No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Kayle Barrington Bates,
Petitioner,

v.

State of Florida,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE
DEATH WARRANT SIGNED
Execution Scheduled: August 19, 2025, at 6:00 p.m.

JAMES L. DRISCOLL, JR.
Counsel of Record

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Counsel for the Petitioner

August 14, 2025

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APPENDIX A

Supreme Court of Florida

No. SC2025-1127

KAYLE B. BATES,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

No. SC2025-1128

KAYLE B. BATES,
Petitioner,

vs.

SECRETARY, DEPARTMENT OF CORRECTIONS,
Respondent.

August 12, 2025

PER CURIAM.

Over four decades ago, Kayle Barrington Bates robbed, attempted to rape, and brutally murdered Janet Renee White. For this conduct, a jury found him guilty of first-degree murder (and

other crimes) and recommended a sentence of death. Following that recommendation, the trial court sentenced him to death. On July 18, 2025, Governor Ron DeSantis signed a warrant for the execution of this sentence. Bates then filed his fourth successive motion for postconviction relief. The circuit court denied all his claims, and Bates appealed. Exercising our mandatory review jurisdiction, we affirm. We also deny Bates' petition for a writ of habeas corpus, a stay, and oral argument. *See* art. V, §§ 3(b)(1), (9), Fla. Const.

I

In June 1982, Bates, a delivery driver, stopped at the insurance office where Renee[1] worked. After briefly speaking with Renee, Bates left. Later, Renee also left the office and met her husband for lunch.

While Renee was gone, Bates returned to the office. He hid his truck in the woods and broke into the building. There he waited for Renee. When she arrived, the office phone was ringing. As Renee answered the phone, she spotted Bates. Startled and terrified, she

1. The victim was known by her middle name.

let out a "bone-chilling" scream. Bates attacked her, but Renee fought back. Despite her best efforts, Bates overpowered Renee and forced her into the woods behind the office.

Once there, Bates brutally beat her, inflicting over thirty contusions, bruises, abrasions, and lacerations. He ripped off her wedding ring, causing serious injury to her finger. He attempted to rape her. He strangled her. And while Renee was still alive, Bates stabbed her twice in the chest. She died from the totality of her wounds a few minutes later.

Bates was apprehended near the office about twenty minutes after the deadly attack began. Law enforcement found Renee's ring in Bates' pocket despite his efforts to conceal it. Bates admitted to carrying Renee out of the office to the woods and engaging in one-sided sexual conduct with her. Bates also told his wife that he had killed a woman.

Consistent with Bates' sexual-conduct admission, both his and Renee's underwear contained evidence of semen. Bates' hat and knife case were located not far from where Renee's body was found. Cloth fibers matching Bates' pants were recovered on Renee's clothing. A watch pin was found in the insurance office—

the same type of pin missing from Bates' watch. Law enforcement also located footprints matching Bates' shoes behind the insurance office.

The State charged Bates with first-degree murder, kidnapping, sexual battery, and armed robbery. *Bates v. State* (*Bates I*), 465 So. 2d 490, 491 (Fla. 1985). A jury found Bates guilty of first-degree murder, kidnapping, attempted sexual battery, and armed robbery and, after the penalty phase, recommended a death sentence. *Id.* At sentencing, the trial court found five statutory aggravators and one nonstatutory mitigator. *Id.* at 492. Ultimately, Bates was sentenced to death for first-degree murder, two life sentences for kidnapping and armed robbery, and fifteen years for attempted sexual battery. *Id.* at 491.

On direct appeal, this Court affirmed Bates' convictions but vacated his death sentence based on the conclusion that two of the aggravating factors were not adequately supported by the evidence. *Id.* at 493. In light of the vacatur, the Court remanded for the trial court to reweigh the remaining aggravators with the mitigator. *Id.* at 492-93.

On remand, and after hearing additional mitigating evidence, the trial court again imposed a death sentence. We affirmed. *Bates v. State* (*Bates II*), 506 So. 2d 1033, 1034 (Fla. 1987). Two years later—after Governor Bob Martinez signed a death warrant for Bates—Bates moved for postconviction relief and a stay of execution. *See Bates v. Dugger* (*Bates III*), 604 So. 2d 457, 458 (Fla. 1992). The circuit court granted Bates a new penalty phase but denied all claims seeking to vacate the murder conviction. *Id.* On appeal, this Court affirmed the lower court in all respects. *Id.* at 458-59.

At his ensuing penalty phase, the jury recommended death by a nine-to-three vote. *Bates v. State* (*Bates IV*), 750 So. 2d 6, 9 (Fla. 1999). The trial court, for its part, found three aggravators: (1) Bates committed the murder while committing two other serious felonies; (2) Bates committed the murder for pecuniary gain; and (3) the murder was especially heinous, atrocious, and cruel (HAC). *Id.* The court found two statutory mitigators: (1) no significant prior criminal history; and (2) his relatively young age when he committed the murder (24 years old). *Id.* Additionally, the court found eight nonstatutory mitigators: (1) Bates' emotional distress at

the time he committed the murder; (2) Bates' ability to follow the law was impaired to a certain degree; (3) Bates' family background; (4) Bates' military service; (5) Bates' patriotism and service as a soldier; (6) Bates' low-average IQ; (7) Bates' love and support for his wife and children; and (8) Bates' good employment record. *Id.* After making these findings, the trial court weighed the aggravators and mitigators, ultimately determining that the aggravating factors outweighed the mitigating circumstances and thus warranted imposition of the death penalty. *Id.* Bates appealed, but we affirmed his sentence. *Id.* at 18.

After the United States Supreme Court denied review,[2] Bates initiated a new batch of postconviction challenges directed at his conviction and sentence. Bates first claimed various constitutional and state-law violations and requested DNA testing. *Bates v. State* (*Bates V*), 3 So. 3d 1091, 1098-1106 (Fla. 2009). We affirmed the circuit court's order denying his claims and his DNA-related request. *Id.* at 1105-06. We also denied Bates' habeas corpus petition. *Id.* at 1107.

2. *Bates v. Florida*, 531 U.S. 835 (2000).

Bates then turned to the federal courts, asking for the issuance of a writ of habeas corpus. But the District Court for the Northern District of Florida denied relief, and the Eleventh Circuit Court of Appeals affirmed. *Bates v. Sec'y, Fla. Dep't of Corr.* (*Bates VI*), 768 F.3d 1278, 1287 (11th Cir. 2014), *cert. denied*, 577 U.S. 839 (2015).

Undaunted by these adverse rulings, Bates continued to seek collateral relief. *See Bates v. Jones* (*Bates VII*), No. SC16-1199, 2016 WL 6205332, at *1 (Fla. July 18, 2016) (striking Bates' habeas petition without prejudice); *Bates v. State* (*Bates VIII*), 218 So. 3d 426, 427 (Fla. 2017) (affirming circuit court's denial of Bates' successive postconviction motion); *Bates v. State* (*Bates IX*), 238 So. 3d 98, 98-99 (Fla. 2018) (affirming circuit court's denial of Bates' successive postconviction motion and denying Bates' habeas petition); *Bates v. State* (*Bates X*), 398 So. 3d 406, 406-08 (Fla. 2024) (affirming circuit court's denial of Bates' successive postconviction motion).

Bates also petitioned in federal court to reopen his habeas proceeding under Federal Rule of Civil Procedure 60(b)(6). *Bates v. Fla. Dep't of Corr.* (*Bates XI*), No. 5:09-cv-00081-MCR (N.D. Fla. July

24, 2025). Specifically, he requested that the court reassess his federal habeas claims without applying the deferential standard required by the Antiterrorism and Effective Death Penalty Act, codified in part at 28 U.S.C. § 2254(d)(1). In Bates' view, *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), rendered such deference unconstitutional. The federal district court denied his motion. *Bates XI*, No. 5:09-cv-00081-MCR, slip op. at 9, *certificate of appealability denied*, No. 25-12588 (11th Cir. Aug. 1, 2025).

This brings us to Bates' fourth successive postconviction motion—the motion at issue in this appeal. Bates raised constitutional challenges to the warrant period's length, the denial of his public records requests, the clemency process, and his death sentence. He also requested a stay. The circuit court denied relief on all Bates' claims and declined to hold an evidentiary hearing or issue a stay.

Bates now appeals, challenging most of the adverse rulings below. He also asks us to grant a stay of execution and issue a writ of habeas corpus.

II

We begin with Bates' appeal. He challenges the circuit court's summary denial of his successive postconviction motion and its denial of his public records requests.[3]

A

Starting with the Florida Rule of Criminal Procedure 3.851 claims, we review the summary denial of such claims de novo. As we have recently reiterated, we will affirm the denial of successive claims that are procedurally barred, untimely, legally insufficient, or refuted by the record. *See Hutchinson v. State*, No. SC2025-0517, 50 Fla. L. Weekly S71, S72, 2025 WL 1198037, at *3 (Fla. Apr. 25), *cert. denied*, 145 S. Ct. 1980 (2025).

1

Bates argues that the circuit court erred in denying his claim that evidence of his organic brain damage was inadequately considered during his second penalty phase. To support this claim, Bates points to multiple alleged shortcomings at the penalty phase,

3. Bates also appeals the circuit court's denial of his motion for a stay during pendency of these proceedings.

including that counsel failed to present testimony from Dr. Barry Crown and from lay witnesses who knew Bates and could have testified to his diminished mental state at the time of the murder. We reject this claim as untimely, procedurally barred, and meritless.

Under Florida Rule of Criminal Procedure 3.851(d), postconviction motions must be filed within one year of the judgment and sentence becoming final.[4] Rule 3.851 provides a narrow exception to this time bar for claims predicated on newly discovered evidence. Fla. R. Crim. P. 3.851(d)(2)(A). But, any claims based on that evidence must still be filed within a year of the date the evidence could have been discovered. *Wainwright v. State*, 411 So. 3d 392, 401 (Fla.), *cert. denied*, No. 24-7365, 2025 WL 1621505 (U.S. June 9, 2025).

Bates' claim is untimely. He was resentenced in 1995, and he could have raised these arguments in the thirty years since. He has not offered any persuasive reason why this evidence is newly discovered or timely now. *See id.*

---

4. Bates' judgment and sentence became final in 2000.

However, even assuming that timeliness would not preclude relief, Bates faces another challenge. We have recognized that claims previously raised and rejected on the merits cannot form a basis of relief, and we have not hesitated to apply this bar in the warrant context. *See Barwick v. State*, 361 So. 3d 785, 794-95 (Fla.), *cert. denied*, 143 S. Ct. 2452 (2023); *Zakrzewski v. State*, 50 Fla. L. Weekly S218, S220, 2025 WL 2047404, at *4 (Fla. July 22), *cert. denied*, No. 25-5194, 2025 WL 2155601 (U.S. July 30, 2025). Although Bates attempts to repackage his prior claims, he has raised several of these arguments before, and we have repeatedly denied relief.

Notably, on direct appeal, Bates claimed that his request for additional experts should have been granted after Dr. Crown did not testify. *See Bates IV*, 750 So. 2d at 15. This Court rejected that argument, explaining that Bates could have presented Dr. Crown's testimony but chose not to. *Id.* at 15-17. In postconviction proceedings, Bates also argued that penalty-phase counsel was ineffective for not presenting Dr. Crown's testimony. *Bates V*, 3 So. 3d at 1100. We affirmed the denial of this claim, explaining that Bates' counsel made an "informed, advised decision not to call Dr.

Crown." *Id.* at 1101. We also explained that even if counsel's performance had been deficient, Bates was not prejudiced, as Dr. Crown's testimony regarding the psychological state of Bates at the time of the murder was merely cumulative of the other expert testimony. *Id.* at 1101-02.

The same goes for Bates' argument that he should have received an evaluation from a neurologist, which his counsel concedes has previously been raised. *See Bates IV*, 750 So. 2d at 15-17. Although he now revives the argument as an Eighth Amendment claim, we reject it as procedurally barred. *See Barwick*, 361 So. 3d at 793.

To the extent that Bates is raising new issues—including that counsel should have better investigated and documented Bates' mental state and presented more witnesses to testify about Bates' mental state—he could have raised these issues in one of his four prior postconviction motions. Three decades have passed since Bates' second penalty phase, and these claims are procedurally barred. *See, e.g.*, *Atkins v. State*, 663 So. 2d 624, 626 (Fla. 1995) (holding that a procedural bar applies to issues which should have been raised in prior collateral proceedings).

Bates asks us to excuse the procedural bars and grant him relief to avoid a manifest injustice. However, upon review of the record, and consistent with our recent precedent, we find no manifest injustice here. *See, e.g.*, *Owen v. State*, 364 So. 3d 1017, 1026-27 (Fla.) (declining to find manifest injustice based on claims of organic brain damage), *cert. denied*, 143 S. Ct. 2633 (2023); *Dillbeck v. State*, 357 So. 3d 94, 105 (Fla.) (rejecting argument that enforcing procedural bars would result in manifest injustice), *cert. denied*, 143 S. Ct. 856 (2023).

This claim also fails on the merits. As we explained in our prior opinions, Bates presented significant evidence regarding his mental state at the time he committed the murder. *See Bates V*, 3 So. 3d at 1100-02. No additional evidence of brain damage would have overcome the significant aggravators presented against Bates. Nor does the Eighth Amendment grant "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." *Hutchinson*, 50 Fla. L. Weekly at S73, 2025 WL 1198037, at *5.

Bates also argues that the second penalty-phase court erred when it refused to inform the jury that Bates would not receive parole if sentenced to life, or that his other sentences guaranteed he would remain incarcerated for the rest of his natural life. Bates has made this argument multiple times. And each time, we have rejected it. *Bates IV*, 750 So. 2d at 9-10; *Bates V*, 3 So. 3d at 1105 n.11. Accordingly, this claim is procedurally barred.[5] *See, e.g.*, *Zakrzewski*, 50 Fla. L. Weekly at S220, 2025 WL 2047404, at *4; *Barwick*, 361 So. 3d at 792.

Recognizing the bar that our rulings on this issue pose, Bates pivots and asks us to grant him due process relief to avoid a manifest injustice. But consistent with our conclusion above, we see no injustice (manifest or otherwise) in enforcing this bar. *See Ford v. State*, 402 So. 3d 973, 977-78 (Fla.), *cert. denied*, 145 S. Ct. 1161 (2025); *Gudinas v. State*, No. SC2025-0794, 50 Fla. L. Weekly S123, S126-27, 2025 WL 1692284, at *7-8 (Fla. June 17), *cert.*

5. This argument is also untimely under rule 3.851(d). *See Wainwright*, 411 So. 3d at 401.

denied, No. 24-7457, 2025 WL 1739159 (U.S. June 24, 2025); *Dillbeck*, 357 So. 3d at 105.

3

Bates next argues that he has a due process right to review and rebut the evidence pertaining to his clemency proceedings. The circuit court properly denied this claim.

We have recently rejected similar arguments in post-warrant litigation. *Gudinas*, 50 Fla. L. Weekly at S127-28, 2025 WL 1692284, at *8-9 (affirming the confidentiality of clemency records); *see also Zakrzewski*, 50 Fla. L. Weekly at S221, 2025 WL 2047404, at *5 (reiterating that no specific procedures are mandated in clemency proceedings). The executive has sole discretion in exercising clemency powers and, "due to important considerations about the separation of powers, we do not second-guess the executive branch in matters of clemency in capital cases." *Zakrzewski*, 50 Fla. L. Weekly at S221, 2025 WL 2047404, at *5; *see also Sullivan v. Askew*, 348 So. 2d 312, 315 (Fla. 1977). Bates has provided no reason to revisit our prior decisions in this regard, and we affirm the circuit court's denial of this claim.

Bates also asserts that the length of the warrant period violates his right to due process and counsel. A thirty-day warrant period does not, in and of itself, deprive a capital defendant of the rights Bates invokes. In post-warrant litigation, due process requires a defendant be given notice and an opportunity to be heard. *Tanzi v. State*, 407 So. 3d 385, 390 (Fla.), *cert. denied*, 145 S. Ct. 1914 (2025). And the right to counsel only requires that the defendant have "meaningful access to counsel and the courts after his death warrant was signed." *Zakrzewski*, 50 Fla. L. Weekly at S220, 2025 WL 2047404, at *5. Accordingly, we have repeatedly rejected such challenges to the length of the warrant period. *Barwick*, 361 So. 3d at 789-90; *Hutchinson*, 50 Fla. L. Weekly at S72-73, 2025 WL 1198037, at *4; *Zakrzewski*, 50 Fla. L. Weekly at S220, 2025 WL 2047404, at *5; *Bell v. State*, 50 Fla. L. Weekly S155, S163, 2025 WL 1874574, at *17 (Fla. July 8), *cert. denied*, No. 25-5083, 2025 WL 1942498 (U.S. July 15, 2025). Our precedent precludes the relief Bates seeks.

As part of this claim, Bates also argues that the circuit court's denial of his lethal injection discovery requests violates his

constitutional rights. We have recently found comparable arguments to be meritless. *See Tanzi*, 407 So. 3d at 392 (rejecting argument that death-sentenced defendant had a constitutional right to public records regarding lethal injection procedures during the warrant period); *Cole v. State*, 392 So. 3d 1054, 1066 (Fla.), *cert. denied*, 145 S. Ct. 109 (2024) (same). Applying this precedent, we affirm the circuit court's denial of Bates' claim.

B

Bates also challenges the circuit court's denial of his public records requests. We review this ruling for abuse of discretion and reiterate that circuit courts possess broad discretion in deciding these matters. *See Hutchinson*, 50 Fla. L. Weekly at S72, 2025 WL 1198037, at *3; *Tanzi*, 407 So. 3d at 391; *Cole*, 392 So. 3d at 1065.

The circuit court found Bates' records requests to be overbroad and unduly burdensome. In denying relief, the court also noted that Bates failed to show how his requests related to a colorable claim for relief or provide good cause for waiting to request the records until after the death warrant was signed.

This rationale is supported by our warrant-related precedent and was reasonable based on the facts and circumstances of this

case. *See Gudinas*, 50 Fla. L. Weekly at S127-28, 2025 WL 1692284, at *9-10 (affirming denial because demands would not reasonably lead to a "colorable claim for relief" and "were overly broad and unduly burdensome"); *Tanzi*, 407 So. 3d at 391; *Zakrzewski*, 50 Fla. L. Weekly at S221, 2025 WL 2047404, at *6-7; *Hutchinson*, 50 Fla. L. Weekly at S72, 2025 WL 1198037, at *3. Accordingly, we affirm the circuit court's denial.

III

Bates also filed a petition for a writ of habeas corpus. In his petition, he raises nine additional claims. We reject them all.

A

Bates devotes much of his habeas petition to issues related to his guilt-phase proceedings. He claims that he was deprived of a fair trial and due process by multiple actions of the trial court judge in not protecting the jury from "external influences." He claims his trial counsel was ineffective. He also faults the conduct of the trial judge and the State in the 1985 resentencing proceeding (which was subsequently vacated). All of these events, Bates alleges, resulted in numerous constitutional infirmities.

Bates has had more than forty years to raise these claims, in both direct appeal and postconviction proceedings. We find he is procedurally barred from collaterally raising them now. *See* Fla. R. Crim. P. 3.851(e); *Gaskin v. State*, 361 So. 3d 300, 309 (Fla.) ("Habeas corpus is not to be used to litigate or relitigate issues which could have been, should have been, or were previously raised." (citing *Breedlove v. Singletary*, 595 So. 2d 8, 10 (Fla. 1992))), *cert. denied*, 143 S. Ct. 1102 (2023); *Moore v. State*, 820 So. 2d 199, 209 n.12 (Fla. 2002) (habeas claim "could have been raised on direct appeal or in a 3.850 motion and, therefore, it is procedurally barred"); *Mills v. Dugger*, 559 So. 2d 578, 579 (Fla. 1990) ("Habeas corpus is not to be used for additional appeals of issues that could have been, should have been, or were raised on appeal or in other postconviction motions.").

B

Bates also attempts to relitigate his request to interview a juror who, alleges Bates, was distantly related to Renee. Bates previously raised this claim and we rejected it less than one year ago. *See Bates X*, 398 So. 3d at 407-08. Thus, this claim is procedurally barred. Fla. R. Crim. P. 3.851(d)-(e); *Mills*, 559 So. 2d

at 579; *Schoenwetter v. State*, 46 So. 3d 535, 562 (Fla. 2010) ("Because [this] argument . . . was raised in his motion filed pursuant to rule 3.851, this claim is rejected as procedurally barred.").

C

Bates also reasserts a claim of entitlement to DNA testing—something we have twice rejected on the merits. *Bates V*, 3 So. 3d at 1098 (concluding that DNA was not a significant part of Bates' conviction considering the weight of evidence against him); *Bates VIII*, 218 So. 3d at 427-28. This claim is procedurally barred and thus does not support relief. *See* Fla. R. Crim. P. 3.851(e); *Mills*, 559 So. 2d at 579; *Schoenwetter*, 46 So. 3d at 562.

D

Bates next argues that, in his second penalty phase, potential jurors were improperly excused while Bates was absent from the courtroom. We rejected this argument on appeal, finding that the trial court did not err in excusing the jurors or that, in the alternative, any error would be harmless. *Bates IV*, 750 So. 2d at 15. As such, this claim is procedurally barred. *See Mills*, 559 So. 2d at 579; *Schoenwetter*, 46 So. 3d at 562.

E

Bates also challenges the HAC aggravator, arguing that it fails to perform its constitutionally required narrowing function. This claim is procedurally barred as it could have been raised on direct appeal. *Mills*, 559 So. 2d at 579; *Moore*, 820 So. 2d at 209. Moreover, we have rejected similar challenges. *Dillbeck*, 357 So. 3d at 105; *Cruz v. State*, 320 So. 3d 695, 730-31 (Fla. 2021). Bates has given us no reason to revisit our precedent in this regard.

F

In his final claim, Bates argues that this Court should grant relief based upon the alleged cumulative errors that have occurred in his proceedings. However, since Bates has not convinced us of any error, there is nothing to review on a cumulative basis. Thus, like his other claims, this one does not support relief.

IV

For the reasons discussed above, we affirm the circuit court's summary denial of Bates' fourth successive postconviction motion and the denial of his requests for public records. We also deny habeas relief. And, in light of these rulings, we deny Bates' motion

for a stay and for oral argument. 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., concurs in result.

An Appeal from the Circuit Court in and for Bay County,
Dustin Stephenson, Judge
Case No. 031982CF000661XXAXMX
And an Original Proceeding – Habeas Corpus

Suzanne Keffer, Capital Collateral Regional Counsel, James L. Driscoll, Jr., Assistant Capital Collateral Regional Counsel, Michael T. Cookson, Staff Attorney, and Jeanine Cohen, Staff Attorney, Southern Region, Fort Lauderdale, Florida,

for Appellant/Petitioner

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

for Appellee/Respondent

APPENDIX B

IN THE CIRCUIT COURT
FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA
IN AND FOR BAY COUNTY

EXECUTION SCHEDULED FOR AUGUST 19, 2025
AT 6:00 P.M. EASTERN (5:00 P.M. CENTRAL)

STATE OF FLORIDA,

Case No.: 1982-CF-00661
CAPITAL CASE

v.

KAYLE B. BATES,

Defendant.

ORDER DENYING SUCCESSIVE MOTION TO VACATE JUDGMENT OF CONVICTION AND DEATH SENTENCE

THIS MATTER comes before this Court upon the Defendant's Successive Motion to Vacate Judgment of Conviction and Death Sentence Under Florida Rule of Criminal Procedure 3.851, filed on July 25, 2025. The State's Answer to Bates'[s] Second Successive Postconviction Motion was filed on July 27, 2025. This Court held a *Huff* hearing on July 28, 2025. Having considered the instant Motion, the State's Answer, the arguments of counsel, court file and records, and being otherwise fully advised, this Court finds as follows:

FACTS AND PROCEDURAL HISTORY

The Florida Supreme Court has previously summarized the facts of the instant case:

> In 1983, Bates was convicted for the 1982 murder of Janet Renee White. We described the unfortunate facts of the murder previously, stating, "Bates abducted a woman from her office, took her into some woods behind [a State Farm Insurance office] building [where she worked], attempted to rape her, stabbed her to death, and tore a diamond ring from one of her fingers."

Bates v. State, 3 So. 3d 1091, 1096 (Fla. 2009) (citing *Bates v. State*, 465 So. 2d 490, 491 (Fla. 1985) (*Bates I*)).

Defendant was indicted for first-degree murder, kidnapping, sexual battery, and armed robbery. *See* Ex. A; *Bates*, 465 So. 2d at 491. After a jury trial, Defendant was found guilty of first-degree murder by premeditation, kidnapping, attempted sexual battery, and armed robbery and recommended a sentence of death. *See* Ex. B; *Bates*, 465 So. 2d at 491. Defendant was sentenced to death for first-degree murder (Count I), imprisonment for life on kidnapping (Count II), 15 years of imprisonment for attempted sexual battery (Count III), and imprisonment for life on armed robbery (Count IV). *See* Exs. B–C; *Bates*, 465 So. 2d at 491. Defendant's sentences were also imposed consecutively on all counts. *See* Ex. C. On appeal, the Florida Supreme Court affirmed Defendant's convictions, but the Court remanded for resentencing on Count I. *Bates*, 465 So. 2d at 491. The trial court reimposed the death penalty, and the Florida Supreme Court affirmed the sentence on appeal. *Bates v. State*, 506 So. 2d 1033 (Fla. 1987).

Defendant has filed several postconviction motions, including a petition for habeas corpus and multiple motions for postconviction relief. *Bates*, 3 So. 3d at 1096–98. The only motion to be granted was one of Defendant's motions for postconviction relief, and that decision was affirmed on appeal by the Florida Supreme Court. *Bates v. Duggar*, 604 So. 2d 457 (Fla. 1992). Pursuant to the Supreme Court's direction, the trial court conducted a new sentencing phase and again reimposed the death penalty. *Bates*, 604 So. 2d at 459. The sentence was affirmed by the Florida Supreme Court. *Bates v. State*, 750 So. 2d 6 (Fla. 1999). Defendant's sentence of death became final on October 2, 2000, when the United States Supreme Court denied his Petition for Writ of Certiorari. *Bates v. Florida*, 531 U.S. 835 (2000). Defendant continued to file postconviction motions. These motions were denied, and the decisions were affirmed on appeal. *See Bates*, 3 So. 3d at 1096–98; *Bates v. State*, 398 So. 3d 406 (Fla. 2024); *Bates v. State*, 238 So. 3d 98 (Fla. 2018); *Bates v. State*, 218 So. 3d 426 (Fla. 2017).

On July 18, 2025, Governor Ron DeSantis signed a death warrant for Defendant's execution. Pursuant to this death warrant, Defendant's execution is scheduled for August 19, 2025, at 6:00 p.m. (Eastern). On July 21, 2025, the Florida Supreme Court entered a corrected order directing that this Court complete its death warrant proceedings no later than 11:00 a.m. (Central) on Wednesday, July 30, 2025. Pursuant to this Court's Scheduling Order, Defendant filed his successive Rule 3.851 motion on July 25, 2025. Following a *Huff* hearing on July 28, 2025, this Court determined that an evidentiary hearing was not required. This Order follows.

APPLICABLE AUTHORITY

Rule 3.851 "applies to all postconviction motions filed on or after January 1, 2015, by defendants who are under sentence of death." Fla. R. Crim. P. 3.851(a). "Any motion to vacate judgment of conviction and sentence of death must be filed by the defendant within 1 year after the judgment and sentence become final." Fla. R. Crim. P. 3.851(d)(1). "A judgment is final on the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed." Fla. R. Crim. P. 3.851(d)(1)(B). "No motion may be filed or considered under this rule if filed beyond the time limitation provided in subdivision (d)(1) unless" an enumerated exception applies. Fla. R. Crim. P. 3.851(d)(2). Rule 3.851 provides three enumerated exceptions to the one-year filing deadline:

> (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.

Fla. R. 3.851(d)(2)(A–C).

> A motion filed under this rule is successive if a state court has previously ruled on a postconviction motion challenging the same judgment and sentence. A claim raised in a successive motion must be dismissed if the trial court finds that it fails to allege new or different grounds for relief and the prior determination was on the merits; or, if new and different grounds are alleged, the trial court finds that the failure to assert those grounds in a prior motion constituted an abuse of the procedure; or, if the trial court finds there was no good cause for failing to assert those grounds in a prior motion; or, if the trial court finds the claim fails to meet the time limitation exceptions set forth in subdivision (d)(2)(A), (d)(2)(B), or (d)(2)(C).

Fla. R. Crim. P. 3.851(e)(2). A postconviction motion filed after a death warrant has been signed is an expedited proceeding. Fla. R. Crim. P. 3.851(h)(3). Summary denial is appropriate where successive postconviction claims are refuted by the record. Fla. R. Crim. P. 3.851(f)(5)(B). Summary denial of purely legal claims is also appropriate where such claims are without merit under controlling precedent. *See Mann v. State*, 112 So. 3d 1158, 1162–63 (Fla. 2013). A trial court should summarily deny "successive claims where those claims are untimely, procedurally barred, legally insufficient, or refuted by the record." *Hutchinson v. State*, No. SC2025-0517, No. SC2025-0518, 2025 WL 1198037, at *3 (Fla. Apr. 25, 2025) (citation omitted).

CLAIM I

Mr. Bates's penalty phase was inadequate to determine whether his case was one of the most aggravated and least mitigated because the jury and court did not receive critical evidence of mitigation. Thus, Mr. Bates's death sentence violates the Eighth and Fourteenth Amendments.

Defendant argues "that the failure to meaningfully consider his organic brain damage at resentencing constitutes a manifest injustice." First, Defendant alleges that "his ineffective counsel had done nothing to investigate or document Mr. Bates's mental status at the time of offense." Defendant alleges that "[a]n expert would have documented Mr. Bates's status and interviewed the people who knew him best." Second, Defendant alleges that his counsel failed to call "Dr. Crown and abandoned presenting organic brain damage as a mitigating factor

altogether." Third, Defendant alleges that his counsel "never developed testimony from … people who were familiar with how he reacted to stress. This would have corroborated the effect that Mr. Bates's organic brain damage had on his reactions to stress." Defendant also alleges that the testimony would have contradicted Dr. McLaren's testimony. Defendant argues that he "was sentenced to death based on a false narrative and without consideration of his organic brain damage, rendering his execution unconstitutional." Defendant argues that the "utter lack of consideration for a compelling form of mitigation that has long been used to find capital punishment inappropriate … is a manifest injustice." Defendant argues that this Court should correct this alleged manifest injustice by not applying the law of the case doctrine, collateral estoppel, and *res judicata* to bar the instant claim.

This Court finds Defendant's first claim should be denied as untimely and procedurally barred. First, the instant claim is untimely. Defendant's death sentence became final on October 2, 2000. *Bates*, 531 U.S. 835. Defendant's allegations fail to establish that any exception to the Rule's one-year filing deadline applies. Second, Defendant raised portions of the instant claim in a previous Rule 3.851 motion. Defendant previously raised the claim that his counsel was ineffective for failing to call Dr. Crown at trial. Defendant also previously raised the claim that counsel was ineffective for failing to challenge the state's mental health expert. These claims were denied by orders rendered on July 29, 2005, and March 1, 2007. *See* Exs. D–E. These decisions were affirmed on appeal. *Bates*, 3 So. 3d at 1100–02. Third, Defendant merely uses a different argument to relitigate issues that were raised in a previous motion for postconviction relief, which is not appropriate. *Barwick v. State*, 361 So. 3d 785, 793 (Fla. 2023) ("Barwick acknowledges in his second successive motion that he previously 'has raised the factual basis of [this] claim.' Barwick is admittedly using 'a different argument to relitigate the same issue,'

which is inappropriate. The circuit court was correct in denying this claim as procedurally barred because versions of it were raised in prior proceedings." (internal citation omitted)). Fourth, Defendant's claim as to his trial counsel's failure to call Dr. Crown is subject to dismissal under Rule 3.851(e)(2). Fifth, to the extent Defendant raises new and different grounds for relief, the claim is subject to dismissal under Rule 3.851(e)(2). Because Defendant could have raised the instant claim's new and different grounds for relief in his previous postconviction motion, this claim is still procedurally barred. *Barwick*, 361 So. 3d at 795 ("Even if this claim had not been raised in a prior proceeding, it is still procedurally barred because it could have been raised previously." (citations omitted)).

Further, this Court has considered the issue of manifest injustice and having reviewed the totality of the circumstances finds Defendant's arguments unpersuasive. *See Owen v. State*, 364 So. 3d 1017, 1025 n.17 (Fla. 2023) ("The circuit court did not expressly pass on Owen's argument that it should overlook the time and procedural bars to correct a manifest injustice. We find no error in the circuit court's refusal to do so." (internal quotations and citations omitted)). Having specifically considered it, this Court does not find any manifest injustice to have occurred which would overcome clearly established legal principles that otherwise compel denial of this claim. Instead, the law of the case doctrine, collateral estoppel, and *res judicata* should be applied here. Because there are timeliness and procedural bars to this claim, it fails. Accordingly, Defendant's first claim should be denied.

CLAIM II

The State obtained Mr. Bates's death sentence in violation of the Eighth Amendment and Due Process Clause of the Fourteenth Amendment because the jury was misled to believe Mr. Bates could be eligible for release on parole in about twelve years, unless sentenced to death.

Defendant argues that his death sentence violates the Eighth Amendment and Due Process Clause of the Fourteenth Amendment because the jury was misled to believe Defendant could be eligible for release on parole in about twelve years unless he was sentenced to death. Defendant acknowledges that he has raised the instant claim in prior proceedings in both State and Federal court. Defendant argues that "[t]he violations of [his] rights under the Due Process Clause and the Eighth Amendment … constitute manifest injustice."

This Court finds that Defendant's second claim should be denied as untimely and procedurally barred. First, Defendant raised the instant claim on direct appeal. The Florida Supreme Court denied the claim in 1999. *See Bates*, 750 So. 2d at 9–11; *see also Bates*, 3 So. 3d at 1105 n.11. Defendant may not use a postconviction motion to raise a claim that was raised on direct appeal. *See Ferrell v. State*, 918 So. 2d 163, 178 (Fla. 2005) (determining a defendant's postconviction claims were procedurally barred in a postconviction proceeding because the claims "were raised and rejected on direct appeal" (citations omitted)); *Deparvine v. State*, 146 So. 3d 1071, 1106 (Fla. 2014) (affirming the trial court's summary denial of a defendant's *Ring* claim because the claim was procedurally barred as "issues raised and rejected on direct appeal cannot be relitigated in postconviction proceedings" (citations omitted)). Second, even if the instant claim were cognizable in a Rule 3.851 motion, Defendant's claim is untimely. Defendant's death sentence became final on October 2, 2000. *Bates*, 531 U.S. 835. Defendant's allegations fail to establish that any exception to the Rule's one-year filing deadline applies.

Further, this Court has considered the issue of manifest injustice and having reviewed the totality of the circumstances finds Defendant's arguments unpersuasive. *See Owen,* 364 So. 3d at 1025 n.17. Having specifically considered it, this Court does not find any manifest injustice to have occurred which would overcome clearly established legal principles that otherwise compel

denial of this claim. Instead, the law of the case doctrine, collateral estoppel, and *res judicata* should be applied here. Because there are timeliness and procedural bars to this claim, it fails. Accordingly, Defendant's second claim should be denied.

CLAIM III

Mr. Bates was denied meaningful clemency proceedings and the opportunity to confront the clemency investigation's finding in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

Defendant argues that he "has a fundamental right to due process" in clemency proceedings and "minimal due process requirements still demand notice, hearing, and an opportunity to explain or deny information used to determine his fate." Defendant alleges that "the clemency board never heard or considered a complete view of the case or Mr. Bates." Defendant alleges that two lawyers spoke to him in 2015 regarding updating his clemency, but he was never informed of the outcome. Defendant alleges that he only received notice that clemency was denied after the Governor signed his death warrant. Defendant argues his Due Process and Equal Protection rights under the Fourteenth Amendment were violated because (1) he "never received the information upon which the governor based his decision[s]" and (2) he was denied "any opportunity to rebut the information used to make penalty decisions."

"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) (citation omitted); *Sullivan v. Askew*, 348 So. 2d 312, 315 (Fla. 1977); Art. IV, § 8, Fla. Const.; *In re Advisory Op. of the Governor*, 334 So. 2d 561, 562–63 (Fla. 1976). There are no specific procedures that are mandated in the clemency process. *Johnston v.*

State, 27 So. 3d 11, 25–26 (Fla. 2010) ("We also noted in *Marek v. State,* 14 So. 3d 985 (Fla. 2009), after Marek raised a second challenge to the clemency process, that 'five justices of the United States Supreme Court concluded [in *Ohio Adult Parole Authority v. Woodard,* 523 U.S. 272, 118 S.Ct. 1244, 140 L. Ed. 2d 387 (1998)] that some minimal procedural due process requirements should apply to clemency ... [b]ut 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.' *Marek,* 14 So. 3d at 998. We again conclude that no specific procedures are mandated in the clemency process and that Johnston has been provided with the clemency proceedings to which he is entitled."); *Bryan v. DeSantis*, 343 So. 3d 127, 129 (Fla. 1st DCA 2022) ("Clemency proceedings satisfy the Due Process Clause as long as the State follows the procedures set out in State law, the State does not arbitrarily deny the prisoner all access to the clemency process, and the clemency decision is not wholly arbitrary or capricious." (citation omitted)); *Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404, at *6 (Fla. July 22, 2025) ("No specific procedures are mandated in clemency proceedings. … 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." (citations omitted)). Indeed, the only procedure that is mandated as part of the clemency process is that an applicant does not have the right to a clemency hearing. Rule 4 of the Rules of Executive Clemency ("The Governor has the unfettered discretion to deny clemency

at any time, for any reason. No applicant has a right to a clemency hearing."). A court may not second-guess clemency decisions in capital cases. *Johnston*, 27 So. 3d at 26 ("Further, we 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."); *Bryan*, 343 So. 3d at 129 ("[C]ourts will not generally second-guess the executive's determination that clemency is not warranted." (quotations and citation omitted)); *Bundy v. State*, 497 So. 2d 1209, 1211 (Fla. 1986) ("[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." (citation omitted)).

Clemency records are also confidential. *See* § 14.28, Fla. Stat. (2025); *Muhammad v. State*, 132 So. 3d 176, 203 (Fla. 2013) ("[C]lemency files and records are not subject to chapter 119 disclosure and are exempt from production in a records request filed in a postconviction proceeding." (citations omitted)). "All records developed or received by any state entity pursuant to a Board of Executive Clemency investigation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution." § 14.28. "[T]o the extent section 14.28 could be read to exclude certain clemency materials from confidentiality, Rule of Executive Clemency 16, which provides that *all* records in the clemency process are confidential, controls … ." *Chavez v. State*, 132 So. 3d 826, 831 (Fla. 2014) (emphasis in original). Rule 16 of the Rules of Executive Clemency states: "[A]ll records and documents generated and gathered in the clemency process as set forth in the Rules of Executive Clemency are confidential and shall not be made available for inspection to any person except members of the Clemency Board and their staff." "[U]nder section 14.28 and rule 16, only the Governor can authorize the release or inspection of such records." *Gudinas v. State*, No. SC2025-0794, 2025

WL 1692284, at *9 (Fla. June 17, 2025) (citations omitted); *see also* § 14.28 ("However, such records may be released upon the approval of the Governor.").

This Court determines that Defendant's third claim should be denied as meritless. Defendant is not entitled to any specific, mandated procedure for clemency review. This includes (1) an opportunity to review "the information that the Governor received," (2) "an opportunity to explain or deny information used to determine his fate," and (3) "any opportunity to rebut the information used to make penalty decisions." The face of Defendant's allegations demonstrate that he received the benefit of a clemency review proceeding, even though clemency was ultimately denied. Here, the Governor determined clemency was not warranted based upon the application of the existing clemency review proceedings afforded to the Defendant. It is not appropriate for this Court to second-guess a decision exclusively reserved to the Governor under Florida law. Based on this record, the due process afforded to Defendant during his clemency review was legally sufficient; the Court finds no due process violation considering all the circumstances presented.

Additionally, the authority is crystal clear: clemency records are confidential. Clemency records include (1) "the information upon which the governor based his decision that clemency was not appropriate or that his death warrant should be signed" and (2) "the information that the Governor received." Defendant does not demonstrate that the Governor has directed, permitted, or otherwise allowed the release or inspection of any records from Defendant's clemency review. (In fact, the record establishes the opposite: the Executive Office of the Governor affirmatively objected to the release of any clemency record in this case.) This is important because only the Governor can authorize the release or inspection of such clemency records. Based on the above authority, this Court is prohibited from ordering that Defendant be allowed to receive or review

any records generated or gathered as part of the executive's clemency decision-making process. Accordingly, Defendant's third claim is meritless and fails. The claim should be denied.

CLAIM IV

The time restraints and wholesale denial of access to public records imposed during these warrant proceedings violated due process, access to the courts, and the right to habeas under the United States and Florida Constitutions.

Defendant argues "that the truncated warrant period and limitations on relief violate Due Process in light of the interests at stake." Defendant also argues that he "was denied access to critical records at the time he needed them most." Defendant argues he "needs public records to enforce *inter alia* his federal right to be free from the infliction of cruel and unusual punishment by raising an as-applied method-of-execution challenge." Defendant argues that "[t]he severely limited time that Mr. Bates was given to seek public records under warrant and the rote denial of discovery effectively precluded any meaningful access to public records in violation of his rights to due process under the Florida and United States Constitutions." Defendant argues that his "right to access to the courts and to seek remedies for the myriad constitutional violations committed throughout these proceedings against him, including his right to petition for a writ of habeas corpus under the Florida and United States Constitutions" were violated.

This Court finds that Defendant's fourth claim should be denied as meritless. The Florida Supreme Court has recently considered and rejected a near identical challenge to a death warrant period similar in length.

> In his first argument on appeal, Tanzi claims that the truncated warrant period and the denial of his public records requests deprived him of his due process rights. The circuit court summarily denied this claim, finding no relief warranted as a matter of law. We agree.

> The warrant litigation schedule does not violate Tanzi's due process rights. "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) (citing *Huff*, 622 So. 2d at 983). This 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 has not shown how the warrant schedule denied him notice or an opportunity to be heard. Thus, the circuit court rightly denied his claim as it pertained to the compressed schedule.

Tanzi v. State, 407 So. 3d 385, 390–91 (Fla. 2025); *see also Bell v. State*, No. SC2025-0891, 2025 WL 1874574, at *17 (Fla. July 8, 2025) ("Moreover, this Court has recently considered and rejected claims challenging the time period set in death warrant cases." (citation omitted)). The Florida Supreme Court also rejected a similar challenge in 2023.

> In his first issue on appeal, Barwick claims primarily that the compressed warrant litigation schedule resulted in the denial of his rights to due process and the effective assistance of postconviction counsel. … The circuit court summarily denied this consolidated claim, finding that Barwick was not denied due process because he did not allege that he was ever denied notice or an opportunity to be heard and that he was not denied effective assistance of postconviction counsel because he has no right to effective assistance of postconviction counsel. We agree that summary denial of this claim was proper. Barwick has made it abundantly clear in his pleadings filed in both the circuit court and this Court that the post-warrant litigation in this case has been very arduous for his counsel due to certain circumstances that happened to coincide with the beginning of the warrant period, such as the occurrence of Holy Week, Passover, and Ramadan; co-counsel being ill; and the presence of another inmate on Death Watch. Indeed, post-warrant litigation is arduous, even without such circumstances. Yet none of the obstacles identified by Barwick resulted in a denial of due process.

Barwick, 361 So. 3d at 789–90. In sum, this type of claim has been repeatedly rejected by the Florida Supreme Court in death warrant cases over the last several years. Here, the Defendant fails to identify any matter on which he has been denied notice and an opportunity to be heard. Even though the instant death warrant period is shorter than it could be, Defendant has been afforded the due process to which he is entitled. Defendant's allegations do not demonstrate that he was prevented from pursuing and filing a successive Rule 3.851 motion. Indeed, despite the

deadlines imposed, the filing of the instant Motion itself, along with the diligent efforts of his counsel throughout this death warrant litigation, refute any such claim. Nor do Defendant's allegations demonstrate that he has been prevented from pursuing a habeas proceeding.

To the extent Defendant challenges application of procedural bars to his Rule 3.852 public records demands, and to his Rule 3.851 successive motion for postconviction relief, his arguments are meritless. The application of procedural bars that prevent a Defendant from relitigating postconviction issues do not violate due process, access to the courts, or the right to counsel. *See Ford v. State*, 402 So. 3d 973, 978 (Fla. 2025) ("Ford's claim that the procedural bars applied to his claims result in a denial of due process is conclusory. Due process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided. Ford does not allege that he was denied notice and an opportunity to be heard. He is simply objecting to the fact that he does not have the opportunity to be reheard. Ford also claims that procedural bars effectively deny him access to courts and the right to counsel and subject him to cruel and unusual punishment. The fact that Ford is not permitted to relitigate issues now does not violate his access to the courts to litigate valid claims in accordance with the procedural rules of this state. The fact that counsel cannot relitigate claims that have already been raised does not deprive him of the right to counsel, who was free to raise appropriate claims. And the application of procedural bars after the signing of his death warrant did not prevent Ford from attempting to show that his case is not among the most aggravated and least mitigated at the appropriate time (or times) and through the appropriate channels, nor did it deprive Ford of an individualized sentencing or otherwise violate the Eighth Amendment or article 1, section 17 of the Florida Constitution. Rule 3.851(d)(2) was not unconstitutionally applied to Ford's third successive motion for postconviction relief. And Ford presents no authorities that support his

argument on this point." (internal quotations and citation omitted)). For these reasons, the Defendant's fourth claim is without merit, and fails. It should be denied accordingly.[1]

Therefore, it is hereby **ORDERED AND ADJUDGED** that:

1) Defendant's Successive Motion to Vacate Judgment of Conviction and Death Sentence Under Florida Rule of Criminal Procedure 3.851, is **DENIED**.

2) Defendant's request for leave to amend the instant Motion is **DENIED**.[2]

3) Defendant's request for this Court to grant a stay of execution is **DENIED**.[3]

4) Defendant must file his notice of appeal by 2:00 p.m. Eastern (1:00 p.m. Central) on Wednesday, July 30, 2025.

IT IS SO ORDERED.

DONE AND ORDERED in Bay County, Florida on Wednesday, July 30, 2025.

HON. DUSTIN STEPHENSON, Circuit Judge

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[1] Because habeas corpus is not properly invoked to raise a collateral attack on a defendant's conviction and sentence, even if a defendant is under a sentence of death, this Court declines to address Defendant's habeas corpus claim. *See Diaz v. State*, 132 So. 3d 93, 122 (Fla. 2013) ("Rules 3.850 and 3.851—which permit initial and, in some circumstances, successive postconviction motions—continue to provide an avenue for litigating most collateral attacks to a conviction or sentence. 'Habeas corpus should not be used as a vehicle for presenting issues which should have been raised at trial and on appeal or in postconviction proceedings. The habeas process is therefore most often used in death penalty cases to challenge the effectiveness of appellate counsel.' " (citation omitted)); *Dailey v. State*, 283 So. 3d 782, 793 (Fla. 2019) ("In his next claim, Dailey argues that allegations of ineffective assistance of postconviction counsel should provide a basis for the Court to consider evidence of actual innocence that would otherwise be procedurally barred. He presented this argument in his second successive postconviction motion, and we rejected it. Habeas corpus is not to be used for additional appeals of issues that ... were raised in previous postconviction motions. The claim is accordingly procedurally barred." (internal quotations and citations omitted)); Fla. R. Crim. P. 3.851(d)(3) ("All petitions for extraordinary relief in which the Supreme Court of Florida has original jurisdiction, including petitions for writs of habeas corpus, must be filed simultaneously with the initial brief filed on behalf of the death-sentenced defendant in the appeal of the circuit court's order on the initial motion for postconviction relief filed under this rule.").

[2] Defendant's request for leave to amend is insufficient because he has failed to articulate any new claims that he believes should be presented to the Court. *See* Fla. R. Crim. P. 3.851(f)(4) ("A motion filed under this rule may not be amended unless good cause is shown. A copy of the claim sought to be added must be attached to the motion to amend.").

[3] *See Bucklew v. Precythe*, 139 S. Ct. 1112, 1134 (2019) ("Last-minute stays should be the extreme exception, not the norm[.]"); *Bowersox v. Williams*, 517 U.S. 345, 346 (1996) ("A stay of execution pending disposition of a second or successive federal habeas petition should be granted only when there are 'substantial grounds upon which relief might be granted.' " (citation omitted)); *Buenoano v. State*, 708 So. 2d 941, 951 (Fla. 1998) (citation omitted).

ATTACHMENTS:

Exhibit A: Indictment, July 6, 1982
Exhibit B: Verdict, filed January 20, 1983
Exhibit C: Judgment and Sentence, filed July 25, 1995 (as to Count I) (confidential information omitted); Judgment and Sentence, March 11, 1983 (as to Counts II–IV) (confidential information omitted)
Exhibit D: Order Denying Relief in Part and Order Granting Evidentiary Hearing, filed July 29, 2005 (original attachments omitted)
Exhibit E: Order Denying Defendant's Motion for Post Conviction Relief Following Evidentiary Hearing, filed March 1, 2007

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing Order has been furnished by regular U.S. mail, email, e-portal, or hand delivery to the individuals listed below on this 30th day of July, 2025.

s/ Belinda Causey
Belinda Causey, Judicial Assistant

Copies to:

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IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA

STATE OF FLORIDA

vs.

KAYLE BARRINGTON BATES

In the Circuit Court of the Fourteenth Judicial Circuit of the State of Florida, in and for Bay County

At the Spring Term hereof, in the Year of Our Lord, One Thousand, Nine Hundred and Eighty-Two

I N D I C T M E N T

COUNT I - FIRST DEGREE MURDER

The Grand Jurors of the State of Florida, lawfully selected, impaneled and sworn, inquiring in and for the body of the County of Bay, upon their oaths as Grand Jurors, do present that on the 14th day of June, in the year of Our Lord, One Thousand, Nine Hundred and Eighty-Two, at and in the County of Bay, State of Florida, KAYLE BARRINGTON BATES, did unlawfully from a premeditated design to effect the death of a human being, to-wit: Janet Renee White, or while engaged in the perpetration of or in an attempt to perpetrate a felony, to-wit: Kiddnapping and/or Sexual Battery and/or Robbery, did kill and murder said Janet Renee White, by stabbing her, in violation of Section 782.04, Florida Statutes.

COUNT II - KIDNAPPING

Further, the Grand Jurors of the State of Florida, lawfully selected, impaneled and sworn, inquiring in and for the body of the County of Bay, upon their oaths as Grand Jurors, do present that on the 14th day of June, in the year of Our Lord, One Thousand, Nine Hundred and Eighty-Two, at and in the County of Bay, State of Florida, KAYLE BARRINGTON BATES, did unlawfully and forcibly, secretly or by threat, confine, abduct, or imprison another, to-wit: Janet Renee White, against her will, and without lawful authority, with intent to inflict bodily harm upon or to terrorize the victim and/or to commit or facilitate commission of any felony, to-wit: Murder and/or Sexual Battery and/or Robbery, in violation of Section 787.01(1)(a), Florida Statutes.

COUNT III - SEXUAL BATTERY

Further, the Grand Jurors of the State of Florida, lawfully selected, impaneled and sworn, inquiring in and for the body of the County of Bay, upon their oaths as Grand Jurors, do present that on the 14th day of June, in the year of Our Lord, One Thousand, Nine Hundred and Eighty-Two, at and in the County of Bay, State of Florida, KAYLE BARRINGTON BATES, did unlawfully commit a sexual battery upon a person over the age of eleven (11) years, to-wit: Janet Renee White, twenty-four (24) years of age, by vaginal penetration by the penis of said KAYLE BARRINGTON BATES, without the consent of Janet Renee White, and in the process thereof used or threatened to use a deadly weapon, to-wit: a knife, or used actual physical force likely to cause serious personal injury, in violation of Section 794.011(3), Florida Statutes.

COUNT IV - ROBBERY (ARMED)

Further, the Grand Jurors of the State of Florida, lawfully selected, impaneled and sworn, inquiring in and for the body of the County of Bay, upon their oaths as Grand Jurors do present that on the 14th day of June, in the year of Our Lord, One Thousand, Nine Hundred and Eighty-Two, at and in the County of Bay, State of Florida, KAYLE BARRINGTON BATES, did unlawfully by force, violence, assault or putting in fear, take certain property, to-wit: a ring, the property of Janet Renee White, as owner or custodian, from the person or custody of Janet Renee White, and in the course of committing said Robbery, carried a deadly weapon, to-wit: a knife, in violation of Section 812.13, Florida Statutes.

I HAVE ADVISED THIS GRAND JURY AS AUTHORIZED AND REQUIRED BY LAW.

John C. Harrison
Assistant State Attorney for the
Fourteenth Judicial Circuit of the
State of Florida

CIRCUIT COURT OF

Bay County

STATE OF FLORIDA

vs.

KAYLE BARRINGTON BATES

INDICTMENT FOR

Count I - First Degree Murder
Count II - Kidnapping
Count III - Sexual Battery
Count IV - Robbery (Armed)

A TRUE BILL

Brooks A. Smith
BROOKS SMITH, FOREMAN

Presented in open Court by the Grand Jury and filed in the presence of the Grand Jury, this 6th day of July, 1982.

Harold Bazzel Clerk

Jim Appleman
State Attorney

John C. Harrison
Assistant State Attorney

The Defendant, being duly arraigned upon this INDICTMENT, pleaded ~~(GUILTY)~~, (NOT GUILTY).

WITNESS my hand and official seal this 12th day of JULY, 1982.

HAROLD BAZZEL, CLERK OF CIRCUIT COURT

BY: Jan Smith
Deputy Clerk

IN THE CIRCUIT COURT FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA
Plaintiff

vs 82-661

KAYLE BATES
Defendant

V E R D I C T

WE, the jury, find the Defendant

AS TO COUNT I: Guilty of:

- ✓ a. First Degree Murder by Premeditation, as charged.
- ___ b. First Degree Felony Murder, as charged.
- ___ c. Attempted First Degree Murder.
- ___ d. Second Degree Murder.
- ___ e Attempted Second Degree Murder.
- ___ f. Third Degree Murder.
- ___ g. Attempted Third Degree Murder.
- ___ h. Manslaughter.
- ___ i. Attempted Manslaughter.
- ___ j. Aggravated Battery.
- ___ k. Attempted Aggravated Battery.
- ___ l. Aggravated Assault.
- ___ m. Attempted Aggravated Assault.
- ___ n. Battery.
- ___ o. Attempted Battery.
- ___ p. Assault.
- ___ q. Attempted Assault.
- ___ r. Not Guilty.

AS TO COUNT II. Guilty of:

- ✓ a. Kidnapping, as charged.
- ___ b. Attempted Kidnapping.
- ___ c. False Imprisonment.
- ___ d. Attempted False Imprisonment.
- ___ e. Aggravated Assault.
- ___ f. Attempted Aggravated Assault.
- ___ g. Not Guilty.

AS TO COUNT III: Guilty of:

- ___ a. Sexual Battery, as charged.
- ✓ b. Attempted Sexual Battery.
- ___ c. Sexual Battery With Slight Force.
- ___ d. Attempted Sexual Battery With Slight Force.
- ___ e. Aggravated Battery.
- ___ f. Attempted Aggravated Battery.
- ___ g. Aggravated Assault.
- ___ h. Attempted Aggravated Assault.
- ___ i. Battery.
- ___ j. Attempted Battery.
- ___ k. Assault.
- ___ l. Attempted Assault.
- ___ m. Not Guilty.

FILED
DATE 1-20-83 TIME 11:21 P.M.
HAROLD BAZZEL
CLERK OF CIRCUIT COURT
BY [signature]
DEPUTY CLERK

BOOK 66 PAGE 203

AS TO COUNT IV — Guilty of:

- ✓ a. Robbery With A Deadly Weapon, as charged.
- ___ b. Attempted Robbery With A Deadly Weapon.
- ___ c Robbery With A Weapon-Not Deadly Weapon.
- ___ d. Attempted Robbery With A Weapon-Not Deadly Weapon.
- ___ e. Robbery Without A Weapon.
- ___ f. Attempted Robbery Without A Weapon.
- ___ g. Grand Theft.
- ___ h. Attempted Grand Theft.
- ___ i. Petit Theft.
- ___ j. Attempted Petit Theft.
- ___ k. Aggravated Battery.
- ___ l. Attempted Aggravated Battery.
- ___ m. Aggravated Assault.
- ___ n. Attempted Aggravated Assault.
- ___ o. Battery.
- ___ p. Attempted Battery.
- ___ q. Assault.
- ___ r. Attempted Assault.
- ___ s. Not Guilty.

SO SAY WE ALL.

DATED this 20 day of January, 1983.

Foreman

FILE# 95-03[illegible]60
BAY COUNTY, FLORIDA

G

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA,

** OFFICIAL RECORDS **
BOOK: 1578 PAGE: 328

Plaintiff,

vs.

CASE NO. 82-661

KAYLE B. BATES,

Defendant.

JUDGMENT

THE DEFENDANT, Kayle B. Bates, being before this Court represented by Thomas Dunn and Harold Richmond, his attorneys of record, and having been tried and found guilty of the crimes of

Murder in the First Degree

Attempted Sexual Battery, and

Kidnapping

on the 11th day of March, 1983, and thereafter pursuant to remand by the Florida Supreme Court for a new penalty phase hearing for the Murder in the First Degree charge, a jury of twelve of his peers rendered on the 25th day of May, 1995, an advisory sentence of death by a vote of nine (9) to three(3) for the Murder in the First Degree charge. No cause being shown why the Defendant should not be adjudicated guilty, it is therefore

ORDERED that the Defendant, Kayle B. Bates, is hereby adjudicated guilty of the crime of Murder in the First Degree.

SENTENCE

AS TO the charge of Murder in the First Degree, the Defendant, Kayle B. Bates, being personally before the Court accompanied by

his attorneys, Thomas Dunn and Harold Richmond, and having been adjudicated guilty herein and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence and to show cause why he should not be sentenced as provided by law, and no cause being shown, and the Court having considered the aggravating and mitigating circumstances presented in this case, finds that the following aggravating circumstances exist beyond a reasonable doubt.

1. The crime for which the Defendant, Kayle B. Bates, is to be sentenced was committed while he was engaged in the commission of or attempt to commit Kidnapping or Attempted Sexual Battery, or flight after committing or attempting to commit the crime of Kidnapping or Attempted Sexual Battery.

2. The capital felony was committed for pecuniary gain. The Defendant broke into the State Farm office where the victim was employed with the intent to steal. The evidence establishes that just prior to the crime, the Defendant was encountering increased financial pressure due to a loss of an anticipated promotion, imminent birth of a child and the recent purchase of a new home. Although the arrival of the victim disrupted his plan, the evidence further establishes that during the commission of this crime the Defendant forcibly removed the victim's diamond wedding ring which was recovered from the Defendant after his arrest.

3. The capital felony was especially heinous, atrocious or cruel. The Circumstances of this killing indicated a consciousless and pitiless regard for the victim's life and was unnecessarily

torturous to the victim, Janet Renee White. The victim did not die an instantaneous type of death. Although the evidence establishes a time frame of between five to ten minutes for this whole sequence of events to occur, the evidence also establishes it was an eternity of fear, emotional strain and terror for Janet Renee White. When she returned from her lunch, Janet Renee White was confronted by the Defendant at the office where she was employed and a struggle took place inside the office/lobby area. The terror and fear experienced by the victim at that point is best evidenced by her scream as vividly described by the phone caller, Geraldine Flynn, who placed the phone call at precisely the time Janet Renee White first encountered the Defendant. There is no physical evidence inside the office to establish that the victim suffered any fatal stab wounds in the office location. The victim was therefore alive during this time frame. Her ordeal of fear, emotional strain and terror continued as she was forcibly taken by the Defendant from the office to a secluded wooded area approximately 100 feet in the rear of the office building. During this same time frame, the victim was severely beaten as evidenced by the approximately 30 contusions, abrasions and lacerations on various parts of her face and body. The bruising to the lower lip indicates the victim was struck in the mouth by the Defendant. The marks on her neck and hemorrhages located in her eyeballs establish she was partially strangled during this struggle. Again, the victim was alive during this attempted strangulation and beating. The Medical Examiner's testimony further establishes that the two

fatal stab wounds occurred while the victim was lying on her back in the wooded area with her head forward so as to be able to see her assailant as the fatal stab wounds were inflicted by him. The victim had to be alive and conscious during this final attack because the evidence also establishes the victim had her arms in an upward position at the time the stab wounds were inflicted. She would then have been conscious for one to two minutes after infliction of the fatal stab wounds and fully aware of what had happened and was happening to her. Her death then occurred within five minutes after the stab wounds were inflicted due to loss of blood.

The Court finds the following statutory mitigating circumstances were presented for the Court's consideration:

1. The Defendant has no significant history of prior criminal activity. The Court finds that this mitigating statutory circumstance does exist and gives it significant weight.

2. The capital felony was committed while the Defendant was under the influence of extreme emotional disturbance. The evidence of this mitigating circumstance is in dispute. The Defendant has presented the testimony of two doctors, Dr. Larson and Dr. McMahon, that this statutory mitigating circumstance does apply and the State has presented the testimony of one doctor, Dr. McLaren, that this statutory circumstance does not apply. Both of the Defendant's doctors indicated that the Defendant did not suffer from a major mental illness. Dr. Larson testified the Defendant suffers from a low level anxiety disorder with a low range IQ of

88. Dr. McMahon concurs in this finding. Both of the Defendant's doctors testified the Defendant was emotionally over-reacting and was extremely angry, threatened, disorganized and impulsive and not thinking when this murder occurred. Dr. McLaren disagreed with the conclusions of the other two doctors. In reaching his opinion, Dr. McLaren talked to the persons who had contact with the Defendant immediately after the murder as well as others who knew or worked with the Defendant. Dr. McLaren listed a number of reasons to support his opinion that the Defendant was not under the influence of extreme emotional disturbance at the time of the murder. Those reasons are:

1. The Defendant has no prior history of mental illness before the offenses.

2. The Defendant has received no subsequent treatment for mental illness.

3. The Defendant denied being under any unusual pressure during the time of the alleged offense.

4. No signs of mental illness were reported by arresting Officer Cioeta.

5. No signs of mental illness were noted by then Investigator Guy Tunnell.

6. No signs of mental illness were noted by interrogating Investigator Frank McKeithen.

7. No unusual behavior was noted on the day of the offenses by Jack Howell, Sr.

8. No signs of mental illness were reported by the Defendant's ex-wife.

9. The Defendant reports being happily married at the time of the offenses.

10. The Defendant reports being rather

happy at the time of the offense reporting having just bought a new home and expecting a second child.

11. No signs of mental illness were noted during a 1983 psychological evaluation.

12. No signs of mental illness were reported by Bay County Jail security staff.

13. No signs of mental illness were reported by the jail nurse.

14. No signs of mental illness were noted by his original defense counsel.

15. The Defendant is not mentally retarded.

16. The Defendant is a high school graduate.

17. The Defendant served in the Florida National Guard for about five years before the offenses with no signs of mental illness.

18. The Defendant worked for the same company for about two years prior to the time of the offense without showing signs of mental illness.

19. The Defendant served actively in the National Guard during the two days prior to the homicide showing no signs of mental illness.

20. The Defendant was working on the day of the homicide.

21. The Defendant concealed the victim's body out of plain view prior to the arrival at the crime scene by law enforcement officers.

22. The Defendant disposed of the murder weapon after killing the victim.

23. The Defendant fled the immediate crime scene.

24. The Defendant gathered cattails as a cover story for being in the area of the crime scene.

25. The Defendant lied about the origin of blood on his clothing initially.

26. The Defendant's initial statement showed no disorganized speech.

27. The Defendant initially lied about the victim's ring belonging to his own wife.

28. The Defendant lied about breaking his watch at a location other than the crime scene.

29. There were no other known instances of alleged uncontrolled rage in the Defendant's history.

30. The company truck driven by the Defendant was concealed from plain view near the crime scene.

In weighing this conflict in the evidence, the Court finds Dr. McLaren's opinion to be compelling.

Under the totality of the facts in this case, the Defendant's statements, and the testimony of Dr. McLaren, this Court is not reasonably convinced that the Defendant was under the influence of extreme emotional disturbance at the time of the murder. The Court therefore finds that this statutory mitigating factor does not exist. However, this Court will consider Dr. Larson's and Dr. McMahon's testimony in finding that the Defendant was under the influence of some (emphasis supplied) emotional disturbance at the time of the murder and that this does exist as a non-statutory mitigating factor. The Court will give it significant weight in the weighing process.

3. The capacity of the Defendant to conform his conduct to the requirements of the law was substantially impaired. Again, Dr. Larson and Dr. McMahon testified on behalf of the Defendant that this circumstance does exist and Dr. McLaren testified on behalf of the State that this circumstance does not exist. There is no

evidence to suggest the Defendant was under the influence of any drugs or alcohol at the time this murder occurred. The Defendant's doctors testified the Defendant's anxiety would become so disorganizing that it would overwhelm all of his cognitive functions. In a confrontation they stated he would become unwrapped and revert to aggressive behavior. However, Dr. Larson's MMPI results show the Defendant with a mild-moderate level of anxiety with unremarkable results. His social history was adequate with a "get by" performance level. Both of the Defendant's doctors testified the Defendant knew what he was doing was wrong and he could appreciate the criminality of his conduct but that he would not conform to what he knew was wrong. Dr. McLaren disagreed using the same factors that show the Defendant was not acting under extreme emotional disturbance. Again, the testimony and findings of Dr. McLaren and the facts of the crime, together with the Defendant's statements, cause this Court to be reasonably convinced that the Defendant's capacity to conform his conduct to the requirements of the law was not substantially impaired. However, the Court will consider the testimony of Dr. Larson and Dr. McMahon in finding the existence of a non-statutory mitigating circumstance that the Defendant's capacity to conform his conduct to the requirements of the law was impaired to some degree. The Court will give this non-statutory circumstance significant weight in the weighing process.

4. The age of the Defendant at the time of the crime. The Defendant was 24 years old at the time the murder was committed.

His IQ was in the low average range. He is not retarded. He functions academically at a 9 - 10 year old level but his social history revealed an adequate, "get by" performance level. He was also working, supporting his family and serving in the military. The Defendant's age at the time of the crime does exist as a mitigating factor and the Court will give it little weight in the weighing process.

The Defendant, Kayle B. Bates, has offered evidence concerning the following non-statutory mitigating factors to be considered by the Court:

1. The Defendant's family background. The evidence establishes the Defendant was a loving son and stepson and a caring brother. The evidence also establishes the Defendant was taught to be respectful, obedient and well behaved during childhood and he demonstrated those traits as a youth by participating in school, athletics, church and Boy Scout activities in Riviera Beach, Florida. The Defendant was a loyal friend. The Court finds these circumstances do exist, but in light of the passage of time between the Defendant leaving this environment and the occurrence of the crime, the Court will give these mitigating circumstances some weight.

2. The Defendant volunteered for service in the Florida National Guard. The Defendant did volunteer for this service and the Court finds this circumstance does exist and gives it little weight in the weighing process.

3. The Defendant was a dedicated soldier and was a patriot.

This circumstance does exist and the Court will give it little weight.

4. The Defendant has a low average IQ. All the doctors agree on the Defendant's IQ and this circumstance does exist. The Court has earlier indicated it has considered as non-statutory mitigating factors the Defendant's capacity to conform his conduct was somewhat impaired and that he was acting under some emotional disturbance. A component of each of those circumstances included a consideration of the Defendant's IQ. Therefore, this Court will give this circumstance little additional weight in the weighing process.

5. The Defendant loves his wife and children and was a supportive father. This fact does exist, and the Court gives it some weight.

6. The Defendant was a good employee while working for the Knight Paper Company. This fact does exist and the Court gives it little weight.

The Court has considered the evidence presented in support of each of these statutory and non-statutory mitigating circumstances and, in weighing all of the mitigating factors found by the Court to exist against the aggravating factors that exist, the Court finds, as did the advisory jury, that the aggravating factors outweigh all of the mitigating factors.

There being no legal cause why the judgment and sentence of the law should not be pronounced;

IT IS THE SENTENCE OF THE LAW that the Defendant, Kayle B.

Bates, be taken into the custody of the Department of Corrections and there, at an appointed place and time, be put to death for the murder of the victim, Janet Renee White.

May God have mercy on your soul.

You have an automatic appeal to the Supreme Court of Florida from the judgment of guilt and the sentence the Court has imposed and the assistance of counsel in taking said appeal at the expense of the State.

The Sheriff of Bay County is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of this Judgment and Sentence.

DONE AND ORDERED in open court this 25th day of July, 1995 at Panama City, Bay County, Florida.

DON T. SIRMONS, Circuit Judge

FILED
JUL 25 3 59 PM '95
CLERK OF CIRCUIT COURT
BAY COUNTY, FLORIDA

☐ PROBATION VIOLATOR
(Check if Applicable)

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT, IN AND FOR BAY COUNTY, FLORIDA

DIVISION _____

CASE NUMBER 82-661

STATE OF FLORIDA

—vs—

KAYLE BARRINGTON BATES,
Defendant

JUDGMENT

The Defendant, KAYLE BARRINGTON BATES, being personally before this Court represented by Honorable Theodore Bowers, his attorney of record, and having:

(Check Applicable Provision)

- ☒ Been tried and found guilty of the following crime(s)
- ☐ Entered a plea of guilty to the following crime(s)
- ☐ Entered a plea of nolo contendere to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME	CASE NUMBER
I	FIRST DEGREE MURDER	782.04	C F	82-661
II	KIDNAPPING	787.01(1a)	F 1	82-661
III	ATTEMPTED SEXUAL BATTERY	794.011(3) & 777.04	L F	82-661
IV	ARMED ROBBERY	812.03	F 1	82-661

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

****

The Defendant is hereby ordered to pay the sum of ten dollars ($10.00) pursuant to F.S. 960.20 (Crimes Compensation Trust Fund). The Defendant is further ordered to pay the sum of two dollars ($2.00) as a court cost pursuant to F.S. 943.25(4).
Costs waived

☐ The Defendant is ordered to pay an additional sum of two dollars ($2.00) pursuant to F.S. 943.25(8).
(This provision is optional; not applicable unless checked).

(Check if Applicable)

☐ The Defendant is further ordered to pay a fine in the sum of $_____ pursuant to F.S. 775.0835.
(This provision refers to the optional fine for the Crimes Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as part of a sentence pursuant to F.S. 775.083 are to be recorded on the Sentence page(s)).

☐ The Court hereby imposes additional court costs in the sum of $_____

Defendant KAYLE BARRINGTON BATES

Case Number 82-661

SENTENCE

(As to Count II)

The Defendant, being personally before this Court, accompanied by his attorney, Honorable Theodore Bowers, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown,

☐ and the Court having on _____ (date) deferred imposition of sentence until this date.

(Check either provision if applicable)

☐ and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein,

IT IS THE SENTENCE OF THE LAW that;

☐ The Defendant pay a fine of $_____, plus $_____ as the 5% surcharge required by F.S. 960.25.

☒ The Defendant is hereby committed to the custody of the Department of Corrections

☐ The Defendant is hereby committed to the custody of the Sheriff* of _____ County, Florida

(Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one; unmarked sections are inapplicable)

☒ For a term of Natural Life

☐ For a term of _____

☐ For an indeterminate period of 6 months to _____ years.

If "split" sentence complete either of these two paragraphs

☐ Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

☐ However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

Firearm — 3 year mandatory minimum

☐ It is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm.

Drug Trafficking — mandatory minimum

☐ It is further ordered that the _____ year minimum provisions of F.S. 893.135(1)( )( ) are hereby imposed for the sentence specified in this count.

Retention of Jurisdiction

☐ The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

Habitual Offender

☐ The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Jail Credit

☐ It is further ordered that the Defendant shall be allowed a total of _____ credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):

Consecutive/Concurrent

It is further ordered that the sentence imposed for this count shall run ☒ consecutive to ☐ concurrent with (check one) the sentence set forth in count I above.

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BOOK 67 PAGE 32

Defendant KAYLE BARRINGTON BATES

Case Number 82-661

SENTENCE

(As to Count III)

The Defendant, being personally before this Court, accompanied by his attorney, Honorable Theodore Bowers, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown,

☐ and the Court having on _____ (date) deferred imposition of sentence until this date.

(Check either provision if applicable)

☐ and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein,

IT IS THE SENTENCE OF THE LAW that:

☐ The Defendant pay a fine of $_____, plus $_____ as the 5% surcharge required by F.S. 960.25.

☒ The Defendant is hereby committed to the custody of the Department of Corrections

☐ The Defendant is hereby committed to the custody of the Sheriff* of _____ County, Florida

(Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one; unmarked sections are inapplicable)

☐ For a term of Natural Life

☒ For a term of Fifteen (15) years

☐ For an indeterminate period of 6 months to _____ years.

☐ Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

If "split" sentence complete either of these two paragraphs

☐ However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

Firearm — 3 year mandatory minimum ☐ It is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm.

Drug Trafficking — mandatory minimum ☐ It is further ordered that the _____ year minimum provisions of F.S. 893.135(1)( )( ) are hereby imposed for the sentence specified in this count.

Retention of Jurisdiction ☐ The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

Habitual Offender ☐ The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Jail Credit ☐ It is further ordered that the Defendant shall be allowed a total of _____ credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):

Consecutive/Concurrent It is further ordered that the sentence imposed for this count shall run ☒ consecutive to ☐ concurrent with (check one) the sentence set forth in count II above.

Defendant KAYLE BARRINGTON BATES

Case Number 82-661

SENTENCE

(As to Count IV)

The Defendant, being personally before this Court, accompanied by his attorney, Honorable Theodore Bowers, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown,

☐ and the Court having on _____ (date) deferred imposition of sentence until this date.

(Check either provision if applicable)

☐ and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein,

IT IS THE SENTENCE OF THE LAW that:

☐ The Defendant pay a fine of $_____, plus $_____ as the 5% surcharge required by F.S. 960.25.

☒ The Defendant is hereby committed to the custody of the Department of Corrections
☐ The Defendant is hereby committed to the custody of the Sheriff* of _____ County, Florida
(Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one; unmarked sections are inapplicable)

☒ For a term of Natural Life
☐ For a term of _____
☐ For an indeterminate period of 6 months to _____ years.

☐ Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

If "split" sentence complete either of these two paragraphs

☐ However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed in this section:

Firearm — 3 year mandatory minimum ☐ It is further ordered that the 3 year minimum provisions of F.S. 775.087(2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm.

Drug Trafficking — mandatory minimum ☐ It is further ordered that the _____ year minimum provisions of F.S. 893.135(1)( )( ) are hereby imposed for the sentence specified in this count.

Retention of Jurisdiction ☐ The Court pursuant to F.S. 947.16(3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.

Habitual Offender ☐ The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F.S. 775.084(4)(a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Jail Credit ☐ It is further ordered that the Defendant shall be allowed a total of _____ credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the following periods of incarceration (optional):

Consecutive/Concurrent It is further ordered that the sentence imposed for this count shall run ☒ consecutive to ☐ concurrent with (check one) the sentence set forth in count III above.

McCONNELL PRTG. CO.

Defendant KAYLE BARRINGTON BATES

Case Number 82-661

Consecutive/Concurrent (As to other convictions)

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run ☐ consecutive to ☐ concurrent with (check one) the following:

☐ Any active sentence being served.

☐ Specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of Bay County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of this Judgment and Sentence.

The Defendant in Open Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

In imposing the above sentence, the Court further recommends _____

DONE AND ORDERED in Open Court at Bay County, Florida, this 11th day of March A.D., 19 83.

W. Trent Irwin

JUDGE

BOOK 67 PAGE 35

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FILED

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR BAY COUNTY, FLORIDA

2005 JUL 29 P 3:55

STATE OF FLORIDA,

Plaintiff,

HAROLD BAZZEL
CLERK OF COURT
BAY COUNTY, FLORIDA

vs.

Case No. 82-661

KAYLE BATES,

Defendant.

ORDER DENYING RELIEF IN PART
AND ORDER GRANTING EVIDENTIARY HEARING

THIS MATTER is before the Court on the Defendant's Amended Motion to Vacate Judgments of Conviction and Sentence With Special Request For Leave To Amend, filed pursuant to 3.850, Florida Rules of Criminal Procedure. Having held a hearing on March 4, 2005 and having considered the motion, supplemental arguments, court file and records, and being otherwise fully advised, this Court finds as follows:

Claim I. Defendant alleges ineffective assistance of counsel during his 1995 resentencing for counsel's (1) failure to adequately investigate and present available mental mitigation and evidence of Bates' ability to adapt to prison; (2) failure to adequately argue waiver of parole, and (3) failure to make a record of the exclusion of jurors. Defendant shall have an evidentiary hearing on subclaim (1) of Claim I. However, the Court agrees with the State that subclaims (2) and (3) of Claim I were litigated on the merits on direct appeal and thus, are procedurally barred. *Bates v. State*, 750 So. 2d 6, 10-14 (Fla. 1999). Defendant may not re-litigate these issues here under the guise of ineffective assistance of counsel.

Further, this Court agrees that subclaims (2) and (3) are without merit. As for subclaim (2),

the record reflects that counsel did vigorously argue that Defendant should be allowed to waive the possibility of parole so the jury could be instructed that it could recommend a sentence of life without the possibility of parole. (R Vol. II 277-278, 335-338 Vol. IV 638 - 642). Regardless, the Florida Supreme Court rejected these arguments. *Bates* at 10-11. As for subclaim (3), the Florida Supreme Court found that Defendant's counsel, Mr. Hal Richmond, was present for the general qualification procedure. *Bates* at 15. The record refutes Defendant's claim that the prosecutor excused any potential jurors from service and instead reflects that Judge Hess conducted the general jury qualification and personally excused potential jurors who could not serve for hardship reasons. (R Vol. IV 634-635). Counsel protested the lack of a record as to potential jurors who were excused and requested a mistrial. (R Vol. IV 661 - 663, VII 1264 - 1271). The Florida Supreme Court denied Defendant's claim that the Court erred in conducting general jury qualification in his absence, found no abuse of discretion in the Court's denial of Defendant's motion for mistrial and found no error in proceeding with jury pool qualification on May 15. *Id.*

Claim II. Defendant alleges that he was deprived of due process and a fair trial when he was prosecuted at trial and both resentencings by the Bay County State Attorney who failed to disclose his personal financial interests and impermissible outside influences that violated *Kyles v. Whitley*. Defendant also alleges that prosecutorial misconduct rendered Defendant's trial fundamentally unfair.

To the extent Defendant argues that the prosecutor improperly opposed Defendant's efforts to waive the possibility of parole so the jury could be instructed that it could recommend a sentence of life without the possibility of parole, as set forth above, the Florida Supreme Court rejected the substantive claim on direct appeal and thus it is procedurally barred. *Bates* at 10-11. Defendant's

claim that the State improperly argued the non-statutory aggravator of future dangerousness was also raised and rejected on appeal. Defendant does not allege that the State drafted the sentencing order in his 1995 resentencing which is currently before the Court. Many of Defendant's allegations are irrelevant to the proceedings currently before the Court. For example, on the issue of corruption, allegations concerning misuse of campaign funds by Mr. Appleman in 1999-2001 occurred after the judgment of conviction in 1983 and the 1995 resentencing. There are no facts alleged which provide any specific connection between any of the campaign contributions and any improper conduct which occurred during the 1983 trial and 1995 resentencing. See *State v. Bullard*, 858 So.2d 1189 (Fla. 2nd DCA 2003). Although Sheriff Pitts was indicted as alleged by the defendant, the defendant has not pled that Sheriff Pitts was convicted of any offense therefore Sheriff Pitts' credibility could not have been impeached at the time of Bates' trial in 1983 solely upon an indictment in 1988. Nor was Sheriff Pitts' credibility an issue at the penalty phase in 1995. Further, Defendant's allegations of a *Giglio* or *Brady* violation are conclusory. Defendant has failed to sufficiently allege materiality or prejudice specifically to Defendant's case. For example, in paragraph 25 of the defendant's 3.850 motion, the defendant claims "it is clear that the pressure exerted by this group has had its effect on Mr. Bates' legal proceedings to his prejudice". However, the defendant never states exactly what "pressure" was exerted and "how" it was exerted and what exact effect there was on these proceedings if it had occurred. *Kyles v. Whitley*, 514 U.S. 419, 435 (1995);*Maharaj v. State*, 778 So. 2d 944, 953 (Fla. 2001); *Giglio v. United States,* 405 U.S. 150 (1972); *Rogers v. State*, 782 So.2d 373 (Fla. 2001).

Claim III. Defendant alleges that Defendant's resentencing jurors relied on unreliable forensic findings in aggravation of Defendant's sentence. Defendant is basically asking this Court to

reconsider this Court's ruling on Defendant's Motion For Postconviction DNA Testing. This Court rejected Defendant's Motion For Postconviction DNA Testing and Defendant should not be permitted to relitigate issues already raised and rejected by this Court. *See Motion For DNA Testing;State's Response;Order Denying Defendant's Motion For DNA Testing.*

Claim IV. Defendant alleges he was denied his rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution as a result of systematic discrimination in the selection of his jury venire, including the lack of a fair cross-section of his peers. Defendant's claim is procedurally barred. *See e.g., Robinson v. State*, 707 So. 2d 688, 698 (Fla. 2003); *Spenkelink v. State*, 350 So. 2d 85 (Fla. 1977). Further, Defendant's allegations are conclusory and insufficient to warrant an evidentiary hearing. *Gordon v. State*, 863 So. 2d 1215, 1218 (Fla. 2003);(R Vols. IV, V, VI).

Claim V. Defendant alleges he was denied his rights under *Ake v. Oklahoma* at the resentencing when counsel failed to obtain an adequate mental health evaluation, failed to present mental health mitigation and failed to adequately challenge the State's mental health expert. Defendant claims this violated his rights to due process and equal protection under the Fourteenth Amendment as well as his rights under the Fifth, Sixth, and Eighth Amendments.

It appears that to some extent this allegation is the same as Claim I. As set forth above, Defendant will be granted an evidentiary hearing on Defendant's allegations in subclaim (1) of Claim I, that counsel was ineffective for failing to investigate and present available mental health evidence. Defendant would be able to explore his claim that counsel was ineffective for failing to call Dr. Crown in support of subclaim (1) of Claim I. However, as to the remainder of Claim V, Defendant's arguments amount to a claim that he was deprived of the right to an evaluation by a

competent mental health expert pursuant to *Ake v. Oklahoma,* 105 S. Ct. 1087 (1985). Defendant's claim is procedurally barred as this claim must be raised on direct appeal. *Marshall v. State*, 854 So. 2d 1235 (Fla. 2003). The Florida Supreme Court rejected an *Ake* claim Defendant raised on appeal alleging that the trial court erred in denying him additional expert assistance after an MRI failed to substantiate Dr. Crown's findings regarding organic brain damage. *Bates* at 15-17. Further, the record reflects that Defendant did receive evaluations by competent mental health experts. (R Vol. XIII 34-68, 94-126).

Claim VI. Defendant alleges that the rules prohibiting Defendant's lawyers from interviewing jurors to determine if constitutional error was present violates equal protection principles, the First, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution. This claim is procedurally barred as it could or should have been raised on direct appeal. *Marquad v. State*, 850 So. 2d 417 (Fla. 2003);*Rose v. State*, 774 So. 2d 629, 637 n. 7 (Fla. 2000). Further, Defendant has not alleged any actual misconduct by the jury.

Claim VII. Defendant alleges that his sentence of death violates the Fifth, Sixth, Eighth and Fourteenth Amendments because the penalty phase jury instructions were incorrect under Florida law and shifted the burden to Defendant to prove that death was inappropriate and trial counsel was ineffective for failing to object to these errors. Defendant's claim is procedurally barred as it could or should have been raised on direct appeal. *Hodges v. State*, 885 So. 2d 338 (Fla. 2004);*Allen v. State*, 854 So. 2d 1255 (Fla. 2003); *Hoffman v. State*, 800 So. 2d 174 (Fla. 2001). Raising a claim that is procedurally barred in terms of ineffective assistance of counsel will not revive it. *Allen v. State*, 854 So. 2d 1255 (Fla. 2003);*Woods v. State*, 531 So. 2d 79 (Fla. 1988). Further, Defendant's

allegations are without merit.

Claim VIII. Defendant alleges that his sentence of death is being exacted pursuant to a pattern and practice of Florida prosecuting authorities, courts and juries to discriminate on the basis of race in the administration of the rights guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution. Defendant's allegations are conclusory and insufficient. Defendant does not allege that any evidence exists in Defendant's own case to support an inference that racial considerations played a part in his prosecution or sentence and thus, is summarily denied. *Foster v. State*, 614 So. 2d 455 (Fla. 1992);*Harris v. Pulley*, 885 F. 2d 1354, 1375 (9 th Cir. 1988). *See also*, *McCleskey v. Kemp*, 481 U.S. 279, 107 S. Ct. 1756, 1767 (1987);*McCrae v. State*, 510 So. 2d 874, 879 (Fla. 1987).

Claim IX. Defendant alleges that the finding of the aggravating factor of heinous, atrocious and cruel violated the Eighth Amendment, *Jackson v. Virginia*, 443 U.S. 307 (1979), and *Lewis v. Jeffers*, 110 S. Ct. 3092 (1990), because no rational factfinder could find the elements of this aggravator proven beyond a reasonable doubt. On direct appeal Defendant argued that the trial judge erred in finding the murder was heinous, atrocious and cruel. The Florida Supreme Court rejected Defendant's claim on the merits. *Bates* at 18. Thus, Defendant's claim is procedurally barred. Defendant's argument is also without merit.

Claim X. Defendant alleges Defendant is innocent of first-degree murder and of the death penalty when he was denied an adversarial testing in violation of the Eighth and Fourteenth Amendments to the United States Constitution. An attack on unconstitutionally vague or overbroad jury instructions is procedurally barred as it could and should have been raised on direct appeal. *Marquad v. State*, 850 So. 2d 417 (Fla. 2002). Defendant's argument that the death penalty in this

case was not proportional was already rejected by the Florida Supreme Court and thus, is procedurally barred. *Bates* at 12. On direct appeal the Florida Supreme Court also rejected Defendant's arguments challenging each of the three aggravators found in this case. Defendant's allegations are without merit.

Claim XI. Defendant argues that the aggravating circumstances were overbroadly and vaguely argued in violation of *Maynard v. Cartwright*, *Hitchcock v. Dugger*, and the Eighth and Fourteenth Amendments. An attack on unconstitutionally vague or overbroad jury instructions is procedurally barred as it could and should have been raised on direct appeal. *Marquad v. State*, 850 So. 2d 417 (Fla. 2002). Further, Defendant's allegations are insufficiently pled. *Griffin v. State*, 866 So. 2d 1 (Fla. 2003).

Claim XII. Defendant alleges he is denied his rights under the Eighth and Fourteenth Amendments of the United States Constitution and under the corresponding provisions of the Florida Constitution because execution by lethal injection is cruel and/or unusual punishment. Defendant's claim is procedurally barred as it could and should have been raised on direct appeal. Further, the Florida Supreme Court has consistently rejected claims identical to Defendant's claim. *Sochor v. State*, 883 So. 2d 776 (Fla. 2004).

Claim XIII.. Defendant alleges he is denied his rights under the Eighth and Fourteenth Amendments of the United States Constitution, the corresponding provisions of the Florida Constitution and under international law because execution by electrocution and/or lethal injection is cruel and unusual punishment. Defendant's claim is procedurally barred as it could and should have been raised on direct appeal. Further, the Florida Supreme Court has consistently rejected claims identical to Defendant's claim. *Sochor v. State*, 883 So. 2d 776 (Fla. 2004).

Claim XIV. Defendant alleges Florida's capital statute is unconstitutional on its face and as applied in this case because it fails to prevent the arbitrary and capricious imposition of the death penalty. Defendant's claim could and should have been raised on direct appeal and thus, is procedurally barred. *Sochor v. State*, 883 So. 2d 776 (Fla. 2004). Further, the Florida Supreme Court has consistently rejected claims identical to Defendant's claims. *Lugo v. State*, 845 So. 2d 74 (Fla. 2003); *Walton v. State*, 847 So. 2d 438 (Fla. 2003).

Claim XV. Defendant alleges he was denied his right to a fair and impartial jury at resentencing by prejudicial pretrial publicity, by the lack of a change of venue and by the events in the court room during trial and that the trial court erred or trial counsel was ineffective in this regard. These issues could or should have been raised on direct appeal and thus, are procedurally barred. Trial counsel filed a motion for change of venue and renewed it immediately before jury selection commenced. The Court reserved ruling on the motion until the end of voir dire. (Vol. I 33-34, Vol. IV 644, 648, 656). Defendant has not indicated any basis for counsel to renew the motion after the jury was seated. Further, Defendant's allegations are conclusory and insufficiently pled.

Claim XVI. Defendant alleges that his rights under the Fifth, Eighth and Fourteenth Amendments were violated when the Court admitted into evidence irrelevant, gruesome and cumulative photographs and that counsel was ineffective to the extent counsel conceded admissibility. Defendant's allegations that the trial court erred in admitting the photographs could or should have raised this issue on direct appeal and thus, is procedurally barred. Further, Defendant's allegations are without merit. The record reflects that trial counsel did object to the admission of the photos prior to trial and then renewed it at the time the State offered the photos. The record also reflects that Dr. Lauridson selected photographs relevant to the jury's consideration

of the aggravating factors that the State relied on in seeking the death penalty. (Vol. IV 655, Vol. X 284 - 288).

Claim XVII[1] Defendant alleges that he was denied a proper direct appeal contrary to Florida law and the Sixth, Eight and Fourteenth Amendments, due to errors in the record and that trial counsel was ineffective in this regard. Defendant's claim is procedurally barred. *Thompson v. State*, 759 So. 2d 650, 660 (Fla. 2000). Further, Defendant's allegations are conclusory and thus, insufficiently pled. *Griffin v. State*, 866 So. 2d 1 (Fla. 2003).

Claim XVIII. Finally, Defendant alleges that his trial was fraught with procedural and substantive errors which cannot be harmless when viewed as a whole because the combination of errors deprived him of the fundamentally fair trial guaranteed under the Sixth, Eighth, and Fourteenth Amendments. This claim will be considered at the evidentiary hearing. It is therefore,

ORDERED AND ADJUDGED that Defendant shall have an evidentiary hearing on subclaim I of Claim I, and Claim XVIII. Otherwise, the remainder of Defendant's claims shall be **DENIED** as set forth above.

DONE AND ORDERED in Panama City, Bay County, Florida, this 29th day of July 2005.

DON T. SIRMONS
CIRCUIT JUDGE

[1] The Court notes for clarification purposes that Defendant mistakenly numbered this claim XVI instead of XVII in his motion.

I HEREBY CERTIFY that a true and exact copy of the foregoing has been provided by U.S. Mail to Terry L. Backhus and Suzanne Keffer, CCR-South,101 NE 3rd Avenues, Suite 400, Fort Lauderdale, FL 33301, Meredith Charbula, Office of the Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, FL 32399-1050, and Joe Grammar, ASA, Office of the State Attorney, P.O. Box 1040, Panama City, FL 32402, this 29 day of July, 2005.

ST. V. BATES
#82-661

Denise Hendrix
Denise Hendrix, Judicial Assistant

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA,

Plaintiff,

vs. CASE NO. 82-661C

KAYLE BARRINGTON BATES,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR POST CONVICTION RELIEF FOLLOWING EVIDENTIARY HEARING

THIS CAUSE has come before the Court upon the defendant, Kayle Barrington Bates', Motion for Post Conviction Relief pursuant to Rule 3.851, Florida Rules of Criminal Procedure. After reviewing the defendant's motion and the State's response, the Court held a *Huff* hearing and on July 29, 2005, entered an order summarily denying the defendant's claims except as to his claims of ineffective assistance of counsel based upon failing to adequately investigate and present mental mitigation evidence and to present evidence of Bates' ability to adapt to prison as well as his claim of cumulative error. On October 16 and 17, 2006, this Court held an evidentiary hearing on these remaining claims.

To establish that defendant's attorney was ineffective for failing to adequately investigate and present mental mitigation evidence and to present evidence of Bates' ability to adapt to prison, the defendant must prove two elements. First, the defendant must show his counsel's performance was deficient. Second, the defendant must show that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668 (1984).

The Supreme Court has held that when counsel fails to investigate and present mitigating evidence "the obligation to investigate and prepare for the penalty portion of a capital case cannot be overstated". *State v. Lewis*, 838 So.2d 1102, 1113 (Fla. 2002). The Court must examine what evidence was not investigated and what were counsel's reasons for not doing so. *Asay v. State*, 769 So.2d 974, 985 (Fla. 2000). In *Wiggins v. Smith*, 539 U.S. 510, 522-23 (2003), the U.S. Supreme Court held:

> Our principal concern in deciding whether counsel exercised "reasonable professional judgment" is not whether counsel should have presented a mitigation case. Rather, we focus on whether the investigation supporting counsel's decision not to introduce mitigating evidence. . . was itself reasonable. In assessing counsel's investigation, we must conduct an objective view of their performance, measured for "reasonableness under prevailing professional norms", which includes a context-dependent consideration of the challenged conduct, as seen "from counsel's perspective at the time".

The Florida Supreme Court has held the potential of opening the door to other damaging evidence could be considered a factor in supporting a decision not to call a mental health expert who had evaluated a defendant. *See Jones v. State*, 928 So.2d 1178 (Fla. 2006) and *Sliney v. State*, 31 Fla.L.Weekly 5776 (Fla. 2006).

The Florida Supreme Court has also noted that the fact that sentencing counsel testified that there was not a strategic reason for not presenting mental mitigation does not require a post conviction court to find ineffective assistance of counsel. *See Breedlove v. State*, 692 So.2d 874, 877 (Fla. 1997).

In the instant case, Thomas Dunn, as sentencing counsel, did offer extensive testimony from Dr. Larson and Dr. McMahon as mental health experts to explain "why" the defendant acted the way he did. Basically they testified he suffered from an extreme mental disorder or emotional disturbance at the time of the murder due to several factors.

However, sentencing counsel did not offer the testimony of a third mental health expert, Dr. Crown. Defense claims the failure to use the testing of Dr. Crown rendered sentencing counsel's performance ineffective. Defendant alleges Dr. Crown's testimony that the defendant suffered from a functional organic brain impairment was essential for the jury to consider in mitigation and the failure to present this testimony was not based on a strategic decision and was prejudicial to the defendant's case.

The record clearly shows that the defendant's defense strategy in mitigation was to show the defendant had been a productive member of society who had served honorably in the military, who had been subjected to stressful situations, who supported and led his family and who reacted totally out of character to a very stressful situation by becoming "unwrapped" and "losing it".

In his opening statement, Mr. Dunn told the "story" to the jury by referring to this incident as a burglary that went bad (Trial transcript Vol. V, page 41) and that they needed to ask themselves the question "why did this happen?" (Trial transcript Vol. V, page 44). On pages 48 – 49 of Mr. Dunn's opening statement he referred to the mental health issues. He mentioned that the jurors were going to hear from three mental health experts "Dr. Jim Larson, Dr. Elizabeth McMahon and Dr. Berry Crown, who are going to tell you about Mr. Bates' below average intelligence, and some of the personality and emotional problems that he has struggled with and that he's overcome but which built up and took over him when he was caught in a situation that I suspect Mr. Bates never thought he could ever be in before". (Trial transcript Vol. V, Page 49)

He specifically never told the jurors about any organic damage to Mr. Bates' brain or made any reference to Dr. Crown's testimony being any different from the testimony

of Dr. Larson and Dr. McMahon. Instead he told the jurors that Mr. Bates' mental health problems caused him to explode under these situations and they should consider those mental health problems not as a medical or legal excuse or defense but as a mitigating fact to answer why this happened. This was sound trial strategy by Mr. Dunn to use the defendant's mental health as a mitigating factor and for the jurors to understand "why" this crime occurred the way it did. Mr. Dunn followed this up by presenting the testimony of Dr. Larson and Dr. McMahon, along with the testimony of 20 lay witnesses. Two of these witnesses testified to Mr. Bates' service in the National Guard.

Dr. Larson was offered as an expert in forensic psychology. Dr. Larson then testified to the results of his forensic evaluation of Mr. Bates. Dr. Larson stated that there was no indication Mr. Bates was suffering from psychosis or mental confusion or mental illness but there was some level of anxiety, depression and paranoia on a mild level (000546). The MMPI tests were consistent and his IQ was in the low average range. Dr. Larson testified as to the presence of "scatter" in Mr. Bates' cognitive testing (000553, 000554). Dr. Larson also pointed out Mr. Bates as being a high strung person that can have anxiety attacks or panic disorders. Dr. Larson related the presence of a medically documented panic or anxiety attack in the defendant's prison medical records (000558-00559). On pages 000564 through 000567, Mr. Dunn asked Dr. Larson a hypothetical question which included the victim spraying mace during a struggle after she or Mr. Bates had startled each other when she returned from lunch and what affect that would have on Mr. Bates and how he would react. Dr. Larson testified that because Mr. Bates was not very bright, he would "become unwrapped" and "he could just lose it" (000565). Dr. Larson opined that because of that, Mr. Bates' capacity to conform his conduct under

the requirements of the law was substantially impaired and that at the time of the offense he was suffering from an extreme mental or emotional disturbance (00566). This was evidence to support a statutory mitigating factor. On pages 000580 and 000581, Dr. Larson was questioned and cross-examined concerning Bates problem with "mace" or "tear gas" and the effect on Bates' behavior.

Dr. McMahon also testified as a forensic psychologist. She testified extensively as to the results of her personality testing of Mr. Bates (000610 – 000616). On pages 000619 – 000620, she testified to Mr. Bates' reaction to a stressful situation. On pages 000621 to 000622 she responded to a hypothetical situation where Mr. Bates was confronted by the victim and sprayed with mace. She testified he would act very impulsively without thought and without evaluating the alternatives. His anxiety would overrule his cognitive process. She concurred that, in her opinion, Mr. Bates was under extreme mental or emotional disturbance at the time of the crime and his capacity to conform his conduct to the requirements of the law was substantially impaired. Again, this was additional evidence of a statutory mitigating factor as well as an answer to the "why" question.

The Court notes that in its sentencing order this Court did find as a non-statutory mitigating factor that Mr. Bates' capacity to conform his conduct to the requirements of the law was somewhat impaired and gave it significant weight. The Court also found as a non-statutory mitigating factor that Mr. Bates was acting under some mental or emotional disturbance at the time of the offense and gave it significant weight.

It is, therefore, clear that trial counsel had investigated and presented evidence in mental mitigation. As to the decision not to offer Dr. Crown's testimony as to the

existence of an organic brain impairment, the Court finds this was a strategic decision made in light of the existence of several factors. To fully understand why this Court believes this was, in fact, a strategic decision made by Mr. Dunn, it is necessary to closely review the record of the trial proceeding and the potential use of the MRI by the State in rebuttal of Dr. Crown's testimony.

First, as noted previously, counsel had presented the testimony of Dr. Larson and Dr. McMahon to establish statutory mental mitigation and to answer the "why" question raised during opening statements. Dr. Crown's testimony could have been considered cumulative except for the additional element of the existence of "organic brain impairment" and its relationship to "stress".

Mr. Dunn did present testimony as to the defendant's reactions to his military experiences including his exposure to stress in the riots in Miami and to tear gas. Indeed, as noted earlier, Mr. Dunn used these in his hypothetical questions to his two mental health experts on the existence of any mitigating factors and to "why" the crime occurred. In response to a question on cross-examination on the significance of mace, Dr. Larson opined that "I just think it's, I think it's one of the variables that probably participated this situation". (Trial record Vol. IX, May 23, 1995, page 79, lines 10-12). Mr. Dunn offered extensive testimony as to aspects of the defendant's life experiences and to how he was acting immediately after the crime had occurred. All of this testimony was offered not only as mitigating in and of themselves but also as additional support of the mental health experts' opinions as to why the crime occurred.

Second, had Mr. Dunn called Dr. Crown, he would have had to negate the testimony of the State's rebuttal expert, Dr. Gregory Presser, a neurologist, who had

administered the MRI which showed the defendant had no organic brain damage. Mr. Dunn was fully aware of the existence of this report prior to his decision not to call Dr. Crown.

Third, in reviewing the record, the defendant's argument that Mr. Dunn had told the jury in opening statement that Dr. Crown would present evidence of organic brain damages is in error. As noted previously, Mr. Dunn told the jurors that there were three doctors that would testify to the defendant's mental health problems. However, organic brain impairment was never mentioned nor was there any reference as to the specifics of Dr. Crown's potential testimony. Dr. Larson and Dr. McMahon thoroughly covered the issues raised by Mr. Dunn in his opening statement. The State never mentioned the fact that Dr. Crown did not testify.

Furthermore, on May 18, 1995, after the opening statements by Mr. Dunn in which Dr. Crown's name was mentioned, Mr. Meadows, on behalf of the State, advised the Court that depending on what Dr. Crown would say during his deposition, the State may have to get a neuropsychologist to rebut Dr. Crown (Trial transcript Vol. V, pg. 67, 68). On May 19, 1995, at the close of Court, the State again mentioned the taking of Dr. Crown's deposition on Sunday and the potential need for an additional expert. (Trial transcript Vol. VI, pages 129-130). On May 22, 1995, the State advised the Court it had taken Dr. Crown's deposition on Sunday and that Dr. Crown opined that the defendant had organic brain impairment. The State then filed a Motion for Diagnostic Testing. In objecting to the motion, Mr. Dunn stated that Dr. Larson has testified in the first penalty proceeding that the results of the tests he performed indicated the defendant had some mild organic brain damage. Therefore, according to Mr. Dunn, the State should not be

surprised as to Dr. Crown's testimony. Furthermore, Mr. Dunn stated that Dr. Crown relied upon the testing done by Dr. Larson and that Dr. Crown's additional testing only confirmed what Dr. Larson's testing had shown. Mr. Dunn stated "There is absolutely nothing new as far as what we are saying". Mr. Dunn argued that the nature of the organic brain damage that Dr. Larson testified to and that Dr. Crown would testify to was not structural but functional. Mr. Dunn pointed out that none of those types of functional deficits or impairments would likely show up on an MRI or CAT scan (Trial record May 22, 1995, Vol. VII, pg. 3-6). On page 9, Vol. VII, lines 23-25 and page 10, lines 1-15, the Court, in ruling on the State's motion, noted that Mr. Dunn had already anticipated that the MRI would not show functional deficits and therefore there would be no prejudice to the defendant by allowing the test because Dr. Crown would be able to testify as to why it would come out negative. Specifically, the Court stated at lines 10-15 on page 10, "But if it came out negative with no signs on the CAT scan or whatever, of organic brain impairment that would still be able to be answered by Dr. Crown's testimony. So I think the defense has anticipated that". On page 11, Vol. VII, lines 9-11, Mr. Dunn stated "So the Court is aware, obviously I don't want my mental health experts to testify until I know what the results show". Indeed, that is what happened.

On May 22, 1995, the MRI was performed on Mr. Bates by Dr. Gregory Presser. Mr. Dunn reviewed the results and on May 23rd, before bringing the jury in that morning, Mr. Dunn requested a consultant to better understand what the MRI exam meant (Record on appeal, Vol. XIII, page 000506). He asked for the appointment of a neuroradiologist, a behavioral neurologist and radiologist.

He specifically requested the defendant be examined with a spec. scan with Ceretec using a double or triple headed camera. He also requested a quantitative EEG to include evoked potential studies to confirm Dr. Crown's finding as to organic brain damage of the functional type Mr. Bates allegedly suffered from (000507).

Mr. Dunn further stated he had been in consultation with a psychiatrist who was attempting to find a behavioral neurologist and the tests would take two weeks to set up and there were very few spec. scans with Ceretec capability in the United States. On page 000508, Record on appeal, Vol. XIII, the Court denied the request for the additional experts and the additional testing and noted the availability of Dr. Larson, Dr. McMahon and Dr. Crown to testify. This decision was affirmed on direct appeal. *State v. Bates,* 750 So.2d 6, 16-17 (Fla. 1999). On page 000509, Mr. Dunn stated that Dr. Crown was not a neuroradiologist or neurologist. Mr. Dunn proffered that Dr. Crown did not read the MRI's and did not use "these things". Mr. Dunn also proffered that when Dr. Crown did use them, he has to have consultation. The Court accepted Dr. Crown's deposition in support of the defendant's motion. In the direct appeal, the defendant argued that the refusal to appoint the additional experts compelled him to abandon a significant mental health defense involving organic brain damage. The Supreme Court noted that the record plainly showed the negative MRI was consistent with what appellant's counsel believed it would show (Id. pg. 16). This reaffirms that counsel was not "surprised" by results of the MRI as he testified to at the post conviction hearing. Furthermore, Mr. Dunn's argument on appeal that he was "compelled to abandon" the organic brain impairment evidence because of the denial of his request for additional experts is totally inconsistent with the argument now being made that he was ineffective because he was "fearful" he could not

rebut the neurologist and that he was "overwhelmed". This Court's ruling did not make his performance ineffective.

The MRI results were known before Mr. Dunn presented the testimony of Dr. Larson and Dr. McMahon and before he made his decision to close his case without putting on the additional testimony of Dr. Crown. As noted previously, both of these doctors did not go into the area of the defendant having organic brain impairment.

These factors strongly suggest that trial counsel was fully aware of the consequences of raising the issue of the existence of a "functional" organic brain impairment in light of the MRI showing no organic brain impairment and therefore chose to avoid confusing the opinions of Dr. Larson and Dr. McMahon in answering the question "Why did this happen?" with the issue of was there or was there not organic brain impairment or functional brain impairment. In following this trial strategy, counsel was effective in keeping the issue of the normal brain scan from being considered by the jury and furthermore removing the potential risks in exposing Dr. Crown's opinion to rigorous cross-examination by the State. Indeed, if the jury were to have disregarded Dr. Crown's opinion, it could have also adversely impacted upon the weight the jury gave to the testimony of Dr. Larson and Dr. McMahon.

There is an additional issue as to if technology has advanced since May of 1995 to the point that questions that could not have been answered then are able to be answered now. In the post conviction hearing, Dr. Crown testified "I think we have learned a lot in the last decade about the inconsistencies and fallacies of MRI which is why we have now moved to functional neuroimaging, functional MRI's which give us a better picture of what actually goes on in the brain and how it works. And that correlates with the

neuropsychological testing". (PC-R2 129). How can Mr. Dunn be ineffective in 1995 in not presenting theories and techniques that were developed in the following ten years? As noted previously, he was aware he had Dr. Crown available to rebut the negative MRI but he would have had to do so under what was available in 1995. From a review of his arguments, he was aware of the use of certain types of scans with certain types of camera. His self serving statement that "well, I think today I know I had it. I just didn't realize that I had it at the time and, yeah, I would have presented it", (PC-R2 102) is without merit.

The trial record reflects Mr. Dunn thoroughly examined and cross-examined each witness. His opening statement and his closing argument were cogent and to the point. His objective to present the defendant as a person who reacted totally out of character to a stressful situation was effectively met. His current claim that he was so overwhelmed and was exhausted that he neglected to call Dr. Crown is without merit. Nothing in the record supports this claim. Indeed, the arguments made by Mr. Dunn in support of his motions and in opposition to the State's motion on this issue at the sentencing trial clearly refute his claim that he was unaware of what was going on. Instead, it reflects that he was, in fact, anticipating potential moves and consequences as would a proficient chess player before making a strategic decision. There is nothing ineffective in counsel's performance in this area.

The defendant presented no additional evidence to support his claim that trial counsel was ineffective in failing to present evidence of Bates' ability to adapt to prison. As noted previously, sentencing counsel's goal was to show Mr. Bates as a good family man, a model soldier, a productive member of society who reacted totally out of character

to a very stressful situation by "becoming unwrapped" and "losing it". The record reflects counsel presented the testimony of 20 lay witnesses as to these elements of Mr. Bates' character along with two mental health experts. Two witnesses testified to Mr. Bates' service in the National Guard. In doing so, Mr. Dunn was not ineffective by failing to raise the specific issue of the defendant's ability to adapt to prison. If the sentencing jury had answered the "why" question the way Mr. Dunn had argued it to them (i.e.) it was totally out of his character and due to a significant mental health issue, they would have, by default, also considered his future behavior in prison.

Due to the findings that Mr. Dunn's performance was not ineffective, the additional claim of cumulative error must also be denied. It is therefore

ORDERED AND ADJUDGED that the Motion for Post Conviction Relief filed by the defendant, Kayle Barrington Bates, pursuant to Rule. 3.851, Florida Rules of Criminal Procedure, be and is hereby denied. The defendant is hereby advised he has the right to appeal the denial of his motion by filing a written Notice of Appeal within 30 days from the date hereof.

DONE AND ORDERED this 28 day of February 2007 at Panama City, Bay County, Florida.

DON T. SIRMONS, Circuit Judge

copies to:
Joe Grammer, Esq.-ASA
Meredith Charbula, Esq. – AGA
Terri Backhus, Esq. c/o Suzanne Keffer, Esq.
Defense Counsel

APPENDIX C

Filing # 227933023 E-Filed 07/23/2025 07:49:56 PM

IN THE FOURTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR BAY COUNTY, FLORIDA

EXECUTION SCHEDULED FOR AUGUST 19, 2025
AT 6:00 P.M. EASTERN (5:00 P.M. CENTRAL)

TRIAL COURT PROCEEDINGS MUST BE COMPLETED BY
Wednesday, July 30, 2025, at 12:00 P.M. EASTERN (11:00 A.M. CENTRAL)

STATE OF FLORIDA,

Case No.: 1982-CF-00661
CAPITAL CASE

v.

KAYLE B. BATES,

Defendant.

ORDER SUSTAINING OBJECTIONS AND
DENYING DEFENDANT'S DEMANDS FOR PUBLIC RECORDS

THIS MATTER came before the Court upon Defendant's Demands for Additional Public Records, filed on July 22, 2025, pursuant to Florida Rule of Criminal Procedure 3.852(i); and Objections that were filed by Office of the State Attorney, 14th Judicial Circuit, on July 22, 2025; by Bay County Sheriff's Office on July 23, 2025; by Office of the Medical Examiner, District Eight on July 23, 2025; by Florida Department of Corrections on July 23, 2025; by Florida Department of Law Enforcement on July 23, 2025; by Office of Executive Clemency, Florida Commission on Offender Review on July 22, 2025; and by Executive Office of the Governor on July 23, 2025.

A Zoom hearing was held on July 23, 2025. The following individuals were present: Laurie Hughes, Office of the State Attorney, 14th Judicial Circuit; Janine Robinson, Office of the Attorney General;[1] Charmaine Millsaps, Office of the Attorney General; Kevin Obos, Lynn

[1] Janine Robinson also represented the Office of the Medical Examiner, District Eight.

Haven Police Department; Waylon Thompson, Bay County Sheriff's Office; Lauren Sparks, Deputy General Counsel, Bay County Sheriff's Office; James Driscoll, Capital Collateral Regional Counsel—South; Jeanine Cohen, Capital Collateral Regional Counsel—South; Michael Cookson, Capital Collateral Regional Counsel—South; Lindsey Brigham, Florida Department of Law Enforcement; Kristen Lonergan, Florida Department of Corrections; William Gwaltney, Florida Department of Corrections; Christina Porrello, Florida Department of Corrections; Rana Wallace, Florida Commission on Offender Review; and Zachary Loyed, Executive Office of the Governor.

Demand on the Lynn Haven Police Department

In its response, the Lynn Haven Police Department certified that it had complied to the best of its ability with the public records demand. It acknowledged that its records in this case had been destroyed when Hurricane Michael made landfall in Bay County, Florida on October 10, 2018. (This Court notes that much of this community suffered catastrophic damage from Hurricane Michael, a Category 5 hurricane and that damage included destruction of the Lynn Haven Police Department.) The Defendant acknowledged during the hearing that he had received the response with the sole surviving record and was satisfied with the response of the Lynn Haven Police Department. This Court determines the agency has complied with the demand. There is no further objection from any party or ruling necessary as to this demand.

Demand on the Office of the State Attorney, 14th Judicial Circuit

In its response, the State acknowledged that it "has scanned all additional material in its case file from 2002 until present and provided such directly to counsel for the Defendant via electronic means on July 22, 2025 at 15:51 CT, with receipt by defense counsel." The State also

asserts that it previously submitted all records to the records repository through December 2002. Defendant acknowledged that he had received records from the State. This Court determines the State has complied with the demand.

As to any additional records that the State was not aware of and did not provide, the Court determines that its objection should be sustained. The demand is overbroad and unduly burdensome. Defendant fails to show good cause for not requesting these records until after the death warrant was signed. Defendant also does not show *how* the request relates to a colorable claim for relief. For those reasons, the Defendant fails to meet its burden under Florida Rule of Criminal Procedure 3.852 *See Tompkins v. State*, 872 So. 2d 230, 244 (Fla. 2003) (citations omitted); *Sims v. State*, 753 So. 2d 66, 70 (Fla. 2000); *Muhammad v. State*, 132 So. 3d 176, 200 (Fla. 2013); *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019); *Asay v. State*, 224 So. 3d 695, 700 (Fla. 2017); *Tanzi v. State*, 407 So. 3d 385, 391–92 (Fla. 2025); *Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404, at *7 (Fla. July 22, 2025). Accordingly, the State's objection is **SUSTAINED**, and the demand is **DENIED**.

Demand on the Bay County Sheriff's Office

In its objection, the Bay County Sheriff's Office acknowledged that it has provided "the records in the possession of the Bay County Sheriff's Office since the previous request for public records were produced to counsel for Mr. Bates." Defendant acknowledged that he received records from the agency. This Court determines the Bay County Sheriff's Office has complied with the demand.

As to any additional records that the Bay County Sheriff's Office was not aware of and did not provide, the Court determines that its objection should be sustained. The demand is

overbroad and unduly burdensome. Defendant fails to show good cause for not requesting these records until after the death warrant was signed. Defendant also does not show *how* the request relates to a colorable claim for relief. For those reasons, the Defendant fails to meet its burden under Florida Rule of Criminal Procedure 3.852 *See Tompkins*, 872 So. 2d at 244; *Sims*, 753 So. 2d at 70; *Muhammad*, 132 So. 3d at 200; *Dailey*, 283 So. 3d at 792; *Asay*, 224 So. 3d at 700; *Tanzi*, 407 So. 3d at 391–92; *Zakrzewski*, No. SC2025-1009, 2025 WL 2047404, at *7 (Fla. July 22, 2025). Accordingly, the Bay County Sheriff's Office's objection is **SUSTAINED**, and the demand is **DENIED**.

Demand on the Office of the Medical Examiner, District Eight

Defendant demands autopsy records, including photographs, laboratory and toxicology reports, radiological images, and autopsy protocols, from the Medical Examiner for 14 capital defendants executed in Florida between April 12, 2023, and July 15, 2025. Defendant argues that the records are necessary for an as-applied constitutional challenge under the Eighth Amended to Florida's lethal injection protocol. However, the demand is overly broad and unduly burdensome. Defendant fails to show good cause for not requesting these records until after the death warrant was signed. Defendant also fails to show *how* the records relate to a colorable claim for postconviction relief. Furthermore, Florida Supreme Court precedent is crystal clear that lethal injection records themselves do not relate to a colorable claim for relief. For those reasons, the Defendant fails to meet its burden under Florida Rule of Criminal Procedure 3.852 *See Tompkins*, 872 So. 2d at 244; *Sims*, 753 So. 2d at 70; *Muhammad*, 132 So. 3d at 200; *Dailey*, 283 So. 3d at 792; *Asay*, 224 So. 3d at 700; *Tanzi*, 407 So. 3d at 391–92; *Zakrzewski*, No. SC2025-1009, 2025 WL 2047404, at *7 (Fla. July 22, 2025); *Rogers v. State*,

409 So. 3d 1257, 1266–67 (Fla. 2025); *Hutchinson v. State*, No. SC2025-0517, 2025 WL 1198037 (Fla. April 25, 2025); *Cole v. State*, 392 So. 3d 1054, 1065–66 (Fla. 2024). Accordingly, the Office of the Medical Examiner, District Eight's objection is **SUSTAINED**, and the demand is **DENIED**.

Demand on the Florida Department of Corrections (Lethal Injection Protocol)

Defendant demands records regarding Florida's lethal injection protocol and past executions. In its response, the Department of Corrections asserts "most of the lethal injection records relates to information that is confidential and exempt from public records disclosures pursuant to Florida law." The Department of Corrections also asserts that the requested records do not relate to a colorable claim.

However, the demand is overbroad and unduly burdensome. Defendant fails to show good cause for not requesting these records until after the death warrant was signed. Defendant also fails to show *how* the records relate to a colorable claim for postconviction relief. Furthermore, Florida Supreme Court precedent is crystal clear that lethal injection records themselves do not relate to a colorable claim for relief. For those reasons, the Defendant fails to meet its burden under Florida Rule of Criminal Procedure 3.852 *See Tompkins*, 872 So. 2d at 244; *Sims*, 753 So. 2d at 70; *Muhammad*, 132 So. 3d at 200; *Dailey*, 283 So. 3d at 792; *Asay*, 224 So. 3d at 700; *Tanzi*, 407 So. 3d at 391–92; *Zakrzewski*, No. SC2025-1009, 2025 WL 2047404, at *7 (Fla. July 22, 2025); *Rogers*, 409 So. 3d at 1266–67; *Hutchinson*, No. SC2025-0517, 2025 WL 1198037 (Fla. April 25, 2025); *Cole*, 392 So. 3d at 1065–66 (Fla. 2024). In addition, lethal injection records are statutorily exempt from disclosure pursuant to § 945.10, Florida Statutes

(2025). Accordingly, the Florida Department of Corrections' objection is **SUSTAINED**, and the demand is **DENIED**.

Demand on the Florida Department of Law Enforcement (Lethal Injection Protocol)

Defendant's demand requests records related to Florida's lethal injection procedures. However, the demand is overbroad and unduly burdensome. Defendant fails to show good cause for not requesting these records until after the death warrant was signed. Defendant also fails to show *how* the records relate to a colorable claim for postconviction relief. Furthermore, Florida Supreme Court precedent is crystal clear that lethal injection records themselves do not relate to a colorable claim for relief. For those reasons, the Defendant fails to meet its burden under Florida Rule of Criminal Procedure 3.852 *See Tompkins*, 872 So. 2d at 244; *Sims*, 753 So. 2d at 70; *Muhammad*, 132 So. 3d at 200; *Dailey*, 283 So. 3d at 792; *Asay*, 224 So. 3d at 700; *Tanzi*, 407 So. 3d at 391–92; *Zakrzewski*, No. SC2025-1009, 2025 WL 2047404, at *7 (Fla. July 22, 2025); *Rogers*, 409 So. 3d at 1266–67; *Hutchinson*, No. SC2025-0517, 2025 WL 1198037 (Fla. April 25, 2025); *Cole*, 392 So. 3d at 1065–66 (Fla. 2024); *Bryan v. State*, 748 So. 2d 1003, 1006 (Fla. 1999); *Sims v. State*, 753 So. 2d 66, 70 (Fla. 2000). In addition, lethal injection records are statutorily exempt from disclosure pursuant to § 945.10, Florida Statutes (2025). Accordingly, the Florida Department of Law Enforcement's objection is **SUSTAINED**, and the demand is **DENIED**.

Demand on the Office of Executive Clemency, Florida Commission on Offender Review

Defendant's demand requests records "concerning the Governor's decision to sign a warrant for the execution of Kayle Barrington Bates," "concerning the initiation of a clemency

investigation involving Kayle Barrington Bates," and clemency investigation records concerning to Kayle Barrington Bates. However, the demand is overbroad and unduly burdensome. Defendant fails to show good cause for not requesting these records until after the death warrant was signed. Defendant also does not show *how* the request relates to a colorable claim for relief. For those reasons, the Defendant fails to meet its burden under Florida Rule of Criminal Procedure 3.852. *See Tompkins*, 872 So. 2d at 244; *Sims*, 753 So. 2d at 70; *Muhammad*, 132 So. 3d at 200; *Dailey*, 283 So. 3d at 792; *Asay*, 224 So. 3d at 700; *Tanzi*, 407 So. 3d at 391–92; *Zakrzewski*, No. SC2025-1009, 2025 WL 2047404, at *7 (Fla. July 22, 2025); *Rogers*, 409 So. 3d at 1266–67; *Hutchinson*, No. SC2025-0517, 2025 WL 1198037 (Fla. April 25, 2025); *Cole*, 392 So. 3d at 1065–66 (Fla. 2024). Furthermore, clemency records are statutorily confidential. *See* § 14.28, Fla. Stat. (2025); *Chavez v. State*, 132 So. 3d 826, 831 (Fla. 2014); *Muhammad*, 132 So. 3d at 203 ("[C]lemency files and records are not subject to chapter 119 disclosure and are exempt from production in a records request filed in a postconviction proceeding." (citation omitted)). And importantly, clemency power also reposes exclusively in the executive. *Sullivan v. Askew*, 348 So. 3d 312, 314 (Fla. 1977); Article IV, Section 8, Fla. Const.; *In re Advisory Opinion of the Governor*, 334 So. 2d 561, 562–63 (Fla. 1976). Accordingly, the Florida Commission on Offender Review's objection is **SUSTAINED**, and the demand is **DENIED**.

Demand on the Executive Office of the Governor

Defendant's demand requests records "concerning the Governor's decision to sign a warrant for the execution of Kayle Barrington Bates," "concerning the initiation of a clemency investigation involving Kayle Barrington Bates," and "reports received … concerning clemency investigations related to Kayle Barrington Bates." However, the demand is overbroad and

unduly burdensome. Defendant fails to show good cause for not requesting these records until after the death warrant was signed. Defendant also does not show *how* the request relates to a colorable claim for relief. For those reasons, the Defendant fails to meet its burden under Florida Rule of Criminal Procedure 3.852. *See Tompkins*, 872 So. 2d at 244; *Sims*, 753 So. 2d at 70; *Muhammad*, 132 So. 3d at 200; *Dailey*, 283 So. 3d at 792; *Asay*, 224 So. 3d at 700; *Tanzi*, 407 So. 3d at 391–92; *Zakrzewski*, No. SC2025-1009, 2025 WL 2047404, at *7 (Fla. July 22, 2025); *Rogers*, 409 So. 3d at 1266–67; *Hutchinson*, No. SC2025-0517, 2025 WL 1198037 (Fla. April 25, 2025); *Cole*, 392 So. 3d at 1065–66 (Fla. 2024). Furthermore, clemency records are statutorily confidential. *See* § 14.28, Fla. Stat.; *Chavez*, 132 So. 3d at 831; *Muhammad*, 132 So. 3d at 203. ("[C]lemency files and records are not subject to chapter 119 disclosure and are exempt from production in a records request filed in a postconviction proceeding." (citation omitted)). And importantly, clemency power also reposes exclusively in the executive. *Sullivan*, 348 So. 3d 312, 314 (Fla. 1977); Article IV, Section 8, Fla. Const.; *In re Advisory Opinion of the Governor*, 334 So. 2d at 562–63. Accordingly, the Executive Office of the Governor's objection is **SUSTAINED**, and the demand is **DENIED**.

IT IS SO ORDERED.

DONE AND ORDERED in Bay County, Florida on Wednesday, July 23, 2025.

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Dustin Stephenson, Judge

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