No. 25-5605

In The
Supreme Court of the United States

DAVID JOSEPH PITTMAN,

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

QUESTIONS PRESENTED

I. Does the Florida Supreme Court's decision in *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020), to recede from a flawed opinion holding *Hall v. Florida*, 572 U.S. 701 (2014), retroactive, resulting in random death-sentenced defendants improperly being resentenced to life, violate the Eighth Amendment?

II. Does the ex post facto clause of the United States Constitution apply to the judicial branch?

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OPINION BELOW

The decision below of the Florida Supreme Court appears as *Pittman v. State,* No. SC2025 - 1320, 2025 WL 2609439 (Fla. Sept. 10, 2025).

STATEMENT OF JURISDICTION

Pittman 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 Pittman's statement regarding the constitutional provisions involved.

STATEMENT OF THE CASE AND FACTS

The essential facts are drawn from the Florida Supreme Court's opinion on direct appeal:

> Shortly after 3 a.m. on May 15, 1990, a newspaper deliveryman in Mulberry, Florida, reported that he had seen a burst of flame on the horizon. When the authorities arrived they found the home of Clarence and Barbara Knowles engulfed in fire. After the fire was extinguished, the police entered the house and found the bodies of Clarence and Barbara, along with the body of their twenty-year-old daughter, Bonnie. A medical examiner determined that the Knowles family had died not from the fire but from massive bleeding resulting from multiple stab wounds. Bonnie Knowles' throat had been cut. An investigator determined that the fire was the result of arson, that the phone line to the house had been cut, and that Bonnie Knowles' brown Toyota was

missing.

> At 6:30 a.m. on the morning of the fire, a construction worker noticed a brown Toyota in a ditch on the side of the road near his job site about one-half mile from the Knowles residence. A few minutes later the worker saw a homemade wrecker, which he later identified as belonging to Pittman, pull up to the Toyota and, shortly thereafter, a cloud of smoke coming from that direction. Another witness who lived near the construction site saw a man running away from the burning car. She identified Pittman from a photo array as the man she saw that morning. Investigators determined that the car fire, like the earlier house fire, was the work of an arsonist.
>
> Pittman knew the Knowles well. At the time of the murders, another of the Knowles' daughters, Marie, was going through a contentious divorce with Pittman. During the process, Pittman had made several threats against Marie and her family. Adding to the strain, Pittman had recently discovered that Bonnie Knowles was attempting to press criminal charges against him for an alleged rape that had occurred five years earlier.
>
> Carl Hughes, a jailhouse informant, testified that Pittman had confessed to him that he had committed the murders. As Pittman told it, he went to the Knowles' house intending to speak with Bonnie Knowles. She let Pittman in and they talked but when Bonnie resisted his sexual advances, he killed her to stop her cries for help. Pittman then murdered Bonnie's mother Barbara Knowles in the hallway outside Bonnie's bedroom and then killed Clarence Knowles as the father tried to use the phone to call for help. Hughes said that Pittman also admitted to burning down the house and stealing the Toyota before setting it aflame.

Pittman v. State, 646 So. 2d 167, 168 (Fla. 1994).

In its sentencing order the trial court found the following aggravators: 1) Prior conviction of a felony involving the use or threat of violence–Aggravated Assault; 2) Commission of two previous capital felonies as to each of the three murders; 3) Heinous, Atrocious, and Cruel as to the murder of Bonnie Knowles; 4) HAC as to the murder of Barbara Knowles; 5) HAC as to the murder of Clarence Knowles.

The trial court rejected most of the defendant's proposed mitigation: 1) Murders were not committed while Pittman was under the influence of extreme mental or emotional disturbance; 2) Pittman's capacity to conform his conduct to the requirements of the law was not substantially impaired; 3) Pittman did not suffer from brain damage.

On direct appeal, the Florida Supreme Court affirmed Pittman's multiple convictions and sentences. *Pittman v. State*, 646 So. 2d 167 (Fla. 1994). Pittman filed a petition for writ of certiorari which this Court denied. *Pittman v. Florida*, 514 U.S. 1119 (1995).

Postconviction Proceedings

Pittman filed his initial postconviction motion which eventually incorporated 17 claims. After an evidentiary hearing the postconviction court entered a 113–page written order denying postconviction relief. The Florida Supreme Court affirmed the denial of postconviction relief and denied Pittman's habeas petition. *Pittman v. State*, 90 So. 3d 794 (Fla. 2011).

Federal Habeas Proceedings

Pittman's federal habeas petition was denied, and the 11th Circuit affirmed following oral argument. *Pittman v. Sec'y, Fla. Dep't of Corr.*, 871 F.3d 1231 (11th Cir. 2017). Pittman's petition for writ of certiorari filed May 18, 2018, was denied on October 1, 2018. *Pittman v. Jones*, 586 U.S. 839 (2018).

Additional Successive Postconviction Proceedings

Pittman filed a successive postconviction motion in the lower court on May 27,

2015, alleging, among other things, that his intellectual disability rendered him ineligible for a death sentence. The postconviction court ultimately found Pittman's intellectual disability claim to be untimely and denied relief as to all claims.

The Florida Supreme Court affirmed. *Pittman v. State*, 337 So. 3d 776 (Fla. 2022).

Proceedings Under Warrant

On August 15, 2025, Governor Ron DeSantis signed Pittman's death warrant. Execution is scheduled for September 17, 2025, at 6:00 p.m.

Pittman's fourth successive 3.851 motion for postconviction relief, filed after the warrant issued, was summarily denied by the trial court and the Florida Supreme Court affirmed. *Pittman v. State*, 2025 WL 2609439 (Fla. Sept. 10, 2025).

On September 11, 2025, Pittman filed his petition for a writ of certiorari.

REASONS FOR DENYING THE PETITION

WHETHER THIS COURT SHOULD GRANT REVIEW OF A DECISION OF THE FLORIDA SUPREME COURT HOLDING THAT PITTMAN'S CLAIM OF INTELLECTUAL DISABILITY BASED ON *ATKINS V. VIRGINIA,* 536 U.S. 304 (2002), AND *HALL V. FLORIDA,* 572 U.S. 701 (2014), WAS UNTIMELY AS MATTER OF STATE LAW.

Petitioner seeks review of the Florida Supreme Court's decision holding that his claim of intellectual disability based on *Atkins* and *Hall* was untimely under state law. He claims that the question of when a judicial opinion should be applied retroactively is both complicated and unclear, that Florida's decision in *Phillips* was arbitrary and capricious and that the decision violated the ex post facto clause of the United States Constitution. Pet. 7.

None of these claims merits this Court's review.

1. The Florida Supreme Court's decision in this case

The Florida Supreme Court affirmed the trial court's summary denial of Pittman's intellectual disability claim as untimely. *Pittman v. State*, 2025 WL 2609439 (Fla. Sep. 10, 2025). Pittman's disability claim was untimely under Florida's existing precedent because it could and should have been raised in 2004 pursuant to Rule 3.203, which required him to raise his intellectual disability claim no later than October of that year. *Pittman*, 2025 WL 2609439 at *4.

The Florida Supreme Court's decision relying on Rule 3.203 is a matter of independent state law. This Court does not grant review of state law claims. *Michigan v. Long*, 463 U.S. 1032, 1040 (1983) (explaining that respect for the "independence of state courts, as well as avoidance of rendering advisory opinions, have been the cornerstones of this Court's refusal to decide cases where there is an adequate and independent state ground" for the decision). If a state court's decision is based on independent state law, this Court "of course, will not undertake to review the decision." *Florida v. Powell*, 559 U.S. 50, 57 (2010). As Justice Story explained, the Judiciary Act of 1789 vested this Court with no jurisdiction unless a federal question is being raised. *Cardinale v. Louisiana,* 394 U.S. 437, 438 (1969) (citing *Owings v. Norwood's Lessee,* 9 U.S. 344 (1809)). The determination of timeliness under state law presents no federal question for review.

Even if this Court were to grant certiorari, Pittman's claim is without merit. This Court has often stated that constitutional claims can be forfeited if not raised in a timely manner. *Peretz v. United States,* 501 U.S. 923, 936-37 (1991) (observing that the "most basic rights of criminal defendants are similarly subject to waiver" citing cases including *Yakus v. United States,* 321 U.S. 414, 444 (1944) ("No procedural principle is more familiar to this Court than that a constitutional right may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right."⟩). Indeed, this Court has observed that a "constitutional claim can become time-barred just as any other claim can." *Block v. N. Dakota ex rel. Bd. of Univ. & Sch. Lands,* 461 U.S. 273,292 (1983).

And this Court has repeatedly found that claims pursued in a dilatory manner, even in capital cases, should be dismissed. *Bucklew v. Precythe,* 587 U.S. 119, 151 (2019) (stating that courts "can and should protect settled state judgments from undue interference by invoking their equitable powers to dismiss or curtail suits that are pursued in a dilatory fashion or based on speculative theories"); *Calderon v. Thompson,* 523 U.S. 538, 585 (1998) ("The federal courts can and should protect States from dilatory or speculative suits.").

Finally, this Court has consistently declined to grant review of Florida decisions holding that *Hall* did not apply retroactively. *See* e.g. *Foster v. Florida*, 145 S. Ct. 1939 (2025), *Arbelaez v. Florida*, 144 S. Ct. 1034 (2024), *Walls v. Florida*, 144

S. Ct. 174 (2023).

2. The Eighth Amendment does not prohibit procedural bar of Intellectual Disability (ID) claims.

Pittman argues that because the Eighth Amendment prohibits certain punishments as a "categorical matter" (Petition, p. 7), his asserted intellectual disability (ID) renders him ineligible for execution regardless of whether Florida courts have found the claim untimely and procedurally barred. But both this Court and lower federal courts routinely enforce time bars and procedural bars, including capital cases raising constitutional claims. *Lawrence v. Florida,* 549 U.S. 327, 337 (2007) (affirming the dismissal of a capital habeas petition as untimely).

The circuit courts have rejected challenges to the habeas statute of limitations in cases involving all types of constitutional claims. *See, e.g., Hill v. Dailey,* 557 F.3d 437 (6th Cir. 2009) (holding the statute of limitations for habeas petitions did not violate Suspension Clause); *Martin v. Ayers,* 52 F.App'x. 917 (9th Cir. 2002) (holding that the federal habeas statute of limitations did not violate Suspension Clause); *Wyzykowski v. Dep't of* Corr., 226 F.3d 1213 (11th Cir. 2000) (holding the AEDPA's one year statute of limitation was not per se unconstitutional as violative of Suspension Clause).

And, while this Court created an actual innocence exception to the federal habeas statute of limitations, this Court also concluded that delays in bringing the actual innocence claim may be grounds to reject it and enforce the time bar. *McQuiggin v. Perkins,* 569 U.S. 383 (2013). Indeed, in *Perkins*

itself, on remand, the district court again concluded that the habeas petition "was properly dismissed as being barred by the statute of limitations" despite the claim of innocence. *Perkins v. McQuiggin,* 2013 WL 4776285, *3 (W.D. Mich. Sept. 4, 2013).

There is no conflict between this Court's view of the forfeiture of constitutional rights and the Florida Supreme Court's holding in this case.

3. The Florida Supreme Court's finding that *Hall* is not retroactive as a matter of state law does not conflict with this Court's caselaw.

In asserting that Florida's high court erred in its retroactivity analysis, Pittman erroneously contends that the decisions in *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. 190 (2016) are relevant. *Miller* found that a state law mandating a life sentence for homicide committed by a juvenile violated the Eighth Amendment, and *Montgomery* concluded that the change, being substantive, required retroactive application.[1]

Florida's high court, however, concluded that *Hall* merely altered the procedures by which a defendant's disability was determined; it did not alter

[1] An important difference between *Miller* and *Hall* is that while one's status as a juvenile offender is easily established through official records, proof of intellectual disability generally requires expert opinions, factual development, and a judicial determination as to whether the facts sufficiently establish the claim. In other words, determination of whether one belongs to the class of individuals exempt from execution is rarely in dispute where the defendant is a juvenile, and nearly always in dispute where the defendant claims to be intellectually disabled.

Atkin's categorical prohibition against executing the intellectually disabled. *Phillips*, 299 So. 3d at 1019. Accordingly, both *Montgomery* and *Miller* do not apply.

Pittman, however, asserts that the *procedural* changes announced in *Hall* expanded the *substantive* changes in *Atkins*, thus requiring retroactive application. Pet. p. 14. This is wrong. *Hall* addressed lower court procedures for establishing whether the defendant is disabled. Because of *Hall*, Florida courts no longer can use a bright-line cutoff for IQ scores when determining if an individual is intellectually disabled. Suggesting that a procedural change is retroactive merely because it affects how the substantive rule is applied improperly conflates *procedural* and *substantive* changes. If Pittman's view were adopted, nearly all procedural changes would become retroactive.

"A rule is new unless it was '*dictated* by precedent existing at the time the defendant's conviction became final.'" *Teague v. Lane*, 489 U.S. 288, 301 (1989) (plurality op.)). In *Atkins*, this Court overruled *Penry v. Lynaugh*, 492 U.S. 302 (1989) and said the Eighth Amendment prohibits the execution of the intellectually disabled. *Atkins*, 536 U.S. at 321. Twelve years later this Court decided in *Hall* that Florida's method of implementing *Atkins* through a strict IQ cutoff was unconstitutional. But petitioner's conviction "became final," *Edwards v. Vannoy*, 593 U.S. 255, 265 (2021) in 1995–when *Penry* was still the law. So not only was *Hall* not "*dictated* by precedent existing at the time [petitioner's] conviction became final," *id.*, it was also foreclosed by it. Accordingly, the rule of *Hall* is plainly new as applied to Pittman.

In any event, Pittman is wrong to argue that *Hall* was dictated by *Atkins*; the latter did not define which defendants are ineligible for execution, but instead "le[ft] to the States the task of developing appropriate ways to enforce the constitutional restriction" it had announced. *Atkins*, 536 U.S. at 317. Nothing in *Atkins* dictated this Court's subsequent holding in *Hall* that Florida's use of an IQ cutoff of 70 violates the Eighth Amendment. Indeed, *Hall* recognized that its "inquiry must go further" than the Court's prior "precedents." *Hall*, 572 U.S. at 721.

Justice Alito's dissent (joined by Chief Justice Roberts, Justice Scalia, and Justice Thomas) confirms that *Hall* was not dictated by *Atkins*. *See Beard v. Banks*, 542 U.S. 406, 414 (2004) (a result is not dictated by precedent if "reasonable jurists could have differed as to whether [precedent] compelled" the result). In Justice Alito's view, the Court's approach "mark[ed] a new and most unwise turn in [the Court's] Eighth Amendment case law" that "cannot be reconciled with the framework prescribed by our Eighth Amendment cases." *Hall*, 572 U.S. at 725 (Alito, J., dissenting).

The Eleventh Circuit thus correctly has explained that "[f]or the first time in *Hall*, the Supreme Court imposed a new obligation on the states not dictated by *Atkins* because *Hall* restricted the states' previously recognized power to set procedures governing the execution of the intellectually disabled." *In re Henry*, 757 F.3d 1151, 1158–59 (11th Cir. 2014); *see also Goodwin v. Steele,* 814 F.3d 901, 904 (8th Cir. 2014) (*Hall* mandates "*new* procedures for ensuring that States do not execute members of an already protected group" (emphasis added)).

The Florida Supreme Court has made clear that *Hall* was a new rule not dictated by *Atkins*. *See Phillips*, 299 So. 3d at 1019 ("[I]t remains clear that *Hall* establishes a *new* rule of law that emanates from the United States Supreme Court and is constitutional in nature . . . ." (emphasis added)); *see also Walls v. State*, 213 So. 3d 340, 346 (Fla. 2016) (overruled decision holding that *Hall* is retroactive as a matter of Florida law but still agreeing that *Hall* was a "change in the law").

4. Florida's decision in *Phillips* does not violate the Eighth Amendment's prohibition against arbitrary punishment.

Pittman next argues that Florida's decision in *Phillips* is an arbitrary application of the law. In support, he notes that in the wake of *Walls* (which erroneously held *Hall* to be retroactive), some death-sentenced inmates had evidentiary hearings that resulted in reduced sentences. *See* Petitioner's Appendices C and D.

But a court's decision to recede from an erroneous decision is most certainly not arbitrary. To the contrary, allowing death sentenced inmates to randomly benefit from a flawed judicial decision is more akin to arbitrariness. As the Florida Supreme Court noted in *Phillips*, "perpetuating an error in legal reasoning under the guise of stare decisis … undermines the integrity and credibility of the court." *Id.* at 1023. That some defendants benefited from Florida's erroneous retroactivity analysis and received a boon to which they were not entitled is an anomaly, not a constitutional violation.

Pittman also contends that arbitrariness is established because he was never afforded the opportunity to present evidence of his disability. This is false. Pittman's

opportunity came when *Atkins* was decided. *Pittman v. State*, 337 So. 3d 776, 777 (Fla. 2022). As argued previously, Pittman was given 60 days to advance a claim of disability, but he chose not to act; instead, Pittman waited until 2015, which was too late. Moreover, the Florida Supreme Court noted, Pittman did in fact advance a similar ID claim in his initial postconviction motion in the form of argument that counsel should have offered his low IQ as additional mitigation. He clearly was aware of the available evidence, but his dilatoriness in pursuing it rendered the claim waived. *Pittman,* WL 2609439 at *4.

Pittman's complaints notwithstanding, there is compelling evidence to refute his disability claim. The record shows that Pittman methodically planned the murders. He cut the telephone lines before entering the house in the middle of the night, stabbed and killed all three victims, and then set fire to the residence and later to the victim's automobile to destroy any evidence of his presence. He worked and lived independently at a motor vehicle scrap yard and built his own tow truck out of spare parts. In short, any claim that Pittman is intellectually disabled would run headlong into strong evidence of adaptive function. Aside from his criminality, Pittman showed no difficulty in managing an independent lifestyle.

While Pittman weakly challenges the validity of Dr. Dee's testimony that he scored a 95 on an IQ test taken prior to trial, it is hard to square such a high score with his previous low assessments,[2] except perhaps to conclude that he did not try as

[2] Pittman's IQ scores obtained while he was a child typically ranged in the low 70's. This was another reason the trial court gave for finding his 2015 claim untimely. There was record evidence of his disability in counsel's possession.

hard when he was tested in school. He contends that Dr. Dee gave him the "wrong" test; but the record shows that Pittman was given an older version of the same intelligence test used by Dr. Taub.[3] In any event, the trial court concluded in denying Pittman's 2015 motion that postconviction counsel could easily have determined that Dr. Dee's assessment was made using the earlier WAIS test: "Prior postconviction counsel himself acknowledged he obtained Dr. Dee's file 'that had been included with the record' to determine the original WAIS test had been improperly administered in 1991. As prior postconviction counsel stated, this was obvious simply from looking at the copyright date." (Respondent's Appendix, p. 22) Counsel began representing Pittman in 2003; thus, he was the proper advocate to have raised the ID claim when *Atkins* was decided. This is a case of dilatory conduct, not arbitrary or capricious action. As previously argued, Florida regularly enforces time and procedural bars to dilatory claims like this one. *Pittman,* WL 2609439 at *4.

5. The ex post facto clause does not apply to judicial decisions.

Finally, Pittman contends that Florida's decision to recede from retroactivity violates the ex post facto clause of the Constitution, and that sufficient confusion regarding this area of the law exists to justify this Court's review. Pittman is wrong.

In *Rogers v. Tennessee,* 532 U.S. 451, 460 (2001), the Court squarely addressed the ex post facto question. The plain language of the Constitution, the *Rogers* court

[3] Dr. Dee administered the WAIS, which was released in 1955. Dr. Taub testified that he should have used the WAIS-R, released in 1981. Dr. Taub used the most current test available in 2015, the WAIS 4.

concluded, demonstrates that the clause applies only to laws passed by congress. And while the Court has found, in some cases, that a judicial act violates due process, it has never held that the judiciary is bound by ex post facto. *Id.* There is nothing to clarify.

The Florida Supreme Court's decision to recede from retroactivity in ID cases is consistent with this Court's jurisprudence, does not violate due process or equal protection, was neither arbitrary nor capricious, and does not stand in violation of the ex post facto clause. This Court should decline to grant certiorari.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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