

No. ____

IN THE SUPREME COURT OF THE UNITED STATES

BRYAN F. JENNINGS,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
EXECUTION SCHEDULED FOR
THURSDAY, NOVEMBER 13, 2025, at 6:00P.M.**

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APPENDIX A

Postconviction orders denying evidentiary hearing and summarily denying relief;
Circuit Court of Brevard County, Eighteenth Judicial Circuit, Florida; *State of
Florida v. Bryan Frederick Jennings*, Case No. 05-1979-CF-773; Judgment entered
October 28, 2025

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY,
FLORIDA

CASE NO.: 05-1979-CF-000773-AXXX-XX

STATE OF FLORIDA,

Plaintiff,

v.

BRYAN FREDRICK JENNINGS,

Defendant.

ORDER DENYING DEFENDANT'S "FIFTH SUCCESSIVE
MOTION TO VACATE JUDGMENT OF CONVICTION AND
SENTENCES OF DEATH AFTER DEATH WARRANT SIGNED"

THIS CAUSE came before the Court on the Defendant's "Fifth Successive Motion to Vacate Judgment of Conviction and Sentences of Death After Death Warrant Signed" filed herein on October 21, 2025, pursuant to Rule 3.851, Florida Rules of Criminal Procedure. (electronic court docket #2275). On October 22, 2025, the State filed a Response to the postconviction motion. (electronic court docket #2276). On October 23, 2025, the Court held a hearing pursuant to Huff v. State, 622 So. 2d 982 (Fla. 1993). At the Huff hearing, the Defendant was represented by Attorneys Tracy Henry, Cortney

Hackett and Arielle Jackson of Capital Collateral Regional Counsel – Middle Region of Florida (“CCRC-M”) and the State of Florida was represented by Attorneys Jonathan Tannen, Michael Mervine, and Naomi Nichols of the Attorney General’s Office, all of whom attended via Microsoft Teams. Eighteenth Judicial Circuit State Attorney William Scheiner, who also represented the State of Florida, attended in person. Counsel for the Florida Department of Corrections and the Defendant’s Federal Public Defender observed via Microsoft Teams. Court Reporter Ann Marie Testa of Ryan Reporting was present in person. On October 24, 2025, this Court entered a written order on the Huff hearing determining that the claims presented in the Defendant’s fifth successive motion for postconviction relief could be decided as a matter of law without an evidentiary hearing. (electronic court docket #2278).

Having considered the Defendant’s “Fifth Successive Motion to Vacate Judgment of Conviction and Sentences of Death After Death Warrant Signed,” the State’s Response, the official court file, legal argument of counsel, and the relevant legal authority, the Court makes the following findings of fact and conclusions of law:

Facts

a. The facts as summarized by the trial court in the original sentencing order and quoted by the Florida Supreme Court are:

In the early morning hours of May 11, 1979, Rebecca Kunash was asleep in her bed. A nightlight had been left on in her room and her parents were asleep in another part of the house. The Defendant went to her window and saw Rebecca asleep. He forcibly removed the screen, opened the window, and climbed into her bedroom. He put his hand over her mouth, took her to his car and proceeded to an area near the Girard Street Canal on Merritt Island. He raped Rebecca, severely bruising and lacerating her vaginal area, using such force that he bruised his penis. In the course of events, he lifted Rebecca by her legs, brought her back over his head, and swung her like a sledge hammer into the ground fracturing her skull and causing extensive damage to her brain. While she was still alive, Defendant took her into the canal and held her head under the water until she drowned. At the time of her death, Rebecca Kunash was six (6) years of age.

Jennings v. State, 583 So. 2d 316, 317 (Fla. 1991).

Procedural History

b. On June 11, 1982, the Defendant was charged by Indictment with the following:

Count I: First Degree Murder from a Premeditated Design
Count II: Felony Murder
Count III: Felony Murder
Count IV: Kidnapping
Count V: Sexual Battery
Count VI: Sexual Battery
Count VII: Sexual Battery
Count VIII: Burglary
Count IX: Aggravated Battery

(Exhibit A, Indictment).

c. The Defendant was tried, convicted, and sentenced to death three times. The first two convictions were vacated. Jennings v. State, 413 So. 2d 24 (Fla. 1982); Jennings v. Florida, 470 U.S. 1002 (1985). After his third trial, the Defendant was again convicted of first-degree murder, kidnapping, sexual battery, aggravated battery, and burglary, and was thereafter again sentenced to death (Composite Exhibit B, Verdicts, Findings of Fact, Sentencing Transcript). The jury recommended death by a vote of eleven to one (Exhibit C, Advisory Verdict). On direct appeal, the Defendant "alleged sixteen errors in the guilt and penalty phases of the trial" and the Florida Supreme Court addressed nine of those alleged errors when affirming the Defendant's convictions and "the sentence of death for murder and the sentence of life imprisonment for burglary."

Jennings v. State, 512 So. 2d 169, 176 (Fla. 1987), cert. denied, 484

U.S. 1079 (1988). The Court opined the following:

1. the trial court did not err in admitting photographs of abrasions to the Defendant's penis;

2. the trial court did not err in finding that sworn motions filed by a state witness were not admissible for purposes of impeachment of that witness;

3. the trial court did not err in admitting statements made by the victim's father and school principal which were relevant to determining the victim's willingness to leave her home;

4. the trial court did not err in admitting postmortem photographs of the victim;

5. the trial court did not err in replacing a juror in between the guilt and penalty phases;

6. the trial court did not err when it denied the Defendant's motion for mistrial after discovering that some jurors were aware that the Defendant had previously been tried;

7. that although the alternate juror left with the panel, there was no evidence that the alternate participated in the deliberation process;

8. the trial court did not err when it declined to find that the Defendant was a mentally disordered sex offender as to the murder and burglary charges, however, the sentences for kidnapping and sexual battery were reversed and the Defendant was subject to resentencing for those crimes; and

9. the trial court did not err in weighing the aggravating and mitigating circumstances.

d. The Supreme Court rejected, "without comment, [Defendant's] remaining points on appeal ... IV—Failure to suppress items seized as a result of warrantless arrest[;] VI—Prosecutor's comment during voir dire alleged to refer to the failure of appellant to testify[;] VII—Permitting admission into evidence of letter written by appellant[;] VIII—Failure to modify standard jury instruction[;] X—Overruling objection to argument of the prosecutor at penalty phase[;] XIII—Refusal to give appellant's requested jury instruction at the penalty phase[; and] XVI—The Florida Capital Sentencing Statute is unconstitutional on its face and as applied." Jennings v. State, 512 So. 2d 169, 176 (Fla. 1987), cert. denied, 484 U.S. 1079 (1988).

e. On October 23, 1989, the Defendant filed a Motion to Vacate Judgment and Sentence with Special Request for Leave to Amend which contained the following twenty-two claims:

1. "The withholding of material exculpatory evidence," a taped interview of Judy Slocum and a letter from Clarence Muszinski, "violated Mr. Jennings rights under the Fifth, Sixth, Eighth and Fourteenth Amendments."

2. "The State's intentional withholding of material and exculpatory evidence," documents undisclosed by the Office of the State Attorney, "violated the constitutional rights of Bryan Jennings under the Fifth, Sixth, Eighth, and Fourteenth Amendments, as well as his rights under Chapter 119 of the Florida Statutes."

3. "Bryan Jennings was denied the effective assistance of counsel at the guilt-innocence phase of his trial in violation of the sixth, eighth and fourteenth amendments" when counsel failed to contact Annis Music Clawson and Charles Clawson to develop an intoxication defense.

4. "Mr. Jennings was deprived of his rights to due process and equal protection under the Fourteenth Amendment to the United States Constitution, as well as his rights under the Fifth, Sixth, and Eighth Amendments, because the mental health experts who saw him could not conduct a constitutionally adequate evaluation because they were not provided with the necessary background information. Mr. Jennings was thus deprived of a constitutionally adequate mental health evaluation and was prejudiced at both the guilt and penalty phases of his trial." This argument was based upon additional mental health testing that occurred after trial.

5. "Bryan Jennings was denied the effective assistance of counsel at the sentencing phase of his trial in violation of the Sixth, Eighth and Fourteenth Amendments" when counsel failed to mitigate his sentence with evidence of extreme intoxication.

6. "Mr. Jennings' rights to present a defense and confront the witnesses against him were denied when the court limited the cross examination of the State's key witness Clarence Muszynski and when the Defendant was foreclosed from introducing evidence establishing that either Mr. Muszynski was insane, a perjurer, or both."

7. "Mr. Jennings was deprived of his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments when jurors were advised of Mr. Jennings' previous convictions for the very crimes at issue."

8. "In contravention of Mr. Jennings' constitutional rights under the Fourth, Fifth and Fourteenth Amendments, the

trial court erred in denying the motion to suppress and allowing into evidence items that were seized as a result of a warrantless arrest."

9. "Mr. Jennings' judge and jury considered and relied on the victim's personal characteristics, the impact of the offense on the victim's parents, and the prosecutor's and family members' characterizations of the offense over defense counsel's timely and repeated objection in violation of Mr. Jennings' Eighth and Fourteenth Amendment rights, Booth v. Maryland, South Carolina v. Gathers, Jackson v. Dugger, and Scull v. State."

10. "Mr. Jennings' sentencing jury was improperly instructed on the "especially heinous, atrocious, or cruel" aggravating circumstance, and the aggravator was improperly argued and imposed, in violation of Maynard v. Cartwright, Hitchcock v. Dugger, and the Eighth and Fourteenth Amendments."

11. "The aggravating circumstance that the offense was cold, calculated and premeditated was improperly applied retroactively in violation of Article I, Section 10 of the United States Constitution, the Fifth, Sixth, Eighth and Fourteenth Amendments, and the corresponding provisions of the Florida Constitution."

12. "The cold, calculated and premeditated aggravating circumstance was applied to Mr. Jennings' case in violation of the Eighth and Fourteenth Amendments."

13. "Mr. Jennings' death sentence rests upon an unconstitutional automatic aggravating circumstance in violation of Maynard v. Cartwright, Lowenfield v. Phelps, Hitchcock v. Dugger and the Eighth Amendment."

14. "The introduction of nonstatutory aggravating factors so perverted the sentencing phase of Mr. Jennings' trial that it resulted in the totally arbitrary and capricious imposition

of the death penalty in violation of the Eighth and Fourteenth Amendments of the United States Constitution."

15. "Mr. Jennings' death sentence was imposed in violation of the Eighth and Fourteenth Amendments because his jury was prevented from giving appropriate consideration to; and his trial judge refused to consider all evidence proffered in mitigation of punishment contrary to Eddings v. Oklahoma, Mills v. Maryland, and Hitchcock v. Florida."

16. "Mr. Jennings' sentence of death violates the Fifth, Sixth, Eighth and Fourteenth Amendments because the penalty phase jury instructions shifted the burden to Mr. Jennings to prove that death was inappropriate and because the sentencing judge himself employed this improper standard in sentencing Mr. Jennings to death."

17. "During the course of Mr. Jennings' trial the court improperly asserted that sympathy and mercy towards Mr. Jennings were improper considerations, in violation of the Eighth and Fourteenth Amendments."

18. "Mr. Jennings' sentencing jury was repeatedly misled by instructions and arguments which unconstitutionally and inaccurately diluted their sense of responsibility for sentencing, contrary to Hitchcock v. Dugger, 107 S.Ct. 1821 (1987); Caldwell v. Mississippi, 105 S.Ct. 2633 (1985); and Mann v. Dugger, 844 F.2d 1446 (11th Cir. 1988), and in violation of the Eighth and Fourteenth Amendments. Mr. Jennings received ineffective assistance of counsel when counsel failed to zealously advocate and litigate this issue."

19. "The sentencing court erred by failing to independently weigh aggravating and mitigating circumstances, contrary to Mr. Jennings' Fifth, Sixth, Eighth and Fourteenth Amendment Rights."

20. "The prosecution of Mr. Jennings by the Office of the State Attorney for the Eighteenth Judicial Circuit violated

the Fifth, Sixth, Eighth, and Fourteenth Amendments because the State Attorney participated in the prosecution of Mr. Jennings despite the fact that he had been a senior Public Defender with the office that represented Mr. Jennings."

21. "The present death warrant has violated Mr. Jennings' rights to due process and equal protection of law and denied him his rights to reasonable access to the courts."

22. "The State's mental health experts relied on a statement made by Mr. Jennings which was unconstitutionally obtained by the State in violation of Edwards v. Arizona, Estelle v. Smith, Powell v. Texas, and the Fifth, Sixth, Eighth, and Fourteenth Amendments."

(Exhibit D, Motion to Vacate filed October 23, 1989).

f. On October 26, 1989, The Court summarily denied the Defendant's first Motion to Vacate Judgment and Sentence. (Exhibit E, Order entered on October 26, 1989, without exhibits). The Florida Supreme Court affirmed the order, except the claim that the Defendant had not received all public records. The Florida Supreme Court remanded for disclosure of public records. Jennings v. State, 583 So. 2d 316 (Fla. 1991).

g. On April 4, 1997, the Defendant filed a "Second Amended Motion to Vacate Judgment and Sentence with Special Request for Leave to Amend and Supplement" which included the following seven claims:

1. "Access to the files and records pertaining to Mr. Jennings' case in possession of certain state agencies has been withheld in violation of Chapter 119, Florida Statutes, the Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution."

2. "The State's withholding of material and exculpatory evidence violated the constitutional rights of Bryan Jennings under the Fifth, Sixth, Eighth and Fourteenth Amendments, and the discovery provisions of the Florida Rules of Criminal Procedure. Moreover, because the jury did not know of this important evidence contained in the State's possession an adversarial testing did not occur. Either the prosecutor violated Brady or defense counsel was ineffective. As a result, confidence is undermined in the outcome and 3.850 relief must be granted." This claim is predicated upon exculpatory evidence that would have been provided about or by Joseph Hildebrand, Billy Ray Crisco, Jr., Vicki McCarren, Judith Loebel, Allen Kruger, Tommy McIntire, Jeff Ryburn, Clifford Pitts, Mrs. McAllister, Catherine Music, Pat Clawson, and Floyd Canada. Their testimony would have either gone to the defense of intoxication, mitigation of an aggravator, or the possibility that another individual committed the crime.

3. "Mr. Jennings' right to a fair trial and his due process rights were violated because the State Attorney allowed material false or misleading testimony to be introduced at trial, failed to correct the testimony at trial or resentencing and knowingly exploited the testimony. The State's withholding of material and exculpatory evidence violated the Fifth, Sixth, Eighth and Fourteenth Amendments, and the discovery provisions of the Florida Rules of Criminal Procedure. An adversarial testing did not occur. Either the prosecutor violated Giglio/Brady, or defense counsel was ineffective, or this evidence constitutes new evidence. As a result confidence is undermined in the outcome and 3.850 relief must be granted." This claim was based upon witnesses Billy Ray Crisco, Jr. and

Allen Kruger's testimony that did not accord with their statements to the State.

4. "The jury was improperly instructed on the heinous, atrocious and cruel and the cold calculated and premeditated aggravating factor[s], in violation of Espinoza v. Florida, Stringer v. Black, Maynard v. Cartwright, Hitchcock v. Dugger and the Eighth and Fourteenth Amendments."

5. "The Rules prohibiting Mr. Jennings' lawyers from interviewing jurors to determine if constitutional error was present violates equal protection principles, the First, Sixth, Eight[h] and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution and denies Mr. Jennings adequate assistance of counsel in pursuing his postconviction remedies."

6. "Execution by electrocution is cruel and/or unusual punishment and violated Mr. Jennings' rights under the Eighth and Fourteenth Amendments of the United States Constitution and under the Florida Constitution."

7. "Mr. Jennings' trial court proceedings were fraught with procedural and substantive errors which cannot be harmless when viewed as a whole since the combination of errors deprived him of the fundamentally fair trial guaranteed under the Sixth, Eighth and Fourteenth Amendments."

(Exhibit F, Second Amended Motion).

h. On March 18, 1998, the Court denied the Defendant's Second Amended Motion. (Exhibit G, Order entered March 18, 1998, without exhibits). The Florida Supreme Court affirmed the denial. Jennings v. State, 782 So. 2d 853 (Fla. 2001), cert. denied 534 U.S. 1096 (2002).

i. The Defendant petitioned for habeas corpus relief and the Florida Supreme Court denied his petition. Jennings v. Crosby, 857 So. 2d 196 (Fla. 2003) cert. denied 541 U.S. 940 (2004). He then petitioned for federal habeas relief, and his request was also denied by Chief Judge Hinkle, who found the following:

Defendant's Brady claim regarding the Slocum tape and Muszynski letter was unfounded; the Florida Supreme Court applied the Strickland standard in an objectively reasonable manner with regard to counsel's failure to present specific, additional, evidence of intoxication during the penalty phase; the Defendant's constitutional rights were not violated at trial when the court did not allow him to enter Mr. Muszynski's prior sworn motions into evidence; the Defendant was "given an adequate opportunity to argue his claim during the state's suppression hearing;" Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428 (2002) did not apply retroactively; the Defendant's argument regarding the jury instruction for the cold, calculated and premeditated aggravator was procedurally barred, the Florida Supreme Court's determination that the use of the heinous, atrocious and cruel jury instruction was harmless was not contrary to established federal law; the Florida Supreme Court's determination as to harmless error in regard to the cold, calculated and premeditated aggravator was not contrary to established federal law; the Florida Supreme Court's ex post facto analysis regarding the cold,

calculated and premeditated was erroneous but harmless; "the Florida aggravating factor for capital felonies committed during the course of specific other offenses does not violate federal law;" Defendant's Caldwell claim was procedurally barred and lacked merit; Defendant's burden shifting argument regarding the weighing of mitigating and aggravating factors was procedurally barred; Defendant's claim that the sentencing court improperly weighed mitigation was unfounded as well as the claim that the Florida Supreme Court improperly rejected that claim; The State met it's [sic] obligation pursuant to Ake; the Defendant was not subjected to double jeopardy.

Jennings v. Crosby, 392 F. Supp. 2d 1312 (N.D. Fla. 2005). The Eleventh Circuit affirmed the district court's denial. Jennings v. McDonough, 490 F.3d 1230 (11th Cir. 2007) cert. denied 552 U.S. 1298 (2008).

j. On April 8, 2008, the Defendant filed an "Amended Motion to Vacate Judgments of Conviction and Sentence of Death" which included the following five claims:

1. "Mr. Jennings' conviction and sentence are unconstitutional under Crawford v. Washington." This claim is based upon the argument that defense counsel was unable to adequately cross-examine Allen Kruger during Mr. Jennings' second trial because the State improperly withheld information regarding Mr. Kruger's relationship with another witness and the inadequate cross-examination of Mr. Kruger would prohibit the use of

the then deceased Mr. Kruger's second trial testimony at Mr. Jennings' third trial.

2. "The application of the cold, calculated and premeditated aggravating circumstance in Mr. Jennings' case violated the Eighth Amendment and renders his sentence of death in violation of both the state and federal constitutions."

3. "Because the inordinate length of time that Mr. Jennings has spent on death row, adding his execution to that punishment would constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution, and the binding norms of international law."

4. "The existing procedure that the State of Florida utilizes for lethal injection violates the Eighth Amendment to the United States Constitution as it constitutes cruel and unusual punishment."

5. "Newly available information demonstrates that Mr. Jennings' convictions and sentence of death constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendment[s] to the United States Constitution."

(Exhibit H, Amended Motion).

k. On July 17, 2008, the Court denied the Defendant's Amended Motion. (Exhibit I, Order entered July 17, 2008, without exhibits). The Florida Supreme Court affirmed the denial. Jennings v. State, 36 So. 3d 84 (Fla. 2010).

I. On November 29, 2010, the Defendant filed a "Successive Motion to Vacate Judgments of Conviction and Sentence" arguing that "Mr. Jennings's sentence violates the Sixth and Eighth Amendments under Porter v. McCollum" (Exhibit J, Successive Motion to Vacate). On February 10, 2011, the Court denied the motion and the Florida Supreme Court affirmed the denial, finding that Porter was not retroactive. (Exhibit K, Order entered February 10, 2011, without exhibits); Jennings v. State, 91 So. 3d 132 (Fla. 2012), cert. denied 568 U.S. 1100 (2013).

m. On June 25, 2012, the Defendant filed a "Successive Motion to Vacate Convictions and Sentence of Death" alleging that he had newly discovered evidence that the State withheld favorable information that demonstrated witness Clarence Muszynski was a state agent when he spoke with the Defendant (in violation of the Fifth and Sixth Amendment), that the State violated its obligation under Brady v. Maryland, 373 U.S. 83 (1963) to disclose favorable information to the defense, and that the State violated its obligation under Giglio v. United States, 405 U.S. 150 (1972) to refrain from presenting and relying upon false evidence in a criminal prosecution (Exhibit L, Successive Motion). On July 5, 2013, the Court entered

an Order denying the successive motion. On September 19, 2013, the Court re-entered the Order as counsel did not receive a copy of the original order (Exhibit M, Order entered September 19, 2013, without exhibits). The Florida Supreme Court affirmed the denial of the motion. Jennings v. State, 192 So. 3d 38 (Fla. 2015) cert. denied 580 U.S. 857 (2016).

n. On October 20, 2016, the Defendant file a Successive Motion to Vacate Death Sentence arguing generally that he was entitled to a de novo resentencing pursuant to Hurst v. Florida, 577 U.S. 92 (2016), the enactment of Chapter 2016-13, Perry v. State, 210 So. 3d 630 (Fla. 2016) and Hurst v. State, 202 So. 3d 40 (Fla. 2016). (Exhibit N, Successive Motion). On January 3, 2017, the Court denied the successive motion finding that neither Hurst nor Perry applied retroactively (Exhibit O, Order entered January 3, 2017 without exhibits). The Florida Supreme Court affirmed the denial. Jennings v. State, 265 So. 3d 460 (Fla. 2018) cert. denied 587 U.S. 990 (2019).

o. On December 28, 2018, the Defendant filed a second petition for writ of habeas corpus with the federal district court. On March 6, 2020, the federal district court dismissed the petition for lack

of subject matter jurisdiction. Jennings v. Inch, No. 5:18-cv-281 (N.D. Fla. Mar. 6, 2020). The Eleventh Circuit affirmed the dismissal. Jennings v. Secretary, Florida Department of Corrections, 108 F.4th 1299 (11th Cir. 2024) cert. denied ___ U.S. ___ (Mar. 31, 2025).

Current Successive Motion

p. In the subject motion, the Defendant raises three claims for relief in his "Fifth Successive Motion to Vacate Judgment of Conviction and Sentences of Death After Death After Death Warrant Signed." The Defendant argues that the claims require the Court to vacate the Defendant's conviction and sentence of death or stay the Defendant's execution to provide counsel additional time to fully litigate any claims it may discover. The State argues that the claims are untimely, procedurally barred, and lack merit under controlling precedent.

Claim One

q. The Defendant's first claim is that "[t]he determination that executive clemency is not appropriate based on Mr. Jennings' 1988 clemency application, and the subsequent denial in 1989, without consideration of any mitigation developed in the nearly four (4)

decades since, violates Mr. Jennings' rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments."

r. The Defendant argues that, as a matter of due process, his clemency presentation should have been updated to address scientific advances and his personal development prior to being considered for executive clemency during the warrant issuance process. He further speculates that had clemency counsel developed and presented different mitigation¹ to the Clemency Board, the Board would have been more merciful.

s. In regard to the Defendant's complaint regarding the adequacy of the mitigation evidence clemency counsel presented to the Clemency Board and its decision, the Court finds that the claim is time-barred. The review process about which he complains was completed in 1989 and the Defendant has not demonstrated that any of the exceptions listed in Florida Rule of Criminal Procedure 3.851(d)(2) apply. Further, should this claim be cast as a claim of ineffectiveness of clemency counsel, the Court notes that the

¹ It is the Defendant's position that it would be revealed that he suffered from post-traumatic stress disorder or a neurocognitive dysfunction.

Defendant has no constitutional right to raise such a claim. Rogers v. State, 409 So. 3d 1257, 1264 (Fla. 2025).

t. Finally, the Defendant asserts that failure to require an updated clemency presentation prior to an executive clemency determination violates his Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions in the Florida Constitution. The Court finds this claim lacks merit. This issue was recently addressed by the Florida Supreme Court in Zakrzewski v. State, 415 So. 3d 203, 211 (Fla. 2025) which stated, "due to important considerations about the separation of powers, we do not second-guess the executive branch in matters of clemency in capital cases. ... No specific procedures are mandated in clemency proceedings." See also Gudinas v. State, 412 So. 3d 701, 717 (Fla. 2025), cert. denied, ___ U.S. ___, 145 S.Ct. 2833 ("Florida's established clemency proceedings and the Governor's absolute discretion to issue death warrants do not violate the Florida or United States Constitutions."). In this case, the Defendant has made two presentations to the Clemency Board and the death warrant states that "WHEREAS, executive clemency for BRYAN FREDRICK JENNINGS, as authorized by Article IV, Section 8(a), of

the Florida Constitution, was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate." As in Zakrzewski, "these proceedings were sufficient." Zakrzewski, 415 So. 3d at 212. The Court finds the Defendant is not entitled to relief as to Claim One.

Claim Two

u. The Defendant's second postconviction claim for relief is that the "post-warrant appointment of counsel and failure to enter a stay of the proceedings renders the warrant proceedings invalid and in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments, and the corresponding provisions of the Florida Constitution."

v. This claim is a variation on the Defendant's argument raised in his "Motion to Vacate Death Warrant or Alternatively to Stay Warrant Proceedings" filed on October 12, 2025, which was denied by the Court on October 16, 2025, after considering the motion, response, and arguments raised at the hearing on October 15, 2025. The Court's October 16, 2025 "Order Denying Defendant's Motion to Vacate Death Warrant or Alternatively to Stay Warrant Proceedings" is incorporated herein by reference. The Court's Order is currently before the Florida Supreme Court on review which will not be

complete prior to the issuance of this Order. It is the Defendant's position that he is constitutionally entitled to continuous and competent representation even when postconviction proceedings are not pending and argues that sections 27.7001 and 27.711(2), Florida Statutes, mandate same.

w. Contrary to the Defendant's position, he is not entitled to representation in between postconviction proceedings. As the Florida Supreme Court found in Asay v. State, 210 So. 3d 1, 27-28 (Fla. 2016), section 27.710, Florida Statutes, does not mandate active investigation between postconviction proceedings. Due process requires notice and an opportunity to be heard. As evidenced by the Defendant's lengthy postconviction history, he has been represented at the state and federal levels while actively pursuing postconviction relief. The Defendant has had, and continues to have, access to counsel and the courts. Finally, the Florida Supreme Court has determined that the timing of the warrant process does not violate a defendant's due process rights. Jones v. State, __ So. 3d. __, 50 Fla. L. Weekly S259a, 2025 WL 2717027 (Fla. Sept. 24, 2025), see also Hall v. State, 420 So. 2d 872 (Fla. 1982).

x. The Court's failure to enter a stay does not violate the Defendant's constitutional rights.

y. The Court finds the Defendant is not entitled to relief as to Claim Two.

Claim Three

z. The Defendant's third postconviction claim is that "Florida's current capital sentencing scheme violates the Eighth and Fourteenth Amendments because it lacks essential safeguards against arbitrary and capricious imposition of the death penalty."

aa. In this claim, the Defendant argues that the Florida capital sentencing scheme is constitutionally deficient in that it fails to require a unanimous jury recommendation for death and lacks proportionality review. Further, as previously argued, the Defendant contends he is constitutionally entitled to continuous and competent representation regardless of whether there are pending postconviction proceedings. It is the Defendant's position that, in the absence of continuous representation, to adhere to the Supreme Court's deadlines would be to prohibit meaningful review and would violate his Sixth and Fourteenth Amendments rights to counsel and meaningful access to the courts. Finally, the Defendant takes issue with the warrant

process itself beginning with the Governor's selection process and ending with the limited time within which to process the warrant is concluded.

bb. Claim Three can be broken down into its subparts:

1. **Lack of unanimity**: The Florida Supreme Court has found that a jury's recommendation of death need not be unanimous to be constitutional. State v. Poole, 297 So. 3d 487 (Fla. 2020). Further, the Defendant has previously raised this claim in the context of Hurst v. State, 202 So. 3d 40 (Fla. 2016) (Exhibit N, Successive Motion). This prior successive motion was denied (Exhibit O, Order entered December 27, 2016 without exhibits) and affirmed on appeal. Jennings v. State, 265 So. 3d 460 (Fla. 2018).

2. **Lack of a proportionality review**: The Florida Supreme Court has held that an independent proportionality review is not constitutionally required. Lawrence v. State, 308 So. 3d 544 (Fla. 2020). Further, the Defendant's sentence was imposed at a time when proportionality reviews were conducted and

"[p]roportionality [was] inherently reviewed on direct appeal, regardless of whether such review is mentioned in [the Florida Supreme Court's] published opinions." Patton v. State, 878 So. 2d 368, 380 (Fla. 2004).

3. **Counsel:** The Defendant's arguments regarding continuous appointment of counsel were addressed in this Order in Claim Two above.

4. **Warrant process:** The Defendant's arguments regarding the lack of transparency and timing of the warrant process were addressed in this Order under Claims One and Two above.

cc. Because the Defendant's individual arguments lack merit, the combination of arguments also lacks merit.

dd. The Court finds the Defendant is not entitled to relief as to Claim Three.

Stay of Execution

ee. The Court has previously addressed the Defendant's request for a stay of execution in its "Order Denying Defendant's Motion to Vacate Death Warrant or Alternatively to Stay Warrant Proceedings" entered on October 16, 2025. Having reconsidered the

arguments raised in regard to the Defendant's "Motion to Vacate Death Warrant or Alternatively to Stay Warrant Proceedings" as well as those made in conjunction with the Defendant's "Fifth Successive Motion to Vacate Judgment of Conviction and Sentences of Death after Death Warrant Signed," the Court finds that the Defendant failed to raise substantial grounds for relief warranting a stay. Barwick v. State, 361 So. 3d 785 (Fla. 2023).

Based upon the foregoing, it is

ORDERED AND ADJUDGED:

1. The Defendant's "Fifth Successive Motion to Vacate Judgment of Conviction and Sentences of Death after Death Warrant Signed" is hereby **DENIED**.

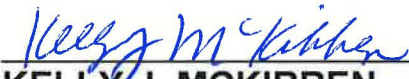
2. The Defendant's motion for stay of execution is hereby **DENIED**.

3. The Clerk of Court is directed to promptly serve on each party a copy of this Order with attachments, noting thereon the date of service by an appropriate certificate of service pursuant to Florida Rule of Criminal Procedure 3.851(f)(5)(F).

4. For purposes of compliance with the Supreme Court of Florida's scheduling order, this Order with attachments shall also be transmitted by the Clerk of Court to the Supreme Court of Florida.

5. Pursuant to the Order of the Supreme Court of Florida issued on October 10, 2025, the Defendant will have until 1:00 p.m. on Wednesday, October 29, 2025, to file a notice of appeal.

DONE AND ORDERED at the Moore Justice Center, Viera, Brevard County, Florida, this 28th day of October, 2025.


KELLY J. MCKIBBEN
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I do hereby certify that copies of this Order with attachments have been provided by e-mail to:

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and by U.S. Mail to:

Bryan Fredrick Jennings, DOC #073045

Florida State Prison

P.O. Box 800

Raiford, Florida 32083

this 28th day of October, 2025.



Tracie Orman

Judicial Assistant

Harry T. and Harriette V. Moore Justice Center

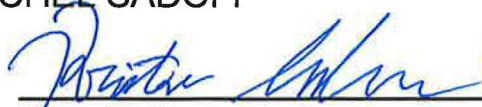
2825 Judge Fran Jamieson Way

Viera, Florida 32940

CERTIFICATE OF SERVICE
STATE OF FLORIDA, COUNTY OF BREVARD

I, Rachel Sadoff, Clerk of the Circuit Court, do hereby certify that a copy of the foregoing was furnished by U.S. Mail to the above listed parties this 28 day of October, 2025.

RACHEL SADOFF

By: 

Deputy Clerk



DEPUTY CLERK,
per F.S. 695.03/92.50
Rachel M. Sadoff, Clerk
Brevard County, Florida

No. ____

IN THE SUPREME COURT OF THE UNITED STATES

BRYAN F. JENNINGS,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
EXECUTION SCHEDULED FOR
THURSDAY, NOVEMBER 13, 2025, at 6:00P.M.**

APPENDIX B

Appeal opinion of the Florida Supreme Court, affirming the denial of the Fifth Successive Motion to Vacate Judgment and Sentence and denying State Habeas Petition; *Jennings v. State*, and *Jennings v. Dixon*, Case Numbers SC2025-1642, SC2025-1686, SC2025-1687

Supreme Court of Florida

No. SC2025-1642

BRYAN FREDRICK JENNINGS,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. SC2025-1686

BRYAN FREDRICK JENNINGS,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

No. SC2025-1687

BRYAN FREDRICK JENNINGS,
Petitioner,

vs.

SECRETARY, DEPARTMENT OF CORRECTIONS,
Respondent.

November 6, 2025

PER CURIAM.

Bryan Fredrick Jennings was sentenced to death for the 1979 murder of six-year-old Rebecca Kunash. On October 10, 2025, Governor Ron DeSantis signed a death warrant scheduling Jennings's execution for November 13, 2025. Jennings unsuccessfully sought relief in the circuit court and now appeals. We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const. We affirm. We deny Jennings's concurrent motion to vacate the death warrant or stay the execution. We deny Jennings's petition seeking review of the nonfinal order from the lower court denying his motion to vacate the death warrant and stay the execution. Finally, we deny his habeas petition, *see id.* § 3(b)(9).

I

We have retold the facts that led to Jennings's death sentence time and again. *See Jennings v. State (Jennings I)*, 413 So. 2d 24, 25 (Fla. 1982); *Jennings v. State (Jennings II)*, 453 So. 2d 1109, 1111-12 (Fla. 1984); *Jennings v. State (Jennings IV)*, 512 So. 2d

169, 175-76 (Fla. 1987); *Jennings v. State* (*Jennings V*), 583 So. 2d 316, 317 (Fla. 1991); *Jennings v. State* (*Jennings VII*), 782 So. 2d 853, 862 (Fla. 2001); *Jennings v. State* (*Jennings X*), 192 So. 3d 38 (Fla. 2015) (table); *Jennings v. State* (*Jennings XI*), 265 So. 3d 460, 461 (Fla. 2018). We recount them here briefly to give context to our discussion.

In the early morning hours of May 11, 1979, Rebecca Kunash was asleep in her family home. Jennings, then twenty years old and on leave from the Marine Corps, dislodged the screen from her window and climbed into her bedroom. He covered her mouth, took her to his car, and drove to an area near the Girard Street Canal on Merritt Island. There, he raped Rebecca, swung her by her legs to the ground with such force that she fractured her skull, and drowned her while she was still alive. Her parents, who were asleep in another part of the house when Jennings broke in, woke up to find Rebecca missing. Later that afternoon, Rebecca's body was found in the water. She suffered extensive damage to her brain and bruising and lacerations to her vaginal area. Rebecca was six years old.

Later that day, Jennings was arrested on a traffic warrant and taken to the Brevard County jail. Investigation revealed that an unknown man matching Jennings's description had been seen in the Kunash family's neighborhood around the time of Rebecca's abduction, that Jennings's shoes matched footprints found at the family's home, that his latent fingerprints were found on Rebecca's windowsill, and that he had returned home on the night of the murder with his clothes and hair wet.

Jennings was tried and convicted for these crimes three times. Twice we reversed. *See Jennings I*, 413 So. 2d 24 (reversed and remanded due to defense counsel's failure to cross-examine a critical witness); *Jennings v. State (Jennings III)*, 473 So. 2d 204 (Fla. 1985) (reversed and remanded in light of the United States Supreme Court's decisions in *Edwards v. Arizona*, 451 U.S. 477 (1981), *Shea v. Louisiana*, 470 U.S. 51 (1985), and *Smith v. Illinois*, 469 U.S. 91 (1984)); *Jennings IV*, 512 So. 2d 169 (conviction and death sentence affirmed).

In 1986, after his third and final trial, Jennings was convicted of first-degree murder, two counts of first-degree felony murder, kidnapping with intent to commit sexual battery, sexual battery,

and burglary. *Jennings IV*, 512 So. 2d at 171. After the penalty phase, the jury recommended he be sentenced to death by a vote of 11-1. The trial court agreed and imposed the death sentence on the charge of first-degree murder. In doing so, the judge found the following aggravating factors: (1) the murder was committed while Jennings was engaged in the commission of, or flight after committing, the crimes of burglary, kidnapping, and rape; (2) the murder was especially heinous, atrocious, or cruel; and (3) the murder was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. *Id.* at 176. We held that the trial court committed no error in finding the absence of any statutory or nonstatutory mitigating circumstances. *Id.* On direct appeal, this Court affirmed Jennings’s conviction and death sentence.¹ *Id.* The conviction and sentence became final

1. Jennings raised the following issues on direct appeal: (1) application of the “fruit of the poisonous tree” doctrine required the suppression of certain photographs, showing abrasions on Jennings’s penis, taken as a result of an illegally obtained confession; (2) sworn motions containing prior inconsistent statements of a State witness were admissible and the court erred in sustaining the State’s objection to their introduction; (3) statement by the victim’s father that the victim was going to be narrator at her school play on the day she was killed was not relevant; (4) the trial court failed to suppress items seized as a

when the United States Supreme Court denied his petition for writ of certiorari on February 22, 1988. *Jennings v. Florida* (*Jennings XII*), 484 U.S. 1079 (1988). Over the next four decades, Jennings unsuccessfully sought postconviction relief in both state and federal court.

result of a warrantless arrest; (5) photographs of the victim should not have been admitted and were so inflammatory that their potential prejudice outweighed their slight probative value; (6) a prosecutor's comment during voir dire alleged to refer to the failure of Jennings to testify; (7) a letter written by Jennings was improperly admitted; (8) failure to modify the standard jury instructions; (9) the trial court impermissibly replaced a guilt phase juror for the penalty phase after the juror explained, after already being sworn, that she had not been completely candid about her feelings concerning the death penalty; (10) the trial court improperly overruled an objection to the prosecutor's argument during the penalty phase; (11) knowledge by three jurors between the guilt and penalty phases that Jennings had been tried before for the same crimes deprived him of his constitutional right to a fair trial on the issue of his penalty; (12) an alternate juror leaving the courtroom at the same time as the jury panel when it retired to deliberate for the penalty phase tainted the jury to the extent that he was denied a fair trial; (13) the trial court's refusal to give Jennings's requested jury instruction at the penalty phase; (14) the trial judge erred in failing to certify Jennings as a mentally disordered sex offender; (15) the death penalty was imposed upon inappropriate aggravating circumstances and certain mitigating circumstances should have been found; and (16) the Florida Capital Sentencing Statute is unconstitutional on its face and as applied.

In state court, Jennings filed five postconviction motions for relief under Florida Rules of Criminal Procedure 3.850 and 3.851. *See Jennings V*, 583 So. 2d 316 (affirming the circuit court's denial of Jennings's initial rule 3.850 motion but granting Jennings's request for certain portions of the State's files as public records under chapter 119, Florida Statutes (1989)); *Jennings VII*, 782 So. 2d 853 (affirming the circuit court's denial of Jennings's remanded initial rule 3.850 postconviction motion); *Jennings v. State* (*Jennings VIII*), 36 So. 3d 84 (Fla. 2010) (table) (affirming the circuit court's denial of Jennings's first successive rule 3.851 motion for postconviction relief); *Jennings v. State* (*Jennings IX*), 91 So. 3d 132 (Fla. 2012) (table) (affirming the circuit court's denial of Jennings's second successive rule 3.851 motion for postconviction relief but allowing thirty days to file a successive postconviction motion raising specific claims); *Jennings X*, 192 So. 3d 38 (affirming the circuit court's denial of Jennings's third successive rule 3.851 motion for postconviction relief); *Jennings XI*, 265 So. 3d 460 (holding that *Hurst*² did not apply retroactively to Jennings's

2. *Hurst v. State*, 202 So. 3d 40 (Fla. 2016) (holding that before a trial court may consider imposing the death penalty, all

sentence of death and affirming the circuit court's denial of Jennings's fourth successive rule 3.851 motion for postconviction relief).

Additionally, Jennings sought state habeas relief. See *Jennings V*, 583 So. 2d 316 (denying Jennings's petition for a writ of habeas corpus). And related to this Court's remand in *Jennings V*, Jennings appealed the circuit court's order for the disclosure of some, but not all, of the public records Jennings requested; this Court approved that order. *Jennings v. State (Jennings VI)*, 626 So. 2d 1324 (Fla. 1993) (relying on *Parole Commission v. Lockett*, 620 So. 2d 153 (Fla. 1993), to hold that the Parole Commission was not required to release clemency files pursuant to the Public Records Act because executive clemency power is independent of both the legislature and the judiciary).

In federal court, Jennings first petitioned for a writ of certiorari following his initial unsuccessful rule 3.850 postconviction motion.

critical findings must be found unanimously by the jury), *receded from in part by State v. Poole*, 297 So. 3d 487 (Fla. 2020) (holding only the existence of an aggravating circumstance qualifies as an element, and thus requires a unanimous jury finding); see *Hurst v. Florida*, 577 U.S. 92 (2016).

In 2002, the United States Supreme Court denied certiorari review. *Jennings v. Florida (Jennings XIII)*, 534 U.S. 1096 (2002). Later, he petitioned for a writ of habeas corpus in the United States District Court for the Northern District of Florida pursuant to 28 U.S.C.

§ 2254. The Northern District denied the petition and the United States Court of Appeals for the Eleventh Circuit affirmed the denial of habeas relief. *Jennings v. Crosby (Jennings XIV)*, 392 F. Supp. 2d 1312 (N.D. Fla. 2005) (denying relief on sixteen claims raised in Jennings's first federal habeas petition); *Jennings v. McDonough (Jennings XV)*, 490 F.3d 1230 (11th Cir. 2007) (affirming the district court's denial of habeas relief). In 2008, the United States Supreme Court again denied certiorari review, this time relating to the Eleventh Circuit's decision in *Jennings XIV*. *Jennings v. McNeil (Jennings XVI)*, 552 U.S. 1298 (2008). After Jennings's second successive postconviction motion was denied (*Jennings IX*), the United States Supreme Court again denied certiorari review.

Jennings v. Florida (Jennings XVII), 568 U.S. 1100 (2013). In 2016, following his third successive rule 3.851 motion (*Jennings X*), the United States Supreme Court again denied certiorari review.

Jennings v. Florida (Jennings XVIII), 580 U.S. 857 (2016). In 2019,

after Jennings's unsuccessful fourth successive rule 3.851 motion (*Jennings XI*), the United States Supreme Court denied certiorari review. *Jennings v. Florida (Jennings XIX)*, 587 U.S. 990 (2019). Jennings filed a second federal habeas petition under 28 U.S.C. § 2254. The Northern District dismissed his successive petition. The Eleventh Circuit affirmed the district court's dismissal. *Jennings v. Sec'y, Fla. Dep't of Corr. (Jennings XX)*, 108 F.4th 1299 (11th Cir. 2024). On March 31, 2025, the United States Supreme Court denied Jennings's petition for a writ of certiorari related to that successive federal habeas petition. *Jennings v. Dixon (Jennings XXI)*, 145 S. Ct. 1472 (2025).

Governor Ron DeSantis signed Jennings's death warrant on October 10, 2025, scheduling Jennings's execution for November 13, 2025. That same day, the State moved to have Capital Collateral Regional Counsel—Middle Region (CCRC-M) appointed as postconviction counsel for Jennings, noting that he required state collateral counsel during the warrant proceedings. On October 12, 2025, CCRC-M filed a limited notice of appearance alongside Jennings's motion to vacate the death warrant or alternatively to stay the warrant proceedings. On October 13, 2025,

the Circuit Court for the Eighteenth Judicial Circuit Court, in and for Brevard County, appointed CCRC-M as postconviction counsel, overruling CCRC-M's request to be appointed in a limited capacity. On October 16, 2025, the circuit court entered an order denying Jennings's motion to vacate the death warrant or alternatively to stay the warrant proceedings. On October 18, 2025, Jennings petitioned this Court to review the circuit court's nonfinal order denying his motion to vacate the warrant or stay the execution proceedings.

On October 21, 2025, Jennings filed his fifth successive motion for postconviction relief. He raised three claims: (1) the determination that executive clemency is not appropriate based on Jennings's clemency denial in 1989 violates his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions in the Florida Constitution; (2) the post-warrant appointment of CCRC-M and failure to stay the proceedings render the warrant proceedings invalid and in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments and the corresponding provisions of the Florida Constitution; and (3) Florida's capital sentencing scheme violates

the Eighth and Fourteenth Amendments because it lacks essential safeguards against arbitrary and capricious imposition of the death penalty. The circuit court denied relief on all claims on October 28, 2025. The circuit court also denied Jennings's request to stay the execution.

Jennings now appeals the denial of his postconviction motion, raising three arguments. He also moves for a stay of execution and petitions for a writ of habeas corpus.

II

We have consistently said:

Summary denial of a successive postconviction motion is appropriate if the motion, files, and records in the case conclusively show that the movant is entitled to no relief. We review the circuit court's decision to summarily deny a successive rule 3.851 motion de novo, accepting the movant's factual allegations as true to the extent they are not refuted by the record, and affirming the ruling if the record conclusively shows that the movant is entitled to no relief.

Zakrzewski v. State, 415 So. 3d 203, 208 (Fla.) (quoting *Tanzi v. State*, 407 So. 3d 385, 390 (Fla. 2025)), *cert. denied*, No. 25-5194, 2025 WL 2155601 (U.S. July 30, 2025). Applying this standard, we affirm the circuit court's summary denial of Jennings's fifth successive postconviction motion.

A

Jennings first claims that his executive clemency determination violates his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution because his appeal for clemency was denied in 1989—thirty-six years ago.

This claim is untimely and procedurally barred. “Claims raised pursuant to rule 3.851 must meet either the timeliness requirements provided in section (d)(1) or the exceptions provided in section (d)(2).” *Ferguson v. State*, 101 So. 3d 362, 366 (Fla. 2012) (rejecting defendant’s clemency-related claim as untimely when he could have raised it earlier). Jennings does neither. Instead, Jennings raises this claim for the first time thirty-six years after his clemency determination and thirty-seven years after his conviction and sentence became final in 1988. Also, in 2016, the State filed its notice of finality with the Clerk of this Court pursuant to rule 3.851(j), acknowledging that Jennings had completed his direct appeal, initial postconviction proceeding in state court, and habeas corpus proceeding and subsequent appeal in federal court. See Attorney General Notification to Clerk of the Florida Supreme Court,

Jennings v. State, No. SC1960-68835 (Fla. Oct. 14, 2016). So “in addition to the thirty-[seven] years of notice since the imposition of his death sentence[], [Jennings] has been on notice for nearly [nine] years that he is ‘warrant-eligible,’ meaning ‘the [G]overnor could sign a warrant for his execution.’” *Jones v. State*, No. SC2025-1422, 2025 WL 2717027, at *4 (Fla. Sept. 24, 2025) (last alteration in original) (quoting *Silvia v. State*, 228 So. 3d 1144, 1146 (Fla. 2013)), *cert. denied*, No. 25-5745, 2025 WL 2775490 (U.S. Sept. 30, 2025).

Jennings has not demonstrated that any exception excuses his untimeliness under rule 3.851(d)(2). He asserts that either there are new facts which were unknowable before now or that he has good cause for failing to assert this claim in a prior motion. Both are false. The plethora of supposedly new facts on which he relies are either public knowledge or were known to him since 1989. Also, he has no good cause for failing to raise this claim earlier because he acknowledges in his brief that he “could have feasibly reapplied for clemency seven (7) times,” but he did not.³ For these

3. To the extent that Jennings is claiming that his clemency counsel was ineffective, the circuit court correctly found that

same reasons, Jennings’s clemency claim is also procedurally barred under rule 3.851(e)(2).

In any event, this claim is meritless. On many occasions, this Court has rejected similar challenges to Florida’s clemency process. The Florida Constitution vests the power of clemency in the executive branch. See art. IV, § 8(a), Fla. Const. We repeat that “[t]he clemency process in Florida derives solely from the Florida Constitution and we have recognized that the people of the State of Florida have vested ‘sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace.’” *Zakrzewski*, 415 So. 3d at 211 (quoting *Carroll v. State*, 114 So. 3d 883, 888 (Fla. 2013)).

Moreover, “[n]o specific procedures are mandated in clemency proceedings.” *Id.* And “[i]n *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998), five justices of the United States Supreme

Jennings has no constitutional right to raise such a claim. See *Rogers v. State*, 409 So. 3d 1257, 1264 (Fla.) (“[Defendant’s claims] are claims of ineffective assistance of postconviction counsel, to which he acknowledges he has no constitutional right in Florida.” (citing *Zack v. State*, 911 So. 2d 1190, 1203 (Fla. 2005))), *cert. denied*, 145 S. Ct. 2695 (2025).

Court concluded that some minimal procedural due process requirements should apply to clemency proceedings. But none of the opinions in that case required any specific procedures or criteria to guide the executive's signing of warrants for death-sentenced inmates." *Marek v. State*, 14 So. 3d 985, 998 (Fla. 2009). Thus, "we do not second-guess the executive branch in matters of clemency in capital cases." *Zakrzewski*, 415 So. 3d at 211.

Jennings argues that the thirty-six-year time lapse between his clemency proceeding and the signing of his death warrant makes his clemency determination inadequate as an arbitrary denial. But this Court previously "rejected the argument that a long time lapse between a defendant's clemency proceeding and the signing of his death warrant renders the clemency process inadequate or entitles the defendant to a second proceeding." *Pardo v. State*, 108 So. 3d 558, 568 (Fla. 2012); *see also Bundy v. State*, 497 So. 2d 1209, 1211 (Fla. 1986) ("We cannot say that the executive branch was required to go through the motions of holding a second proceeding when it could well have properly determined in the first that appellant was not and never would be a likely candidate for executive clemency."). It bears repeating that in the

thirty-six years since Jennings's clemency denial, he could have, but did not, reapply.

Jennings argues that because his clemency was denied before any of his postconviction proceedings, his clemency determination did not provide a "fail-safe in our criminal justice system" as envisioned in *Harbison v. Bell*, 556 U.S. 180, 192 (2009).⁴ In *Johnston v. State*, when the defendant argued that his clemency proceeding "was inadequate because it was held before the postconviction proceedings," this Court concluded:

[T]he clemency system in Florida performed as intended in providing a "fail safe" for [the defendant]. He was given a full clemency hearing in 1987 at which he was represented by counsel. When the death warrant was signed on April 20, 2009, it stated that "it has been determined that Executive Clemency, as authorized by Article IV, Section 8(a), Florida Constitution, is not appropriate."

27 So. 3d 11, 24 (Fla. 2010).

Here, as Jennings's postconviction motion in the circuit court acknowledged, he was represented by counsel at his 1988 clemency

4. In *Harbison*, the United States Supreme Court recognized that "[f]ar from regarding clemency as a matter of mercy alone, we have called it 'the "fail safe" in our criminal justice system.'" 556 U.S. at 192 (quoting *Herrera v. Collins*, 506 U.S. 390, 415 (1993)).

proceeding. When his death warrant was signed on October 10, 2025, it stated that “executive clemency for BRYAN FREDRICK JENNINGS, as authorized by Article VI, Section 8(a), of the Florida Constitution, was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate.” So as in *Johnston*, the clemency process here performed as intended and Jennings’s arguments to the contrary are without merit. *See also Valle v. State*, 70 So. 3d 530, 551 (Fla. 2011) (rejecting defendant’s claim that his clemency proceeding did not serve as a fail-safe when it was done before his postconviction proceedings).⁵

Jennings also contends that, based on developments since 1989, there may be additional mitigation to present at an updated clemency proceeding. However, this Court has “previously rejected

5. In support of this fail-safe argument, Jennings relies on an appendix of clemency letters in his initial brief to claim that the Governor treated other similarly situated individuals differently than him. These documents were not submitted to the circuit court and cannot be considered here. *See Gudinas v. State*, 412 So. 3d 701, 708 n.5 (Fla.) (“We decline to consider materials that were not presented to and considered by the circuit court.”), *cert. denied*, 145 S. Ct. 2833 (2025). Regardless, as we have said, Jennings’s fail-safe argument is meritless.

the argument that a defendant is entitled to present a full accounting of mitigation evidence as part of the clemency process,” much less a second clemency proceeding to present purportedly developed mitigation. *Pardo*, 108 So. 3d at 568 (citations omitted); *see also Dailey v. State*, 283 So. 3d 782, 788 (Fla. 2019) (“[T]o the extent [the defendant] asserts that his execution would be arbitrary because he was not granted an additional clemency proceeding at which to present newly discovered evidence, his claim is foreclosed by our caselaw.” (citations omitted)).

We affirm the circuit court’s denial of Jennings’s claim as to his clemency proceeding.

B

Next, Jennings argues he was denied due process under the Fifth Amendment, adequate representation of counsel under the Sixth Amendment, his Eighth Amendment rights, and access to the courts in violation of the Fourteenth Amendment, along with his corresponding rights under the Florida Constitution, because the Governor signed his death warrant at a time when he was unrepresented in state court: his lawyer died in 2022. He separately raises the same issue in his motion to vacate the death

warrant or for a stay of execution. The circuit court denied these claims. We find no fault in its decisions.

From as early as 1991, Jennings was represented in state court by the Office of the Capital Collateral Representative (CCR). *See Jennings V*, 583 So. 2d 316 (Jennings's initial rule 3.850 motion, listing Larry Helm Spalding, Martin J. McClain, Jerome H. Nickerson, and Bret R. Strand from the Office of the Capital Collateral Representative, Tallahassee, for Jennings). Mr. McClain continued representing Jennings in state proceedings for many years thereafter, including after leaving CCR. *See Jennings VII*, 782 So. 2d 853 (Jennings's remanded initial rule 3.850 postconviction motion, noting Martin J. McClain, Brooklyn, NY, for Jennings); *Jennings XI*, 265 So. 3d 460 (Jennings's fourth successive rule 3.851 motion, noting Martin J. McClain of McClain & McDermott, P.A., Wilton Manors, Florida, for Jennings).

In federal court, too, Mr. McClain continued to advocate for Jennings after leaving CCR. *See Jennings XIV*, 392 F. Supp. 2d 1312 (Jennings's first federal habeas petition, noting Martin James McClain, McClain & McDermott PA, Wilton Manors, FL, for Jennings); *Jennings XV*, 490 F.3d 1230 (noting Martin J.

McClain (Court–Appointed), Wilton Manors, FL, for Jennings). In addition to Mr. McClain’s advocacy in federal court, Jennings was also appointed attorneys from the Capital Habeas Unit of the Federal Public Defender’s Office (CHU) throughout his recent federal proceedings. *See Jennings XX*, 108 F.4th 1299 (Jennings’s second federal habeas petition, listing John Abatecola, Terri L. Backhus, Linda McDermott, Federal Public Defender’s Office, Tallahassee, FL, for Jennings). Jennings is represented by the Federal Public Defender’s Office in his federal proceedings today.⁶

In 2022, four years after this Court denied relief on Jennings’s fourth successive rule 3.851 motion for postconviction relief (*Jennings XI*), Mr. McClain passed away. Jennings claims he was entitled to continuous representation, including after Mr. McClain’s passing, despite the fact he had no matter pending in state court until these warrant proceedings began. We disagree.

6. On October 22, 2025, counsel for Jennings, Linda McDermott from the Office of the Federal Public Defender for the Northern District of Florida, filed on Jennings’s behalf a complaint for declaratory and injunctive relief under 42 U.S.C. § 1983 seeking a stay of his execution.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution ensures that no state shall “deprive any person of life, liberty, or property, without due process of law.” Amend. XIV, U.S. Const. Our Florida Constitution similarly provides that “[n]o person shall be deprived of life, liberty or property without due process of law.” Art. I, § 9, Fla. Const. We have long recognized that “[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) (citing *Huff v. State*, 622 So. 2d 982, 982 (Fla. 1993)).

Jennings argues he has been denied access to the courts and deprived of active investigation into potential claims since his attorney’s passing in 2022. He claims that under Florida Rule of Criminal Procedure 3.851 and section 27.710, Florida Statutes, he was entitled to appointed counsel—at all times—unless a judge allowed counsel to withdraw or the sentence was reversed, reduced, or carried out, regardless of whether another attorney represented him in a federal court. *See* Fla. R. Crim. P. 3.851(b)(5); § 27.710(4), Fla. Stat. But rule 3.851 and chapter 27 only require representation during postconviction proceedings. They are silent

about representation when no matters are pending. *See* Fla. R. Crim. P. 3.851(a) (“This rule applies to all postconviction proceedings that commence on issuance of the appellate mandate affirming the death sentence”); § 27.711(1)(a), Fla. Stat. (defining “[c]apital defendant” as “the person who is represented in postconviction capital collateral proceedings by an attorney appointed under s. 27.710”); § 27.711(1)(c), Fla. Stat. (defining “[p]ostconviction capital collateral proceedings” as “one series of collateral litigation of an affirmed conviction and sentence of death”).

Jennings has been represented by counsel during every postconviction proceeding, both in state and federal court. While he may have been unrepresented in state court during the three-year period between his attorney’s passing and CCRC-M’s appointment after the signing of his death warrant, Jennings benefitted from Mr. McClain’s representation in all five of his postconviction motions. Furthermore, he continued to be represented by federal counsel even after Mr. McClain’s passing. And now, in his sixth postconviction motion, he has been appointed the services of CCRC-M.

Jennings argues that, without continuous state postconviction counsel, no one has tracked any changes in his mental or physical health or any other possible grounds for postconviction relief. But that ignores exactly what his federal counsel was available to do. Even after Mr. McClain's death, Jennings continued to receive, and to date receives, the benefit of his federal CHU counsel. Jennings's suggestion that postconviction counsel was required to actively investigate his case for the last three years we rejected in *Asay*, where we found even a ten-year period without appointed counsel did not violate due process where the defendant "was represented by counsel at every stage of his postconviction proceedings." *Asay*, 210 So. 3d at 27-28 (explaining that section 27.710, Florida Statutes, does not mandate that postconviction counsel actively investigate a defendant's case and continuously bring forth new arguments). Here, that can be said for Jennings, so we reject his contention that any gap in his representation over the last four decades amounts to a denial of due process.

Jennings also argues that the warrant schedule prevents his current counsel from providing effective assistance under the Sixth Amendment, and therefore effectively violates the Fourteenth

Amendment's guarantee to due process as well. He alleges that the office of CCRC-M has been given an impossible task of reviewing over forty-six years of proceedings and cannot under any circumstances develop sufficient factual claims to support the granting of an evidentiary hearing or a stay of execution.

It is true that, under Florida law, individuals sentenced to death are entitled to the appointment of capital postconviction counsel for the purpose of pursuing any collateral attacks on their convictions and sentences. *See* § 27.702(1), Fla. Stat. (2025) ("The capital collateral regional counsel shall represent each person convicted and sentenced to death in this state for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed"); *Spalding v. Dugger*, 526 So. 2d 71, 72 (Fla. 1988). But Jennings does not say that he sought the appointment of counsel for that purpose.

We have also said that this statutory provision "does not create a right to effective assistance of postconviction counsel," for the statute itself "plainly states that '[a]n action taken by an attorney who represents a capital defendant in postconviction capital collateral proceedings may not be the basis for a claim of

ineffective assistance of counsel.’ ” *Barwick v. State*, 361 So. 3d 785, 790 (Fla. 2023) (alteration in original and citation omitted) (holding that *Spalding* only requires that a defendant be represented by an attorney during postconviction proceedings); see also *Asay*, 210 So. 3d at 28-29 (“[T]his Court has repeatedly held that defendants are not entitled to effective assistance of collateral counsel.”); *Gore v. State*, 91 So. 3d 769, 778 (Fla. 2012) (explaining that there is no independent cause of action for ineffective assistance of collateral counsel in Florida); *Zack v. State*, 911 So. 2d 1190, 1203 (Fla. 2005) (“Under Florida and federal law, a defendant has no constitutional right to effective collateral counsel.”).

To the extent he argues that the warrant schedule in this matter renders the assistance of his counsel ineffective, the applicable statute and our settled law provide Jennings no avenue of relief. Jennings’s counsel has zealously represented him since CCRC-M was appointed. This is what the statute requires. See *Hall v. State*, 420 So. 2d 872, 874 (Fla. 1982) (holding that the denial of a continuance of warrant proceedings was proper where counsel had only fourteen days between appointment and the scheduled execution).

We have recently considered and rejected claims similar to Jennings's, holding "an expedited warrant litigation schedule does not deprive a defendant of his right to due process." *Windom v. State*, 416 So. 3d 1140, 1150 (Fla.), *cert. denied*, No. 25-5440, 2025 WL 2460118 (U.S. Aug. 27, 2025); *see also Zakrzewski*, 415 So. 3d at 211 (rejecting claim that expedited process of warrant litigation deprived defendant of his due process rights); *Bell v. State*, 415 So. 3d 85, 106-07 (Fla.) (rejecting challenge to time period set in death warrant proceedings), *cert. denied*, 145 S. Ct. 2872 (2025); *Tanzi v. State*, 407 So. 3d 385, 393 (Fla.) (rejecting similar constitutional arguments attacking the compressed warrant litigation schedule), *cert. denied*, 145 S. Ct. 1914 (2025).

To the extent Jennings believes the warrant proceedings violate his Eighth Amendment rights, he offers no argument to support this claim. The issue is insufficiently presented and therefore waived. *See Miller v. State*, 161 So. 3d 354, 383 (Fla. 2015) (holding that conclusory allegations of ineffective assistance of counsel consisting of a single statement are insufficient and therefore waived); *Wyatt v. State*, 71 So. 3d 86, 111 n.19 (Fla. 2011) (claim was insufficiently pled and therefore waived for purposes of

appeal when defendant cited no authority demonstrating a right to public-records access).

C

In his final claim, Jennings asserts that Florida’s capital sentencing regime is constitutionally deficient for several reasons. He contends that Florida’s capital sentencing system “no longer meaningfully narrows death eligibility” and is facially invalid because (1) a death sentence does not require a unanimous jury recommendation and (2) proportionality review is not mandated. Jennings further argues (3) that the Governor deployed an “opaque” and “arbitrary” process in signing Jennings’s warrant instead of carrying out the sentences of other warrant-eligible individuals. He likewise contends (4) that the State’s clemency process is “stale and secretive.” And finally, Jennings argues (5) that his sentence cannot be constitutionally carried out because he was “deni[ed] . . . continuous counsel.” We have repeatedly rejected these claims, which are without merit.

Beginning with Jennings’s facial challenge, as we have explained, “neither the Eighth Amendment nor any provision in our state constitution requires jury sentencing in capital cases, or a

unanimous jury recommendation, or indeed any jury recommendation at all.” *Herard v. State*, 390 So. 3d 610, 622-23 (Fla. 2024) (citing *Poole*, 297 So. 3d at 503-05), *cert. denied*, 145 S. Ct. 1315 (2025). Moreover, “we have ‘repeatedly rejected the argument that the death-penalty statute violates the Eighth Amendment because it fails to sufficiently narrow the class of murderers eligible for the death penalty.’ Eliminating proportionality review did not change that.” *Loyd v. State*, 379 So. 3d 1080, 1097-98 (Fla. 2023) (citation omitted) (quoting *Wells v. State*, 364 So. 3d 1005, 1015 (Fla. 2023)), *cert. denied*, 145 S. Ct. 188 (2024). Simply put, “there is no merit to the suggestion that the lack of proportionality review renders the entire capital sentencing scheme in Florida facially unconstitutional for failing to narrow the class of death-eligible defendants.” *Fletcher v. State*, 415 So. 3d 147, 162-63 (Fla. 2025), *petition for cert. filed*, No. 25-5923 (U.S. Oct. 21, 2025). Jennings does not offer any basis to depart from this precedent, so we likewise reject his facial challenge here.

Next, Jennings says that by signing his death warrant “while dozens of represented, warrant-eligible prisoners remained, the

Governor exercised the State’s ultimate power in a manner that was arbitrary and opaque.” The argument is likewise foreclosed by this Court’s precedent. Indeed, “[w]e have repeatedly held that the Governor’s broad discretion in selecting which death warrants to sign and when does not violate the United States Constitution or the Florida Constitution.” *Zakrzewski*, 415 So. 3d at 210; *see also Hutchinson v. State*, 416 So. 3d 273, 280 (Fla.) (“[W]e are aware of no constitutional principle that demands a fixed formula, thereby limiting the decisionmaker in determining the order of execution.”), *cert. denied*, 145 S. Ct. 1980 (2025); *Gore*, 91 So. 3d at 780 (rejecting claims that the Governor’s absolute discretion to sign death warrants violates the United States Constitution).

Jennings does not dispute that he is eligible for a death warrant. His observation that the Governor could have exercised his discretion to sign another death warrant does not provide a basis for relief, because the Governor has “broad discretion in selecting which death warrants to sign and when.” *Zakrzewski*, 415 So. 3d at 210. We have never disturbed the Governor’s exercise of this discretion, and we decline to do so in this case.

Jennings’s last two arguments—that his “denial of continuous counsel” and a “stale and secretive clemency process” render Florida’s capital sentencing scheme unconstitutional—are simply repackaged versions of his first two claims, which we reject. See *supra* pp. 13-28. Jennings was represented at every stage of his postconviction proceedings. His claim that he was denied “continuous counsel” stems from his incorrect suggestion that he was entitled to postconviction counsel actively investigating his case for the thirty-plus years from his sentence to the signing of the warrant. Jennings was also given a full clemency hearing where he was represented by counsel. The clemency process performed as a fail-safe as intended. And this Court will not second-guess the Governor’s clemency determination.⁷

III

Jennings’s habeas petition alleges he has been deprived of life, liberty, and property interests based on the lack of state court

7. As each of Jennings’s discrete attacks on Florida’s capital sentencing regime fail, we also reject Jennings’s contention that the “cumulative effect” of each of these purported “deficiencies” renders the system unconstitutional.

representation since his attorney passed in 2022. He claims the lapse in representation violates his due process rights under the Fourteenth Amendment to the United States Constitution.

Jennings relies on section 27.711(12), Florida Statutes, which requires the court to “monitor the performance of assigned counsel to ensure that the capital defendant is receiving quality representation.” § 27.711(12), Fla. Stat. This claim is nearly identical to the second issue Jennings raises in his fifth successive postconviction motion, which we reject for the reasons already articulated. Jennings simply rewords his argument as a deprivation of life, liberty, and property interests. “Habeas corpus is not to be used to litigate or relitigate issues which could have been, should have been, or were previously raised.” *Gaskin v. State*, 361 So. 3d 300, 309 (Fla. 2023). This claim is procedurally barred.

Still, we reiterate that Jennings did, in fact, have the benefit of counsel for his first postconviction motion and the four successive postconviction motions filed thereafter. Jennings argues that chapter 27 creates life, liberty, and property rights to continuous representation. It does not.

First, as we have established, chapter 27 only requires representation during postconviction proceedings. See § 27.711(1)(a), Fla. Stat. And we have held that the right to postconviction counsel is purely “statutory in nature, not constitutional.” *Darling v. State*, 45 So. 3d 444, 455 (Fla. 2010) (emphasis omitted). We have specifically held that “[u]nder Florida and federal law, a defendant has no constitutional right to effective collateral counsel.” *Barwick*, 361 So. 3d at 791 (alteration in original) (quoting *Zack*, 911 So. 2d at 1203). Section 27.7002, Florida Statutes, explicitly provides that it “does not create any right on behalf of any person, provided counsel pursuant to any provision of this chapter, to challenge in any form or manner the adequacy of the collateral representation provided.” § 27.7002(1), Fla. Stat. Further, under section 27.711, postconviction capital collateral proceedings “do[] not include repetitive or successive collateral challenges to a conviction and sentence of death which is affirmed by the Supreme Court and undisturbed by any collateral litigation.” § 27.711(1)(c), Fla. Stat. Thus, Jennings was not denied due process when he was provided counsel at all relevant stages of his postconviction proceedings.

Next, Jennings argues his lack of representation after his attorney's passing in 2022 denied him meaningful access to the courts. We reject this. In his first postconviction motion, each of his four successive postconviction motions, and now in his fifth successive postconviction motion, Jennings has been provided notice, counsel, and the opportunity to raise challenges. The extensive procedural history we have summarized demonstrates ample access to the courts. Jennings "had notice of each postconviction proceeding and the opportunity to have counsel argue his claims before the court." *Asay*, 210 So. 3d at 28.

Finally, Jennings argues that he has been denied equal protection because the Governor passed over other warrant-eligible individuals who are already represented by state collateral counsel. We reject this argument for the reasons we have already articulated.

IV

We affirm the summary denial of Jennings's motion for postconviction relief and deny his request for an evidentiary hearing. We deny his concurrent motion to vacate the death warrant or stay the execution, and we deny his petition seeking an order from this Court directing the circuit court to vacate the death

warrant or stay the execution. Additionally, we deny Jennings's petition for a writ of habeas corpus.

No motion for rehearing will be entertained by this Court. The mandate shall issue immediately.

It is so ordered.

MUÑIZ, C.J., and COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ., concur.
LABARGA, J., concurs in result.
CANADY, J., recused.

An Appeal from the Circuit Court in and for Brevard County,
Kelly J. McKibben, Judge – Case No. 051979CF000773AXXXXX
And an Original Proceeding – Habeas Corpus

Eric Pinkard, Capital Collateral Regional Counsel, Tracy Martinell Henry, Assistant Capital Collateral Regional Counsel, Cortney L. Hackett, Assistant Capital Collateral Regional Counsel, and Arielle B. Jackson, Assistant Capital Collateral Regional Counsel, Middle Region, Temple Terrace, Florida,

for Appellant/Petitioner

James Uthmeier, Attorney General, Tallahassee, Florida, Jonathan S. Tannen, Senior Assistant Attorney General, Naomi Nichols, Senior Assistant Attorney General, and Michael W. Mervine, Special Counsel, Assistant Attorney General, Tampa, Florida,

for Appellee/Respondent

No. ____

IN THE SUPREME COURT OF THE UNITED STATES

BRYAN F. JENNINGS,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
EXECUTION SCHEDULED FOR
THURSDAY, NOVEMBER 13, 2025, at 6:00P.M.**

APPENDIX C

State's Motions to Appoint Substitute Postconviction Counsel; *State of Florida v. Grover B. Reed*, Circuit Court of Duval County, Fourth Judicial Circuit, Florida, Case No. 16-1986-CF-6123 (filed March 31, 2022); *State of Florida v. Edward J. Zakrzewski*, Circuit Court of Okaloosa County, First Judicial Circuit, Florida, Case No. 1994-1283-CFA (filed March 31, 2022); *State of Florida v. Thomas James Moore*, Circuit Court of Duval County, Fourth Judicial Circuit, Florida, Case No. 1993-1659-CFA (filed April 1, 2022).

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO.: 16-1986-CF-06123-AXXX
CAPITAL CASE

GROVER B. REED,

Defendant.

_____/

STATE'S MOTION TO APPOINT SUBSTITUTE POSTCONVICTION COUNSEL

On March 7, 2022, state postconviction counsel, registry counsel Martin J. McClain, died. Under Florida Statutes, a capital inmate is required to be represented by state postconviction counsel at all times. *State v. Kilgore*, 976 So.2d 1066, 1068 (Fla. 2007) (noting the “Legislative intent and findings” statute, § 27.7001, Fla. Stat. (2002), provides that “any person convicted and sentenced to death in this state” be provided with postconviction counsel so that “collateral legal proceedings may be commenced in a timely manner”); *see also* § 27.711(2), Fla. Stat. (2022) (providing state postconviction counsel must “represent the capital defendant throughout all postconviction capital collateral proceedings, including federal habeas corpus proceedings, in accordance with this section or until released by order of the trial court”); § 27.710(3), Fla. Stat. (2022) (registry statute providing that registry counsel “shall continue such representation under

the terms and conditions set forth in s. 27.711 until the sentence is reversed, reduced, or carried out or unless permitted to withdraw” based on a “finding of sufficient good cause”). Therefore, this Court is required to appoint substitute state postconviction counsel for Reed because he no longer has postconviction counsel due to the recent death of his former state postconviction counsel.

Capital Collateral Regional Counsel (CCRC) is the preferred state postconviction counsel under the statutory scheme. § 27.702(1), Fla. Stat. (2022) (“The capital collateral regional counsel shall represent each person convicted and sentenced to death in this state for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in the state courts, federal courts in this state, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court”); § 27.703(1), Fla. Stat. (2022) (providing, that if one CCRC office has a conflict, another CCRC office should appointed as state postconviction counsel).

The Florida Legislature literally created the three CCRC offices to represent capital defendants for that sole purpose. *Lugo v. Sec’y, Fla. Dept. of Corr.*, 750 F.3d 1198, 1202, n.2 (11th Cir. 2014) (noting that Florida’s three CCRC offices were created in 1997 and CCRC-N was recreated in 2013). Under the statutory scheme, registry counsel should only be appointed if all three offices—Northern, Middle, and Southern—have a conflict. So, Capital Collateral Regional Counsel - Northern Region (CCRC-N) should be assigned to handle this case, unless that office has a conflict and then either CCRC-M or CCRC-S should be appointed.

There are additional reasons to appoint a CCRC office before registry counsel. If registry counsel retires, or as in the case, dies, this Court must monitor the representation and appoint new counsel. But if CCRC is counsel of record, and one of two attorneys assigned to the case can no longer represent the capital defendant for any reason, the office itself simply and automatically assign new counsel without any involvement from the State or this Court being required. Capital defendants can fall through the cracks and become unrepresented if registry counsel is appointed. *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016) (arguing that the lack of registry counsel for many years violated due process and equal protection in a case where the trial court allowed registry counsel to withdraw when the case moved into federal habeas court, leaving a capital defendant without state postconviction counsel for nearly a decade and who was only appointed new registry counsel after a warrant was signed).

Moreover, a few years ago, the Florida Supreme Court increased the minimum standards for lead state postconviction counsel in capital cases. Fla. R. Crim. P. 3.112(k); *In re Amendments to Florida Rules of Judicial Admin.*; *Florida Rules of Criminal Procedure*; and *Florida Rules of Appellate Procedure-Capital Postconviction Rules*, 148 So.3d 1171, 1173 (Fla. 2014). Some registry counsel lack the required higher qualifications but CCRC's lead attorneys are death-qualified. *Sanchez-Torres v. Justice Admin. Comm'n*, 2021 WL 72196 (Fla. Jan. 8, 2021) (noting that the registry counsel representing a capital defendant was, in fact, not death-qualified). The Eleventh Circuit has noted that it was mainly

registry counsel that were responsible for missing the statute of limitations deadlines for timely filing federal habeas petitions in many Florida capital cases. *Lugo v. Sec’y, Fla. Dept. of Corr.*, 750 F.3d 1198, 1212-13 (11th Cir. 2014) (noting that the problem in Florida of death-row inmates missing the federal habeas deadline despite the provision of state collateral counsel in every case causing “concern about the quality of capital collateral representation in some Florida cases” and advocating the creation of a Capital Habeas Unit of the federal public Defender to provide “critical assistance and training to private registry counsel”); *id.* at 1221, n.6 (Martin, J., concurring) (criticizing the qualifications and performance of some of the registry attorneys in Florida who have missed deadlines in state and federal court).

Additionally, the CCRC offices have an institutional knowledge, expertise, and resources that registry counsel, who are often sole practitioners or in small partnerships, may lack including experience in warrant litigation. *Van Poyck v. State*, 2013 WL 2217495 (Fla. May 20, 2013) (SC13-851) (noting a motion to withdraw had been filed by the law firm of Quarles & Brady, which had been handling the case for over a decade, 12 days after a warrant was signed by the Governor because the firm lacked experience in warrant litigation). Even large, prestigious firms often lack the required specialized expertise to handle capital cases. Indeed, the lead case of *Maples v. Thomas*, 565 U.S. 266 (2012), where the United States Supreme Court found that the capital defendant’s attorneys has “abandoned” him were attorneys from the law firm of Sullivan & Cromwell.

Maples, 565 U.S. at 291-92 (Alito, J., concurring) (noting the firm whose lawyers represented petitioner “is one of the country’s most prestigious and expensive” and observing “the vast majority of criminal defendants would think that they had won the lottery if they were given the opportunity to be represented by attorneys from such a firm” but agreeing the firm “effectively deprived petitioner of legal representation”). CCRC attorneys, on the other hand, are prohibited by statute from practicing in any other area of the law but capital litigation. § 27.706, Fla. Stat. (2022) (providing that each “capital collateral regional counsel and all full-time assistants appointed by him or her shall serve on a full-time basis and may not engage in the private practice of law”).

For all these reasons, this Court should appoint CCRC-N as substitute state postconviction counsel to replace deceased counsel.

Accordingly, the motion should be granted and new postconviction counsel appointed.

Respectfully submitted,

ASHLEY MOODY,
ATTORNEY GENERAL OF FLORIDA

/s/ Charmaine Millsaps

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CO-COUNSEL FOR THE STATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the STATE'S MOTION TO APPOINT SUBSTITUTE POSTCONVICTION COUNSEL has been furnished via the e-portal to ROBERT FRIEDMAN, Chief of CCRC-N, 1004 DeSoto Park Drive, Tallahassee FL 32301; phone: (850) 487-0922; email: robert.friedman@ccrc-north.org this 31st day of March, 2022.

/s/ Charmaine Millsaps

Charmaine M. Millsaps
Senior Assistant Attorney General

IN THE CIRCUIT COURT OF THE
FIRST JUDICIAL CIRCUIT,
OKALOOSA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO.: 1994-1283-CFA
CAPITAL CASE

EDWARD J. ZAKRZEWSKI,

Defendant.

_____/

STATE'S MOTION TO APPOINT SUBSTITUTE POSTCONVICTION COUNSEL

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statute providing that registry counsel “shall continue such representation under the terms and conditions set forth in s. 27.711 until the sentence is reversed, reduced, or carried out or unless permitted to withdraw” based on a “finding of sufficient good cause”). Therefore, this Court is required to appoint substitute state postconviction counsel for Zakrzewski because he no longer has postconviction counsel due to the recent death of his former state postconviction counsel.

Capital Collateral Regional Counsel (CCRC) is the preferred state postconviction counsel under the statutory scheme. § 27.702(1), Fla. Stat. (2022) (“The capital collateral regional counsel shall represent each person convicted and sentenced to death in this state for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in the state courts, federal courts in this state, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court”); § 27.703(1), Fla. Stat. (2022) (providing, that if one CCRC office has a conflict, another CCRC office should appointed as state postconviction counsel). The Florida Legislature literally created the three CCRC offices for that sole purpose. *Lugo v. Sec’y, Fla. Dept. of Corr.*, 750 F.3d 1198, 1202, n.2 (11th Cir. 2014) (noting that Florida’s three CCRC offices were created in 1997 and CCRC-N was recreated in 2013). Under the statutory scheme,

registry counsel should only be appointed if all three offices — Northern, Middle, and Southern — have a conflict. So, Capital Collateral Regional Counsel - Northern Region (CCRC-N) should be assigned to handle this case, unless that office has a conflict and then either CCRC-M or CCRC-S should be appointed.

There are additional reasons to appoint a CCRC office before registry counsel. If registry counsel retires, or, as in the case, dies, this Court must monitor the representation and appoint new counsel. But if CCRC is counsel of record, and one of two attorneys assigned to the case can no longer represent the capital defendant for any reason, the office itself simply and automatically assign new counsel without any involvement from the State or this Court being required. Capital defendants can fall through the cracks and become unrepresented if registry counsel is appointed. *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016) (arguing that the lack of registry counsel for many years violated due process and equal protection in a case where the trial court allowed registry counsel to withdraw when the case moved into federal habeas court, leaving a capital defendant without state postconviction counsel for nearly a decade and who was only appointed new registry counsel after a warrant was signed).

Moreover, a few years ago, the Florida Supreme Court increased the minimum standards for lead state postconviction counsel in capital cases. Fla. R. Crim. P. 3.112(k); *In re Amendments to Florida Rules of Judicial Admin.*; *Florida*

Rules of Criminal Procedure; and Florida Rules of Appellate Procedure-Capital Postconviction Rules, 148 So.3d 1171, 1173 (Fla. 2014). Some registry counsel lack the required higher qualifications but CCRC’s lead attorneys are death-qualified. *Sanchez-Torres v. Justice Admin. Comm’n*, 2021 WL 72196 (Fla. Jan. 8, 2021) (noting that the registry counsel representing a capital defendant was, in fact, not death-qualified). The Eleventh Circuit has noted that it was mainly registry counsel that were responsible for missing the statute of limitations deadlines for timely filing federal habeas petitions in many Florida capital cases. *Lugo v. Sec’y, Fla. Dept. of Corr.*, 750 F.3d 1198, 1212-13 (11th Cir. 2014) (noting that the problem in Florida of death-row inmates missing the federal habeas deadline despite the provision of state collateral counsel in every case causing “concern about the quality of capital collateral representation in some Florida cases” and advocating the creation of a Capital Habeas Unit of the federal public Defender to provide “critical assistance and training to private registry counsel”); *id.* at 1221, n.6 (Martin, J., concurring) (criticizing the qualifications and performance of some of the registry attorneys in Florida who have missed deadlines in state and federal court).

Additionally, the CCRC offices have an institutional knowledge, expertise, and resources that registry counsel, who are often sole practitioners or in small partnerships, may lack including experience in warrant litigation. Even large,

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/s/ Charmaine Millsaps
Charmaine M. Millsaps
Senior Assistant Attorney General

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT,
DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO.: 1993-1659-CFA
CAPITAL CASE

THOMAS JAMES MOORE,

Defendant.

_____/

STATE'S MOTION TO APPOINT SUBSTITUTE POSTCONVICTION COUNSEL

On March 7, 2022, state postconviction counsel, registry counsel Martin J. McClain, died. Under Florida Statutes, a capital inmate is required to be represented by state postconviction counsel at all times. *State v. Kilgore*, 976 So.2d 1066, 1068 (Fla. 2007) (noting the “Legislative intent and findings” statute, § 27.7001, Fla. Stat. (2002), provides that “any person convicted and sentenced to death in this state” be provided with postconviction counsel so that “collateral legal proceedings may be commenced in a timely manner”); *see also* § 27.711(2), Fla. Stat. (2022) (providing state postconviction counsel must “represent the capital defendant throughout all postconviction capital collateral proceedings, including federal habeas corpus proceedings, in accordance with this section or until released by order of the trial court”); § 27.710(3), Fla. Stat. (2022) (registry statute providing that registry counsel “shall continue such representation under

the terms and conditions set forth in s. 27.711 until the sentence is reversed, reduced, or carried out or unless permitted to withdraw” based on a “finding of sufficient good cause”). Therefore, this Court is required to appoint substitute state postconviction counsel for Moore because he no longer has postconviction counsel due to the recent death of his former state postconviction counsel.

Capital Collateral Regional Counsel (CCRC) is the preferred state postconviction counsel under the statutory scheme. § 27.702(1), Fla. Stat. (2022) (“The capital collateral regional counsel shall represent each person convicted and sentenced to death in this state for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in the state courts, federal courts in this state, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court”); § 27.703(1), Fla. Stat. (2022) (providing, that if one CCRC office has a conflict, another CCRC office should appointed as state postconviction counsel).

The Florida Legislature literally created the three CCRC offices for that sole purpose. *Lugo v. Sec’y, Fla. Dept. of Corr.*, 750 F.3d 1198, 1202, n.2 (11th Cir. 2014) (noting that Florida’s three CCRC offices were created in 1997 and CCRC-N was recreated in 2013). Under the statutory scheme, registry counsel should only be appointed if all three offices — Northern, Middle, and Southern — have a conflict. So, Capital Collateral Regional Counsel - Northern Region (CCRC-N) should be assigned to handle this case, unless that office has a conflict and then either CCRC-M or CCRC-S should be appointed. There are additional

reasons to appoint a CCRC office before registry counsel. If registry counsel retires, or, as in the case, dies, this Court must monitor the representation and appoint new counsel. But if CCRC is counsel of record, and one of two attorneys assigned to the case can no longer represent the capital defendant for any reason, the office itself simply and automatically assign new counsel without any involvement from the State or this Court being required. Capital defendants can fall through the cracks and become unrepresented if registry counsel is appointed. *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016) (arguing that the lack of registry counsel for many years violated due process and equal protection in a case where the trial court allowed registry counsel to withdraw when the case moved into federal habeas court, leaving a capital defendant without state postconviction counsel for nearly a decade and who was only appointed new registry counsel after a warrant was signed).

Moreover, a few years ago, the Florida Supreme Court increased the minimum standards for lead state postconviction counsel in capital cases. Fla. R. Crim. P. 3.112(k); *In re Amendments to Florida Rules of Judicial Admin.*; *Florida Rules of Criminal Procedure*; and *Florida Rules of Appellate Procedure-Capital Postconviction Rules*, 148 So.3d 1171, 1173 (Fla. 2014). Some registry counsel lack the required higher qualifications but CCRC's lead attorneys are death-qualified. *Sanchez-Torres v. Justice Admin. Comm'n*, 2021 WL 72196 (Fla. Jan. 8, 2021) (noting that the registry counsel representing a capital defendant was, in fact, not death-qualified). The Eleventh Circuit has noted that it was mainly

registry counsel that were responsible for missing the statute of limitations deadlines for timely filing federal habeas petitions in many Florida capital cases. *Lugo v. Sec’y, Fla. Dept. of Corr.*, 750 F.3d 1198, 1212-13 (11th Cir. 2014) (noting that the problem in Florida of death-row inmates missing the federal habeas deadline despite the provision of state collateral counsel in every case causing “concern about the quality of capital collateral representation in some Florida cases” and advocating the creation of a Capital Habeas Unit of the federal public Defender to provide “critical assistance and training to private registry counsel”); *id.* at 1221, n.6 (Martin, J., concurring) (criticizing the qualifications and performance of some of the registry attorneys in Florida who have missed deadlines in state and federal court).

Additionally, the CCRC offices have an institutional knowledge, expertise, and resources that registry counsel, who are often sole practitioners or in small partnerships, may lack including experience in warrant litigation. Even large, prestigious firms often lack the required specialized expertise to handle capital cases. *Van Poyck v. State*, 2013 WL 2217495 (Fla. May 20, 2013) (SC13-851) (noting a motion to withdraw had been filed by the law firm of Quarles & Brady, which had been handling the case for over a decade, 12 days after a warrant was signed by the Governor because the firm lacked experience in warrant litigation). Indeed, the lead case of *Maples v. Thomas*, 565 U.S. 266 (2012), where the United States Supreme Court found that the capital defendant’s attorneys had “abandoned” him were attorneys from the law firm of Sullivan & Cromwell.

Maples, 565 U.S. at 291-92 (Alito, J., concurring) (noting the firm whose lawyers represented petitioner “is one of the country’s most prestigious and expensive” and observing “the vast majority of criminal defendants would think that they had won the lottery if they were given the opportunity to be represented by attorneys from such a firm” but agreeing the firm “effectively deprived petitioner of legal representation”). CCRC attorneys, on the other hand, are prohibited by statute from practicing in any other area of the law but capital litigation. § 27.706, Fla. Stat. (2022) (providing that each “capital collateral regional counsel and all full-time assistants appointed by him or her shall serve on a full-time basis and may not engage in the private practice of law”).

For all these reasons, this Court should appoint CCRC-N as substitute state postconviction counsel to replace deceased counsel.

Accordingly, the motion should be granted and new postconviction counsel appointed.

Respectfully submitted,

ASHLEY MOODY,
ATTORNEY GENERAL OF FLORIDA

/s/ Charmaine Millsaps

Charmaine M. Millsaps
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CO-COUNSEL FOR THE STATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the STATE'S MOTION TO APPOINT SUBSTITUTE POSTCONVICTION COUNSEL has been furnished via the e-portal to MARTIN J. McCLAIN, 141 NE 30th St. Wilton Manors, FL 33334-1064; phone: (305) 984-8344; email: martymcclain@comcast.net and ROBERT FRIEDMAN, Chief of CCRC-N, 1004 DeSoto Park Drive, Tallahassee FL 32301; phone: (850) 487-0922; email: robert.friedman@ccrc-north.org this 1st day of April, 2022.

/s/ Charmaine Millsaps

Charmaine M. Millsaps
Senior Assistant Attorney General

No. ____

IN THE SUPREME COURT OF THE UNITED STATES

BRYAN F. JENNINGS,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
EXECUTION SCHEDULED FOR
THURSDAY, NOVEMBER 13, 2025, at 6:00P.M.**

APPENDIX D

Order Appointing Capital Collateral Regional Counsel, Pinellas County Circuit Court, Sixth Judicial Circuit, Florida, State of Florida v. Milo Andrew Rose, Case No. CRC82-8683 (filed May 19, 2022).

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY
CRIMINAL DIVISION**

STATE OF FLORIDA,

**CASE NO.: CRC82-08683CFANO
UCN: 521982CF008683XXXXNO**

v.

DIVISION: J

MILO ANDREW ROSE,

Person ID: 201924, Defendant. /

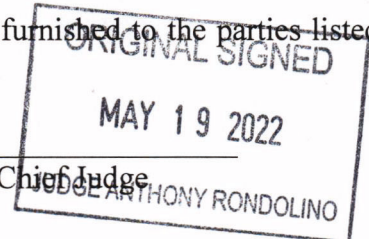
ORDER APPOINTING CAPITAL COLLATERAL REGIONAL COUNSEL

THIS CAUSE came before the Court on the Court's own motion. Defendant is under a sentence of death in the above-styled case. On April 7, 2017, the Court held a hearing pursuant to Florida Rule of Criminal Procedure 3.851(i) where Defendant voluntarily waived his right to postconviction counsel and all postconviction claims. Rule 3.851(i) has since been amended to require that the Court appoint counsel for all cases where counsel was previously discharged pursuant to the rule. In accordance with section 27.702, Florida Statutes and Florida Rule of Criminal Procedure 3.851,

IT IS ORDERED that Capital Collateral Regional Counsel – Middle Region is hereby appointed to represent Defendant in the above-styled case.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this ____ day of May, 2022. A true and correct copy of this order has been furnished to the parties listed below.

Anthony Rondolino, Chief Judge



cc: The Honorable William H. Burgess III
Office of the State Attorney

Office of the Attorney General
Concourse Center 4, Suite 200
3507 East Frontage Road
Tampa, FL 33607-7013

Capital Collateral Regional Counsel – Middle Region
12973 N. Telecom Parkway
Temple Terrace, FL 33637

Milo Rose (DC# 090411)
Union Correctional Institution
7819 N.W. 228th Street
Raiford, FL 32026-4000

No. ____

IN THE SUPREME COURT OF THE UNITED STATES

BRYAN F. JENNINGS,
Petitioner,
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STATE OF FLORIDA,
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THURSDAY, NOVEMBER 13, 2025, at 6:00P.M.**

APPENDIX E

Emergency Motion to Appoint CCRC-M as Postconviction Counsel, Circuit Court of Brevard County, Eighteenth Judicial Circuit, Florida; *State of Florida v. Bryan Frederick Jennings*, Case No. 05-1979-CF-773 (filed October 10, 2025).

**IN THE EIGHTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR BREVARD COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

BRYAN F. JENNINGS,

Defendant.

Case No. 1979-CF-773
ACTIVE DEATH WARRANT
Execution scheduled for
November 13, 2025 @ 6:00 pm

EMERGENCY FILING

**EMERGENCY MOTION TO APPOINT
CCRC-M AS POSTCONVICTION COUNSEL**

COMES NOW, the State of Florida, by and through the undersigned counsel, and moves this Court to appoint Capital Collateral Regional Counsel — Middle Region (CCRC-M) as postconviction counsel for Defendant Bryan F. Jennings.

Procedural Background

Following reversals of his 1980 and 1982 convictions and death sentences, Defendant, Bryan F. Jennings, was tried, convicted, and sentenced to death in 1986 for first-degree murder, kidnapping with intent to commit sexual battery, sexual battery, and burglary in connection with the 1979 abduction and death of six-year-old

Rebecca Kunash. *See Jennings v. State*, 512 So. 2d 169 (Fla. 1987), *cert. denied*, 484 U.S. 1079 (1988).

After the Florida Supreme Court affirmed his convictions and death sentence, the Office of the Capital Collateral Representative (CCR) began their representation of Jennings for his postconviction proceedings. *See Jennings v. State*, 583 So. 2d 316 (Fla. 1991) (noting that Larry Helm Spalding, Martin J. McClain, and Jerome H. Nickerson of CCR represented Jennings). Martin McClain continued to represent Jennings throughout his subsequent state collateral challenges, even after McClain left CCR and became registry counsel. *See Jennings v. State*, 782 So. 2d 853 (Fla. 2001) (affirming the denial of Jennings' postconviction motion); *Jennings v. State*, 36 So. 3d 84 (Fla. 2010) (affirming the denial of Jennings' first successive postconviction motion); *Jennings v. State*, 91 So. 3d 132 (Fla. 2012) (affirming denial of second successive postconviction motion); *Jennings v. State*, 192 So. 3d 38 (Fla. 2015) (affirming denial of third successive postconviction motion); *Jennings v. State*, 265 So. 3d 460 (Fla. 2018) (affirming denial of fourth successive postconviction motion), *cert. denied*, 139 S. Ct. 2019 (2019).

In addition to representing Jennings throughout his state collateral challenges, Martin McClain also represented Jennings in federal court when he sought habeas corpus relief. *See Jennings v. Crosby*, 392 F. Supp. 2d 1312 (N.D. Fla. 2005) (denying Jennings' petition for writ of habeas corpus); *Jennings v. McDonough*, 490 F.3d 1230 (11th Cir. 2007) (affirming the denial of Jennings' habeas petition), *cert denied*, 552 U.S. 1298 (2008).

On September 12, 2015, the federal district court appointed Terri Backhus of the Capital Habeas Unit (CHU), Federal Public Defender's Office for Jennings. The district court's order indicated that Martin McClain would also remain as co-counsel. On December 28, 2018, Martin McClain and CHU Terri Backhus filed a second, unauthorized petition for writ of habeas corpus in federal court. On March 6, 2020, the district court dismissed the petition for lack of jurisdiction. *Jennings v. Inch*, Case No. 5:18-cv-281 (N.D. Fla. Mar. 6, 2020). The Eleventh Circuit Court of Appeals affirmed the dismissal of Jennings' second federal habeas petition. *Jennings v. Sec'y, Fla. Dep't of Corr.*, 108 F.4th 1299, 1302 (11th Cir. 2024), *cert. denied*, 145 S. Ct. 1472 (2025).

In short, Jennings has continually been represented by counsel, either Martin McClain or CHU, while pursuing his collateral remedies; however, Martin McClain passed away on March 7, 2022. Jennings, therefore, requires *state* collateral counsel.

Moreover, on October 10, 2025, Governor Ron DeSantis signed Jennings' death warrant, and his execution is scheduled to occur on Thursday, November 13, 2025, at 6:00 p.m. Thus, the appointment of state collateral counsel for Jennings is time-sensitive.

Argument

The State submits that this Court should promptly appoint the Office of Capital Collateral Regional Counsel – Middle District for Jennings. Florida law requires capital defendants to be represented by state postconviction counsel, and it directs the Office of Capital Collateral Regional Counsel to represent “each person convicted and sentenced to death” for the purpose of raising collateral actions. § 27.702(1), Fla. Stat. (2025). That representation shall continue “throughout all postconviction capital collateral proceedings.” § 27.711(2), Fla. Stat. (2025).

Notably, Capital Collateral Regional Counsel – Middle District is, for this region, the legislatively preferred choice. *See* § 27.702(2),

Fla. Stat. (2025) (requiring that capital collateral regional counsel represent persons convicted and sentenced to death in collateral postconviction proceedings “unless the court appoints or permits other counsel to appear as counsel of record”); § 27.710, Fla. Stat. (2025) (discussing registry counsel and specifically noting the registry counsel provisions do “not preclude the court from reassigning a case to a capital collateral regional counsel following discontinuation of representation if a conflict of interest no longer exists with respect to the case”); *see also* § 27.703(1), Fla. Stat. (2025) (providing, that if one CCRC office has a conflict, another CCRC office should be appointed as state postconviction counsel).

Because Jennings currently does not have state postconviction counsel, the State respectfully requests that this Court appoint the Office of Capital Collateral Regional Counsel – Middle District to represent Jennings.¹

¹ The State notes that a similar situation occurred in another death-warrant case: *State v. Grim*, No. 1998-CF-510 (Fla. 1st Jud. Cir. Ct.). The First Circuit appointed CCRC-N to represent Grim because his state-appointed registry counsel was no longer practicing law at the time that Grim’s death warrant was signed. Grim’s execution is scheduled for October 28, 2025.

Respectfully submitted,

JAMES UTHMEIER
ATTORNEY GENERAL OF FLORIDA

/s/ Jonathan S. Tannen
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CO-COUNSEL FOR STATE OF FLORIDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of October 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 Melanie Chase, Chief Circuit Judge, Eighteenth Judicial Circuit, Brevard County Courthouse, 2825 Judge Fran Jamieson Way, Viera, Florida 32940, **jennifer.biron@flcourts18.org**; Will Scheiner, State Attorney, Eighteenth Judicial Circuit, 2725 Judge Fran Jamieson Way, Viera, Florida 32940, **wscheiner@sa18.org**; Eric C. Pinkard, Chief, Assistant CCRC-M, Office of Capital Collateral Regional Counsel-Middle, 12973 North Telecom Parkway, Temple Terrace, Florida 33637, **pinkard@ccmr.state.fl.us**, **support@ccmr.state.fl.us**; Linda McDermott, Chief Federal Public Defender, Office of the Federal Public Defender – Northern District, 227 N. Bronough Street, Suite 4200, Tallahassee, Florida 32301, **linda_mcdermott@fd.org**; Kristen Lonergan, Executive Senior Attorney, Florida Department of Corrections, 501 South Calhoun Street, Tallahassee, Florida 32399, **kristen.lonergan@fdc.myflorida.com**, **christina.porrello@fdc.myflorida.com**, **bill.gwaltney@fdc.myflorida.com**, **courtfilings@fdc.myflorida.com**; and the Florida Supreme Court, 500 South Duval Street, Tallahassee, Florida 32399, **warrant@flcourts.org**, **canovak@flcourts.org**.

/s/ Jonathan S. Tannen
Co-Counsel for State of Florida