No. _____

IN THE

Supreme Court of the United States

EDWARD JAMES ZAKRZEWSKI, II,

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, JULY 31, 2025, AT 6:00 P.M.

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INDEX TO APPENDIX

A1

Florida Supreme Court Order
Affirming Denial of Successive Motion
for Postconviction Relief,
July 22, 2025

Supreme Court of Florida

No. SC2025-1009

EDWARD J. ZAKRZEWSKI, II,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

July 22, 2025

PER CURIAM.

Edward J. Zakrzewski, II, has been sentenced to death for the murders of his wife, Sylvia, and two minor children, Edward and Anna. On July 1, 2025, Governor Ron DeSantis signed a death warrant scheduling Zakrzewski's execution for July 31, 2025. Zakrzewski unsuccessfully sought relief in the circuit court and now appeals. We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const. We affirm. We also deny Zakrzewski's motion for stay of execution and request for oral argument.

I

After experiencing marital problems and twice telling a neighbor that he would kill his family rather than go through a divorce, Zakrzewski carried out his plan on June 9, 1994. He killed Sylvia, seven-year-old Edward, and five-year-old Anna with a machete. We recounted the facts surrounding the murders in our opinion on direct appeal. *Zakrzewski v. State* (*Zakrzewski I*), 717 So. 2d 488, 490-91 (Fla. 1998). After the murders, Zakrzewski fled to Hawaii, changed his name, and lived there for four months before turning himself in. *Id.* at 491. Zakrzewski pled guilty to all three murders. *Id.* at 490.

At the end of a penalty-phase trial, the jury recommended sentences of death for the murders of Sylvia and Edward, each by a vote of seven to five, and a sentence of life imprisonment for the murder of Anna. *Id.* at 491. On April 19, 1996, the trial court imposed death sentences for all three murders, overriding the jury's recommendation of life imprisonment for the murder of Anna. *Id.*[1]

1. Florida's capital sentencing regime in 1996 was, as it is today, a "hybrid system" in which "[a] jury render[ed] an advisory verdict but the judge [made] the ultimate sentencing

For each murder, the trial court found three aggravating factors: (1) Zakrzewski was previously convicted of other capital offenses (the contemporaneous murders); (2) the murders were committed in a cold, calculated, and premeditated manner without pretense of legal or moral justification (CCP); and (3) the murders were committed in an especially heinous, atrocious, or cruel manner (HAC). *Zakrzewski I*, 717 So. 2d at 491. The trial court gave significant weight to both of Zakrzewski's statutory mitigators—no significant prior criminal history and the fact that the murders were committed while the defendant was under the influence of extreme mental or emotional disturbance—and varying degrees of weight to twenty-four nonstatutory mitigators. *Id.* at 491 nn.1-2.

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determinations." *Ring v. Arizona*, 536 U.S. 584, 608 n.6 (2002). However, at the time, section 921.141, Florida Statutes (1996), provided in relevant part that a simple majority vote was sufficient for the jury to recommend a sentence of death. A jury's advisory sentence of life imprisonment could be overridden by the trial court "after weighing the aggravating and mitigating circumstances," so long as the court set forth in writing its findings upon which the sentence of death was based as to certain enumerated facts. § 921.141(3), Fla. Stat. (1996).

On direct appeal, this Court affirmed Zakrzewski's convictions and sentences.[2] *Id.* at 495. The sentences became final when the United States Supreme Court denied certiorari review. *Zakrzewski v. Florida*, 525 U.S. 1126 (1999). In the next three decades, Zakrzewski unsuccessfully sought postconviction relief many times in state and federal court.

In federal court, Zakrzewski petitioned for habeas relief in the Northern District of Florida. The Eleventh Circuit Court of Appeals affirmed the district court's denial of relief after reviewing two claims of ineffective assistance of counsel. *See Zakrzewski v. McDonough* (*Zakrzewski III*), 455 F.3d 1254, 1256, 1258-61 (11th

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2. Zakrzewski's issues on direct appeal were: (1) the trial court erred by finding HAC; (2) the trial court erred by finding CCP; (3) the death sentence is not proportionately warranted; (4) the trial court erred in overriding the jury's recommendation of life for Anna's murder; (5) the trial court allowed prejudicial photographs of the victims to be admitted into evidence; (6) the trial court permitted the State's mental health expert to testify about certain topics; (7) the trial court permitted the State's mental health expert to testify, when the testimony did not rebut the testimony of Zakrzewski's mental health expert; (8) the trial court failed to instruct the jury that Zakrzewski's ability to understand his conduct was substantially impaired; and (9) the trial court failed to instruct the jury on each of Zakrzewski's nonstatutory mitigating factors.

Cir. 2006), *cert. denied*, 549 U.S. 1349 (2007).[3] Zakrzewski then filed a Federal Rule of Civil Procedure 60(b) motion to reopen his federal habeas proceedings, alleging that state counsel and federal habeas counsel perpetrated a fraud on him and the federal court. *See Zakrzewski v. McDonough* (*Zakrzewski IV*), 490 F.3d 1264, 1265 (11th Cir. 2007). The district court first dismissed the motion as a successive habeas petition, but the Eleventh Circuit reversed and remanded for reconsideration on the merits. *Id.* at 1267-68. On remand, the district court denied relief, finding that counsel made no material misrepresentation, and the Eleventh Circuit affirmed. *See Zakrzewski v. McDonough*, No. 3:04CV66/RV, 2007 WL 2827735 (N.D. Fla. Sept. 26, 2007); *Zakrzewski v. McNeil* (*Zakrzewski V*), 573 F.3d 1210, 1211 (11th Cir. 2009).

In state court, Zakrzewski filed five motions for postconviction relief under Florida Rule of Criminal Procedure 3.851 and a petition for state habeas relief. Each was denied. *See Zakrzewski v. State*

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3. The two ineffective assistance of counsel claims reviewed by the Eleventh Circuit were whether trial counsel was ineffective (1) for failure to object to statements made by the prosecutor in closing argument and (2) for failure to file a motion to suppress evidence contained in the house which constituted the murder scene. *Zakrzewski III*, 455 F.3d at 1256.

(*Zakrzewski II*), 866 So. 2d 688 (Fla. 2003) (affirming circuit court's denial of Zakrzewski's initial rule 3.851 motion); *Zakrzewski v. State* (*Zakrzewski VI*), 13 So. 3d 1057 (Fla. 2009) (unpublished table decision) (affirming the denial of Zakrzewski's first successive rule 3.851 motion); *Zakrzewski v. State* (*Zakrzewski VII*), 115 So. 3d 1004 (Fla. 2012) (unpublished table decision) (affirming the denial of Zakrzewski's second successive rule 3.851 motion); *Zakrzewski v. State* (*Zakrzewski VIII*), 147 So. 3d 531 (Fla. 2014) (unpublished table decision) (affirming the denial of Zakrzewski's third successive rule 3.851 motion); *Zakrzewski v. Jones* (*Zakrzewski IX*), 221 So. 3d 1159 (Fla. 2017) (holding that *Hurst*[4] did not apply retroactively to Zakrzewski's sentences of death and denying Zakrzewski's habeas petition (citing *Asay v. State*, 210 So. 3d 1 (Fla. 2016))); *Zakrzewski v. Jones* (*Zakrzewski X*), 254 So. 3d 324 (Fla. 2018) (affirming the denial of Zakrzewski's fourth successive rule 3.851 motion (citing *Zakrzewski IX*, 221 So. 3d at 1159)).

4. *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), *receded from in part by State v. Poole*, 297 So. 3d 487 (Fla. 2020); *see Hurst v. Florida*, 577 U.S. 92 (2016).

Governor Ron DeSantis signed Zakrzewski's death warrant on July 1, 2025, setting an execution date of July 31, 2025. On July 9, 2025, Zakrzewski filed his fifth successive motion for postconviction relief in the Circuit Court of the First Judicial Circuit, in and for Okaloosa County. He raised three claims: (1) executing an individual like him, whose jury vote would have made him ineligible for the death penalty today, is arbitrary and violates the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and corresponding provisions of the Florida Constitution; (2) the Governor's signing of his death warrant immediately prior to the Fourth of July holiday weekend, while another death row defendant's death warrant was still pending, violated his right to access the courts and counsel under the Fifth, Sixth, and Fourteenth Amendments and his right to due process; and (3) the Governor's signing of his death warrant without conducting a recent updated clemency review is arbitrary and violates his rights under the Equal Protection Clause, the Fifth, Eighth, and Fourteenth Amendments, and corresponding provisions of the Florida Constitution. After holding a second case management conference to hear argument on the necessity of an

evidentiary hearing,[5] the circuit court summarily denied relief on all claims. The circuit court also denied Zakrzewski's motion for a stay of execution.

Zakrzewski now appeals the denial of his postconviction motion, raising four arguments.

II

We have consistently said:

> Summary denial of a successive postconviction motion is appropriate if the motion, files, and records in the case conclusively show that the movant is entitled to no relief. We review the circuit court's decision to summarily deny a successive rule 3.851 motion de novo, accepting the movant's factual allegations as true to the extent they are not refuted by the record, and affirming the ruling if the record conclusively shows that the movant is entitled to no relief.

Tanzi v. State, 407 So. 3d 385, 390 (Fla.) (citing *Owen v. State*, 364 So. 3d 1017, 1022-23 (Fla. 2023)), *cert. denied*, 145 S. Ct. 1914 (2025). Applying this standard, we affirm the circuit court's

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5. *Huff v. State*, 622 So. 2d 982, 983 (Fla. 1993) (requiring the circuit court to conduct a hearing to determine whether an evidentiary hearing is necessary to resolve a death penalty defendant's initial postconviction claims). This requirement also applies to successive postconviction motions under Florida Rule of Criminal Procedure 3.851(f)(5)(B). *See Taylor v. State*, 260 So. 3d 151, 157 (Fla. 2018).

summary denial of Zakrzewski's fifth successive postconviction motion.

A

In his first claim on appeal, Zakrzewski contends that his execution would be unconstitutional and arbitrary because the advisory jury votes at his penalty-phase trial (7-5, 7-5, and 6-6 on counts 1 through 3, respectively) would make him ineligible for the death penalty today, and the circuit court's summary denial of this claim violates his Eighth Amendment rights. We agree with the circuit court that Zakrzewski's claim is untimely, procedurally barred, and meritless.

Zakrzewski's claim is untimely. Florida Rule of Criminal Procedure 3.851 prohibits, with certain exceptions, claims made more than one year after the judgment and sentences at issue become final. Zakrzewski's judgment and sentences became final on January 25, 1999, when the United States Supreme Court denied certiorari review of our decision affirming his sentences. *Zakrzewski*, 525 U.S. 1126.

Zakrzewski argues that his claim challenging the bare majority vote and judicial override was not ripe until the signing of his death

warrant because there was no indication until then that he would not continue to live out his natural life in prison on death row: he had no injury to complain of and nothing to litigate. Leaving aside that this proposed exception would swallow the rule as to timeliness, it is foreclosed by the record. As he concedes in his initial brief, Zakrzewski raised arguments about the jury's simple majority vote in favor of the death penalty, and the sentencing court's decision to sentence him to death for Anna's murder, "even prior to his 1996 trial," "[a]fter being sentenced," and at "every step of the way." It stands to reason, then, these claims were not contingent on the signing of Zakrzewski's death warrant. On the contrary, they have been available to him and extensively litigated in the last three decades. They were ripe for adjudication and in fact adjudicated. *See Texas v. United State*s, 523 U.S. 296, 300 (1998) (defining a claim not ripe for adjudication as a claim resting upon contingent future events); *Ford v. State*, 402 So. 3d 973, 978 n.5 (Fla.) (denying the defendant's claim under *Roper v. Simmon*s, 543 U.S. 551 (2005), as untimely because his mental age remained stable for the past twenty-five years and therefore was ripe for adjudication), *cert. denied*, 145 S. Ct. 1161 (2025).

Zakrzewski's claim is also procedurally barred. This Court has many times held that a postconviction claim is procedurally barred where it was or could have been litigated on direct appeal. *See, e.g.*, *Doty v. State*, 403 So. 3d 209, 214 (Fla. 2025) (holding that a claim is precluded from our consideration on collateral review if it could have been raised on direct appeal); *Hendrix v. State*, 136 So. 3d 1122, 1125 (Fla. 2014) ("Claims raised and rejected in prior postconviction proceedings are procedurally barred from being relitigated in a successive motion."); *Turner v. Dugger*, 614 So. 2d 1075, 1078 (Fla. 1992) (barring postconviction claims, or variations thereof, that have been raised on direct appeal).

Here, Zakrzewski raised the same claim on direct appeal, contending that the trial court erred in overriding the jury's recommendation of life imprisonment for the murder of Anna. We affirmed, finding that "the facts suggesting the sentence of death for all three of these murders are clear and convincing, and as to Anna, even more compelling," and we concluded, " 'no reasonable person could differ' as to the appropriateness of the death penalty for the murder of Anna." *Zakrzewski I*, 717 So. 2d at 494 ("In order to sustain a sentence of death following a jury recommendation of life,

the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ." (quoting *Tedder v. State*, 322 So. 2d 908, 910 (Fla. 1975))). Zakrzewski cannot now use the postconviction proceeding as a means of obtaining a second appeal of the issue. *See Barwick v. State*, 361 So. 3d 785, 793 (Fla. 2023) ("[U]sing 'a different argument to relitigate the same issue' . . . is inappropriate." (quoting *Medina v. State*, 573 So. 2d 293, 295 (Fla. 1990))).

Next, relying on *Hurst v. Florida*, 577 U.S. 92, and invoking evolving standards of decency, Zakrzewski argues he could not be sentenced to death today on the basis of a simple majority advisory vote from a penalty-phase jury. He also contends that this Court is not bound by the law of the case doctrine to follow erroneous precedents.

To the extent this is a repackaged *Hurst* claim, we have, twice, denied it in Zakrzewski's postconviction proceedings. *See Zakrzewski IX*, 221 So. 3d at 1159 (denying habeas relief and reiterating our holding from *Asay*, 210 So. 3d 1, that *Hurst v. Florida* and *Hurst v. State* do not apply retroactively to death sentences finalized before *Ring*); *Zakrzewski X*, 254 So. 3d at 324

(denying Zakrzewski's fourth successive postconviction motion raising *Hurst*). Here, we again deny Zakrzewski's invitation to reconsider our precedent on the retroactivity of *Hurst v. Florida* and *Hurst v. State*.

Even without the time and procedural bars, Zakrzewski's claim is meritless. As acknowledged in his brief, at the time of Zakrzewski's trial, the trial court could override a jury's recommendation where "the facts suggesting a sentence of death [were] so clear and convincing that virtually no reasonable person could differ." *Tedder*, 322 So. 2d at 910 (citing § 921.141(3), Fla. Stat. (1973)); *see also Mahn v. State*, 714 So. 2d 391, 401 (Fla. 1998) (stating that the standard set out in *Tedder* was the standard for a trial court to override a jury recommendation of life imprisonment at the time). In its sentencing order, the trial court explicitly stated that all of the physical evidence in the case and related expert testimony established beyond a reasonable doubt that Anna was still living, saw her brother's mutilated body, and knew her own father was about to kill her before she was murdered with a machete. "This [c]ourt could not imagine a more heinous and atrocious way to die." *State v. Zakrzewski*, No. 94-1283-CFA,

1996 WL 34578426 (Fla. 1st Cir. Ct. Apr. 19, 1996). As we have affirmed on direct appeal, "no reasonable person could differ as to the appropriateness of the death penalty for the murder of Anna." *Zakrzewski I*, 717 So. 2d at 494 (internal quotation marks omitted).

We affirm the circuit court's summary denial of Zakrzewski's first claim.

B

Zakrzewski next claims that the thirty-day period between the signing of his death warrant and expected execution, overlapping with the Fourth of July holiday and the pendency of another death row inmate's execution, deprived him of meaningful access to counsel and the courts.

We have repeatedly held that the Governor's broad discretion in selecting which death warrants to sign and when does not violate the United States Constitution or the Florida Constitution. *See, e.g.*, *Hutchinson v. State*, No. SC2025-0517, 50 Fla. L. Weekly S71a, S73, 2025 WL 1198037, at *5 (Fla. Apr. 25) ("[W]e are aware of no constitutional principle that demands a fixed formula, thereby limiting the decisionmaker in determining the order of execution."), *cert. denied*, No. 24-7079, 145 S. Ct. 1980 (May 1, 2025); *Gore v.*

State, 91 So. 3d 769, 780 (Fla. 2012) (rejecting claims that the Governor's absolute discretion to sign death warrants violates the United States Constitution); *Dailey v. State*, 283 So. 3d 782, 787-88 (Fla. 2019) ("We have consistently rejected the assertion that the warrant selection process is arbitrary because there are no standards that constrain the Governor's discretion in determining which warrant to sign." (collecting cases)).

Here, Zakrzewski had meaningful access to counsel and the courts after his death warrant was signed. Zakrzewski acknowledges having discussed his death warrant and legal claims for a postconviction motion with counsel. The circuit court timely held case management hearings, scheduled filing deadlines, assessed the necessity of an evidentiary hearing, considered Zakrzewski's multiple demands for additional public records, and ruled upon his postconviction motion.

Zakrzewski also contends that an expedited process of warrant litigation deprived him of his due process rights. We reject this claim, as this Court recently did in other cases challenging the death warrant time period. *See Tanzi*, 407 So. 3d at 393; *Bell v. State*, No. SC2025-0891, 50 Fla. L. Weekly S155a, S163, 2025 WL

1874574, at *17 (Fla. July 8), *cert. denied*, No. 25-5083, 2025 WL 1942498 (U.S. July 15, 2025).

C

Zakrzewski next claims that the Governor's signing of his death warrant without a recent updated clemency review violates his rights to due process and equal protection and his rights under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

This Court has previously rejected similar challenges to Florida's clemency process. We reiterated that, due to important considerations about the separation of powers, we do not second-guess the executive branch in matters of clemency in capital cases. "The clemency process in Florida derives solely from the Florida Constitution and we have recognized that the people of the State of Florida have vested 'sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace.' " *Carroll v. State*, 114 So. 3d 883, 888 (Fla. 2013) (quoting *Sullivan v. Askew*, 348 So. 2d 312, 315 (Fla. 1977)); *see also Bundy v. State*, 497 So. 2d 1209, 1211 (Fla. 1986) ("[T]his Court has always viewed the

pardon powers expressed in the Constitution as being peculiarly within the domain of the executive branch of government." (quoting *In re Advisory Op. of the Governor*, 334 So. 2d 561, 562-63 (Fla. 1976))).

No specific procedures are mandated in clemency proceedings. *See Bundy*, 497 So. 2d at 1211 (rejecting the defendant's claim that he must be allowed time to prepare and present an application for executive clemency before his death sentence may be carried out); *Marek v. State*, 14 So. 3d 985, 998 (Fla. 2009) ("In *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998), five justices of the United States Supreme Court concluded that some minimal procedural due process requirements should apply to clemency proceedings. But none of the opinions in that case required any specific procedures or criteria to guide the executive's signing of warrants for death-sentenced inmates.").

Zakrzewski has provided no reason for the Court to depart from its decisions on these matters.

And in any event, Zakrzewski has indeed had the benefit of a clemency proceeding. As his postconviction motion acknowledged, he initiated clemency proceedings in 2007 and made presentations

to the Florida Commission on Offender Review. The death warrant signed by Governor DeSantis expressly states that "executive clemency for EDWARD J. ZAKRZEWSKI, II, as authorized by Article IV, Section 8(a), of the Florida Constitution, was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate." Under our cases, these proceedings were sufficient. *See Valle v State*, 70 So. 3d 530, 551 (Fla. 2011) (denying the defendant's claim that his clemency proceeding did not serve the fail-safe purposes because it was done before his postconviction proceedings); *Rutherford v. State*, 940 So. 2d 1112, 1122-23 (Fla. 2006); *Johnson v. State*, 27 So. 3d 11, 24 (Fla. 2010); *Marek v. State*, 8 So. 3d 1123, 1129 (Fla. 2009).

D

In his final claim on appeal, Zakrzewski contends that the circuit court abused its discretion in denying his requests for public records from various state agencies under Florida Rule of Criminal Procedure 3.852(i), which violates his rights to due process and equal protection under the Eighth and Fourteenth Amendments to

the United States Constitution and the corresponding provisions of the Florida Constitution.

We review a circuit court's denial of requests for public records for abuse of discretion. *See Tanzi*, 407 So. 3d at 391. Rule 3.852(i)(2) limits the production of additional public records to only those demonstrating:

> (A) collateral counsel has made a timely and diligent search of the records repository;
>
> (B) collateral counsel's affidavit identifies with specificity those additional public records that are not at the records repository;
>
> (C) the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and
>
> (D) the additional records request is not overly broad or unduly burdensome.

Fla. R. Crim. P. 3.852(i)(2). We have held that rule 3.852 is "not intended to be a procedure authorizing a fishing expedition for records" and that records requests made under rule 3.852(i) "must show how the requested records relate to a colorable claim for postconviction relief and good cause as to why the public records request was not made until after the death warrant was signed."

Dailey, 283 So. 3d at 792 (internal citations and quotations omitted).

Here, Zakrzewski requested additional public records from nine state agencies under rule 3.852(i) after his death warrant was signed. The circuit court denied each request with specified reasons. For Zakrzewski's records demands relating to Florida's lethal injection protocol from the Department of Law Enforcement, the Department of Corrections, and the Office of the Medical Examiner, the circuit court found them overly broad, not related to a colorable claim for relief, and without good cause for failing to request them prior to the signing of the warrant. For his requests for clemency records from the Office of the Attorney General, the Executive Office of the Governor, the Commission on Offender Review, and the Office of the Okaloosa County Clerk of Court, the circuit court denied them because clemency records are confidential. For his requests to the Okaloosa County Sheriff's Office and the Office of the State Attorney for records relating to his investigation and prosecution, responsive records did not exist, and the demands were moot.

We find no abuse of discretion in the circuit court's decisions. Zakrzewski's "any and all" requests were overly broad and burdensome. *See Moore v. State*, 820 So. 2d 199, 204 (Fla. 2002) (upholding the trial court's discretion to deny public records requests that are "overly broad, of questionable relevance, and unlikely to lead to discoverable evidence"). His all-encompassing requests for records relating to Florida's lethal injection protocol bear no relation to a colorable postconviction claim for relief. *See Muhammad v. State*, 132 So. 3d 176, 203 (Fla. 2013) ("[R]equests related to actions of lethal injection personnel in past executions do not relate to a colorable claim concerning future executions because there is a presumption that members of the executive branch will perform their duties properly."); *Valle*, 70 So. 3d at 549 (denying requests for lethal injection protocol because the records sought were not related to a colorable Eighth Amendment claim). And clearly, records relating to the clemency process are confidential and exempt from public records requests under section 14.28, Florida Statutes, and the Florida Rules of Executive Clemency. *See Gudinas v. State*, No. SC2025-0794, 50 Fla. L. Weekly S124, S127, 2025 WL 1692284, at *9 (Fla. June 17) ("The requested records

relating to the clemency process are exempt from disclosure."), *cert. denied*, No. 24-7457, 2025 WL 1739159 (U.S. June 24, 2025).

The circuit court's denial of Zakrzewski's requests for public records was far from arbitrary or unreasonable but instead supported by adequate reasons. *See State v. Coney*, 845 So. 2d 120, 137 (Fla. 2003) ("Discretion is abused only when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable person would take the view adopted by the trial court." (quoting *White v. State*, 817 So. 2d 799, 806 (Fla. 2002))).

III

We affirm the summary denial of Zakrzewski's motion for postconviction relief, along with the circuit court's denial of his demands for public records. Accordingly, we also deny his motion for stay of execution and request for oral argument. No motion for rehearing will be entertained. The mandate shall issue immediately.

It is so ordered.

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

An Appeal from the Circuit Court in and for Okaloosa County,
Lacey Powell Clark, Judge
Case No. 461994CF001283XXXAXX

Dawn B. Macready, Capital Collateral Regional Counsel, Lisa M. Fusaro, Assistant Capital Collateral Regional Counsel, and Alicia Hampton, Assistant Capital Collateral Regional Counsel, Northern Region, Tallahassee, Florida,

for Appellant

James Uthmeier, Attorney General, Charmaine M. Millsaps, Senior Assistant Attorney General, and Janine D. Robinson, Assistant Attorney General, Tallahassee, Florida,

for Appellee

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First Judicial Circuit Court for Okaloosa County
Order Denying Fifth Successive Motion
for Postconviction Relief,
July 14, 2025

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

STATE OF FLORIDA,

Plaintiff,

vs.

EDWARD J. ZAKRZEWSKI, II,

Defendant.

CASE NO.: 1994-CF-001283A
DIV.: 001
DEATH WARRANT SIGNED FOR EXECUTION – JULY 1, 2025

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

THIS CAUSE is before the Court on Defendant's Successive Motion to Vacate Judgment and Death Sentences, filed on July 9, 2025, pursuant to Florida Rule of Criminal Procedure 3.851, and on Defendant's Motion for Stay of Execution, also filed on July 9, 2025. Having considered the motions, record, the State's Answer to the Fifth Successive Postconviction Motion, State's Response to the Motion for Stay of Execution, and the applicable law, the Court finds as follows:

Background

On June 9, 1994, after receiving a call from his seven-year-old son, Edward, informing Defendant that his wife, Sylvia, was filing for divorce, Defendant used his lunch break to purchase a machete, took it home, sharpened it, and positioned it behind the bathroom door in their house. He also placed a crowbar and pieces of rope in a bedroom. Defendant then went back to work and completed his shift. Once everyone returned home that evening, Defendant had Edward and his five-year-old daughter Anna go into another room before he hit Sylvia in the

head with the crowbar and then choked her with the rope. After he choked Sylvia, Defendant went to the bathroom, called Edward, and murdered him with the machete. Defendant proceeded to call Anna to the bathroom where he then murdered Anna with the machete. On Monday, June 13, 1994, Sylvia, Edward, and Anna were found dead in the bathroom; all three victims had been struck with the machete.

Defendant subsequently pleaded guilty to three counts of first-degree murder, and after the penalty phase, the jury recommended the death penalty for the murders of Edward and Sylvia, but recommended life for the murder of Anna. The Court affirmed the jury's death sentence recommendation for Edward and Sylvia but overrode the jury's recommendation of life for the murder of Anna and imposed another death sentence.

Defendant filed a direct appeal, and the Florida Supreme Court affirmed Defendant's conviction and death sentences.[1] The Supreme Court of the United States denied Defendant's petition for certiorari review on January 25, 1999.[2] Defendant then filed his initial motion for postconviction relief which was denied after an evidentiary hearing on June 17, 2002. On appeal, the Florida Supreme Court affirmed the denial.[3] Defendant then attempted to seek relief in federal court between 2004 and 2009.[4]

While he was seeking relief in federal court, Defendant continued to seek relief through this Court by filing the first of four successive motions for postconviction relief in 2007. Defendant filed his second, third, and fourth successive motions for postconviction relief between 2010 and 2017. Ultimately, all four successive motions for postconviction relief were

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[1] Zakrzewski v. State, 717 So. 2d 488 (Fla. 1998).
[2] Zakrzewski v. Florida, 525 U.S. 1126 (1999).
[3] Zakrzewski v. State, 866 So. 2d 688 (Fla. 2003).
[4] See Zakrzewski v. McDonough, No. 3:04CV66/RV, 455 F.3d 1254 (11th Cir. 2006); Zakrzewski v. McDonough, 2007 WL 2827735 (N.D. Fla. Sept. 26, 2007), aff'd sub nom. Zakrzewski v. McNeil, 573 F.3d 1210 (11th Cir. 2009); Zakrzewski v. McDonough, No. 3:04CV66/RV, 490 F.3d 1264 (11th Cir. 2007); Zakrzewski v. McDonough, 2008 WL 150050 (N.D. Fla. Jan. 14, 2008); Zakrzewski v. McNeil, 573 F.3d 1210 (11th Cir. 2009).

denied. Defendant appealed all four denials, and the Florida Supreme Court affirmed all denials on appeal.[5] During the pendency of Defendant's fourth successive motion, Defendant filed a petition for writ of habeas corpus in the Florida Supreme Court, which was denied on May 25, 2017.[6]

On July 1, 2025, Governor DeSantis signed Defendant's death warrant. That same day, the Florida Supreme Court entered an order setting time constraints on the proceedings. Pursuant to that order, all proceedings in the trial court shall be completed and orders entered no later than 10:00 a.m. Central, 11:00 a.m. Eastern, on Monday, July 14, 2025.

This Court held a capital postconviction case management conference via Zoom on July 2, 2025, pursuant to rule 3.851(h)(6). Following the hearing, the Court entered an order on the case management conference scheduling the remaining filing deadlines and hearings. Then on July 3, 2025, Defendant filed multiple demands for additional public records pursuant to rule 3.852(i). On July 7, 2025, the following entities filed objections to Defendant's demands: the Office of the Attorney General; the Office of the Medical Examiner, District Eight; the Executive Office of the Governor; the Florida Department of Law Enforcement; the Florida Department of Corrections; the Florida Commission on Offender Review; the Okaloosa County Clerk of Court; the Okaloosa County Sheriff's Office; and the Office of the State Attorney for the First Judicial Circuit. On July 8, 2025, the Court held a hearing via Zoom on the demands and objections. Following the hearing, the Court entered an order sustaining all objections and denying the demands.

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[5] Zakrzewski v. State, 13 So. 3d 1057 (Fla. 2009) (affirming denial of successive postconviction motion); Zakrzewski v. State, 115 So. 3d 1004 (Fla. 2012) (affirming denial of second successive postconviction motion); Zakrzewski v. State, 147 So. 3d 531 (Fla. 2014) (affirming denial of third successive postconviction motion); Zakrzewski v. State, 254 So. 3d 324 (Fla. 2018) (affirming denial of fourth successive postconviction motion).

[6] Zakrzewski v. Jones, 221 So. 3d 1159 (Fla. 2017).

On July 10, 2025, this Court held a second case management conference to hear arguments from the parties as to whether an evidentiary hearing would be needed to address the claims raised in Defendant's Successive Motion to Vacate Judgment and Death Sentences. That same day, the Court entered an order denying Defendant's request for an evidentiary hearing.

SUCCESSIVE MOTION TO VACATE JUDGMENT AND DEATH SENTENCES

Defendant raises three claims for relief and requests a stay of execution, an evidentiary hearing on his claims, leave to amend his motion "should new claims, facts, or legal precedent become available[,]" vacation of his judgment and death sentences and/or commutation to life sentences without the possibility of parole, and any other relief the Court deems appropriate. The Court declines to grant relief for the reasons discussed below.

Claim 1

The Execution of an Individual Whose Jury Vote Would Make Him Ineligible for the Death Penalty Today, is Arbitrary and Violates the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and the Corresponding Provisions of the Florida Constitution

Generally, a motion to vacate judgment of conviction and sentence of death must be filed within one year after the judgment and sentence become final. Fla. R. Crim. P. 3.851(d)(1). There are limited exceptions to the one-year time limit. The exceptions are set forth in rule 3.851(d)(2) as follows:

> No motion may be filed or considered under this rule if filed beyond the time limitation provided in subdivision (d)(1) unless it alleges:
>
> (A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or

> (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or
>
> (C) postconviction counsel, through neglect, failed to file the motion.

Defendant claims he is being deprived of rights under the Equal Protection Clause and the Fifth, Eighth, and Fourteenth Amendments, and he requests that his death sentences be "commuted to three life sentences" or that he be given a new penalty phase. Specifically, Defendant seeks relief claiming that the jury recommendations that he received following the penalty phase of his trial would, if received today, render him ineligible for a death sentence under the current version of section 921.141(2)(c), Florida Statutes. In a similar vein, Defendant challenges the judicial override of the jury's recommendation of a life sentence for the murder of Anna.

Defendant's judgment and sentence became final decades ago, and he fails to establish how any of the exceptions to the one-year time limit in rule 3.851(d)(2) apply to his claim. To the extent Defendant attempts to suggest that rule 3.851(d)(2)(B) applies based on a "fundamental constitutional right," Defendant fails to establish, or even allege, that section 921.141(2)(c), Florida Statutes, applies retroactively. For at least that reason, the Court finds that Claim 1 is untimely.

Further, Defendant's argument that even when "*Tedder* was still good law, ***three*** [Florida Supreme Court] Justices found that [Defendant]'s jury override sentence was 'in direct violation of the law'"[7] doesn't provide a basis for relief. Defendant fails to point out that the **majority** concluded "that 'no reasonable person could differ' as to the appropriateness of the death penalty for the murder of Anna. Accordingly, we find that the trial court did not err in overriding the

[7] Tedder v. State, 322 So. 2d 908 (Fla. 1975), abrogated by Hurst v. Florida, 577 U.S. 92 (2016).

jury's recommendation of life for the murder of Anna." Zakrzewski v. State, 717 So. 2d 488, 494 (Fla. 1998). Moreover, because this issue was raised on appeal, at which time this Court's ruling was affirmed, this portion of Defendant's claim is procedurally barred. See Hendrix v. State, 136 So. 3d 1122, 1124 (Fla. 2014) ("A successive postconviction motion may not be used to relitigate a claim that has been raised and rejected on direct appeal."); Freeman v. State, 761 So. 2d 1055, 1067 (Fla. 2000); Francis v. Barton, 581 So. 2d 583, 584 (Fla. 1991) ("Issues raised and disposed of on direct appeal are procedurally barred in postconviction proceedings.").

However, Defendant further asserts that the law of the case doctrine should not apply based on changes in the law, specifically, the decision in Hurst v. Florida, 577 U.S. 92 (2016), and the 2023 revisions to section 921.141, Florida Statutes. Therefore, according to Defendant, "his case was decided wrong previously and manifest injustice would result from letting his death sentences stand."

Defendant previously raised the argument that Hurst applies to his case on appeal;[8] therefore, this claim is procedurally barred. See Fla. R. Crim. P. 3.851; Hendrix, 136 So. 3d at 1125. Defendant attempts to differentiate this claim from his prior claims by making an "Eighth Amendment 'evolving standards of decency'" argument; however, the Florida Supreme Court has "rejected similar claims." James v. State, 404 So. 3d 317, 327 (Fla. 2025), cert. denied sub nom. James v. Florida, 145 S. Ct. 1351 (2025); see also Zack v. State, 371 So. 3d 335, 347 (Fla. 2023), cert. denied sub nom. Zack v. Florida, 144 S. Ct. 274 (2023) ("'using "a different argument to relitigate the same issue" ... is inappropriate.'") (citations omitted); Dillbeck v. State, 357 So. 3d 94 (Fla. 2023).

[8] Zakrzewski v. Jones, 221 So. 3d 1159, 1159 (Fla. 2017).

Defendant also appears to claim that he has been subject to cruel and unusual punishment due to the fact that he has been on Florida's death row. This type of claim has repeatedly been found to be meritless by the Florida Supreme Court. See Valle v. State, 70 So. 3d 530, 552 (Fla. 2011) ("[N]o federal or state court has accepted the argument that a prolonged stay on death row constitutes cruel and unusual punishment.") (quotation omitted); Carroll v. State, 114 So. 3d 883, 889 (Fla. 2013); James, 404 So. 3d at 325. Additionally, the Court also notes that this subclaim is not properly pleaded. See Fla. R. Crim. P. 3.851(e)(1), (2), (h)(5). Accordingly, Claim 1 is denied.

Claim 2

Signing Mr. Zakrzewski's Death Warrant Immediately Prior to the Holiday Weekend, While Mr. Bell's Death Warrant Was Still Pending, Violates His Right to Access to the Courts and Access to Counsel Under the Fifth, Sixth, and Fourteenth Amendments, as Well as His Right to Due Process

Defendant claims that the death warrant schedule violates his right to access the courts and counsel under the Fifth, Sixth, and Fourteenth Amendments and his right to due process. Defendant argues that "because the Governor closed state offices on July 3, 2025, in addition to the regular office closures on July 4," the "warrant should not have been signed on July 1." Defendant argues that the Governor "should have been aware" that signing the warrant on July 1 "would cause difficulties with [counsel's] access to Mr. Zakrzewski and the courts, as well as create added complications with all of these state agencies who must litigate the warrant and public records demands during this period."

Defendant also argues that due to another inmate being on death watch at the same time as Defendant, his access to counsel has been hindered. More specifically, Defendant claims the

"lack of meaningful access to courts and counsel have hindered counsel from fully investigating and presenting his post-warrant claims for relief." Defendant requests a stay of execution to allow him to "fully and adequately participate in the preparation of legal claims for his post-warrant successive motion under Rule 3.851 without the issues and constraints associated with having two individuals on death watch simultaneously."

"Due process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided." Asay v. State, 210 So. 3d 1, 27 (Fla. 2016). Defendant's motion does not demonstrate that his due process rights have been violated. See Tanzi v. State, 407 So. 3d 385, 391 (Fla. 2025), cert. denied sub nom. Tanzi v. Dixon, 145 S. Ct. 1914 (2025); Barwick v. State, 361 So. 3d 785, 789 (Fla. 2023). Further, although Defendant claims that the warrant circumstances have caused "difficulties" concerning access to counsel, the motion demonstrates that despite the difficulties, Defendant has had access and communications with counsel on July 2, 3, 7, and 9. Therefore, the motion fails to demonstrate that he did not have meaningful access to the courts or counsel. Further, to any extent that Defendant claims that the circumstances result in ineffective assistance of counsel, "a claim of ineffective assistance of postconviction counsel does not provide a valid basis for relief." See Barwick, 361 So. 3d at 791. As to Defendant's request for a stay of execution, he fails to establish substantial grounds upon which relief might be granted. Thus, Claim 2 is denied.

Claim 3

Signing Mr. Zakrzewski's Death Warrant Without Conducting a Recent, Updated Clemency Review, Which Other Inmates Have Been Entitled To, Is Arbitrary and Violates His Rights Under The Equal Protection Clause, as Well as the Fifth, Eighth, and Fourteenth Amendments and Corresponding Provisions of The Florida Constitution

Defendant claims that his clemency process was "rendered effectively meaningless" because it "occurred nearly two decades before his death warrant was signed without any opportunity for Mr. Zakrzewski to be heard or provide an updated clemency application," which he claims is an arbitrary denial of "access to the clemency process." Defendant claims "there have been myriad advances in science, medicine, and the law, completely changing the question of whether a grant of mercy would be appropriate in this case." Defendant claims the circumstances make his sentence cruel and unusual in violation of the Eighth Amendment. Defendant also generally challenges the clemency process in Florida and states, "Granting the Governor such unfettered discretion has in practice established an arbitrary selection process to determine who lives and dies." Defendant also claims that because other inmates on Florida's death row have had second rounds of clemency review, his own "clemency review, and lack of update thereof, is unconstitutionally arbitrary and capricious and does not comport with due process or equal protection."

Defendant also claims that due to this Court's denial of his demand for public records, and due to the time constraints of the expedited warrant schedule, he "lacks the capability to attach records and information necessary to present more specific and detailed evidence regarding these constitutional violations." Defendant requests a stay of execution and that this Court "revisit" the denial of his demand for records for Defendant to "amend his claim to add detailed evidence in support."

The State points out in its answer that Claim 3 is insufficiently pleaded because it constitutes three separate claims. Although it appears that this claim fails to comply with the requirements of rule 3.851, which requires that "[e]ach claim or subclaim must be separately

pled and sequentially numbered beginning with claim number 1,"[9] the Court will look beyond that pleading deficiency and consider the substance of the claims. In doing so, the Court finds that even if the requirement to separately plead and number the claims were satisfied, Defendant is not entitled to relief, for the reasons discussed below.

First, Defendant does not demonstrate that his claims fit within one of the exceptions to the one-year time limit for filing a motion to vacate judgment and sentence of death, and accordingly, the claims are time-barred. See Fla. R. Crim. P. 3.851(d)(2).

Second, at least to the extent Defendant relies on claims that advances in science, medicine, and the law provide a basis for relief, the claims are conclusory, and they may be summarily denied. See Cole v. State, 392 So. 3d 1054, 1061 (Fla. 2024), cert. denied sub nom. Cole v. Florida, 145 S. Ct. 109 (2024).

Third, regardless of the above-stated reasons for denial, the claims do not demonstrate a basis for relief. "The clemency process in Florida derives solely from the Florida Constitution and we have recognized that the people of the State of Florida have vested sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace." Carroll, 114 So. 3d at 888 (quotations omitted). The Florida Supreme Court has stated, "It is not our prerogative to second-guess the application of this exclusive executive function. . . . [T]he principle of separation of powers requires the judiciary to adopt an extremely cautious approach in analyzing questions involving this admitted matter of executive grace." Bundy v. State, 497 So. 2d 1209, 1211 (Fla. 1986).

Defendant's motion acknowledges that he has had a clemency proceeding. Moreover, Defendant does not claim that he was not given an opportunity to be heard or that he did not

[9] See Fla. R. Crim. P. 3.851(e)(1), (2), (h)(5).

have legal representation during his clemency proceeding. Further, Defendant's death warrant states that executive clemency "was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate[.]" Defendant's arguments regarding the alleged Eighth Amendment, due process, and equal protection violations are unavailing. See Gudinas v. State, No. SC2025-0794, 2025 WL 1692284, at *9 (Fla. June 17, 2025) ("Florida's established clemency proceedings and the Governor's absolute discretion to issue death warrants do not violate the Florida or United States Constitutions."); Dailey v. State, 283 So. 3d 782, 788 (Fla. 2019) ("[T]o the extent Dailey asserts that his execution would be arbitrary because he was not granted an additional clemency proceeding at which to present newly discovered evidence, his claim is foreclosed by our caselaw."); Muhammad v. State, 132 So. 3d 176, 199 (Fla. 2013) ("No specific procedures are required in clemency proceedings . . . ."); Johnston v. State, 27 So. 3d 11, 26 (Fla. 2010) ("[W]e decline to depart from the Court's precedent, based on the doctrine of separation of powers, in which we have held that it is not our prerogative to second-guess the executive on matters of clemency in capital cases."); Grossman v. State, 29 So. 3d 1034, 1044 (Fla. 2010) (rejecting claim that the "death penalty is arbitrary and capricious as applied to [the defendant] because he had a clemency proceeding in October 1988, but has not had an opportunity to present further information about his life in a recent clemency proceeding."); Marek v. State, 8 So. 3d 1123, 1129 (Fla. 2009) (rejecting claim that the clemency process is one-sided, arbitrary, and standardless as meritless); King v. State, 808 So. 2d 1237, 1246 (Fla. 2002); Rutherford v. State, 940 So. 2d 1112, 1122 (Fla. 2006) ("In *King v. State* 808 So.2d 1237, 1241 n. 5, 1246 (Fla.2002), this Court concluded that the defendant's claim that Florida's clemency process violates due process and equal protection was meritless."); Bundy v. State, 497 So. 2d at 1211 ("We cannot say that the executive branch was required to go through

the motions of holding a second proceeding when it could well have properly determined in the first that appellant was not and never would be a likely candidate for executive clemency.").

Finally, as to Defendant's request for the Court to revisit the denial of his demands for records, he does not demonstrate any basis for relief. As to Defendant's request for a stay of execution, he fails to establish substantial grounds upon which relief might be granted. Thus, Claim 3 is denied.

MOTION FOR STAY OF EXECUTION

The Court has considered the arguments for a stay of execution presented in this motion, as well as in Defendant's Successive Motion to Vacate Judgment and Death Sentence, and the Court finds that Defendant fails to raise substantial grounds for relief warranting a stay. See Barwick, 361 So. 3d at 791; 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 Death Sentences 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 Chambers in Fort Walton Beach, Okaloosa County, Florida.

07/14/2025 08:48:20

signed by CIRCUIT COURT JUDGE LACEY POWELL CLARK 07/14/2025 08:48:20 DfH479Xs

LACEY POWELL CLARK
CIRCUIT COURT JUDGE

LPC/may/eeb

Clerk of Court to Serve a Copy of this Order on the Following:

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