No. 25-5475

In The
Supreme Court of the United States

VICTOR TONY JONES

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR SEPTEMBER 30, 2025, AT 6:00 P.M.

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Capital Case

QUESTIONS PRESENTED

Whether certiorari should be denied because Jones has raised issues not presented to the Florida Supreme Court and those presented were denied on independent State law grounds of untimeliness and procedural bar.

I. **Whether this Court should grant review of the Florida Supreme Court's rejection of an intellectual disability claim on the basis of a re-litigation bar where Jones had previously raised this claim which was rejected on the merits after a full and fair evidentiary hearing in state court.**

II. **The Florida Supreme Court's rejection of Jones' mitigation evidence as time barred presents no conflict with this Court's precedent or compelling justification for certioraris review**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

OPINION BELOW

The decision below of the Florida Supreme Court appears as *Jones v. State*, No. SC2025–1422.

JURISDICTION

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The State accepts Jones' statement regarding the constitutional provisions involved.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

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 the Florida Supreme Court affirmed. *Id*. 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.

On August 29, 2025, Governor DeSantis 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 the Florida Supreme Court affirmed the denial of relief. *Jones v. State,* September 24, 2025 2025 WL 2717027.

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*.

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. The police found Mrs. Nestor's purse on the couch with Jones. *Id*. Mrs. Nestor's change purse, keys, lighter, and both victims' wallets were found in Jones' pant pockets. *Id*.

Through Dr. Jethro Toomer, Jones presented mitigation evidence that when he was five years old his mother went to New York and left him in the care of his aunt

Laura Long. Jones was raised by the Longs, a middle-class family, who cared for him and took him to church regularly. They required him to behave well and tried to teach Jones right from wrong. They provided Jones with clothing, food, and shelter. According to his teacher indicated Jones was appropriately dressed and had the proper school supplies when he came to class. 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.

Dr. Toomer told the jury that Jones was of average intelligence and that he had never been treated for a 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. 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. Dr. Toomer acknowledged that Jones did not suffer from any major mental disorder or psychosis. At no point during the trial did Jones present any evidence of abuse by any source.

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.

Postconviction Proceedings

Jones filed his initial motion for postconviction relief that he later amended. The court granted an evidentiary hearing, and Jones presented the testimony of two of his relatives regarding his childhood and of several expert witnesses who had evaluated Jones before his trial but did not testify in support of his claims. Jones' trial counsel testified that Jones told him he was often beaten during his childhood. Yet, Laura Long, his aunt who raised him, contradicted his claims by describing his childhood as largely "idyllic," as did another close relative. In addition, one of Jones' teachers described him as a good student, verified by the school records, and that she never saw any evidence of abuse. Jones also presented the testimony of his sister and cousin to corroborate his claim. The trial court found his sister and cousin's testimony not credible and contradicted by the evidence. *Jones v. State*, 855 So. 2d 611, 618 (Fla. 2003). After a multi-day evidentiary hearing, the lower court denied relief on all claims. The Florida Supreme Court affirmed the denial of postconviction relief and denied Jones' habeas petition. *Id.* at 615.

Federal Habeas Proceedings

Jones federal habeas petition was denied, and the Southern District denied relief. *Jones v. McNeil*, 776 F. Supp. 2d 1323, 1338 (S.D. Fla. 2011). Jones' petition for writ of certiorari was denied. *Jones v. Fla. Dep't. of Corr.,* 568 U.S. 873 (2012).

Additional Successive Postconviction Proceedings

In 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, the Florida Supreme Court remanded the case 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. The Florida Supreme Court noted, "[t]he parties stipulated that evidence from the evidentiary hearing would be considered cumulatively with the evidence from prior proceedings." *Id.*

Before the penalty phase, Jones had a competency hearing where several doctors testified although none of them found Jones was intellectually disabled. *Id.* at 321. At age 14, after a psychiatric evaluation ordered by the juvenile court, he was discharged with a diagnosis of "unsocialized aggressive reaction of adolescence," with no psychiatric treatment needed. 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.* at 322.

School records indicated that Jones was in regular classes, earning mostly Cs in grades one and two, with some As and Bs in English and writing. By third grade, his teacher reported that he was of "a little above average intelligence" and up until seventh grade, Jones earned Bs and Cs in school. In eighth grade, he began using drugs, skipping school, and having disciplinary problems and eventually dropped out at age sixteen. During his teenage years, he was in several juvenile placements over various periods of time and discharged from the State juvenile system in 1978. *Id.* at

323.

Jones supported himself through the years by working various jobs as a waiter, as a bouncer, cutting lawns, and selling drugs. He had several intimate relationships and a common law wife. Then, in 1989 he was arrested for armed robbery, and was under sentence of imprisonment in 1990 when he committed the murders of the Nestors and was shot in the head. *Id.*

Between 1991 and 2005, Jones was administered either the WAIS–R (Wechsler Adult Intelligence Scales) or WAIS–III intelligence tests, and his IQ scores were reported as follows: 72, 70, 67, 72, and 75. The doctors also administered other tests, including the MMPI (Minnesota Multiphasic Personality Inventory) and the WRAT (Wide Range Achievement Test). *Id.*

At the conclusion of the evidentiary hearing, the postconviction court found that Jones did not meet even one of the three statutory prongs required to establish an intellectual disability. The Florida Supreme Court affirmed. *Jones v. State*, 966 So. 2d at 325.

On November 29, 2010, Jones filed his second successive motion for postconviction relief, raising a claim that *Porter v. McCollum*, 558 U.S. 30 (2009), constituted a retroactive change in law that required reconsideration of the denial his prior postconviction claims. The trial court summarily denied the motion. Jones later voluntarily dismissed his appeal. *Jones v. State*, 135 So. 3d 287 (Fla. 2014).

In his third successive postconviction motion, Jones re-raised his claim of intellectual disability, under *Hall v. Florida*, 572 U.S. 701 (2014), and requested a

new evidentiary hearing. The Florida Supreme Court affirmed the denial of Jones' successive postconviction motion determining that Jones was not entitled to a new hearing because the ruling in *Hall* did not disturb the previous findings that Jones failed to establish that he has concurrent adaptive deficits, and onset before age eighteen. *Jones v. State*, 231 So. 3d 374, 376 (Fla. 2017).

Jones filed his fourth successive postconviction motion for relief on October 13, 2017, again raising a *Hurst v. Florida,* 577 U.S. 92 (2016) claim. The trial court summarily denied relief and the Florida Supreme Court affirmed, finding *Hurst* does not apply retroactively to cases decided before *Ring v. Arizona, 536 U.S. 584 (2002).* *Jones v. State*, 241 So. 3d 65, 66 (Fla. 2018). Jones' petition for writ of certiorari was denied by this Court. *Jones v. Florida*, 586 U.S. 1052 (2018).

Proceedings Under Warrant

After Governor DeSantis signed Jones' death warrant Jones filed a fifth successive 3.851 motion for postconviction relief. Of importance here, Jones alleged newly discovered evidence that he was in a class of people that had attended the Okeechobee School between 1940-1979. This claim of newly discovered evidence was summarily denied by the lower court and the Florida Supreme Court affirmed.

REASONS FOR DENYING THE WRIT

I. Whether this Court should grant review of the Florida Supreme Court's rejection of an intellectual disability claim on the basis of a re-litigation bar where Jones had previously raised this claim which was rejected on the merits after a full and fair evidentiary hearing in state court.

Jones asserts that the Florida Supreme Court's determination that a state

habeas petition is the improper vehicle to litigate, or re-litigate, federal constitutional claims is somehow in violation of the Supremacy Clause. He further contends that the State lacks a proper means to litigate such claims which arise in postconviction. Jones goes on to claim that the Florida Supreme Court's intellectual disability analysis violates this Court's directions in *Hall v. Florida*, 572 U.S. 701 (2014), *Moore v. Texas* (*Moore I*), 581 U.S. 1 (2017); and *Moore v. Texas* (*Moore II*), 586 U.S. 133. He further asserts that the way the Florida Supreme Court analyzes adaptive deficits conflicts with the practices used in other states and federal Courts of Appeal. This issue was not raised below in the Florida courts so Jones may not raise it for the first time here. Furthermore, the Florida Supreme Court denied the claim Jones actually raised in state court on independent state grounds thereby preventing consideration by this Court. This Court should deny the petition for certiorari.

Certiorari review is not a matter of right, but of judicial discretion. It is granted only for compelling reasons. This Court will not grant certiorari where the federal constitutional claim was not passed upon by the state court or where the state decision rests on an adequate foundation of state law. In *Hemphill v. New York*, this Court stated that it "has almost unfailingly refused to consider any federal-law challenge to a state-court decision unless the federal claim was either addressed by or properly presented to the state court that rendered the decision we have been asked to review." *Hemphill v. New York*, 142 S. Ct. 681, 689 (2022). The claim must have been "'brought to the attention of the state court with fair precision and in due time.'" *Id.* (citations omitted). *Robertson*, 520 U.S. 83, 90 (1997) (concluding this Court

should not "disturb the finality of state judgments on a federal ground that the state court did not have occasion to consider."). Because Jones failed to present this claim to the Florida Supreme Court, certiorari must be denied.

Additionally, this Court has repeatedly recognized that where a state court decision rests on non-federal grounds, where the non-federal state grounds are an adequate basis for the ruling, independent of the federal grounds, "our jurisdiction fails." *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935); *Michigan v. Long*, 463 U.S. 1032, 1038 (1983). *See also Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969) (reaffirming that this Court has no jurisdiction to review a state court decision on certiorari review unless a federal question was raised and decided in the state court below); *Street v. New York*, 394 U.S. 576, 581-82 (1969) (same). If a state court's decision is based on separate state law, this Court "of course, will not undertake to review the decision." *Florida v. Powell*, 559 U.S. 50, 57 (2010). This Court has also instructed that "state courts are the ultimate expositors of state law" and federal courts "are bound by their constructions except in extreme circumstances." *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975). *Sykes*, 433 U.S. 72, 81 (1977) (noting principal that a state decision resting on adequate state substantive law is immune from federal review.) Certiorari must be denied.

a. A State Habeas Petition Is Not The Proper Vehicle

Jones incorrectly asserts that, under Florida law, a writ of habeas corpus should be used to petition the Florida Supreme Court to reconsider an earlier decision, particularly when an intervening decision by a higher court has modified the law on an issue in the prior decision. He claims that a habeas petition is a proper

vehicle to correct manifest injustice when no other means are available. The Florida Supreme Court has been very clear that the purpose of the writ of habeas corpus is to provide a means of judicial evaluation of the legality of a prisoner's detention. *McCrae v. Wainwright,* 439 So.2d 868 (Fla.1983). It is not a vehicle for obtaining a second determination of matters previously decided on appeal or as an additional appeal. In fact, the very case that Jones cites as support for his use of the habeas petition plainly states that it may not be used as he did. A habeas petition "is not properly used for purposes of raising issues that could have been raised on appeal, or for re-litigating questions that have been determined by means of a prior appeal. … It is only in the case of error that prejudicially denies fundamental constitutional rights that this Court will revisit a matter previously settled by the affirmance of a conviction or sentence." *Kennedy v. Wainwright*, 483 So. 2d 424, 425–26 (Fla. 1986); *Steinhorst v. Wainwright*, 477 So.2d 537, 539 (Fla.1985) ("The principle of finality of judgments, and the requirement that challenges to judgments and sentences be made by means of the one appeal to which a person is entitled by law, prohibit allowing the writ of habeas corpus to be utilized as a vehicle for obtaining a second appeal."); *Gaskin v. State*, 361 So. 3d 300, 309 (Fla. 2023) ("Habeas corpus is not to be used to litigate or relitigate issues which could have been, should have been, or were previously raised."); *Knight v. State*, 923 So. 2d 387, 395 (Fla. 2005) ("[C]laims [that] were raised in [a] postconviction motion ... cannot be relitigated in a habeas petition."). This has been the law and practice in Florida for decades, not something the Florida Supreme Court suddenly announced in this case.

It was this body of law that the Florida Supreme Court followed when it denied Jones' habeas petition. Jones was merely asking the court to revisit and change its 2017 decision denying him relief on his postconviction motion claiming that he is ineligible for the death penalty due to intellectual disability in light of *Hall v. Florida*. The court properly stated that a habeas petition is not to be used to relitigate issues already decided. *Jones v. State*, No. SC2025-1422, 2025 WL 2717027, at *6 (Fla. Sept. 24, 2025). This re-litigation bar is routinely followed in Florida and is an independent and adequate basis for the ruling below.

In *Cruz v. Arizona*, 598 U.S. 17, 25–26 (2023), Arizona's high court upheld a procedural bar to deny relief where the trial court refused to allow the defense to tell the jury that the alternative sentence to death was only life without the possibility of parole. In so doing, the Arizona court determined that this Court's decision in *Lynch v. Arizona*, 578 U.S. 613 (2016) was not a significant change in the law which would have negated the procedural bar. This Court reversed, saying that *Lynch* was a significant change in the law mandating relief. No such situation exists in Jones' case. *Hall* was the basis of his 2016 postconviction motion. This Court has not altered the law on intellectual disability substantially since *Atkins*.

Jones invokes manifest injustice as a legal basis for this Court to grant certiorari to mandate that the Florida Supreme Court reconsider its prior rulings. He does so to circumvent the state postconviction procedures as well as the time and procedural bars which preclude relief. The Florida Supreme 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). No exceptional circumstances exist in Jones' case, and none were presented in the petition to warrant habeas relief as 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). A movant must demonstrate an error "so patently unfair and tainted that it is manifestly clear to all who view it." *Parks,* 319 So. 3d at 110. This Court has equated manifest injustice to a defendant proving actual innocence. *Schlup v. Delo*, 513 U.S. 298 (1995); *House v. Bell*, 547 U.S. 518, 537 (2006). Manifest injustice is not at play in this case.

b. Florida Has A Well Defined Postconviction Procedure For Defendants To Assert Constitutional Claims

Jones claims that Florida provides no other means for him to assert a federal constitutional claim if he cannot avail himself of the habeas writ. His stance is belied from the history of his own case. Florida has laid out the means and manner for a capital defendant to raise collateral and postconviction challenges to both the conviction and the sentence in Florida Rule of Criminal Procedure 3.851. Jones filed six postconviction motions under this or an earlier version of this rule. In his second and fourth successive motions for relief, Jones challenged his death sentence on his allegation that he is intellectually disabled. He could have raised this issue in his sixth motion as well although he would have both time-barred and procedurally barred from relief. Florida does provide a vehicle to make constitutional claims.

c. The Florida Supreme Court's Resolution Of Jones Intellectual Disability Claim Comports With This Court's Jurisprudence

Despite having an evidentiary hearing on his *Atkins* claim where he was permitted to present evidence on each of the three prongs for intellectual disability ("ID"), as well as a second review following *Hall,* Jones asserts he should be permitted another evidentiary hearing in an attempt to present additional evidence and argument on the second intellectual disability prong of adaptive deficits. See *Jones v. State*, 966 So. 2d 319 (Fla. 2007) and *Jones v. State*, 241 So. 3d 65 (Fla. 2018), *cert. denied* 586 U.S. 1052 (2018). He claims that the Florida Supreme Court's finding of a procedural bar to his claim raised in a second state habeas petition was error as it did not allow him to present argument under *Moore I, Moore II,* and *Brumfield v. Cain*, 576 U.S. 305 (2015), to show that Florida's adaptive deficit analysis was improper under this Court's precedent. A review of the evidence presented on the original *Atkins* claim and the assessment of the intellectual disability claim, raised post-*Hall,* established that the Florida Supreme Court's analysis did not conflict with any case from this Court, a federal circuit court, or another state supreme court. Certiorari should be denied.

The Florida Supreme Court did not even reach the merits of the *Atkins* claim because of the relitigation bar on state habeas review. Nonetheless, the record from that prior hearing established that Jones was not intellectually disabled. At the evidentiary hearing, Jones presented the testimony of Dr. Hyman Eisenstein, and the State presented neurologist Dr. Enrique Suarez and Department of Corrections Psychological Specialist Lisa Wiley. Each party offered testimony on each of the three

ID prongs.

Dr. Eisenstein, who was involved in the case since April 1991, explained that he evaluated Jones in 1991, 1993, and 1999, each time giving Jones a form of the Wechsler Adult Intelligence Scale (WAIS) IQ test. (PCR2-ST 181-82). The doctor noted that other experts had given WAIS tests to Jones in 2003 and 2005, so he decided not to retest Jones for the *Atkins* litigation. (PCR2-ST 182-83). Further, Dr. Eisenstein did not believe there were any "formal test instruments" to determine adaptive functioning so he did no testing. (PCR2-ST. 184). Dr. Eisenstein also stated that over the years he gave Jones a number of other tests, including the Minnesota Multiphasic Personality Inventory (MMPI) which he believed was "certainly relevant" to determining whether Jones was intellectually disabled. (PCR2-ST. 189). Jones gave invalid results on all the MMPI tests, but the doctor chose to believe that this was not an indication of malingering. (PCR2-ST 281-88). For the *Atkins* claim, Dr. Eisenstein again interviewed Jones trying to determine his mental status before the age of eighteen. (PCR2-ST 190-92). The doctor had previously interviewed family members for trial and the original postconviction litigation, including Jones' sisters, Pamela Mills and Valerie Johnson, his brother Michael Jones, his cousin Carl Miller, and his aunt Laura Long who raised Jones. (PCR2-ST 192, 194).

Dr. Eisenstein acknowledged that at the time of trial Long had said that Jones was a good child but changed her version during postconviction, claiming Jones was slow. (PCR2-ST 194-95). Pre-trial and in 2005, Mills claimed Jones was unable to do his schoolwork, so she did it for him. In 2005, Mills offered that Jones was placed in

classes for the learning disabled, that he stuttered, slurred his words, had difficulty articulating, and was a loner. (PCR2-ST 199-202). Johnson asserted Jones was forced to raise himself because of the lack of parental care. (PCR2-ST 203).

In 2005, Miller told Dr. Eisenstein that Jones was slow, needed directions repeated before he could follow them, had trouble communicating, and lacked social skills. (PCR2-T. 204-05). Also in 2005, Dr. Eisenstein interviewed Frank Mills, Jones' brother, who reported they were not raised together and that he saw Jones briefly at family gatherings held where Jones did not socialize. (PCR2-ST 206-10).

Dr. Eisenstein interviewed Shirley Anthony, a former girlfriend, who was twenty years older than Jones. She had lived with Jones in a common law marriage when he was sixteen living in Atlanta. (PCR2-ST 210). Anthony had difficulty "recalling" her relationship with Jones but remembered he worked different jobs, and she provided the home. (PCR2-ST. 210-11).

Dr. Eisenstein reviewed Jones' discharge summary from Jackson Memorial Hospital, school records, prison records, and the Wide Range Achievement Tests (WRAT) given over the years. (PCR2-ST 212-17). Dr. Eisenstein believed Jones' performance on the two WRATs he administered were consistent with those administered by both Drs. Caddy and Suarez but that those doctors made scoring errors. (PCR2-ST218-24). Jones' 1988 Beta IQ test yielded an IQ of 76 and the Test of Nonverbal Intelligence (TONI) administered by Dr. Suarez also showed a full-scale IQ of 76 which was consistent with Jones' other scores. (PCR2-ST 225-29).

Although Dr. Eisenstein claimed to follow the definition of intellectual

disability contained in the Diagnostic and Statistical Manual of Mental Disorders, DSM-IV-TR, he stated that he limited his investigation of Jones' adaptive functioning to how he functioned before eighteen years old. In spite of the intellectual disability diagnosis calling for evidence of (1) significantly subaverage intellectual functioning, (2) concurrent deficits in present adaptive functioning and (3) onset before eighteen, Dr. Eisenstein made no attempt to determine how Jones was functioned as an adult, claiming it was not relevant to his functioning before the age of eighteen. He then admitted that if present adaptive functioning actually meant functioning at the present time, he had not assessed the prong at all. (PCR2-ST 289-91, 333-35).

Dr. Eisenstein stated that his opinion regarding Jones had changed since his previous testimony because the definition of intellectual disability had changed. He claimed that before the publication of the DMS-IV-TR in 2000, it was impossible to diagnose intellectual disability if the IQ scores were higher than 70. (PCR2-ST. 298). He admitted that he had reviewed the reports of all the other experts who had ever been involved in the case and had conducted his own previous evaluations. Neither he nor any of the other experts who evaluated Jones had ever been of the opinion he was intellectually disabled. (PCR2-ST. 324-30). Dr. Eisenstein acknowledged that intellectual disability was an important issue even at the time of trial. (PCR2-ST. 324-31).

In terms of how Jones was presently functioning, Dr. Eisenstein was aware Jones communicates in writing using more than one and two syllable words and that Jones has an entire routine for cleaning his cell. (PCR2-ST 338). Also, the doctor was

cognizant that Jones established his own exercise routine and fashioned his exercise equipment himself out of the furnishings in his cell. Further, Dr. Eisenstein was aware that Jones attended to his personal hygiene and pursued resolution of grievances concerning his prison account and finances. (PCR2-ST 338-40). Dr. Eisenstein acknowledged that Jones remembered meeting with him previously and discussed when they last met. Jones recounted the medications he was taking and their dosages, the medications he had taken previously, and when they were changed. Jones also evidenced a desire to remain alert while incarcerated and his concerns for his safety when he was not alert because of medication or his physical condition. (PCR2-ST. 341-35). Likewise, Dr. Eisenstein was aware that Jones reported going to the law library twice a week. (PCR2-ST. 346-48).

Dr. Eisenstein admitted that he never saw any school records indicating Jones was in special education classes but insisted that this was because the school records were incomplete. (PCR2-ST 367-68). When confronted with the fact Jones' third grade teacher had testified Jones was a good student of above average intelligence, Dr. Eisenstein then claimed Jones did well because Mills helped him. The doctor admitted that the decline in Jones' grades in school coincided with an increase in disciplinary problems and truancy. (PCR2-ST 370-72). Although he admitted that the prison records showed Jones' functioning was average, that his IQ score was an underestimate, and that his true level of intellectual functioning was in the low average range, Dr. Eisenstein did not believe that the functioning level indicated anything about Jones' adaptive functioning. (PCR2-ST. 381-83).

Lisa Wiley, a psychological specialist for the Department of Corrections with a master's degree in clinical psychology, worked with death row inmates for the past thirteen years providing them frontline clinical psychological services. (PCR2ST. 249-50). She explained that in making weekly rounds she checked to see if the inmates were acting strangely, appeared withdrawn, or had their cells in disarray. She stated inmates were required to keep their cells clean by mopping and sweeping the floors, throwing out their garbage, changing their linens and uniforms, and keeping their personal effects in their lockers. (PCR2-ST 253).

Wiley knew Jones since his arrival on death row in 1993. She did not recall Jones ever having a dirty cell or behaving in anything but an appropriate and polite manner. While Jones rarely spoke to her during rounds, Wiley recalled Jones requesting assistance in having his television repaired. (PCR2-ST 250-54). The sole time the staff ever suggested Jones needed treatment was in response to a call from one of his sisters suggesting he was depressed. (PCR2-ST. 254-55). When Jones chose to speak to Wiley, he was able to communicate in a rational, coherent, and logical manner. The language he used in these conversations was not elementary. (PCR2-ST. 256, 261). Wiley never had any concerns that Jones might be intellectually disabled, nor had any other corrections staff member ever suggested to Wiley that they had such concerns. (PCR2-ST 256-57).

Wiley stated she was familiar with Jones' handwriting from seeing requests he had written to her. She identified Jones' handwriting on several informal grievances. In one, he had complained about not receiving mail. (PCR2-ST. 259, 261-62). Wiley

recalled that Jones was prescribed medications for diabetes and Lipitor, which Jones administered himself. She did not recall there ever being an issue of Jones being unable to take his medications properly. (PCR2-ST. 264-65). Similarly, Jones monitored his inmate account and submitted grievances when he had concerns that deposits were not made that were expected. (PCR2-ST 260, 265, 275-78). Wiley stated that she had said to Dr. Suarez that Jones had some deficits in social skills because Jones had a flatter effect than normal people. (PCR2-ST 271).

Dr. Enrique Suarez testified that one needed to consider malingering in a forensic evaluation, as the DSM-IV requires. Not all psychological tests include malingering or validity checks; the MMPI has validity checks, while the IQ tests do not. Dr. Suarez administered tests to Jones to assess his motivation, i.e., whether he was putting in good effort. (PCR2-ST. 399-402).

Dr. Suarez interviewed Jones since the interview was important because intellectual disability has behavioral consequences at all levels and would be noticeable to a professional. That interview indicated that Jone was normal. (PCR2-ST. 406-07). Because multiple WAIS IQ tests had been administered to Jones, Dr. Suarez did not believe that additional intelligence tests were necessary. Instead, Dr. Suarez chose to give a test of non-verbal intelligence (TONI) because he did not believe Jones would be familiar with it and because it corresponded with a validity test Dr. Suarez would be administering. (PCR2-ST 402-05, 531). The TONI was normed and validated using the same method as the WAIS, however, the TONI tests only reasoning ability and avoids measurement errors caused by language problems,

sensory deficits, and the practice effect. (PCR2-ST. 405-06).

On the TONI, Jones scored a 76, with the confidence interval between 68 and 84, and falling in the borderline range. (PCR2-ST 408-09). Dr. Suarez explained that a borderline score is not in the intellectual disability range but is in the range above intellectual disability; and there is no such diagnosis as borderline intellectual disability. (PCR2-ST 410). As a result, the notation in the Jackson Memorial Hospital report is a misnomer. (PCR2-ST 410).

After defining the three-prong criteria for intellectual disability and the standard error of measurement, Dr. Suarez stated that Jones had been repeatedly tested, and this repeated testing produced scores that all but one fell in the borderline range. (PCR2-ST 411-15, 433-34, 591-92). The doctor noted that most of the IQ tests were not accompanied by tests of validity. Jones, however, was given the TOMM in 2005 along with the WAIS and Dr. Suarez gave Jones two validity tests. (PCR2-ST 416-17). The TOMM indicated a blatant tendency not to use one's best effort; the VIP indicated Jones was compliant in the verbal area and non-compliant and inconsistent on the nonverbal area. (PCR2-ST 416-18). Dr. Suarez concluded Jones was not performing optimally on purpose. (PCR2-ST 419, 451). This opinion was reinforced by the content of Dr. Suarez's interview with Jones where he exhibited a surprising ability to articulate, use words, structure sentences, understand concepts, and remain internally consistent in his speech. (PCR2-ST 420-24).

Dr. Suarez explained that intellectually disabled people have a limited ability to learn beyond a certain level and because of that limitation, are unable to be

employed in more than menial tasks, to travel on their own or to live without supervision. (PCR2-ST 420-21). Further, the intellectually disabled frequently have difficulty communicating and understanding questions, which was not the case with Jones. His history of traveling independently, being employed, supporting himself through legal and illegal means, and having relationships with women indicated a level of functioning inconsistent with intellectual disability. (PCR2-ST 421-28). Further, Jones also showed the ability to care for himself medically and an awareness of his needs at a level again inconsistent with intellectual disability. The information Jones provided in his interview was confirmed by a review of Jones' jail medical records. (PCR2-ST 429-33).

Regarding adaptive deficit functioning analysis, Dr. Suarez stated that the preferred method of evaluating it was through the administration of an instrument like the Adaptive Behavior Assessment Scales (ABAS) or Vineland. By doing so, one receives standardized information. (PCR2-ST. 588). To evaluate whether Jones had concurrent deficits in present adaptive functioning, Dr. Suarez spoke with Jones and administered the ABAS to individuals familiar with Jones and his present abilities and those during the last few years. (PCR2-ST 435-36). Dr. Suarez explained that the composite scores on the ABAS administrations placed Jones in the forty-seventh, fifty-fifth, and seventieth percentiles. While Jones' social skills were the area in which he achieved his lowest scores on all of the ratings, his scores in this area were in the borderline and low average ranges, which are too high for Jones to be considered to have a deficit in adaptive behavior in this area. (PCR2-ST 609-13). Although one later

also gave Jones a below average score in self-direction, again it was not low enough to be considered a deficit. (PCR2-ST 614).

Dr. Suarez rejected Dr. Eisenstein's hypothesis that Jones' poor performance on the TOMM was due to brain damage as the TOMM was specifically designed not to be affected by brain damage. (PCR2-ST 451-53). Further, Jones' highest score on any subtest of the WAIS was in picture completion, supporting Dr. Suarez's interpretation that the TOMM results showed Jones intentionally suppressed his level of effort. (PCR2-ST 452-54). Likewise, Dr. Suarez disagreed with Dr. Eisenstein's opinion the Jones' good scores on some of the WAIS subtests indicated Jones was not malingering. This is so because most malingerers do so in more subtle ways such as performing well on some parts of the tests and not on others. (PCR2-ST. 457-58). Also, Jones' completion of the MMPI Dr. Suarez administered supported the finding of malingering and exaggeration. Jones was able to read the test which requires a Sixth grade reading ability and to answer the questions quickly. Jones scores on the F-scales, those designed to measure malingering, exaggeration, and confusion, were so high the results were invalid. The results indicated Jones was not answering the questions randomly but was grossly exaggerating. (PCR2-ST 458-64, 467-70). The MMPI results indicated that Jones understood the questions but was exaggerating so much that he had to be malingering. (PCR2-ST 561-64).

In addition to his interviews and testing, Dr. Suarez reviewed the reports of five other mental health experts, the 1975 hospital report, the medical records of Jones' 1990 gunshot to his head, numerous transcripts, raw data from testing by Drs.

Gregory Prichard and Eisenstein, and Jones' corrections records. (PCR2-ST 496). Of note, the hospital records following the gun shot injury indicated Jones recovered remarkably well and contained no indication of retardation. (PCR2-ST 497-98). With regard to the 1975 hospital report noting Jones having been labeled "borderline mentally retarded," Dr. Suarez saw nothing supporting that statement and that balance of the report was inconsistent with the original statement as it stated that Jones was functioning normally. (PCR2-ST 499-500).

Based on everything he had reviewed, and all the tests and interviews conducted, Dr. Suarez opined that Jones was not intellectually disabled. (PCR2-ST 502-07). Dr. Suarez did not believe that Jones had significantly subaverage intellectual functioning because Jones had consistently scored in the borderline range on IQ tests and the collateral information suggested that Jones was probably actually functioning in the borderline to low average range. The doctor further opined that Jones intellectual functioning probably was even higher as the tests at issue were administered after Jones had been shot in the head. (PCR2-ST. 502-03, 505-06).

With regard to adaptive functioning, Dr. Suarez stated that nothing in Jones' present functioning or his history of travel, employment, and relationships suggests any deficits. Likewise, Jones' school records do not suggest intellectual functioning deficits as a child as Jones did not have failing grades until junior high school when he started behaving badly and being truant. (PCR2-ST 503-07). Further, Dr. Suarez saw no indication that Jones had exhibited confused or disorganized behavior which would be expected in an intellectually disabled person, particularly one who needed

instructions repeated before he grasped them. (PCR2-ST. 520-22).

Based on the above, the trial court found Jones had not established any of the three intellectual disability prongs. (PCR2-SR2 495-506). The trial court noted that the IQ tests at issue were given between 1991 and 2005, and "[m]ost notably, Dr. Eisenstein found that Jones' major head trauma compromises his ability to perform these tests. Dr. Eisenstein testified, in fact, that the majority of Defendant's deficiencies were caused by the gunshot wound to the head received at the time of the commission of the crime." (PCR2-SR2 497, 499). Jones failed to prove the second and third prongs for intellectual disability. (PCR2-SR2 505).

> Jones clearly does not suffer from deficiencies in his adaptive functioning. He keeps his cell clean, takes his own medication and is aware of which medications he takes and in which dosages. He has fashioned a way to exercise in his cell. Most telling, the grievance letters Jones wrote show that he has ample communication skills and is sophisticated enough in his thought process to understand how wire transfers are made from Europe to his prison account.
>
> Finally, there is no evidence whatsoever of the onset of [intellectual disability] before the age of eighteen. Jones has failed to present proof by clear and convincing evidence that he is [intellectually disabled].

(PCR2-SR2 505-06)

On appeal, the Florida Supreme Court agreed. *Jones III*, 966 So. 2d at 325-29. When this issue was raised in his federal habeas review, the district court rejected the claim as meritless. *Jones v. McNeil*, 766 F. Supp. 2d 1323, 1369-75 (S.D. Fla. 2011). A certificate of appealability was denied and this Court denied certiorari. *Jones v. Fla. Dep't of Corr.,* 133 S. Ct. 413 (2012). When this Court decided *Hall*, Jones sought another review. *Hall* "created a procedural requirement that those with IQ

test scores within the test's standard of error would have the opportunity to otherwise show intellectual disability." *In re Henry*, 757 F.3d 1151, 1161 (11th Cir. 2014). The Florida Supreme Court determined that Jones had a full evidentiary hearing on his *Atkins* claim and that *Hall* did not require a second review, especially because Jones had failed to prove he had adaptive deficits and onset before age eighteen. "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*, 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 denied certiorari. *Jones v. Florida*, cert. denied, 586 U.S. 1052 (2018).

Following the signing of his death warrant, Jones filed a successive state habeas petition asking the Florida Supreme Court to reconsider the summary denial of the *Hall* claim in light of *Moore I*; *Moore II*, and *Brumfield*. Such was rejected on state procedural grounds. *Jones v. State*, No. SC2025-1422, 2025 WL 2717027, at *6 (Fla. Sept. 24, 2025). Jones' attempt to show the Florida Supreme Court's decision conflicts with *Moore* and *Brumfield* and is an outlier in how it assesses the deficits in adaptive functioning prong fails. Neither *Moore I*, *Moore II*, nor *Brumfield* assist Jones, and Florida's resolution of the adaptive functioning prong meets constitutional muster.[1]

[1] While Jones focuses on adaptive deficits, it should be noted that an average of his five IQ scores obtained from 1991 to 2005, (72 + 70 + 67 + 72 + 75) yields and average

Dr. Eisenstein, Jones' mental health expert, never evaluated Jones for present deficits in adaptive functioning; he made no attempt to determine how Jones was functioning as an adult, claiming it was not relevant to his functioning before the age of eighteen. This was despite the clear requirement for a diagnosis under the relevant DSM manual for intellectual disability finding. Dr. Eisenstein admitted that if present adaptive functioning actually meant functioning at the present time, he had not assessed the prong at all. (PCR2-ST 289-91, 333-35). Contrary to Dr. Eisenstein's initial position, Dr. Suarez found an intellectual disability diagnosis required assessing the subject adaptive functioning as an adult and he conducted such a review using the ABAS and conducting interviews. Even considering the lowest scores Jones received on the ABAS, he was in the borderline and low average ranges, which are scores too high for Jones to be considered to have a deficit in adaptive functioning. (PCR2-ST 609-13). The state courts agreed with Dr. Suarez in determining Jones failed to prove the second prong of intellectual disability.

Jones' reliance on the *Moore* cases and *Brumfield* do not further his position. In *Moore I*, this Court did not dictate a particular way adaptive functioning deficits had to be assessed but like in *Atkins* and *Hall*, determined the states discretion was not "unfettered" and should "be informed by the medical community's diagnostic

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score of 71.2. This averaging of IQ scores is a recognized and accepted manner of dealing with multiple scores. *See Clemons v. Comm'r, Ala. Dep't of Corr.,* 967 F.3d 1231, 1249 (11th Cir. 2020) (using an average of four IQ scores to determine that the defendant's IQ was 70.25*), cert. denied, Clemons v. Dunn*, 141 S. Ct. 2722 (2021) (No 20-1197). Such an average established that Jones has not met the first prong of intellectual disability.

framework." *Moore I*, 581 U.S. at 13. *Moore I* merely criticized the Texas appellate court for **overemphasizing** the defendant's perceived adaptive strengths when the assessment was for adaptive deficits. *Id*. at 16. Yet, this Court did not hold that adaptive strengths could not be considered as Jones suggests. Instead, this Court reasoned that adaptive strength in one area could not be used to overcome adaptive deficits in another area. *Id*. As the majority explained:

> The dissent suggests that disagreement exists about the precise role of adaptive strengths in the adaptive-functioning inquiry. *See post*, at 1058 – 1059. But even if clinicians would consider adaptive strengths alongside adaptive weaknesses within the same adaptive-skill domain, neither Texas nor the dissent identifies any clinical authority permitting the arbitrary offsetting of deficits against unconnected strengths in which the CCA engaged, see 470 S.W.3d, at 520–526.

Moore I, 581 U.S.at 1, n.8 (emphasis supplied). The Arizona Supreme Court recognized that adaptive strengths may be considered when it succinctly stated that to assess adaptive behavior, as informed by *Moore I* and *Moore II*:

> … a court should first conduct an overall assessment by holistically considering the strengths and weaknesses in each of the life-skill categories (conceptual, social, and practical), as identified by the medical community, to determine if there is a deficit in any of these areas. Under this step, the court cannot offset weaknesses in one category with unrelated strengths from another category. *Moore I*, 137 S. Ct. at 1050 n.8. And although *Moore I* cautioned against overemphasizing adaptive strengths, a court should consider both a defendant's strengths and weaknesses within the life-skill categories. *Id*. at 1050; *see also* DSM-5, supra ¶ 1 n.1, at 25 (cautioning that there is an "imperfect fit between the questions of ultimate concern to the law and the information contained in a clinical diagnosis" and stating "additional information is usually required" for a legal determination of intellectual disability); AAIDD Guide, supra ¶ 1 n.1, at 1 ("Within an individual, limitations often coexist with strengths."). Consideration of both strengths and weaknesses within each individual category is part of the necessary overall assessment for an intellectual disability determination in

Arizona.

S*tate ex rel. Montgomery v. Kemp in & for Cnty. of Maricopa*, 249 Ariz. 320, 325–26, 469 P.3d 457, 462–63 (2020) (emphasis supplied footnote omitted). Similarly, neither *Petetan v. State*, 622 S.W.3d 321, 358059 (Tex. Crim. App. 2021) nor *Commonwealth v. Cox*, 651 P.A. 272, 300 (Pa. 2019), show any conflict in the way the Florida Supreme Court resolved Jones' intellectual disability claim or in how the state courts assessed the adaptive functioning prong.

The State's expert, Dr. Suarez, considered each area of Jones' skill set using the ABAS. He supported his findings of no adaptive deficits based on the test results and related evidence. Conversely, Jones' expert, Dr. Eisenstein acknowledged he did not even address Jones' adaptive functioning as an adult. Jones has not pointed to any adaptive functioning strengths from an unrelated category which was used improperly to overcome a deficit in a different category. The fact that the Florida Supreme Court determined that Jones did not have adaptive functioning deficits in any category as an adult, does not run afoul of *Moore I*, *Moore II*, and the medical community as addressed in *State ex rel. Montgomery*. Jones has failed to show a basis for certiorari review.

Likewise, *Brumfield*, 576 U.S. at 305 does not aid in Jones' attempt to gain review from this Court. In fact, it is completely distinguishable. *Brumfield* involved a Louisiana case in which the defendant timely raised an *Atkins* claim and pointed to evidence from the trial to support it. Defendants in Louisiana had to be granted funds to investigate postconviction claims. The trial court in *Brumfield* refused to grant the funds and instead summarily found that the defendant failed to prove the

Atkins claim based solely on the trial evidence. This 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 element of intellectual disability to be granted funds and an evidentiary hearing. *Id.* at 308-10. 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, as stipulated to by Jones, in assessing witness credibility and persuasiveness. Jones has not established any constitutional error which conflicts with this Court's precedent or that of a federal circuit court, or other state supreme court. Certiorari should be denied.

Jones Has Already Had A Full Evidentiary Hearing Where The Florida Courts Properly Analyzed His Adaptive Deficits

As discussed previously, Jones had a full evidentiary hearing where he was permitted to present evidence on all three prongs required to prove he is intellectually disabled. His evidentiary proof was insufficient to prove he currently suffers adaptive deficits. Hence, the question presented is not case-dispositive and does not merit certiorari. *Cf. Rice v. Sioux City Mem'l Park Cemetery, Inc.*, 349 U.S. 70, 74 (1995) (opining certiorari should not be granted when the question, though "intellectually interesting" is merely "academic").

Further, the lower court and the Florida Supreme Court analyzed all the evidence presented in a manner consistent with this Court's direction in *Atkins* and *Hall*. Most Circuit Courts of Appeal have recognized that *Hall, Moore I*, and *Moore II* did not state new rules, but applied a general rule in *Atkins*. *See Smith v. Sharp*, 935

F.3d 1064, 1084–85 (10th Cir. 2019); *In re Payne*, 722 F. App'x 534, 538 (6th Cir. 2018); *Williams v. Kelley*, 858 F.3d 464, 474 (8th Cir. 2017) (per curiam); *Kilgore v. Sec'y, Fla. Dep't of Corr.*, 805 F.3d 1301, 1314-15 (11th Cir. 2015); *Payne v. State*, 493 S.W.3d 478, 489-91 (Tenn. 2016); *State v. Jackson*, 157 N.E. 3d 240, 253 (Ohio Ct. App. 2020) (citing the "substantial and growing body of case law that has declined to apply *Hall* . . . retroactively"). After the evidentiary hearing, the Florida courts looked to all three prongs, as *Hall* outlined, to ascertain whether Jones had proven intellectual disability, including whether he currently suffers from deficits in adaptive behavior. They conducted "an overall assessment by holistically considering the strengths and weaknesses in each of the life-skill categories (conceptual, social, and practical) … to determine if there is a deficit in any of these areas." *State ex rel. Montgomery v. Kemp in & for Cnty. of Maricopa*, 249 Ariz. 320, 325 (2020). The Florida courts did not "offset weaknesses in one category with unrelated strengths from another category." *Id.* Jones failed to present evidence that, as an adult, he had any such adaptive deficits. It is not true that Florida denied Jones a chance to fully develop the facts to support his claim, unlike the cases he cites.

Finally, this Court denied certiorari after the Florida Supreme Court denied relief in both 2006 and 2017. Having previously denied review directly, there is no basis for reconsidering the issue after a death warrant was signed. This Court should deny certiorari.

II. The Florida Supreme Court's rejection of Jones' mitigation evidence as time barred presents no conflict with this Court's precedent or compelling justification for certioraris review

Jones asserts that Florida unduly restricted his post-conviction presentation of mitigating evidence by applying a time bar to his alleged abuse at a correctional school for boys that was only raised after his death warrant was signed. Clearly, Florida has the authority to adopt procedural rules that apply in its courts. Indeed, this Court has observed that "[a] State's procedural rules are of vital importance to the orderly administration of its criminal courts; [and] when a federal court permits them to be readily evaded, it undermines the criminal justice system." *Johnson v. Lee*, 578 U.S. 605, 612 (2016) (quoting *Lambrix v. Singletary*, 520 U.S. 518, 525 (1997)). Time bars, specifically, are not unusual and are necessary to discourage dilatory tactics. *See, e.g.*, *Henyard v. Sec'y, Dept. of Corr.*, 543 F.3d 644, 647 (11th Cir. 2008) (applying Florida's four-year statute of limitations to bar section 1983 lethal injection challenge); *McNair v. Allen*, 515 F.3d 1168, 1172-78 (11th Cir. 2008) (finding lethal injection challenge barred under Alabama's two-year statute of limitations); *see also* § 924.051(8), Fla. Stat. (instructing "that all terms and conditions of direct appeal and collateral review be strictly enforced, including the application of procedural bars, to ensure that all claims of error are raised and resolved at the first opportunity").

The state court's finding of procedural bar under state law is an independent and adequate basis to deny review. Furthermore, this untimely and procedurally barred claim presents no unsettled or important constitutional question for review. Certiorari should be denied.

In finding this claim barred under state law, the Florida Supreme Court stated:

> The circuit court correctly determined that Jones's claim is procedurally barred. The alleged abuse occurred nearly fifty years ago—and roughly fifteen years before his trial—yet Jones did not raise it at trial or in any prior postconviction proceeding. Because Jones's claim about any abuse he suffered at the Okeechobee School could have and should have been raised earlier, it is procedurally barred. *See Rogers v. State*, 409 So. 3d 1257, 1263 (Fla.) ("[I]n an active warrant case, a postconviction claim that could have been raised in a prior proceeding is procedurally barred."), *cert. denied*, 145 S. Ct. 2695 (2025).

Jones v. State, No. SC2025-1422, 2025 WL 2717027, at *3 (Fla. Sept. 24, 2025)

This Court lacks jurisdiction over cases that do not present federal questions. 28 U.S.C. § 1257 (Scalia, J., concurring) (noting that 28 U.S.C. § 1257 imposes a federal-question requirement as a condition of this Court's appellate jurisdiction). In *Michigan v. Long*, 463 U.S. 1032 (1983), this Court explained that it lacks jurisdiction over a case if a state court's decision rests upon two grounds: a state law ground and a federal ground, provided the state law ground is independent and adequate itself. *Id*. at 1038, n.4 (quoting *Fox Film Corp. v Muller*, 296 U.S. 207, 210 (1935)). Provided the state law is not "interwoven" with federal law, this Court's jurisdiction "fails." *Id* (citing *Enter. Irrigation Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157, 164 (1917)); *see also Foster v. Chatman*, 578 U.S. 488, 497 (2016) (noting that this Court lacks jurisdiction to review a state court judgment if that judgment rests on state law citing *Harris v. Reed*, 489 U.S. 255, 260 (1989)).

In finding Jones newly discovered mitigation claim barred the court was interpreting Florida law which prohibits untimely and piecemeal post-conviction challenges. There is no federal constitutional aspect to such determination. S*ee Johnson v. Lee*, 578 U.S. 605, 609 (2016) (acknowledging that state postconviction court is generally not used to litigate claims that were or could have been raised at

trial or direct appeal and finding that the procedural bar "qualifies as adequate to bar federal habeas review"). The procedural bar determination was not interwoven with federal constitutional law. This is an independent and adequate ground to deny review and this Court should decline certiorari.

Moreover, the Florida Supreme Court's alternative holding that the newly discovered mitigation would not change the sentencing calculus does not present any unsettled or important question of federal law. There is no conflict with this Court's case law. It must be remembered that this is a long final post-conviction case, and this Court has never held a defendant has an unfettered right to present and force courts to consider post-conviction mitigation evidence. Jones' mitigation claim is neither new nor compelling. Jones received a letter related to a class of individuals eligible for compensation and such correspondence is not adjudication of fact nor is it recognition of abuse specific to Jones. Importantly Jones never raised these abuse allegations during decades of litigation despite having had every opportunity to do so.

Further, his assertion that the prosecutions argument at trial was undermined is unfounded. The jury's sentencing recommendation and the court's ruling were based on the totality of the evidence including aggravators far outweighing the mitigation offered. Nothing in the letter from January 2025 alters the record or establishes that the trial arguments were materially false. Finally, Florida courts properly denied the successive claim in a summary proceeding because it failed to present newly discovered evidence warranting relief. Florida law requires that newly

discovered evidence be of such nature that it would be that it would probably produce acquittal or life sentence on retrial. *See Sawyer v. Whitley,* 505 U.S. 333 (1992) (In order to demonstrate actual innocence to permit court to consider merits of abusive claims that fail cause and prejudice requirement, as well as successive claims, petitioner must show by clear and convincing evidence that but for constitutional error, no reasonable juror would have found petitioner eligible for death penalty under applicable state law). A generalized letter of class eligibility, without individualized findings and decades after the fact does not meet that standard.

Even assuming Petitioner's allegations of abuse are true, this is not newly discovered information. Petitioner was aware of his own history at the time of trial and had every opportunity to present such evidence then. Petitioners' belief that presenting new mitigation more than thirty years later would alter the outcome does not meet this standard and the Eighth Amendment does not require courts to reopen final judgments every time a defendant claims that additional background evidence might have persuaded one juror differently. To do so would elevate speculation over finality and ignore the balance struck by this Court between accuracy and capital sentencing and the state's compelling interest in enforcing the lawful judgments.

This Court has made it clear that late-raised mitigation, even if colorable, does not entitle a defendant to relief absent a showing that it would have changed the result. *See Schiro v. Landrigan*, 550 U.S. 465, 478 (2007) (rejecting a claim where new mitigation evidence, decades later, would not have changed the outcome); *Sawyer,* 505 U.S. at 333 (requiring clear and convincing evidence that but for

constitutional error, no reasonable juror would have found petitioner eligible for death penalty in order to reopen a final sentence.) Petitioners' reliance on new mitigation after three decades falls short of that burden.

Jones now attempts to repackage his eligibility for Florida's Okeechobee School victim-compensation program as "powerful mitigation." This argument fails for several reasons. First, the alleged abuse was always known to petitioner himself and cannot constitute newly discovered evidence. A later legislative program recognizing such abuse does not transform petitioner's personal history into "new" mitigation. And mitigation cannot be introduced decades later simply because a legislative program exists.

Second, even if this evidence were considered, the Constitution does not require that it be assigned controlling weight. As *Eddings* makes clear, the only requirement is that mitigation not be excluded. *Eddings v. Oklahoma*, 455 U.S. 104, 114–15 (1982). Petitioner never presented mitigation of the alleged abuse at the Okeechobee School, at the time of his trial. The alleged abuse occurred more than fifty years ago, and Jones had personal knowledge of it. Florida courts did not exclude this mitigation, it was never presented until after the warrant was signed.

Finally, Jones's attempt to relitigate his sentence under the guise of "new mitigation" is foreclosed by this Court's finality jurisprudence. Permitting such claims at the warrant stage would encourage endless delays, undermining both the State's interest in finality and the victims' interest in closure. *See Calderon v. Thompson*, 523 U.S. 538, 555–56 (1998) (finality is essential in capital cases);

McCleskey v. Zant, 499 U.S. 467, 491 (1991) (abuse-of-the-writ doctrine bars repetitive claims). The Eighth Amendment does not require that final judgments be set aside whenever a defendant identifies background evidence that could have been raised decades earlier. *See, e.g.*, *Jones v. Hendrix*, 599 U.S. 465, 482-87 (2023) (holding there is no constitutional right to two rounds of postconviction review even for legal innocence claims). Allowing Jones' claim would erode finality, undermine the State's compelling interest in enforcing lawful sentences, and convert capital litigation into a cycle of perpetual delay. This Court should reject Jones' attempt to relitigate his sentence under the guise of mitigation evidence long available to him.

CONCLUSION

The petition for a writ of certiorari should be denied.

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