No. ___

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

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, MAY 1, 2025, AT 6:00 P.M.

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A1

Florida Supreme Court Order Affirming Denial of Fourth Successive Motion for Postconviction Relief and Denying Petition for Writ of Habeas Corpus

April 25, 2025

2025 WL 1198037
Only the Westlaw citation is currently available.

Supreme Court of Florida.

Jeffrey G. HUTCHINSON, Appellant,
v.
STATE of Florida, Appellee.
Jeffrey G. Hutchinson, Petitioner,
v.
Secretary, Department of Corrections, Respondent.

No. SC2025-0517, No. SC2025-0518
|
April 25, 2025

An Appeal from the Circuit Court in and for Okaloosa County, Lacey Powell Clark, Judge Case No. 461998CF001382XXXACX And an Original Proceeding – Habeas Corpus

Attorneys and Law Firms

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James Uthmeier, Attorney General, Charmaine M. Millsaps, Senior Assistant Attorney General, and Jason W. Rodriguez, Senior Assistant Attorney General, Tallahassee, Florida, for Appellee/Respondent

Opinion

PER CURIAM.

***1** More than two decades have passed since Jeffrey Glenn Hutchinson murdered three children under the age of ten. For these crimes, the trial court imposed sentences of death. Governor Ron DeSantis has signed a warrant calling for the execution of those three sentences. Following issuance of the warrant, Hutchinson filed his fourth successive motion for postconviction relief. The circuit court denied the motion in its entirety, giving rise to this consolidated proceeding. Carrying out our mandatory-review function, *see* art. V, § 3(b)(1), Fla. Const., we affirm. In addition, we deny Hutchinson's requests for habeas relief, [1] a stay, and oral argument.

1 Article V, section 3(b)(9) of the Florida Constitution gives us discretionary authority to issue writs of habeas corpus.

I

In 1998, Hutchinson lived with his girlfriend, Renee Flaherty, and her three children: Geoffrey (nine years old), Amanda (seven years old), and Logan (four years old). On the day of the murders, Hutchinson drank several beers and argued with Renee. As a result of that argument, Hutchinson packed up his belongings, including a shotgun, and went to a nearby bar where he consumed more beer. At one point, he told a patron that Renee was angry at him.

Hutchinson left the bar and drove back to Renee's home. Armed with a shotgun, he broke down the front door. He proceeded to the bedroom where he shot Renee, Amanda, and Logan, killing each of them with a single shot to the head.

Hutchinson then turned his attention to Geoffrey, who was standing at the bedroom doorway. Perceiving the imminent danger posed by Hutchinson, Geoffrey attempted to block the first shot directed at him. Predictably, Geoffrey's defensive efforts were ineffective. The shot grazed Geoffrey's arm and struck him in the chest. Geoffrey spun around, stumbled into the living room, and fell to the floor. However, he remained conscious. Meanwhile, as Hutchinson had done after taking each shot, he pumped the shotgun to reload the chamber. Hutchinson then fired a second shot at the kneeling child. This shot hit Geoffrey in the head, killing him.

In the aftermath of the shootings, a male who did not identify himself called 911 from Renee's house. The caller began by stating, "I just shot my family." Later, the caller indicated that "some guys" had been present, though he was unsure of the exact number. At some point, the caller stopped speaking with the operator.

Within minutes of the 911 call, law enforcement arrived at Renee's home where they found Hutchinson on the floor of the garage. A phone was near Hutchinson's head and still

connected to the 911 dispatcher. Body tissue from Geoffrey was on one of Hutchinson's legs, and there was gunshot residue on Hutchinson's hands.

After assessing the situation in the garage, law enforcement entered the home. Inside, officers found Renee's and Logan's bodies on the bed, Amanda's body on the bedroom floor, and Geoffrey's body in the living room. They also located a twelve-gauge pistol-grip shotgun on the kitchen counter—a shotgun later determined to be Hutchinson's.

***2** That night, Hutchinson was taken to a nearby police station where he spoke with two officers. Among other things, Hutchinson claimed that two mask-wearing individuals were responsible for the deaths of Renee and the children.

After additional evidence was obtained, the State charged Hutchinson with four counts of first-degree murder and sought the death penalty. At trial, the State presented overwhelming evidence of Hutchinson's guilt, including the testimony of multiple witnesses identifying Hutchinson as the 911 caller. The State also presented testimony from officers who responded to Renee's home and detained Hutchinson. Several experts opined on the significance of physical evidence recovered from the scene.

For one of his defenses, Hutchinson argued that two men barged into the house and shot Renee and the children, despite Hutchinson's best efforts to disarm them. The State, however, presented evidence that Hutchinson lacked any injuries one would expect from an intense physical altercation.

Ultimately, the jury rejected Hutchinson's defenses (including voluntary intoxication) and found him guilty as charged on all four murder counts. With the advice of his family and counsel, Hutchinson waived a penalty-phase jury.

At the ensuing penalty phase, the trial court received evidence on aggravating and mitigating circumstances. As for mitigation, the court heard that Hutchinson had served in the Gulf War and suffered effects (including nonphysical issues) from that service—what witnesses described as Gulf War Syndrome or Illness. In addition, the court heard that Hutchinson had earned multiple awards for his military service.

Following the penalty phase, the parties submitted competing sentencing memoranda. Ultimately, the trial court sentenced Hutchinson to death for the murder of each child, finding that the aggravating circumstances outweighed the mitigating circumstances. [2]

2 For all three children, the court found that the youth and prior-violent-felony aggravators applied. And as for Geoffrey, the court ruled that his murder was heinous, atrocious, and cruel.

Hutchinson appealed his convictions and death sentences, but we affirmed. *Hutchinson v. State*, 882 So. 2d 943, 961 (Fla. 2004). In the twenty-plus years since our affirmance, Hutchinson has challenged his convictions and death sentences in both state and federal court to no avail. We affirmed the denial of his initial motion for postconviction relief and likewise affirmed the denial of his successive motions, including one pending when the Governor signed the death warrant. *Hutchinson v. State*, 17 So. 3d 696 (Fla. 2009) (initial state postconviction proceeding); *Hutchinson v. State*, 243 So. 3d 880 (Fla. 2018) (successive state proceeding); *Hutchinson v. State*, 343 So. 3d 50 (Fla. 2022) (successive state proceeding); *Hutchinson v. State*, No. SC2025-0497, —— So.3d ——, 2025 WL 1155717 (Fla. Apr. 21, 2025) (successive state proceeding). Hutchinson fared no better in federal court. His first habeas petition was rejected on timeliness grounds. *Hutchinson v. Florida*, No. 5:09-cv-261-RS, 2010 WL 3833921 (N.D. Fla. Sept. 28, 2010), *aff'd*, 677 F.3d 1097 (11th Cir. 2012). [3] And his second petition was dismissed as an unauthorized second or successive petition. *Hutchinson v. Crews*, No. 3:13-cv-128-MW, 2013 WL 1765201 (N.D. Fla. Apr. 24, 2013).

3 Hutchinson later sought relief from the judgment dismissing his first federal habeas petition, but the federal district court declined to grant relief. *Hutchinson v. Inch*, No. 3:13-cv-128-MW, 2021 WL 6335753, at *10 (N.D. Fla. Jan. 15, 2021), *certificate of appealability denied*, No. 21-10508-P, 2021 WL 6340256, at *1 (11th Cir. Mar. 24, 2021); *Hutchinson v. Sec'y, Fla. Dep't of Corr.*, No. 3:13-cv-128-MW, slip op. at 15-18 (N.D. Fla. Apr. 17, 2025), *certificate of appealability denied*, No. 25-11271, slip op. at 10-11 (11th Cir. Apr. 23, 2025).

***3** This brings us to the claims Hutchinson raised in his fourth successive postconviction motion—the motion at issue in this appeal. As part of these claims, Hutchinson asserted that the limited warrant-litigation period violated his constitutional rights, especially in light of the claims he raised

in his third successive motion.[4] He accordingly asked for a stay. Apart from requesting additional time to investigate and litigate his claims, Hutchinson asserted entitlement to the vacatur of his death sentences on constitutional grounds. The court denied relief in all respects without holding an evidentiary hearing. Having denied the claims, the court declined to issue a stay.

4 As suggested above, we have affirmed the denial of this motion.

Hutchinson appealed, arguing various grounds for reversal. He also asks us to grant a writ of habeas corpus. Asserting that our review would be facilitated by additional deliberation, Hutchinson requests a stay and oral argument.

II

We begin with Hutchinson's appeal. He challenges the court's ruling on his numerous records requests, its summary denial of his fourth successive postconviction motion, and its refusal to enter a stay while his postconviction claims were pending.

A

For his first issue, Hutchinson argues that the circuit court erred in denying his records requests. We disagree.

Hutchinson sought records under Florida Rule of Criminal Procedure 3.852(h) and (i). The circuit court ruled that subdivision (h) did not apply since the mandate in Hutchinson's direct appeal issued in 2004. As for subdivision (i), the court found that the requests did not meet the standards established in the rule or in case law interpreting it. Indeed, the court determined that many of the requests did not relate to a colorable claim for relief and, thus, amounted to a prohibited fishing expedition.

We have held that a circuit court has broad discretion in handling post-warrant records requests. *See Cole v. State*, 392 So. 3d 1054, 1065 (Fla.), *cert. denied*, —— U.S. ——, 145 S. Ct. 109, 219 L.Ed.2d 1355 (2024); *Tanzi v. State*, 50 Fla. L. Weekly S59, S60, —— So.3d ——, ——, 2025 WL 971568 (Fla. Apr. 1, 2025), *cert denied*, Nos. 24-6932, 24A948, —— U.S. ——, —— S.Ct. ——, —— L.Ed.2d ——, 2025 WL 1037494 (U.S. Apr. 8, 2025). In this case, the rationale provided by the circuit court comports with our warrant-related precedent and was reasonable based on the facts and circumstances of this case.[5] Accordingly, we find no abuse in the court's discretionary ruling.

5 Though Hutchinson claims that his requests met the appropriate legal standards, his assertions are conclusory.

As an alternative, Hutchinson now claims that the operation of rule 3.852 violates due process and equal protection, at least in his case. We reject this challenge.

To the extent Hutchinson is presenting an as-applied constitutional challenge, that challenge is not preserved. *Davis v. Gilchrist Cnty. Sheriff's Off.*, 280 So. 3d 524, 531 (Fla. 1st DCA 2019) (preservation requirement). However, on the merits, the claim still fails. We have consistently rejected constitutional challenges to rule 3.852's restrictions on the availability of public records. *Dailey v. State*, 283 So. 3d 782, 793 (Fla. 2019); *Lambrix v. State*, 124 So. 3d 890, 895 n.2 (Fla. 2013). And we see nothing novel in Hutchinson's challenge. We further note that, even at this stage, Hutchinson does not say how some record believed to exist would support a colorable claim, i.e., the type of claim that could support relief.

B

Next, we consider the circuit court's rulings on the fourth successive postconviction motion. Under our de novo standard of review, we affirm the summary denial of successive claims where those claims are untimely, procedurally barred, legally insufficient, or refuted by the record. *See Cole*, 392 So. 3d at 1060-61.

1

***4** Hutchinson asserts error in the court's rejection of his claim that he was denied due process based on (1) the shortness of the warrant period, (2) the pendency of claims at the time the warrant was signed, (3) the reassignment of his third successive motion to another judge who lacked familiarity with this case, and (4) a "myriad of additional issues" frustrating counsel's ability to research and present post-warrant claims. This claim is meritless.

We have recently rejected due process arguments comparable to Hutchinson's. *Tanzi*, 50 Fla. L. Weekly at S60, —— So.3d at ——; *Barwick v. State*, 361 So. 3d 785, 789-90 (Fla.), *cert. denied*, —— U.S. ——, 143 S. Ct. 2452, 216 L.Ed.2d 427 (2023). Though Hutchinson relies on different facts than those in *Tanzi* and *Barwick*, such distinctions do not justify a different outcome here.

In sum, although the warrant period in this case was admittedly short and the record lengthy, Hutchinson has been able to raise numerous postconviction claims and advance arguments to support them.[6] Moreover, as represented in the primary order challenged here, the newly assigned judge offered record- and rules-based reasons for rejecting Hutchinson's claims. We also note that Hutchinson, though concerned about the judge's lack of prior familiarity with his case, has not claimed that the judge was biased in any respect.

6 Based on our own independent assessment of the record, we reject Hutchinson's premise that he "was not afforded any opportunity to address the specific concerns or issues raised by the judge who ultimately issued the order denying him relief."

Accordingly, for the reasons discussed above, we agree with the denial of this claim.[7]

7 The dissent takes issue with our resolution of this claim, implying that the facts in this case set it apart from our recent unanimous decisions rejecting claims based on the shortness of the warrant period. *See Tanzi*, 50 Fla. L. Weekly at S60, —— So.3d at ——; *Barwick*, 361 So. 3d at 789. To this end, the dissent notes that we did not receive notification from anyone—including Hutchinson's attorneys and the Office of the Attorney General—that Hutchinson had asked Governor DeSantis to find him insane under section 922.07, Florida Statutes (2024) (giving the Governor authority to declare a death-row inmate "insane" for purposes of execution). Nor were we told about the mandatory stay until its dissolution (which happened after the Governor denied relief). *See* § 922.07(1). Nevertheless, despite being surprised by the lack of notice, we do not see how the events occurring in a purely executive proceeding frustrated or impeded our review of Hutchinson's distinct requests and claims here. We similarly find misplaced the dissent's reliance on the pendency of Hutchinson's third successive motion at the time the warrant issued. Our rules of procedure specifically contemplate that such situations could occur and provide for expedited proceedings in order to timely resolve the pending claims. *See* Fla. R. Crim. P. 3.851(f)(5)(B).

2

***5** Hutchinson also argues that the circuit court erred in denying his claim challenging the warrant selection process as "arbitrary and truncated." As he sees it, "Florida's utter lack of any method, criteria, or procedure in determining whom to execute is arbitrary and capricious leading to an absurd result that violates the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution." We again disagree.

Our precedent contradicts Hutchinson's arguments. We have repeatedly held that the Governor's broad discretion does not contravene constitutional norms. In doing so, we have emphasized not only the executive's authority to exercise discretion, but also the *breadth* of that discretion. For instance, in *Gore v. State*, 91 So. 3d 769, 780 (Fla. 2012), we said that the "absolute discretion" reposed in the Governor did not violate the constitution.

Notwithstanding this authority, Hutchinson tells us that other states have a more structured, less-discretionary process. That may be true. But we are aware of no constitutional principle that demands a fixed formula, thereby limiting the decisionmaker in determining the order of execution. At the very least, Hutchinson has failed to show that a discretionary standard in warrant selection (regardless of the decisionmaker) offends a discrete provision of the state or federal constitution.

As another component of this claim, Hutchinson asserts that his execution would be arbitrary because of his mitigation and severe brain damage. It is true that the U.S. Supreme Court's Eighth Amendment jurisprudence forbids statutes that allow imposition of arbitrary death sentences. But that aspect of the Eighth Amendment is satisfied when the challenged statute sufficiently narrows the class of persons eligible for the death penalty. *Johnson v. Norris*, 537 F.3d 840, 850 (8th Cir. 2008). We have repeatedly held that Florida's death-penalty statute accomplishes this. *Wells v. State*, 364 So. 3d 1005, 1015 (Fla. 2023) (collecting cases). We have also upheld the validity of specific aggravators, including the prior-

violent-felony (PVF) and the "especially" heinous-attrocious-or-cruel (HAC) aggravators.[8] *Davidson v. State*, 323 So. 3d 1241, 1250 (Fla. 2021) (upholding PVF aggravator); *Victorino v. State*, 23 So. 3d 87, 104 (Fla. 2009) (upholding HAC aggravator).

8 In their current form, these aggravators are listed in section 921.141(6), Florida Statutes (2024).

The Eighth Amendment also requires individualized sentencing, which gives the capital defendant the right to present mitigating evidence to his sentencer. *Kansas v. Marsh*, 548 U.S. 163, 175, 126 S.Ct. 2516, 165 L.Ed.2d 429 (2006) ("In aggregate, our precedents confer upon defendants the right to present sentencers with information relevant to the sentencing decision and oblige sentencers to consider that information in determining the appropriate sentence. The thrust of our mitigation jurisprudence ends here."); *cf. Jackson v. Cool*, 111 F.4th 689, 702 (6th Cir. 2024) ("[C]apital defendants have a right to present *during their sentencing proceedings* 'any and all relevant mitigating evidence that is available.' " (emphasis added) (quoting *Skipper v. South Carolina*, 476 U.S. 1, 8, 106 S.Ct. 1669, 90 L.Ed.2d 1 (1986))). Hutchinson vindicated this right by presenting mitigating evidence at his penalty phase. And despite his invocation of vague constitutional principles, Hutchinson has not cited any authority holding that the Eighth Amendment provides an absolute right to present mitigating evidence at any time, regardless of its availability, regardless of the defendant's diligence in locating and presenting it, and regardless of its strength or force.[9]

9 If anything, our recent case law would be inconsistent with such a right. *See Ford v. State*, 402 So. 3d 973, 977-78 (Fla.) (rejecting constitutional challenge to rule 3.851's one-year time limitation), *cert. denied*, No. 24-6510, —— U.S. ——, —— S.Ct. ——, —— L.Ed.2d ——, 2025 WL 467243 (U.S. Feb. 12, 2025); *Barwick*, 361 So. 3d at 795 (enforcing procedural bar in context of Eighth Amendment claim); *James v. State*, No. SC2025-0280, —— So.3d ——, ——, 2025 WL 798376, at *9 (Fla. Mar. 13, 2025) (refusing to reconsider prior rulings that barred merits review of certain constitutional claims), *cert. denied*, No. 24-6775, —— U.S. ——, —— S.Ct. ——, —— L.Ed.2d ——, 2025 WL 864460 (U.S. Mar. 20, 2025).

***6** Consequently, Hutchinson seeks an unjustified extension of the U.S. Supreme Court's Eighth Amendment jurisprudence and his claim is inconsistent with our precedent.[10]

10 Moreover, to the extent that Hutchinson is arguing that his brain damage categorically exempts him from the death penalty, he is wrong for the reasons we identify below.

3

Relying on the Eighth Amendment, Hutchinson also claims that his execution would be cruel and unusual punishment in light of his time on death row, his conditions of confinement, and his combat-related issues. We agree with the circuit court's rejection of this claim.

Our precedent again undermines Hutchinson's arguments. Indeed, we have consistently rejected arguments that a lengthy time on death row requires setting aside a death sentence. *Orme v. State*, 361 So. 3d 842, 845 (Fla. 2023) (citing 2003 precedent). And in the warrant context, we recently rejected an argument that a lengthy amount of time on death row, coupled with substandard conditions of confinement, could be a basis for vacating a death sentence. *See Cole*, 392 So. 3d at 1064. We are not persuaded that Hutchinson's combat-related issues make a difference for purposes of this claim.

4

Hutchinson also asserts that the circuit court erred in denying his access-to-court claim. In that claim, Hutchinson argued that the Florida Constitution's access-to-court provision entitles him to the presence of two legal witnesses and related accommodations. We disagree.

We have rejected similar requests, finding the legal grounds advanced to be without merit. *See Dailey*, 283 So. 3d at 791; *Long v. State*, 271 So. 3d 938, 946 (Fla. 2019). And we see no reason to depart from that precedent.

III

Aside from challenging the denial of his fourth successive motion, Hutchinson has filed a petition for habeas corpus relief. In his petition, Hutchinson raises three claims. We deny them all.

A

For his first habeas claim, Hutchinson argues that *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002), should extend to individuals, like Hutchinson, with certain neurocognitive disorders. This claim fails for multiple reasons.

First, this argument could have been raised earlier and is thus untimely and procedurally barred. Fla. R. Crim. P. 3.851(d)-(e); *Sparre v. State*, 391 So. 3d 404, 406 n.5 (Fla. 2024).[11] Second, on the merits, our precedent squarely forecloses Hutchinson's argument. We have repeatedly refused to extend *Atkins* beyond the intellectual-disability context. *See Dillbeck v. State*, 357 So. 3d 94, 98 (Fla. 2023) (warrant); *Barwick*, 361 So. 3d at 795 (warrant); *Wells*, 364 So. 3d at 1016 (direct appeal). We decline to revisit this precedent.

11 Hutchinson argues that procedural bars do not apply to categorical-exemption claims, but he is mistaken. *See Dillbeck v. State*, 357 So. 3d 94, 100 (Fla. 2023); *Barwick*, 361 So. 3d at 795.

B

Hutchinson's second habeas claim seeks relief from procedural barriers, relying on the alleged ineffectiveness of state postconviction counsel as a gateway to seek merits review of otherwise barred claims. Hutchinson focuses primarily on counsel's failure to file the initial postconviction motion in state court within the time frame that would have tolled the federal habeas statute of limitations. In light of that claimed ineffectiveness, he urges us to adopt a rule similar to the one the U.S. Supreme Court adopted in *Martinez v. Ryan*, 566 U.S. 1, 9-17, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012) (ineffective assistance of state postconviction counsel can provide cause to forgive a procedural default for claims of ineffective assistance of trial counsel where the state requires such claims to be raised in the initial-postconviction-review proceeding). This claim lacks merit.

***7** First, we have held that there is no right to the effective assistance of postconviction counsel. *Barwick*, 361 So. 3d at 791. We have also consistently recognized that *Martinez* applies solely in federal courts. *See Dailey v. State*, 279 So. 3d 1208, 1215 (Fla. 2019); *Howell v. State*, 109 So. 3d 763, 774 (Fla. 2013). What's more, *Martinez* only applied to a certain type of defaulted claim—one that asserts ineffective assistance of trial counsel. *Davila v. Davis*, 582 U.S. 521, 530, 137 S.Ct. 2058, 198 L.Ed.2d 603 (2017). That type of claim is not at issue in this warrant proceeding.

C

In his third and final habeas claim, Hutchinson challenges the HAC aggravator, arguing that it fails to perform the narrowing function demanded by the Eighth Amendment. This claim is untimely and procedurally barred as it could have been raised on direct appeal. *Sparre*, 391 So. 3d at 406 n.5. Moreover, we have rejected similar challenges. *Dillbeck*, 357 So. 3d at 105 (collecting cases). And last, the HAC aggravator applied only to Geoffrey's murder. Thus, even if we found it invalid, it would have no bearing on the death sentences for the murders of Amanda and Logan.

IV

For the reasons given above, we affirm the summary denial of Hutchinson's fourth successive motion and deny habeas relief. In light of these rulings, we also deny Hutchinson's request for oral argument and a stay. No motion for rehearing will be considered. The mandate shall issue immediately.

It is so ordered.

MUÑIZ, C.J., and CANADY, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ., concur.

LABARGA, J., dissents with an opinion.

LABARGA, J., dissenting.

I fully acknowledge the horrific facts of this death warrant case. Yet, as acknowledged by the majority, "the warrant period in this case was *admittedly short and the record lengthy*." Majority op. at —— (emphasis added).

Additionally, the recent procedural history of this case has been affected by the following: (1) Hutchinson's third successive postconviction motion was still pending in the circuit court at the time that the death warrant was signed on March 31, 2025, and (2) on April 17, 2025, the Governor temporarily stayed Hutchinson's execution so that Hutchinson could be evaluated for competency. At the time that the stay was entered, this Court was actively considering the merits of Hutchinson's current postconviction appeal, habeas petition, and other motions. However, this Court was only notified of the stay days later, *after* the competency evaluation was completed *and the stay lifted*.

Given these circumstances, I cannot concur in the majority's decision to permit this execution to proceed at this time, without ensuring a reasonable period for this Court to conduct a full review.

Because due process requires more, I dissent.

All Citations

--- So.3d ----, 2025 WL 1198037

A2

First Judicial Circuit Court Okaloosa County
Order Denying Fourth Successive Motion
for Postconviction Relief
April 11, 2025

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR OKALOOSA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

Case No. 1998-CF-1382
Div. 001

JEFFREY HUTCHINSON,

Defendant.

ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION TO VACATE JUDGMENT AND DEATH SENTENCE AND MOTION FOR STAY OF EXECUTION WITH DIRECTIONS TO CLERK

THIS CAUSE is before the Court on Defendant's Motion for Stay of Execution, filed by Defendant's counsel on April 1, 2025, and Successive Motion to Vacate Judgment and Sentence, filed by Defendant's counsel on April 7, 2025, pursuant to Florida Rule of Criminal Procedure 3.851. Having considered the motions, State's responses, argument of counsel, record, and applicable law, the Court finds as follows:

Background

On January 18, 2001, Defendant was convicted of four counts of first degree murder for the deaths of his girlfriend Renee Flaherty and her three children, Logan, Amanda, and Geoffery. Defendant waived jury trial for the penalty phase, and after presenting mitigation to the Court, he was ultimately sentenced on February 6, 2001, to life in prison for the murder of Renee, and to death for the murder of each child. The Florida Supreme Court affirmed the convictions of first degree murder and sentences of death on July 1, 2004.[1]

[1] Hutchinson v. State, 882 So. 2d 943 (Fla. 2004).

On October 20, 2005, Defendant filed a motion to vacate judgments and sentences in which he raised numerous claims of ineffective assistance of counsel. Then on June 13, 2006, Defendant filed a motion for DNA testing, which the Court denied on November 3, 2006. On August 15, 2007, Defendant filed an amended motion for postconviction relief. Following an evidentiary hearing held on October 22, 2007, the Court entered an order on January 3, 2008, denying the motion. The Florida Supreme Court affirmed the trial court's denial of Defendant's motion.[2]

Then on July 25, 2011, Defendant filed a motion for postconviction DNA testing, which the Court denied on November 3, 2011. Defendant appealed, but it was ultimately dismissed by the Florida Supreme Court on March 8, 2012. Then on March 20, 2013, Defendant filed another motion for postconviction relief, which the Court dismissed on April 12, 2013, as an improper *pro se* filing. Defendant then filed through counsel a successive motion for postconviction relief in light of Hurst v. Florida, 577 U.S. 92 (2016), and Hurst v. State, 202 So. 3d 40 (Fla. 2016); the Court denied Defendant's motion on May 30, 2017, and the Florida Supreme Court ultimately affirmed the Court's decision.[3]

Then on June 12, 2020, Defendant filed another successive motion to vacate and set aside his judgments of conviction and sentences due to violations by the State under Brady v. Maryland, 373 U.S. 83 (1963), and Giglio v. United States, 405 U.S. 150 (1972); Defendant filed an amended motion on July 13, 2020. The motions were stricken with leave to amend on July 16, 2020. Then on September 14, 2020, Defendant filed a second amended successive motion for

[2] Hutchinson v. State, 17 So. 3d 696 (Fla. 2009).
[3] Hutchinson v. State, 243 So. 3d 880 (Fla. 2018).

postconviction relief. The Court denied the motion on December 4, 2020, which the Florida Supreme Court affirmed.[4]

Defendant then filed another successive motion for postconviction relief on January 15, 2025, based on newly discovered evidence. On March 6, 2025, a case management conference was held on the motion. On April 1, 2025, this case was reassigned to the undersigned following Governor DeSantis's signing of Defendant's death warrant on March 31, 2025. On April 1, 2025, the Florida Supreme Court entered an order setting time constraints regarding the proceedings. Pursuant to that order, all proceedings in the trial court shall be completed and orders entered no later than 3:00 p.m. Central, 4:00 p.m. Eastern, on Friday, April 11, 2025. Also on April 1, Defendant filed the present motion for stay of execution; the State filed a written response that same day.

The Court then held a capital postconviction case management conference via Zoom on April 1, 2025, pursuant to rule 3.851(h)(6). On April 1, the Court entered an order on the case management conference and scheduled the remaining filing deadlines and hearings. Then on April 2, 2025, Defendant filed several demands for additional public records pursuant to rules 3.852(h)(3) and (i). On April 3, 2025, the following entities filed objections to said demands: the Office of the Medical Examiner, District Eight; the Florida Commission on Offender Review; the Florida Department of Law Enforcement; the Office of the Attorney General; the Florida Department of Corrections; Crestview Police Department; Niceville Police Department; the Office of the State Attorney; the Okaloosa County Sheriff's Office, and the Executive Office of the Governor. A hearing was held via Zoom on April 4, 2025. Following the hearing, the Court entered an order sustaining all objections and denying the demands.

---

[4] Hutchinson v. State, 343 So. 3d 50 (Fla. 2022).

Then on April 4, 2025, the Court entered an order denying Defendant's successive motion for postconviction relief based on newly discovered evidence. The Court found the motion to be untimely. On April 5, 2025, Defendant filed a motion for rehearing; the State's response was filed that same day. Defendant then filed the present successive motion for postconviction relief ("Motion"). The State responded on April 8, 2025. On the same day, the Court entered an order denying Defendant's motion for rehearing, and Defendant filed a notice of appeal.

The Court then held a second case management conference on April 9, 2025, to hear arguments from the parties as to whether an evidentiary hearing would be needed to address the claims raised in the Motion. On April 9, 2025, the Court entered an order denying Defendant's request for an evidentiary hearing.

SUCCESSIVE MOTION FOR POSTCONVICTION RELIEF

Defendant raises four claims for relief and requests a stay of execution, an evidentiary hearing on his claims, leave to amend his claims if "new claims, facts, or legal precedent become available to counsel,"[5] vacation of his judgment and death sentences, and any other relief the Court deems appropriate. For the reasons discussed below, the Court declines to grant relief.

Claim 1

The Timing and Specific Litigation Context of the Death Warrant

Violates State and Federal Due Process

Defendant argues that the "truncated consideration of the complex and fact-intensive Rule 3.851 motion pending at the time of the warrant signing" and "the substitution of the judge presiding over the Rule 3.851 motion who had heard argument and indicated he needed some

[5] Defendant's request to amend does not meet the requirements of Florida Rule of Criminal Procedure 3.851(f)(4), which requires a showing of good cause as well as attachment "of the claim sought to be added . . . ."

time to review the record and evaluate the necessity of an evidentiary hearing," have hindered his attorneys "from fully investigating and presenting his post-warrant claims for relief." Defendant claims, "Postconviction counsel simply cannot adequately represent [Defendant] under the circumstances."[6]

Specifically, Defendant challenges the reassigning of his case to this Court the day after the Governor signed Defendant's death warrant and claims that this Court's denial of his successive motion for postconviction relief, "having not taken [his] allegations of diligence as true and not permitting [Defendant] an opportunity to address any concerns that this Court had because no opportunity was provided to him[,]" violates due process. Defendant argues that "the Court's deliberation should not have been suffocated by the Governor's decision to sign a death warrant despite the pendency of unresolved ligation . . . ."

Defendant also argues that "the Governor provided an unfair litigation advantage by informing nonparties of the upcoming warrant in advance while keeping it a secret from [Defendant] and his counsel." Defendant claims that on Friday, March 21, 2025, "an apparent member of the victims' family posted on Facebook that [Defendant's] warrant would be signed next and that 'nothing absolutely nothing will stop it.'" Defendant claims that "when a death warrant was officially signed 10 days later, the Governor's Office also failed to serve it upon any of [Defendant's] appointed state or federal counsel who have represented him for years . . . delaying notice to his actual counsel by hours." Defendant asserts that the Attorney General, the State, and family members of the victims had advance notice of the warrant. According to

[6] In the Motion, Defendant also claims that he "has been deprived of . . . the right to a fair and impartial tribunal based upon the circumstances surrounding his impending execution . . . ." However, at the case management conference on April 9, 2025, counsel clarified that Defendant was not intending to assert that this Court was not fair and impartial.

Defendant, "This surprise and gamesmanship create an unlevel playing field, violating due process."

Defendant also argues that his "access to mental health experts is but one example of how he is being denied due process and a fundamentally fair proceeding." Defendant claims that he could not be seen by mental health experts until after the April 7, 2025, deadline for filing his final successive motion. Defendant argues that had he "been afforded the same notice as various nonparties or the State, he could have arranged for timelier expert assistance." Therefore, Defendant requests that this Court "enter a stay of execution for a reasonable time so that [Defendant] can fully investigate and prepare a Rule 3.851 motion and so that adequate consideration of his claims will occur."

Analysis and Discussion

The Court finds that the arguments and allegations raised in Claim 1 do not provide a basis for relief. More specifically, the Governor's signing of Defendant's death warrant while his *successive* motion for postconviction relief was pending does not violate his due process rights, as Defendant has filed multiple postconviction motions over the last 20 years since his judgment and sentence became final in 2004. A death warrant being signed while a motion for postconviction relief is pending is not unique to this case. See Marek v. State, 8 So. 3d 1123 (Fla. 2009); Bolin v. State, 184 So. 3d 492 (Fla. 2015). Therefore, Defendant's argument that "[t]he Court's deliberation should not have been suffocated by the Governor's decision to sign a death warrant despite the pendency of unresolved litigation" is not well-taken.

Importantly, it was not Defendant's initial postconviction motion pending at the time Defendant's death warrant was signed, as was the case in King v. State, 808 So. 2d 1237 (Fla. 2002). Rather, Defendant's third successive motion for postconviction relief was filed by counsel

on January 15, 2025, over two months before the signing of Defendant's death warrant. Consequently, counsel had ample time to investigate and prepare said motion and present it to the Court at the case management conference held on March 6, 2025. The case management conference was counsel's opportunity to present argument regarding the need for an evidentiary hearing on that motion. Following the reassignment of Defendant's case, this Court reviewed the entire record, including the transcript and video recording from said conference, prior to ruling on Defendant's motion. Therefore, Defendant's claim that this Court conducted a "hasty and inadequate review" of his motion that denied him due process is speculative, and "postconviction relief cannot be based on mere speculation." McLean v. State, 147 So. 3d 504, 512 (Fla. 2014). Further, the fact that Defendant's successive postconviction motion for relief was denied as untimely without an evidentiary hearing does not convert the circumstances to a denial of due process. Therefore, the Court finds that Defendant was not denied due process during his third successive postconviction action. See Kokal v. State, 901 So. 2d 766, 778 (Fla. 2005), as revised on denial of reh'g (Apr. 28, 2005).

Moreover, Defendant's challenge to the reassignment of his case to this Court following the Governor's signing of his death warrant is not well-taken. "Where the court has jurisdiction, it is the court, and not the particular judges thereof, that has jurisdiction over a particular cause, controversy and the parties thereto." Kruckenberg v. Powell, 422 So. 2d 994, 996 (Fla. 5th DCA 1982). "Subject only to substantive law relating to disqualification of judges, litigants have no right to have, or not have, any particular judge of a court hear their cause and no due process right to be heard before any assignment or reassignment of a particular case to a particular judge." Id.

Additionally, while Defendant alleges that notice of the warrant was delayed by hours, he fails to demonstrate how he was prejudiced by the inadvertent and brief delay. As to his claims regarding not receiving advance notice of the warrant, in Marek v. State, 14 So. 3d 985, 998 (Fla. 2009), the Florida Supreme Court held that "Marek has not provided any authority holding that he must be provided notice before a death warrant is signed . . . ." This Court likewise finds that Defendant fails to cite any case law requiring he be given advance notice of the signing of his death warrant. Therefore, Defendant's speculative argument that had he "been afforded the same notice as various nonparties or the State, he could have arranged for timelier expert assistance," is not well-taken.

Finally, regarding the Court's adoption of the State's proposed scheduling order, Defendant's counsel only requested modification of two deadlines, both of which the Court granted. Per counsel's request, the deadline for filing the successive motion on April 7, 2025, was moved to 2:00 p.m. Central, 3:00 p.m. Eastern, and the start time for the second case management conference on April 9, 2025, was moved to 9:00 a.m. Central, 10:00 a.m. Eastern. Otherwise, counsel did not object to the Court's adoption of the State's proposed scheduling order. The Florida Supreme Court "has previously rejected the argument that a 30-day 'compressed warrant litigation schedule' denies a capital defendant 'his rights to due process.' See Barwick v. State, 361 So. 3d 785, 789 (Fla. 2023)." Tanzi v. State, No. SC2025-0371, 2025 WL 971568 (Fla. Apr. 1, 2025), cert. denied sub nom. TANZI, MICHAEL v. DIXON, SEC., FL DOC, No. 24-6932, 2025 WL 1037494 (U.S. Apr. 8, 2025). Additionally, to the extent that Defendant is attempting to connect his circumstances to a claim that he is receiving ineffective assistance of counsel, he is not entitled to relief. The Florida Supreme Court "has repeatedly held

that defendants are not entitled to effective assistance of collateral counsel." Asay v. State, 210 So. 3d 1, 28 (Fla. 2016).

In the postconviction relief context, the "right to due process is not parallel to a trial right, but rather must be analyzed in light of the fact that he has already been found guilty at a fair trial, and has only a limited interest in postconviction relief." Dist. Attorney's Office for Third Judicial Dist. v. Osborne, 557 U.S. 52, 69 (2009). For the reasons explained above, Claim 1 is denied.

Claim 2

Execution of Defendant Would Be So Arbitrary as to Violate the Fifth, Eighth, and Fourteenth Amendments and Corresponding Provisions of the Florida Constitution

First, Defendant claims that "the determination of who lives and dies in Florida is made by a single person for any reason or no reason at all." He argues that "[t]here are no limits to cabin executive discretion, there are no guidelines for the selection process, and the entire process is cloaked in secrecy." According to Defendant, "Granting the Governor such unfettered discretion has in practice established an arbitrary selection process . . . ." Defendant argues that "[t]he extreme arbitrariness of the process means that, inevitably, the resulting decisions and warrant announcements come as a complete surprise to defendants, who may learn of the warrant after decades on death row when corrections officers come to move them to death watch."

This type of claim has previously been rejected by the Florida Supreme Court. See Gore v. State, 91 So. 3d 769, 780 (Fla. 2012) ("As recently as last year, we rejected claims that because of the Governor's absolute discretion to sign death warrants, thereby deciding who lives and who dies, the death penalty structure of Florida violates the United States Constitution."). Defendant "has not presented any reason for the [Florida Supreme] Court to recede from its

precedent on this issue." Carroll v. State, 114 So. 3d 883, 888 (Fla. 2013). Therefore, the Court finds that Defendant's claim is meritless and should be denied.

Second, Defendant claims to have been diagnosed with "mild neurocognitive disorder due to traumatic brain injury namely due to repeated exposures to blast overpressure injuries during his military service" and Gulf War Illness from being "repeatedly exposed to low-level sarin gas from the fallout produced by U.S. and Coalition bombing of Iraqi production and storage facilities," as he previously did in his third successive motion for postconviction relief filed in January of 2025. Defendant claims that this evidence supports his "defense at trial and gives rise to reasonable doubt that his jury would have found him guilty of first-degree murder." He argues that "[t]he failure of any court to adequately hear and weigh this mitigation evidence is so arbitrary as to violate the Fifth, Eighth, and Fourteenth Amendments." Defendant argues that absent intervention by the courts, "there is no other forum to correct the grave constitutional errors resulting from the execution of a brain damaged person on May 1, 2025." Defendant therefore requests that this Court "exercise its constitutional obligation to issue a stay, review [Defendant's] substantial claims of mitigation and brain damage, and order a new trial."

This claim is meritless and procedurally barred. Defendant's newly discovered evidence claims were thoroughly reviewed by this Court and denied in an order entered on April 4, 2025; this Court found that Defendant's claims were untimely under rule 3.851(d)(2).[7] Defendant's

[7] Defendant's claims in the present motion concerning blast overpressure injuries and Gulf War Illness are the same as, or related to, the claims he raised in his prior motion for postconviction relief, the denial of which is currently on appeal in the Florida Supreme Court. See case number SC2025-0497. This Court is aware that "[a] trial court does not have jurisdiction to rule on a subsequent postconviction motion that raises the same or related claims as were raised in a prior postconviction motion that is the subject of a pending appeal." Rhow v. State, 264 So. 3d 288, 289 (Fla. 1st DCA 2019). Nevertheless, even when the claims are the same, the trial court does have authority to dismiss a procedurally barred motion. See id.

counsel also filed a motion for rehearing of the Court's order denying relief. The Court reviewed and denied the motion for rehearing in an order entered on April 8, 2025.

Additionally, "[t]o the extent that [Defendant] is arguing that he cannot be executed because of mental conditions that are not insanity or mental retardation, the issue has been resolved adversely to his position." Connor v. State, 979 So. 2d 852, 867 (Fla. 2007), as clarified (Apr. 10, 2008). "[T]he Eighth Amendment's prohibition of cruel and unusual punishment does not require a categorical bar against the execution of persons who suffer from any form of mental illness or brain damage." Gordon v. State, 350 So. 3d 25, 37 (Fla. 2022). "[T]he existence of a traumatic brain injury does not reduce an individual's culpability to the extent they become immune from capital punishment." Id. Therefore, Claim 2 is denied.

Claim 3

Executing Defendant After Almost 24 Years on Death Row in Near Total Solitary Confinement While Suffering from Combat-Related Injuries Violates the Eighth and Fourteenth Amendments

Defendant argues that "two decades of unjustly harsh and prolonged solitary confinement on death row followed by an execution at the hands of the government he once served equates to cruel and unusual punishment." Defendant argues that the "already painful reality of death row confinement was compounded by social isolation" because "he was deprived of basic human contact in a confined space to languish alone in cramped, concrete, windowless cells, often for twenty-four hours a day, for years on end." (quotations omitted). Defendant claims that his "sentence and confinement conditions were heightened by his PTSD symptoms, a 'mild neurocognitive disorder' due to multiple traumatic brain injuries, including injuries sustained from blast overpressure during his service in the Gulf War, and GWI." (citations omitted). Defendant claims that he "has lived with the haunting uncertainty of not knowing when or if a

death warrant would be signed" and that "[t]his uncertainty stacks on an additional punishment in the form of psychological torture that constitutes cruel and unusual punishment . . . as it is a greater punishment than that which [Defendant] was sentenced to and that which the Eighth Amendment condones."

While Defendant acknowledges that the Florida Supreme Court held in Dillbeck v. State, 357 So. 3d 94, 103 (Fla. 2023), that "no federal or state court has accepted the argument that a prolonged stay on death row constitutes cruel and unusual punishment," Defendant argues that his claim "does not simply rely on the length of his death row stay" but rather "hinges on the added, unnecessary punishment to an Army veteran who faced inexplicable trauma overseas serving his country." However, the Florida Supreme Court has repeatedly rejected arguments concerning the length of time spent on death row. See Booker v. State, 969 So. 2d 186 (Fla. 2007); Tompkins v. State, 994 So. 2d 1072 (Fla. 2008); Marek v. State, 8 So. 3d 1123 (Fla. 2009); Johnston v. State, 27 So. 3d 11 (Fla. 2010); Valle v. State, 70 So. 3d 530 (Fla. 2011); Gore v. State, 91 So. 3d 769 (Fla. 2012); Muhammad v. State, 132 So. 3d 176 (Fla. 2013); Lambrix v. State, 217 So. 3d 977 (Fla. 2017); Long v. State, 271 So. 3d 938 (Fla. 2019); Dillbeck v. State, 357 So. 3d 94 (Fla. 2023), cert. denied sub nom. Dillbeck v. Florida, 143 S. Ct. 856 (2023); Gaskin v. State, 361 So. 3d 300 (Fla. 2023), cert. denied sub nom. Gaskin v. Florida, 143 S. Ct. 1102 (2023); Owen v. State, 364 So. 3d 1017 (Fla. 2023).

Additionally, the defendant in Muhammad, 132 So. 3d at 207, similarly attempted "to distinguish his circumstances from the normal case where an inmate is kept for a lengthy period of time on death row." However, the Florida Supreme Court found that those facts did not "provide a sufficient distinguishing basis for this Court to depart from its established precedent on this issue." Id. This Court likewise does not find that Defendant's veteran status and his other

circumstances provide a sufficient basis to depart from the body of precedent on this issue; accordingly, Claim 3 is denied.

Claim 4

Defendant Has a Constitutional Right to Have Access to the Courts if His Execution Proceeds

Defendant requests that "(1) his designated legal witness(es) be allowed access to a telephone before and during the execution process; (2) he be afforded a second witness to his execution; and (3) one of [his] witnesses be allowed to view the IV insertion process." Defendant "also requests that his designated legal witness(es) be allowed access to a writing pad and pen during his execution." Defendant argues, "The right to counsel and the right to be free from cruel and unusual punishment will be meaningless if [his] sole witness has no ability to both document the event and leave the site to seek legal recourse in the likely event his execution runs afoul of the Eighth Amendment."

The Florida Supreme Court rejected similar claims in Long v. State, 271 So. 3d 938 (Fla. 2019) and Dailey v. State, 283 So. 3d 782 (Fla. 2019). "[T]he DOC is entitled to a presumption that it will properly perform its duties while carrying out an execution ... [and] our role is not to micromanage the executive branch in fulfilling its own duties relating to executions." Dailey, 283 So. 3d at 791 (quotations omitted). Because Defendant fails to demonstrate "that the DOC's current policies and procedures are unconstitutional," he is not entitled to the relief he seeks. Id. Thus, Claim 4 is denied.

MOTION FOR STAY OF EXECUTION

The Court has already addressed the claims Defendant makes in support of his request for a stay of execution. In light of the Court's findings regarding the Successive Motion to Vacate Judgment and Sentence, filed on January 15, 2025, and the present Successive Motion to Vacate Judgment and Sentence, filed on April 7, 2025, the Court finds that Defendant fails to raise

substantial grounds for relief warranting a stay. See Barwick v. State, 361 So. 3d 785, 791 (Fla. 2023), cert. denied sub nom. Barwick v. Florida, 143 S. Ct. 2452 (2023); Chavez v. State, 132 So. 3d 826, 832 (Fla. 2014).

Ruling

Therefore, it is **ORDERED AND ADJUDGED** that Defendant's Successive Motion to Vacate Judgment and Sentence and Motion for Stay of Execution are **DENIED.** Pursuant to Florida Rule of Criminal Procedure 3.851(f)(5)(F), **the Clerk of Court is DIRECTED** to promptly serve on each party a copy of this Order, noting thereon the date of service by an appropriate certificate of service.

DONE AND ORDERED in Fort Walton Beach, Okaloosa County, Florida.

04/11/2025 12:21:17

signed by CIRCUIT COURT JUDGE LACEY POWELL CLARK 04/11/2025 12:21:17 89bzyuqC

LACEY POWELL CLARK
CIRCUIT COURT JUDGE

LPC/mrf

Copies of the foregoing Order to be served by the Clerk of Court on the following parties:

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