

Following federal counsel's § 2254 filing and the district court's grant of a *Rhines* stay, the state court's summary dismissal of Mr. James' postconviction motion was based almost entirely on his prior waivers. 2PCR. 571-604. The Florida Supreme Court affirmed on the same grounds. *James*, 323 So. 3d at 159.

C. Mr. James' § 2254 petition proffered significant evidence of mental incapacitation

> *[I]t is possible that a neurocognitive condition coupled with depression rendered [Mr. James] incompetent to proceed in his capital legal proceeding and subsequent appeals, as both conditions would compromise a person's capacity to concentrate, sustain attention, learn, reason through hypothetical legal scenarios, make sound decisions, and conform his behavior to the requirements of a courtroom. That is, his flawed thinking, based on psychological trauma, brain damage, depression, self-loathing, and low self-esteem, could have impacted his ability to rationally understand the charges against him, appreciate the penalties he faces, understand the legal system, and assist his attorneys.* MDFL-ECF 66-1 at 76-77 (Report of Dr. Yenys Castillo).

[8] In 2022, the Florida Supreme Court recognized that the state procedural rule that permitted Mr. James to languish without counsel was "inconsistent with" its case law and held that "a capital defendant may waive postconviction proceedings but not postconviction counsel, and that a subsequent postconviction motion is allowable to raise certain specified claims after a waiver of pending postconviction proceedings. *In re Amendments to Florida Rules of Criminal Procedure 3.851 and Florida Rule of Appellate Procedure 9.142*, 351 So. 3d 574, 575 (Fla. 2022).

On December 5, 2022, federal counsel filed an amended § 2254 petition raising eleven claims of constitutional error. MDFL-ECF 66 at 113-230. As to timeliness, the petition argued that Mr. James was incompetent at the time of his postconviction waiver and throughout the 15 years in which he languished without counsel. Thus, Mr. James was unable to timely file a habeas petition due to his mental incapacity. *See generally* MDFL-ECF 66 at 20-23, 106-18, 174-80.

Federal counsel proffered significant new evidence supporting its allegations of Mr. James' mental incapacity. For instance, Florida Department of Corrections ("DOC") records dating back to 2005 indicate that Mr. James suffered from "impaired" thinking. MDFL-ECF 66-1 at 40-43.

Likewise, Dr. Julie Kessel, M.D., noted in 2018 that Mr. James suffers from longstanding brain damage, as well as short and long-term memory loss. He struggles to organize his thoughts and frequently loses his train of thought. MDFL-ECF 66-1 at 4. He suffers from apathy and cannot necessarily distinguish between memories and things he has been told. *Id.* at 4-5. He is impaired in his ability to think abstractly, recognize what information is relevant or irrelevant, use information in a meaningful way, consider consequences, and manage his behavior. *Id.* at 5.

Noting indicators of dementia and a longstanding seizure disorder,[9] Dr. Kessel explained that "[t]he coupling of cognitive dysfunction and brain damage may very

[9] Dr. Kessel "observed [Mr. James] to have occasional facial tics" and noted "a history of chronic periods of cognitive lapses, lasting under one minute but beginning in his childhood, coupled with learning problems and difficulty in school." MDFL-ECF 66-1 at 5. Dr. Kessel explained: "These episodes of disruption in his level of consciousness, beginning in his early life, suggest the possibility of petit mal generalized seizures. If

well aggravate Mr. James's depression, particularly given his memory impairments around the time of the offense." *Id.* And, his memory, organization, and word-finding ability progressively worsened, which carried weighty implications not only for his trial-level proceedings but for every stage of his legal process:

> All of these factors, including but not limited to traumatic brain injury, the possibility of seizure activity, the emergence of a dementing disorder, the use of drugs and alcohol, the existence of blackouts and memory loss, and mental illness such as depression, would be important to consider as part of Mr. James's overall legal situation. Many of these elements would have been present during critical times of Mr. James's legal processes, impacting his ability to manage his behavior, fully understand his legal circumstances, assist his legal team, and act in his own best interests.

Id. at 5-6. Dr. Kessel concluded that the impairments she observed in her 2018 evaluation have been present "for the foreseeable past[.]" *Id.* at 5.

Also in 2018, Dr. Eddy Regnier, Ph.D., noted that Mr. James "presents with multiple red flags for a cognitive impairment, such as dementia." MDFL-ECF 66-1 at 11. He has a restrictive affect, signs of depression, labile moods, and decreased control over his emotions. *Id*. He has "poor recall" about the crimes. *Id.* He has been experiencing cognitive decline for "several years" and it is a problem that affects his daily living. *Id*. Aside from Mr. James' striking memory issues, he is "frustrated by instability and changes in mood. He gets angry and cries without control for any recognizable reason." *Id*.

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there is an underlying seizure disorder, this may drive cognitive decline over time, particularly if untreated." *Id*.

In 2022, Dr. Hyman Eisenstein, Ph.D., performed additional memory testing as recommended by Dr. Regnier and confirmed Mr. James' dementia. MDFL-ECF 66 at 45-54. He formally diagnosed Mr. James with "a neurodegenerative disorder, marked by significant decline over time." *Id.* at 54. This condition is "consistent with [Mr. James'] history of multiple head trauma[s] and substance abuse." *Id.* Specifically, Dr. Eisenstein noted Mr. James' "long history of substance abuse beginning at a very young age and escalating over time"; multiple head injuries and insults to the brain";[10] and the fact that he "has suffered and continues to endure long term telltale signs of neurological insults,[11] including headaches and tinnitus." *Id.* at 54, 62-63.

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[10] Mr. James' head injuries include a high speed, rollover car crash that resulted in a concussion, skull fracture, loss of consciousness, and hospitalization (14-15 years old); repeated "head butting" against a refrigerator until the door fell off (15-16 years old); a car accident resulting in a totaled car, head bump, grogginess, and lingering headaches (16 years old); an assault in which Mr. James was struck hard in the back of the head with a large branch (17 years old); an assault in which Mr. James was struck in the head with swinging battery cables and lost consciousness (age undetermined); assaults in which he was hit in the head with a baseball bat and two-by-four; a tubing accident in which he was ejected at such high speed that he lost consciousness when his head hit the water and had to be saved from drowning (23 years old); a high speed car crash into a tree which resulted in a totaled car, brief loss of consciousness, and confusion (24 years old); an assault in which he was stabbed nine times, resulting in perforated intestines and multiple other wounds, including injuries to his face and arms which required stitches and staples (30 years old). MDFL-ECF 66-1 at 47-48, 62-63.

[11] These symptoms are corroborated by lay-witness accounts such as James Wilson (a counselor who noticed that in the wake of Mr. James' first car crash, his eyes would involuntarily dart off to the lower right); Wayne Montgomery (who recalled people calling Mr. James "crazy" because his expression would go vacant and he had severe memory problems such as forgetting names and how to complete tasks); and Keith McCauley (who noticed that Mr. James would stop talking mid-sentence, stare into space, and wander off until someone snapped their fingers to get his attention back). MDFL-ECF 66-1 at 63.

As is expected of individuals with significant brain deterioration, Mr. James "does well with structure, following rules and regulations without fighting them." *Id.* at 53-54. And, critically, Dr. Eisenstein explained that although Mr. James' IQ had declined over time, his still-high intelligence was not reflective of the severity of his cognitive impairment. *Id.* at 54. IQ represents "crystallized, long-standing abilities, which are more resilient to change." *Id*. Mr. James' intelligence, therefore, does not dictate his overall functioning or ability to engage in cognitive reasoning. *Id*. The functional difficulties he exhibits outside of the highly regulated and restrictive prison routine "appear[] to stem from brain injury not personality disorder." *Id*.

Dr. Yenys Castillo, Ph.D., reinforced Dr. Eisenstein's conclusion that Mr. James' intelligence "was not a protective factor for him" in terms of his mental incapacity at the time of his postconviction waivers and other critical legal junctures. MDFL-ECF 66-1 at 77-78. "Cognitive deficits, psychological trauma, drug abuse, and head injuries probably overrode Mr. James' intellectual strengths" and "compromise[d] his ability to think critically, manage the challenges of daily living, modulate his reactions, and effectively navigate relationships." *Id*. Dr. Castillo also reinforced the prior expert conclusions that "[d]epression and neurodegenerative conditions can interfere with an individual's competency to proceed." *Id*. at 76.

Drawing on the prior expert reports and further contextualizing them with Mr. James' traumatic life history, Dr. Castillo concluded that multiple competency concerns were apparent throughout the entirety of Mr. James' legal proceedings, most of which revolved around his irrationality and suicidality. *Id*. at 76-77. Even in 2022,

after four years of the assistance of legal counsel and medical expertise to help him understand his condition, Mr. James still exhibited self-loathing, impaired judgment, a tendency to act without thinking, difficulty establishing goals, and destabilization. *Id*. at 58. "It is unclear whether he has been able to fully appreciate the finality and weight of the sentence he faces and the importance of collaborating with his attorney for his own defense." *Id.* at 76.

D. Rushed clemency and death warrant proceedings underscore the "short shrift"[12] given to Mr. James' initial § 2254 litigation

> *[T]imeliness…was among the primary legal issues before the federal district court, and at the time [Mr. James'] clemency proceedings were initiated, the court had yet to make a determination on it….[C]lemency counsel notified the Florida Commission on Offender Review ("FCOR") that Mr. James' clemency proceedings were not yet ripe and requested a postponement….This request was denied…prompting clemency counsel to withdraw….FCOR contracted with new clemency counsel, [and] conducted [the clemency proceedings] all while Mr. James' initial federal litigation was still pending. Both federal law and the Rules of Executive Clemency are subverted by depriving Mr. James of the opportunity to exhaust his judicial remedies without the exigencies of an execution date.* 2/20/25 Letter to the Office of Executive Clemency et al. (App. A5).

In April 2024, while Mr. James' § 2254 petition was still pending in the federal district court, the Governor initiated a clemency investigation. Although Mr. James objected that such proceedings were not yet ripe under Rule 15 of the Florida Rules of Executive Clemency, and that his ability to meaningfully participate in a clemency interview was compromised by the ongoing litigation, his request for a postponement was denied and a clemency interview was held while Mr. James' initial § 2254

[12] *McGee v. McFadden*, 139 S. Ct. 2608, 2612 (2019) (Sotomayor, J., dissenting from denial of certiorari).

litigation remained ongoing. *See id.*; *see also* 1/6/25 Excerpt from Clemency Submission (App. A6).[13]

On February 18, 2025, the Governor signed a warrant for Mr. James' execution. Contrary to the Florida Attorney General's representation to the Governor, at the time the death warrant issued, Mr. James' initial round of federal appellate review had not yet concluded. *See* 2/18/25 Death Warrant and Letter from Attorney General (App. A7).

REASONS FOR GRANTING THE WRIT

I. MR. JAMES IS ENTITLED TO ONE UNTRUNCATED ROUND OF INITIAL FEDERAL HABEAS REVIEW

> *This case provides an illustration of what can be lost when COA review becomes hasty. It is not without complications: There may be good arguments, yet unexplored, why [the petitioner's] claim may fall short of meeting AEDPA's strict requirements….But the weighty question whether [the petitioner] is "in custody in violation of the constitution," § 2254(a), appears to have gotten short shrift here. With a lifetime…hanging in the balance, this claim was ill suited to snap judgment*. *McGee*, 139 S. Ct. at 2611-12 (2019) (Sotomayor, J., dissenting from denial of certiorari).

Governor DeSantis bucked longstanding precedent in signing a death warrant before the conclusion of Mr. James' initial federal habeas appeal. The exigencies of Mr. James' death warrant resulted in truncated panel review of the single-judge COA denial—reconsideration was summarily denied less than three days after Mr. James sought it. *See* CA11-ECFs 11, 17-1. In other words, in less than three days, two judges

[13] Florida's clemency secrecy rules restrict access to the transcript of clemency interviews, even to the Petitioner himself. Therefore, a transcript of Mr. James' clemency interview is unavailable.

of the Eleventh Circuit purportedly reviewed voluminous materials and made a COA decision in a fact-intensive, legally complex, and initial-posture § 2254 appeal of a 120-page district court order. No other Florida petitioner has been subjected to such an abrupt fast-track of their initial § 2254 proceedings in the modern era, and meaningful review is not feasible under such constraints.

Absent this Court's intervention, Mr. James will be executed without meaningful access to his "one fair opportunity to seek federal habeas relief[.]" *Banister v. Davis*, 590 U.S. 504, 507 (2020) (ruling that post-judgment motion filed via the Federal Rules of Civil Procedure after § 2254 denial was "part and parcel of the first habeas proceeding."); *compare In re Davis*, 565 F. 3d 810, 817-18 (11th Cir. 2009) *with Hodges v. Att'y Gen., State of Fla.*, 506 F. 3d 1337, 1339 (11th Cir. 2007) (together, clarifying that the "one bite at the [habeas] apple" contemplated by the AEDPA includes COA application proceedings in the federal circuit court). This includes the opportunity to litigate whether the § 2254 petition is procedurally proper by virtue of tolling or other well-established equitable doctrines. *See Slack v. McDaniel*, 529 U.S. 473, 478 (2000) (a district court's procedural rulings are subject to the same COA review as claim-merit rulings).

A. The Court should enforce its precedent that the COA standard is a low "threshold"

> *[W]hen a district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claims, a COA should issue (and an appeal of the district court's order may be taken) if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling*. *Slack*, 529 U.S. at 478.

In *Slack*, this Court explained that when a federal district court denies a § 2254 on procedural grounds, the COA inquiry consists of "two components, one directed at the underlying constitutional claims and one directed at the district court's procedural holding." *Id*. at 484.

Further, this Court has clearly instructed that the standard of review regarding a petitioner's entitlement to a COA imposes a low bar. It is a "threshold" inquiry that is "not coextensive with a merits analysis." *Buck v. Davis*, 580 U.S. 100, 115 (2017). A COA does not "require a showing that the appeal will succeed." *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003). Although determining whether a petition states a valid claim of a denial of a constitutional right involves an "overview" of the claims within the petition, it "does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the statute forbids it." *Id.* at 336. A claim or procedural ruling can be debatable—and a COA can issue—even where "every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." *Id.* at 338.

As is laid out below, Mr. James has satisfied the COA standard and should not be executed without first being permitted a full appeal of the district court's decision. At this urgent juncture, this Court should grant certiorari review to ensure its COA precedent is enforced and habeas petitioners are not arbitrarily denied access to at least one full round appellate review before being executed.

B. Reasonable jurists could debate whether Mr. James alleged sufficient facts to justify an evidentiary hearing on the issue of equitable tolling

> *The evidence identified…depicts Petitioner as an individual with a troubled upbringing that involved developmental trauma, a history of head injuries, extensive substance abuse, depression, and low self-esteem. The mental health experts agree that, likely stemming from those circumstances, Petitioner suffers from significant cognitive decline. Such decline would be exacerbated by further drug use and would aggravate his symptoms of depression.* MDFL-ECF 90 at 25 (district court order denying § 2254 relief).

Reasonable jurists could debate the correctness of the lower courts' procedural rulings and find that—at minimum—Mr. James' detailed factual proffer in support of equitable tolling warranted an evidentiary hearing at which (1) the proffered mental health experts could testify about his impairments and their nexus to the untimely habeas filing; and (2) prior state postconviction counsel could be questioned as to why they did not raise concerns about Mr. James' competency to waive.

The district court ruled that Mr. James was not entitled to equitable tolling on the basis of his incompetency and subsequent deprivation of counsel because he had not "show[n] a causal connection between his mental impairments and his ability to file a timely petition[.]" *Id.* at 32-33. The district court also ruled that Mr. James had not sufficiently alleged that his counsel should have had competency concerns prior to his postconviction waiver. *Id.* at 43. The district court denied a COA as to the entirety of its analysis, stating that Mr. James "has not demonstrated that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* at 119.

In Mr. James' motion to alter or amend the judgment, he described the district court's failure to accept his numerous unrebutted factual allegations and evidentiary proffers as true and to construe them in the light most favorable to him, as is required at the § 2254 pleading stage. MDFL-ECF 93 at 2-14, 17-24. He argued that as a result of the district court's failure to engage with his procedural arguments, the district court's unfavorable procedural rulings exceeded the legal conclusions that could appropriately be reached in light of the record extant. *Id.* at 2. The district court's denial of the Rule 59(e) motion again did not engage with any of these arguments. MDFL-ECF No. 94 at 2.

The single-judge order from the Eleventh Circuit denied a COA on similar grounds, concluding as to equitable tolling that:

> James neither alleges facts nor provides evidence of how any mental impairment caused him to discharge his counsel or discontinue his state postconviction proceedings….James also failed to allege that he acted with reasonable diligence between when he discontinued his postconviction proceedings and the end of the one-year limitation period. James has not established that his mental health problems prevented him from timely filing a petition for habeas relief. Therefore, reasonable jurors would not debate the district court's denial of equitable tolling.

CA11-ECF 9-1.

Whether equitable tolling is warranted on the basis of mental incapacity is a "highly case-specific inquiry." *Bolarinwa v. Williams*, 593 F.3d 226, 232 (2d Cir. 2010) (citations omitted)). And under the Eleventh Circuit's own precedent, although a petitioner ultimately bears the evidentiary burden to show equitable tolling is warranted, *see, e.g.*, *Lugo v. Sec'y, Fla. Dep't of Corrs.*, 750 F.3d 1198, 1209 (11th Cir. 2014), the burden at the initial pleading stage is much lower. Mr. James needed only

to "proffer enough facts that, if true, would justify an evidentiary hearing on the issue." *Hutchinson v. Florida*, 677 F.3d 1097, 1099 (11th Cir. 2012). A hearing is necessary when "the material facts [necessary to determine whether tolling is appropriate] are in dispute," as opposed to when a petition provides "merely conclusory allegations unsupported by specifics." *San Martin v. McNeil*, 633 F.3d 1257, 1271 (11th Cir. 2011) (quoting *Pugh v. Smith*, 465 F.3d 1295, 1298, 1300 (11th Cir. 2006)). Although the allegations must be more than speculative, they need not be detailed. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). And, an evidentiary hearing on equitable tolling is appropriate even if it would not resolve all dispositive timeliness issues.

In similar circumstances, the Middle District of Florida has correctly granted a hearing. *See Miller v. Sec'y, Fla. Dep't of Corrs.*, No. 3:17-cv-932, ECF 35 at 10-12 (M.D. Fla. Apr. 16, 2021) (ordering limited evidentiary hearing where a petitioner whose § 2254 filing was many years untimely presented "significant allegations" regarding a discrete aspect of an equitable tolling inquiry, even though resolution of the relevant factual disputes in his favor would not necessarily establish his own diligence or result in his petition being deemed timely); *Miller v. Sec'y, Fla. Dep't of Corrs.*, 2022 WL 1692946 (11th Cir. May 10, 2022) (circuit court addressing equitable tolling issue in denial of a COA).

Reasonable jurists could debate whether the § 2254 petition sufficiently proffered facts that, taken as true and with all inferences drawn in Mr. James' favor, demonstrate that his cognitive and psychological impairments prevented him from

timely filing. They could conclude that the lower courts' rejection of Mr. James' equitable tolling arguments relied on the district court's speculations about his functioning, and its failure to construe the multiple expert reports—each of which detailed competency concerns—in his favor. Mr. James alleged that his mental impairments directly caused irrational, self-defeating, and ultimately suicidal behavior prior to his AEDPA deadline and persisted for the entirety of time that elapsed before his petition was filed in 2018. Reasonable jurists could debate whether these proffered facts, if proven true, would show that Mr. James' mental incapacity had a causal nexus to his inability to file a timely petition because the symptoms of that incapacity prevented him from rationally understanding his legal situation, assisting his attorneys, evaluating consequences, or acting in his own interests.

Reasonable jurists could also debate whether this proffer was sufficient to warrant an evidentiary hearing at which Mr. James would bear the burden of proving his factual allegations. This is implicitly supported by the district court's February 4, 2019, order granting Mr. James' motion for a *Rhines* stay. *Rhines* specifies that habeas petitions should only be subject to a federal stay "in limited circumstances[,]" and where there is "good cause" for the petitioner's failure to previously exhaust the claims in state court. *Rhines*, 544 U.S. at 277. Similar to equitable tolling inquiries, the *Rhines* standard was not intended to impose a "strict and inflexible requirement." *See id.* at 279 (Stevens, J., concurring). In large part, the "good cause" around which Mr. James' *Rhines* stay motion was granted was the significant indicia of his incompetency and subsequent deprivation of counsel—the same cause underlying his

equitable tolling argument. MDFL-ECF 25 at 12. Moreover, the COA standard is lower than that of *Rhines* or an ultimate equitable tolling determination. Thus, it is at least debatable among reasonable jurists that if the district court implicitly found good cause for failure to raise the issues earlier in state court, equitable tolling could apply to the federal petition on the same grounds.

Further, reasonable jurists could find that the many years of Mr. James' deprivation of counsel were attributable to the confluence of his mental incapacities and an unjust, now-defunct provision of the Florida's Rules of Criminal Procedure. They could debate whether equitable tolling should apply on that ground to any or all of the time period between Mr. James' 2003 state-court waiver and 2018 filing. As the § 2254 petition and reply explain, Florida law now recognizes that—notwithstanding a postconviction waiver—a death-sentenced individual must retain state-court counsel to protect his access to the courts and ability to avail himself of potential future claims. *See In re Amendments*, 351 So. 3d at 574. By Florida's current standards, Mr. James would not have gone unrepresented for *any* length of time. But he was on his own for approximately 15 years, with a strict admonishment from the state court that he had irrevocably lost his chance to litigate. He cannot be faulted for not knowing how to meaningfully access the courts during that time, nor can he be expected to have investigated new evidence or litigated his own incompetency. Thus, reasonable jurists could debate whether equitable tolling applies to the time Mr. James languished without collateral counsel.

In light of the vast mental health evidence and systemic flaws Mr. James has proffered, all of which are unrebutted by the record extant, reasonable jurists could debate whether his situation rises to the level of exceptional circumstances such that an evidentiary hearing is warranted to determine whether equitable tolling should apply. Under this Court's standards, a COA should have been granted on this issue.

C. Reasonable jurists could debate whether Mr. James has stated a valid claim of the denial of a constitutional right

> *Petitioner argues the first part of the Court's denial—that "Petitioner has not demonstrated that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong"—does not make sense, because the Court denied the Amended Petition on procedural grounds….Notwithstanding the standard language included in the Order regarding assessment of constitutional claims, the Court also ruled that jurists of reason would not find the Court's procedural rulings debatable. Petitioner's arguments to the contrary do not persuade the Court to reconsider the denials*. MDFL-ECF 94 at 2 (district court order denying reconsideration of COA denial).

To support issuance of a COA regarding a procedural issue, all a habeas petitioner need show regarding the underlying merits is that his petition arguably "states a valid claim of the denial of a constitutional right." *Slack*, 529 U.S. at 484.

Here, Mr. James' § 2254 petition stated eleven claims of constitutional error, including numerous instances of trial counsel ineffectiveness for failing to conduct an adequate investigation into the State's case against Mr. James; failing to protect him from entering pleas and waivers that were not knowing, voluntary, intelligent, and competently rendered; and failing to adequately prepare for his penalty phase proceedings. MDFL-ECF 66 at 113-62. Additionally, the petition raised claims of constitutional error involving the ineffective assistance of direct appeal counsel, *id.*

at 162-69; substantive and procedural competency challenges, *id.* at 169-79; the unconstitutionality of Florida's pre-*Hurst* capital sentencing scheme, *id.* at 179-87; improper rejection of statutory mitigators and instructions regarding non-statutory mitigators, *id.* at 187-213; improper use of aggravators, *id.* at 213-23; improper prosecutorial comments, *id.* at 223-29; and cumulative error. *Id.* at 227-30.

The district court's order denying the petition did not reach the merits of any claim. MDFL-ECF 90 at 118. Further, its order denying reconsideration implied that to the extent the September 6, 2024, order appeared to state Mr. James had not made the requisite showing of the denial of a constitutional right, this was not actually the district court's ruling. Rather, it was the erroneous inclusion of "standard language" in the order. MDFL-ECF 94 at 2.

At minimum, a reasonable jurist could find it debatable that at least one of the eleven substantive claims in Mr. James' § 2254 petition states a valid claim of the denial of a constitutional right. The state-court record illustrates this. For instance, on direct appeal, the Florida Supreme Court recognized that Mr. James' improper prosecutorial comments claim (Claim Ten in the § 2254 petition) centered around an "instance of misconduct" by the prosecutor during closing arguments. *James*, 695 So. 2d at 1234. Additionally, multiple subclaims of Mr. James' ineffective assistance of counsel claims (Claim One in the § 2254 petition) were set for an evidentiary hearing in the state court prior to Mr. James' 2003 postconviction waiver. PCR. 348-50. This necessarily involved the state court's finding that the allegations of ineffective assistance of counsel were legally sufficient and not refuted by the record. *See id.*

(denying an evidentiary hearing on other claims that were not deemed to be legally sufficient or unrefuted by the record). Thus, reasonable jurists (the Seminole County circuit court and Florida Supreme Court) have already implicitly found certain of Mr. James' claims to state a valid denial of a constitutional right.

Moreover, the district court's determinations support this finding. In February 2019, the district court accepted Mr. James' argument that his case should be stayed and held in abeyance pursuant to *Rhines*. *See* MDFL-ECF 29 at 2; *see also* MDFL-ECF 25 at 12-13 (arguing that the § 2254 claims were potentially meritorious). *Rhines* instructs that a "district court would abuse its discretion if it were to grant [a federal petitioner] a stay when his unexhausted claims are plainly meritless." 544 U.S. at 277. Thus, in granting Mr. James' motion for a *Rhines* stay, another reasonable jurist—the federal district court whose rulings give rise to this certiorari action—implicitly recognized that at least some of Mr. James' § 2254 claims could validly state the denial of a constitutional right.

CONCLUSION

This Court should grant a stay of Mr. James' execution and grant a writ of certiorari to review the decision below.

Respectfully submitted,

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