No. _____

IN THE SUPREME COURT OF THE UNITED STATES

VICTOR T. JONES,

Petitioner,

v.

STATE OF FLORIDA and

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondents.

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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

VOLUME II

CAPITAL CASE

DEATH WARRANT SIGNED
EXECUTION SET SEPTEMBER 30, 2025, AT 6:00 P.M.

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September 26, 2025

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

VICTOR T. JONES,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

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

APPENDIX D

CAPITAL CASE

DEATH WARRANT SIGNED
EXECUTION SET SEPTEMBER 30, 2025, AT 6:00 P.M.

State's Response To Defendant's Successive Motion To Vacate Judgment Of Conviction And Sentence Of Death Pursuant To Florida Rule Of Criminal Procedure 3.851 After A Signed Death Warrant, *State v. Victor T. Jones*, Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, 90-CF-50143 (Sept. 9, 2025)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

VICTOR TONY JONES,

Defendant.
_____/

Case No. 1990-CF-50143
FSC No. SC1960-81,482
ACTIVE DEATH WARRANT
Execution scheduled for
September 30, 2025 at 6:00 pm

STATE'S RESPONSE TO DEFENDANT'S SUCCESSIVE MOTION TO VACATE JUDGMENT OF CONVICTION AND SENTENCE OF DEATH PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.851 AFTER A SIGNED DEATH WARRANT

The State of Florida, by and through undersigned counsel, files its response to Defendant's Successive Motion to Vacate Judgment of Conviction and Sentence of Death Pursuant to Florida Rule of Criminal Procedure 3.851 After a Signed Death Warrant filed on September 8, 2025, and alleges:

OVERVIEW

This is the fifth successive postconviction motion, and sixth overall postconviction challenge filed by Defendant, Victor Tony Jones ("Jones"). The capital sentence under attack in this successive motion for postconviction relief stems from Jones' conviction and sentence of death for the murders of Matilda Nestor and Jacob Nestor. *Jones v. State*, 652 So. 2d 346 (Fla. 1995). Jones' case became final on October 2, 1995, with the denial of certiorari by the United States Supreme Court. *See Jones v. Florida*, 516 U.S. 875 (1995). The instant motion was filed following the Governor's August 29, 2025, signing of a Death Warrant for Jones. The execution is set for September 30, 2025.

FACTS AND PROCEDURAL HISTORY[1]

The State rests on the detailed Facts and Procedural History filed with this Court on September 2, 2025.

STANDARD OF REVIEW

This is a successive motion as "a state court has previously ruled on a postconviction motion challenging the same judgment and sentence." Florida Rule of Criminal Procedure 3.851(e)(2). *See Jones v. State*, 855 So. 2d 611 (Fla. 2003) (*Jones II*); *Jones v. State*, 966 So. 2d 319 (Fla. 2007) (*Jones III*); *Jones v. State*, 135 So. 3d 287 (Fla. 2014) (*Jones IV*); *Jones v. State*, 231 So. 3d 1374 (Fla. 2017) (*Jones V*) ; *Jones v. State*, 241 So. 3d 65 (Fla. 2018) (*Jones VI*), *cert. denied*, 586 U.S. 1052 (2018). In Jones' case, he has had five prior reviews making this his sixth. In order to bring a successive postconviction claim and one outside the one-year time limitation, the defendant must show either: (1) newly discovered evidence; (2) a new constitutional right held to apply retroactively; or (3) counsel's neglect to file a motion. *See* Rule 3.851(d)(2); *Owen v. Crosby*, 854 So. 2d 182, 188 (Fla. 2003) (explaining capital defendant failed to establish

[1] The State will use the following to identify the appellate records where necessary: (1) **Direct Appeal** – **ROA with R for records and T for transcripts** in case number SC1960-81482; *Jones v. State*, 652 So. 2d 346 (Fla. 1995) (*Jones I*), *cert. denied*, 516 U.S. 875 (Oct. 2, 1995); (2) **Original Postconviction Appeal – 1PCR** for case number SC01-734 *Jones v. State*, 855 So. 2d 611 (Fla. 2003) (*Jones II*); (3) **First Successive Postconviction Appeal/Intellectual Disability – 2PCR** for case number SC04-726 *Jones v. State*, 966 So. 2d 319 (Fla. 2007) (*Jones III*); (4) **Second Successive Postconviction Appeal – 3PCR** case number SC13-2392 *Jones v. State*, 135 So. 3d 287 (Fla. 2014) (*Jones IV*) raising a claim under *Porter v. McCollum,* 558 U.S. 30 (2009) which was voluntarily dismissed; **Third Successive Postconviction Appeal/Intellectual Disability - 4PCR** case number SC-15-1549 *Jones v. State*, 231 So. 3d 1374 (Fla. 2017) (*Jones V*) **; *Fourth Successive Postconviction Appeal* - 5PCR** case number SC18-285 *Jones v. State*, 241 So. 3d 65 (Fla. 2018) (*Jones VI*), *cert. denied*, 586 U.S. 1052 (2018). An "S" preceding the record type indicates a supplemental record.

that his successive motion was predicated on newly discovered evidence, thus, he could not overcome the procedural bar); *Knight v. State*, 784 So. 2d 396, 400 (Fla. 2001); *Francis v. Barton*, 581 So. 2d 583, 584 (Fla. 1991). Absent such a showing, the motion should be summarily denied. Fla. R. Crim. P. 3.851(e)(2).

A postconviction court may summarily deny a postconviction claim that is conclusively rebutted by the existing record. Fla. R. Crim. P. 3.851(f)(5)(B). It is also proper for a postconviction court to summarily deny postconviction claims that are untimely, not retroactive, procedurally barred, not cognizable, or meritless as a matter of law under controlling precedent. *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020); *Rodgers v. State*, 288 So. 3d 1038, 1039 (Fla. 2019) (affirming a summary denial of a successive postconviction claim as untimely), *cert. denied,* 141 S. Ct. 398 (2020); *Bogle v. State*, 288 So. 3d 1065, 1069 (Fla. 2019) (affirming the summary denial of a successive postconviction claim on non-retroactivity grounds), *cert. denied*, 141 S. Ct. 389 (2020); *Morris v. State*, 317 So. 3d 1054, 1071 (Fla. 2021) (stating a court may summarily deny a postconviction claim that is procedurally barred citing *Matthews v. State*, 288 So. 3d 1050, 1060 (Fla. 2019)); *Mann v. State*, 112 So. 3d 1158, 1162 (Fla. 2013) (noting that because the claims were purely legal claims that have been previously rejected by this Court, the circuit court properly summarily denied relief).

The burden is on the defendant to establish a *prima facie* case, based upon a legally valid claim. *See Franqui v. State*, 59 So. 3d 82, 96 (Fla. 2011); *Nixon v. State*, 932 So. 2d 1009, 1018 (Fla. 2006). Mere conclusory allegations are not sufficient to meet this burden. *Foster v. State*, 132 So. 3d 40, 62 (Fla. 2013). A facially sufficient 3.851 motion requires alleging specific legal and factual grounds that demonstrate a cognizable claim

for relief. If a defendant's conclusory allegations are not supported by a properly pled factual basis, the claim is facially insufficient and should be summarily denied. *See Davis v. State*, 875 So. 2d 359, 368 (Fla. 2003).

Successive motions for postconviction relief based on newly discovered evidence must allege the facts upon which the claim is based "were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence," and that there is good cause for failing to raise the claim in a prior motion. Fla. R. Crim. P. 3.851(d)(2)(A), (e)(2). If this Court finds the evidence undergirding a newly discovered evidence claim was previously discoverable, or there is no good cause for failing to assert the claim earlier, it must dismiss the claim under Florida law. *Id*. Jones has the burden of showing his claims are timely. *Mungin*, 320 So. 3d at 626 ("It is incumbent upon the defendant to establish the timeliness of a successive postconviction claim.").

Procedurally barred claims may be denied summarily. *Muhammad v. State*, 603 So. 2d 488, 489 (Fla. 1992) (noting "[i]ssues which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral attack"); *Medina v. State*, 573 So. 2d 293, 295 (Fla. 1990) (holding "[a]llegations of ineffective assistance cannot be used to circumvent the rule that postconviction proceedings cannot serve as a second appeal"); *Harvey v. Dugger*, 656 So. 2d 1253, 1256 (Fla. 1995). All other claims may be summarily denied "when the motion and the record conclusively demonstrate that the movant is entitled to no relief." *Kennedy v. State*, 547 So. 2d 912, 913 (Fla. 1989). Because this is a successive postconviction motion, this court may summarily deny a postconviction motion claim that is conclusively rebutted by the existing record. Fla. R. Crim. P. 3.851(f)(5)(B).

As will be shown below, Jones previously challenged how his counsel presented his life history and mental health to support mitigation in this case. The instant attempt to allege prior physical abuse is nothing more than a sixth attempt to review those issues and obtain a lesser sentence. His reliance on what he asserts was his experience at the Okeechobee School is untimely. Moreover, having raised his history previously, and the fact that all have been rejected on appeal, the challenges here are procedurally barred and should be denied without an evidentiary hearing. Jones has failed to show that his claims are timely or are based on a new constitutional right made retroactive to cases on collateral review. While he claims to have a new psychologist, Dr. Castillo, she merely re-ploughs the same question thoroughly explored in the penalty phase and/or prior postconviction motions. Furthermore, Jones admits that the doctor was not hired until after the death warrant was signed. He makes no effort to explain why he could not have investigated and reported his experiences at the Okeechobee School earlier or have Dr. Castillo, or a doctor with similar qualifications, evaluate him earlier in the near 30 years history of this this case. Further, the constitutional challenges to the death sentence and warrant selection process are similarly untimely, procedurally barred and without merit. This motion should be denied summarily.

ARGUMENT

Claim I

Jones' Claim that His Inclusion as a Member of the Okeechobee Victim Compensation Class Is New Mitigation Which Would Probably Result in a Lesser Sentence Is Untimely, Procedurally Barred, and Meritless.

Jones argues that the State of Florida's inclusion of him in a class of persons eligible for compensation based on his residency in the Okeechobee Florida School for

Boys on four occasions between 1975 and 1978 constitutes newly discovered evidence of abuse at that institution, entitling him to an evidentiary hearing and postconviction relief. This claim is untimely, procedurally barred, and meritless because the purported evidence is unlikely to have resulted in a life sentence even if the jury and sentencing court had heard it presented in mitigation during the penalty phase.

A. The Claim is Untimely

Rule 3.851 requires, with few exceptions, that any motion to vacate judgement of conviction and sentence of death shall be filed by the defendant within one year after the judgement and sentence become final. Fla. R. Crim. P. 3.851(d)(1). Jones' judgement and sentence were finalized on October 2, 1995, when the United States Supreme Court denied his petition for certiorari. *Jones v. Florida*, 516 U.S. 875; Fla. R. Crim. P. 3.851(d)(1)(B) (judgement becomes final "on the disposition of the petition for writ of certiorari by the United States Supreme Court"). Rule 3.851 does provide an exception to the one-year limitation when the facts on which the claim is predicated were unknown to the defendant and could not have been ascertained by the exercise of diligence. Fla. R. Crim. P. 3.851(d)(2). It is, however, Jones' burden to demonstrate that the alleged newly discovered evidence qualifies for this exception. Fla. R. Crim. P. 3.851(d)(2)(A); *See Dillbeck v. State*, 357 So. 3d 94, 100 (Fla. 2023). Yet, even if Jones shows that he could not have discovered this information within one year of his judgement and sentence, to be considered timely filed as newly discovered evidence, the motion must be filed within one year of the date upon which the claim became discoverable through due diligence. *Jimenez v. State*, 997 So. 2d 1056, 1064 (Fla. 2008).

Jones argues this exception for newly discovered evidence renders the claim

timely because it was not until January 6, 2025, that the State "recognized [him] as [a] victim of abuse at the Okeechobee School for Boys" by placing him in the compensation class. (Motion 8) The Florida legislature passed, and the Governor signed, CS/HB 21 – Dozier School for Boys and Okeechobee School Victim Compensation Program in 2024. Based on that bill, the State established a victims' compensation fund administered by the Office of the Attorney General, which wrote Jones the letter referenced in the motion. The fact that he received that letter in 2025 does not render any potential allegations of abuse "new." Jones was placed at Okeechobee fifty years ago; he would have known of any abuse at the time of the trial and the initial postconviction motion.

Thus, clearly, Jones' claim that the evidence of his mistreatment is newly discovered cannot stand. Jones attempts to argue the claim is timely by saying that he had repeatedly informed others, including "authority figures," about the abuse, but no one believed him. He contends that the January 2025 letter from the State validated his claim and thus makes it newly discovered, allowing him to make this claim for the first time despite him knowing about the purported abuse for half a century. The bill establishing the reparations for a particular class of attendees of the Okeechobee School is not considered newly discovered evidence. *Cole v. State*, 392 So. 3d 1054, 1061-62 (Fla. 2024) ("The rationale underlying our decision in cases like *Barwick* applies with equal force to Cole's claim. Like the APA resolution in *Barwick*, CS/HB 21 expresses a public stance predicated on reports, data, and research that have been publicly available for years"); *Barwick v. State*, 361 So. 3d 785, 793 (Fla. 2023) ("This Court has routinely held that resolutions, consensus opinions, articles, research, and the like, do not constitute newly discovered evidence"). This claim is virtually identical to the types of claims that the

Florida Supreme Court rejected just last year in *Zack v. State*, 371 So. 3d 335 (Fla. 2023) and *Barwick*, 361 So. 3d 785.

In *Zack*, the defendant argued for an extension of *Atkins v. Virginia,* 536 U.S. 304, (2002), to encompass cases involving Fetal Alcohol Syndrome ("FAS"). He argued that "new scientific consensus" found in several articles now recognized FAS as being equivalent to an intellectual disability. The Court rejected Zack's argument that the "new scientific consensus" is newly discovered evidence. "This Court has repeatedly held that [n]ew opinions or research studies based on a compilation or analysis of previously existing data and scientific information are not generally considered newly discovered evidence." *Zack*, 371 So. 3d at 346 (internal quotations deleted), citing *Dillbeck v. State*, 357 So. 3d at 99 (quoting *Henry v. State*, 125 So. 3d 745, 750 (Fla. 2013) (noting that "*Dillbeck* cites a 2021 article for the proposition that the medical and scientific community view ND-PAE as equivalent to intellectual disability, and that article in turn relies on older sources")).

Furthermore, the Court pointed out that the facts upon which Zack's intellectual disability claim was predicated had long been known to him and his attorneys. "He relies on this twenty-year-old-plus information to now claim he should be deemed intellectually disabled and, thus, categorically exempt from execution under *Atkins*. But Zack raises no newly discovered evidence on this point." *Zack*, 371 So. 3d at 345. As a result, the Court affirmed the lower court's ruling that the postconviction motion was untimely.

The Court should note that the portion of the legislation cited in Jones' motion acknowledges that the legislation is based on a compilation of earlier reports and investigations. Therefore, the new letter, and the compensation fund and legislation that

generated it, is not "newly discovered evidence," but a compilation of evidence, much of which has been available since Jones' trial. The claim should be summarily denied.

B. The Claim is Procedurally Barred

Jones was well aware of the conditions at the Okeechobee School and his treatment there, both when he originally went to trial and for his initial postconviction motion where he raised multiple claims of ineffective assistance of counsel claims, including for not adequately investigating, preparing the experts, and presenting the mitigation during the penalty phase. Indeed, this is the very first instance he ever mentions his treatment at the Okeechobee School in his court filings. He attempts to disguise this fact by saying that his prior claims of childhood abuse somehow incorporated any mistreatment when he was a teen at the school. However, they did not. The only abuse Jones informed his trial counsel of was being beaten by his aunt's son when he misbehaved. (PCR 425-27, 593-95). Counsel had five mental health experts evaluate Jones for the penalty phase; most reevaluated him and testified at the postconviction hearing. None mentioned abuse at the Okeechobee School. (PCR 553-54, 575-82, 738, 746-48, 843-47, 851-53, 886-87, 910-11, 1014, 1028-29, 1044-45, 1111-12, 1116-21). Interestingly, Dr. Jethro Toomer testified in postconviction that the hospital records from 1975 indicated that Jones possibly provoked the hospital visit for drugs in order to get out of juvenile detention but made no mention of abuse within that detention. (PCR 1111-12). Jones cannot create a wholly new claim on evidence which supposedly existed when he brought his earlier challenges to his conviction and sentence.

Since Jones could have raised this issue earlier, he is procedurally barred from doing so now. *Rogers v. State*, 409 So. 3d 1257, 1263 (Fla. 2025) ("[I]n an active warrant

case, a postconviction claim that could have been raised in a prior proceeding is procedurally barred."); *Barwick*, 361 So. 3d 795; *Hojan v. State*, 212 So. 3d 982, 994 (Fla. 2017) (noting claims which could have been raised on direct appeal are procedurally barred in postconviction); *Tanzi v. State*, 94 So. 3d 482, 494 (Fla. 2012) (finding all facts for postconviction allegation of conflict of interest were known on direct appeal where it could have been raised rendering procedurally barred in postconviction). This Court should summarily deny it.

C. The Claim is Meritless

Finally, this Court should deny this claim because it is without merit. In order for a defendant to prevail on a claim of newly discovered evidence, the defendant must prove both that (1) the evidence was not known by him, his counsel, or the trial court at the time of the trial and could not have been known by the use of due diligence, and (2) that the evidence must be of such a nature that it would probably produce an acquittal on retrial. *Dillbeck v. State*, 357 So. 3d 94, 100 (Fla. 2023); *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998). When challenging a sentence of death, the evidence must be of such a nature that it would result in a different sentence. *Davis v. State*, 26 So. 3d 519, 524 (Fla. 2009). Jones is unable to demonstrate either that: the evidence was not known by him, his counsel, or the trial court at the time of the trial; could not have been known by the use of due diligence; or that the evidence is of such a nature that it would result in a different sentence. Recently, the Florida Supreme Court has held that the above referenced legislation and what ensued from it are neither new or newly discovered evidence. *Cole*, 392 So. 3d at 1061-62.

First, evidence of Jones' treatment at the Okeechobee School would have been

clearly known to him and his counsel at both the time of the original trial and the initial postconviction motion. The fact that he chose not to raise his treatment, abusive or not, previously as a claim does not now render it new under the relevant rule. Further, this evidence would not have been likely to result in a life sentence instead of a death sentence. The Florida Supreme Court determined in *Jones*, 709 So. 2d at 521–22 that when a prior evidentiary hearing has been conducted, "the trial court is required to 'consider all newly discovered evidence which would be admissible' at trial and then evaluate the 'weight of both the newly discovered evidence and the evidence which was introduced at the trial'" in determining whether the evidence would probably produce a different result on retrial.

Despite Petitioner's assertions to the contrary, this is a highly aggravated case in which the trial court sentenced Jones to death upon finding four aggravators. These aggravators included convictions for prior violent felonies, committing the murders during the course of robberies; committing the murder for pecuniary gain (merged with the robbery), and being under a sentence of imprisonment at the time of the murders. The prior violent felony aggravator is one of the most weighty aggravators, especially when it is based not only of a contemporaneous first degree murder, but also on other prior violent felonies. *Bright v. State*, 299 So. 3d 985, 1011 (Fla. 2020) ("[T]his Court has stated that the prior violent felony aggravator is one of the most weighty aggravating circumstances in Florida's statutory sentencing scheme."); *Bolin v. State,* 117 So. 3d 728, 742 (Fla. 2013); *Armstrong v. State*, 73 So. 3d 155, 175 (Fla. 2011). Given the lack of mitigation found by the trial court, in conjunction with the postconviction court's finding that the testimonies of Jones' family members regarding the early childhood abuse were not

credible, it is not likely at all that Jones would have received a life sentence for this unprovoked double murder, thus, this Court should summarily deny the claim.

Claim II

Jones's Claim that Capital Cases in Miami-Dade County Are Prosecuted in a Discriminatory Manner by Disproportionately Punishing Defendants Convicted of Murdering White Victims in Violation of the Eighth and Fourteenth Amendments Is Untimely, Procedurally Barred, and Meritless.

Jones asserts he has newly discovered evidence that the death penalty in Miami-Dade is prosecuted in a discriminatory manner in violation of the Eighth Amendment. In support, he points solely to a "Preliminary Report" dated September 6, 2025, by Dr. O'Brien and Professor Grosso who conducted a statistical analysis of Miami-Dade capital cases based on reports from 1990-1994, 2004-2007, 2018, and 2020 This claim should be summarily denied for multiple reasons. It is untimely irrespective of the date of the O'Brien/Grosso "Preliminary Report" as all of the data was available by 2020, yet Jones waited until 2025 to raise the claim. Also, the claim is procedurally barred as the information was compiled as early as 1990 and available to Jones during the 35 years he litigated his case from trial through his multiple postconviction cases. Moreover, the issue is without merit as he has failed to present a claim based on anything more than statistics; he has not carried his burden under *McCleskey v. Kemp*, 481 U.S. 279 (1987). This Court should summarily deny relief.

A. The Claim Is Untimely.

Jones' case became final on October 2, 1995, when the United States Supreme Court denied certiorari review on his direct appeal. *Jones I*, 652 So. 2d at 346; *Jones v. Florida*, 516 U.S. 875 (Oct. 2, 1995). Rule 3.851(d) requires that his postconviction motion

be filed within one-year of his conviction and sentence becoming final. One of the exceptions to the one-year time limit is a claim of newly discovered evidence. *See* Rule 3.851(d)(2); *Owen*, 854 So. 2d 182, 188 (Fla. 2003) (explaining capital defendant failed to establish that his successive motion was predicated on newly discovered evidence, thus, he could not overcome the procedural bar); *Knight v. State*, 784 So.2d 396, 400 (Fla. 2001). To meet the pleading requirement, Jones must show:

> First, the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence. Second, the newly discovered evidence must be of such [a] nature that it would probably produce an acquittal on retrial.

Rogers, 327 So. 3d at 787 (quoting *Long v. State*, 183 So. 3d 342, 345 (Fla. 2016)).

While Jones asserts he has new evidence in the form of the Dr. O'Brien/Grosso letter, a review of that letter shows that it is based on information available as early as 1990 and as late as 2020. Jones notes his statisticians relied on information from the State Attorney's Office from 1990-1994 but fails to explain why this information could not have been discovered through the exercise of due diligence earlier. Clearly, the analysis and claim could have been presented well before the September 8, 2025, successive postconviction relief motion filed after the death warrant was signed. *See State v. Tucker*, 385 N.C. 471, 500–01, 895 S.E.2d 532, 554 (2023), *cert. denie*d, 145 S. Ct. 196 (2024) (noting data used by Dr. O'Brien and Professor Grosso could have been used by defendant to prepare a substantially similar study for direct appeal or a prior postconviction motion thus the O'Brien/Grosso study was not "not newly discovered" but merely "newly created"). As the North Carolina court recognized, allowing a defendant to label a study "newly discovered" when it was merely based on a analysis of old data

"would effectively allow" a defendant to manufacture infinite postconviction motions for relief. *Id*. Jones points to no case which allows a defendant to reanalyze old data to support a newly discovered evidence claim. In fact, the Florida Supreme Court has rejected claims of "newly discovered evidence" where they are based on a compilation or re-working of old information. *See Cole*, 392 So. 3d at 1061–62 (rejecting as "newly discovered evidence" APA resolution based on a public stance predicated on reports, data, and research that have been publicly available for years.); *Barwick*, 361 So. 3d at 793 ("This Court has routinely held that resolutions, consensus opinions, articles, research, and the like, do not constitute newly discovered evidence."); *Zack*, 371 So. 3d at 335 (noting "[n]ew opinions or research studies based on a compilation or analysis of previously existing data and scientific information' are not generally considered newly discovered evidence"). Jones has not shown that he has "newly discovered evidence" and has failed to explain his failure to file this claim in his original postconviction litigation. The claim should be denied summarily.

B. The Claim Is Procedurally Barred.

For similar reasons, this Court should find the claim procedurally barred. The information relied upon by Jones to make his Eighth Amendment challenge again was available as early as 1990, but also by 2020, some five years before the instant warrant was signed. At worst, Jones could have tried to raise his constitutional challenge within one year of 2020. Jones had prosecuted five postconviction motions by 2018. Issues which could have been raised in an earlier litigation are procedurally barred in a successive motion. *Morris*, 317 So. 3d at 1071 (stating a court may summarily deny a postconviction claim that is procedurally barred). Since his case was final following direct

appeal, Jones has been continuously represented by Capital Collateral Regional Counsel. Jones has not explained why he could not have raised this claim earlier.

C. Jones's *McCleskey* Claim Is Legally Insufficient as It Rests Solely on a Statistical Analysis; It Does Not Meet the Pleading Requirements under *McCleskey* and this Court Must Follow the Eighth Amendment Jurisprudence Announced by the United States Supreme Court.

Jones asserts that 47% of the death cases originating in Miami-Dade County involve homicides of white victims while only 6% to 15% of the homicide victims in the county are white. He claims this disparity establishes a constitutionally infirm application of the death penalty. (M at 15). In essence, Jones is raising a *McCleskey* claim by suggesting that *McCleskey v. Kemp*, 481 U.S. 279 (1987), may not be decided the same way if raised today and that the opinion had been strongly opposed. Nonetheless, *McCleskey* remains valid Supreme Court precedent interpreting how a defendant may make an Eighth Amendment challenge to his death sentence when raising claims of racial disparity. Under Florida's constitution, Florida courts are bound to interpret the Eighth Amendment in a manner consistent with United States Supreme Court precedent. *See Dillbeck*, 357 So. 3d at 104 (reiterating Florida Courts are "bound by Supreme Court precedents that construe the United States Constitution"). Jones has not met his burden.[2]

[2] Jones' reliance upon the Michigan State law professors' statistical analysis and preliminary 'conclusion' of racial bias in charging decisions is inherently flawed. The Miami-Dade homicides are not separated by degree, and there are no facts suggesting, much less establishing what aggravating factors, if any, apply to those homicides. To call the statistical analysis Jones relies upon here less than 'rigorous' is charitable. *See State v. Loftin*, 157 N.J. 253, 315, 724 A.2d 129, 160 (1999)(noting the difficulty in attempting to determine the statistical significance of disparities in imposition of the death penalty and concluding that "the link between racial bias and the death penalty must be clearly established before we find that our system of capital punishment is so seriously flawed as to require intervention by this Court.")

In *McCleskey*, a black capital defendant, who had killed a white police officer during a robbery, sought habeas relief alleging that Georgia's capital sentencing scheme was being applied in a racially discriminatory manner. 481 U.S. at 283-86. *McCleskey* involved a statistical study, the Baldus study, regarding the imposition of death sentences in murder cases in Georgia which concluded that decisions to seek and impose the death penalty were racially skewed. The study found that prosecutors sought the death penalty much more often in cases involving black defendants with white victims than in cases involving white defendants with black victims. The study also found that defendants charged with killing white victims were 4.3 times more likely to receive a death sentence than defendants charged with killing black victims. *Id*. at 287. The study found that prosecutors sought the death penalty in 70% of the cases involving black defendants and white victims, 32% of the cases involving white defendants and white victims, 15% of the cases involving black defendants and black victims, and 19% of the cases involving white defendants and black victims. *Id*. at 287. The Court assumed that the study was valid statistically.

The *McCleskey* Court held that a capital defendant must prove that the decision makers in his case acted with discriminatory purpose. *McCleskey*, 481 U.S. at 292. In defining discriminatory purpose, the Court explained that McCleskey would have to prove that the Georgia Legislature enacted or maintained the death penalty statute because of an anticipated racially discriminatory effect. *Id*. at 298. Statistical proof must present a "stark pattern" to be the sole proof of discriminatory intent. *Id*. at 293-94 (citing *Arlington Heights v. Metropolitan Housing Dev. Corp*., 429 U.S. 252, 266 (1977)). The Court rejected McCleskey's claim because he offered no evidence specific to his own case to

support an inference that racial considerations played a part in his sentence. The Court found the study to be insufficient to support an inference that the decision makers in McCleskey's case acted with purposeful discrimination. *Id*. at 313 (holding "the Baldus study does not demonstrate a constitutionally significant risk of racial bias affecting the Georgia capital sentencing process").

The *McCleskey* Court rejected the equal protection challenge to Georgia's death penalty scheme. *McCleskey*, 481 U.S. at 292-99. The Court also rejected the Eighth Amendment arbitrariness challenge. *Id*. at 299-320.

Here, Jones, like McCleskey, offers nothing beyond a statistical analysis;[3] Jones offers nothing related to his specific case. There are no allegations of any racial bias woven into Florida's capital sentencing, the selection of Jones as a capital defendant, the jury's recommendation, or the trial court's imposition of the death sentence. Jones' instant claim fails for the same reasons McCleskey's claims failed. He has offered nothing specific to his case supporting unconstitutional racial bias in his prosecution. Jones has offered nothing to show both a discriminatory effect **and** a discriminatory purpose which is required under *United States v. Armstrong*, 517 U.S. 456 (1996). A criminal defendant must present clear evidence of both discriminatory effect **and** discriminatory purpose.

[3] In fact, the statistical analysis by Dr. O'Brian/Grosso Jones offers is merely "Preliminary." (Defense Ex. H) Further, it is unsworn and gives no indication when the report was requested. Given the timing of the "Preliminary Report," it suggests that it was requested as a result of the Governor signing Jones' death warrant. Such is hardly sufficient to call into question, much less overturn, a capital case under active death warrant that has been final since October 2, 1995, with five prior postconviction cases between 1995 and 2018. The fact that the Dr. O'Brien/Grosso "preliminary Report" was prepared on short notice based on data from 1990 to 2020, leads to the conclusion that this surely could have been produced at a much earlier date, and included as part of the original postconviction litigation.

Armstrong, 517 U.S. at 456; *United States v. Smith*, 231 F.3d 800, 807-08 (11th Cir. 2000); *United States v. Brantley*, 803 F.3d 1265, 1271 (11th Cir. 2015).

To establish discriminatory effect, the defendant "must show that similarly situated individuals of a different race were not prosecuted" or not selected for capital sentencing. *Armstrong*, 517 U.S. at 465; *Smith*, 231 F.3d at 808; *Brantley*, 803 F.3d at 1271. The comparator must be similarly situated "in all relevant respects." *Brantley*, 803 F.3d at 1272. Showing a discriminatory purpose requires a showing that the decision maker selected a particular course of action at least in part because of, not merely in spite of, its adverse effects upon identifiable groups. *Brantley*, 803 F.3d at 1271 (quoting *Wayte v. United States*, 470 U.S. 598, 610 (1985)).

In *United States v. Lawrence*, 735 F.3d 385, 438-39 (6th Cir. 2013), the Sixth Circuit, in a federal capital case, rejected a claim of racial bias in the prosecution. Lawrence moved in the district court for discovery regarding the Government's charging practices in capital cases. *Id*. at 438. The district court denied the discovery motion, ruling that Lawrence's statistical evidence failed to show a discriminatory effect or evidence of discriminatory intent. *Id*. at 439. The court noted that a criminal defendant seeking to prove selective prosecution must show that prosecutorial policy had both a discriminatory effect **and** discriminatory purpose. *Id*. (citing *United States v. Armstrong*, 517 U.S. 456, 465 (1996), and *McCleskey v. Kemp*, 481 U.S. 279, 292 (1987)). To show a discriminatory effect, the defendant must show "that similarly situated individuals of a different race were not prosecuted" and "that the decision makers in his case acted with discriminatory purpose." *Id*. (citing *Armstrong*, 517 U.S. at 465; *McCleskey*, 481 U.S. at 292). The court observed that a disparity between the percentage of African Americans in the general

population and the percentage charged with capital murder, alone, is insufficient to demonstrate that race played a part in the defendant's prosecution and sentencing under *McCleskey*. *Id*. (citing *Keene v. Mitchell*, 525 F.3d 461, 464 (6th Cir. 2008)). Lawrence's support for his claim of selective prosecution asserted that the government sought the death penalty disproportionately for minority-group capital defendants. Lawrence based his claim "exclusively on statistical evidence." *Lawrence*, 735 F.3d at 439. The Sixth Circuit held that the district court correctly determined that the statistical evidence was "inconclusive." *Id*. at 439. The court, alternatively, held that Lawrence "undisputedly" had not shown a "discriminatory purpose" because he produced "no evidence that decision makers in his case acted with discriminatory purpose or that similarly situated individuals" of a different race were not prosecuted in federal court. *Id*.

The observations and holdings of the Sixth Circuit in *Lawrence* apply equally to the instant claim. Again, Jones cites nothing other than statistics from as early as 1990 to support his claims. He points to no statements or actions by the prosecution, jury, or judge proving any discriminatory purpose or intent. Indeed, there are no allegations of any racial bias on the part of the State other than the "Preliminary" statistics provided. On this basis alone, the instant claim should be summarily denied.

Under the newly discovered evidence standard, Jones' claim fails as he cannot establish that had his jury heard of the alleged racial bias, he would have obtained a life sentence. Jones was sentenced for a double homicide at the time he was under sentence of imprisonment when he had already committed prior violent felonies. The trial court found both those aggravators and merged the during the course of a felony and pecuniary gain aggravators. Nothing was found in mitigation *Jones I*, 652 So. 2d at 348-49. Given

the highly aggravated nature of the double homicide, the matter of alleged racial bias based on a "Preliminary Report" of statistics would not have altered in the least the sentences recommended or imposed. This Court should find that such evidence would reasonably produce a lesser sentence on retrial. Jones has failed to establish his claim of newly discovered evidence. A summary denial should be ordered.

Claim III

Jones Has Had Ample Notice and Opportunity to Be Heard in His Postconviction Proceedings.

Jones claims a due process violation arising from what he terms is a surprise signing of the death warrant coupled with a truncated warrant process. However, he admits that he does not expect relief on these claims. (Motion p. 25) This claim is without merit and the Florida Supreme Court has repeatedly rejected it. This Court should summarily deny it.

Neither the Constitution of the United States nor of the State of Florida afford Jones the right to protest a procedural inconvenience for a situation he brought upon himself by committing this double murder. Rather, "[d]ue process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided." *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016); *see also Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Jones has had thirty years to litigate his postconviction claims. The State afforded Jones a full and fair opportunity to be heard throughout his appeal and postconviction proceedings. *Jones v. State*, 966 So. 2d 319, 321 (Fla. 2007). Jones' convictions and sentence became final in 1995. Jones' last postconviction litigation was in 2018 when he challenged the retroactivity of *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). *Jones v. State*, 241 So. 3d 65 (Fla. 2018). By May 2, 2018, Jones knew he had become death eligible. Jones has been

on notice for more than eight years now, and thirty years since his sentence and convictions were final. Jones cannot now claim surprise, that he had no meaningful opportunity to be heard, or lacked ample time to prepare for a warrant when he has been death eligible for a longer time than the Florida Constitution currently envisions for the completion of all postconviction proceedings. *See* Art. I, § 16(b)(10)b., Fla. Const. ("All state-level appeals and collateral attacks on any judgment must be complete . . . within five years from the date of appeal in capital cases.").

A. Jones' Claim Is Meritless

Jones does not even hide the fact that his claim is meritless and does not indicate what issue the expedited warrant schedule will prevent. *See* Mtn. at 20-21. Jones' council quibbles about the warrant being a surprise, holidays being interrupted, travel cancelled, the court staff having short notice, and being unable to represent other clients during this period but does not indicate any issue the expedited schedule forecloses. (Motion.p. 22-23)

Jones' objections do not have a basis in law. A compressed warrant schedule does not violate his due process rights. Due process requires that Jones be given notice and an opportunity to be heard on a matter before it is decided. *Tanzi v. State*, 407 So. 3d 385, 390–91 (Fla. 2025). The Florida Supreme Court has previously rejected the argument that a 30-day "compressed warrant litigation schedule" denies a capital defendant "his rights to due process." *Id. See Barwick v. State*, 361 So. 3d 785, 789 (Fla. 2023). Jones has not shown how the warrant schedule denied him notice or an opportunity to be heard. Therefore, this Court should deny the claim.

CONCLUSION

For the foregoing reasons, this court should summarily deny Jones' successive postconviction motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of September 2025, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: The Honorable Lody Jean, Circuit Court Judge, Eleventh Judicial Circuit, 1351 NW 12th Street, Miami, Florida 33125, **ljean@jud11.flcourts.org, lrusconi@jud11.flcourts.org**; Reid Rubin, Jose Arrojo, and Christine Zahralban, Assistant State Attorney's, Office of the State Attorney, 11th Judicial Circuit, 1351 NW 12th Street, Miami, Florida 33125, Florida 33125, **reidrubin@miamiSAO.com, josearrojo@miamiSAO.com, christinezahralban@miamiSAO.com**; Marie-Louise Samuels Parmer, Brittney N. Lacy, and Jeanine L. Cohen, Assistants CCRC-South, Capital Collateral Regional Counsel-South, 110 SE 6th Street, Fort Lauderdale, Florida 33301, **marie@samuelsparmerlaw.com**, **ccrcpleadings@ccsr.state.fl.us**, **lacyb@ccsr.state.fl.us**, cohenj@ccsr.state.fl.us, and **LindseyBrigham@fdle.state.fl.us**; and the Florida Supreme Court, 500 South Duval Street, Tallahassee, Florida 32399, **warrant@flcourts.org, canovak@flcourts.org**.

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of type used in the foregoing is 12-point Arial.

/s/ Jennifer A. Davis
Co-Counsel for State of Florida

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

VICTOR T. JONES,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

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

APPENDIX E

CAPITAL CASE

DEATH WARRANT SIGNED
EXECUTION SET SEPTEMBER 30, 2025, AT 6:00 P.M.

Petition for Writ of Habeas Corpus from the Court or Any Individual Justice Thereof, *Victor T. Jones v. State of Florida*, Florida Supreme Court, SC2025-1423 (Sept. 12, 2025)

Filing # 231442926 E-Filed 09/12/2025 12:45:25 PM

IN THE SUPREME COURT OF FLORIDA

CASE NO. _____

EXECUTION SCHEDULED FOR SEPTEMBER 30, 2025 AT 6:00 PM

VICTOR TONY JONES,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

PETITION FOR WRIT OF HABEAS CORPUS FROM THE COURT OR ANY INDIVIDUAL JUSTICE THEREOF

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September 15, 2025

Preliminary Statement

This petition asserts substantial claims of error under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States. Correspondingly, this petition asserts substantial claims of error under Article I, Sections 13 and 17. This Court's opinions denying Petitioner Victor Tony Jones' claim that he is Intellectually Disabled and therefore excluded from the class of individuals eligible to be executed, defied controlling U.S. Supreme Court precedent and are infamous in their erroneous analysis and conclusions as will be set out below. Petitioner's sentences of death were obtained, affirmed, and maintained in violation of his fundamental rights and liberties.

Record Citations

Citations to the record appear as follows: Trial proceedings on direct appeal (R. ___); Initial postconviction proceedings (PCR. ___); *Atkins* proceedings (PCR-*Atkins*, ____; PCR-*Atkins*-T, ____); *Hall* proceedings (PCR-*Hall*, ___).

Jurisdiction

Article I, Section 13, of the Constitution of the State of Florida provides: "The writ of habeas corpus shall be grantable of right, freely and without costs." In turn, under Article V, Section 3(b)(9), "[t]he supreme court . . . [m]ay, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge." Further, Article V, Section 3(b)(7), authorizes this court to "issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction." Although the All-Writs Provision is not an independent basis for jurisdiction, this Court may invoke it to "preserv[e] jurisdiction that has already been invoked or protect[] jurisdiction that likely will be invoked in the future." *Roberts v. Brown*, 43 So. 3d 673, 677 (Fla. 2010); *Petit v. Adams*, 211 So. 2d 565, 566 (Fla. 1968) (finding All Writs provision applicable to preserve status quo and preserve future jurisdiction).

Here, this Court has jurisdiction to entertain this petition and grant the writ of habeas corpus. *See* Art. V, § 3(b)(9), Fla. Const. (1998). Moreover, each justice of this Court possesses independent

authority to grant the writ. *See id.*

Request for Oral Argument

Through counsel, Mr. Jones respectfully urges this Court to grant oral argument in this matter.

Introduction

The Nature and Scope of Habeas Corpus

Habeas corpus is the proper vehicle for raising "error that prejudicially denies fundamental constitutional rights" and urging "this Court [to] revisit a matter previously settled by the affirmance of a conviction or sentence." *Kennedy v. Wainwright*, 483 So. 2d 424, 426 (Fla. 1986). Florida's Constitution empowers this Court to prescribe "procedural vehicle[s] for the collateral remedy otherwise available by writ of habeas corpus" and impose "certain reasonable limitations consistent with [its] full and fair exercise." *Allen v. Butterworth*, 756 So. 2d 52, 61 (Fla. 2000). But these procedural requirements must yield where necessary to ensure habeas relief is "available to all through simple and direct means without needless complication or impediment and should be fairly administered in favor of justice and not bound by technicality." *Id.*

Cautioning this Court against curtailing habeas relief without due consideration for its historical importance, Justice Anstead wrote:

> [W]e must constantly keep in mind that we are dealing with the writ of habeas corpus, the

> Great Writ, which is expressly set out in Florida's Constitution. That writ is enshrined in our Constitution to be used as *a means to correct manifest injustices* and its availability for use *when all other remedies have been exhausted* has served our society well over many centuries.

Baker v. State, 878 So. 2d 1236 (Fla. 2004) (Anstead, J. concurring) (emphasis added).

> Habeas corpus jurisdiction is basic to our legal heritage. It is so basic that the authors of our habeas corpus jurisdiction made it unique with regard to this Court because it states that habeas corpus jurisdiction may not only be exercised by the entire Court, but it may also be exercised by a single justice. It is the only jurisdictional provision that gives authority to an individual justice. The provision also takes particular care to address the problem of resolving substantial issues of fact, a concern of the majority, by allowing the Court or any justice to make the writ returnable to "any circuit judge."

Baker, 878 So. 2d at 1246 (quoting *Harvard v. Singletary*, 733 So. 2d 1020, 1025 (Overton, J., dissenting)).

This Court has "exclusive jurisdiction to review all types of collateral proceedings in death penalty cases . . ." *Farina v. State*, 191 So. 3d 454, 454-55 (Fla. 2016). This is such a case. As the highest court in the State, this Court can remedy an extreme malfunction in

death penalty proceedings.

Mr. Jones asks this Court to exercise its inherent habeas authority to vindicate the rights and liberties guaranteed by the United States and Florida Constitutions. This Court, or any justice thereof, should grant the writ and remedy the manifest injustice set forth in this petition.

Ground for Relief

I. Mr. Jones's Execution Will Violate the Eighth Amendment of the United States Constitution Because he is Intellectually Disabled and this Court's Assessment of his Claim Defied U.S. Supreme Court Precedent.

Mr. Jones is intellectually disabled ("ID")[1]. His pending execution will violate the Eighth Amendment's prohibition on executing the intellectually disabled, because of this Court's and the circuit court's refusal and failure to assess Mr. Jones' ID claim in conformance with controlling U.S. Supreme Court decisions.

This Court is required to follow the U.S. Supreme Court's

[1] The term "Mental Retardation" is no longer used by the medical community. This Petition will use the clinically accepted term of "Intellectual Disability" except when quoting cases that use the antiquated term.

precedent. As recently as August 21, 2025, Justice Kavanaugh, joined by Justice Gorsuch, stated in *National Institutes Of Health, Et Al. v. American Public Health Association, Et Al.*, that while "[l]ower court judges may sometimes disagree with this Court's decisions, [] they are never free to defy them." No. 25A103, 2025 WL 2415669 (Aug. 21, 2025). This Court has defied clear precedent that requires this Court to vacate Mr. Jones's death sentence.

A. Procedural History of Mr. Jones's Challenges due to his Intellectual Disability.

Mr. Jones first timely challenged the constitutionality of his execution based on ID in 2003 after *Atkins v. Virginia*, 536 U.S. 304 (2002) issued. Mr. Jones filed a successive Rule 3.851 motion pursuant to Florida Rule of Criminal Procedure 3.202 alleging that he was ineligible to be executed under *Atkins* because he was ID. This Court relinquished jurisdiction for an evidentiary hearing (PCR-*Atkins*, 47). The circuit court conducted an evidentiary hearing on Mr. Jones's *Atkins* motion in 2006, where Jones presented expert testimony establishing that he was ID, including that he had a range of IQ scores all at or below 75, the lowest being 67 and the highest

being 75.[2] The circuit court denied relief citing the state expert, Dr. Suarez who opined that even if the prior tests scores were valid, Jones failed to meet the criteria because he "falls into borderline range in most areas." (PCR-*Atkins*, 495-506) Suarez further noted that "only one [of Mr. Jones's IQ scores] was under 70." The court further relied on Suarez's opinion that a "review of Jones' experiences, including his relationships and employment, [indicates] Jones has probably never had adaptive impairment." (PCR-*Atkins*, 495-506).

The postconviction court denied relief, finding that Florida law "defines mental retardation as an I.Q. under 70." (PCR-*Atkins*, 505) (citing *Zack v. State*, 911 So. 2d 1201 (Fla. 2005)). The court reiterated that Mr. Jones did not meet the statutory requirements of intellectual disability, because "[h]is I.Q. has consistently been tested as 70 or above. Based on that alone he is not [intellectually disabled]." *Id.* at 505. The court, evidencing a misunderstanding of

[2] Mr. Jones's scores were obtained using versions of the Wechsler Adult Intelligence Scale. The first two scores were obtained from the Revised edition, known as the WAIS-R. Mr. Jones was then administered the Third Edition, or WAIS-III on three separate occasions.

adaptive assessment, also determined that Jones "clearly does not suffer from deficiencies in adaptive functioning," because "[he keeps his cell clean, takes his own medication," "has fashioned a way to exercise in his cell," and has written grievances and "is sophisticated enough" to understand wire transfers. *Id*.

This Court affirmed, stating:

> Accordingly, under the plain language of the statute, "significantly subaverage general intellectual functioning" correlates with an IQ of 70 or below. *See Zack v. State,* 911 So. 2d 1190, 1201 (Fla. 2005) ("Under Florida law, one of the criteria to determine if a person is mentally retarded is that he or she has an IQ of 70 or below."). Jones's scores on the WAIS were as follows: 72 (1991), 70 (1993), 67 (1999), 72 (2003), and 75 (2005). In other words, the scores did not indicate "significantly subaverage general intellectual functioning."

Jones v. State, 966 So. 2d 319, 329 (Fla. 2007). After *Jones* issued, experts on ID and the legal assessment of ID criticized this Court's decision as wrongly decided. James R. Patton, *Educational Records, in* The Death Penalty and Intellectual Disability 293, 297 (Edward A. Polloway ed., 2015) (*Jones* [] is wrongly decided and "inconsistent with accepted methodology in the field.")

In 2014, the U.S. Supreme Court issued its opinion in *Hall v.*

Florida, 572 U.S. 701, wherein it held this Court's rule requiring a capital defendant to have an IQ score of 70 or below in order to establish ID was unconstitutional under the Eighth and Fourteenth Amendments to the Constitution. The Court reasoned:

> By protecting even those convicted of heinous crimes, the Eighth Amendment reaffirms the duty of the government to respect the dignity of all persons. *Roper* [*v. Simmons*, 543 U.S. 551, 560 [2005]; *see also Trop v. Dulles*, 356 U. S. 86, 100 (1958) (plurality opinion) ("The basic concept underlying the Eighth Amendment is nothing less than the dignity of man").
>
> The Eighth Amendment "is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." *Weems v. United States*, 217 U. S. 349, 378 (1910). To enforce the Constitution's protection of human dignity, this Court looks to the "evolving standards of decency that mark the progress of a maturing society." *Trop*, [356 U.S.] at 101. The Eighth Amendment's protection of dignity reflects the Nation we have been, the Nation we are, and the Nation we aspire to be. This is to affirm that the Nation's constant, unyielding purpose must be to transmit the Constitution so that its precepts and guarantees retain their meaning and force.

Id. at 708.

Mr. Jones timely filed a Rule 3.851 motion asserting that *Hall* renders the postconviction court's ruling that he is not intellectually

disabled clearly erroneous and unconstitutional. Jones argued *Hall* establishes that the previous denial of his ID claim was premised upon this Court's misapplication of *Atkins*. The *Hall* postconviction court summarily denied Jones's claim, stating: "As Defendant does not meet the second and third prongs of the test, his I.Q. is irrelevant in determining intellectual disability. He does not get a do-over under Hall." (PCR-*Hall*, 180).

The court relied on the prior testimony presented at the penalty phase proceeding and the evidentiary hearing, both of which were held years earlier, and rested its assessment on the same type of error criticized in *Hall*—the circuit court assessed adaptive functioning by relying on Jones's conduct in a prison setting to find that Jones did not meet the second prong of ID, even though assessing ID in the prison setting is not considered appropriate or reliable within the standards of the medical community. (PCR-*Hall*, 179). In so doing, the court also ignored Jones's school records demonstrating Jones had deficits in the educational setting and diminished the Jackson Memorial Hospital report identifying him as borderline mentally retarded when he was a teenager. (PCR-*Atkins*, 87-88).

On appeal, Mr. Jones argued that this Court should reverse and remand for an evidentiary hearing, because the previous findings of the postconviction court years ago were not based on the prevailing standards of the medical community and the accepted methodology in the professional community that specializes in intellectual disability as required under *Hall*, and also that the circuit court's assessment defied *Hall's* instruction to consider generally accepted practices within the relevant medical community. *Jones v. State*, SC15-1549, Initial Br., Dec. 12, 2021.

Ruling on the merits, because *Hall v. Florida* applied retroactively to Mr. Jones, this Court affirmed the postconviction court's finding and denial of an evidentiary hearing stating

> Jones is not entitled to a new hearing in order to present additional evidence of intellectual disability because he was already provided the opportunity to present evidence regarding each of the three prongs of the intellectual disability standard in 2006, and *Hall* does not change the fact that Jones failed to establish that he meets the second or third prong."

Jones v. State, 231 So. 3d 374, 376 (Fla. 2017). This Court rejected Jones's claim that the prior postconviction court in 2006 (and this Court on appeal) improperly relied on behavior in prison, which is an

invalid indicator, determining that his argument was meritless and procedurally barred. *Id*. In so doing, this Court maintains that the assessment of the second prong was premised on more than just "Jones's functioning in prison." *Id*.

This Court's assessment defied the dictates of *Hall* and its progeny, including *Moore v. Texas*, 581 U.S. 1 (2017) (*Moore I*) and *Moore v. Texas*, 586 U.S. 133 (2019) (*Moore II*).

B. The Legal Criteria For Intellectual Disability

Florida law defines intellectual disability by statute and rule of criminal procedure. Rule 3.203(b) defines intellectual disability as:

> significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this rule, means performance that is 2 or more standard deviations from the mean Florida Rules of Criminal Procedure score on a standardized intelligence test authorized by the Department of Children and Families in rule 65G-4.011 of the Florida Administrative Code. The term "adaptive behavior," for the purpose of this rule, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.

Likewise, section 921.137(1), Florida Statutes, defines intellectual disability as:

> significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities. The term "adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The Agency for Persons with Disabilities shall adopt rules to specify the standardized intelligence tests as provided in this subsection.

1. *Atkins v. Virginia*, 536 U.S. 304 (2002)

In *Atkins,* the U.S. Supreme Court held that the execution of persons with ID violated the Eighth Amendment's prohibition against cruel and unusual punishment. *Id.* at 306-07. The Court was careful to distinguish between the criminal responsibility of the intellectually disabled and the prohibition of their execution:

> Those mentally retarded persons who meet the law's requirements for criminal responsibility

> should be tried and punished when they commit crimes. Because of their disabilities in areas of reasoning, judgment, and control of their impulses, however, they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct. Moreover, their impairments can jeopardize the reliability and fairness of capital proceedings against mentally retarded defendants. Presumably for these reasons, in the 13 years since we decided *Penry v. Lynaugh*, the American public, legislators, scholars, and judges have deliberated over the question whether the death penalty should ever be imposed on a mentally retarded criminal. The consensus rejected in those deliberations informs our answer to the question presented by this case: whether such executions are "cruel and unusual punishments" prohibited by the Eighth Amendment to the Federal Constitution.

Id. (internal citations omitted).

The *Atkins* Court found it determinative that despite the legislative popularity of "anti-crime legislation," overwhelmingly states had prohibited the execution of the ID by statute.

> [This] provides powerful evidence that today our society views the execution of [intellectually disabled] persons (and the complete absence of States passing legislation reinstating the power to conduct such executions) provides powerful evidence that today our society views [intellectually disabled] mentally retarded offenders as categorically less culpable than the average criminal. [Intellectually disabled]

> offenders as categorically less culpable than the average criminal.

Id. at 315-316. The Court further reasoned:

> This consensus unquestionably reflects widespread judgment about the relative culpability of [intellectually disabled] offenders, and the relationship between mental retardation and the penological purposes served by the death penalty. Additionally, it suggests that some characteristics of [intellectual disability] undermine the strength of the procedural protections that our capital jurisprudence steadfastly guards.

Id. at 317.

The Court found that neither of the two permissible bases for capital punishment, deterrence and retribution, were measurably contributed to by the execution of the intellectually disabled. *Id.* at 319. The Court concluded:

> We are not persuaded that the execution of [intellectually disabled] criminals will measurably advance the deterrent or the retributive purpose of the death penalty. Construing and applying the Eighth Amendment in the light of our "evolving standards of decency," we therefore conclude that such punishment is excessive and that the Constitution "places a substantive restriction on the State's power to take the life" of a[n intellectually disabled] offender."

Id. at. 321.

The *Atkins* Court acknowledged that, "[t]o the extent there is serious disagreement about the execution of [intellectually disabled] offenders, it is in determining which offenders are in fact [intellectually disabled]." *Id.* at 317. To make this determination, the Court left to the "States the task of developing appropriate ways to enforce the constitutional restriction upon its execution of sentences."' *Id.* (citations omitted).

States developed procedures that allowed the courts deciding issues of intellectual disability to give full effect to the Supreme Court's decision in *Atkins*. Florida was not one of them. *Hall v. Florida,* 572 U.S. 701 (2014)

This Court's gloss on the definition of intellectual disability had the possibility of rendering the categorical exclusion a nullity. Indeed, Florida's history of treatment of ID claims in capital proceedings is infamous. In a nationwide analysis of the percentage of capital defendants raising *Atkins* claims and their success rates, the data showed that only 7.7% of capital defendants raised Atkins claims. John H. Blume, et al., *A Tale of Two (Possibly Three)* Atkins*: Intellectual Disability and Capital Punishment Twelve Years After the*

Supreme Court's Creation of a Categorical Bar, 23 Wm. & Mary Bill Rts. J. 393, 396 (2014). Nor were the claims frivolous, as 55% of litigants prevailed on their claims as of 2013, although that number varied by year. *Id.* at 397-398. The causes of the decline of success rates over time "are potentially []nefarious." *Id.* at 399. The two extreme examples of states that modified their procedures to make it difficult for persons with intellectual disability to prevail were Florida and Texas. *Id.* "In analyzing the success rate of ID claims post *Atkins*, overall, from 2002 through 2013, only about 7.7% (371) of death row inmates or capital defendants have raised claims of intellectual disability. The total success rate for such claims was 55%. In North Carolina, the success rate was 82%, and in Mississippi 57%. However, [ ]in **Florida, the success rate was zero."** *Law Reviews: Disparities in Determinations of Intellectual Disability*, Death Penalty Info. Ctr., (Feb. 2, 2015), https://deathpenaltyinfo.org/law-reviews-disparities-in-determinations-of-intellectual-disability (emphasis added).

By the end of 2013, of the 24 ID postconviction cases decided on the merits in Florida, all 24 cases had lost. Jones was one of those

cases.

2. Hall v. Florida, 572 U.S. 701 (2014).

As noted *supra*, following *Atkins*, Florida implemented a rigid IQ score cut-off of 70 that a litigant needs show to meet the criteria for intellectual disability. *Hall*, 572 at 704. An IQ above 70 foreclosed "all further exploration of intellectual disability." *Id.* in 2014, the U.S. Supreme Court held in *Hall*, that"[t]his rigid rule... creates an unacceptable risk that persons with intellectual disability will be executed, and thus is unconstitutional." *Id.*

Freddie Lee Hall was evaluated nine times in 40 years. *Hall*, 572 U.S. at 707. He presented test scores ranging between 60 and 80, including a 71; however, due to evidentiary issues, the trial court excluded the scores below 70, leaving only the scores ranging from 71-80. *Id.*

The State argued that Mr. Hall "could not be found intellectually disabled because Florida law requires that, as a threshold matter, Hall show an IQ test score of 70 or below before presenting any additional evidence of his intellectual disability." *Id.* The trial court denied relief and this Court upheld the constitutionality of Florida's

70-point threshold. *Id.*

The U.S. Supreme Court, however, vacated this Court's decision, criticizing this Court's rule requiring a 70 or below on the IQ test without consideration of the Standard Error of Measurement (SEM). The Court explained:

> This awareness of the IQ test's limits is of particular importance when conducting the conjunctive assessment necessary to assess an individual's intellectual ability. *See* American Association on Intellectual and Developmental Disabilities, Intellectual Disability: Definition, Classification, and Systems of Supports 40 (11th ed. 2010) ("It must be stressed that the diagnosis of [intellectual disability] is intended to reflect a clinical judgment rather than an actuarial determination")
>
> Intellectual disability is a condition, not a number. See DSM-5, at 37. Courts must recognize, as does the medical community, that the IQ test is imprecise. This is not to say that an IQ test score is unhelpful. It is of considerable significance, as the medical community recognizes. But in using these scores to assess a defendant's eligibility for the death penalty, a State must afford these test scores the same studied skepticism that those who design and use the tests do, and understand that an IQ test score represents a range rather than a fixed number. A State that ignores the inherent imprecision of these tests risks executing a person who suffers from intellectual disability. *See* APA Brief 17 ("Under

> the universally accepted clinical standards for diagnosing intellectual disability, the court's determination that Mr. Hall is not intellectually disabled cannot be considered valid").
>
> This Court agrees with the medical experts that when a defendant's IQ test score falls within the test's acknowledged and inherent margin of error, the defendant must be able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits.
>
> It is not sound to view a single factor as dispositive of a conjunctive and interrelated assessment. See DSM-5, at 37 ("[A] person with an IQ score above 70 may have such severe adaptive behavior problems... that the person's actual functioning is comparable to that of individuals with a lower IQ score"). The Florida statute, as interpreted by its courts, misuses IQ score on its own terms; and this, in turn, bars consideration of evidence that must be considered in determining whether a defendant in a capital case has intellectual disability. Florida's rule is invalid under the Constitution's Cruel and Unusual Punishments Clause.

Id. at 723.

3. Moore v. Texas, 581 U.S. 1 (2017) (*Moore I*)

In *Moore v. Texas*, the Court further assessed the diagnostic criteria for intellectual disability, this time establishing the framework for assessing adaptive functioning. In *Moore I*, the Court struck the Texas courts' use of standards adopted in 1992 known as

the *Briseno*[3] factors. 581 U.S. 1. The Court reaffirmed that the legal determination of whether a defendant is intellectually disabled, and therefore ineligible for execution, must be "informed by the medical community's diagnostic framework." *Moore I* , 581 U.S. at 2 (*citing Hall*, 572 U.S. 721).

The Supreme Court instructed that the Eighth Amendment requires consideration of current clinical manuals, which offer "the best available description of how mental disorders are expressed and can be recognized by trained clinicians." *Moore I*, 581 U.S. at 20 (citing the DSM-V and American Association on Intellectual and Developmental Disabilities, R. Schalock et al., User's Guide To Accompany the 11th Edition of Intellectual Disability: Definition, Classification, and Systems of Supports 22 (2012) [hereinafter AAIDD Manual-11]).

After Moore's conviction and death sentence were affirmed on appeal, he sought state habeas relief. The court granted an evidentiary hearing on Moore's intellectual disability claim. After the evidentiary hearing, the habeas court found Moore was intellectually

[3] *Ex Parte Briseno*, 135 S. W. 3d 1 (2004).

disabled, and therefore his death sentence violated the Eighth Amendment's cruel and unusual punishment clause. The habeas court relied on the 11th edition of the AAIDD Manual for current medical diagnostic standards in evaluating adaptive deficits. *Id.* at 10. The Texas Court of Criminal Appeals (CCA) rejected the habeas court's findings, relying on the *Briseno*[4] factors. Moore I, 581 U.S. 20-21.

In vacating and remanding, the U.S. Supreme Court in *Moore I* held that the CCA "deviated from prevailing clinical standards" when it relied on outdated ID guides rather than ID guides currently used in the medical community. *Id.* at 15. The CCA erred in concentrating on Moore's *adaptive strengths* including "living on the streets, playing pool and mowing lawns for money, committing the crime in a sophisticated way and then fleeing, testifying and representing himself at trial, and developing skills in prison," in determining Moore did not have adaptive deficits. *Id.* at 11. Relying heavily on the AAIDD Manual, the U.S. Supreme Court also criticized the CCA's misuse of Moore's behavior in prison in assessing adaptive deficits.

[4] *Ex Parte Briseno*, 135 S. W. 3d 1 (2004).

> Clinicians, however, caution against reliance on adaptive strengths developed "in a controlled setting," as a prison surely is. DSM–5, at 38 ("Adaptive functioning may be difficult to assess in a controlled setting (e.g., prisons, detention centers); if possible, *corroborative information reflecting functioning outside those settings should be obtained*."); see AAIDD–11 User's Guide 20 (counseling against reliance on "behavior in jail or prison").

Id. at 16 (emphasisi added).

> As we instructed in *Hall,* adjudications of intellectual disability should be "informed by the views of medical experts." That instruction cannot sensibly be read to give courts leave to diminish the force of the medical community's consensus.

Id. at 5. (citations omitted).

4. Moore v. Texas, 586 U.S. 133 (2019) (*Moore II*)

On remand, the CCA again concluded Moore was not ID. The U.S. Supreme Court again reversed the CCA, finding that the CCA had overemphasized Moore's adaptive strengths rather than deficits. *Moore II*, 586 U.S. at 134-35. The CCA had emphasized Moore's perceived ability to read and write, which was based on a review of pro se documents Moore filed. *Id*. The CCA dismissed the possibility that Moore received help on the documents, because "Moore's 'ability to copy such documents by hand' was 'within the realm of only a few

intellectually disabled people.'" *Id.* 140. The CCA also "stressed" the fact that Moore had previously testified in various court proceedings "coherent[ly]," even though evidence established Moore's attorney prepared and coached him in all but one of the proceedings. The CCA noted that in one pro se matter, "Moore read letters into the record 'without any apparent difficulty.'" *Id.*

The CCA's analysis of Moore's adaptive functioning "relied heavily upon adaptive improvements made in prison," including "trips to the prison commissary, commissary purchases, and the like." *Moore II*, 586 U.S. at 140. The court opined that because Moore could get a haircut, this was evidence that he did not suffer from deficits in adaptive functioning. The U.S. Supreme Court criticized the CCA's reasoning: "[t]he length and detail of the [CCA's] discussion on these points is difficult to square with our caution against relying on prison-based development." *Id.*

The CCA wholly failed to consider Moore's deficits, focusing on his strengths to disprove his claim, just as the circuit court and this Court did in Jones' case. It is well established that persons with ID will have strengths, many can have and manage families, and

"between nine and forty percent" have jobs. *Id.* at 142 (citing AAIDD Manual, p. 151).

The Court determined Moore had presented evidence that he is intellectually disabled, and determined the CCA's analysis was improper and inconsistent with its own opinion in *Moore I*. *Id.*

C. The Clinical Criteria For Intellectual Disability

There are two essential clinical diagnostic sources for the medical community's diagnostic framework:

The first is the updated version of the DSM-V, the DSM-V-TR", published in 2022. The DSM-V-TR defines intellectual disability as the following:

> a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social and practical domains. The following three criteria must be met:
>
> A. Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.
>
> B. Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social

> responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.
>
> C. Onset of intellectual and adaptive deficits during the developmental period.

DSM-V-TR at 37:

The second source is the AAIDD Manual. The Court in Moore and in *Hall* relied on the 11th edition. The 12th edition was published in 2021 [hereinafter AAIDD-12 Manual]. The manual explains

> Intellectual disability (ID) is characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. This disability originates during the developmental period, which is defined operationally as before the individual attains age 22.

Id. at 1.

Three Prong Analysis as Applied to Mr. Jones

1. Prong I: Deficits in Intellectual Functioning

It is beyond dispute that Mr. Jones has deficits in intellectual functioning. However, the *Hall* postconviction court declined to even engage in the requisite analysis. The *Hall* postconviction courts and

this Court's failure to properly assess prong I is foundational to the assessment of the remainder criteria—all of which were improperly denied.

In 2006, at the only evidentiary hearing he was given to present evidence of his intellectual disability ("*Atkins* Hearing"), Mr. Jones presented IQ scores obtained between 1991 and 2005. A total of five intelligence tests were administered by three examiners. (PCR-*Atkins*-T, 182-83). Mr. Jones was administered the Wechsler Adult Intelligence Scale-Revised (WAIS-R) twice by Dr. Eisenstein, resulting in full scale IQ scores of 72 (April 1991) and 70 (February 1993). (PCR3. 88.) He was also administered the Wechsler Adult Intelligence Scale-Third Edition (WAIS-III) three times, resulting in full scale IQ scores of 67 (March 1999, by Dr. Eisenstein), 72 (June 2003, by Dr. Glenn Caddy), and 75 (May 2005, by Dr. Greg Prichard). *Jones*, 966 So. 2d at 323; (PCR-*Atkins*, 497).

Mr. Jones was shot in the head in 1990 at the time of the offenses for which he was sentenced to death. At the *Atkins* Hearing, the experts testified that the gunshot wound to Mr. Jones's frontal lobe could have impacted his IQ scores obtained post-gunshot. In

assessing Mr. Jones's claim under *Atkins* and later, under *Hall*, the postconviction court improperly relied on this testimony as a forgone conclusion. *See Jones,* 966 So. 2d at 324; *Jones*, 231 So. 3d at 376. However, records from the Department of Corrections from 1988, prior to the shooting indicated that Mr. Jones obtained a score of 76 on a BETA, a screener test for intellectual ability. (PCR-*Hall*, 120.) This score was consistent with Jones's performance on all five WAIS IQ tests which were administered after the shooting. (PCR-*Atkins*, 52.) Additionally, Jackson Memorial Hospital records from when he was a teenager refer to him as borderline mentally retarded and his school records demonstrate extreme difficulty in school. (PCR-*Atkins*-T, 235).

The postconviction court ignored Mr. Jones's testing on the WAIS tests, and instead relied on state expert, Dr. Enrique Suarez's scoring of the Wide Range Achievement Test ("WRAT") to support its finding that Mr. Jones did not meet prong one. (PCR-*Atkins*, 500). The court's determination, and this Court's affirmance of that ruling, is wrong and defies U.S. Supreme Court precedent. The WRAT is a cognitive achievement test, not an intelligence test, and is not

recognized by the State of Florida as a sufficient testing instrument to diagnose intellectual disability. Florida Law recognizes only two tests to be used in consideration of whether someone is intellectually disabled, the WAIS and the Stanford-Binet. Fla. Admin. Code Ann. R. 65G-4.011 (2004).

The *Hall* postconviction court declined to engage with prong 1, criticizing Jones for seeking a "do-over." (PCR-Hall, 180). Instead, the postconviction court simply affirmed its own prior conclusion, despite its incongruence with U.S. Supreme Court commands and prevailing norms in the scientific and medical communities a set out in *Hall* and *Moore I*. This Court affirmed. *Jones*, 23 So. 3d 374.

2. Prong II: Adaptive Functioning:

Jones has presented more than sufficient evidence to establish he suffers from adaptive functioning deficits. Florida law defines the term "adaptive behavior" as "the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community." Fla. Stat. § 921.137(1) (2005); *accord* Fla. R. Crim. P. 3.203(b). This is consistent with the AAIDD definition and the DSM-

IV-TR definition.

However, this Court in Mr. Jones's *Atkins* appeal, determined that the question is "whether a defendant 'is' [intellectually disabled], not whether he was." *Jones III*, 966 So. 2d at 326. This Court then went on to set up the options as a black and white choice between assessing adaptive functioning in the present time, notwithstanding the impossibility of so doing in a prison environment and assessing it before the age of 18. As noted *supra*, the recommended scientific methods of assessing adaptive functioning do not fall easily into either category, but rather require a longitudinal analysis utilizing information from as many sources as possible.

Expert testimony establishes Mr. Jones has had, prior to the age of 18, deficits in five areas: communication, functional academic skills, self-direction, social interpersonal skills, and health and safety. (PCR-*Atkins*-T. 119-22). However, the *Hall* postconviction court declined to engage with the requisite analysis and relied only on the *Atkins* postconviction court's assessment of the State expert's 2006 testimony. The State expert focused on Mr. Jones's adaptive strengths, rather than his deficits, relying heavily on Mr. Jones's

behavior and functioning in prison. The postconviction court opined that Mr. Jones had demonstrated that he "understands and manages his own life" *both* in and out of prison. (PCR-*Atkins*, 495-506). However, as demonstrated below, the State used an improper standard in assessing Mr. Jones's functioning and wrongly weighted facts without any supporting detail, and the fact that a person understands and manages their life does not preclude a finding of ID, it merely reinforces inaccurate stereotypes about persons with ID.

Declining to engage with Mr. Jones's limitations and deficits, the *Hall* postconviction court relied heavily on Mr. Jones's behaviors and routine in prison as evidence that Mr. Jones does not suffer from sufficient adaptive deficits to warrant a finding of ID. This over-inflated the reality of any perceived strengths Mr. Jones may have.

For example, citing a block quote from this Court's opinion affirming Mr. Jones *Atkins* relief, the *Hall* court noted that Mr. Jones kept himself clean and his cell organized. (PCR-*Hall*, 179) The court did not take into consideration or engage with the structure and rigidity of prison life. Moreover, the court accepted the State expert's statements on a surface level and failed to engage in any supporting

detail. The postconviction court noted that Mr. Jones "follows a daily exercise regimen of his own devising and uses improvised equipment to gain, according to Jones, the benefits of health and stress relief." (PCR-*Hall*, 179). The court did not address the fact that persons with intellectual disability can engage in physical fitness and certainly did not inquire as to what that fitness regimen even looked like.

The court considered that Mr. Jones understood his "various medical problems" and how to regularly take medication, and he requested to see doctors and could explain his medical concerns. (PCR-*Hall*, 179). The court further highlighted that Mr. Jones followed up on foreign transactions to his inmate account, (PCR-*Hall*, 179), although such follow up was simply asking if the money sent by an international pen pal had arrived.

Notably, the court made a finding that Mr. Jones went to the prison library regularly, yet the court heard no testimony suggesting Mr. Jones conducted any legal research, that any legal research was relevant to his case, or that he understood the legal issues and research. *See* (PCR-*Hall*, 179).

The *Hall* postconviction court relied on Mr. Jones's "language

skills in writing, speaking, and other intellectual skills are strong in light of his dropping out of school at an early age." (PCR-Hall, 179) Notably, the court fails to identify what "strong" means or how such a conclusion was made in light of record evidence to the contrary. Jones' school records from first through third grade demonstrate that Jones struggled in school at an early age. Although he did receive an A in writing, he finished those school years with almost all C's (PCR-*Atkins*, 197). By 1976, Mr. Jones received straight F's. (PCR-*Atkins*, 200).

Lastly, the court stated that Mr. Jones traveled and lived alone in several states in his 20's and "supported himself through various jobs." (PCR-*Hall*, 179). The court noted he even had girlfriends and even called one a "common law wife". (PCR-*Hall*, 179; PCR-*Atkins*. 495-506). Notably, Dr. Eisenstein testified that Mr. Jones was in a relationship with a woman named Shirley Anthony. Ms. Anthony was 20 years older than 16-year-old Jones when their relationship began. *Ms. Anthony* characterized the relationship as "common law." (PCR-*Atkins*-T, 210).

The court's assessment and conclusions improperly relied on

stereotypes about persons with ID. These persistent stereotypes distort the reality of the abilities of adults with ID, and often include "an invented 'list' of things people with intellectual disability cannot do. But there is no such list in the scholarly literature." James W. Ellis et al., *Evaluating Intellectual Disability: Clinical Assessments in Atkins Cases*, 46 Hofstra L. Rev. 1402 (2018).

The *Hall* postconviction court's assessment of Mr. Jones's adaptive deficits, and this Court's upholding of that ruling, is wrong for two reasons: 1) the court failed to assess Mr. Jones's adaptive functioning using prevailing norms; and 2) in doing so, the court improperly relied on testimony and facts established at proceedings, in violation of *Brumfield v. Cain*, 576 U.S. 305 (2015).

i. <u>The Court Failed to Assess Mr. Jones's Intellectual Disability Under Prevailing and Accepted Clinical and Medical Standards and Instead Improperly Relied on Reported Strengths</u>

Relying on the surface level perception of strengths is exactly what the AAIDD warned against and why the U.S. Supreme Court reversed *Moore I* and *Moore II* . Here, the lower court erred in evaluating adaptive functioning strengths rather than following the current medical standards and assessing adaptive functioning

weaknesses. It has long been established that strengths can coexist with deficits and the existence of strengths in adaptive functioning does not preclude a finding of intellectual disability. *See Moore II*, 586 U.S. 133; *Moore I*, 581 U.S. 1. Ellis et al., *Evaluating Intellectual Disability: Clinical Assessments in Atkins Cases*, at 1305. Nor does every intellectually disabled person exhibit deficits in all adaptive skill areas or in the same areas.

The recognized and accepted diagnostic framework requires that the evaluator must focus on the deficits, not a person's strengths. While it may seem intuitive to try and balance each against one another, this approach over simplifies the issues and is prohibited by the diagnostic criteria. "The central reason for focusing on deficits in adaptive functioning begins with the universally recognized fact that every individual who has intellectual disability also has things that he or she has learned to do, and can do whether with or without assistance." Ellis et al., *Evaluating Intellectual Disability: Clinical Assessments in Atkins Cases*, at 1393-94.

In failing to focus on Mr. Jones's deficits, the court erroneously ignored clear evidence that Mr. Jones is ID. *See* Caroline Everington

& J. Gregory Olley, *Implications of Atkins v. Virginia: Issues in Defining and Diagnosing Mental Retardation*, J. Forensic Psychol. Prac., Vol. VIII, Issue 1, 8 (2008) ("If a defendant has a job, drives a car, fixes engines, and/or is married, he/she is *improperly declared* to have no deficits in adaptive skills.").

ii. The Court Failed to Hold the Requisite Hearing and Take Evidence and Instead Improperly Relied on Prior Proceedings.

The U.S. Supreme Court explained in *Brumfield* that courts must not rely on conduct or testimony at prior proceedings to assess claims asserting intellectual disability. In *Brumfield*, the Court noted that the trial attorney had "little reason to investigate or present evidence relating to [ID]" at trial, therefore an ID challenge required full evidentiary development. 576 U.S. at 321.

The same reasoning applies to Mr. Jones. Mr. Jones's postconviction counsel presented evidence at the *Atkins* hearing pursuant to the relevant standard Florida used to assess intellectual disability at that time. The Supreme Court subsequently declared that Florida's determination of intellectual disability was unconstitutional. The very framework the postconviction court relied

on to deny Mr. Jones was overturned. Therefore, the prior hearing was insufficient.

Moreover, the *Hall* opinion established that much of the testimony the postconviction court in Jones' *Atkins* proceeding dismissed was now relevant in the assessment. The postconviction court's reliance on the prior testimony was improper. Because there remained disputed issues of fact in the case, the *Hall* court was required to hold an evidentiary hearing.

Suarez's conclusion that Mr. Jones does not exhibit deficits in adaptive functioning is contradicted by Mr. Jones's own family.[5] Mr. Jones was raised mostly by his aunt, Laura Long. Mr. Jones's sister, Pamela Mills, and his cousin, Carl Leon Miller, lived in the home.

Ms. Mills testified that Mr. Jones was a slow learner as a child.

[5] The court's reliance on Suarez cannot stand in light of Hall and its progeny. Suarez refused to rely on standards in his own profession. For example, Suarez administered the TONI to determine Jones's intellectual functioning, when the DSM-IV recommends and the Florida Statutes require that evaluators use the Stanford-Binet or the WAIS (nevertheless, Jones still scored within the ID range on the TONI, with the SEM). He then relied solely on prison staff as respondents to assess adaptive functioning, which the AAIDD specifically rejects. An expert's testimony must be based on the standards of their medical and scientific communities, not based on their personal feelings or opinions.

She confirmed that Mr. Jones was in classes for "learning disabled" students, he had a stutter, he slurred his words, and he had trouble communicating. (PCR-*Atkins*-T. 202.) Ms. Mills recalled that her brother wasn't able to get his work done, so she completed his schoolwork. As is noted throughout the postconviction records in this case, although Ms. Long claimed she took care of these children and provided a better life than their alcoholic mother could, Ms. Long abused and tortured the children. Ms. Mills noted she had to assist Mr. Jones in finishing his school work to shield him from being punished. *Id.*

Mr. Jones's cousin, Carl Leon Thomas, testified that Mr. Jones was slower than other kids at everything, and it took him a long time to follow directions.

Dr. Eisenstein testified that he learned Mr. Jones's uncle, David Gilkus, called Jones "retarded." (PCR-*Atkins*-T. 204). At a young age, Mr. Gilkus had to demonstrate tasks to Jones repeatedly, noting that he learned slowly. (PCR-*Atkins*-T. 204). He noted that Mr. Jones was slower than the other children. (PCR-*Atkins*-T. 205).

Testimony established that Ms. Long targeted Mr. Jones and

abused him because of his "inability to learn [and] his inability to follow directions." (PCR-*Atkins*-T, 205).

Shirley Anthony, Mr. Jones's former girlfriend, lived with him when Jones was between 16-19 years old. Ms. Anthony, who was 20 years older than Mr. Jones, characterized their relationship as "common-law." (PCR-*Atkins*-210). Ms. Anthony told Dr. Eisenstein that although Mr. Jones held several jobs while they were together, she supported him.

Notwithstanding Suarez's opinion that Mr. Jones exhibited strengths in prison, he also testified that staff at the prison indicate Mr. Jones exhibits deficits in adaptive functioning. Suarez conducted an Adaptive Behavior Assessment System ("ABAS") on two correctional officers and a "psychologist specialist." (PCR-*Atkins*-T. 297). All three respondents rated Jones's social skills as below average, and one rated his self-direction as borderline. (PCR-*Atkins*-ID. 298).

Indeed, abilities and strengths do not in and of themselves preclude an intellectual disability diagnosis and Mr. Jones's deficits establish he is intellectually disabled and the constitution precludes

his execution.

3. Prong III Onset Before Age 18:

Mr. Jones has established that he suffered from subaverage intellectual functioning and deficits in adaptive functioning prior to his 18th birthday. At the 2006 hearing, Mr. Jones presented evidence establishing he struggled in school and daily life as a child and a teenager through hospital and school records as well as testimony of family members. (PCR-*Atkins*, 87-88; PCR-*Atkins*-T) Mr. Jones presented hospital records from 1975 showing that he had been classified as "borderline mentally retarded." (PCR-*Atkins*, 87-88). Both the *Atkins* and *Hall* postconviction courts disregarded these records.

In upholding the denial of prong 3, the Court determined Ms. Long's testimony at the *Atkins* hearing contradicted her testimony at the penalty phase. Again, reliance on this finding violates the dictates of *Brumfield*, wherein the Court warns against using trial testimony because counsel may have strayed away from aspects of a defendant's intellectual deficits as trial strategy. *See* 576 U.S. 305.

Conclusion

Despite the dictates of *Hall*, requiring a holistic evaluation of Mr. Jones's intellectual disability claim, the postconviction court denied his claim, again relying on the prior record and discounting his family's testimony.[6] The court determined the testimony from family members was not credible, finding that there was "no evidence whatsoever of the onset of [intellectual disability] before the age of 18." (PCR-*Atkins,* 506) This was patently wrong and contradicted by the record.

While Mr. Jones was granted an evidentiary hearing in 2006 under *Atkins*, the postconviction court unconstitutionally misapplied

[6] The Court's discounting of testimony from family members is improper:

> Among the most common and potentially most valuable sources are interviews with family members and others who have known the individual well in varied community settings. Multiple informants who have known the individual at different ages before the pertinent crime can provide consensual validity regarding adaptive functioning.

J. Gregory Olley, Adaptive Behavior Instruments, in The Death Penalty And Intellectual Disability 187, 193 (Edward A. Polloway ed., 2015).

the analysis by failing to apply or defer to current and prevailing medical standards as recognized by the experts in the field and required under *Hall*. This court should have set aside the factual determinations reached by the circuit court because they were "induced by an erroneous view of the law." *Holland v. Gross*, 89 So. 2d 255, 258 (Fla. 1956); *see Central Waterworks, Inc. v. Town of Century*, 754 So. 2d 814 (Fla. 1st DCA 2000) (same).

Post-*Hall*, the circuit court and this Court denied Mr. Jones right to an evidentiary hearing, and to put on multiple experts[7] on ID, not just to opine that Mr. Jones meets criteria for ID, *but also to explain where the trial court's use of outdated testimony from a hearing held years prior ran afoul of the current medical community standards at that time.*

[7] In support of the Rule 3.851 motion filed pursuant to *Hall*, the defense listed experts Dr. Caroline Everington, Dr. Stephen Greenspan, Dr. Denis Keyes, and Dr. Marc Tasse. Each of these experts contributed to *The Death Penalty and Intellectual Disability*, published by the AAIDD in January 2015. Each expert has researched and published extensively in the field of ID. Dr. Caroline Everington is an authority on adaptive functioning, Dr. Stephen Greenspan is a world authority on IQ tests. Dr. Denis Keyes co-authored the chapter entitled "Variability of IQ Test Scores," which addresses the possible causes of IQ test score variability. Dr. Denis Keyes is another leading expert in the field of ID.

This Court should prohibit Mr. Jones' execution as he has clearly demonstrated ID, or, alternatively, remand and allow Mr. Jones to present evidence that the lower court can analyze applying current medical standards as required by *Hall* and fundamental principles of federal due process of which the Supreme Court of the United States has repeatedly reminded this Court, see, e.g. *Cash v. Culver,* 358 U.S. 633 (1959), and *McNeal v. Culver*, 365 U.S. 109 (1961); *Carnley v. Cochran*, 369 U.S. 506 (1962),

D. Manifest Injustice Requires this Court Remand for an Evidentiary Hearing

There can be no greater manifest injustice than executing a person with ID. This is an opportunity for this Court to correct a blatant constitutional error on a case that is recognized nationwide by experts in the field as wrongly decided.

This Court should exercise the jurisdiction it has long acknowledged it possesses in cases of manifest injustice and correct its own egregious errors:

> We think it should be made clear however, that an appellate court should reconsider a point of law decided on a former appeal only as a matter of grace, and not as a matter of right; and that an exception to the general rule binding the

> parties to the "law of the case" at the retrial and at all subsequent proceedings should not be made except in unusual circumstances and for the most cogent reasons—and always, of course, only where "manifest injustice" will result from a strict and rigid adherence to the rule.

Strazzulla v. Hendrick, 177 So. 2d 1, 4 (Fla. 1965); *W. Virginia Oil & Gas Co. v. George E. Breece Lumber Co.*, 213 F.2d 702, 704 (5th Cir. 1954) (identifying "two principles of judicial administration founded on sound public policy, namely, that litigation must finally and definitely terminate within a reasonable time and that justice must be done unto the parties"). Here, justice was never done.

The law of the case, collateral estoppel, and *res judicata* do not prevent relief in this case. This Court explained in *State v. Owen*, 696 So. 2d 715 (Fla. 1997):

> Generally, under the doctrine of the law of the case, "all questions of law which have been decided by the highest appellate court become the law of the case which must be followed in subsequent proceedings, both in the lower and appellate courts." *Brunner Enters., Inc. v. Department of Revenue*, 452 So. 2d 550, 552 (Fla. 1984). However, the doctrine is not an absolute mandate, but rather a self-imposed restraint that courts abide by to promote finality and efficiency in the judicial process and prevent relitigation of the same issue in a case.

> *See Strazzulla v. Hendrick*, 177 So. 2d 1, 3 (Fla. 1965) (explaining underlying policy). This Court has the power to reconsider and correct erroneous rulings in exceptional circumstances and where reliance on the previous decision would result in manifest injustice, notwithstanding that such rulings have become the law of the case. *Preston v. State*, 444 So. 2d 939 (Fla. 1984). An intervening decision by a higher court is one of the exceptional situations that this Court will consider when entertaining a request to modify the law of the case. *Brunner*, 452 So. 2d at 552; *Strazzulla*, 177 So. 2d at 4.

Id. at 720. Mr. Jones submits that adherence to *Hall, Moore I,* and *Moore II,* require this Court to correct the manifest injustice in Jones' case which will result in the state of Florida executing an intellectually disabled person. Relying on the previous decision in Mr. Jones's case is a manifest injustice that cannot stand and leads to the undermining of our system of justice.

This Court has also found that a manifest injustice can overcome collateral estoppel and res judicata. In *State v. McBride*, 848 So. 2d 287 (Fla. 2003) this Court acknowledged the clear principle, "that res judicata will not be invoked where it would defeat the ends of justice. *See deCancino v. E. Airlines, Inc.*, 283 So. 2d 97, 98 (Fla. 1973*); Universal Constr. Co. v. City of Fort Lauderdale*, 68 So.

2d 366, 369 (Fla. 1953). The law of the case doctrine also contains such an exception. *See Strazzulla v. Hendrick*, 177 So. 2d 1, 4 (Fla. 1965). *Id.* at 291. This Court found that there was no similar precedent on collateral estoppel so this Court held "that collateral estoppel will not be invoked to bar relief where its application would result in a manifest injustice." *Id.* at 292.

The U.S. Supreme Court has repeatedly held "that the Eighth Amendment requires increased reliability of the process by which capital punishment may be imposed." *Herrera v. Collins*, 506 U.S. 390 (1993); *McKoy v. North Carolina*, 494 U.S. 433 (1990); *Eddings v. Oklahoma*, 455 U.S. 104 (1982); *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (plurality). "If the Constitution renders the fact *or timing* of his execution contingent upon establishment of a further fact . . . then that fact must be determined with the high regard for truth that befits a decision affecting the life or death of a human being." *Herrera,* 506 U.S. at 405-406 (quoting *Ford v. Wainwright*, 477 U.S. 399, 411 (1986)).

Factual determinations related to the constitutionality of a person's execution are "properly considered in proximity to the

execution." *Herrera*, 506 U.S. at 406 (noting competency to be executed determination is more reliable near time of execution whereas guilt or innocence determination becomes less reliable).

This Court has the opportunity to correct a previous error and stop the execution of a person with ID. Anything less will be a travesty of justice and a dark moment in this Court's history.

Conclusion And Relief Sought

This Court should grant the writ of habeas corpus, stay Mr. Jones's execution, and grant appropriate relief.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND FONT

Counsel certifies that this Petition for Habeas Corpus is produced in Bookman Old Style 14-point font in compliance with the requirements of Florida Rules of Appellate Procedure 9.100.

Counsel further certifies that this Petition contains 9,050 words.

/s/ Marie-Louise Samuels Parmer
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic service using the State of Florida E-Filing Portal, to the following this 12th Day of September, 2025.

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

VICTOR T. JONES,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

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

APPENDIX F

CAPITAL CASE

DEATH WARRANT SIGNED
EXECUTION SET SEPTEMBER 30, 2025, AT 6:00 P.M.

Response to Petition for Writ of Habeas Corpus, *Victor T. Jones v. Secretary, Department of Corrections*, Florida Supreme Court, SC2025-1423 (Sept. 16, 2025)

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC2025-1423

ACTIVE WARRANT CAPITAL CASE EXECUTION SET FOR TUESDAY, SEPTEMBER 30, 2025

VICTOR TONY JONES,
Petitioner,
v.
SECRETARY, DEPARTMENT OF CORRECTIONS,
Respondent.

ON APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, MIAMI-DADE COUNTY, FLORIDA

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

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PRELIMINARY STATEMENT/JURISDICTION

Petitioner, Victor Tony Davis, has filed his initial brief in the related postconviction appeal in case number SC2025-1422. Jones is under an active death warrant and the execution is set for September 30, 2025.

In his Preliminary Statement and Jurisdiction section, Jones asserts that he is raising claims of error under the United States Constitution and Article I, Sections 13 and 17, of the Florida Constitution. (P at 1). The Florida State Constitution, Art. V, sections 3(b)(1) and (9), grant exclusive jurisdiction over appeals in death penalty cases to the Florida Supreme Court, including habeas petitions from capital cases. *James v. State*, 404 So. 3d 317, 319 (Fla. 2025); *see also*, Fla. R. App. P. 9.030(a)(3) (noting this Court's original jurisdiction to issue writs of habeas corpus). This Court has jurisdiction.

While Jones correctly invokes this Court's jurisdiction under Article V, section 3(b)(9), Florida Constitution, he incorrectly invokes jurisdiction under Article I, section 13 of the Florida Constitution. (P. at 1-3). That provision provides: "The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable

without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety." The state constitutional habeas provision was first adopted in 1838 and reflects the common law understanding of the Great Writ. Art. I, § 11, Fla. Const. (1838). However, the "Great Writ" does not apply here. *See Brown v. Davenport*, 596 U.S. 118, 127-28 (2022); *Edwards v. Vannoy*, 593 U.S. 255, 284 (2021) (Gorsuch, J. concurring). Once Jones was convicted and sentenced, the "Great Writ," as well as Florida's equivalent state constitutional habeas provision, no longer applied as a basis for this Court's jurisdiction to hear post-judgment claims. The "Great Writ" is not at issue here.

RESPONSE TO REQUEST FOR ORAL ARGUMENT

This Court's standard policy is not to conduct oral arguments in active warrant cases. Jones' case has been litigated and reviewed several times over the past 35 years, with oral argument before this Court at least twice. *See Jones v. State*, 652 So. 2d 346 (Fla. 1995), *cert. denied*, 516 U.S. 875 (Oct. 2, 1995); *Jones v. State*, 855 So. 2d 611 (Fla. 2003). As discussed below, the issue of Jones' intellectual disability was raised twice before and he obtained an evidentiary hearing on the claim. This Court denied relief both times, agreeing

that Jones was not intellectually disabled following *Atkins v. Virgina*, 536 U.S. 304 (2002), and was not entitled to relief following *Hall v. Florida*, 572 U.S. 701 (2014), because Jones did not meet the second and third prongs, i.e., deficits in adaptive functioning and onset before age 18, to prove intellectual disability. *Jones v. State*, 231 So. 3d 374, 376 (Fla. 2027). Jones' petition seeks to relitigate the propriety of this Court's resolution of his *Atkins* and *Hall* claims rendering the matter untimely, procedurally barred, and meritless. He has not presented any substantial issue, and therefore, oral argument is unwarranted.

STATEMENT OF THE CASE AND FACTS[1]

Jones is under an active death warrant based on his conviction for two counts of first-degree murder of Matilda Nestor and Jacob Nestor. *Jones v. State*, 652 So. 2d 346, 348 (Fla. 1995) (*Jones I*). Following his conviction for two counts of first-degree murder and two counts of armed robbery, the jury recommended death for each victim, the trial court imposed two death sentences and life on each robbery count, all to run consecutively, and this Court affirmed. *Id.*

[1] The State will use the following to identify the appellate records: (1) **Direct Appeal – ROA with R for records and T for transcripts** in case number SC1960-81482, *Jones v. State*, 652 So. 2d 346 (Fla. 1995) (*Jones I*), *cert. denied*, 516 U.S. 875 (Oct. 2, 1995); (2) **Original Postconviction Appeal – PCR1** for case number SC01-734, *Jones v. State*, 855 So. 2d 611 (Fla. 2003) (*Jones II*) with related petition for writ of habeas corpus in case number SC02-605; (3) **First Successive Postconviction Appeal/Intellectual Disability – PCR2** for case number SC04-726, *Jones v. State*, 966 So. 2d 319 (Fla. 2007) (*Jones III*); (4) **Second Successive Postconviction Appeal – PCR3** case number SC13-2392, *Jones v. State*, 135 So. 3d 287 (Fla. 2014) (*Jones IV*) raising a claim under *Porter v. McCollum*, 558 U.S. 30 (2009) which was voluntarily dismissed; **Third Successive Postconviction Appeal/Intellectual Disability – PCR4** case number SC15-1549, *Jones v. State*, 231 So. 3d 374 (Fla. 2017) (*Jones V*); **Fourth Successive Postconviction Appeal – PCR5** case number SC18-285, *Jones v. State*, 241 So. 3d 65 (Fla. 2018) (*Jones VI*), *cert. denied*, 586 U.S. 1052 (2018); and **Fifth Successive Postconviction Appeal – PCR6** case number SC2025-1422 (the present appeal under active death warrant). An "S" preceding the record type indicates a supplemental record. Jones' Petition will be notated as "P."

at 348-49. Over the approximate thirty-five years since the murders, Jones has litigated his direct appeal, six postconviction motions with two evidentiary hearings, and a federal habeas petition, none of which were successful. *See* footnote 1, *supra*.

On August 29, 2025, the Governor signed a death warrant with the execution set for September 30, 2025. On September 8, 2025, Jones filed a successive postconviction motion, which was summarily denied. He appealed and his initial brief in case number SC2025-1422 was filed on September 16, 2025.

On direct appeal, this Court set forth the facts of the crime. On December 19, 1990, the bodies of sixty-six-year-old Matilda Nestor and sixty-seven-year-old Jacob Nestor were found in their place of business. *Jones I*, 652 So. 2d at 348. Jones, on his second day working for the Nestors, stabbed Mrs. Nestor in the back severing her aorta and Mr. Nestor in the heart, killing them. *Id.* Before he died, Mr. Nestor was able to remove the knife from his chest, attempt to call for help, and fire five shots from his .22 caliber automatic pistol striking Jones once in the forehead *Id.* After the stabbings, Jones robbed both victims. *Id.*

Following the murders and robberies, Jones locked himself in

the building where he remained until the police knocked down the door. *Id.* The police found Jones slumped over on the couch near Mr. Nestor's body with the butt of a .22 caliber automatic pistol sticking out from under his arm. *Id.* No money or valuables were found on either victim. Mrs. Nestor's purse was discovered on the couch with Jones. *Id.* The evidence also indicated that after Mr. Nestor collapsed, his body was rolled over so items could be removed from his pockets. *Id.* Mrs. Nestor's change purse, keys, lighter, and both victims' wallets were found in Jones' pant pockets. *Id.*

It was not readily apparent that Jones had been shot until he complained of a headache after being handcuffed. *Id.* After noticing blood coming from his forehead, police asked what happened and Jones replied, "the old man shot me." *Jones I,* 652 So. 2d at 348. Jones was transported to the hospital and while in the intensive care unit, he told a nurse that he had to leave because "he had killed those people." *Id.* When the nurse asked him why, Jones responded: "they owed me money, and I had to kill them." *Id.* Upon this evidence, Jones was found guilty of two counts of first-degree murder and two counts of armed robbery. *Id.*

On February 11, 1993, between the guilt and penalty phases, a

competency hearing was held. Jones was found competent to proceed. (ROA-T 2436).

During the penalty phase, the State presented testimony supporting prior violent felony convictions where Jones committed armed robberies and a burglary with an assault. (ROA-T 2514-51, 2564-66, 2576). On November 27, 1990, less than a month before the instant murders, Jones had been conditionally released from imprisonment. (ROA-T 2580).

Jones presented Dr. Jethro Toomer to present mitigation. The doctor evaluated Jones and testified he was just five years old when his mother went to New York, and Jones was left in the care of his mother's sister, Laura Long, who lived in Miami. Jones was raised by the Longs who cared for him and required a high standard of behavior from him. They were demanding in terms of the behavior required and tried to teach Jones right from wrong. (ROA-T 2600-06, 2615). Jones was raised in a middle-class household by a family who took him to church when he was young. (ROA-T 2615). Jones was provided clothing, food, and shelter. His teacher indicated Jones was appropriately dressed and had the proper school supplies when he came to class. (ROA-T 2607). Dr. Toomer also testified that Jones'

aunt was married to a minister who raised Jones along with his two cousins. Mrs. Long indicated her husband loved Jones as he did his two sons. (ROA-T 2663-65).

Around the age of twelve, Jones began to skip school and started using marijuana and committing burglaries. He also ran away several times. (ROA-T 2611). At fourteen-years-old,[2] Jones made his own way to New York to his mother. (ROA-T 1612). Dr. Toomer testified that Jones stayed with his mother for about two years after 1973 and that he was registered in the New York school system. (ROA-T 2649). After leaving New York, Jones went to Texas, then California where he informed Dr. Toomer he supported himself through employment from 1976 to 1981; Jones told Dr. Toomer he was not committing crimes during that period.[3] (ROA-T 2650).

In 1981, Jones moved to Atlanta, Georgia. There, he lived with a "common-law wife" who supported him when Jones stopped

[2] The testimony varies on the age Jones first ran away to New York; it ranges between eleven and fourteen years of age.

[3] Dr. Toomer based that testimony on what Jones disclosed, however, the record shows that Jones had in fact engaged in criminal activity in Atlanta. Likewise, Jones was untruthful with Dr. Toomer when he denied having been referred to drug treatment programs in Atlanta and Florida. (ROA-T 2651-55).

working. Eventually, she demanded Jones leave her house. (ROA-T 2652). Between 1980 and 1990, Jones lived with his grandmother in Miami except for the periods of time he was in Atlanta or in prison. (ROA-T 2667). Dr. Toomer admitted that Jones had a number of disciplinary problems while in state prison and county jail. (ROA-T 2627).

Dr. Toomer informed the jury that Jones was of average intelligence and that he had never been treated for mental disease or defect. Likewise, Jones never had any psychological counselling. There was no evidence of Jones ever exhibiting bizarre or psychotic behavior in prison. (ROA-T 2673). Dr. Toomer opined that Jones suffered from a borderline personality disorder and was a victim of abandonment, whose family was dysfunctional, resulting in his maladaptive behavior. (ROA-T 2608, 2621). Although he did not talk to Jones about the events surrounding the murder or his prior crimes, Dr. Toomer believed the statutory mitigator of "under the influence of extreme mental or emotional disturbance" applied. The doctor did not believe the particular crime facts mattered. (ROA-T 2642-44). Even so, Dr. Toomer conceded that Jones did not suffer from any major mental disorder or psychosis and without a desire to

seek counselling on Jones' part, the probability of Jones altering his behavior was "practically nil." (ROA-T 2628, 2648).

In rebuttal, the State presented Dr. Charles Mutter, a forensic psychiatrist who evaluated Jones. (ROA-T 2682-83). Dr. Mutter was also of the opinion that Jones had average intelligence. The doctor reviewed the Jackson Memorial Hospital records relating to Jones' December 1990 gunshot wound, Dr. Toomer's notes and depositions, the police reports, the July 24, 1992, Minnesota Multiphasic Personality Inventory ("MMPI") report on Jones, the 1987-1990 arrest records, the February 1987 through July 1990 Florida Department of Corrections records including his disciplinary problems and medical status, and Jones' current Dade County jail records. (ROA-T 2687). From his review and evaluation, Dr. Mutter concluded that the statutory mitigator of extreme mental or emotional disturbance was not applicable. (ROA-T 2688). The doctor found no evidence that Jones had ever been psychotic, out of touch with reality, or had a flash back to some traumatic experience. (ROA-T 2689).

Dr. Mutter opined that the Longs taught Jones right from wrong and how to live as an adult. Jones, in fact, knew right from wrong and, without question, made a conscious choice to kill. Since the age

of twenty, Jones' criminal troubles stemmed from his desire to get money for drugs. Dr. Mutter did not believe Jones had an extreme mental or emotional disturbance. The doctor rejected the suggestion that Jones used drugs because of an emotional abandonment as a child. (ROA-T 2690-91). Further, Dr. Mutter saw no evidence Jones was under the influence of alcohol or drugs when he murdered and robbed the Nestors. In discussions with Dr. Mutter, Jones denied being under the influence of those substances at the time of the crimes. (ROA-T 2692). It was the doctor's opinion that Jones had an antisocial personality, which is not considered a major mental disorder, and Jones' antisocial personality became evident around twelve-years of age. Prior to that, Jones did fairly well in school. After that age, Jones made the same errors repeatedly because he seemed more concerned with what he thought was good for himself rather than learning from his mistakes. (ROA-T 2698-99, 2702).

Based on the above evidence, the jury recommended death for the murder of Mrs. Nestor by a vote of ten to two. *Jones I,* 652 So. 2d at 348. For Mr. Nestor's murder, the jurors unanimously recommended death. *Id.*

Additional mitigation evidence was presented to the trial court

alone. Dr. Hyman Eisenstein, a neuropsychologist, primarily testified on Jones' competency. (ROA-T 2793-2815). However, he had no opinion regarding the existence of mitigating circumstances and was unable to opine whether any neurological deficits he diagnosed predated the December 1990 gunshot injury inflicted during the murders. (ROA-T. 2820).

Laura Long, Jones' aunt who raised him, testified that Jones came to live with her when he was two-years-old[4] and remained with her until he was fourteen or fifteen-years-old. (ROA-T 2835). As a child, Jones was very nice and did very well in school. Long explained that she was a teacher and helped Jones and her other children with their schooling. Jones did not have any problems with his lessons or behavior in elementary school. (ROA-T 2836). In fact, Jones' teacher noted he was very well behaved and was an ideal student. When Jones was young she took him to church. He liked to go with the children and the children liked Jones. (ROA-T 2837).

It was not until Jones was between twelve and fourteen-years of age that he started running away and he and his best friend began

[4] This is a different date from Dr. Toomer's testimony.

getting into trouble. (ROA-T 2839). After Jones ran away to New York when he was fifteen-years-old,[5] he never lived with Long again, even though she had asked him to return and she loved him very much. (ROA-T 2840).

With respect to Jones' drug use, Long testified that she was very upset the first time Jones came home on drugs. When they spoke about his drug use, Jones said he was doing drugs because most of his peers used drugs. He felt peer-pressure. (ROA-T 2842).

In its sentencing order, the trial court found in aggravation for each murder: (1) under a sentence of imprisonment; (2) prior violent felony convictions; (3) murder committed during the course of a robbery, and merged with, (4) pecuniary gain. *Jones I,* 652 So. 2d at 348–49. The sentencing court found nothing in mitigation and followed the jury's recommendation in sentencing Jones to death for the double homicide. *Id.* at 349. Jones received life sentences for each robbery, with all sentences to run consecutively. *Id.*

On direct appeal, Jones raised five issues: (1) error in denying a judgment of acquittal on the armed robbery counts as the thefts

[5] The testimony regarding Jones' ages during different events in his life varies between witnesses and various proceedings.

were done posthumously; (2) error in not instructing the jury on merging of the "during the course of a robbery" and pecuniary gain aggravators; (3) error to not remove the "extreme" qualifier from the standard instruction for the statutory mitigator of "under extreme mental or emotional disturbance" at the time of the offense; (4) a new sentencing was required as the mental health experts failed to address the possibility that Jones suffered from fetal alcohol syndrome/effect and the sentencing court refused to consider Jones' abandonment by his mother as mitigation; and (5) error to deny a mistrial based upon various alleged improper prosecutorial comments during the penalty phase closing argument. *Jones I,* 652 So. 2d at 349. This Court denied each claim and affirmed the convictions and sentences. *Id.* at 353. On October 2, 1995, Jones' case became final with the United States Supreme Court's denial of certiorari. *Jones v. Florida*, 516 U.S. 875 (1995).

Represented by Capital Collateral Regional Counsel-South, Jones pursued postconviction relief. His initial motion was filed on March 24, 1997, amended in March 1999, and on October 8, 1999, where he raised over twenty claims. The March 1999 motion was accompanied by a motion to determine competency. (PCR1 93-202;

SR-PCR1 131-34). Pursuant to *Carter v. State*, 706 So. 2d 873 (Fla. 1997), the postconviction court ordered Jones evaluated by two experts, who both found him competent. (SR-PCR1 131-34, 147-56). After an evidentiary hearing at which both doctors testified, the court found him competent. Following that, the postconviction court granted an evidentiary hearing on Jones' claims of ineffective assistance related to failing to raise: (1) voluntary intoxication; (2) mental health and family mitigation history; and (3) competency prior to trial. (PCR1 365). The court held a multi-day evidentiary hearing, then denied relief. Jones appealed. *Jones II*, 855 So. 2d at 614-15. Where relevant, the facts established in the initial postconviction litigation will be included in the argument portion of this response. On appeal, this Court considered and rejected the five claims raised by Jones and discussed whether counsel was ineffective for: (1) failing to investigate and present a voluntary intoxication defense and (2) failing to properly investigate and present available mitigation. *Jones II*, 855 So. 2d at 615-16.

Attendant with his postconviction appeal in *Jones II*, Jones raised claims of ineffective assistance of appellate counsel under case number SC02-605. There he raised:

> … (1) trial counsel's conflict of interest and the trial court's denial of trial counsel's motion to withdraw; (2) the denial of appellant's motions to suppress; (3) trial counsel's objection to the substitution of the medical examiner; (4) the voluntariness of Jones's pleas in prior cases; (5) the trial court's denial of Jones's motion to compel psychiatric examination of a witness; (6) the trial court's denial of defense counsel's motion for mistrial based on the prosecutor's "inferential" comment on petitioner's right to remain silent; and (7) the invalidity of the jury instructions under *Caldwell v. Mississippi*, 472 U.S. 320, 105 S. Ct. 2633, 86 L.Ed.2d 231 (1985).

Jones II, 855 So. 2d at 619 n.5. This Court denied the petition. *Id*.

Next, Jones filed a federal petition for writ of habeas corpus, raising twenty-six claims. Relief was denied. *Jones v. McNeil*, 776 F. Supp. 2d 1323, 1338 (S.D. Fla. 2011). Jones attempted to appeal the denial but a certificate of appealability was denied. The United States Supreme Court denied certiorari. *Jones v. Fla. Dep't of Corr.*, 568 U.S. 873 (2012).

While litigating his federal claims, on January 25, 2006, Jones filed his first successive motion for postconviction relief alleging intellectual disability under *Atkins v. Virgina*, 536 U.S. 304 (2002), as a bar to his execution. Initially, the postconviction court summarily denied relief, however, this Court remanded for an

evidentiary hearing. *Jones v. State*, 966 So. 2d 319, 322 (Fla. 2007) (*Jones III*). At the hearing, Dr. Hyman Eisenstein testified on Jones' behalf and the State presented Dr. Enrique Suarez and Lisa Wiley, a psychological specialist with the Department of Corrections. *Id.* at 322. This Court noted, "[t]he parties stipulated that evidence from the evidentiary hearing would be considered cumulatively with the evidence from prior proceedings." *Id.*

Additional facts are included in the argument portion of this response; however, a synopsis of the evidence presented at the intellectual disability evidentiary hearing included that Jones' was born in 1961 and his school records showed he was in "regular classes" where he earned "mostly Cs" in first and second grade "with some As and Bs in English and writing." *Jones III*, 966 So. 2d at 322. Jones' "third-grade teacher reported that he was of 'a little above average intelligence' and did well in school." *Id.* In the seventh grade, Jones "again earned Cs with Bs in English;" however, in the eighth grade, "he began using drugs, skipping school, and having disciplinary problems, [and] his grades dropped precipitously" before he dropped out of school at sixteen-years-old. *Id.*

Jones ran away from home multiple times including at fourteen

years old, successfully stowing away on an airline and making his way alone to New York to be with his mother. *Jones III*, 966 So. 2d at 322. In 1978, when Jones was under eighteen-years-old, he worked as a waiter before "hitchhik[ing] alone to Texas, supporting himself by working various jobs and selling drugs," then flying "to San Francisco, where he supported himself mostly through robberies," before returning to Miami in 1979. He then moved to Atlanta, Georgia "where he lived for several years, working various jobs over time, including bouncer and waiter." *Id.* at 322. Upon his return to Miami in 1986, Jones supported himself by mowing lawns for a living and selling drugs. *Id.* at 322-23.

When Jones was fourteen years old, he was admitted to the hospital "for psychiatric evaluation" and the records showed he "had a 'completely normal mental status' during his stay" and "was discharged with a diagnosis of 'unsocialized aggressive reaction of adolescence,' with no psychiatric treatment needed." While "[a] hospital document indicated that Jones previously had been labeled at a juvenile facility as having borderline mental retardation," "no documentation supported the statement." *Jones III*, 966 So. 2d at 322-23. This Court found that between 1991 and 2005, various

doctors "administered either the WAIS–R (Wechsler Adult Intelligence Scales) or WAIS–III intelligence tests" with Jones obtaining full scale scores between 67 and 75. *Jones III*, 966 So. 2d at 323.

During the evidentiary hearing, the trial court heard testimony from Lisa Wiley and Drs. Eisenstein and Suarez, regarding Jones' adaptive functioning abilities. The trial court determined that Jones offered "no credible evidence" to support his claim of intellectual disability and concluded that "Jones did not meet even one of the three statutory requirements" for intellectual disability. *Jones III*, 966 So. 2d at 325. This Court found that substantial competent evidence supported the trial court's conclusion that Jones did not meet the statutory definition of intellectual disability, as necessary to bar the imposition of the death penalty. *Id.* at 325-29.

On November 29, 2010, Jones filed his second successive postconviction relief motion raising a claim under *Porter v. McCollum*, 558 U.S. 30 (2009), seeking reconsideration of the denial of his prior claims of ineffective assistance of counsel. After the trial court summarily denied the motion, Jones appealed. However, he later voluntarily dismissed the action. *Jones IV*, 135 So. 3d at 287 (table).

In his third successive postconviction relief motion, Jones re-

raised his claim of intellectual disability following the Supreme Court's decision in *Hall v. Florida*, 572 U.S. 701 (2014), and requested a new evidentiary hearing. *Jones V*, 231 So. 3d at 374. On appeal following the summary denial of relief, Jones also raised a claim under *Hurst v. Florida*, 577 U.S. 92 (2016). This Court affirmed the denial of Jones' *Hall* claim, concluding "Jones is not entitled to a new hearing in order to present additional evidence of intellectual disability because he was already provided the opportunity to present evidence regarding each of the three prongs of the intellectual disability standard." *Jones V*, 231 So. 3d at 376. Further "*Hall* does not change the fact that Jones failed to establish that he meets the second or third prong" of an intellectual disability claim. *Id*. This Court also denied the *Hurst v. Florida* claim having found it was not retroactive to cases final before *Ring v. Arizona*, 536 U.S. 584 (2002) was decided. *Jones V*, 231 So. 3d at 376.

Jones filed his fourth successive postconviction motion for relief on October 13, 2017, again raising a *Hurst v. Florida* claim but also pointing to this Court's decision in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). Again, the trial court denied relief summarily and this Court affirmed noting that *Hurst v. Florida* was not retroactive to cases final

before *Ring* which included Jones' case. *Jones v. State*, 241 So. 3d 65 (Fla. 2018).

On August 29, 2025, Governor Ron DeSantis signed Jones' death warrant scheduling the execution for September 30, 2025. This prompted Jones to file with the trial court his fifth successive postconviction relief motion, his sixth overall. The circuit court summarily denied relief and Jones appealed in case number SC2025-1422. Under this Court's warrant schedule, Jones was permitted to file a habeas petition, which he did. The State's response follows.

ARGUMENT

Jones' Attempt to Relitigate This Court's Prior Rejections of His Claim of Intellectual Disability as a Bar to the Death Penalty Is Untimely, Procedurally Barred, and without Merit.

There are multiple reasons why this Court should deny the instant petition under an active warrant. First, it is untimely. Fla. R. Crim. P. 3.851(d)(3) requires that a habeas petition "shall" be filed at the same time as the appeal from the denial of postconviction relief. Jones did file a habeas petition in this Court concurrently with his appeal of the initial postconviction motion, challenging appellate counsel's effectiveness. There are no provisions in the rules

authorizing successive habeas petitions. Moreover, under this Court's established precedent, habeas petitions are reserved to challenge the effectiveness of appellate counsel. *See Davis v. State*, 789 So. 2d 978, 981 (Fla. 2001) (reiterating that state habeas corpus proceedings are the vehicle to advance claims of ineffective assistance of appellate counsel). Accordingly, the instant petition should be dismissed as untimely and impermissibly successive.

Jones contends that his pending execution will violate the Eighth Amendment because he is intellectually disabled which this Court and the lower court have refused to recognize and have failed to properly analyze his previous intellectual disability claims in conformance with controlling United States Supreme Court precedent. Jones raised this claim twice before, had an evidentiary hearing on it, fully litigated it in the post-conviction court and this Court, and has failed to prove it each time. This newest attempt to raise it is procedurally barred and equally without merit because he still cannot meet the statutory requirements needed to prove the three intellectual disability prongs. This Court should deny the habeas petition.

Jones' petition merely asks this Court to revisit its earlier

decisions finding that Jones' failed to meet any of the three prongs necessary to the finding of intellectual disability. A state habeas petition is not grounds to argue claims that either could have been or were raised earlier. *See Breedlove v. Singletary*, 595 So. 2d 8, 10 (Fla. 1992) ("Habeas corpus is not a second appeal and cannot be used to litigate or relitigate issues which could have been, should have been, or were raised on direct appeal.") (citing *Porter v. Dugger*, 559 So. 2d 201 (Fla. 1990)); *Clark v. Dugger*, 559 So. 2d 192 (Fla. 1990), *Lambrix v. State*, 217 So. 3d 977, 989 (Fla. 2017). As this Court has previously stated, habeas corpus does not present a proper forum to simply quibble with prior rulings of this Court. *Diaz v. State*, 132 So. 3d 93, 123 (Fla. 2013) ("Habeas proceedings simply do not afford an opportunity to relitigate such claims.").

Jones has raised a claim that he is intellectually disabled twice in successive postconviction motions rendering his instant challenge procedurally barred. *Hutchinson v. State*, 2025 WL 1198037, *6 (Fla. Apr. 25, 2025); *Hendrix v. State*, 136 So. 3d 1122, 1125 (Fla. 2014) ("Claims raised and rejected in prior postconviction proceedings are procedurally barred from being relitigated in a successive motion."); *Parker v. Dugger*, 550 So. 2d 459, 460 (Fla. 1989) (denying habeas

relief where all claims raised after death warrant was signed were procedurally barred). The first time this claim was presented pursuant to *Atkins* was in 2004. Initially the claim was summarily denied, but after a remand from this Court, the circuit court held an evidentiary hearing, after which it denied the claim. This Court specifically found that a diagnosis of intellectual disability must be based on "present or current intellectual functioning and adaptive skills and information that the condition also existed in childhood." *Jones IV*, 966 So. 2d at 327. This Court determined that Jones' functioning in prison can be used as a basis for assessing his adaptive functioning and found that both in and out of prison Jones understood and managed his life. *Id.* at 328. Jones failed to meet the first prong because all his IQ scores were 70 or above and all the testing was done after he was shot in the head, which the experts said was a major trauma and his intelligence was probably higher before that wound. *Id.* at 329. Finally, his school records and elementary school teacher indicated that any intellectual impairment did not manifest before the age of 18. *Id.* at 329-30. This Court affirmed the denial of relief.

Jones raised this issue in a federal habeas petition, which was

denied as meritless. *Jones v. McNeil*, 766 F. Supp. 2d 1323, 1369-75 (S.D. Fla. 2011). He was denied an appeal to the Eleventh Circuit Court of Appeals and the United States Supreme Court denied certiorari. *Jones v. Fla. Dep't of Corr.*, 133 S. Ct. 413 (2012).

Jones next raised the issue in 2015 after the release of *Hall v. Florida*.[6] The lower court summarily denied it and this Court affirmed. *Jones v. State*, 231 So. 3d 374. Since the court allowed Jones to present evidence at the 2006 evidentiary hearing on whether he had deficits in adaptive functioning and if the intellectual disability had manifested before he was 18, this Court affirmed this denial since that hearing met the requirements set out in *Hall* and Jones had failed to prove any of the three prongs set out in the Florida statute. *Id.* This Court reiterated its rejection of Jones' contention that his behavior in prison should not be considered in assessing his adaptive functioning. *Id.* at 376.

The record reflects that competent substantial evidence supports the denial of the intellectual disability claim and specifically

[6] In *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020), this Court held that *Walls v. State*, 213 So. 3d 340, 346 (Fla. 2016) was clearly erroneous and that *Hall* should not be retroactively applied. *Id.* at 1019-21.

that Jones failed to prove the second and third intellectual disability prongs. Jones has been repeatedly evaluated and tested by mental health experts, both during the original trial when competency was an issue as well as in the postconviction litigation when he raised claims that he is intellectually disabled. Dr. Eisenstein gave Jones an IQ test between the guilt and penalty phase trials and placed him in the borderline range with a full scale IQ of 72. The doctor noted that Jones had a very high score on the malingering scale of the test. (ROA-T 2350, 2385). Ms. Long, Jones' aunt and guardian, described him as smart and did well in school. (ROA-T 2823, 2836-37). Dr. Jethro Toomer testified that Jones was an average student with average grades in elementary school. (ROA-T 2610). Dr. Toomer said Jones was of average intelligence. (ROA-T 2638-39, 2658). Dr. Charles Mutter also testified in the penalty phase, saying Jones was at least averagely intelligent and did well in school until he began behaving antisocially. (ROA-T 2686, 2702).

Jones raised competency issues again in postconviction. Dr. Ruth Latterner, chosen by the defense, said Jones' social skills were normal and his intellectual functioning was in the borderline to low average range. (PCR1-ST 184-88). She said that Jones lacked

motivation during her testing of him. (PCR1 1467). Dr. Latterner specifically stated that Jones was not intellectually disabled. (PCR1 1475). Dr. Jane Ansley, chosen by the State, said that Jones had a full scale IQ score of 73, but found that he put forth minimal effort during the tests, resulting in scores lower than his actual abilities. (PCR1-ST 179, PCR1 1422-25). She noted that Jones was faking bad and making "a deliberate attempt to exaggerate symptoms of psychiatric illness." (PCR2 181). Jones called Dr. Eisenstein who testified that he had seen an IQ score of 77 from when Jones was a teen and a Beta IQ score of 76 from prison records. (PCR1 808, 814-15). Dr. Eisenstein testified that Jones received B's and C's in the seventh and eighth grades. It was only in the ninth grade that he began receiving failing grades. (PCR1 880–83; PCR2 197-206). The doctor did state that Jones had damage to his frontal lobe from the gunshot wound sustained during the murders. (PCR1 918). Jones' third grade teacher Vera Edwards testified at the initial postconviction evidentiary hearing, saying that Jones had no academic difficulties and was an average student with above average intelligence. (PCR1 1161–73). Jones never raised the issue of intellectual disability during his initial postconviction motion. None

of the four experts who testified in the initial postconviction evidentiary hearing ever opined that Jones was intellectually disabled.

Jones then filed a successive motion alleging that he was intellectually disabled. The postconviction court held, pursuant to this Court's order, an evidentiary hearing where Dr. Eisenstein, Lisa Wiley, and Dr. Enrique Suarez testified.

Dr. Suarez noted that malingering must be considered when giving psychological and IQ tests; the IQ tests do not include an assessment for malingering. (PCR1-ST 400). Dr. Suarez interviewed Jones for an hour and a half before testing him in order to ascertain if Jones exhibited behavioral consequences of intellectual disability. The doctor determined from the interview that Jones was normal. (PCR1-ST 406-7). Dr. Suarez decided to give Jones a test for non-verbal intelligence because Jones had previously been given multiple WAIS tests and the test Suarez was giving would correspond with a malingering validity test he also administered. (PCR2-ST 402-05, 531). Jones's score on the validity test clearly indicated that he was deliberately not putting forth his best effort. (PCR1-ST 416-19, 451). Dr. Suarez testified that intellectually disabled individuals have an

inability to learn beyond a certain level, making them unable to perform more than menial tasks, to travel on their own, or to live without supervision. (PCR1-ST 420-21). Jones, however, was articulate, using words, sentence structures, intellectual concepts, internally consistent sentences, and behaviors not associated with someone with intellectual disability. (PCR1-ST 421-33).

Dr. Suarez also administered the Adaptive Behavior Assessment Scales (ABAS) test which recognized the limitations a situation like prison would present where the person would not have the opportunity to demonstrate a particular behavior and the test specifically allowed the person completing the evaluation to estimate whether a person could do the behavior based on the person's ability to do a related behavior. (PCR1-ST 437-39). Jones failed the malingering tests on the MMPI test. (PCR1-ST 461-70, 561-64).

In addition to his interviews and testing, Dr. Suarez reviewed the reports of Drs. Jane Ansley, Lloyd Miller, Ruth Lattener, Steven Sevush, Jorge Herrera, the 1975 Jackson Memorial Hospital report, the medical records from that hospital concerning when Jones was shot, numerous transcripts, the raw data from testing by Dr. Gregory Prichard and Dr. Eisenstein, and Defendant's corrections records.

(PCR1-ST. 496). Dr. Suarez stated that hospitals usually make an assessment of a person's functioning after the person has been shot in the head. (PCR1-ST 497-98). The hospital record he reviewed indicated that Jones recovered remarkably well and contained no indication of retardation. (PCR1-ST 498).

Dr. Suarez saw the JHM report indicating a previous labeling of Jones as borderline mentally retarded but saw nothing to support this statement and the remainder of the report was inconsistent with that statement. (PCR2-ST 499-500). Dr. Suarez did not find Jones mentally retarded. (PCR2-ST 502-07). The doctor also believed that Jones was functioning at a higher intellectual level before he received the gunshot wound to his head. (*Id.* at 505-06).

Dr. Suarez saw nothing in Jones' travels, work history, relationships, or functioning in prison, which suggested any deficits in adaptive functioning. Jones' failing grades only came when he started using drugs and skipping school. (PCR2-ST 503-7).

In finding that Jones had not shown deficits in adaptive functioning or an onset before the age of 18, the lower court found Jones' family's testimony not credible and was actually contradicted by either their own earlier testimony or by extrinsic records. There

was no record of special education classes, contrary to what his sister said. Jones' failing grades in the ninth grade were the result of truancy and bad behavior. The circuit court looked to Jones' behavior while out of prison (holding jobs, supporting himself, travelling alone, maintaining relationships, and so on) in addition to Jones' adaptive functioning while in prison given that Jones had spent so much of his life in custody. Making his own gym set up in his cell as well as developing and maintaining an exercise and medication schedule demonstrate his self-motivation and self-direction. Jones failed to show he is intellectually disabled, and this Court properly affirmed the denial of relief both times it was raised. In this petition, Jones simply makes conclusory statements and does not provide details of any adaptive deficits or onset prior to 18.

Additionally, Jones essentially relates a tutorial on Supreme Court law on intellectual disability, summarizing *Hall*, *Moore v. Texas*, 581 U.S. 1 (2017), and *Moore v. Texas*, 586 U.S. 133 (2019). Jones does not address the fact that *Hall* is not retroactive and did not change *Atkins* or the fact that the Supreme Court left it up to the individual states to determine how to assess intellectual disability. Further, Jones did not tie those cases to his. This Court properly

applied Florida law when finding that Jones failed to prove any of the three required prongs. Irrespective of how the Florida courts assessed the IQ prong and the standard error of measurement, Jones failed to show he had adaptive deficits concurrent and manifested before age 18. This Court should deny the petition.

Finally, Jones argues that under *Brumfield v. Cain*, 576 U.S. 305 (2015), the postconviction court should have held another evidentiary hearing when he re-raised this claim after the issuance of *Hall* because he asserts that the case changed the "very framework" used to assess intellectual disability. *Brumfield* involved a Louisiana case where the defendant timely raised an *Atkins* claim and pointed to evidence from the trial to support the claim. Defendants in Louisiana had to be granted funds to investigate postconviction claims. The trial court in *Brumfield* refused to grant the funds and instead found that the defendant failed to prove the *Atkins* claim based solely on the trial evidence. The Supreme Court found that the state court had acted unreasonably and that the defendant only had to present sufficient information to show a doubt on each of the elements of retardation to be granted funds and an evidentiary hearing. *Id.* at 2274-75. Contrary to what happened to

the defendant in *Brumfield*, the Florida courts granted Jones a full evidentiary hearing where he was permitted to present evidence on all three intellectual disability prongs. The court properly considered prior testimony in assessing witness credibility and persuasiveness. The petition should be denied.

Stare Decisis

Jones would have this Court recede from decades of its holdings in his case and not be bound by stare decisis. He also suggests this Court is not bound by the law of the case doctrine, if it undertakes a third look at his intellectual disability claim which was previously decided.

This Court has observed that "stare decisis has consequence only to the extent it sustains incorrect decisions; correct judgments have no need for that principle to prop them up." *Lawrence v. State*, 308 So. 3d 544, 551 (Fla. 2020). "It is a rule that precedent must be followed except when departure is necessary to vindicate other principles of law or to remedy continued injustice." *Sparre v. State*, 164 So. 3d 1183, 1199 (Fla. 2015).

Jones must show that this Court's prior decisions were clearly erroneous and that there is no valid reason against receding from it.

See State v. Poole, 297 So. 3d 487, 507 (Fla. 2020). Precedent is clearly erroneous where it lacks any fair support in governing law or clearly misconstrues or conflicts with the controlling authorities. *Id.* at 501–07 (Fla. 2020) (receding from a decision that misconstrued United States Supreme Court precedent, misread Florida statutory law, and broke with long-settled Florida precedent); *Steiger v. State*, 328 So. 3d 926, 932 (Fla. 2021) (receding from a decision inconsistent with Florida statutory law); *State v. Penna*, 385 So. 3d 595, 601 (Fla. 2024) (receding from a categorical rule with no support in either caselaw or constitutional text).

Merely arguing a precedent was wrongly decided is not enough. *See Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec'y, Fla. Dep't of State*, 2025 WL 1982762, at *9 (Fla. July 17, 2025); *Ritchie v. State*, 344 So. 3d 369, 387 (Fla. 2022). "A conclusion that the earlier Court erred must be based on a searching inquiry, conducted with minds open to the possibility of reasonable differences of opinion." *Poole*, 297 So. 3d at 506. After all, "stare decisis means sticking to some wrong decisions." *Id.* at 507.

In this petition, Jones does precisely what is prohibited. He merely asserts that this Court's prior decisions were wrongly decided,

with nothing more. Jones has not established that any "continued injustice" exists in his case or that any of this Court's decisions were incorrect, requiring departure from its precedent. Because he has failed to do so, this Court need not recede from any of its decisions in his case.

As to the law of the case Jones references, it must be followed unless "there has been an intervening change of controlling law." *Thompson v. State*, 341 So. 3d 303, 306 (Fla. 2022). The law of the case doctrine gives way only "when there has been a change in the fundamental controlling legal principles." *Id.* (citing *Wagner v. Baron*, 64 So. 3d 267, 268 (Fla. 1953)). *See also United States v. Stein*, 964 F.3d 1313, 1325 (11th Cir. 2020) ("Not just any change in law qualifies as an exception to the law of the case doctrine. Rather, we demand an 'intervening change in the controlling law' that 'dictates a different result.'"). In its review of a recent active death warrant case, this Court denied a capital defendant's "invitation to reconsider" its prior precedent. *See Zakrzewski v. State*, 2025 WL 2047404, *4 (Fla. July 22, 2025) (affirming summary denial of post-warrant claims as untimely and procedurally barred where issues raised were addressed on direct appeal and appeal of successive

postconviction motions).

Jones fails to provide this Court with a good faith basis or compelling reason to recede from the decisions in his case which have conclusively disposed of the issue he raises. He offers nothing to support this Court's abandonment of its stare decisis framework other than the mere invitation to do so. That is not enough. *See Sparre*, 164 So. 3d at 1198-99. This Court should decline Jones' invitation to recede from any prior decision and dismiss the petition.

Manifest Injustice

Finally, Jones argues that his alleged intellectual disability establishes that his execution would result in manifest injustice. He invokes manifest injustice as the primary legal basis for this Court to reconsider its rulings over the past 30 years. He does so to circumvent the time and procedural bars which clearly preclude any habeas relief sought in the Petition.

The State understands that this Court has "the power to reconsider and correct erroneous rulings in exceptional circumstances and where reliance on the previous decision would result in manifest injustice, notwithstanding that such rulings have become the law of the case." *State v. Owen*, 696 So. 2d 715, 720 (Fla.

1997). *See also State v. Atkins*, 69 So. 3d 261, 268 (Fla. 2011) ("Under and citing Florida law, appellate courts have 'the power to reconsider and correct erroneous rulings [made in earlier appeals] in exceptional circumstances and where reliance on the previous decision would result in manifest injustice.'" (quoting *Muehleman v. State,* 3 So. 3d 1149, 1165 (Fla. 2009) and citing *Fla. Dep't of Transp. v. Juliano,* 801 So.2d 101,106 (Fla. 2001) ("[A]n appellate court has the power to reconsider and correct an erroneous ruling that has become the law of the case where a prior ruling would result in a 'manifest injustice.'")). No exceptional circumstances exist in Jones' case and none were presented in the petition to warrant habeas relief on the basis of manifest injustice.

Florida limits the manifest injustice exception to extremely limited cases as a basis for permitting a defendant to advance an otherwise barred claim. *Parks v. State*, 319 So. 3d 102 (Fla. 3d DCA 2021). The Third District Court of Appeal described its application to revive otherwise procedurally barred claims as limited "to an extraordinary narrow category of claims. And merely incanting the term 'does not make it so.'" *LaCascio v. State,* 400 So. 2d 719, 722 (Fla. 3rd DCA 2024). Moreover, "a movant must demonstrate an error

'so patently unfair and tainted that it is manifestly clear to all who view it.'" *Id.* (quoting *Parks,* 319 So. 3d at 110).

This Court dismissed a habeas petition in a recent death warrant case, which sought reconsideration of prior decisions, arguing manifest injustice. In James, this Court found that postconviction claims were untimely and rejected the argument that the capital defendant was "precluded from receiving a merits review of constitutional claims" and failure to reconsider the rulings amounts to manifest injustice. *James*, 404 So. 3d at 328 (citing *Williams v. State*, 316 So. 2d 267, 274 (Fla. 1975) (stating a defendant has the burden of proving manifest injustice and that "[i]n other words, clear prejudice must be shown")). *See also Parilla v. Crews*, 2015 WL 136393, *12 (S.D. Fla. Jan. 9, 2025) (mentioning *Williams* and further observing, the "United States Supreme Court has equated manifest injustice to a defendant proving actual innocence," citing *Roy v. Wainwright*, 151 So. 2d 825, 828 (Fla. 1963) and *House v. Bell*, 547 U.S. 518, 537 (2006) (quoting *Schlup*, 513 U.S. at 324.))[7]

[7] Federal courts require defendants seeking to excuse delay in pursuing federal habeas relief to show that (1) no reasonable juror would have found him guilty; or (2) where a defendant is challenging

This Court has rejected a manifest injustice argument raised on appeal of the summary denial of a capital defendant's sixth successive postconviction motion, where there was no question about his guilt for first-degree murder and other contemporaneous crimes. *See Wainwright v. State*, 2017 WL 394509 (Fla. Jan. 30, 2017). This Court affirmed summary denial concluding "reliance on our previous decision will not result in manifest injustice." *Id.* at *1 (citing *Owen*, 696 So. 2d at 720). *See also Dillbeck v. State*, 357 So. 3d 94, 105 (Fla. 2023) (rejecting argument that enforcing procedural bar would result in manifest injustice).

Contrary to his conclusory allegations, Jones cannot demonstrate that manifest injustice exists. He also fails to address that this and other courts have found that he repeatedly has failed to prove intellectual disability and the evidence of his guilt was, and still is, overwhelming. Bates has been afforded decades of appellate review on the issues presented in the Petition. This, plus the overwhelming trial evidence supporting his convictions and death sentences, forestalls any argument that should this Court reverse his sentence, that no reasonable juror would have voted in favor of death. *See Schlup v. Delo*, 513 U.S. 298 (1995).

itself on the intellectual disability issue, or he would suffer a manifest injustice. This petition should be denied.

CONCLUSION

Based upon the foregoing, the State requests respectfully this Court deny the Petition for Writ of Habeas Corpus.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic service to: Assistant Capital Collateral Counsel-South Marie-Louise Samuels Parmer, at ccrcpleadings@ccrc.state.fl.us and marie@samuelsparmerlaw.com; Assistant Capital Collateral Regional Counsel-South Brittney N. Lacy, at lacyb@ccsr.state.fl.us; and Assistant Capital Collateral Regional Counsell-South Jeanine L. Cohen, at cohenj@ccsr.state.fl.us; 110 SE 6th Street, Fort Lauderdale, Florida 33301 and the Florida Supreme Court, 500 South Duval Street, Tallahassee, Florida 32399, warrant@flcourts.org, canovak@flcourts.org this 16th day of September, 2025.

CERTIFICATE OF FONT AND WORD COUNT COMPLIANCE

I HEREBY CERTIFY that the foregoing Petition for Writ of Habeas Corpus has been produced in 14-point Bookman Old Style and that according to the Word program on which this petition was written the petition contains 8056 words in compliance with Rules 9.100(g) and 9.210, Fla. R. App. P.

Respectfully submitted,

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COUNSEL FOR RESPONDENT

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

VICTOR T. JONES,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

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

APPENDIX G

CAPITAL CASE

DEATH WARRANT SIGNED
EXECUTION SET SEPTEMBER 30, 2025, AT 6:00 P.M.

Reply Brief of Petitioner, Petition for Writ of Habeas Corpus, *Victor T. Jones v. Secretary, Department of Corrections*, Florida Supreme Court, SC2025-1423 (Sept. 17, 2025)

Filing # 231753768 E-Filed 09/17/2025 01:29:35 PM

IN THE SUPREME COURT OF FLORIDA

CASE NO. 2025-1423

EXECUTION SCHEDULED FOR SEPTEMBER 30, 2025 AT 6:00 PM

VICTOR TONY JONES,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

REPLY BRIEF OF PETITIONER

PETITION FOR WRIT OF HABEAS CORPUS

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September 17, 2025

Record Citations

Citations to the record appear as follows: Trial proceedings on direct appeal (R. ___); Initial postconviction proceedings (PCR. ___); *Atkins* proceedings (PCR-*Atkins*, ____; PCR-*Atkins*-T, ____); *Hall* proceedings (PCR-*Hall*, ___).

ARGUMENT IN REPLY

One is hard-pressed to imagine a greater manifest injustice under the law than executing an intellectually disabled person.

Ground for Relief

Mr. Jones's Execution Will Violate the Eighth Amendment to the United States Constitution Because he is Intellectually Disabled and this Court's Assessment of his Claim Defied U.S. Supreme Court Precedent.

1. Mr. Jones's Petition is Timely and Properly Filed.

Respondent argues that Jones's petition merely asks this Court to revisit its earlier rulings with which he disagrees and therefore Jones's petition is untimely, procedurally barred and without merit. (Resp. at 21-23) The State's argument that Mr. Jones's Petition is "untimely and impermissibly successive," (Resp. at 21-22), is absurd. Notwithstanding the fact that this Court's August 29, 2025, Scheduling Order explicitly permitted Mr. Jones

to file a habeas petition in this proceeding, Florida Rule of Appellate Procedure 9.142(b) unequivocally provides for the filing of successive habeas petitions. *See* 9.142(b)(2)(D) (contents must include: "if a previous petition was filed, the reason the claim in the present petition was not raised previously"). The State's reliance on Florida Rule of Criminal Procedure 3.851(d)(3), which concerns the timing of filing habeas petitions during the initial Rule 3.851 proceeding and does not control whether additional petitions can be filed, is inapplicable here.

Likewise, the State's assertion that habeas petitions are "reserved to challenge the effectiveness of appellate counsel," is equally unfounded and contrary to this Court's established precedent, the Florida Constitution, the Florida Rules of Appellate Procedure, and our Nation's foundational legal tradition. This Court's long-standing position that a writ of habeas corpus is the appropriate vehicle for IAC appellate counsel claims does not mean, nor has this Court ever held, that the inverse is true. The State wholly ignores the dozens of successive habeas petitions this Court has decided on the merits, filed well beyond the initial

postconviction stage.[1]

Enshrined in the Florida Constitution, the "Great Writ" is "to be used as a means to correct manifest injustices and its availability for use when all other remedies have been exhausted." *Baker v. State*, 878 So. 2d 1236, 1246 (Fla. 2004) (J. Anstead,

[1] *See, e.g. Downs v. Dugger*, 514 So. 2d 1069 (Fla. 1987); *Martin v. Dugger*, 515 So. 2d 185 (Fla. 1987); *Riley v. Wainwright*, 517 So. 2d 656 (Fla. 1987); *Darden v. Dugger*, 521 So. 2d 1103 (Fla. 1988); *Eutzy v. State*, 541 So. 2d 1143 (Fla. 1989); *O'Callaghan v. State*, 542 So. 2d 1324 (Fla. 1989); *Martin v. Singletary*, 599 So. 2d 121 (Fla. 1992); *Kennedy v. Singletary*, 602 So. 2d 1285 (Fla. 1992); *Mills v. Singletary*, 606 So. 2d 623 (Fla. 1992); *Johnson v. Singletary*, 612 So. 2d 575 (Fla. 1993); *Henderson v. Singletary*, 617 So. 2d 313 (Fla. 1993); *Mills v. Singletary*, 622 So. 2d 943 (Fla. 1993); *Atkins v. Singletary*, 622 So. 2d 951 (Fla. 1993); *Marek v. Singletary*, 626 So. 2d 160 (Fla. 1993); *Roberts v. Singletary*, 626 So. 2d 168 (Fla. 1993); *Lambrix v. Singletary*, 641 So. 2d 847 (Fla. 1994); *Porter v. State*, 653 So. 2d 374 (Fla. 1995); *Doyle v. Singletary*, 655 So. 2d 1120 (Fla. 1995); *White v. Singletary*, 663 So. 2d 1324 (Fla. 1995); *Jones v. Butterworth*, 691 So. 2d 481 (Fla. 1997); *McCray v. State*, 699 So. 2d 1366 (Fla. 1997); *Provenzano v. Moore*, 744 So. 2d 413 (Fla. 1999); *Glock v. Moore*, 776 So. 2d 243 (Fla. 2001); *Mills v. Moore*, 786 So. 2d 532 (Fla. 2001); *Johnston v. Moore*, 789 So. 2d 262 (Fla. 2001); *Downs v. Moore*, 801 So. 2d 906 (Fla. 2001); *King v. State*, 808 So. 2d 1237 (Fla. 2002); *Bottoson v. Moore*, 833 So. 2d 693 (Fla. 2002); *King v. Moore*, 831 So.2d 143 (Fla. 2002); *Diaz v. Crosby*, 869 So. 2d 538 (Fla. 2003); *Haliburton v. Crosby*, 865 So. 2d 480 (Fla. 2003); *Valle v. Crosby*, 859 So. 2d 516 (Fla. 2003); *Hertz v. Jones*, 218 So. 3d 428 (Fla. 2017); *Card v. Jones*, 219 2 So. 3d 47 (Fla. 2017); *Bailey v. Jones*, 225 So. 3d 776 (Fla. 2017); *Nelson v. Jones*, No. SC17-2034, 2018 WL 798255 (Fla. Feb. 9, 2018).

concurring) (quoting *Harvard v. Singletary*, 733 So. 2d 1020 (Fla. 1999) (Overton, J., dissenting). The writ of habeas corpus is "basic to our legal heritage" as the fundamental instrument used to safeguard against illegal detention. *Id*. at 1246.

Whether the State is attempting to completely erode review of constitutional error in capital cases[2] or simply did not read the appellate rules, the Florida Constitution, or this Court's Scheduling Order, Mr. Jones will not waste any more of this Court's time on these arguments.

[2] Notwithstanding clearly established authority permitting capital defendants to file habeas petitions as relevant claims arise, the State has filed a variety of an "abuse of writ" challenge in every response to habeas petitions under warrant since at least 2019. This evidences an attempt to unconstitutionally suspend death-sentenced prisoners' access to the writ of habeas corpus. *See Gaskin v. Dixon*, *Sec'y Dept. of Corr.*, SC2023-0440, State's Response filed March 39, 2023; *Dillbeck v. State*, SC2023-220, State's Response filed February 13, 2023; *James v. State*, SC2025-281, States Response filed March 7, 2025; *Dailey v. Inch, Sec'y Dept. of Corr.*, SC2019-1797, State's Motion to Dismiss Petition for Writ of Habeas Corpus; *Long v. Inch, Sec'y Dept. of Corr.*, SC2019-752, State's Motion to Dismiss Petition for Writ of Habeas Corpus.

2. Mr. Jones's Meritorious Challenge Is Properly Before This Court.

Respondent argues that Jones's "petition merely asks this Court to revisit its earlier decisions finding that Jones' failed to meet any of the three prongs necessary to the finding of intellectual disability." (Resp. at 22-23) Respondents are mistaken both on the nature of Jones's claim and on this Court's assessment. After *Hall v. Florida,* 572 U.S. 701 (2014), issued, this Court stated, "Jones is correct that in light of *Hall*, he would likely now meet the first prong of the intellectual disability standard—significantly subaverage general intellectual functioning." *Jones v. State*, 231 So. 3d 374, 376 (Fla. 2017). Although this Court qualified that statement by referencing Jones's head injury, this Court premised its decision on a determination that "*Hall* does not change the fact that Jones failed to establish that he meets the second or third prong." *Id*.

Jones set forth in his petition with careful detail his argument that this Court's treatment of his intellectual disability claim is in defiance of controlling U.S. Supreme Court precedence because this Court's assessment of his claim rests on non-clinical, stereotypical rationales in violation of *Moore v. Texas*, 581 U.S. 1

(2017) (*Moore I*) and *Moore v. Texas*, 586 U.S. 133 (2019) (*Moore II*). Alerting this Court to Supreme Court jurisprudence establishing that he is entitled to relief is not merely relitigating his claim.

At page 18, Respondent cites this Court's opinion in *State v. Jones*, 966 So. 2d 319, 322 (Fla. 2007) in a disjointed way suggesting that there were *no records* to support the fact that Jones was noted in 1975 as being mentally retarded, when he was approximately 14 or 15. But the full quote of what this Court said was, "A hospital document indicated that Jones previously had been labeled at a juvenile facility as having borderline mental retardation, but no documentation supported the statement." Id.

The actual report is in the record and reads: "Patient has been evaluated in different institutions and structured environment-like youth homes and has been labeled as borderline mental retardation, very depressed, angry, looseness of talk." (PCR 504) This document clearly supports a determination that Jones met the prong of onset before age 18.

Respondent then spends eight pages merely rehashing the history of Jones's intellectual disability claims before this Court.

(Resp. p. 23-31). [3] Throughout these pages, however, Respondent cites facts or rulings that demonstrate why this Court's resolution of Jones's claim defies controlling precedent by failing to rely on and consider the generally accepted consensus within the medical community as to assessing intellectual disability, in violation of *Hall*, *Moore I* and *Morre II.*

By way of example, Respondent cites to testimony at the penalty phase to demonstrate Jones is not intellectually disabled, (Resp. p. 27), a practice which is not appropriate by clinical standards and also precluded by the U.S. Supreme Court. *See Brumfield v. Cain*, 576 U.S. 305 (2015). Respondent also spends a great deal of time on Dr. Suarez's so-called malingering assessment, (Resp. p. 28), where Dr. Suarez gave Jones a test for non-verbal intelligence which showed Jones was not giving his best effort. But the use of such testing for the purposes of detecting malingering in an intellectual disability assessment is not within accepted clinical

[3] Respondents also spend 20 pages of their 40-page pleading setting out the entire history of Jones's case in what appears to be a pre-written version of the history of the case simply plugged into their document with little thought or effort to narrow the focus of their position or guide the Court.

standards:

> There have also been some suggestions that an individual's level of effort in intelligence testing could be evaluated, and potentially impeached, by employing psychometric instruments which were designed for other psychological purposes, which include an element for the detection of malingering. … Current research does not support the suggestion that these instruments can reliably detect malingering intellectual disability.

Ellis, James W. et al., *Evaluating Intellectual Disability: Clinical Assessments in Atkins Cases*, 46 Hofstra L. Rev. 1370 (2018).

Respondent further identifies evidence the circuit court looked to in support of its finding that Jones lacked adaptive deficits. While attempting to minimize the circuit court's reliance on Dr. Suarez's improper adaptive assessment based on Jones's prison conduct, Respondent argues that the circuit court looked to Jones's behavior outside of prison as well. "The circuit court looked to Jones' behavior while out of prison (holding jobs, supporting himself, travelling alone, maintaining relationships, and so on) in addition to Jones' adaptive functioning while in prison." (Resp. p. 31).

Respondent's assertion merely further demonstrates the circuit court's, and ultimately this Court's, reliance on stereotypes

of how intellectually disabled people function. “An accurate and fair evaluation of an *Atkins* claim may be impeded by persistent stereotyped views about what constitutes intellectual disability.” Ellis, James W. et al., *Evaluating Intellectual Disability: Clinical Assessments in Atkins Cases* at 1399. “The impulse to measure actual individuals against our own, conjured vision of what people with intellectual disability are like remains incredibly strong. These images are often accompanied by an ‘invented list’ of things that people with intellectual disability cannot do. But there is no such list in the scholarly literature.” *Id.* at 1403.

These stereotypes often involve misperceptions about how people with intellectual disability can manage their own lives, their employment and personal relationships. *Id.* at 1404. People with intellectual disability do not look “retarded,” they can marry and have families, they can hold down jobs, and they can drive a car and obtain a driver’s license. *Id.* at 1404-05, n. 382.

As set out in Jones’s petition, strengths co-exist with deficits and stereotypes about the abilities of the intellectually disabled are not a valid basis for a forensic assessment of intellectual disability in the capital context.

What is most notable about the Response, however, is not the lengthy related procedural and unrelated procedural histories, it is the fact that Respondent makes no effort to actually engage with Jones's arguments about how this Court's resolution of Jones's claim defies controlling precedent. Respondent simply ignores much of Jones's petition.

To the extent Respondent engages with U.S. Supreme Court law, Respondent faults Jones for "essentially relat[ing] a tutorial on Supreme Court law on intellectual disability," (Resp. p. 31), as if citing to and explaining binding precedent, which this Court has misapprehended, is somehow odd or peculiar. Perhaps, Respondent does this because Respondent is unable to distinguish or explain how this Court's decisions in Jones's case do not run afoul of Supreme Court precedent on intellectual disability.

Respondent further argues that "*Hall* is not retroactive and did not change *Atkins* or the fact that the Supreme Court left it up to the individual states to determine how to assess intellectual disability." (Resp. p. 31) This is a stunning assertion because that is precisely what *Hall* criticized Florida for doing. While "[i]t is true that *Atkins* did not provide definitive procedural or substantive

guides for determining when a person who claims mental retardation falls within the protection of the Eighth Amendment," it did not give "the States unfettered discretion to define the full scope of the constitutional protection." *Hall*, 572 U.S. at 718 (internal quotations and citations omitted).

As to Hall's retroactivity, at the time this Court assessed Jones's *Hall* claim, *Hall* was retroactive according to this Court. The merit or lack thereof of this Court's subsequent decision in *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020) (receding from *Walls v. State*, 213 So. 3d 340 (Fla. 2016), and holding that *Hall v. Florida*, 572 U.S. 701 (2014), does not apply retroactively) is debatable but not at issue here. [4]

Respondent then makes the extraordinary assertion that Jones did not "tie those cases to his." (Resp. p. 31) Jones literally devoted pages and pages of his Petition explaining how this Court's

[4] "I dissented in *Phillips* in light of my concern that the decision 'potentially deprives certain individuals of consideration of their intellectual disability claims, and it results in an inconsistent handling of these cases among similarly situated individuals.' 299 So. 3d at 1026 (Labarga, J., dissenting)." *Pittman v. State*, SC2025, 1320, 2025 WL 2609439 (Fla. Sept. 10, 2025) (Labarga, J., dissenting).

assessment was wrong in light *of Hall*, *Moore I,* and *Moore II* by relying on stereotyped assessments, failing to consider the consensus within the medical community for adaptive assessments in prison settings and failing to conduct the necessary holistic assessment consistent with the consensus of practices medical community. Jones wonders how Respondent could make such an assertion.

Respondent attempts to argue that *Brumfield v. Cain*, 576 U.S. 305 (2015) does not apply because "the Florida courts granted Jones a full and fair evidentiary hearing." (Resp. p. 33) But as Jones asserted in his Petition, Jones's postconviction counsel presented evidence at the *Atkins* hearing pursuant to a standard that would subsequently be declared unconstitutional. Therefore, the prior hearing was insufficient.

3. *Stare Decisis is not an impediment to Relief*

Respondent argues that Jones must show that this Court's prior decisions were clearly erroneous and that "there is no valid reason against receding from" the prior decisions. (Resp. p. 33) But, as noted by respondent, "precedent must be followed except when departure is necessary to correct a manifest injustice." *Sparre v.*

State, 164 So. 3d 1183, 1189 (Fla. 2015). Jones has met that showing. This Court has "the power to reconsider and correct erroneous rulings in exceptional circumstances and where the previous decision would result in manifest injustice, notwithstanding that such rulings have become the law of the case." *State v. Owen*, 696 So. 2d 715, 720 (Fla. 1997)

Jones has demonstrated that this Court's decisions adjudicating his intellectual disability claim defied controlling U.S. Supreme Court precedent. Jones has demonstrated the exceptional circumstances which require this Court to reverse its own precedent. One is hard-pressed to think of a manifest injustice worse than executing a person with intellectual disability.

This Court should grant the petition and any other relief as justice requires.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND FONT

Counsel certifies that this Petition for Habeas Corpus is produced in Bookman Old Style 14-point font in compliance with the requirements of Florida Rules of Appellate Procedure 9.100.

Counsel further certifies that this Petition contains 2,569 words.

/s/ Marie-Louise Samuels Parmer
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic service using the State of Florida E-Filing Portal, to the following this 17th Day of September, 2025.

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