

**In The
Supreme Court of the United States**

EDWARD THOMAS JAMES,
Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

RESPONDENT'S BRIEF IN OPPOSITION

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Capital Case

QUESTION PRESENTED

James, a state prisoner, confessed and ultimately plead guilty to the rape and murder of an eight-year-old girl, and the subsequent murder of the girl's grandmother, and he was sentenced to death following the recommendation of his guilt phase jury. When appointed counsel sought to pursue postconviction relief, James told the court that he wished to withdraw the motion and discharge counsel. The colloquy which followed was sufficient to establish that his decision was both knowing and voluntary. James' judgment and sentence became final in 1997.

Jame's habeas application was not filed until 2018. And while he attempted to justify his tardiness through a combination of medical and other experts in an effort to establish equitable tolling as well as actual innocence, the district court found neither of these exceptions applied, dismissed his untimely petition and denied a Certificate of Appealability (COA). The Eleventh Circuit examined the district court's lengthy opinion in detail and denied not only James' request for Certificate of Appealability (COA), but also denied his motion for reconsideration.

James now seeks certiorari review of an unpublished order from the Eleventh Circuit Court of Appeals denying his motion for COA in a federal habeas corpus proceeding. *See* 28 U.S.C. § 2253(c)

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OPINION BELOW

The opinion from which Petitioner seeks certiorari review is the Eleventh Circuit's order denying his application for COA. *James v. Sec'y, Dep't. of Corr. et al.*, No. 24-14162, (11th Cir. February 3, 2025), CA11-ECF 9-1.

STATEMENT OF JURISDICTION

Petitioner seeks to invoke this Court's jurisdiction under 28 U.S.C. § 1254. Respondent agrees that this Court has the authority to grant review under that statute but denies that this is an appropriate case for the exercise of this Court's discretionary jurisdiction as the Eleventh Circuit's order has no precedential value, does not conflict with any decision by this Court or any other United States court of appeals, and does not decide any important or unsettled question of federal law. *See* Sup. Ct. R. 10(a), (c).

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. 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.*

As to James' motion to amend the habeas petition, the Eleventh Circuit found that he had not established a substantial likelihood of success on the merits. Namely, under *Boyd v. Sec'y, Dep't of Corr.*, 114 F.4th 1232, 1236 (11th Cir. 2023), a prisoner cannot amend a habeas petition and relitigate the case after the district court has entered its final judgment and the prisoner has appealed. *James*, 2025 WL 796324, at *3. This Court's granting of certiorari in *Rivers v. Lumpkin*, 99 F.4th 216 (5th Cir. 2024), *cert. granted*, 145 S. Ct. 611 (2024), did not change the law and could not be the basis for granting a stay of execution. Further, the Eleventh Circuit held that even if the district court's jurisdictional ruling were incorrect, James' motion to

amend would not alter his failure to file a federal habeas petition until many years after the statute of limitations had run. *Id.* Finally, it held that a stay of execution would not be equitable, because James voluntarily abandoned his postconviction challenges years ago. *Id.*

Warrant Postconviction 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).

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. *Id.* He also filed an accompanying motion for 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.

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 was untimely under state procedural law. He asserted that reconsideration was warranted because: (1) an amendment to state procedural law no longer permitted the waiver of postconviction counsel; (2) similarly situated defendants had been permitted to reinstate postconviction proceeding; and (3) newly received CT scans undermined his waiver of postconviction proceedings; and (4) manifest injustice. On March 13, 2025, the court denied the petition. *James*, 2025 WL 798376, at *9. The court also denied James’ accompanying motion, holding that he had failed to raise substantial grounds upon which relief might be granted. *Id.*

James filed his certiorari petition in this Court 3 days before his execution is scheduled to take place. This is the State’s Brief in Opposition.

REASONS FOR DENYING THE PETITION

1. The Eleventh Circuit’s Order Is Not Binding Precedent And Does Not Conflict With Any Decision By Another United States Court Of Appeals.

James’ petition asks the Court only whether the Eleventh Circuit wrongly denied a Certificate of Appealability (COA) because, in his view, he meets the standard for granting COA. He contends, without a shred of support, that the Eleventh Circuit “rushed” to deny his COA as well as his Motion asking them to reconsider, and as a consequence he has been denied a fair opportunity to seek habeas relief. What James conveniently omits, however, is the fact that his initial habeas

petition was filed more than ten years late, a delay that is entirely attributable to James' knowing and voluntary decision not to pursue his available postconviction and federal claims.

28 U.S.C. § 2254 provides that a petitioner may not appeal a district court's final order "[u]nless a circuit justice or judge issues a certificate of Appealability." 28 U.S.C. § 2253(c). For a certificate to issue, the petitioner must make "a substantial showing of the denial of a constitutional right." *Id.* The certificate analysis is a procedural rule mandating a "threshold inquiry into whether the circuit court may entertain an appeal." *Slack v. McDaniel*, 529 U.S. 473, 482 (2000). It allows courts to "screen[] out issues unworthy of judicial time and attention," thus protecting appellate panels from frivolous claims. *Gonzalez v. Thayer*, 565 U.S. 134, 145 (2012). In this sense, it gives courts a "gatekeeping function." *Id.*

A. The COA Standard

Petitioner correctly notes that certificate analysis under AEDPA "is not coextensive with a merits analysis." *Buck v. Davis*, 580 U.S. 100, 115 (2017). Indeed, a court of appeals that engages with the merits of a petitioner's claim in order to justify denying a certificate "is in essence deciding an appeal without jurisdiction." *Id.* (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003)). And James is correct in directing our attention to *Miller-el*, (Petition, p. 18), which states that a COA may be granted 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. This merely states a truism about appellate review- that an appellant who

is granted permission to proceed to full briefing should not perceive the COA as a sign that he will prevail once the court has the opportunity to conduct a full review. What James refuses to acknowledge, however, is that the District Court and the Eleventh Circuit both conducted a thorough analysis of his claims and properly concluded that no reasonable jurist would agree that the District Court's analysis was either debatable or wrong.

B. The District Courts Ruling on Equitable Tolling

As a preliminary matter, James contends that his tardiness is excused by equitable tolling. Not so. Avoidance of the procedural bar imposed by AEDPA is not available, as a matter of law, when the delay is caused by the petitioner's own waiver of state postconviction proceedings. *Menominee Indian Tribe of Wisconsin v. United States*, 577 U.S. 250, 256-57 (2016). This Court observed in that case that it would "make little sense if equitable tolling were available" based on the litigant's "own delay." *Id.* at 256-57.

James may not be granted equitable tolling because it was his intentional and knowing waiver of collateral review and waiver of collateral counsel that was the cause of the delay in filing the § 2254 petition, all of which was completely within his own control. Equitable tolling is simply not available when the delay was caused by the petitioner's intentional conduct. Undaunted, James nevertheless contends that the lower Court Order denying COA overlooked critical facts that, in his view, support equitable tolling. We consider each of these in turn.

1. Petitioner's mental capacity

In assessing the validity of this claim, the district court examined the state court record as well as new, non-record evidence developed and presented by James following appointment of federal counsel in 2018. Consideration of non-record evidence that had never been introduced in the state court was proper, the district court noted, only to the extent that it might be relevant to the question of whether James could establish grounds to avoid AEDPA's procedural bar (Doc. 90 p 12).

In evaluating the merits of James' assertion that he was mentally incapacitated and unable to timely file, the district court focused on documents roughly contemporaneous with James' 2003 decision to withdraw his state postconviction motion (Doc 90 p 25). The district court found significant FDOC records that in 2005 (shortly before James requested appointment of collateral counsel to resume his waived postconviction claims) a psychiatric evaluation of James revealed that James was alert, aware of person, place, time and situation, and had a cooperative attitude. The evaluation also revealed that James suffered from impaired thinking, but the district court concluded that the record failed to establish that James' mental condition during the relevant time was so impaired that he was incapable of meeting AEDPA's filing deadline. Indeed, James' mental state in 2005 did not prevent him from writing a request for appointment of postconviction counsel.

The record also showed James's IQ at that time to be approximately 120, with no record at all of any psychiatric hospitalizations, treatment, medication, or history of violence occurring prior to that evaluation. This was significant, the district court noted, because it documented James' mental state during the critical time when he

permitted the deadline for filing his habeas petition to expire (Doc. 90 p. 25-6). The district court found no evidence to support James' assertion that his failure to timely file his federal application was causally linked to any mental incapacity during the year following 2003. This was a critical element of the district court's assessment.

As for the new evidence, the court, while recognizing that James might well establish some level of cognitive decline in recent years, concluded that none of the reports developed by James' federal counsel was sufficiently relevant to his mental state in 2003 so as to justify avoiding AEDPA's procedural bar.

These findings were significant to the Eleventh Circuit's denial of COA and Respondent's position is that it is not fairly debatable to any reasonable jurist that an evaluation fifteen years after the fact could effectively show that James' mental state in 2003 was such that he was incapable of meeting AEDPA's filing deadline, particularly where contemporaneous records, made prior to a time when James had any reason to challenge a procedural bar, demonstrate otherwise.¹ These are facts that cannot reasonably be disputed.

James' suggestion that the *Rhines*² "good cause" standard for granting a stay is the same as that for granting COA is quite simply incorrect. As noted earlier, James filed his untimely habeas petition in 2018, immediately sought a stay, and proffered

¹It is not necessarily surprising that James might be presently suffering from some level of cognitive decline in light of his age (63), as well as the damage resulting from a 2023 heart attack. Nonetheless, James' state postconviction counsel recently hired an expert who conducted IQ testing which yielded a full-scale IQ of 115. Hardly a significant decline from prior testing. *James*, 2024 WL 798376, *9.

² *Rhines v. Weber*, 544 U.S. 269 (2005).

to the court that his delay in filing was attributable to long-standing mental incapacity that predated James' trial. In granting a *Rhines* stay, the court need only determine, based on counsel's proffer, whether counsel has shown good cause based on a "potentially meritorious" claim. *Id.* at 278. Thus, a district court may grant a stay based solely on counsel's good faith proffer; here, that proffer suggested that James had developed new evidence which, taken at face value, might establish equitable tolling and possibly permit him to avoid AEDPA's procedural bar.

But the standard for granting a *Rhines* stay falls far short of that for granting COA. *Miller-el*, to the contrary, requires denial of COA only where no reasonable jurist might find the district court's merits determination debatable or wrong. *Slack*, 529 U.S. at 484. By its terms, a *Rhines* stay views and accepts counsel's proffer that the claim is *potentially* meritorious, and necessarily is determined before the claim is fully briefed for a merits assessment by the district court. A district court could not properly make a COA determination based solely on a claim's "potential" merit, nor was this the basis for the district court's assessment below, which was made following 120 pages of careful analysis. In short, the Eleventh Circuit's initial Order denying COA applied the correct standard and properly concluded that James failed to meet it.

James next contends that his failure to timely file is attributed, in part, to Florida's failure to provide him with postconviction counsel. As the district court found (Doc. 90 p 44), this argument fails for two reasons.

First, James chose to discharge counsel, and he did so with full knowledge of

the consequences following a *Faretta*³ inquiry by the court. Florida provided postconviction counsel to James but he made his own decision to fire them.

Second, as the district court properly noted there is no constitutional right to postconviction counsel, and while it may be true that Florida has more recently decided to appoint counsel to all death-sentenced defendants, the decision to do so is not motivated nor mandated by any federal constitutional requirements. James failed to timely file his federal application only because he chose not to do so until after the deadline had long passed. This claim is not debatable among reasonable jurists and COA was properly denied.

C. Dismissal on Procedural Grounds and denial of constitutional right

Finally, James asserts that because he presented a multitude of claims alleging denial of a substantial constitutional right, this alone was sufficient to merit a COA. He cites *Slack* as support for his position. But *Slack* simply does not say what James wants it to say. The District Court dismissed James' habeas application on procedural grounds; it was clearly untimely, and none of James' arguments established either equitable tolling or actual innocence, the two grounds which James hoped would help him avoid AEDPA's procedural bar. And *Slack* tells us that where the petition is dismissed on procedural grounds, COA should issue if the petitioner has established denial of a substantial constitutional right, *and* that the procedural grounds on which the application's dismissal is based are debatable by reasonable jurists. *Slack*, 529 U.S. at 484. The Court noted the same concept in *Jiminez v.*

³ *Faretta v. California*, 422 U.S. 806 (1975).

Quarterman, 555 U.S. 113 (2009) where, in Footnote 3, the Court quoted *Slack* in reminding us that issuance of COA requires “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.” (emphasis in original).

Respondent does not dispute that James alleged in his habeas application that he was denied various substantial constitutional rights. But James waived his opportunity to present and exhaust them in state court in 2003. By the time he decided to advance them, they were untimely and procedurally barred under state law. The Eleventh Circuit denial of COA was proper and James’ failure to justify his tardiness is supported by the record.

Because the Eleventh Circuit’s decision to deny COA does not conflict with any decisions of this Court or involve an important, unsettled question of federal law, this Court should decline to issue the writ.

CONCLUSION

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

Respectfully submitted,

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