No. 24-7079

In The
Supreme Court of the United States

JEFFREY GLENN HUTCHINSON

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 MAY 1, 2025, AT 6:00 P.M.

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Capital Case

QUESTIONS PRESENTED

I. Whether this Court should grant review of a decision of the Florida Supreme Court holding the claim of newly discovered evidence of mitigation of a mild neurological disorder was untimely and meritless, as a matter of state law?

II. Whether this Court should grant review of a decision of the Florida Supreme Court holding the claim of newly discovered evidence of mitigation of Gulf War Illness was untimely and meritless, as a matter of state law?

III. Whether this Court should grant review of a decision of the Florida Supreme Court holding the Eighth Amendment claim was not properly pled, as a matter of state law?

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The Florida Supreme Court's opinion is published at *Hutchinson v. State*, 2025 WL 1155717 (Fla. April 21, 2025) (SC2025-0497).

JURISDICTION

On April 21, 2025, the Florida Supreme Court affirmed the state postconviction court's summary denial of third successive postconviction motion. The Florida Supreme Court also denied a stay and issued the mandate immediately, due to the active warrant.

On April 27, 2025, Hutchinson, represented by Capital Collateral Regional Counsel – North (CCRC-N), filed a petition for a writ of certiorari in this Court. The petition is timely. *See* Sup. Ct. R. 13.3; 28 U.S.C. § 2101(d). Jurisdiction exists pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution, which 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, section one, which 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, § 1.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The litigation in this capital case spans nearly 25 years.

Facts of the crime

On September 11, 1998, Hutchinson murdered his live-in girlfriend, Renee Flaherty, and her three young children: Logan, Amanda, and Geoffrey. *See Hutchinson v. State*, 882 So. 2d 943, 948-49 (Fla. 2004). Logan was four years old, Amanda was seven years old, and Geoffrey was nine years old. Hutchinson shot the four victims with his pistol-grip Mossberg shotgun, which was found inside the home on the kitchen counter. *Id.* at 948.

Hutchinson had been living with Renee and her three children immediately prior to the murders. She and Hutchinson had a fight. *Hutchinson*, 882 So. 2d at 948. Hutchinson, who had been drinking, loaded his clothes and guns into his truck and drove to a local bar. He told the bartender that Renee was "pissed off" at him, while drinking more beer. *Id.* at 948. Hutchinson's blood alcohol content level was between .21 to .26 on the night of the murders. *Id.* at 959. Renee called a friend after Hutchinson left and she told her friend that Hutchinson had left for good. *Hutchinson*, 882 So. 2d at 948. But Hutchinson returned to the house after leaving the bar and broke down the front door, which had been locked with a dead bolt. *Id.* at 949. In a drunken rage at Renee, he shot her and her three children. Renee was on the bed in the master bedroom with her two youngest children.

Hutchinson shot her once in the head. *Id.* at 948. Hutchinson also shot Amanda once in the head. The deputies found the seven-year-old girl's body on the floor near the bed. Hutchinson shot Logan once in the head as well. The deputies found the four-year-old boy's body at the foot of the bed. Hutchinson shot Geoffrey twice–once in the head and once in the chest. The deputies found the nine-year-old boy's body in the living room between the couch and the coffee table.

A 911 call from 410 John King Road, the victims' home, was received at 8:41 p.m. (T. XXII 728,750). The 911 caller stated: "I just shot my family." (T. XXII 701). Deputies arrived at the home within ten minutes of the 911 call and found Hutchinson

on the ground in the garage with the cordless phone nearby. *Hutchinson*, 882 So. 2d at 948. The caller identified one of the victims as his girlfriend, not his wife. (T. XXII 706).

One of the child victim's tissue, caused from the blowback of shooting the child with a shotgun, was on Hutchinson's pants. *Hutchinson*, 17 So. 3d at 698. The State's DNA expert at trial, Candy Zuleger, testified that Geoffrey's tissue was on Hutchinson's leg. (T. XXIV 1174; XXVII 1616-1617).

Hutchinson also had gunshot residue on his hands, according to the residue test performed at 10:20 p.m. on September 11, 1998, the night of the murders. (T. XXV 1250).

Hutchinson's shotgun, a Mossberg 12-gauge pistol-grip shotgun, was positively identified as the murder weapon. The murder weapon was located on the kitchen counter in the house. (T. XXII 621; XXVI 1547, 1552, 1557; XXVII 1710); *Hutchinson*, 882 So. 2d at 948. All eight expended shells—the five involved in the murders and the three located in the closet of the house—were from this shotgun. (T. XXVI 1557).

Procedural history

On January 18, 2001, the jury convicted Hutchinson of four counts of first-degree murder with a firearm, as indicted. *Hutchinson v. State*, 882 So. 2d 943, 948 (Fla. 2004). Hutchinson waived his right to a penalty phase jury but presented mitigation to the trial judge at a bench penalty phase. *Id.*

The sentencing court found two aggravating factors for the murders of Logan and Amanda: (1) previously convicted of another capital felony for the murders of the other children; and (2) the victim was less than 12 years of age. *Hutchinson*, 882 So. 2d at 959; *see also State v. Hutchinson*, 2001 WL 36412569 (Fla. Cir. Ct. Feb. 6, 2001) (trial court's sentencing order). The trial court found three aggravating factors for the murder of Geoffrey Flaherty: (1) previously convicted of another capital felony for the

murders of the other children; (2) the victim was less than 12 years of age; and (3) the murder was heinous, atrocious, and cruel (HAC). *Id.* at 959. The sentencing court found one statutory mitigator: no significant history of prior criminal activity and gave it significant weight. *Hutchinson*, 882 So. 2d at 959. The sentencing court also found 20 non-statutory mitigators. *Id.* at 959-60 (listing the 20 non-statutory mitigators and the weight given to each).

On February 6, 2001, the trial court imposed three death sentences for the murders of each of the three children. *Hutchinson*, 882 So. 2d at 949. The trial court also sentenced Hutchinson to life imprisonment for the murder of the children's mother.

The Florida Supreme Court affirmed the convictions and sentences, including the three death sentences for the murders of the three children. *Hutchinson v. State*, 882 So. 2d 943, 961 (Fla. 2004). The Florida Supreme Court affirmed the denial of the initial postconviction motion. *Hutchinson v. State*, 17 So. 3d 696, 704 (Fla. 2009). The Florida Supreme Court affirmed the summary denial of his first successive postconviction motion. *Hutchinson v. State*, 243 So. 3d 880 (Fla. 2018). The Florida Supreme Court also affirmed the summary denial of his second successive postconviction motion. *Hutchinson v. State*, 343 So. 3d 50, 54 (Fla. 2022).

In 2012, the Eleventh Circuit affirmed the dismissal of his federal habeas petition as untimely, due to Hutchinson's own lack of diligence. *Hutchinson v. Florida*, 677 F.3d 1097, 1102-02 (11th Cir. 2012). In 2021, the Eleventh Circuit denied a certificate of appealability (COA) regarding the denial of a Rule 60(b) motion to reopen, rejecting an actual innocence claim based on *McQuiggin v. Perkins*, 569 U.S. 383 (2013). *Hutchinson v. Sec'y, Fla. Dep't of Corr.*, 2021 WL 6340256 (11th Cir. Mar. 24, 2021). And currently pending in the Eleventh Circuit is the denial of a successive Rule 60(b)(2) motion to reopen based on newly discovered evidence of mitigation. *Hutchinson v. Sec'y, Fla. Dep't of Corr.*, No. 25-11271 (11th Cir.).

Third successive postconviction motion

On January 15, 2025, Hutchinson, represented by CCRC-N, filed a third successive Rule 3.851 motion raising two claims: (1) a claim of newly discovered evidence of a mild neurocognitive disorder due to traumatic brain injury (TBI) resulting from his military service during the Gulf War; and (2) a claim of newly discovered evidence of Gulf War Illness. There is a dispute regarding whether Hutchinson also raised an Eighth Amendment claim in the postconviction motion.

On January 21, 2025, the State filed an answer to the third successive postconviction motion, arguing that both claims of newly discovered evidence were untimely; the second claim was procedurally barred because the matter of Hutchinson suffering from Gulf War Illness was presented as mitigation at trial; and that neither diagnosis would result in an acquittal of any of the four first-degree murder convictions at a new trial or life sentences at a new penalty phase. In a footnote, the state noted it was unclear whether he was raising an Eighth Amendment claim because it was not properly pled as a separate claim and clearly numbered with a "3," as required by Florida's rules of court. Fla. R. Crim. P. 3.851(e)(1) (providing that in initial postconviction motions, each "claim or subclaim shall be separately pled and shall be sequentially numbered beginning with claim number 1."); Fla. R. Crim. P. 3.851(e)(2)(A) (providing that in successive postconviction motions, the motion shall comply with "all of the pleading requirements of an initial motion under subdivision (e)(1)"). The State asserted the third successive postconviction motion should be summarily denied.

On March 6, 2025, the postconviction court held a case management conference, as required by Fla. R. of Crim. P. 3.851(f)(5)(B), commonly referred to as a *Huff*[1]

[1] *Huff v. State*, 622 So. 2d 982 (Fla. 1993). On April 27, 2025, Hutchinson, represented by CCRC-N, filed a petition for a writ of certiorari in this Court from the Florida Supreme Court's decision affirming the summary denial of the third successive postconviction motion, raising three questions.

hearing, regarding the third successive postconviction motion. Counsel did not clarify whether the Eighth Amendment claim was being raised at the *Huff* hearing nor did counsel file an amended motion clearly raising the Eighth Amendment claim.

On March 31, 2025, the Governor signed a warrant scheduling the execution for May 1, 2025. The next day, April 1, 2025, a new judge, Judge Clark, was assigned to preside over both the pending third successive postconviction motion and the warrant litigation. On April 4, 2025, the postconviction court summarily denied the third successive postconviction motion finding both claims to be untimely. The lower court did not address the improperly pled Eighth Amendment claim. And, on April 8, 2025, the postconviction court denied the motion for rehearing, again determining the successive claims of newly discovered evidence to be untimely.

On April 21, 2025, the Florida Supreme Court affirmed the summary denial of the third successive postconviction motion. *Hutchinson v. State*, SC2025-0497 (Fla. April 21, 2025).

REASONS FOR DENYING THE PETITION

ISSUE I

Whether this Court should grant review of a decision of the Florida Supreme Court holding the claim of newly discovered evidence of mitigation of a mild neurocognitive disorder was untimely and meritless as a matter of state law?

Petitioner Hutchinson seeks review of the Florida Supreme Court's decision affirming the postconviction court's summary denial of the third successive postconviction motion, in this active warrant case, arguing that his claim of newly discovered evidence of mitigation of a mild neurocognitive disorder should not have been rejected as untimely. The issue of the timeliness of a claim of newly discovered evidence of mitigation, filed in state court, pursuant to a state rule of court, raising a state law claim is solely a matter of state law. Indeed, the entire concept of newly discovered evidence of mitigation is a state law concept, not a constitutional matter.

This Court does not review matters of state law. Alternatively, there is no conflict between this Court's jurisprudence and the Florida Supreme Court's decision in this case. Federal courts do not recognize the concept of newly discovered evidence of mitigation, discovered years after the sentences were final, as a basis for granting a new penalty phase, in federal habeas litigation. There is also no conflict with either the federal circuit courts or the state courts of last resort regarding the timeliness of a claim of newly discovered evidence of mitigation as a federal constitutional matter. Because the issue involves two matters of state law and because there is no conflict with this Court or other appellate courts and the Florida Supreme Court's decision finding the claim to be untimely, this Court should deny review of the question.

The Florida Supreme Court's decision in this case

The Florida Supreme Court affirmed the lower court's summary denial of the claim of newly discovered evidence of mitigation of a mild neurocognitive disorder as untimely. *Hutchinson v. State*, 2025 WL 1155717 (Fla. April 21, 2025). The Florida Supreme Court stated that the lower court "correctly determined" that the third successive postconviction motion and claims of newly discovered evidence raised under *Jones v. State*, 709 So. 2d 512 (Fla. 1998), "were untimely." *Hutchinson*, 2025 WL 1155717, at *2. The Florida Supreme Court explained that under Florida Rule of Criminal Procedure, a postconviction motion must be filed within one year of the convictions and sentences becoming final to be timely, unless one of three exceptions applies. *Id.* at *2 (citing Fla. R. Crim. P. 3.851(d)(1); Fla. R. Crim. P. 3.851(d)(2)). One of the exceptions applies if the facts were unknown and could not have been ascertained by the exercise of due diligence, which are commonly referred to as claims of newly discovered evidence. *Id.* (quoting Fla. R. Crim. P. 3.851(d)(2)(A)). The Florida Supreme Court concluded that "traumatic brain damage, neurocognitive impairment, and PTSD, regardless of their specific causation, are not new diagnosable conditions." *Id.* at *2.

The Florida Supreme Court also concluded that the claim failed on the merits because Hutchinson satisfied neither prong of the *Jones* test for claims of newly discovered evidence. *Hutchinson*, 2025 WL 1155717, at *2. He did not establish that his traumatic brain damage, neurocognitive impairment, and PTSD were unknown at the time of the first penalty phase, as required by the first prong of the *Jones* test. *Id.* at *2. Nor did he establish that he could not have found that mitigation by due diligence as additionally required by the first prong of the *Jones* test. *Id.* Hutchinson also could not establish that his traumatic brain damage, neurocognitive impairment, and PTSD were "likely lead to an acquittal or a reduced sentence," as required by the second prong of the *Jones* test. The Florida Supreme Court rejected the argument that these diagnoses would led the jury to accept his voluntary intoxication defense, given the evidence of premeditation that was presented at trial. The Court also rejected the assertion that these diagnoses would result in three life sentences. *Id.* at *3. The Florida Supreme Court did not view these diagnoses as "powerful" mitigation given the aggravation in a case which included the fact that the three children he murdered were under ten years old with the youngest victim being four years old and the nine year old boy was shot twice; had defensive wounds; and at the time the second shot was fired, the boy was "in a kneeling position and still conscious." *Id.* The Florida Supreme Court also noted that the original sentencing judge heard mitigation that included "cognitive and mental health issues." *Id.* The Florida Supreme Court concluded that the additional mitigation from these diagnoses would only have a "marginal effect" at any new penalty phase and would be "highly unlikely" would lead to a life sentence for any of the three children's murders. *Id.*

Matters of state law

The timeliness of a claim of newly discovered evidence of mitigation, filed in state court, pursuant to a state rule of court, is solely a matter of state law. The Florida Supreme Court's decision regarding timeliness of the claim was based on its reading

of the provisions of Florida Rule of Criminal Procedure 3.851. *Hutchinson*, 2025 WL 1155717, at *2 (citing Fla. R. Crim. P. 3.851(d)(1); Fla. R. Crim. P. 3.851(d)(2)); Fla. R. Crim. P. 3.851(d)(2)(A)). Moreover, the entire concept of newly discovered evidence of mitigation under *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998), is also solely a matter of state law.

Both the timeliness of a claim of newly discovered evidence and the entire concept of newly discovered evidence of mitigation are "adequate and independent state law grounds," precluding this Court's review. This Court has explained that if "the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision." *Michigan v. Long*, 463 U.S. 1032, 1041 (1983). This Court's jurisdiction "fails" if the non-federal ground is independent and adequate to support the judgment. *Long*, 463 U.S. at 1038, n.4 (quoting *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935)). A decision "is independent only when it does not depend on a federal holding" and "is not intertwined with questions of federal law." *Glossip v. Oklahoma*, 145 S. Ct 612, 624 (Feb. 25, 2025). The Florida Supreme Court's analysis regarding the timeliness of the claim mentioned only state law; it was not intertwined with federal law in any manner. "In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional." *Id.* at 624 (quoting *Coleman v. Thompson*, 501 U.S. 722, 729 (1991)). There is no federal question presented in the petition and therefore, this Court lacks jurisdiction.

No equivalent constitutional concept

Federal courts do not recognize the concept of newly discovered evidence of mitigation as a basis for ordering a new penalty phase. There simply is no constitutional equivalent to the state concept of newly discovered evidence of mitigation under *Jones*. There is no constitutional precedent from this Court requiring a new sentencing proceeding based on new mitigation, discovered years after the

sentence was final. Hutchinson cites no federal case entertaining such a concept in a capital case as a matter of constitutional law, much less granting the relief of a new penalty phase based on the Eighth Amendment.

No conflict with this Court's jurisprudence

There is no conflict between this Court's jurisprudence and the Florida Supreme Court's decision in this case. Sup. Ct. R. 10(c) (listing conflict with this Court as a consideration in the decision to grant review).

There is no conflict between this Court's jurisprudence and the Florida Supreme Court's decision finding the claim of newly discovered evidence of mitigation to be untimely and meritless. This Court does not recognize the concept of newly discovered evidence of mitigation, discovered years after the sentence is final, as a basis for ordering a new penalty phase, much less dictate constitutional time requirements regarding such a claim. Petitioner cites to no case from this Court discussing new discovered evidence of mitigation discovered for the first time at the postconviction stage, as a constitutional matter, even in passing and certainly does not cite a case from this Court placing a time limitation on such a claim violates some provision of the U.S. Constitution.

No conflict with the federal appellate courts or state supreme courts

There is also no conflict with either the federal circuit courts or the state courts of last resort and the Florida Supreme Court's decision. 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 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).

There is no identified conflict between the Florida Supreme Court's decision in this case and any decision of any federal circuit court of appeal. Hutchinson cites no decision from any federal circuit court even addressing the concept, much less a published decision holding that some provision of the federal constitution mandates that states grant new penalty phases, based on new evidence of mitigation, discovered years after the penalty phase was final. Nor is any case cited in the petition holding that enforcing a time limitation on such an issue violates some provision of the U.S. Constitution. There is no conflict between federal circuit courts and the Florida Supreme Court's decision finding the claim of newly discovered evidence to be untimely and meritless.

There is also no identified conflict between any decision of any other state court of last resort and the Florida Supreme Court's decision. Petitioner cites no decision from any state supreme court even addressing the concept, much less a published decision holding that some provision of the federal constitution mandates that states grant new penalty phases, based on new evidence of mitigation, discovered years after the penalty phase was final. Nor does he cite any state supreme court decision holding that there being a time limitation on such a claim violates some provision of the U.S. Constitution. There is no conflict between the other state supreme courts and the Florida Supreme Court's decision finding the claim to be untimely.

The entire concept of newly discovered evidence of mitigation is a state law issue and the issue of the timeliness of such a claim is also a matter of state law. Since there is no conflict among lower courts on the question, review of this question should be denied.

ISSUE II

Whether this Court should grant review of a decision of the Florida Supreme Court holding the claim of newly discovered evidence of mitigation of Gulf War Illness was untimely and meritless, as a matter of state law?

Hutchinson seeks review of the Florida Supreme Court's decision affirming the postconviction court's summary denial of the third successive postconviction motion, in this active warrant case, arguing that his claim of newly discovered evidence of mitigation of Gulf War Illness should not have been considered untimely. The issue of the timeliness of a claim of newly discovered evidence of mitigation, filed in state court, pursuant to a state rule of court, raising a state law claim is solely a matter of state law. Indeed, the entire concept of newly discovered evidence of mitigation is a state law concept, not a constitutional matter. This Court does not review matters of state law. Alternatively, there is no conflict between this Court's jurisprudence and the Florida Supreme Court's decision in this case. Federal courts do not recognize the concept of newly discovered evidence of mitigation, discovered years after the sentences were final, as a basis for granting a new penalty phase, in federal habeas litigation. There is also no conflict with either the federal circuit courts or the state courts of last resort regarding the timeliness of a claim of newly discovered evidence of mitigation as a federal constitutional matter. Because the issue involves two matters of state law and because there is no conflict with this Court or other appellate courts and the Florida Supreme Court's decision finding the claim to be untimely, this Court should deny review of the question.

The Florida Supreme Court's decision in this case

The Florida Supreme Court affirmed the lower court's summary denial of the claim of newly discovered evidence of mitigation of Gulf War Illness as untimely. *Hutchinson v. State*, 2025 WL 1155717 (Fla. April 21, 2025). The Florida Supreme Court stated that the lower court "correctly determined" that the third successive postconviction motion and claims of newly discovered evidence raised under *Jones v. State*, 709 So. 2d 512 (Fla. 1998), "were untimely." *Hutchinson*, 2025 WL 1155717, at *2. The Florida Supreme Court explained that under Florida Rule of Criminal Procedure, a postconviction motion must be filed within one year of the convictions and

sentences becoming final to be timely, unless one of three exceptions applies. *Id.* at *2 (citing Fla. R. Crim. P. 3.851(d)(1); Fla. R. Crim. P. 3.851(d)(2)). One of the exceptions applies if the facts were unknown and could not have been ascertained by the exercise of due diligence, which are commonly referred to as claims of newly discovered evidence. *Id.* (quoting Fla. R. Crim. P. 3.851(d)(2)(A)). The Florida Supreme Court concluded that Gulf War Illness "was a well-known diagnosable condition at the time of Hutchinson's trial." *Id.* at*2. The Florida Supreme Court observed that even at the time of the penalty phase in 2001, experts recognized that Gulf War illness "encompassed mental-health and cognitive effects." *Id.* The Florida Supreme Court refused to permit a defendant to invoke the exception in Rule 3.851(d)(2)(A), to the time limitation based on an "expansion of scientific knowledge regarding a particular diagnosable condition" that was known at the time of the trial or penalty phase because to do so would be "at odds with the finality interests served by the rule." *Id.* at *2, n.4.

The Florida Supreme Court also concluded that the claim of new discovered evidence of Gulf War Illness failed on the merits as well. *Hutchinson*, 2025 WL 1155717, at *3. The Court also rejected the assertion that Gulf War Illness would result in three life sentences. *Id.* The Florida Supreme Court did not view Gulf War Illness as "powerful" mitigation given the aggravation in a case which included the fact that the three children he murdered were under ten years old with the youngest victim being four years old and the nine year old boy was shot twice; had defense wounds; and at the time the second shot was fired, the boy was "in a kneeling position and still conscious." *Id.* The Florida Supreme Court also noted that the original sentencing judge heard mitigation that included his military service and Gulf War Illness. *Id.* The Florida Supreme Court concluded that the additional mitigation from an enhanced version of Gulf War Illness would only have a "marginal effect" at any new penalty phase and would be "highly unlikely" would lead to a life sentence for any of the three

children's murders.

Matters of state law

The timeliness of a claim of newly discovered evidence of mitigation, filed in state court, pursuant to a state rule of court, is solely a matter of state law. The Florida Supreme Court's decision regarding timeliness of the claim was based on its reading of the provisions of Florida Rule of Criminal Procedure 3.851. *Hutchinson*, 2025 WL 1155717, at *2 (citing Fla. R. Crim. P. 3.851(d)(1); Fla. R. Crim. P. 3.851(d)(2)); Fla. R. Crim. P. 3.851(d)(2)(A)). Moreover, the entire concept of newly discovered evidence of mitigation under *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998), is also solely a matter of state law.

Both the timeliness of a claim of newly discovered evidence and the entire concept of newly discovered evidence of mitigation are "adequate and independent state law grounds," precluding this Court's review. This Court has explained that if "the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision." *Michigan v. Long*, 463 U.S. 1032, 1041 (1983). This Court's jurisdiction "fails" if the non-federal ground is independent and adequate to support the judgment. *Long*, 463 U.S. at 1038, n.4 (quoting *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935)). A decision "is independent only when it does not depend on a federal holding" and "is not intertwined with questions of federal law." *Glossip v. Oklahoma*, 145 S. Ct 612, 624 (Feb. 25, 2025). The Florida Supreme Court's analysis regarding the timeliness of the claim mentioned only state law; it was not intertwined with federal law in any manner. "In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional." *Id.* at 624 (quoting *Coleman v. Thompson*, 501 U.S. 722, 729 (1991)). There is no federal question presented in the petition and therefore, this Court lacks jurisdiction.

No equivalent constitutional concept

Federal courts do not recognize the concept of newly discovered evidence of mitigation as a basis for ordering a new penalty phase. There simply is no constitutional equivalent to the state concept of newly discovered evidence of mitigation under *Jones*. There is no constitutional precedent from this Court requiring a new sentencing proceeding based on new mitigation, discovered years after the sentence was final, at the postconviction stage. Hutchinson cites no federal case entertaining such a concept in a capital case as a matter of constitutional law, much less granting the relief of a new penalty phase based on the Eighth Amendment.

No conflict with this Court's jurisprudence

There is no conflict between this Court's jurisprudence and the Florida Supreme Court's decision in this case. Sup. Ct. R. 10(c) (listing conflict with this Court as a consideration in the decision to grant review).

There is no conflict between this Court's jurisprudence and the Florida Supreme Court's decision finding the claim of newly discovered evidence of mitigation of Gulf War Illness to be untimely. This Court does not recognize the concept of newly discovered evidence of mitigation, discovered years after the sentence is final, as a basis for ordering a new penalty phase, much less dictate constitutional time requirements regarding such a claim. Petitioner cites to no case from this Court discussing new discovered evidence of mitigation discovered for the first time at the postconviction stage, as a constitutional matter, even in passing and certainly does not cite a case from this Court placing a time limitation on such a claim violates some provision of the U.S. Constitution.

No conflict with the federal appellate courts or state supreme courts

There is also no conflict with either the federal circuit courts or the state courts of last resort and the Florida Supreme Court's decision. 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 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).

There is no identified conflict between the Florida Supreme Court's decision in this case and any decision of any federal circuit court of appeal. Hutchinson cites no decision from any federal circuit court even addressing the concept, much less a published decision holding that some provision of the federal constitution mandates that states grant new penalty phases, based on new evidence of mitigation, discovered years after the penalty phase was final. Nor is any case cited in the petition holding that enforcing a time limitation on such an issue violates some provision of the U.S. Constitution. There is no conflict between federal circuit courts and the Florida Supreme Court's decision finding the claim of newly discovered evidence to be untimely and meritless.

There is also no identified conflict between any decision of any other state court of last resort and the Florida Supreme Court's decision. Petitioner cites no decision from any state supreme court even addressing the concept, much less a published decision holding that some provision of the federal constitution mandates that states grant new penalty phases, based on new evidence of mitigation, discovered years after the penalty phase was final.[2] Nor does he cite any state supreme court decision

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[2] Gulf War Illness is not "new" mitigation. That Gulf War Illness had a neurological aspect to it was known to both Hutchinson's mental health expert and to his attorney at the time of the original penalty phase. Dr. Baumzweiger's 2000 report, which was written months before the original penalty phase, extensively referred to the neurological aspects of Gulf War Illness and its various mental effects on Hutchinson. (DAR SC2001-500, Vol. IV at 806-808). And Hutchinson's defense attorney knew that Gulf War Illness had neurological aspects to it as well. At a hearing on defense

holding that there being a time limitation on such a claim violates some provision of the U.S. Constitution. There is no conflict between the other state supreme courts and the Florida Supreme Court's decision finding the claim to be untimely.

Because the issue involves two matters of state law and because there is no conflict with this Court or the other appellate courts and the Florida Supreme Court's decision finding the claim to be untimely and meritless, this Court should deny review of this question.

ISSUE III

Whether this Court should grant review of a decision of the Florida Supreme Court holding the Eighth Amendment claim was not properly pled, as a matter of state law?

Petitioner Hutchinson seeks review of the Florida Supreme Court's decision, in this active warrant case, arguing that his claim of newly discovered evidence of mitigation is a matter of Eighth Amendment law. The Florida Supreme Court found the claim was not properly pled, as required by Florida's rules of court. This Court does not review matters of state law. Alternatively, there is no conflict between this Court's jurisprudence and the Florida Supreme Court's decision in this case. There is no constitutional right to present new mitigation, discovered years after the penalty phase was final. There is no conflict with the Court's Eighth Amendment jurisprudence because this Court's caselaw does not support the argument that the Eighth Amendment right to present mitigation extends to the postconviction context. There is also no conflict with the federal circuit courts because federal courts do not recognize the concept of newly discovered evidence of mitigation, discovered years after

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counsel's motion to appoint a third psychiatrist with an additional expertise in neurology, defense counsel described Gulf War Illness as a "neurological" condition "involving exposure to chemical substances which causes physiological changes to the brain itself." (DAR Supp. I at 2-3). Gulf War Illness is old mitigation. Hutchinson certainly does not point to any case from any court that allows a capital defendant to demand a new penalty phase based on old mitigation that was known and available at the time of the original penalty phase.

the sentences were final. Nor is there any conflict with the state courts of last resort regarding the concept of newly discovered mitigation, as a federal constitutional matter. Because the issue is a matter of state law and because there is no conflict with this Court or other appellate courts and the Florida Supreme Court's decision in this case, this Court should deny review of the question.

The Florida Supreme Court's decision in this case

The Florida Supreme Court found the Eighth Amendment claim of newly discovered evidence of mitigation to have been "not properly presented" in the lower court. *Hutchinson v. State*, 2025 WL 1155717, at *3 (Fla. April 21, 2025). The Florida Supreme Court also found the claim to be conclusory. *Id.* at 9. For these reasons, the Florida Supreme Court did not address the Eighth Amendment claim on the merits.

Matter of state law

This Court has explained that if "the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision." *Michigan v. Long*, 463 U.S. 1032, 1041 (1983). This Court's jurisdiction "fails" if the non-federal ground is independent and adequate to support the judgment. *Long*, 463 U.S. at 1038, n.4. A decision "is independent only when it does not depend on a federal holding" and "is not intertwined with questions of federal law." *Glossip v. Oklahoma*, 145 S. Ct 612, 624 (Feb. 25, 2025). "In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional." *Id.* at 624 (quoting *Coleman*, 501 U.S. at 729).

The Eighth Amendment claim was not properly presented in the lower court under Florida's rules of court. Fla. R. Crim. P. 3.851(e)(1) (providing that in initial postconviction motions, each "claim or subclaim shall be separately pled and shall be sequentially numbered beginning with claim number 1."); Fla. R. Crim. P. 3.851(e)(2)(A) (providing that in successive postconviction motions, the motion shall

comply with "all of the pleading requirements of an initial motion under subdivision (e)(1)"). Florida's pleading requirements mandate that every claim and subclaim raised in a postconviction motion be separately and sequentially numbered but the Eighth Amendment claim was not. But the Eighth Amendment claim was labeled "D" rather than "3" And subsection "C," right before the Eighth Amendment claim, was entitled "cumulative review," which clearly was an argument in support of the other claims, not an independent claim itself. Although the state pointed out in its answer that it was unsure if the Eighth Amendment issue was intended to be a separate claim, opposing counsel did not file an amended motion correctly pleading the claim or even inform the postconviction court at the *Huff* hearing that the Eighth Amendment issue was intended to be a separate claim.[3]

Furthermore, the Eighth Amendment claim was raised in one paragraph consisting of three sentences in the last paragraph of the motion, which the Florida Supreme Court found to be conclusory. Such pleading requirements are a matter of

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[3] The rule was adopted by the Florida Supreme Court at the urging of trial court judges in Florida who are death-qualified to handle capital cases. *In re Amends. to Fla. Rules of Judicial Admin.; Fla. Rules of Criminal Procedure; and Fla. Rules of Appellate Procedure--Capital Postconviction Rules*, 148 So. 3d 1171, 1175 (Fla. 2014) (amending the rule "to provide new requirements for organizing" postconviction motions). The rule was based on their concern that, due to the "Russian nesting doll" pleading style of the CCRC offices, a judge would be misled into thinking the assertion was simply an argument in support of another claim and consequently, not rule on the claim. That concern turned out to be prescient because that is exactly what happened in this case. *See also Green v. Sec'y, Fla. Dep't of Corr.*, 28 F.4th 1089, 1155, 1156 (11th Cir. 2022) (noting that the postconviction motion filed in state court by CCRC-M "was the pleading equivalent of a Russian nesting doll—every claim contained more claims within it" and also noting that the federal habeas petition filed in the federal district court "employed the same 'Russian nesting doll' pleading tactics" resulting in the district court being misled regarding whether a claim had been properly exhausted in state court and mistakenly granting habeas relief on a claim that was, in fact, never raised in state court). The Eleventh Circuit urged Florida courts to require "more straightforward post-conviction pleadings" to prevent "the abuse of the post-conviction process in both state and federal courts." *Id.* at 1159. The Florida Supreme Court was merely enforcing its pleading rules.

state law which this Court does not review.

No equivalent constitutional concept

Federal courts do not recognize the concept of newly discovered evidence of mitigation. There simply is no constitutional equivalent to the state concept of newly discovered evidence of mitigation. There is no constitutional precedent from this Court requiring a new sentencing proceeding based on new mitigation, discovered years after the sentence was final. Hutchinson cites no federal case entertaining such a concept in a capital case as a matter of federal constitutional law, much less granting the relief of a new penalty phase based on the Eighth Amendment.

No conflict with this Court's jurisprudence

There is no conflict between this Court's jurisprudence and the Florida Supreme Court's decision in this case. Sup. Ct. R. 10(c) (listing conflict with this Court as a consideration in the decision to grant review).

There is no conflict between this Court's jurisprudence and the Florida Supreme Court's decision finding the Eighth Amendment claim of mitigation to be untimely or forfeited or not cognizable. There is no conflict with the Court's Eighth Amendment jurisprudence because this Court's caselaw does not support the idea that the Eighth Amendment right to present mitigation extends to the postconviction context. This Court's decisions in *Lockett v. Ohio*, 438 U.S. 586 (1978) (plurality opinion), and *Eddings v. Oklahoma*, 455 U.S. 104 (1982), are Eighth Amendment cases concerning the right to present mitigation at the original penalty phase. Neither *Lockett* nor *Eddings* mention, even in passing, the right to present mitigation discovered years after the death sentence is final.

This Court does not recognize the concept of newly discovered evidence of mitigation, discovered years after the sentence is final, as a basis for ordering a new penalty phase. The Eighth Amendment does not mandate that capital defendants be granted new penalty phases based on claims of newly discovered evidence of

mitigation.

No conflict with the federal appellate courts or state supreme courts

There is also no conflict with either the federal circuit courts or the state courts of last resort and the Florida Supreme Court's decision. 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 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).

There is no identified conflict between the Florida Supreme Court's decision in this case and any decision of any federal circuit court of appeal. Hutchinson cites no decision from any federal circuit court even addressing the issue of whether the Eighth Amendment extends to the postconviction stage, much less a published decision holding that some provision of the federal constitution mandates that states grant new penalty phases, based on new evidence of mitigation, discovered years after the penalty phase was final, under the Eighth Amendment. There is no conflict between federal circuit courts and the Florida Supreme Court's decision.[4]

There is also no identified conflict between any decision of any other state court

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[4] Hutchinson would not be entitled to any relief, even if such a claim was cognizable. The few federal courts that recognize a claim of "innocence of the death penalty" require that the new evidence negate every aggravating factor. The focus is exclusively on aggravation, not mitigation. *See, e.g., Irick v. Bell*, 2010 WL 4238768, at *5 (E.D. Tenn. Oct. 21, 2010) (stating that actual innocence of the death penalty "must focus on those elements that render a defendant eligible for the death penalty, nd not on additional mitigating evidence" citing *Sawyer v. Whitley*, 505 U.S. 333, 347 (1992)). Mitigation is not even considered in the analysis, and certainly not newly discovered mitigation.

of last resort and the Florida Supreme Court's decision. Petitioner cites no decision from any state supreme court even addressing the issue of whether the Eighth Amendment extends to the postconviction stage, much less a published decision from a state supreme court holding that the Eighth Amendment mandates that states grant new penalty phases, based on new evidence of mitigation, discovered years after the penalty phase was final.

Because the entire concept of newly discovered evidence of mitigation is a state law concept with no Eighth Amendment equivalent and because there is no conflict with this Court or among the lower appellate courts, review of this question should be denied.

Accordingly, this Court should deny the petition.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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