No. _____

In the Supreme Court of the United States

CURTIS WINDOM,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

CAPITAL CASE

DEATH WARRANT SIGNED
Execution Scheduled: August 28, 2025, at 6:00 p.m.

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether the "evolving standards of decency" test, which has been recognized for Eighth Amendment protections, should be used to analyze other constitutional protections where decency and public conscience would be implicated - in this case, to the right to counsel guaranteed by the Sixth Amendment.

2. Whether Petitioner's due process rights recognized by the Fifth and Fourteenth Amendments of the United States Constitution are violated by Florida's post-warrant litigation schedule by preventing Petitioner from being meaningfully heard and having an opportunity to fully investigate and present newly discovered evidence.

LIST OF PARTIES

All parties appear in the caption on the cover page.

RELATED CASES

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Circuit Court of the Ninth Judicial Circuit, Orange County, Florida
Docket Number: 1992-CF-001305-A-O
Case Caption: State of Florida v. Curtis Windom
Date of Entry of Judgement: Convicted, August 28, 1992; Jury Recommendation, September 23, 1992; Sentence of Death, November 10, 1992.
Unreported

Direct Appeal

Florida Supreme Court
Docket Number: SC1960-80830
Case Caption: Curtis Windom v. State of Florida
Date of Entry of Judgement: Order entered, April 27, 1995; Rehearing Denied, June 29, 1995; Mandate issued, August 1, 1995.
Windom v. State, 656 So. 2d 432 (Fla. 1995)

Petition for Writ of Certiorari

United States Supreme Court
Docket Number: 95-6232
Case Caption: Curtis Windom v. State of Florida
Date of Entry of Judgment: December 4, 1995.
Windom v. Florida, 516 U.S. 1012 (1995)

Postconviction Motion to Vacate Judgment and Sentence

Circuit Court of the Ninth Judicial Circuit, Orange County, Florida
Docket Number: 1992-CF-001305-A-O
Case Caption: State of Florida v. Curtis Windom
Date of Entry of Judgement: Order denying postconviction relief, November 1, 2001.
Unreported

Appeal from Denial of Postconviction Motion to Vacate Judgement and Sentence and Consolidated State Habeas Petition

Florida Supreme Court
Docket Number: SC01-2706, SC02-2142
Case Caption: Curtis Windom –Appellant v. State of Florida –Appellee; Curtis Windom –Petitioner v. James V. Crosby, Jr. Et al. –Respondent.
Date of Entry of Judgement: Order entered, May 6, 2004; Rehearing Denied, July 8, 2004; Mandate issued, August 9, 2004.
Windom v. State, 886 So. 2d 915 (Fla. 2004)

Federal Habeas Corpus Petition

United States District Court, Middle District of Florida, Orlando Division
Docket Number: 04-cv-01378-ORL-28KRS
Case Caption: Curtis Windom v. Secretary, Florida Department of Corrections, et al.

Date of Entry of Judgment: Petition denied, November 2, 2007.
Unreported in Fed. Supp. *Windom v. Sec'y, Fla. Dept. of Corrections*, 2007 WL 9725062 (U.S. M.D. 2007)

Appeal from Denial of Petition of Federal Habeas Corpus

United States Court of Appeals, Eleventh Circuit.
Docket No: 07-15876
Case Caption: Curtis Windom, Petitioner-Appellant, v. Secretary, Department of Corrections, Attorney General, State of Florida, Respondents-Appellees.
Date of Entry of Judgement: Order affirming, August 10, 2009.
Windom v. Sec'y, Dept. of Corr., 578 F.3d. 1227 (11th Cir. 2009)

Petition for Writ of Certiorari

United States Supreme Court
Docket Number: 09–8930
Case Caption: Curtis Windom v. Walter A. McNeil, Sec'y, Fla. Dept. of Corrections, et al.
Date of Entry of Judgment: Petition denied, April 5, 2010.
Windom v. McNeil, 559 U.S. 1051, 130 S. Ct. 2367 (Mem), 176 L.Ed.2d 566, 78 USLW 3579 (2010)

Successive Motion to Vacate Death Sentences –Challenge to Lethal Injection Protocols

Circuit Court of the Ninth Judicial Circuit, Orange County, Florida
Docket Number: 1992-CF-001305-A-O
Case Caption: State of Florida v. Curtis Windom
Date of Entry of Judgement: Order denying without prejudice, January 8, 2008.
Unreported

***Pro Se* Successive Rule 3.851 Motion to Vacate based on Martinez v. Ryan, 566 U.S. 1 (2012)**

Circuit Court of the Ninth Judicial Circuit, Orange County, Florida
Docket Number: 1992-CF-001305-A-O
Case Caption: State of Florida v. Curtis Windom
Date of Entry of Judgement: Order striking successive motion, January 30, 2014.
Unreported

***Pro Se* Motion to Discharge Appointed Postconviction Counsel, and Conjoined Motion to Equitably Toll One Year Time Limit for Newly Discovered Evidence, Inter Alia**

Circuit Court of the Ninth Judicial Circuit, Orange County, Florida
Docket Number: 1992-CF-001305-A-O
Case Caption: State of Florida v. Curtis Windom
Date of Entry of Judgement: Order denying entered, September 17, 2014.
Unreported

Appeal of *Pro Se* Motions

Florida Supreme Court
Docket Number: SC14-2189
Case Caption: Curtis Windom v. State of Florida
Date of Entry of Judgement: Order striking and dismissing entered, February 2, 2015; order denying *pro se* motion for rehearing, April 9, 2015.
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Successor Motion for New Trial [sic]

Circuit Court of the Ninth Judicial Circuit, Orange County, Florida
Docket Number: 1992-CF-001305-A-O
Case Caption: State of Florida v. Curtis Windom
Date of Entry of Judgement: Order granting Motion to Allow Counsel to Argue Motion Filed by Prior Defense Counsel entered, April 4, 2016; order denying entered, July 5, 2016.
Unreported

***Pro Se* Motion to Appear as Co-Counsel**

Circuit Court of the Ninth Judicial Circuit, Orange County, Florida
Docket Number: 1992-CF-001305-A-O
Case Caption: State of Florida v. Curtis Windom
Date of Entry of Judgement: Order denying entered, November 29, 2016.
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Appeal from Summary Denial of Windom's Successive Postconviction Motion

Florida Supreme Court
Docket Number: SC16-1371
Case Caption: Curtis Windom v. State of Florida
Date of Entry of Judgement: Order entered, July 28, 2017.
Unreported

Second Successive Postconviction Motion based on *Hurst v. State*, 147 So. 3d 435 (Fla. 2014)

Circuit Court of the Ninth Judicial Circuit, Orange County, Florida
Docket Number: 1992-CF-001305-A-O
Case Caption: State of Florida v. Curtis Windom
Date of Entry of Judgement: Order denying entered, March 7, 2017; Order denying motion for rehearing entered, April 17, 2017.
Unreported

Appeal from Denial of Second Successive Postconviction Motion to Vacate Judgement and Sentence and Consolidated State Habeas Petition

Florida Supreme Court
Docket Number: SC17-902,
Case Caption: Curtis Windom v. State of Florida
Date of Entry of Judgement: Order entered, January 23, 2018; Mandate issued, February 8, 2018.
Windom v. State, 234 So. 3d 556 (Fla. 2018)

Petition for Writ of Certiorari

United States Supreme Court
Docket Number: 17-9439
Case Caption: Curtis Windom v. State of Florida
Date of Entry of Judgment: Petition denied, October 1, 2018.
Windom v. McNeil, 586 U.S. 860, 139 S. Ct. 172 (Mem), 202 L.Ed.2d 106 (2018)

***Pro Se* Motion to Disqualify Bias Judge**

Circuit Court of the Ninth Judicial Circuit, Orange County, Florida
Docket Number: 1992-CF-001305-A-O
Case Caption: State of Florida v. Curtis Windom
Date of Entry of Judgement: Order denying entered, October 11, 2018.
Unreported

***Pro Se* Motion Requesting Premission (sic) to File *Pro Se* Petition for Dismissal of Conflict Counsel because of "Adversarcial (sic) Relationship"**

Circuit Court of the Ninth Judicial Circuit, Orange County, Florida
Docket Number: 1992-CF-001305-A-O
Case Caption: State of Florida v. Curtis Windom
Date of Entry of Judgement: Order denying entered, October 11, 2018.
Unreported

***Pro Se* Motion Requesting Premission (sic) to File *Pro Se* Petition to Proceed (sic) the Legal Amount of Pages Allowed to File Motion to Disqualify Bias Judge**

Circuit Court of the Ninth Judicial Circuit, Orange County, Florida
Docket Number: 1992-CF-001305-A-O
Case Caption: State of Florida v. Curtis Windom
Date of Entry of Judgement: Order denying entered, October 11, 2018.
Unreported

***Pro Se* Motion to Discharge Court-Appointed Counsel because of "Adversarcial (sic) Relationship" and because She Failed to Act as Windom's Legal Agent**

Circuit Court of the Ninth Judicial Circuit, Orange County, Florida
Docket Number: 1992-CF-001305-A-O
Case Caption: State of Florida v. Curtis Windom
Date of Entry of Judgement: Order denying entered, October 11, 2018.
Unreported

***Pro Se* Second or Successive Motion for Postconviction Relief**

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Docket Number: 1992-CF-001305-A-O
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Date of Entry of Judgement: Order denying entered, October 11, 2018.
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Case Caption: Curtis Windom v. State of Florida
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Case Caption: State of Florida v. Curtis Windom
Date of Entry of Judgement: Order denying entered, February 8, 2019.
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Case Caption: Curtis Windom v. Secretary, Florida Department of Corrections and Attorney General, State of Florida
Date of Entry of Judgement: Order denying entered, June 26, 2025.
Unreported

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Docket Number: CR92-1305
Case Caption: Curtis Windom v. State of Florida
Date of Entry of Judgement: Order denying entered, July 31, 2025.
Unreported

Defendant's Successive Motion to Vacate Judgment of Conviction and Sentence of Death

Circuit Court of the Ninth Judicial Circuit, Orange County, Florida
Docket Number: 1992-CF-001305-A-O
Case Caption: State of Florida v. Curtis Windom
Date of Entry of Judgement: Order summarily denying entered, August 7, 2025.
Unreported

Defendant's Emergency Motion for Stay of Execution

Circuit Court of the Ninth Judicial Circuit, Orange County, Florida
Docket Number: 1992-CF-001305-A-O
Case Caption: State of Florida v. Curtis Windom
Date of Entry of Judgement: Order summarily denying entered, August 8, 2025.
Unreported

Appeal from Denial of Postconviction Motion to Vacate Judgement and Sentence and Consolidated State Habeas Petition

Florida Supreme Court
Docket Number: SC2025-1179, SC2025-1182
Case Caption: Curtis Windom –Appellant v. State of Florida –Appellee; Curtis Windom –Petitioner v. Department of Corrections Secretary – Respondent.
Date of Entry of Judgement: Order denying initial appeal and state habeas corpus petition entered, August 21, 2025.
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PETITION FOR WRIT OF CERTIORARI

Curtis Windom respectfully petitions for a writ of certiorari to review a judgment of the Supreme Court of Florida.

DECISIONS AND ORDERS BELOW

The opinion of the Florida Supreme Court is attached as Appendix A. The order of the Ninth Judicial Circuit of the State of Florida, Orange County, (warrant court) is unpublished and attached as Appendix B.

JURISDICTION

The judgment of the Florida Supreme Court was entered on August 21, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment provides, in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right to have Assistance of Counsel for his defense . . . .

The Eighth Amendment provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment provides, in relevant part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Mr. Windom was convicted and sentenced to death in 1992 for the death of Johnnie Lee, Mary Lubin, and Valerie Davis. *Windom v. State*, 656 So. 2d 432 (Fla. 1995) . On direct appeal, the Florida Supreme Court affirmed the trial court sentencing order finding the cold, calculated, and premediated aggravator was proven for murder of Johnnie Lee, but did not find that the murders of Valerie Davis and Mary Lubin were cold, calculated, and premediated. *Windom v. State*, 656 So. 2d 432, 439 (Fla. 1995). The Florida Supreme Court used the concurrent convictions for the finding of "a capital felony or felony involving violence" aggravator thus affirming the death sentences for the murders of Mary Lubin and Valerie Davis. *Id*. Subsequently, Mr. Windom sought and was denied postconviction relief, ending most recently with denial of postconviction relief raising two constitutional issues in *Windom v. State*, SC2025-1179 & SC2025-1182, 2025 WL ___ (Fla. August 21, 2025). [App.A] The Florida Supreme Court denied relief holding: Claim one is untimely, procedurally barred and meritless. As to the second claim the FSC held, "Windom was given notice and full opportunity to be heard…" . [App.A-16,18] Mr. Windom now seeks relief from this Court and presents two issues of constitutional significance for this Court to review.

A. Introduction

Mr. Windom's right to counsel under the Sixth Amendment to the United States Constitution was violated when the State allowed an attorney not experienced enough to represent clients in capital murder cases, where the State was seeking the

death penalty, to handle Mr. Windom's case. At the time that trial counsel represented Mr. Windom, there were no special qualifications imposed for capital attorneys. The trial record indicates counsel was out of his league. He did not have the slightest notion how to handle complicated mental health investigation and presentation at either the trial or the penalty phase stages of a capital trial.

Postconviction counsel presented evidence that if trial counsel had retained the appropriate experts he could have asked the jury to consider that Mr. Windom was not guilty by reason of insanity. At trial, counsel called the court-appointed psychiatrist who was appointed so late and with only the information of Mr. Windom's charges, he could do nothing more than confirm Mr. Windom's mental status was competent to proceed to trial. At trial, the psychiatrist did little more than educate the jury on what a fugue state is, but was not in any position to render an opinion about whether Mr. Windom was in a fugue state at the time of the shootings.

Postconviction evidence also demonstrated that trial counsel could have presented mitigation evidence at the penalty phase for serious mental illness at the time of the offense. Instead, he presented no mitigation *whatsoever* for the jury to consider. In postconviction, counsel admitted that if he had that evidence, he would have presented it.

Today standards have evolved and the rules in place now would have prevented this injustice. Counsel lacked the experience required by today's rules for handling a capital felony. Today, he could not have accepted the case. The justice system has never accepted its responsibility in failing to provide rules, standards and

safeguards against the tragedy that Mr. Windom faced at the hands of an attorney that was in effect, no counsel at all. Therefore, applying evolving standards of decency, which have been recognized for Eighth Amendment protections, to other critical protections under the Constitution, would entitle Mr. Windom to a reversal of his convictions and a new trial with a properly trained lawyer.

In 1992, when counsel defended Curtis Windom against charges of first-degree murder, the only requirement necessary for an attorney to handle a capital case was that he be licensed and in good standing. The training seminars that attorneys now attend to learn how to defend a capital case, *Death Is Different*, for instance, was not available until 1995, according to the Florida Association of Criminal Defense Attorneys. Fla.R.Crim.P. 3.112 setting standards for capital representation was not in effect until 1999. ABA Guidelines for Appointment and Performance of Defense Counsel in Death Penalty Cases were not revised until 2003. Justice Sandra Day O'Connor was quoted by the Death Penalty Information Center as saying, in 2001, "After 20 years on (the) high court, I have to acknowledge that serious questions are being raised about whether the death penalty is being fairly administered in this country. Perhaps it's time to look at minimum standards for appointed counsel in death cases and adequate compensation for when they are used."[1] While *Strickland*[2]

[1]Death Penalty Information Center, Standards for Counsel in Capital Cases, https://deathpenaltyinfo.org/policy-issues/policy/death-penalty-representation/standards-for-counsel-in-capital-cases

[2] *Strickland v. Washington*, 466 U.S. 668 (1984).

was decided in 1984, the minimum standards for an attorney to be considered competent to represent a capital defendant have evolved beyond what was acceptable in 1992. Mr. Windom has sought justice time and time again to redress the injustice of being appointed incompetent counsel.

The concept of "evolving standards of decency" was first applied to the Eighth Amendment and what should be considered cruel and unusual punishment. However, the concept of decency in a civilized society should not be limited to punishment, but must apply to all constitutional principles, most especially, the fundamental right to counsel. It is about time, literally the eleventh hour, to acknowledge that Mr. Windom never received the right to competent counsel as we recognize that right today.

1. History of the "Evolving Standards of Decency" Test

In 1910, in *Weems v. United States*[3], this Supreme Court found that a constitution "must be capable of wider application than the mischief which gave it birth." The Court further developed this principle over the following decades. In *Trop v. Dulles*[4], citing *Weems*'s, the Court recognized, "…the words of the [Eighth] Amendment are not precise and their scope is not static." This Court further found, "[t]he [Eighth] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."

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[3] *Weems v. United States,* 217 U.S. 349 (1910).

[4] *Trop v. Dulles*, 356 U.S. 86, 101 (1957).

In several cases during the early 2000s[5], this Court developed a two-part test to determine whether a punishment was inconsistent with the evolving standards of decency. First, the Court looks for objective indicia of a national consensus.[6] As part of this step, "the clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures."[7] Second, the Court will add to this criteria its own independent judgment.[8] *Id.* In other words, the Court will come to a consensus as to whether the majority of the Court finds there is "reason to disagree with the judgment reached by the citizenry and its legislators." *Atkins*, 536 U.S. at 313.

To date, this Court has yet to extend the application of the Eighth Amendment's "evolving standards of decency" test. However, while *Weems* is an Eighth Amendment case, "its analysis transcends this one amendment by discussing the requirements for all constitutional principles to be effective: specifically, the capacity for evolution."[9] The implication is that the "evolving standards of decency"

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[5] See *Atkins v. Virginia*, 536 U.S. 304 (2002) (striking down capital punishment for individuals with intellectual disabilities); *Roper v. Simmons*, 543 U.S. 551 (2005) (striking down capital punishment for juveniles under 18 years of age.

[6] *Atkins*, 536 U.S. at 311–12; *Roper*, 543 U.S. 563–67.

[7] *Atkins*, 536 U.S. at 312 (citation and internal quotations omitted).

[8] *Atkins*, at 312. *Roper*, 543 U.S. at 563.

[9] *Rethinking the Fundamental: Applying the Evolving Standards of decency Test to the Court's Evaluation of Fundamental Rights*, Nick Wolfram, UC Law Constitutional Quarterly, Fall 2024, Vol. 51, No. 1, Article 6, pg. 167.

test should be used to analyze other constitutional protections where decency and public conscience would be implicated. *Id.*

2. Evolving Guidelines and Standards for Capital Attorneys

In 1992, when prosecutors were seeking the death penalty for Mr. Windom, the American Bar Association Guidelines[10] provisions under standard, 5-2.2 Eligibility to Serve, recognized:

> There is no more demanding task for a criminal lawyer than that of representing a person accused or convicted of a capital offense. The selection of such attorneys within an assigned counsel system therefore takes on critical importance. The U.S. Congress recognized this concept when it limited representation for state prisoners under sentence of death in federal habeas corpus proceedings to lawyers with significant experience in criminal law and procedure,(citing The Anti-Drug Abuse Act, 21 U.S.C. § 848 (q)(4)(B) and (q)(9)(1991).)

The guidelines encouraged lawyers to submit their names to a court appointed list rather than shun criminal defense law. [See, 1992 ABA Guidelines, Commentary at pg. 33] The ABA also discussed and encouraged the need for training programs. *Id.* at pg. 35. Additionally, they found there is a duty for an attorney not competent to handle a criminal case to decline court appointment. *Id.*

While the trial bar began to see the need to attract qualified attorneys to the complex practice of criminal defense law, the process of training lawyers to represent clients facing the death penalty was still in its formative state. The Florida Association of Criminal Defense Lawyers (FACDL) presents a yearly death penalty

[10] 1992 ABA Guidelines, 5-2.2, Criminal Justice Providing Defense Services Standards, pg. 35.

seminar to help train attorneys handling capital cases. However, their 2024 agenda labeled, *Death is Different FACDL'S 30TH Death Penalty Seminar,* demonstrates that these seminars were not offered when Mr. Windom was appointed trial counsel. [SPCR1231] Even if they were, Mr. Windom's attorney testified that Mr. Windom's case was his first capital trial that involved a penalty phase and that he had no special training to handle a death penalty first-degree murder case. [App.O-V16/PCTr314-15] In fact, he had not attended any continuing legal education courses related to mental health defenses, as a lawyer, nor taken any such courses while in law school. [Id., at 315]

It was not until 1997 that the Florida Supreme Court, (hereinafter, "FSC"), "…established the Committee on Minimum Standards for Attorneys in Capital Cases to study and recommend for the Court's review minimum standards to ensure the competency of court-appointed counsel in death penalty cases." Finally, in 1999, the FSC adopted Fla.R.Crim.P. 3.112, and stated[11]:

> Under our procedural and adversarial system of justice, the quality of lawyering is critical. For that reason, trial judges responsible for the appointment of counsel in cases where the very life of the defendant is at risk must take care to appoint well-qualified lawyers. …. This Court has an inherent and fundamental obligation to ensure that lawyers are appointed to represent indigent capital defendants who possess the experience and training necessary to handle the complex and difficult issues inherent in death penalty cases. This Court, over the years, has reviewed countless ineffective assistance of counsel claims alleging incompetence of counsel at both the trial and appellate levels.

[11] *In re Amendment to Florida Rules of Criminal Procedure-Rule 3.112 Minimum Standards for Attorneys in Capital Cases*, 759 So.2d 610, 613-14 (Fla. 1999).

Over time, these standards have evolved and the FSC has since adopted several amendments that dealt with extending coverage to private counsel,[12] expanding coverage to the five Offices of Criminal Conflict and Civil Regional Counsel,[13] and extending the rule's coverage to include postconviction counsel.[14] It is important to note that the FSC found these rules were necessary, "Based on…ongoing concerns as to the quality of the judicial process in capital cases, [the] Court in 1997 appointed a select committee of highly qualified and experienced judges and lawyers to study and recommend for…review minimum standards to ensure the competency of court-appointed lawyers in capital cases."[15]

A filing by the Florida Public Defenders Association[16] captures how the rules for capital attorneys continued to evolve through the early part of this century:

> The ABA promulgated guidelines to remedy the systemic problem of subpar representation in capital cases.[17] The United States Supreme

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[12] *In re Amendment to Florida Rules of criminal Procedure-Rule 3.112 Minimum Standards for Attorneys in Capital Cases*, 820 So.2d 185 (Mem) (Fla. 2002).

[13] *In re Amendments to Florida Rule of Criminal Procedure 3.112-Minimum standards for Attorneys in Capital Cases*, 3 So.3d 1175 (Mem) (Fla. 2009); *In re Amendments to Florida Rule of Criminal Procedure 3.112-Minimum Standards for Attorneys in Capital Cases*, 993 So.2d 501 (Mem) (Fla. 2008).

[14] *In re: Amendments to the Florida Rules of Judicial Administration; the Florida Rules of Criminal Procedure; and the Florida Rules of Appellate Procedure – Capital Postconviction Rules*, 39 Fla. L. Weekly S467 (Fla. July 3, 2014).

[15] *In re Amendment to Florida Rules of Criminal Procedure-Rule 3.112 Minimum Standards for Attorneys in Capital Cases*, at 759 So.2d 612.

[16] *In re: Amendments to the Florida rules of Criminal Procedure*, Case No. SC15-177, Comments from the Florida Public Defender Association Regarding Proposed Amendment to Florida rule of Criminal Procedure 3.112, pg. 7, filed March 30, 2015.

[17] FN24 - See ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (rev. ed. Feb. 2003), 31 Hofstra L. Rev. 913 (2003) (hereinafter "ABA Guidelines").

> Court has repeatedly referred to the ABA guidelines as "guides to determining what is reasonable" with regard to the performance of counsel.[18]
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>
> Death penalty cases are unique. They have become so complex and specialized that "defense counsel have duties and functions definably different from those of counsel in ordinary criminal cases."[19] As such, they call for only the most experienced, competent, and dedicated of defense attorneys. The ABA requires that a capital defense attorney demonstrate "a commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases."[20]

Currently, under Fla. R. Crim. P. 3.112, Minimum Standards for Attorneys in Capital Cases, Mr. Windom's lead trial attorney would not meet today's evolved standards to be qualified to represent him. He did not satisfy several provisions of our current Fla. R. Crim. P. 3.112(f), Lead Trial Counsel, which states that lead counsel assignment should be given to attorneys who:

> (3) have… prior experience as lead defense counsel or co-counsel in at least two state or federal cases tried to completion in which the death penalty was sought.
>
> (5) are familiar with and experienced in the utilization of expert witnesses and evidence, including but not limited to psychiatric and forensic evidence; and
>
> (6) have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases, including but not limited to the investigation and presentation of evidence in mitigation of the death penalty; and

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[18] FN25 - *Rompilla v. Beard*, 545 U.S. 374, 387 (2005); *Wiggins v. Smith*, 539 U.S. 510, 524 (2003).

[19] FN26 - ABA Guidelines at 923.

[20] FN27 - ABA Guidelines, 5.1(B)(1)(b), at 961.

> (7) have attended within the last two years a continuing legal education program of at least twelve hours' duration devoted specifically to the defense of capital cases.

COMMITTEE COMMENTS to Fla. R. Crim. P. 3.112 state in part:

> The experience and continuing educational requirements in these standards are *based on existing local standards in effect throughout the state* as well as *comparable standards in effect in other states*. Specifically, the committee considered the standards for the appointment of counsel in capital cases in the Second, Sixth, Eleventh, Fifteenth, and Seventeenth Circuits, the statewide standards for appointing counsel in capital cases in California, Indiana, Louisiana, Ohio, and New York, and the American Bar Association standards for appointment of counsel in capital cases. (Emphasis added)

These Committee Comments show that Mr. Windom meets the first prong of the evolving standards of decency outlined in *Atkins* which looks for reliable objective evidence of contemporary values in the enactment of rules and/or laws. *See, Atkins*, 536 U.S. at 312. *Roper*, 543 U.S. at 563. In the case of capital defense attorney standards, the second prong of the evolving standards test is in effect combined with the first prong, because the courts promulgate these rules. The Court adding its own independent judgment to the national consensus of the citizenry and the legislature is already taken into consideration when they approve the rules for appointment of capital counsel.

B. Factual and Procedural Background

1. Claim 1 - Sixth Amendment Right to Counsel

Mr. Windom has repeatedly sought relief from the injustice of being represented by unqualified and incompetent counsel. For example, eleven days

before trial, the court asked counsel if he had taken depositions, yet. Counsel replied that they were set for the following week. [App.L-SupplR559-60] Mr. Windom let the court know that his attorney had not been communicating with him and that he did not know what was going on. [App.L-SupplR462-64] Appellate counsel captured the disturbing circumstances of the meager representation given Mr. Windom, which fell short of what should be expected of a capital attorney. Apparently in 1995, a befuddled client who advised the court he did not know what was going on with his defense was not enough information to require a court to inquire whether Mr. Windom was being represented by competent counsel. *See, Windom v. State*, 656 So.2d 432, 437 (Fla. 1995). While the court was on notice that counsel was not handling a first-degree murder case properly, the system blamed the defendant for not complaining loudly enough that his attorney was not doing his job. Mr. Windom could not be sure since he was superficially informed of events and the court did not inquire further.

Additionally, on August 14, 1992, a week before trial (and *2 months after* the court granted a defense motion to have Mr. Windom evaluated by a psychiatrist to determine competency and sanity), counsel had not gotten around to giving the court an Order, and did not realize he needed to do so. [App.L-Suppl.R554- 57] On August 17, 1992, Dr. Kirkland gave Mr. Windom a mental status exam. With barely enough time to have Mr. Windom seen by an expert, Dr. Kirkland did not form an opinion about Mr. Windom's sanity at the time of the offenses. Dr. Kirkland's report indicates he would have needed 2-3 weeks to do such a review. [App.P-SPCR1232-33]

The only defense that was presented as to Mr. Windom's mental condition at the time of the shootings was the psychiatrist testifying that Mr. Windom made statements that could be consistent with him being in a fugue state. The psychiatrist was presented to merely testify that "it's possible he is telling the truth about that." [App.J-V4/R570] There was no testing, no review of evidence, no objective criteria to analyze the statements. The trial court was painfully aware of the absurdity of presenting Dr. Kirkland to tell the jury that Mr. Windom was in a fugue state without "any kind of objective evidence of brain damage or mental incapacity, or any history of epilepsy or amnesia." However, the court found, "It's his only defense. It's the only thing [counsel's] going to present on his behalf. And I'm concerned that, as crazy as I think the idea of the fugue state defense is, I'm going to let the Doctor testify to that." [App.J-V4/R573]

Trial counsel seemed to be making it up as he went along. In fact, he needed the court to tell him what the appropriate order would be to present his witnesses and evidence of this fugue state. [App.J-V4/R574-75] When this defense witness took the stand, Dr. Kirkland told the jury it is "possible" that Mr. Windom was in a fugue state, but not "reasonable or likely." [App.J-V4/R584] Dr. Kirkland gave the jury an example of a patient who did experience a fugue state. In order to determine that the person was in that state, "They had several experts who examined him at great length, including video-taping interviews and so forth." [App.J-V4/R586] None of that was done in Mr. Windom's case.

Counsel had never been properly trained to handle this type of expert witness and it showed in his presentation. [App.O-V16/PCTr314-15] Dr. Kirkland, appointed by the Court *a week before trial*, testified that he was provided with no background information on Mr. Windom and that "it would have been professionally difficult, if not impossible, to conduct an adequate evaluation" with the information he did have. [App.O-V16/PCTr274,283] The information he did have consisted of just being advised of what Mr. Windom had been charged with. [App.O-V16/PCTr284]

In postconviction, Mr. Windom's legitimate concerns about the woefully inadequate representation he received were nevertheless dismissed by the circuit court. Significantly, the circuit court added in its opinion that a claim that an attorney is "patently unqualified" is not cognizable as an ineffective assistance of counsel claim. [App.G-SPCR1302] Under evolving standards of decency this issue would be cognizable. This is not an impermissibly repetitive filing of the same ineffective assistance of counsel claim. The perspective is different and issues may be interrelated but, as the trial court noted, "Florida's lack of standards for counsel in capital cases" … "is not an ineffective assistance of counsel claim." *Id*. This issue was summarily denied and does not appear to have been addressed by the Florida Supreme Court. *Windom v. State*, 886 So.2d 915 (Fla. 2004). Under today's evolving standards, this claim is finally ripe for consideration and relief.

By today's standards, counsel would have been properly trained and experienced and know how to retain the appropriate experts to lay a convincing foundation to this defense, as was presented by postconviction counsel.

Postconviction counsel retained a neurologist and neuropsychologist to establish brain damage and insanity at the time of the offense. Trial counsel admitted during the evidentiary hearing that he would have put on that defense if he knew about it, even if it would have opened the door to the jury knowing about Mr. Windom's involvement with drug sales. [App.O-V16/PCTr317] However, being unfamiliar with penalty phase presentations, counsel settled for quizzing a court-appointed competency psychiatrist about what could be a possible defense to Mr. Windom's actions – rather than actually pursuing and establishing that Mr. Windom meets the criteria for an affirmative defense of insanity at the time of the offense. He was not able to do more than work with the expert the court appointed for its own purposes (to confirm defendant's mental status to proceed to trial.) There was not enough time or information provided for the expert to determine insanity. Furthermore, the expert was not appointed to assist trial counsel to explore a defense to or mitigating evidence for the crimes charged.

Incomprehensibly, trial counsel also opted for no penalty phase defense *whatsoever* because he failed to do any mental illness investigation which could be used as mitigation for the penalty phase. With nothing to present to the jury, he told the jury in his Penalty Phase Opening Statement:

> DEFENSE COUNSEL: One more time. I am not one of those people. This is not fun. Nothing about this has been fun. Trying a first-degree murder case is about as brutal as it gets. I wasn't there, I didn't participate. My job is to try to save a man's life, end of story. *You made your decision. It wasn't* too *tough.*

> *Broad daylight, what can you say? I would have* to *be the firm of Christ and Houdini* to *have made anything out of this other than what it clearly was.*

[App.M-PP-R26-27] (Emphasis added).

With no investigation or development of mitigation evidence, his Penalty Phase Closing Argument meant to encourage a jury to recommend life instead of death was not any better. After reassuring the jury regarding their guilt verdict, defense counsel confided to the Court that essentially no mitigation existed: "Nobody really has much to say other than [Mr. Windom] is a good fellow, probably to them in the past." [App.M-PP-R45) Counsel then delivered his closing argument to the jury:

> *... Curtis Windom doesn't deserve pity. He doesn't deserve anything for what he did. I agree with you, it was--I agree with Jeff [Ashton], it was cold. The two aggravating factors are that it was premeditated. Well, that is part of the charge. Anybody that could commit first-degree murder, it is premeditated. So that is aggravated.*
>
> *And the other is that it was cold in the sense that any killing is cold. It is, by definition. The mitigation factors you will be asked* to *consider, some of them don't make any sense at all.*
>
> .....
>
> *Some of them talk about whether or not the individual was under extreme mental or emotional disturbance at the time. I never told you he was crazy.*

[App.M-PP-R96-97] (emphasis added) Elsewhere in his closing argument, counsel told the jury that Mr. Windom "did everything a human being could probably do to deserve [the death penalty]." [App.M-PP-R92] He also told the jury that Mr. Windom "is not a good fellow." [App.M-PP-R94] Further, he declared that Mr. Windom's crime "wasn't a mistake. It was a horrible, brutal act." [App.M-PP-R95]

This claim is distinguished from an ineffective assistance of counsel claim under *Strickland* in that the issue is about the justice system allowing a lawyer to represent a client facing such dire circumstances despite not being qualified to do so. Counsel had nothing to argue on Mr. Windom's behalf because he was not trained to make a penalty phase presentation. Today, we have standards which would have prevented this situation from occurring. Perhaps from the perspective of challenging the system and its failure to ensure standards were in place to produce attorneys that could properly advocate for their client, his plea for relief will finally be heard. Applying evolving standards of decency principles to the Sixth Amendment right to counsel in capital criminal prosecutions would enable a court to remedy a constitutional violation that was not given its due gravity when it occurred, but can finally be rectified as our system of justice has progressed.

2. Claim 2 - Fourteenth Amendment Right to Due Process

On August 5, 2025, the morning of the *Huff* hearing, Windom's counsel learned of mitigating evidence, which included letters and a video from the victims' families, that were presented during Clemency on behalf of Mr. Windom. Windom brought this to the circuit court's attention and argued that the newly discovered evidence highlights the flaws with the abbreviated schedule imposed upon Mr. Windom during the hearing. Windom subsequently filed "Defendant's Emergency Motion for Stay of Execution" in the Circuit Court and asserted the newly discovered evidence established the death penalty as applied to Curtis Windom is unconstitutional.

The newly discovered evidence revealed a 2013 video of Curtisia Windom Willingham and Jermey Lee for the Clemency proceedings and numerous letters from the three affected families, the Lee, Lubin, and Davis families, that provided both mitigation on behalf of Curtis Windom, as well as the families' stance on Windom's death sentence. The letters capture the positive impact Mr. Windom had on each of them and the positive impact he had on his community. [App.-Q]

ARGUMENTS CHALLENGING FLORIDA SUPREME COURT DENIAL OF RELIEF FOR CLAIM ONE

A. FSC Opinion– Denied claim as untimely

The FSC affirmed the denial of Mr. Windom's current successive postconviction motion because it was of the opinion that applying evolving standards of decency to the Sixth Amendment right to counsel is not an established fundamental right. [App.A-10] Therefore, the court reasoned, "Windom cannot use the timeliness exception in rule 3.851(d)(2)(B) to affirmatively establish a new and retroactive constitutional right." [*Id.*] However, the legal precedent to consider evolving standards of decency was well *established* over 100 years ago. While the fundamental right to counsel has been established, the evolving standards have not been *applied* to other constitutional protections, although the United States Supreme Court has indicated in *Weems*[21] and created in *Trop*[22] the foundation for doing so. This claim is

[21] *Weems v. United States,* 217 U.S. 349 (1910).

[22] *Trop v. Dulles*, 356 U.S. 86, 101 (1957).

not asking the Court to create a new fundamental right to counsel but to recognize that what it means to have the right to counsel continues to evolve and Mr. Windom was denied that right. This Court should find this claim is timely filed.

B. FSC Opinion – Denied claim as procedurally barred

The FSC also found that the claim is procedurally barred because Mr. Windom has already raised Florida's lack of standards in previous pleadings. [App.A-11]

First, in the direct appeal, appellate counsel argued that the trial court failed to conduct an adequate *Nelson*[23] hearing regarding the *effectiveness* of trial counsel. *See, Windom v. State*, 656 So.2d 432, 437 (Fla. 1995). There is nothing in the allegations against trial counsel or the trial court that indicate trial counsel should not have been *allowed to serve* as Mr. Windom's attorney because he was not qualified to handle a death penalty case.

Allegations against trial counsel were again raised in postconviction where postconviction counsel gave a thorough presentation and argument showing how the trial attorney did not provide effective assistance of counsel. The circuit court postconviction Order denying relief referenced by the FSC in its opinion [App.A-11] in the current appeal, states, "…Defendant argued that Florida's lack of standards for counsel in capital cases led to the trial court's tolerance of an attorney who was patently unqualified to serve as a defense counsel. In summarily denying this claim,

[23] *Nelson v. State*, 274 So.2d 256 (Fla. 4th DCA 1973), approved by *Hardwick v. State*, 521 So.2d 1071 (Fla. 1988).

the Court found that such a claim was not cognizable in a postconviction motion ..." [App.B-1302] The claim was also treated as procedurally barred because Mr. Windom appealed the fact that the trial court should have conducted a *Nelson* hearing. [*Id.*]

At no time, in either the direct appeal or in the R.3.850 motion for postconviction relief was the issue of attorney standards fully analyzed from the perspective of a Sixth Amendment violation under evolving standards of decency. No reviewing court considered the *qualifications* of trial counsel except through the lens of "ineffective assistance of counsel" (IAC) under *Strickland*. The judicial system failed Mr. Windom as much as his counsel. This argument is not, as the FSC finds, a "repacking of claims" already considered. [App.A11] The courts have refused to consider the fault of the judicial system because they were narrowly analyzing the claims as a postconviction claim under IAC which they found did not apply to the judicial system. The judicial system has avoided responsibility for this failure for far too long. This Court should find this claim is not procedurally barred.

C. FSC Opinion – Denied claim as meritless

The FSC also affirmed the denial of Mr. Windom's motion finding that prior court rulings have found trial counsel was not ineffective because he had a reasonable strategy [in presenting no defense.] [App.A15] In other words, we do not need to consider whether trial counsel was unqualified to represent Mr. Windom because the court will find there was no prejudice, he was not ineffective.

The rejection of claims of ineffective assistance of counsel (IAC) based on the

argument that counsel had a strategy is an often-misused principle that sweeps under the carpet and excuses actions that are indefensible. Significantly, the attorney must have actually had the strategy, not an ad hoc excuse for incompetence. As mentioned above, this finding completely disregards that trial counsel admitted he would have used these experts if he had known about the possible defenses and mitigation they could provide - whether or not the prosecutor threatened to bring drugs into the narrative. [App.O-V16/PCTr318-19]

The issue of IAC may have already been decided, but the postconviction court did not have the benefit of knowing the State's witness, Jack Luckett, who established a premeditated plan and motive, was under prosecution for a serious felony at the time he testified.[24] He was arrested for trafficking and bonded out three weeks before trial. The State did not share this information with trial counsel.[25] This would have cast a different light on the postconviction findings. We should not be so quick to conclude that if this case was analyzed today with all the evidence that has been uncovered, the result would be the same.

Postconviction counsel established through their experts that Mr. Windom was also suffering from delusional paranoia at the time of the incident. [App.N-V15/PCTr66] We know now that the State's star witness, Jack Luckett, was also a drug dealer. He had good reason to garner favor with the State right after the

[24] The State stipulated to this fact during the *Huff* hearing on August 5, 2025.

[25] The *Brady* issue was litigated. See, *Windom v. State*, SC16-1371, 2017 WL 3205278 (Fla. July 28, 2017); *See Brady v. Maryland,* 373 U.S. 83 (1963).

shooting occurred. Eventually, as he probably anticipated, he also found he was under prosecution for drug trafficking[26] – but he had positioned himself to be a State witness. In other words, Luckett was motivated from the start to give the police useful information about Mr. Windom. Consideration of a prior consistent statement should be mindful of that fact.

Being able to challenge Jack Luckett's credibility removes the State's argument against the affirmative defense of insanity. He was the only witness to Mr. Windom's statements that he planned to attack Mr. Lee the next morning. However, on cross-examination, Mr. Luckett admitted that Mr. Windom is not a violent person and his behavior was completely different than the Curtis Windom everybody knew. [App.I-V2/TrR327] This impression was confirmed by Pamela Fikes, another eyewitness. [App.I-V2/TrR317]

Mr. Windom has consistently insisted that he thought Mr. Lee had a gun, that he was turning toward him with it when Mr. Windom drove up to him, and that he shot Mr. Lee in self-defense. [App.R-SPCR863-64] Whether or not this is actually what happened, or what Mr. Windom in his paranoid, delusional state of mind perceived was happening, the jury never had the benefit of hearing about it in either the trial or penalty phase, nor did they hear evidence of his delusional paranoia. [App.N-V15/PCTr66] Unfortunately, the successive postconviction motion was denied as untimely and due to the previous findings of no IAC. *Windom v. State*, 2017

[26] Ninth Judicial Circuit, Orange County, Florida, Case No. – 1992-CF-008204-A-O, *State v. Jack Luckett*.

WL 3205278 (Fla. July 28, 2017).

The fact that standards have evolved which would have prevented the unqualified attorney who represented Mr. Windom from taking his case is not meritless. Today, if this Sixth Amendment violation is finally redressed from the perspective of the responsibility the justice system bears, then all the facts of this case may be reviewed. We now have an opportunity to correct several system failures: The lack of standards that did not ensure a qualified attorney handled this complicated case concerning life and death; realize this attorney was not only unqualified but also ineffective in both phases of the trial; and review key evidence withheld by the State, evidence that unlocks the truth. As a very different picture emerges so should there be a different verdict.

D. **FSC Opinion – Denied Rule 3.112(c) is retroactive**

The FSC also found that standards for attorneys should not be applied retroactively. [App.A-13-14] The court looked to the text of Fla. R. Crim. P. 3.112(c) regarding minimum standards for attorneys in capital cases and found that it does not mention that it should have retroactive application.

This claim seeks relief from a violation of the Sixth Amendment right to counsel. This right has long been established and it should be applied pursuant to evolving standards of decency to a fundamental constitutional protection. This claim is not wholly dependent on the text which finally created the necessary standards which require that an attorney handling a capital case in Florida must have the

proper experience and training. This claim seeks to do more than enforce a rule of criminal procedure. Rather, Mr. Windom is asking the judicial system to recognize its responsibility in creating the opportunity for the injustice he experienced to occur.

1. Retroactivity of Sixth Amendment Evolving Standards of Decency as Applied to Right to Counsel

As the awareness and consciousness of humanity rises, the time is ripe to apply evolving standards of decency to the Sixth Amendment right to counsel. As this Supreme Court found in *Weems*:

> Legislation, both statutory and constitutional, is enacted, it is true, from an experience of evils, but its general language should not, therefore, be necessarily confined to the form that evil had theretofore taken. Time works changes, brings into existence new conditions and purposes. Therefore a principle to be vital must be capable of wider application than the mischief which gave it birth. This is peculiarly true of constitutions.
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> In the application of a constitution, therefore, our contemplation cannot be only of what has been but of what may be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality. And this has been recognized. The meaning and vitality of the Constitution have developed against narrow and restrictive construction. (Emphasis added.)

Weems v. United States, 217 US 349, 373 (1910).

As to the argument that standards for counsel have been evolving for some time therefore this issue should have been raised sooner, fundamental fairness would support the retroactive application of this violation to the failure of a system that has

acknowledged the constitutionally indispensable right to counsel, but has yet to acknowledge its part in denying it. The FSC has found that "[t]he doctrine of finality should be abridged only when a more compelling objective appears, such as ensuring fairness and uniformity in individual adjudications." *Witt*, 387 So. 2d at 925. And again from *Witt,* "Uniquely, capital punishment, on the one hand, connotes special concern for individual fairness because of the possible imposition of a penalty as unredeeming as death." *Id*. at 926.

"In considering the ideal of individual fairness in capital cases," the FSC, in *Witt*, held:

> … two countervailing considerations must be weighed. First, if punishment is ever to be imposed for society's most egregious crimes, the disposition of a particular case must at some point be considered final notwithstanding a comparison with other individual cases. Second, we cannot ignore the purpose for our post-conviction relief procedure in cases where a death penalty has been imposed, for Florida's post-conviction relief rule came about as a narrow response to *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). That decision, it will be recalled, first announced that each state must provide counsel to every indigent defendant charged with a felony at all critical stages of the proceeding. The *Gideon* decision constituted a change of law of such magnitude that it was applied retroactively in order to remedy the basic constitutional injustice of prior felony trials without counsel.[12]"

Witt v. State, 387 So.2d 922, 927 (Fla. 1980). It is significant that the FSC cited to *Gideon* as part of its discussion and consideration of when a ruling should be retroactive. While *Gideon* concerned the State's duty to provide counsel to an indigent defendant charged with a felony, has the State honored the intent of this

holding if it did not provide any standards to ensure that an attorney is qualified to be counsel in a defendant's capital murder case? If not, then the ruling becomes a superficial statement of what ought to be without meaningful substance. In considering retroactivity as applied to evolving standards of decency to a Sixth Amendment guarantee, the issue raised in this case is as significant as the *Gideon* holding.

The realization that we must set aside Mr. Windom's death sentence because a society that has evolved enough to understand his trial counsel should not have been permitted by law to handle Mr. Windom's case must take responsible for that failure. The justice system should realize it cannot confidently allow someone to be executed when the underlying system shares blame for counsel's incompetence. This concept further satisfies this Court's test for retroactivity, falling under the second prong of qualifying cases under *Teague v. Lane*, 489 U.S. 288, 311-12 (1989):

> The second exception suggested by Justice Harlan — that a new rule should be applied retroactively if it requires the observance of "those procedures that . . . are `implicit in the concept of ordered liberty,' " *id.,* at 693 (quoting *Palko*, 302 U. S., at 325) — we apply with a modification. The language used by Justice Harlan in *Mackey* leaves no doubt that he meant the second exception to be reserved for watershed rules of criminal procedure:
>
> > "… in some situations it might be that time and growth in social capacity, as well as judicial perceptions of what we can rightly demand of the adjudicatory process, will properly alter our understanding of the *bedrock procedural elements* that must be found to vitiate the fairness of a particular conviction. For example, such, in my view, is the case with the right to counsel at trial now held a necessary condition precedent to any

> conviction for a serious crime." 401 U. S., at 693-694 (emphasis added).

In 1999, standards were finally created and evolved further in 2002. It is not likely there are many capital death sentences left pending that were tried without properly qualified counsel.

In support of retroactivity, applying evolving standards of decency to ineffective assistance of counsel cases that have this additional failure of an unqualified attorney, because the system had no standards in place, would narrow the number of cases affected and not be overly burdensome. However, it would allow courts to correct Sixth Amendment violations that were previously swept under the carpet. This is especially true because most indigent defendants would have been represented by a public defender or registry counsel. While hardly foolproof against a situation like Mr. Windom's, it is highly likely that at least most public defenders had the necessary experience and training before being assigned a capital case that included the State's Notice of Seeking Death. Likewise, registry counsel would not likely be chosen if not found by the court administrators and/or judicial administration to be qualified. A defendant that can easily afford to defend a capital murder charge would be able to hire a big law firm where the partners are able to retain the most qualified attorneys from the Florida Bar. It is reasonable to assume, then, that the situation that Mr. Windom was in – a family member tried to help him, hired private counsel, and unknowingly hired someone that should not have been allowed to represent him, this situation will not create an unacceptable number of cases for the judicial system in its wake. The justice system should not be

overwhelmed or terribly burdened. This would not be a justification for denying Mr. Windom the benefit of applying our evolving standards of decency to his case.

The time has come for our justice system to acknowledge that the failure to provide standards for capital attorneys is a violation of the Sixth Amendment due to evolving standards of decency. It is essential that the evolving standards claim be recognized through an adjudication of the issue raised and not stand on dictum. *See*, *Stovall v. Denno*, 388 U.S. 293, 301(1967). Today, society's conscience cannot allow its justice system to remain indifferent to its role in a constitutionally deficient process. This Court should grant this petition and order the FSC vacate Mr. Windom's judgment and death sentence, and grant him a trial with a properly trained capital attorney.

ARGUMENTS CHALLENGING FLORIDA SUPREME COURT DENIAL OF RELIEF CLAIM TWO

The circuit court's scheduling order denies Mr. Windom notice and opportunity to be heard in violation of due process rights afforded to him by the Florida and U.S. Constitution.

Florida's post-warrant litigation scheduling orders violate Mr. Windom's due process protections of the Fourteenth Amendment of the United States Constitution. The Fourteenth Amendment of the United States Constitution provides that "no person shall be deprived of life,... without due process of the law."

An opportunity to be heard requires "a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). "Due process is flexible and

calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Due process is not defined as "a technical concept with a fixed content unrelated to time, place, and circumstances." *Cafeteria & Restaurant Workers Union, Local 473, AFL-CIO v. McElroy*, 367 U.S. 886 (1961).

A. Florida's post-warrant scheduling orders deny Windom a meaningful opportunity to be heard.

The Ninth Judicial Circuit Court, ("warrant court") entered a scheduling order over postconviction counsel's objection. [App.-F]. Windom argued that the Court adopting the State's proposed scheduling order does not provide Windom a legitimate opportunity to be heard on issues arising from the death warrant.

The Florida Supreme Court has addressed the "expedited process of warrant litigation," in recent decisions. *Zakrzewski v. State*, 2025 WL 2047404 (Fla. 2025); *Tanzi*, 407 So. 3d 385,393 (Fla. 2025); *Bell v. State*, 2025 WL 1874574, (Fla. 2025). Florida's opinions rely on the court's opinions in *Barwick v. State*, 361 So. 3d 785 (Fla. 2023) and *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016), which do not address the due process violation faced by Windom.

Post-warrant litigation requires flexible procedural protections that give capital defendants a meaningful opportunity to present issues prior to their execution. Florida's post-warrant litigation scheduling orders denied Windom this right.

B. Mr. Windom was denied a meaningful opportunity as protected by the United States Constitution due process rights, to present newly discovered evidence.

Two-factor test must be satisfied when seeking to vacate a death sentence based on newly discovered evidence. First, "in order to be considered newly discovered, the evidence 'must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known [of it] by the use of diligence.'" *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998) (internal citation omitted).

Secondly, the newly discovered evidence must be of such nature "'that the newly discovered evidence would probably yield a less severe sentence'—i.e., a life sentence —rather than an acquittal." *Damren v. State*, 397 So. 3d 607, 610 (Fla. 2023) (internal citation omitted). The word "probably" is understood to mean "more likely than not" standard of prejudice. *Damren*, 397 So. 3d at 611. Florida Statute § 921.141 (1992) required that trial courts considered both statutory mitigating factors and non-statutory mitigating factors.

Windom raised the issue of the newly discovered mitigation evidence in an "Emergency Motion to Stay Execution." The FSC held the evidence was not "new" information, without acknowledging that the information was compiled during Clemency proceedings, which are cloaked in secrecy, or that rules and victims' right statutes preclude unwanted contact of victims. [App.-A] However, the warrant court found that the information was in fact newly discovered but failed the second factor of *Dailey v. State*, 239 So. 3d 1280 (Fla. 2021). [App.-G] The circuit court's findings

only considered the inadmissible pieces of the newly discovered evidence. The circuit court considered neither the significant impact of the mitigation being provided from family members of all three homicide victims nor the admissible aspects of the newly discovered evidence, such as Mr. Windom's positive impact on their lives and positive character evidence.

The letters provide significant mitigation which would be extremely compelling to the jury and the sentencing court. This is particularly so, given that all three of victims' families themselves provide mitigation on behalf of Curtis Windom, beyond their desires that his life be spared. The newly discovered evidence would probably have yielded a less severe sentence especially considering the trial court's sentencing order in which the trial court found little weight as to the Windom's assistance to his community. The newly discovered evidence corroborates the information presented to the trial court during the sentencing hearing.

Windom's due process rights are violated by the post-warrant litigation schedule because the abbreviated scheduling orders deny Mr. Windom a meaningful opportunity to present and further develop the newly discovered evidence.

C. The newly discovered evidence shifts the scales, showing that mitigation outweighs the aggravators in Windom's case.

The death penalty is to be reserved for "only the most aggravated and unmitigated" cases. *State v. Dixon*, 283 So. 2d 1,7 (Fla. 1973) ; *Crook v. State*, 908 So. 2d 350, 357 (Fla. 2005) (citing, *Kramer v. State*, 619 So. 2d 274, 278 (Fla. 1993)).

Determining whether the punishment of death has been applied to the most

aggravated case requires a careful weighing process of the aggravators and mitigation. *Dixon*, 283 So. 2d at 7. "Discretion and judgment are essential to the judicial process, and are present at all stages of its progression – arrest, arraignment, trial, verdict, and onward through final appeal." *Id.* at 6. (emphasis added). The weighing process of the aggravators and mitigation is not a quantitative process "…but rather a reasoned judgment as to what factual situations require the imposition of death and which can be satisfied by life imprisonment in light of the totality of the circumstances present." *Id.* at 10.

A mitigating circumstance is "'any aspect of a defendant's character or record and any of the circumstances of the offense' that reasonably may serve as a basis for imposing a sentence less than death." *Douglas v. State*, 878 So. 2d 1246, 1258 (Fla. 2004) (citing, *Campbell v. State*, 571 So. 2d 415, 419 FN4 (Fla. 1990) (quoting *Lockett v. Ohio*, 438 U.S. 586 (1978).

There is no punishment as unique or final as death. "[T]he Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed." *Furman v. Georgia*, 408 U.S. 238, 310 (1972) (Justice Stewart, concurring). "Because of the uniqueness of the death penalty, Furman held that it could not be imposed under sentencing procedures that created a substantial risk that it would be inflicted in an arbitrary and capricious manner." *Gregg v. Georgia*, 428 U.S. 153, 188 (1976). The newly discovered evidence would show that Mr. Windom's case is not a class of first-degree murder the death penalty is intended to punish. Windom's case

is simply not the most aggravated and least mitigated.

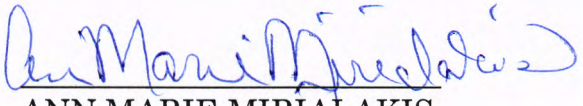
The newly discovered evidence provided compelling and significant mitigation that if it had been presented to a jury or the court during in Mr. Windom's trial or sentencing, it is more likely than not, that Mr. Windom would not have been sentenced to death. [App.-Q] The voices of all three affected families, the Lee, Lubin and Davis families, would have been incredibly compelling and mitigating. It would have probably yielded a less severe sentence for Mr. Curtis Windom.

There is no greater need for due process protection than when the State is taking someone's life. The need for due process is rooted in the very foundation of what it means to have a civilized society.

CONCLUSION

A system that is in the business of executing people should be impeccable. Respectfully, certiorari should be granted for this case.

Respectfully submitted,



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