No. 25-5440

In The
Supreme Court of the United States

CURTIS WINDOM

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

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Capital Case

QUESTION PRESENTED

I. Whether the Florida Supreme Court wrongly affirmed the postconviction court's summary denial of Windom's postconviction claim he raised while under warrant, when the claim is both untimely and procedurally barred by Florida law, and seeks to apply the Eighth Amendment concept of evolving standards of decency to the Sixth Amendment, which no court is known to have ever done.

II. Whether Windom, who has had a lawyer and over 30 years to raise postconviction claims, was denied his right to due process because the 30-day warrant schedule inhibited his ability to present untimely evidence.

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OPINION BELOW

The decision below of the Florida Supreme Court appears as *Windom v. State,* NO. SC2025 - 1179, WL 2414205 (Fla. August 21, 2025).

STATEMENT OF JURISDICTION

Windom asserts that this Court's jurisdiction is based upon 28 U.S.C. § 1257. The State of Florida agrees that this statute sets out the scope of this Court's certiorari jurisdiction, however, because the issues raised were resolved on independent and adequate state law grounds, this case is inappropriate for the exercise of this Court's discretionary jurisdiction. the Florida Supreme Court's opinion does not conflict with any decision by this Court, another state court of last resort, or a United States court of appeals, See Sup. Ct. R. 10(b)-(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The State accepts Windom's statement regarding the constitutional provisions involved.

STATEMENT OF THE CASE AND FACTS

Facts of the Crime

Jack Luckett testified that he spoke with Curtis Windom in the morning the day of the shootings and learned that Johnnie Lee owed Windom $2,000. When Windom learned Lee had won money at the track, he said to Luckett, "My nigger, you're gonna read about me" and said he intended to kill Lee. That same day, Windom purchased a .38 caliber revolver and a box of fifty .38 caliber shells from a Walmart in Ocoee. *Windom v. State*, 656 So. 2d 432, 435 (Fla. 1995).

Within minutes of that purchase, Windom pulled up in his car next to where Lee was standing. Windom leaned across the passenger side of the vehicle and shot Lee twice in the back. After Lee fell to the ground, Windom got out of the car, stood over Lee, and shot him twice more at very close range. *Id.*

Windom then ran towards the apartment where Valerie Davis, his girlfriend and mother of one of his children, lived. He shot Davis once in the left chest, without any provocation, within seconds of arriving in the apartment. *Id.*

After shooting Davis, Windom left the apartment and encountered Kenneth Williams on the street. Windom stated, "I don't like police ass niggers." (TR:340). Windom shot Williams in the chest. Although Williams was in the hospital for about 30 days and the wound was serious, he did not die. *Id*.

After Windom shot Williams, and while Windom was behind Brown's Bar, his brother and two other men tried to take the gun from him. By that time, Davis's mother had learned about her daughter's shooting and left work in her car. As she was driving down the street, Windom saw her car stopped at a stop sign, went to the car, and shot her twice, killing her. *Id*.

Convictions and Death Sentences

The jury found Windom guilty, as charged. (TR:726). The penalty phase was held on September 23, 1992, resulting with the jury unanimously recommending a sentence of death. (PP:108). The trial court, in its sentencing order, found the following aggravating circumstances: (1) Windom was previously convicted of another capital offense or felony involving the use of threat or violence; and (2) the crime was

cold, calculated, and premeditated. As mitigation, the court found the following statutory factors: (1) Windom had no significant history of prior criminal activity; (2) the capital felony was committed while Windom was under the influence of extreme mental or emotional disturbance; and (3) Windom acted under extreme duress or under the substantial domination of another person. The court also considered the following non-statutory mitigators: (1) Windom assisted people in the community; (2) Windom was a good father (3) Windom saved his sister from drowning and (4) Windom saved another individual from being shot during a dispute over twenty dollars. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); (ROA:359-62). The court sentenced Windom to death for each murder and imposed a consecutive 22-year sentence for the attempted murder of Kenneth Williams. (S:133; ROA:355-79). The Florida Supreme Court affirmed the convictions and sentences on direct appeal. *Id.* This Court denied Windom's petition for certiorari. *Widom v. Florida, cert. denied*, 516 U.S. 1012 (1995).

Prior Collateral Proceedings

Windom then filed his initial postconviction motion pursuant to Rule 3.850, raising thirty-three (33) claims, followed by an Amended Motion to Vacate. The postconviction court entered an order granting an evidentiary hearing on multiple claims. Upon the conclusion of the evidentiary hearing and the filing of written closing arguments, the court issued an order denying postconviction relief on November 1, 2001. *Windom v. State*, 886 So. 2d 915, 921 (Fla. 2004). Windom appealed the denial of postconviction relief to this Court and filed a petition for a

state writ of habeas corpus alleging ineffective assistance of appellate counsel. The Florida Supreme Court affirmed the denial of postconviction relief and denied Windom's habeas corpus petition. *Windom v. State*, 886 So. 2d 915 (Fla. 2004).

Windom unsuccessfully sought federal habeas relief in the United States Middle District in 2007. *Windom v. Sec'y, Fla. Dep't Corr.*, No. 04-cv-01378, 2007 WL 9725062 (M.D. Fla. Nov. 2, 2007). Windom's motion to alter or amend was likewise denied.

Windom then applied in the United States District Court-Middle District for a Certificate of Appealability, which was granted as to two issues. Following oral argument, the Eleventh Circuit Court of Appeals affirmed the denial of Windom's federal petition for writ of habeas corpus. *Windom v. Sec'y, Dep't of Corr.*, 578 F.3d. 1227 (11th Cir. 2009), *cert. denied*, 559 U.S. 1051 (2010).

Windom filed a successive Rule 3.851 motion to vacate raising an Eighth Amendment challenge to Florida's lethal injection protocol, which was summarily denied in 2008. Windom did not appeal this ruling.

In 2013, Windom filed a pro se successive Rule 3.851 motion to vacate based on *Martinez v. Ryan*, 566 U.S. 1 (2012). Because Windom was represented by counsel, the circuit court entered its order striking it as an unauthorized motion.

In 2014, Windom filed another pro se motion, this time seeking to discharge his appointed postconviction counsel and toll the time for raising his substantive claim based on alleged *Brady* violations. The postconviction court denied Windom's motion. Windom, still represented by counsel, appealed pro se to the Florida Supreme

Court but his notice of appeal was stricken as unauthorized. *Windom v. State*, 160 So. 3d 901 (Fla. 2015).

Windom continued to unsuccessfully seek postconviction relief in both state and federal court. This included twice having his application denied by the Eleventh Circuit for a second or successive habeas corpus petition as well as an emergency application for leave to file one.

Proceedings Under Warrant

On July 28, 2025, Governor Ron DeSantis signed Windom's death warrant. Execution is scheduled for August 28, 2025, at 6:00 p.m. An initial case management hearing was held on July 30, 2025, and the court entered its Order on Case Management Conference on that date.

The only public records request Windom made was one to the Florida Department of Corrections (FDOC), which provided the records on July 31, 2025, pursuant to court order. Windom filed his successive 3.851 motion for postconviction relief on August 3, 2025, raising two claims, and the State filed its response on August 4, 2025.

On August 5, 2025, the circuit court held a second case management conference for the purpose of determining the need for an evidentiary hearing on either of Windom's claims. At the hearing, the court orally pronounced that it did not need an evidentiary hearing to address Windom's claims and entered a written order that day denying Windom an evidentiary hearing and cancelling one tentatively set at the first hearing.

On August 8, 2025, the lower court entered its order denying Windom's successive motion for postconviction relief, and Windom filed his Notice of Appeal.

On August 8, 2025, Windom filed his petition for state habeas corpus. On August 11, 2025, he filed his initial brief. On August 12, 2025, the State filed its answer brief and its response to the habeas petition, and on August 13, 2025, Windom filed his replies. On August 21, 2025, the Florida Supreme Court issued its opinion affirming the lower court's summary denial of his successive 3.851 motion and denying his habeas petition.

On August 22, 2025, Windom filed his petition for a writ of certiorari, to which this responds.

REASONS FOR DENYING THE PETITION

I. Whether the Florida Supreme Court wrongly affirmed the postconviction court's summary denial of Windom's postconviction claim he raised while under warrant, when the claim is both untimely and procedurally barred by Florida law, and seeks to apply the Eighth Amendment concept of evolving standards to the Sixth Amendment, which no court is known to have ever done..

Windom seeks this Court's review of the Florida Supreme Court's rejection of his Sixth Amendment claim. But the Florida Supreme Court's ruling was based on its interpretation of state law, finding the motion untimely filed and procedurally barred. It also found the claim meritless.

A. Windom's Sixth Amendment claim was rejected on the independent and adequate state law ground that it was untimely and procedurally barred under Florida Rule of Criminal Procedure 3.851 and by firmly established and regularly followed Florida Supreme Court precedent.

When both state and federal questions are involved in a state court proceeding,

this Court has no jurisdiction to review the case provided the state court judgment rests on a state law ground that is both independent of the merits of the federal claim and an adequate basis for the state court's decision. *See Foster v. Chatman*, 578 U.S. 488, 497 (2016). This "adequate and independent state grounds" rule stems from the fundamental principle that this Court lacks jurisdiction to review matters of state law. *See Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945). But to "qualify as an adequate procedural ground, capable of barring federal habeas review, a state rule must be firmly established and regularly followed." *Johnson v. Lee*, 578 U.S. 605, 608 (2016) (internal quotations omitted).

This Court has stated that its "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And [that] power is to correct wrong judgments, not to revise opinions" or "render an advisory opinion." *Id.* "[I]f the same judgment would be rendered by the state court after [this Court] corrected its views of federal laws, [this Court's] review could amount to nothing more than an advisory opinion." *Id.* at 126. Accordingly, if a state court's decision is separately based on state law, this Court "will not undertake to review the decision." *Florida v. Powell*, 559 U.S. 50, 57 (2010).

1. Windom's claim is untimely under Florida Rule of Criminal Procedure 3.851 and under firmly established and regularly followed Florida Supreme Court precedent.

The Florida Supreme Court's determination that Windom's Sixth Amendment claim was untimely according to the Florida Rules of Criminal Procedure constitutes a separate basis for the denial of his claim that is independent of the federal-law

question Windom raises in this Court and adequate to support the denial of postconviction relief. The governing state-law rule, Florida Rule of Criminal Procedure 3.851(d), provides that any motion to vacate a judgment of conviction and sentence of death must be filed no later than one year after the judgment and sentence become final. §3.851(d)(1), Fla. R. Crim. P. The one-year limitations period is subject to only the following three exceptions:

> (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 ("NDE"), 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.

3.851(d)(2), Fla. R. Crim. P.

In addition, when it comes to NDE, "For an otherwise untimely claim to be considered timely as newly discovered evidence, it must be filed within a year of the date the claim became discoverable through due diligence." *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020). Further, "[i]t is incumbent upon the defendant to establish the timeliness of a successive postconviction claim." *Id.* And dismissal of a successive motion for postconviction relief is *required* if "the claim fails to meet the time limitation exceptions set forth in subdivision (d)(2)." 3.851(e), Fla. R. Crim. P.

Windom has known for years that his trial counsel did not meet the standards Florida subsequently established for representation of a capital defendant, whether the standards were introduced by national organizations such as the National

Association of Criminal Defense Lawyer ("NCDL") or the American Bar Association ("ABA"), or whether those standards were set by the Florida Supreme Court. *See In re Amend. To Fla. Rules of Crim. Proc.-Rule 32.112 Min. Stds. For Att'ys in Cap. Cases*, 759 So. 2d 610 (Fla. 1999) (setting minimal standards for attorneys appointed to represent capital defendants); *see also In re Amend. To Fla. Rules of Crim. Proc.-Rule 32.112 Min. Stds. For Att'ys in Cap. Cases*, 820 So. 2d 185 (Fla. 2002) (applying the 1999 rules to privately retained counsel). Yet, Windom waited until his execution warrant was issued to raise this claim. As a result, this claim was untimely, and Windom was unable to demonstrate that it met any of the exceptions in the rule noted above.[1] Consequently, the Florida Supreme Court affirmed the postconviction court's summary denial of the Windom's successive motion for postconviction relief, a ruling the Florida Supreme Court has regularly issued in cases when a defendant has filed an untimely postconviction motion. *See Dillbeck v. State, 357 So. 3d 94, 98 (Fla. 2023), cert. denied Dillbeck v. Florida,* 143 S. Ct. 856 (2023*); Mungin v. State,* 320 So. 3d 624, 626 (Fla. 2020*)*; *Rivera v. State,* 187 So. 3d 822, 833 (Fla. 2015); *Downs v. State,* 740 So. 2d 506, 512 (Fla. 1999); *Henderson v. Singletary*, 617 So. 2d 313, 316 (Fla. 1993); This Court should not reward him for employing such dilatory tactics.

A state court's finding that a federal law claim is time-barred under the state's

[1] The Florida Supreme Court found that the retroactive application of a new constitutional right exception did not apply because no court has ever ruled that "evolving standards of decency" should be applied to the Sixth Amendment, and Windom did not challenge the postconviction court's finding that the NDE exception did not apply. *Windom v. State*, No. SC2025-1179, 2025 WL 2414205, at *3 (Fla. Aug. 21, 2025).

procedural rules constitutes an independent and adequate state-law ground for rejecting the claim. *See Walker v. Martin*, 562 U.S. 307, 316-17 (2011) (finding that California's time bar qualified as an adequate state procedural ground*); Jeter v. Sec'y, Fla. Dep't of Corr.*, 479 F. App'x 286, 287-88 (11th Cir. 2012) (holding that the Florida courts' dismissal of Jeter's postconviction motion as untimely under Fla. R. Crim. P. 3.850 was a rejection on adequate and independent state procedural grounds); cf. *Michigan v. Long*, 463 U.S. 1032, 1042 (1983) (stating that this Court will "*assume that there are no such grounds* when it is not clear from the opinion itself that the state court relied upon an adequate and independent state ground") (emphasis added). Because Windom failed to file his claim in a timely manner, it was proper for the Florida Supreme Court to affirm the summary denial of this postconviction claim.

2. The claim was procedurally barred under Florida Rule of Criminal Procedure 3.851 and by firmly established and regularly followed Florida Supreme Court precedent.

The Florida Supreme Court's determination that Windom's Sixth Amendment claim was procedurally barred under the Florida Rules of Criminal Procedure establishes a second basis for the denial of his claim that is both independent of the federal-law question he raises in this Court and adequate to support the denial of postconviction relief. A successive motion for postconviction relief *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. 3.851(e)(2), Fla. R. Crim. P. The Florida Supreme Court has long held and regularly followed its rules regarding procedural barring of claims. *See Johnson*, 578 U.S. 605 at 608 ("To qualify as an adequate procedural ground, capable of barring federal habeas review, a state rule must be firmly established and regularly followed.") (citation modified).

The Florida Supreme Court has consistently ruled that claims that (1) were previously raised and rejected on a direct appeal, or (2) that could have previously been raised on either direct appeal or in prior postconviction proceedings, are procedurally barred. *See Carroll v. State*, 114 So. 3d 883, 886 (Fla. 2013) (claims that either were raised and rejected on direct appeal or could have been raised on direct appeal or in other postconviction motions are procedurally barred).

Nor is it unique to have a rule barring claims a party failed to bring earlier. Federal and state courts across the country follow the same rule. "The general rule in federal habeas cases is that a defendant who fails to raise a claim on direct appeal is barred from raising the claim on collateral review." *Sanchez–Llamas v. Oregon*, 548 U.S. 331, 350–351 (2006). Similarly, states generally prohibit the postconviction litigation of claims which were or could have been raised at trial or on direct appeal. *Johnson*, 578 U.S. 609. As this Court noted, "It appears that every State shares this procedural bar in some form." *Id.* The Court concluded that federal courts reviewing state postconviction proceedings "must not lightly disregard state procedural rules that are substantially similar to those to which we give full force in our own courts." *Id.* (citing *Beard v. Kindler*, 558 U.S. 53, 62 (2009). It added, "And it would be "[e]ven

stranger to do so with respect to rules in place in nearly every State." 578 U.S. 609.

Florida's procedural bar is broader than the bars discussed above. It also prohibits claims that could have been raised on direct appeal or prior postconviction proceedings but were not, as well as claims previously raised either on direct or postconviction appeal. The state's courts consistently follow these rules.

The rule was first adopted in 1993 based on the recommendation of the *Supreme Court Committee on Postconviction Relief in Capital Cases*, which was created to resolve the substantial delays in the death penalty postconviction relief process. *See* §3.851 Fla. R. Crim. P. (1993) (Editor's Notes). Rule 3.851 was repealed effective January 14, 2000, but was readopted as it existed previously under the provisions of the Florida Supreme Court Order of February 7, 2000. R. 3.851, Fla. R. Crim P.; *see also*, *In re Rules Governing Capital Postconviction Actions*, 763 So. 2d 273 (Fla. 2000); *Allen v. Butterworth*, 756 So. 2d 52 (Fla. 2000). The rule has been consistently enforced by the Florida Supreme Court since it was first enacted and then later readopted. *See Jimenez v. State,* 265 So. 3d 462, 481 (Fla. 2018); *Deparvine v. State*, 146 So. 3d 1071, 1106 (Fla. 2014); *Everett v. State*, 54 So. 3d 464, 488 (Fla. 2010), *as revised on denial of reh'g* (Fla. 2011); *Brown v. State*, 755 So. 2d 616 (Fla. 2000; *Henderson v. Singletary*, 617 So. 2d 313, 315 (Fla. 1993).

The Florida Supreme Court has also applied this same standard of review to cases under warrant. In 2024 and 2025, twelve death-row inmates to date have been sentenced to death. Each defendant has raised a claim that the State has argued was either untimely or procedurally barred, or both. In each case, the postconviction court

has summarily dismissed at least one claim found untimely, procedurally barred, or both, and in each case the Florida Supreme Court has agreed that summary dismissal was proper in at least one of the defendant's claims because it was untimely, procedurally barred, or both. *See e.g. Cole v. State,* 392 So. 3d 1054, 1063-64 (Fla. 2024), *cert. denied Cole v. Florida,* 145 S. Ct. 109 (2024); *Wainwright v. State*, 411 So. 3d 392, 398-401 (Fla. 2025), *cert. denied Wainwright v. Florida*, No. 24-7365, 2025 WL 1621505 (U.S. June 9, 2025); *Bell v. State*, No. SC2025-0891, 2025 WL 1874574, at *1, 7, 12-16 (Fla. July 8, 2025), *cert. denied Bell v. Florida*, No. 25-5083, 2025 WL 1942498 (U.S. July 15, 2025).

Florida's rules regarding barring certain postconviction claims, including their timeliness, are clearly "firmly established" and Florida's postconviction courts and Supreme Court, have "regularly followed" these rules, including during the pendency of execution warrants. The Court should deny Windom's certiorari petition because the Florida Supreme Court decided this claim on an independent and adequate state law ground.

B. There is no conflict between the Florida Supreme Court's decision and any of the decisions of this Court, the other federal courts, or state courts of last resort to warrant this Court's review.

Windom has failed to establish any conflict between the Florida Supreme Court's decision in this case and (1) that of this Court or any federal circuit court of appeals, or (2) any state court of last resort. *See* Sup. Ct. R 10(b) (listing conflict among the federal appellate courts and state supreme courts as a consideration in the decision to grant review). And even if this Court had jurisdiction, review would

be unwarranted. As this Court has observed, a principal purpose for certiorari jurisdiction "is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." *Braxton V. United States*, 500 U.S. 344, 347 (1991). In the absence of such conflict, certiorari is rarely warranted. This Court generally does not review state court decisions merely because a question of federal law is implicated. Rather, the state court typically must have "decided an important question of federal law in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals" or "with relevant decisions of this Court," or "decided an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10. That is not the case here.

Rather, Windom seeks to expand the horizons of the Sixth Amendment by applying to it the Eighth Amendment's concept of "evolving standards of decency." Windom cites no other court, federal appellate court or state court of last resort, that has ever done this. Consequently, Windom has failed to demonstrate any conflict exists between the Florida Supreme Court and these other courts, nor does he identify any important federal question decided by the Florida Supreme Court that has not been, but should be, settled by this Court.

C. The Florida Supreme Court correctly ruled meritless Windom's claim that evolving standards of decency should apply to the Sixth Amendment.

Windom asks this Court to rule that a reviewing court should apply current standards for representation to cases litigated prior to the existence of these

standards. But Windom's ambiguous Sixth Amendment 'evolving' standards criteria would invite open ended collateral attacks on counsel and frustrate the government's strong interest in finality. It would also run counter to this Court's decision in *Strickland* which advised courts to "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Strickland v. Washington*, 466 U.S. 668, 690 (1984). As a result, the Florida Supreme Court correctly ruled that the concept of evolving standards of decency should not be applied to the Sixth Amendment. Let alone be retroactively applied.

At the time of Windom's trial, Florida had no standards an attorney representing a capital defendant was required to meet, other than a license to practice law in Florida that was in good standing. The "Death is Different" seminar did not exist, and no NACDL or ABA guidelines required specific standards for representation of capital defendants. Current standards are far more exacting. They require various degrees of experience, depending on one's role, and attendance at 12-hour seminars that did not even exist at the time of Windom's trial. *See* Fla. R. Crim. P. 3.112. Because now-required courses did not exist at the time, no attorney at the time of Windom's trial could meet all current qualification requirements for representation of a capital defendant.

And Windom's claim of ineffective assistance has already been thoroughly addressed in both state and federal courts. Both courts unanimously held that Windom was not denied effective assistance of counsel. Windom's attempt to relitigate these claims under a novel evolving standards of the Sixth Amendment

theory runs counter to *Strickland* which judge's trial counsel against contemporary standards at the time of trial. Notably, Windom challenged the effectiveness of counsel on habeas review under *Strickland* but both the district court and Eleventh Circuit agreed that Windom did not demonstrate his counsel was ineffective. This Court rejected certiorari following the Eleventh Circuit's decision, *Windom v. Sec'y Dep't of Corr., et. al.,* 559 U.S. 1051 (2010). It should do so again.

II. Whether Windom, who has had a lawyer and over 30 years to raise postconviction claims, was denied his right to due process because the 30-day warrant schedule inhibited his ability to present untimely evidence.

In his second claim, Windom argues that the Florida Supreme Court wrongly denied his claim that the 30-day timespan presented by the warrant violates his right to due process. He states that he has come into recent possession of video tapes from his 2013 clemency hearing that portray victims' family members (one of whom is the daughter of defendant, who was an infant when her mother, Davis, and grandmother, Lubin, were shot to death by Windom) stating that they did not want Windom put to death. But the Florida Supreme Court concluded that the claim was meritless because Windom received notice and had an opportunity to be heard and that his alleged newly discovered evidence claim was untimely because the evidence could have been discovered with due diligence and was unlikely to result in a different sentence.

A. Windom's postconviction claim of newly discovered evidence was rejected on the independent and adequate state law ground that it was untimely under Florida Rule of Criminal Procedure 3.851(d) and by firmly established and regularly followed Florida Supreme Court precedent.

The Florida Supreme Court ruled Windom's claim untimely because the court concluded that the clemency hearing evidence did not qualify under the first exception to the one-year requirement for Windom filing a motion for postconviction relief. The court found that "the allegedly new information was ascertainable long ago by the exercise of due diligence." *Windom v. State*, No. SC2025-1179, 2025 WL 2414205, at *7 (Fla. Aug. 21, 2025*; see also* Fla. R. Crim. P. 3.851(d)(2)(A) (requiring the exercise of due diligence in ascertaining information).

The court additionally concluded that even if this evidence was admissible, it would not likely result in a different sentence. *Id.* (citing *Davis v. State*, No. SC2024-1128, 2025 WL 1970014, at *5 (Fla. July 17, 2025). The court rejected Windom's contention that this sentence was likely due to the highly aggravated nature of the case, explaining, "As we said in *Windom I*, 'we conclude that the existence of the one aggravator of the conviction of two other capital offenses and one violent felony against a person in each instance is sufficient to outweigh the little weight given to the mitigating factors set forth in the sentencing order.' 656 So. 2d at 440 *(*citations omitted*)." Windom v. State,* No. SC2025-1179, 2025 WL 2414205, at *7 (Fla. Aug. 21, 2025).

Because the Florida Supreme Court determined Windom was unable to meet this exception to the one-year requirement, his claim is untimely as it was filed more

than one year after his judgment and sentence were deemed final. The Florida Supreme Court's determination that Windom's claim was untimely under the Florida Rules of Criminal Procedure constitutes a separate basis for the denial of his claim that is both adequate and independent of the federal-law question because the Florida Supreme Court regularly affirms postconviction courts employing Rule 3.851 to summarily deny claims when a defendant has filed an untimely postconviction motion. *See Mungin v. State,* 320 So. 3d 624, 626 (Fla. 2020); *Rivera v. State*, 187 So. 3d 822, 833 (Fla. 2015); *Downs v. State*, 740 So. 2d 506, 512 (Fla. 1999); *Henderson v. Singletary*, 617 So. 2d 313, 316 (Fla. 1993).

This Court should deny Windom's petition because his postconviction claim was denied on an adequate and independent basis that it was untimely under Florida law.

B. Windom's due process claim is meritless.

Although the warrant was signed July 29, 2025, and Windom's execution is scheduled to take place on August 28, 2025, Windom has not been limited to 30 days to challenge his execution. To the contrary, Windom had *thirty-plus years* to advance numerous challenges during the time he has been on death row; those challenges included his arguments that Florida lacks standards for capital trial attorneys; trial was ineffective regarding his alleged intoxication, failure to hire competent mental health experts, and his failure to put on an insanity defense; as well as alleged *Brady* violations and the ineffectiveness of appellate counsel. He has further enjoyed a full round of constitutional challenges during habeas review in federal court, but none of these challenges merited relief of any sort, and this Court declined to review the 11th

Circuit's decision denying habeas relief sought for the alleged ineffectiveness of his trial counsel. *Windom v. Sec'y, Dep't of Corr.*, 578 F.3d. 1227 (11th Cir. 2009*), cert. denied*, 559 U.S. 1051 (2010).

The time frame of the warrant implicates no issue of unsettled federal constitutional law for this Court to decide. Windom has enjoyed the benefit of the full panoply of rights afforded to him under the constitution and has not missed any opportunity to advance whatever claim he desired to press. The state courts' conclusions were correct — Windom has had all the process he is due. That the warrant has now been given thirty days to prepare for his execution does not alter that fact or violate any remaining right he has to due process. *Zakrzewski v. State*, No. SC2025-1009, 2025 WL 2047404, at *1 (Fla. July 22, 2025); *Tanzi v. State*, 407 So. 3d 385, 393 (Fla. 2025).

Accordingly, the Court should deny this petition.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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