No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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FRANK ATHEN WALLS,

***Petitioner*,**

vs.

STATE OF FLORIDA,

Respondent.

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

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, DECEMBER 18, 2025, AT 6:00 P.M.

JULISSA R. FONTÁN*
FLORIDA BAR NUMBER 0032744
LAW OFFICE OF THE CAPITAL COLLATERAL
REGIONAL COUNSEL - MIDDLE REGION
12973 N. TELECOM PARKWAY
TEMPLE TERRACE, FL 33637
TELEPHONE: (813) 558-1600
COUNSEL FOR THE PETITIONER
****COUNSEL OF RECORD***

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APPENDIX A

The opinion of the Florida Supreme Court *Walls v. State*, SC25-1915 & SC25-1917

Supreme Court of Florida

No. SC2025-1915

FRANK A. WALLS,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

No. SC2025-1917

FRANK A. WALLS,
Petitioner,

vs.

SECRETARY, DEPARTMENT OF CORRECTIONS,
Respondent.

December 11, 2025

PER CURIAM.

Frank A. Walls is a prisoner under sentence of death for whom a warrant has been signed and an execution set for December 18, 2025. Walls appeals the denial of his successive motion for

postconviction relief, files a petition for a writ of habeas corpus, and seeks a stay of his execution. We have jurisdiction. *See* art. V, § 3(b)(1), (9), Fla. Const. For the reasons that follow, we affirm the denial of postconviction relief. We also deny Walls' habeas petition and his motion for a stay of execution.

I

In 1987, Edward Alger and Ann Peterson were living together in Okaloosa County, Florida. *Walls v. State* (*Walls I*), 580 So. 2d 131, 132 (Fla. 1991). Alger worked at a nearby air force base, but he did not report for duty on July 22, 1987. *Id.* Alger's absence caused Sergeant Calloway, Alger's superior officer, to go to Alger and Peterson's home. *Id.* Upon arriving, Calloway found Peterson's body in the front bedroom. *Id.* Calloway immediately left the home and called the police. *Id.*

Police investigators arrived and found Peterson lying on the floor of the front bedroom with two gunshots to her head. *Id.* Police found Alger's body on the floor of the second bedroom. *Id.* A curtain cord bound Alger's feet. *Id.* He had been shot three times, and his throat was cut. *Id.*

Investigators obtained a search warrant for the mobile home

where Walls lived with his roommate. *Id.* Police seized several items connected to the crime scene. *Id.* In a post-arrest statement to investigators, Walls detailed his involvement in the murders. *Id.* Walls confessed to investigators that he entered the mobile home of the victims to commit a burglary, knocked over a fan intentionally to wake them up, forced Peterson to tie up Alger, and then restrained Peterson himself. *Walls v. State* (*Walls II*), 641 So. 2d 381, 384 (Fla. 1994). Alger got loose and attacked Walls, which led to Walls cutting Alger's throat. *Id.* at 384-85. Walls then shot Alger several times in the head. *Id.* at 385. Peterson was crying and asked whether Alger was all right. *Id.* Walls told her no, blamed the murder on Alger attacking him, and started wrestling with Peterson and taking her clothes off before shooting her in the back of the head. *Id.* Walls explained that after the first shot, Peterson was "doing all kinds of screaming." *Id.* He then forced her face into a pillow and shot her a second time in the head. *Id.*

The jury convicted Walls of felony murder for Alger's death and of premeditated and felony murder for Peterson's death. *Walls I*, 580 So. 2d at 132. Following the jury's recommendation, the trial

court sentenced Walls to death for Peterson's murder.[1] *Id.* But on appeal this Court reversed Walls' judgment and sentence because of a due process violation. *Id.* at 132-33.

Upon retrial, "[t]he State's guilt-phase case consisted primarily of the physical evidence, testimony by investigating officers, testimony by a pathologist, and Walls' taped confession, which was played for the jury." *Walls II*, 641 So. 2d at 385. Walls presented no defense in the guilt phase and the jury found him guilty as charged. *Id.*

During the penalty phase, the defense detailed Walls' history of behavioral and emotional problems, as well as later treatment. *Id.* The defense put Walls' IQ at issue and asserted that Walls was impaired during the murder. *Id.* at 385-86. Still, the jury unanimously recommended the death penalty for murdering Peterson. *Id.* at 386. The trial court again sentenced[2] Walls to

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1. The jury recommended a life sentence for murdering Alger. *Id.* at 132.

2. The judge also sentenced Walls to "five years for burglary of a structure, twenty years for the armed burglary of a dwelling, twenty years each for two counts of kidnapping, and two months for petty theft. Walls again received a life sentence for the murder of Alger." *Id.*

death after finding the nine mitigators[3] were insufficient to outweigh the six aggravators.[4] *Id.* And the trial court specifically rejected the existence of any statutory mental health mitigators. *Id.*

On Walls' second direct appeal, he raised nine issues. *Walls v. State* (*Walls III*), 926 So. 2d 1156, 1162-63 (Fla. 2006).[5] This Court

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3. (1) Walls had no significant history of prior criminal activity; (2) Walls' age at the time of the crime (nineteen); (3) Walls had been classified as emotionally handicapped; (4) Walls had apparent brain dysfunction and brain damage; (5) Walls had a low IQ so that he functioned intellectually at about the age of twelve or thirteen; (6) Walls confessed and cooperated with law enforcement officers; (7) Walls had a loving relationship with his parents and a disabled sibling; (8) Walls was a good worker when employed; and (9) Walls had exhibited kindness toward weak, crippled, or helpless persons and animals. *Id.*

4. The jury found the following aggravators: (1) prior violent felony conviction; (2) murder committed during burglary or kidnapping; (3) murder committed to avoid lawful arrest; (4) murder committed for pecuniary gain; (5) the murder was heinous, atrocious, or cruel (HAC); and (6) the murder was cold, calculated, and premeditated (CCP). *Id.*

5. Walls raised the following issues: (1) the trial court should have excused a potential juror for cause or granted the defense an additional peremptory challenge to excuse the juror; (2) the State improperly exercised peremptory challenges to dismiss two black jurors based on their race; (3) the jurors were kept in session for overtaxing hours during trial; (4) the trial court gave the jury erroneous penalty phase instructions on the mitigating factors of mental disturbance, impairment, or duress and on the aggravating factors of HAC and CCP; (5) the trial court refused to provide the jury with a detailed interpretation of emotional disturbance as a

rejected all of Walls' claims and affirmed his judgment and sentence of death in July 1994. *Id.* at 1163 (citing *Walls II*, 641 So. 2d at 391). The United States Supreme Court then denied Walls' petition for certiorari. *See Walls v. Florida*, 513 U.S. 1130 (1995).

Walls filed his initial motion to vacate his judgment and sentences in 1997, and he amended in 1997 and 2001. *Walls III*, 926 So. 2d at 1163. Walls raised nine claims in his postconviction motion.[6] *Id.* at 1163 n.1. The circuit court denied all of Walls' claims in his postconviction motion. *Id.* at 1163-64.

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mitigating factor; (6) the trial court made errors in its findings on the aggravating factors because HAC and CCP were not proven beyond a reasonable doubt, the evidence did not support the conclusion that the murder occurred during a kidnapping, the commission during a burglary aggravating factor impermissibly doubled the pecuniary gain factor, and the avoid arrest aggravator was improper; (7) the trial court required Walls to prove the mitigating factors by a preponderance of the evidence; (8) the trial court improperly rejected expert testimony that Walls was suffering from extreme emotional disturbance and substantial impairment; and (9) the death sentence was not proportionate in his case. *Walls II*, 926 So. 2d at 1162-63.

6. Walls raised the following nine claims in his postconviction motion: (1) he was denied a fair guilt phase proceeding due to ineffective assistance of counsel, prosecutorial misconduct, and trial court error; (2) counsel conceded guilt and eligibility for the death penalty without Walls' consent; (3) he was denied a fair penalty phase proceeding due to ineffective assistance of counsel, prosecutorial misconduct, and trial court error; (4) counsel failed to

Walls appealed the denial of his motion, raising two claims encompassing several subclaims: the circuit court erred in (1) denying Walls' ineffective assistance of counsel claims for counsel's

> failure to exclude and object to the admission of evidence of a possible sexual battery, failure to object to a lack of remorse argument by the prosecutor during closing argument, concession of guilt to the facts of felony murder and to the aggravating factor of commission during a burglary, and failure to object to a number of other prosecutorial comments and arguments[;]

and (2) denying Walls an evidentiary hearing on his other five ineffective assistance of counsel claims[7] and his claim that his

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obtain an adequate mental health evaluation in violation of *Ake v. Oklahoma*, 470 U.S. 68 (1985); (5) his death sentence is unconstitutional because he is mentally retarded; (6) the trial court did not independently weigh the aggravating and mitigating circumstances; (7) the trial court considered inadmissible victim impact evidence; (8) the jury was improperly instructed on the aggravating factors; and (9) the cumulative effect of these procedural and substantive errors deprived him of a fair trial. *Walls III*, 926 So. 2d at 1164.

7. These claims were that counsel did not present: (1) expert testimony on the effects of Ritalin, (2) a pharmacologist's testimony about the effects of Walls' drug and alcohol use, (3) an adequate mental health evaluation including a PET scan to show brain damage, and (4) lay testimony on mitigation. *Walls III*, 926 So. 2d at 1169-70. Claim (5) was that counsel should have filed a motion asserting that the death penalty was barred by double jeopardy

death sentence is improper because he is intellectually disabled. *Id.* at 1164-65, 1169-70. We affirmed the denial of relief as to all claims but Walls' intellectual disability claim. *Id.* at 1181. Because we adopted Florida Rule of Criminal Procedure 3.203[8] after the circuit court's ruling, we held "Walls may still file a rule 3.203 motion for a determination of mental retardation as a bar to execution in the trial court and is entitled to an evidentiary hearing on that motion." *Walls III*, 926 So. 2d at 1174.[9]

Walls then sought federal habeas relief in the United States District Court for the Northern District of Florida under 28 U.S.C. § 2254. *Walls v. McNeil*, No. 3:06CV237/MCR, 2009 WL 3187066, at *1 (N.D. Fla. Sept. 30, 2009), *aff'd sub nom.*, *Walls v. Buss*, 658

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because retrial was caused by the prosecutor's misconduct. *Id.* at 1169-70.

8. This rule allowed motions to determine intellectual disability even when a defendant's direct appeal proceedings were final. *Walls v. State* (*Walls V*), 213 So. 3d 340, 344 n.3 (Fla. 2016).

9. We also rejected all of Walls' habeas claims: (1) Florida's capital sentencing scheme is unconstitutional under *Ring v. Arizona*, 536 U.S. 584 (2002); (2) his death sentence is invalid under *Ring* because the aggravating circumstances were not charged in his indictment; and (3) appellate counsel was ineffective for failing to raise several claims of error in Walls' direct appeal to this Court. *Walls III*, 926 So. 2d at 1174-75.

F.3d 1274 (11th Cir. 2011). The federal district court denied Walls' petition. *Id.* The court granted in part Walls' application for a certificate of appealability, and the Eleventh Circuit Court of Appeals affirmed. *Walls v. McNeil*, No. 3:06CV237/MCR, 2009 WL 3822951 (N.D. Fla. Nov. 16, 2009); *Walls*, 658 F.3d at 1282. The United States Supreme Court thereafter denied Walls' petition for writ of certiorari. *Walls v. Tucker*, 566 U.S. 976 (2012). Walls then filed an application with the Eleventh Circuit seeking an order authorizing the district court to consider a second or successive petition for a writ of habeas corpus, but the Eleventh Circuit denied the application. *In re Walls*, No. 23-10982-P, 2023 WL 3745103, at *1, *6 (11th Cir. Apr. 13, 2023).

Walls filed his first successive postconviction motion in 2006 pursuant to rules 3.203 and 3.851 of the Florida Rules of Criminal Procedure. *Walls V*, 213 So. 3d at 344. Walls only raised an intellectual disability issue, and the circuit court denied his motion after an evidentiary hearing. *Id.* We affirmed because no evidence supported his intellectual disability claim. *Walls v. State* (*Walls IV*), 3 So. 3d 1248 (Fla. 2008) (table).

Walls filed his second successive postconviction motion under rules 3.851 and 3.852 of the Florida Rules of Criminal Procedure on May 26, 2015. *Walls V*, 213 So. 3d at 344. He amended his motion a day later. *Id.* Walls argued that the application of *Atkins v. Virginia*, 536 U.S. 304 (2002), and *Hall v. Florida*, 572 U.S. 701 (2014), precluded his death sentence because of his IQ scores. *Walls V*, 213 So. 3d at 344. We held that *Hall* applied retroactively to Walls. *Id.* at 346-47. We also concluded that Walls did not receive a proper hearing on his alleged intellectual disability, so we remanded for a new evidentiary hearing. *Id.* at 347. But, between Walls' remand and his ensuing appeal, we determined that *Hall* was not retroactive. *See Phillips v. State*, 299 So. 3d 1013, 1023 (Fla. 2020).[10] The circuit court then held an evidentiary hearing on Walls' intellectual disability claim and relied on *Phillips* to conclude that *Hall* could not provide a basis for relief. *Walls v. State* (*Walls*

10. "We cannot escape the conclusion that this Court in *Walls* clearly erred in concluding that *Hall* applies retroactively. We say that based on our review of *Hall*, our state's judicial precedents regarding retroactivity, and the decisions of federal habeas courts concluding that *Hall* does not apply retroactively." *Phillips*, 299 So. 3d at 1023.

VII), 361 So. 3d 231, 233 (Fla. 2023). Second, the circuit court found that Walls did not prove that he was intellectually disabled under section 921.137, Florida Statutes (2021). *Walls VII*, 361 So. 3d at 233. We affirmed the denial of Walls' second successive postconviction motion because there was no new intellectual disability standard applicable to him. *Id.* at 233-24. The United States Supreme Court denied Walls' request for a writ of certiorari. *Walls v. Florida*, 144 S. Ct. 174 (2023).

Walls filed his third successive motion for postconviction relief and sought relief following *Hurst v. Florida*, 577 U.S. 92 (2016). *Walls v. State* (*Walls VI*), 238 So. 3d 96, 97 (Fla. 2018). We denied relief because *Hurst* did not apply retroactively to Walls' sentence. *Id.* at 97. The United States Supreme Court then denied Walls' petition for writ of certiorari. *Walls v. Florida*, 586 U.S. 864 (2018).

On November 18, 2025, Governor DeSantis signed a death warrant for Walls' execution. The execution is set for Thursday, December 18, 2025, at 6:00 p.m.

Timely under this Court's scheduling order, Walls filed his successive motion for postconviction relief at issue here raising three issues: (1) his death sentence is unconstitutional due to his

intellectual disability; (2) his execution is prohibited by the Eighth Amendment because he was nineteen years old at the time of the offense; and (3) the thirty-seven-year delay in carrying out his execution violates the Eighth Amendment because it removes any penological justifications for the death penalty. He also moved for stay of execution.

The circuit court held a *Huff*[11] hearing on December 1, 2025, to decide whether Walls' motion required an evidentiary hearing. That same day, the court denied Walls' request for an evidentiary hearing. On December 3, 2025, the circuit court entered its order summarily denying Walls' successive motion for postconviction relief and denying his motion for stay. Walls now timely appeals the circuit court's order denying his successive motion for postconviction relief. He also seeks habeas relief and a stay of execution.

II

"Summary denial of a successive postconviction motion is appropriate '[i]f the motion, files, and records in the case

11. *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

conclusively show that the movant is entitled to no relief.' " *Bogle v. State*, 322 So. 3d 44, 46 (Fla. 2021) (alteration in original) (quoting Fla. R. Crim. P. 3.851(f)(5)(B)); *see also* Fla. R. Crim. P. 3.851(h)(6). In reviewing a circuit court's summary denial, "this Court must accept the defendant's allegations as true to the extent that they are not conclusively refuted by the record." *Tompkins v. State*, 994 So. 2d 1072, 1081 (Fla. 2008) (citing *Rolling v. State*, 944 So. 2d 176, 179 (Fla. 2006)). Still, "[t]he defendant bears the burden to establish a prima facie case based on a legally valid claim; mere conclusory allegations are insufficient." *Franqui v. State*, 59 So. 3d 82, 96 (Fla. 2011) (citing *Freeman v. State*, 761 So. 2d 1055, 1061 (Fla. 2000)). A circuit court's decision whether to grant an evidentiary hearing on a rule 3.851 motion "is tantamount to a pure question of law, subject to de novo review." *Marek v. State*, 8 So. 3d 1123, 1127 (Fla. 2009) (citing *State v. Coney*, 845 So. 2d 120, 137 (Fla. 2003)).

Also relevant here, postconviction claims in capital cases must generally be filed within one year after the judgment and sentence become final. Fla. R. Crim. P. 3.851(d)(1). With certain exceptions, rule 3.851 prohibits both untimely and repetitive claims. Fla. R.

Crim. P. 3.851(e)(2); *see also Hendrix v. State*, 136 So. 3d 1122, 1125 (Fla. 2014) ("Claims raised and rejected in prior postconviction proceedings are procedurally barred from being relitigated in a successive motion." (citing *Van Poyck v. State*, 116 So. 3d 347, 362 (Fla. 2013))).

A

In his first argument on appeal, Walls challenges the postconviction court's denial of his intellectual disability claim, arguing his death sentence is unconstitutional. As the postconviction court determined though, Walls has already raised and been denied relief on this claim. *See Walls VII*, 361 So. 3d at 233 (holding that *Hall* does not apply to Walls' case because *Phillips*, 299 So. 3d at 1024, found *Hall* to not be retroactive). As a result, the claim is procedurally barred. *See* Fla. R. Crim. P. 3.851; *see also Barwick v. State*, 361 So. 3d 785, 793 (Fla. 2023) ("The circuit court was correct in denying this claim as procedurally barred because versions of it were raised in prior proceedings."); *Hendrix*, 136 So. 3d at 1125 ("Claims raised and rejected in prior postconviction proceedings are procedurally barred from being relitigated in a successive motion." (citing *Van Poyck*, 116 So. 3d at

362)). And although Walls argues that procedural bars should not apply to intellectual disability claims, we reject that argument, as we have in the past. *See Pittman v. State*, 417 So. 3d 287, 292 (Fla.) ("We equally reject Pittman's argument that procedural bars should not apply to intellectual disability claims. . . . [W]e have regularly applied procedural bars to exemption-from-execution claims."), *cert. denied*, No. 25-5605, 2025 WL 2649015 (U.S. Sept. 16, 2025); *Dillbeck v. State*, 357 So. 3d 94, 100 (Fla. 2023); *Carroll v. State*, 114 So. 3d 883, 886 (Fla. 2013).

Even were the claim not barred, it fails on the merits. Walls' argument on this point depends on retroactive application of *Hall*. But *Phillips* forecloses application of *Hall* to Walls, and Walls has not given us reason to reconsider that holding. Likewise, this Court's decision to adhere to *Phillips* does not result in an arbitrary and capricious application of the death penalty. We recently rejected a similar constitutional challenge and maintain that course here. *See Pittman*, 417 So. 3d at 293 (holding that this Court's adherence to *Phillips*, which correctly applies our established retroactivity test, does not alter our conclusion that the death penalty scheme is constitutionally sound).

B

Next, Walls argues that the postconviction court erred in denying his second claim in which he argued that he is categorically exempt from execution because he was nineteen when he committed his capital offense. Walls asserts that advancements in scientific research show individuals between the ages of eighteen and twenty-two are, developmentally, no different from juveniles under the age of eighteen. For this reason, he argues, the holding in *Roper v. Simmons*, 543 U.S. 551 (2005), should be expanded to include individuals who were under the age of twenty-one at the time their capital offenses were committed.

1

As the postconviction court correctly determined, this claim is procedurally barred. Walls raises this issue outside of the one-year time limit under rule 3.851 and he has not shown any of the exceptions to the time bar apply. Fla. R. Crim. P. 3.851(d). Walls marshals what he classified as new scientific evidence to support his claim, but we have previously rejected arguments that similar evidence constitutes newly discovered evidence sufficient to overcome procedural bars. *See, e.g.*, *Sliney v. State*, 362 So. 3d

186, 188-89 (Fla. 2023) (rejecting argument that a new consensus among experts based on the 2021 version of the Intellectual Disability manual issued by the American Association on Intellectual and Developmental Disabilities constituted newly discovered evidence); *Barwick*, 361 So. 3d at 793 (citing *Foster v. State*, 258 So. 3d 1248, 1253 (Fla. 2018)); *see also Gudinas v. State*, 412 So. 3d 701, 711 (Fla.) ("literature, research, studies, reports, and cases discussing maturity, age, and the fact that the brain is not fully developed or matured by the age of eighteen or twenty or even twenty-five have been well known in the public domain for decades, and even before *Roper* was decided"), *cert. denied*, 145 S. Ct. 2833 (2025).

Walls' attempt to distinguish the evidence he submits from the precedent that precedes him fails. For example, Walls argues that Dr. Steinberg's declaration, dated November 18, 2025, reflects an expert opinion on a gradually emerging scientific understanding and is therefore sufficient to overcome procedural bars. But the Steinberg declaration is like the evidence we rejected as "newly discovered" in *Sparre v. State*, No. SC2024-1512, 2025 WL 3481670, at *3 (Fla. Dec. 4, 2025), because the underlying factual

basis for the study was available years before the relevant postconviction motion was filed.[12] So, the declaration cannot support the postconviction relief Walls seeks. For the same reason, we reject Walls' arguments that recent judicial decisions in other states constitute newly discovered evidence.

Even were it timely though, Walls' claim fails on the merits. "We have . . . repeatedly rejected the argument that *Roper*'s categorial ban on the execution of individuals who were under eighteen years old at the time they committed their capital offense(s) should be extended to defendants whose chronological age was over eighteen at the time of their offense(s)." *Gudinas*, 412 So. 3d at 712-13 (collecting cases). We have also acknowledged that we lack authority, due to the conformity clause of article I, section 17 of the Florida Constitution, to extend *Roper* or *Atkins*. *Id.* at 713. The postconviction court therefore properly denied the claim.

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12. While Walls asserts in his reply brief that Dr. Steinberg explains the scientific consensus giving rise to Walls' *Roper* claim did not exist before this year, that assertion is refuted by the record. The Steinberg declaration states the "scientific information was not available at the time of Mr. Walls's sentencing in 1992." And although Dr. Steinberg cites more recent state supreme court decisions, the scientific data underlying the declaration spans decades.

2

In apparent recognition of the hurdle Florida's conformity clause presents to his claim, Walls next argues that article I, section 17 of the Florida constitution is unconstitutional. This is also a claim we have recently considered and rejected as well. *Gudinas*, 412 So. 3d at 714 ("While the states are required to adhere to the Supreme Court's Eighth Amendment jurisprudence, neither the Eighth nor Fourteenth Amendments require states to expand the protections afforded by the Eighth Amendment or to interpret their own corresponding state constitutional prohibitions against cruel and unusual punishment in a more expansive manner than the Supreme Court has interpreted the federal prohibition."). In adhering to this position today, we reject Walls' argument that doing so results in Florida falling below the floor established by Supreme Court jurisprudence. We likewise reject his argument that recent legislative activity and political statements release the judiciary from its obligation to adhere to a constitutionally mandated conformity clause.

C

Finally, Walls argues that the thirty-seven years he has spent

on death row constitutes cruel and unusual punishment in violation of the Eighth Amendment.

Walls makes no attempt to justify the untimeliness of this claim in his postconviction motion other than with a conclusory introductory sentence alleging "[f]acts in support of these claims could not have been raised in a prior motion." To the extent the claim is not procedurally barred though, it fails. We recently addressed a similar argument in *James v. State*, 404 So. 3d 317, 325 (Fla.), *cert. denied*, 145 S. Ct. 1351 (2025). There we acknowledged decades-old precedent observing that "no federal or state court has accepted the argument that a prolonged stay on death row constitutes cruel and unusual punishment." *Id.* (quoting *Booker v. State*, 969 So. 2d 186, 200 (Fla. 2007)). We also highlighted the recent death warrant cases in which we have repeatedly rejected similar arguments. *Id.*; *see Owen v. State*, 364 So. 3d 1017, 1027 (Fla. 2023) (declining to recognize Owen's claim that thirty-seven years on death row constitutes cruel and unusual punishment); *Dillbeck*, 357 So. 3d at 103 (affirming the denial of Dillbeck's claim that executing him after thirty years on death row constitutes cruel and unusual punishment, "consistent with our

longstanding precedent that such claims are 'facially invalid,' " and concluding that "Dillbeck's arguments about conditions on death row do not persuade us that our precedent is 'clearly erroneous' "); *Gaskin v. State*, 361 So. 3d 300, 308 (Fla. 2023) (rejecting claim that Gaskin's more than three decades on death row constituted cruel and unusual punishment). The postconviction court correctly denied this claim.

III

In his habeas petition, Walls presents one claim in subparts. Specifically, he argues that he is entitled to review of his *Atkins* claim under *Hall*'s standards. In support, he characterizes this Court's application of *Phillips* to his case as a due process violation, arguing he acquired a right to *Hall* standards controlling his case upon this Court's mandate in 2017 and the United States Supreme Court's subsequent denial of the State's certiorari petition.

We reject Walls' claim because it is procedurally barred. Despite Walls' attempts to frame this as a new claim, Walls previously argued that the Due Process Clause entitled him to retroactive application of *Hall*, and this Court rejected his argument in his successive motion for postconviction relief. *Walls VII*, 361 So.

3d at 234 n.5. He therefore cannot relitigate the issue now. *See, e.g.*, *Jones v. State*, 419 So. 3d 619, 629 (Fla.) (denying habeas petition raising intellectual disability claim because it was already litigated), *cert. denied*, No. 25-5745, 2025 WL 2775490 (U.S. Sept. 30, 2025). And even if it is a unique argument, it could have been raised in the prior appeal and consequently cannot serve as a basis for habeas relief. *See* Fla. R. Crim. P. 3.851(e); *Gaskin*, 361 So. 3d at 309 ("Habeas corpus is not to be used to litigate or relitigate issues which could have been, should have been, or were previously raised."); *Knight v. State*, 923 So. 2d 387, 395 (Fla. 2005) ("[C]laims [that] were raised in [a] postconviction motion . . . cannot be relitigated in a habeas petition."). Because Walls' habeas petition seeks only to relitigate an issue that was previously decided, we deny the petition.

Walls' claim also fails on the merits. *State v. Okafor*, 306 So. 3d 930 (Fla. 2020), is not controlling here because our judgment ordering a new *Hall* hearing did not vacate Walls' death sentence. *See Thompson v. State*, 341 So. 3d 303, 306 (Fla. 2022). And regardless, Walls' due process rights have not been violated. "Due 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*, 622 So. 2d at 983). Here, Walls has received the process due to him and has failed to meet the requisite standards for overcoming summary denial. *See Pittman*, 417 So. 3d at 292-93 (rejecting a death row defendant's request for due process relief to further demonstrate his mental state at the time of his offense because it was time-barred); *Bates v. State*, 416 So. 3d 312 (Fla.) (same), *cert. denied*, No. 25-5370, 2025 WL 2396797 (U.S. Aug. 19, 2025).

Finally, our decision to deny Walls habeas relief does not result in a manifest injustice. Walls is wrong that his due process argument has never been considered. And upon review of the record, and consistent with our recent precedent, we remain confident in the propriety of the sentence imposed. *See, e.g.*, *Bates*, 416 So. 3d at 320 (no manifest injustice in determination that claim based on alleged brain damage was procedurally barred where movant had argued in prior proceeding that his counsel was ineffective for failing to investigate his mental health); *Owen*, 364 So. 3d at 1026-27 (declining to find manifest injustice based on procedurally barred claims of organic brain damage); *Dillbeck*, 357

So. 3d at 105 (rejecting argument that enforcing procedural bars would result in manifest injustice).

IV

Because Walls is not entitled to relief, we deny his motion for a stay of execution. *See Dillbeck*, 357 So. 3d at 103 ("[A] stay of execution on a successive motion for postconviction relief is warranted only where there are substantial grounds upon which relief might be granted." (quoting *Davis v. State*, 142 So. 3d 867, 873-74 (Fla. 2014))).

V

We affirm the summary denial of Walls' successive motion for postconviction relief. We also deny his petition for a writ of habeas corpus and his motion for stay of execution. No motion for rehearing will be considered 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., dissents with an opinion.
CANADY, J., recused.

LABARGA, J., dissenting.

I continue to adhere to my dissent in *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020) (receding from *Walls v. State*, 213 So. 3d 340 (Fla. 2016), and holding that *Hall v. Florida*, 572 U.S. 701 (2014), does not apply retroactively). For this reason, I dissent to the majority's decision affirming the denial of Walls's successive motion for postconviction relief.

An Appeal from the Circuit Court in and for Okaloosa County,
William Francis Stone, Judge
Case No. 461987CF000856XXXAXX
And an Original Proceeding – Habeas Corpus

Eric Pinkard, Capital Collateral Regional Counsel, Julissa R. Fontán, Assistant Capital Collateral Regional Counsel, Megan Montagno, Assistant Capital Collateral Regional Counsel, and John "Jack" LoBianco, Assistant Capital Collateral Regional Counsel, Middle Region, Temple Terrace, Florida,

for Appellant/Petitioner

James Uthmeier, Attorney General, Charmaine M. Millsaps, Senior Counsel, Assistant Attorney General, Jason W. Rodriguez, Senior Assistant Attorney General, and Benjamin L. Hoffman, Senior Assistant Attorney General, Tallahassee, Florida,

for Appellee/Respondent

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

_____

FRANK ATHEN WALLS,

***Petitioner*,**

vs.

STATE OF FLORIDA,

Respondent.

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

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, DECEMBER 18, 2025, AT 6:00 P.M.

APPENDIX B

The trial court's order denying Walls' successive motion for post-conviction relief

Filing # 236928731 E-Filed 12/03/2025 01:02:56 PM

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

STATE OF FLORIDA,

Plaintiff,

vs.

FRANK ATHEN WALLS,

Defendant.

CASE NO.: 1987-CF-856-A
DIV.: 002
DEATH WARRANT FOR EXECUTION SIGNED NOVEMBER 18, 2025

ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION TO VACATE JUDGMENT AND CONVICTION OF SENTENCE OF DEATH AFTER DEATH WARRANT SIGNED AND MOTION FOR STAY OF EXECUTION WITH DIRECTIONS TO CLERK

THIS CAUSE is before the Court on Defendant's Successive Motion to Vacate Judgment and Conviction of Sentence of Death After Death Warrant Signed, filed on November 25, 2025, pursuant to Florida Rule of Criminal Procedure 3.851, and on Defendant's Motion for Stay of Execution, also filed on November 25, 2025. Having considered the motions, record, the State's Answer to Third Successive Postconviction Motion, State's Response to the Motion for Stay of Execution, and the applicable law, the Court finds as follows:

Background

In the early morning hours of July 22, 1987, Frank A. Walls ("Defendant") entered the mobile home shared by Edward Alger and Ann Peterson. Defendant forced Alger to lie on the floor and made Peterson tie Alger's hands behind his back and his ankles together. Defendant forced Peterson to lie on the floor, and he tied her up in the same manner. Alger subsequently got loose from his bindings and attacked Defendant. During the fight, Defendant forced Alger to the

floor and slashed his throat; when Alger continued to struggle, Defendant shot him in the head several times. Defendant then went to Peterson who was still bound and gagged and was crying. There was a struggle where Defendant ripped off Peterson's clothes and shot her in the side of the head. When Peterson continued to scream, Defendant shoved her face in a pillow and shot her in the head a second time, killing her. The next morning when Alger failed to report for duty, his superior went to Alger's home where he discovered the body of a woman in the front bedroom and phoned the police. When investigators arrived, they identified the woman as Peterson; Alger's body was found in the second bedroom.

In 1992, following a retrial, Defendant was found guilty of the first-degree murder of Edward Alger and Ann Peterson; the jury unanimously recommended a sentence of death for the murder of Ann Peterson.[1] On July 29, 1992, Defendant was sentenced to death for the murder of Peterson; he was sentenced to a term of natural life for the murder of Alger. Defendant appealed, and the Florida Supreme Court affirmed the judgment and sentence on July 7, 1994.[2] The United States Supreme Court denied certiorari on January 23, 1995.[3]

Defendant subsequently filed his initial motion for postconviction relief, the denial of which was affirmed by the Florida Supreme Court.[4] However, in affirming this Court, the Florida Supreme Court concluded that Defendant was "entitled to file a motion for determination of [intellectual disability] as a bar to execution in the circuit court pursuant to rule 3.203."[5]

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[1] As noted by the Florida Supreme Court, "Because of the prior trial result, double jeopardy precluded the possibility of a death penalty for the murder of Alger on retrial." Walls v. State, 641 So. 2d 381, 386 n.1 (Fla. 1994).
[2] Walls v. State, 641 So. 2d 381, 391 (Fla. 1994).
[3] Walls v. Florida, 513 U.S. 1130 (1995).
[4] Walls v. State, 926 So. 2d 1156 (Fla. 2006).
[5] Id. The Florida Supreme Court used the term "mental retardation" in its opinion; however, Florida Rule of Criminal Procedure 3.203 has since been amended to replace the term "mental retardation" with "intellectual disability." See In re Amendments to Florida Rules of Criminal Procedure, 132 So. 3d 123 (Fla. 2013).

Defendant subsequently filed a motion in which he raised the issue of whether he was ineligible for the death penalty as intellectually disabled pursuant to rule 3.203. Following an evidentiary hearing on the matter, the Court entered an order denying relief, which the Florida Supreme Court affirmed.[6] Defendant then filed a successive motion for postconviction relief wherein he claimed that, pursuant to Hall v. Florida, 134 S. Ct. 1986 (2014), he was entitled to present additional evidence that he is intellectually disabled. This Court entered an order denying relief finding that even if Hall were retroactive, "Defendant's IQ scores prior to 18 do not place him within the range of concern contemplated in Hall," and "Defendant has already received a hearing at which he presented evidence regarding each prong of the relevant test for intellectual disability. . . ." Defendant appealed, and the Florida Supreme Court issued an opinion which held that Hall was retroactive, and reversed and remanded Defendant's case for this Court to "conduct a new evidentiary hearing as to Walls' claim of intellectual disability."[7][8]

However, before the Court could hold the evidentiary hearing pursuant to the Florida Supreme Court's order, the Florida Supreme Court receded from its decision in Walls v. State, 213 So. 3d 340 (Fla. 2016), concerning the retroactivity of Hall. See Phillips v. State, 299 So. 3d 1013 (Fla. 2020). Regardless, this Court concluded that it was bound by the Florida Supreme Court's mandate in Walls and set a hearing on Defendant's intellectual disability claim. After holding a six-day evidentiary hearing spanning from June 29 to July 7, 2021, this Court found

[6] Walls v. State, 3 So. 3d 1248 (Fla. 2008) (unpublished table disposition).
[7] Walls v. State, 213 So. 3d 340 (Fla. 2016).
[8] After the Florida Supreme Court issued its mandate, Defendant filed yet another successive motion for postconviction relief which was denied by this Court on February 20, 2017. Defendant appealed and the Florida Supreme Court affirmed the denial. See Walls v. State, 238 So. 3d 96 (Fla. 2018).

that Defendant had not satisfied the requirements for demonstrating intellectual disability.[9] Defendant appealed; the Florida Supreme Court affirmed the denial.[10]

On November 18, 2025, the Honorable Governor DeSantis signed Defendant's death warrant. The next day, the Florida Supreme Court entered an order setting time constraints on the proceedings. Pursuant to that order, all proceedings in the trial court shall be completed and orders entered no later than 11:00 a.m. Central, 12:00 p.m. Eastern, on Friday, December 5, 2025.

This Court held a capital postconviction case management conference via Zoom on November 19, 2025, pursuant to rule 3.851(h)(6). Following the hearing, the Court entered an order on the case management conference scheduling the remaining filing deadlines and hearings. Defendant did not file any public records requests; consequently, there were no objections. Nonetheless, on November 21, 2025, the Court conducted the scheduled public records hearing via Zoom. Following the hearing, and pursuant to this Court's scheduling order, the Court entered an order on the public records hearing.

On December 1, 2025, this Court held a second case management conference to hear arguments from the parties and determine whether an evidentiary hearing would be needed. That same day, the Court entered an order denying Defendant's request for an evidentiary hearing.

[9] Attachment A: Order Denying Defendant's Intellectual Disability Claim entered November 22, 2021. Though the Court considered Defendant's motion on the merits, the Court also found that "Defendant's claim should be denied because Hall does not apply retroactively, and therefore Defendant is not entitled to reconsideration of whether he is intellectually disabled."

[10] Walls v. State, 361 So. 3d 231 (Fla. 2023).

SUCCESSIVE MOTION TO VACATE JUDGMENT AND CONVICTION OF SENTENCE OF DEATH AFTER DEATH WARRANT SIGNED

Defendant raises three claims for relief and requests a stay of execution, an evidentiary hearing on his claims, leave to amend his motion as necessary, and vacatur of his judgment and death sentence. The Court declines to grant relief for the reasons discussed below.

Claim 1

Defendant's Death Sentence is Unconstitutional Due to His Intellectual Disability

Defendant asserts that he is intellectually disabled and "of a class of individuals constitutionally prohibited from execution under the Eighth Amendment" as decided in Atkins v. Virginia, 536 U.S 304 (2002). Defendant claims that the Florida courts have "prevented a merits-determination on whether [Defendant] is categorially prohibited from being executed." According to Defendant "[a]n individual who is categorically ineligible for execution because of his intellectual disability must have his *Atkins* claim heard before an execution warrant can be carried out."

Additionally, Defendant claims that "Florida currently applies the law in an arbitrary and capricious manner." This is in reference to the Florida Supreme Court's holding in Walls v. State, 213 So. 3d 340 (Fla. 2016), where the Florida Supreme Court held that Hall v. Florida, 572 U.S. 701 (2014) applied retroactively, and reversed and remanded for this Court to conduct an evidentiary hearing on Defendant's intellectual disability claim. As mentioned earlier in this Order, before this Court could hold a hearing on the matter, the Florida Supreme Court receded from its holding in Walls and instead found that Hall was not retroactive. See Phillips v. State, 299 So. 3d 1013 (Fla. 2020). Defendant is essentially arguing that this Court should extend

Atkins under Hall and find that Defendant is intellectually disabled. The Court finds that Defendant's claim is procedurally barred and meritless.

Defendant's claim that he has been denied a "merits determination" on whether Defendant is intellectually disabled is not well taken. This Court conducted a six-day evidentiary hearing at which time defense counsel presented evidence and argument that Defendant is intellectually disabled. After having considered expert testimony, testimony of trial counsel, and all other evidence presented at the six-day hearing, this Court denied relief on the basis that Defendant failed to show "clear and convincing evidence that he satisfies the first and third prongs of the test for intellectual disability." The Court also noted that even if Defendant had satisfied the first prong, Defendant failed to show that "the condition manifested prior to age 18, and therefore, he is not entitled to relief."

Defendant appealed and the Florida Supreme Court affirmed this Court's ruling without reaching the merits "on the basis that *Hall* is not retroactive." Walls v. State, 361 So. 3d 231, 233 (Fla. 2023). The Florida Supreme Court also held that Defendant's "*Hall*-based intellectual-disability claim fails regardless of the evidence presented at his evidentiary hearing" because of the intervening change in the law that occurred with the holding in Phillips. Because this Court previously ruled on the merits of Defendant's Hall-based intellectual disability claim, Defendant is procedurally barred from bringing such a claim now. See Fla. R. Crim. P. 3.851; Barwick, 361 So. 3d 785, 793 ("The circuit court was correct in denying this claim as procedurally barred because versions of it were raised in prior proceedings."); Thompson v. State, 759 So. 2d 650, 656 (Fla. 2000).

Defendant also claims that procedural bars should not apply to intellectual disability claims; this claim is not well-taken and has been repeatedly rejected by the Florida Supreme

Court. Pittman v. State, 417 So. 3d 287, 292 (Fla. 2025), as corrected (Sept. 11, 2025), cert. denied sub nom. Pittman v. Florida, No. 25-5605, 2025 WL 2649015 (U.S. Sept. 16, 2025) ("[W]e have regularly applied procedural bars to exemption-from-execution claims."); Dillbeck v. State, 357 So. 3d 94 (Fla. 2023); Carroll v. State, 114 So. 3d 883 (Fla. 2013).

Moreover, the Court notes that Defendant's claim is meritless. See Gudinas v. State, 412 So. 3d 701 (Fla. 2025), cert. denied sub nom. Gudinas v. Florida, 145 S. Ct. 2833 (2025) ("Because the Supreme Court has interpreted the Eighth Amendment to limit the exemption from execution based on mental functioning to those who are intellectually disabled or insane and the exemption from execution based on age to those whose chronological age was less than eighteen years at the time of their capital crime(s), this Court is bound by those interpretations and is precluded from interpreting Florida's prohibition against cruel and unusual punishment to exempt individuals from execution whose mental or cognitive issues do not rise to the level of intellectual disability. . . ."); Zack v. State, 371 So. 3d 335 (Fla. 2023) ("[T]his Court lacks the authority to extend *Atkins* to individuals who 'are not intellectually disabled as provided in *Atkins*.'") (citation omitted); Barwick, 361 So. 3d at 795. Consequently, Claim 1 is denied.

Claim 2

Defendant's Execution is Categorically Prohibited by the Eighth Amendment because he was 19 Years Old at the Time of The Offense, and American Society and the Scientific Consensus Now Recognize that Execution is an Unusual, Irrational, and Unacceptable Penalty for 19-year-olds with Underdeveloped Brains

Defendant claims that the Eighth Amendment "categorically forbids the execution of 19-year-olds like [Defendant]." Defendant claims this "categorical exemption" is evidenced by the "evolving standards of American society" which "indicate that the death penalty is an

inappropriate punishment for 19-year-old offenders . . . ." Defendant contends that the "scientific understanding of late adolescent brain development supporting a categorical prohibition of the death penalty for late adolescents did not exist in 1992 and did not reach a sufficient sociolegal tipping point until this year" and "proves that the death penalty is a disproportionate punishment for late adolescents."

At its core, Defendant's claim is that Roper v. Simmons, 543 U.S. 551 (2005), which held that the "Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed," should be extended to individuals who were late adolescents when they committed their capital offense, such as Defendant in this case. Id. at 578. Defendant asserts that his claim is timely because he could not have raised this claim previously as the "scientific evidence that it is premised upon 'was not available at the time of [Defendant]'s sentencing in 1992."' The Court finds that Defendant's claim is untimely and without merit.

The Florida Supreme Court "has routinely held that resolutions, consensus opinions, articles, research, and the like, do not constitute newly discovered evidence." Barwick, 361 So. 3d at 793; See Foster v. State, 258 So. 3d 1248 (Fla. 2018); Branch v. State, 236 So. 3d 981 (Fla. 2018); Schwab v. State, 969 So. 2d 318 (Fla. 2007). Because Defendant has failed to present any evidence that qualifies as newly discovered evidence, the Court finds that his claim is untimely.

Moreover, Defendant's claim is without merit because this Court lacks the authority to extend Roper. See Barwick, 361 So. 3d at 794 (Fla. 2023) ("Because the Supreme Court has interpreted the Eighth Amendment to limit the exemption from execution to those whose chronological age was less than eighteen years at the time of their crimes, this Court is bound by that interpretation and is precluded from interpreting Florida's prohibition against cruel and

unusual punishment to exempt individuals eighteen or more years old from execution on the basis of their age at the time of their crimes. This Court simply does not have the authority to extend Roper to [the defendant] based on his age of nineteen at the time of the murder."). Therefore, Claim 2 is denied.

Claim 3

The 37-year Delay Violates the Eighth Amendment Because it Strips the Scheduled Execution of Any Penological Justifications for the Death Penalty

Defendant asserts that in his 38-years on death row, he has been subjected to cruel and unusual punishments in violation of the Eighth Amendment because of the "legal delays, caused by a variety of factors (including changes to the law, various legitimate appellate reviews, and a retrial of the case) . . . ." According to Defendant, "the anguish [of being on death row] has been exacerbated by Florida's unwillingness to recognize his cognitive deficits and intellectual disability."

The Florida Supreme Court has repeatedly rejected arguments concerning the length of time spent on death row. See Booker v. State, 969 So. 2d 186 (Fla. 2007); Tompkins v. State, 994 So. 2d 1072 (Fla. 2008); Marek v. State, 8 So. 3d 1123 (Fla. 2009); Johnston v. State, 27 So. 3d 11 (Fla. 2010); Valle v. State, 70 So. 3d 530 (Fla. 2011); Gore v. State, 91 So. 3d 769 (Fla. 2012); Muhammad v. State, 132 So. 3d 176 (Fla. 2013); Lambrix v. State, 217 So. 3d 977 (Fla. 2017); Long v. State, 271 So. 3d 938 (Fla. 2019); Dillbeck, 357 So. 3d 94; Gaskin v. State, 361 So. 3d 300 (Fla. 2023); Owen v. State, 364 So. 3d 1017 (Fla. 2023); James v. State, 404 So. 3d 317 (Fla. 2025).

While Defendant attempts to argue that his intellectual disability "exacerbates" his anguish, as explained earlier in this Order, Defendant has not established that he is intellectually

disabled. Defendant has not provided "a sufficient distinguishing basis" for this Court to depart from the Florida Supreme Court's established precedent. See Muhammad, 132 So. 3d at 207. Accordingly, Claim 3 is denied.

MOTION FOR STAY OF EXECUTION

Generally, "[t]he execution of a death sentence may be stayed only by the Governor or incident to an appeal." § 922.06(1), Florida Statutes (2025). However, circuit courts have jurisdiction to grant a stay of execution, but "only when there are 'substantial grounds upon which relief might be granted." Chavez v. State, 132 So. 3d 826, 832 (Fla. 2014) (quoting Buenoano v. State, 708 So. 2d 941, 951 (Fla. 1998)); See also Amendments to Florida Rule of Criminal Procedure 3.851(h), 828 So. 2d 999 (Fla. 2002) ("[C]ircuit courts have jurisdiction, under their all writs power, to enter a stay of execution where the application for stay is filed with a motion for postconviction relief . . . .").

The Court is not aware of any stay of execution that has been entered by the Governor for Defendant, and Defendant has not provided any evidence or established that a stay has been entered.

The Court finds Defendant's assertion that the schedule of his proceedings denies him due process is not well taken. The Florida Supreme Court has recently considered and rejected similar claims holding that "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. 2025), cert. denied sub nom. Windom v. Florida, No. 25-5440, 2025 WL 2460118 (U.S. Aug. 27, 2025); See also Bates v. State, 416 So. 3d 312, 321 (Fla. 2025), cert. denied sub nom. Bates v. Florida, No. 25-5370, 2025 WL 2396797 (U.S. Aug. 19, 2025).

Having considered the arguments for a stay of execution presented in this motion, as well

as in Defendant's Successive Motion to Vacate Judgment and Conviction of Sentence of Death After Death Warrant Signed, the Court finds that Defendant fails to raise substantial grounds for relief warranting a stay. See Barwick, 361 So. 3d at 791; Chavez, 132 So. 3d at 832.[11] Consequently, Defendant's Motion for Stay of Execution is denied.

Ruling

Therefore, it is **ORDERED AND ADJUDGED** that Defendant's Successive Motion to Vacate Judgment and Conviction of Sentence of Death After Death Warrant Signed and Motion for Stay of Execution are **DENIED.** Pursuant to Florida Rule of Criminal Procedure 3.851(f)(5)(F), **the Clerk of Court is DIRECTED** to promptly serve on each party a copy of this Order, noting thereon the date of service by an appropriate certificate of service.

DONE AND ORDERED in Chambers in Fort Walton Beach, Okaloosa County, Florida.

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signed by CIRCUIT COURT JUDGE WILLIAM F STONE 12/03/2025 12:02:12 3DvGPDDd

[11] The Court notes that Defendant has a federal case pending in the United States District Court for the Northern District of Florida. The Court, the State, and Defendant agree that the pending federal case does not affect this Court's ability to rule on Defendant's Third Successive Motion and Motion for Stay of Execution.

Clerk of Court to Serve a Copy of this Order on the Following:

FRANK A. WALLS, DC No. 112850, Florida State Prison, Post Office Box 800, Raiford, Florida 32083

ERIC C. PINKARD, Capital Collateral Counsel Regional Counsel-Middle Region, pinkard@ccmr.state.fl.us

JULISSA FONTÁN, Assistant Capital Collateral Counsel, fontan@ccmr.state.fl.us

MEGAN M. MONTAGNO, Assistant Capital Collateral Counsel, montagno@ccmr.state.fl.us

JOHN "JACK" LOBIANCO, Assistant Capital Collateral Counsel, lobianco@ccmr.state.fl.us

CHARMAINE MILLSAPS, Senior Assistant Attorney General, charmaine.millsaps@myfloridalegal.com, capapp@myfloridalegal.com

JASON W. RODRIGUEZ, Senior Assistant Attorney General, jason.rodriguez@myfloridalegal.com

BENJAMIN L. HOFFMAN, Senior Assistant Attorney General, benjamin.hoffman@myfloridalegal.com

CHRISTINA PORRELLO, Florida Department of Corrections, christina.porrello@fdc.myflorida.com

MATTHEW CASEY, Assistant State Attorney, mcasey@osa1.org

BRIDGETTE M. JENSEN, Chief Assistant State Attorney, bjensen@osa1.org

ASHLEY HERNDON, Deputy Chief Assistant State Attorney, aherndon@osa1.org

OKALOOSA COUNTY COURT REPORTERS, Okaloosa.Reporters@flcourts1.gov

FLORIDA SUPREME COURT, warrant@flcourts.org

ATTACHMENT A

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

STATE OF FLORIDA,

Plaintiff,

v. **Case No. 87-CF-856**

Div. 002

FRANK A. WALLS,

Defendant.

ORDER DENYING DEFENDANT'S INTELLECTUAL DISABILITY CLAIM

THIS CAUSE is before this Court pursuant to the Order[1] of the Supreme Court of Florida issued in Walls v. State, 213 So. 3d 340 (Fla. 2016), reversing this Court's summary denial of Defendant's postconviction intellectual disability claim and remanding for this Court to conduct an evidentiary hearing. Having considered Defendant's claim, conducted an evidentiary hearing on the matter, and having considered the record, arguments of the parties, applicable law, and otherwise being fully informed, this Court finds as follows:

LIMITED RELEVANT BACKGROUND

Following a retrial, Defendant was found guilty of the first-degree murder of Edward Alger and Ann Peterson, and the jury unanimously recommended a sentence of death for the

[1] Walls v. State, 213 So. 3d 340 (Fla. 2016).

murder of Ann Peterson.[2] On July 29, 1992, Defendant was sentenced to death for the Peterson murder. The Supreme Court of Florida affirmed the judgment and sentence on July 7, 1994.[3] The United States Supreme Court denied certiorari on January 23, 1995.[4]

Defendant filed an initial motion for postconviction relief, the denial of which was affirmed by the Supreme Court of Florida on February 9, 2006.[5] Although this Court's order was affirmed, the Florida Supreme Court concluded that Defendant was entitled to file a motion for determination of intellectual disability pursuant to rule 3.203.[6] Consequently, in June 2006, Defendant filed a rule 3.203 motion. After holding an evidentiary hearing on the matter, this Court denied relief, and the denial of relief was affirmed.[7] During the time of those proceedings, a strict 70-point IQ test score cutoff applied to claims of intellectual disability.

In 2014, the United States Supreme Court decided Hall v. Florida[8] and held that Florida's strict 70-point IQ test score cutoff was unconstitutional.

In May 2015, based on Hall, Defendant filed a successive postconviction motion to vacate his sentence. After considering the record of the prior evidentiary hearing, this Court found that even if Hall applied retroactively, Defendant would not be entitled to relief, and this Court summarily denied the motion.

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[2] As noted by the Supreme Court of Florida, "Because of the prior trial result, double jeopardy precluded the possibility of a death penalty for the murder of Alger on retrial." Walls v. State, 641 So. 2d 381, 386 n.1 (Fla. 1994).

[3] Walls v. State, 641 So. 2d 381, 391 (Fla. 1994).

[4] Walls v. Florida, 513 U.S. 1130 (1995).

[5] Walls v. State, 926 So. 2d 1156 (Fla. 2006).

[6] Walls v. State, 926 So. 2d 1156, 1181 (Fla. 2006).

[7] Walls v. State, 3 So. 3d 1248 (Fla. 2008) (unpublished table disposition).

[8] Hall v. Florida, 572 U.S. 701 (2014).

In Walls v. State,[9] the Supreme Court of Florida found that Hall applied retroactively, and that Court reversed the summary denial of the intellectual disability claim and remanded the matter for this Court to conduct an evidentiary hearing.

On May 21, 2020, in Phillips v. State,[10] the Supreme Court of Florida receded from its decision in Walls concerning the retroactivity of Hall.

On May 29, 2020, based primarily on Phillips, the State filed a motion for summary denial of Defendant's claim.

On February 8, 2021, this Court concluded that it was bound by the Walls mandate and entered an order denying the State's motion.

On June 29, 2021, the hearing on Defendant's intellectual disability claim commenced in this Court, and it concluded on July 7, 2021.

On August 26, 2021, the Supreme Court of Florida issued Nixon v. State[11] which concerns the nonretroactivity of Hall and the law of the case doctrine.

On September 20, 2021, the parties filed written closing arguments concerning the evidentiary hearing. In a portion of its written closing argument, the State cited Nixon and requested this Court to deny Defendant's intellectual disability claim on nonretroactivity grounds without making any findings concerning the testimony from the hearing.

On September 22, 2021, Defendant filed a "Motion to Strike Defective Written Closing Argument and in the Alternative to be Heard" ("Motion to Strike").

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[9] Walls v. State, 213 So. 3d 340 (Fla. 2016).

[10] Phillips v. State, 299 So. 3d 1013 (Fla. 2020), reh'g denied, SC18-1149, 2020 WL 4727425 (Fla. Aug. 14, 2020), and cert. denied sub nom. Phillips v. Florida, 210 L. Ed. 2d 837 (2021).

[11] Nixon v. State, SC20-48, 2021 WL 3778705 (Fla. Aug. 26, 2021), reh'g denied, SC20-48, 2021 WL 4978675 (Fla. Oct. 27, 2021).

On October 8, 2021, this Court entered an order granting the Motion to Strike in part. That Order permitted Defendant to file a limited brief on the Nixon issue and allowed the State to file a responsive brief on that issue.

On October 13, 2021, based on the above circumstances concerning the Nixon issue, this Court found that it would be unable to comply with the time requirements provided in Florida Rule of Criminal Procedure 3.851(f)(5)(F) concerning rendition of the final order on the intellectual disability claim. Accordingly, this Court entered a status report to the Supreme Court of Florida, with a notice of an enlargement of the time period provided in rule 3.851(f)(5)(F) for this Court to enter the final order on the intellectual disability claim within 30 days after the filing of the final brief concerning the Nixon issue.

On October 22, 2021, Defendant filed its brief.

On October 25, 2021, the State filed its responsive brief.

DEFENDANT'S CLAIM

Defendant argues that he satisfies the legal requirements for intellectual disability. Defendant also argues that Florida law violates federal law and clinical standards to the extent that it would prevent this Court from conforming its decision to professional standards.

LEGAL AUTHORITY

Florida law requires a defendant to prove intellectual disability by clear and convincing evidence.[12] "Clear and convincing evidence means evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief, without hesitation, about the matter in issue."[13]

"The determination of intellectual disability is subject to a three-prong test: (1) significantly subaverage intellectual functioning; (2) concurrent deficits in adaptive behavior; and (3) manifestation of the condition before age eighteen."[14] "[I]f a defendant fails to prove that he or she meets any one of the three prongs of the intellectual disability standard, he or she will not be found to be intellectually disabled."[15]

Significantly Subaverage Intellectual Functioning

Significantly subaverage general intellectual functioning is defined as "performance that is 2 or more standard deviations from the mean score on a standardized intelligence test authorized by the Department of Children and Families in rule 65G-4.011 of the Florida Administrative Code."[16] Rule 65G-4.011 provides that the approved tests are the Stanford-Binet Intelligence Scale and Wechsler Intelligence Scale. "The mean IQ test score is 100."[17] "The standard deviation on an IQ test is approximately 15 points, and so two standard deviations is approximately 30 points. Thus a test taker who performs 'two or more standard

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[12] § 921.137(4), Florida Statutes (2021).
[13] Dufour v. State, 69 So. 3d 235, 245 (Fla. 2011), as revised on denial of reh'g (Aug. 25, 2011).
[14] Franqui v. State, 301 So. 3d 152, 154 (Fla. 2020), reh'g denied, SC19-203, 2020 WL 5562317 (Fla. Sept. 17, 2020), and cert. denied sub nom. Franqui v. Florida, 141 S. Ct. 2636 (2021).
[15] Phillips v. State, 299 So. 3d 1013, 1024 (Fla. 2020).
[16] Fla. R. Crim. P. 3.203(b); see also § 921.137(1), Fla. Stat. (2021).
[17] Hall v. Florida, 572 U.S. 701, 711 (2014).

deviations from the mean' will score approximately 30 points below the mean on an IQ test, *i.e.,* a score of approximately 70 points."[18] Accordingly, "the medical approximation of significant subaverage intellectual functioning is an IQ score of 70, plus or minus."[19] "There is a standard error of measurement (SEM) that affects each IQ score, which results in a range approximately 5 points above and below the raw IQ test score."[20]

"[W]hen a defendant's IQ test score falls within the test's acknowledged and inherent margin of error, the defendant must be able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits."[21] "For professionals to diagnose—and for the law then to determine—whether an intellectual disability exists once the SEM applies and the individual's IQ score is 75 or below the inquiry would consider factors indicating whether the person had deficits in adaptive functioning."[22]

Concurrent Deficits in Adaptive Behavior

Adaptive behavior is defined as "the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community."[23] "The DSM-5 divides adaptive functioning into three broad categories or 'domains': conceptual, social, and practical."[24] "[A]daptive deficits exist when at least one domain is sufficiently impaired that ongoing support is needed in order for the person to perform adequately in one or more life settings at school, at work, at home, or

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[18] Hall v. Florida, 572 U.S. 701, 711 (2014).
[19] **Wright v. State, 256 So. 3d 766, 771 (Fla. 2018).**
[20] **Id.**
[21] Hall v. Florida, 572 U.S. 701, 723 (2014).
[22] Id. at 714.
[23] **Florida Rule of Criminal Procedure 3.203(b); See also § 921.137(1), Fla. Stat. (2021).**
[24] Wright v. State, 256 So. 3d 766, 773 (Fla. 2018). The DSM-5 is the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

in the community."[25] A "person with an IQ score above 70 may have such severe adaptive behavior problems ... that the person's actual functioning is comparable to that of individuals with a lower IQ score."[26]

Age of Onset

Manifestation of the condition before age 18 does not require that the defendant be "diagnosed" before age 18.[27] "Manifestation prior to age eighteen of subaverage intellectual functioning or adaptive deficits that do not rise to the levels required to meet the first two prongs of the intellectual disability standard is irrelevant to a determination of intellectual disability."[28]

DISCUSSION

At the evidentiary hearing, the defense called Dr. Mark Cunningham, Dr. Karen Hagerott, retired Assistant Public Defender James C. Sewell, Jr. (who represented Defendant during his 1992 retrial), Dr. Daniel Martell, Dr. Mark Mills, and Dr. Robert Ouaou. The State called Dr. Gregory Prichard, and the defense called Dr. Barry Crown as a rebuttal witness.

Intellectual Functioning

Defendant fails to prove by clear and convincing evidence that he has significantly subaverage intellectual functioning for the reasons discussed below.

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[25] Id. (quotations omitted).
[26] Hall v. Florida, 572 U.S. 701, 712 (2014) (quoting DSM-5, at 37).
[27] Oats v. State, 181 So. 3d 457, 460 (Fla. 2015).
[28] Haliburton v. State, SC19-1858, 2021 WL 2460806, at *8 (Fla. June 17, 2021).

Dr. Prichard testified that only the Weschler scales and Stanford-Binet measurements are accepted by the Agency of Persons with Disabilities for "measuring that first prong . . . IQ."[29] This testimony is consistent with Florida law.[30]

Dr. Prichard testified that when performing a "retrospective analysis" of intellectual disability, the "best data is typically the data you get from the school records" because "typically we are able to identify intellectually disabled people in the school environment."[31]

At the hearing, this Court heard testimony regarding six IQ scores based on the Weschler scale. Four of the scores were achieved by Defendant between ages 6 and 14, and the remaining two scores were obtained by Defendant as an adult and after his arrest and prosecution in this case.

At age 6, Defendant achieved a full-scale IQ score of 88.[32]

At age 7, Defendant was again tested, and he performed in the average range on the Weschler scale.[33] Dr. Cunningham testified that "average is psychometrically understood as an IQ score from about 90 to 110."[34]

At about age 12, Defendant obtained a full-scale IQ score of 102.[35] In regard to that IQ score, Dr. Hagerott[36] testified that Defendant's "cognitive status was solidly average to

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[29] Evidentiary hearing transcript, page 782. Further references in this Order to the transcript from the evidentiary hearing are designated by "T" followed by the appropriate page number(s).
[30] See Fla. R. Crim. P. 3.203(b); See also § 921.137(1), Fla. Stat. (2021); Haliburton v. State, 46 Fla. L. Weekly S177 *4 n.7 (Fla. June 17, 2021) ("The tests approved by the rules of the Agency for Persons with Disabilities are the Stanford-Binet Intelligence Scale and the Wechsler Intelligence Scale. Fla. Admin. Code R. 65G-4.011.").
[31] T. 779-780.
[32] T. 77, 788.
[33] T. 80, 791. A numerical score was not provided for that test.
[34] T. 80.
[35] T. 82, 792.
[36] Dr. Hagerott testified that she had been retained in 1992 by James Sewell in regard to Defendant's retrial, and she performed neuropsychological testing on Defendant at that time. T. 199-200.

slightly above average."[37] Dr. Hagerott testified that the "data at that point in time is not indicative of an intellectual disability."[38]

At age 14 in 1982, Defendant obtained a full-scale IQ score of 101.[39]

Regarding the IQ scores obtained by Defendant during his childhood, Dr. Cunningham testified that "these scores are inconsistent with what we would generally expect to observe with somebody with intellectual disability."[40] Dr. Prichard noted that concerning IQ measures, "[Y]ou can't score higher than you're capable of scoring."[41]

This Court applies the SEM to the childhood IQ scores and finds that these scores do not support a finding of subaverage intellectual functioning.[42] Moreover, the Court finds that those childhood IQ scores are valid because there is no competent, substantial evidence to show otherwise. Indeed, in Defendant's written closing argument, he admits, "It is true that Mr. Walls had measured IQ scores during his childhood in the average range, *which his defense experts largely assume to be generally correct*."[43]

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[37] T. 210 (emphasis added).
[38] T. 247.
[39] T. 83, 794.
[40] T. 84.
[41] T. 834.
[42] At the hearing, the defense presented testimony regarding multiple psychometric considerations, such as norm obsolescence (the Flynn effect). It appears to this Court that the Flynn effect should not be applied. Quince v. State, 241 So. 3d 58, 61 (Fla. 2018) ("As many courts have already recognized, *Hall* does not mention the Flynn effect and does not require its application to all IQ scores in *Atkins* cases."). Notably, the defense's own witness, Dr. Cunningham, testified that his understanding was that the Florida Supreme Court does not consider norm obsolescence or the Flynn effect. T. 177. Dr. Prichard testified that the Flynn effect is a "scientific phenomenon" though it is "not to the point where it can be applied on intellectual measures." T. 910 Nevertheless, even when the childhood IQ scores are considered in light of psychometric considerations such as the standard error of measurement, norm obsolescence, and sampling errors as testified to by defense witness Dr. Cunningham, this Court's conclusion is unchanged in this case because even the "corrected" scores do not suggest subaverage intellectual functioning. See T. 77-84.
[43] Defendant's Written Closing Argument, page 49, filed on September 20, 2021 (emphasis added).

The defense presented evidence that Defendant's academic performance was generally poor, and ultimately he was placed in emotionally handicapped classes. The defense presented evidence regarding academic testing, including the Wide Range Achievement Test ("WRAT") and Peabody Individualized Achievement Test. However, Dr. Prichard testified that those tests are not "intelligence tests" but are "academic screening instruments."[44] Dr. Prichard testified that "a person's intelligence does not always match up with their academic functioning and their academic performance on those instruments."[45] Dr. Prichard testified that those instruments are "not utilized in determining that first prong; that is, significantly subaverage intellectual functioning."[46] Indeed, defense witness Dr. Cunningham admitted that "poor academic performance doesn't necessarily reflect poor intellectual capability . . . ."[47]

Notably, although records and testimony show that Defendant's academic performance was often poor, a WRAT administered to Defendant in 1982 when he was in eighth grade provided data indicating that his performance was at the high school level, except for spelling.[48] Nevertheless, despite that evidence of good academic performance, in that same year Defendant's behavioral and emotional issues had "become so significant" that he was placed at "Camp E-Ma-Chamee," a highly structured program.[49] Dr. Prichard testified that comments by school employees in the records indicate that Defendant "appears to have the capacity for academic success, but his behavior is getting in the way of academic

[44] T. 783.
[45] T. 784.
[46] T. 784.
[47] T. 149.
[48] T. 354.
[49] T. 214-215.

progress."[50] That assessment appears accurate because although Defendant's behavior was clearly problematic, he nevertheless obtained a full-scale IQ score in 1982 of 101 (as discussed earlier), showing strongly that his intellectual functioning was in the average range.

Defendant's other IQ scores were obtained years after his arrest and prosecution. In 1991, at about age 24, Defendant obtained a full-scale IQ score of 72 (a remarkable drop of 29 points from his prior score of 101 at age 14), and later in 2006, at age 39, he obtained a full-scale IQ score of 74.[51]

The near 30-point drop in IQ scores begs the question of whether the scores obtained by Defendant as an adult are credible representations of his IQ.

Dr. Mills testified that it is uncommon for a person's IQ to drop 29 points in ten years.[52] Dr. Prichard also testified that such a drop in IQ is uncommon.[53] Dr. Prichard testified that IQ is "considered a static trait."[54] Dr. Prichard testified that he was "not able to find any records that would suggest . . . a reasonable accounting for that dramatic drop over a ten-year period."[55] Dr. Prichard explained that he did not "see anything, for example, a

[50] T. 834-835.
[51] T. 53, 799.
[52] T. 593.
[53] T. 799.
[54] T. 800-801.
[55] T. 800-801.

traumatic brain injury that would account for a 29 point decline . . . ."[56] Dr. Prichard ultimately concluded that the IQ scores obtained by Defendant as an adult are representative of an "intentional underperformance of Mr. Walls."[57]

In regard to the adult IQ scores, the defense presented testimony and argument that it would be difficult for a person to replicate psychometrically identical scores over 15 years apart. For example, Dr. Hagerott testified that it would be "near impossible" for a person to replicate a psychometrically identical score over 15 years.[58]

However, Dr. Prichard credibly rejected the assertion that it is difficult to malinger on an IQ test.[59] Dr. Prichard explained that on an IQ test, the "skills get harder incrementally . . . ."[60] Dr. Prichard testified that people successfully malinger by recognizing when the test becomes harder, and "they deliberately don't get it right or perform slowly . . . ."[61]

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[56] T. 747. In regard to the decline in IQ scores, defense witness Dr. Cunningham testified that the decline could be explained by various issues, including high fevers in early childhood, a suicide attempt at about age 12 where Defendant was "found unconscious hanging by a bathrobe belt from a doorknob," and playing a "passout game." T. 88. However, Dr. Mills testified that he found no declines in Defendant's intelligence after any strangulation episode. T. 600. Dr. Cunningham testified that there were "at least two, *perhaps* three episodes of viral meningitis." T. 88. (emphasis added). Dr. Cunningham testified that the first occurred at age 12, and "*maybe* another one in between and then another recurrence of viral meningitis at age 15." T. 88. (emphasis added). However, the only diagnosed case of meningitis occurred when Defendant was age 12. T. 604. This Court does not find these circumstances to constitute the most likely explanation for the decline in IQ scores, for at least the reason that Defendant—despite experiencing various health events—obtained a valid IQ score of 101 at age 14, years after these events occurred.

[57] T. 747.

[58] T. 239.

[59] T. 906-907.

[60] T. 906.

[61] T. 907. The defense argues that Dr. Prichard's conclusions regarding malingering are not credible, in part because he administered a test of memory malingering ("TOMM") when he met with Defendant in 2017, and Defendant passed the test. However, Dr. Prichard credibly explained that a finding independent of the TOMM test can occur when "the malingering scale doesn't match up with your own clinical analysis of his behavior . . . ." T. 758. Dr. Prichard's testimony is credible when considering Defendant's IQ scores obtained prior to his commission of the murders, the fact that there is no competent, substantial evidence of significant brain trauma to support the near 30-point drop in IQ scores Defendant obtained after his arrest and prosecution, and the fact that Defendant's presentation in the phone calls to his family (discussed later in this order) is inconsistent with intellectual disability.

As to considerations other than IQ scores, Dr. Cunningham testified that both the "AAIDD and DSM-5 deemphasized the IQ score as they call for simultaneous consideration of adaptive skills" and "gathering clinical information that would inform intellectual functioning . . . ."[62] Dr. Cunningham also testified that neuropsychological testing "provides a more comprehensive standardized assessment than IQ testing does alone."[63] Dr. Cunningham testified that at age 16, a neuropsychological assessment administered by Dr. [Edward] Chandler on Defendant showed cerebral dysfunction and "delays in processing."[64] Dr. Hagerott, who administered a neuropsychological battery of Defendant in 1992, testified that her evaluation of him was consistent with Dr. Chandler's evaluation.[65]

However, Dr. Prichard testified that neuropsychological testing is "not an individualized, standardized intelligence test, so I don't think it's prudent and scientifically appropriate to suggest it is an IQ test."[66] Indeed, the neuropsychological testing results do not persuade this Court to find that Defendant has proven significantly subaverage intellectual functioning.

Dr. Prichard testified that he has conducted about 2,000 evaluations to determine intellectual disability over the past 25 years.[67] Dr. Prichard testified that he interviewed Defendant on June 28, 2017.[68] Dr. Prichard testified that Defendant's presentation was "strange" and "really didn't match up with" his experience with intellectually disabled

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[62] T. 66.
[63] T. 92.
[64] T. 94.
[65] T. 217.
[66] T. 835.
[67] T. 718.
[68] T. 817.

people.[69] Dr. Prichard testified that his "impression" was that Defendant "was messing around." Dr. Prichard testified that during the evaluation, there were times when Defendant began talking like he was a child.[70] Dr. Prichard explained that "intellectually disabled people typically don't behave that way especially when they get later in life."[71]

Dr. Prichard testified that Defendant's presentation in phone calls made to his family from prison was not consistent with intellectual disability.[72] Dr. Prichard noted how Defendant told his brother on a phone call that he's on a "modification diet" and had "been up to 312 and now he's down to 296."[73] Dr. Prichard testified that when he met with Defendant, he asked him "how much he weighed and how tall he was, and [Defendant] had to get his badge and look at his badge to tell me, which was a big, red flag for me."[74] Dr. Prichard testified that in considering "the fluid nature of the dialogue with his family, it seems like he can communicate that stuff just fine."[75] Ultimately, Dr. Prichard diagnosed Defendant with ADHD, conduct disorder, and antisocial personality disorder and found that he is not intellectually disabled.[76]

This Court has also considered the evidence regarding deficits in adaptive behavior, and although the Court finds that Defendant has deficits (as discussed in more detail later in this Order), the evidence presented regarding adaptive deficits does not persuade this Court to conclude that Defendant has significantly subaverage intellectual functioning. Notably,

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[69] T. 755-756.
[70] T. 756.
[71] Dr. Barry Crown testified that he observed Dr. Prichard's interview and testing of Defendant, and in general, Dr. Crown disagreed with Dr. Prichard's characterization of Defendant's behavior. T. 932-937.
[72] T. 918.
[73] T. 814.
[74] T. 815.
[75] T. 815.
[76] T. 828-829.

although Defendant exhibited academic and behavioral problems throughout his youth, he nevertheless *consistently* obtained IQ scores during that time that are clearly outside of any range of concern for intellectual disability. The defense has not presented competent, substantial evidence that those IQ scores are invalid.

Although the two IQ scores obtained by Defendant as an adult in 1991 and 2006 suggest significantly subaverage intellectual functioning when considering the SEM, *both* the defense and the State presented testimony that the large drop in IQ that those scores indicate is uncommon. Further, there is no competent, substantial evidence of any traumatic event that would show that Defendant's IQ scores in 1991 and 2006 represent his full efforts.

Although the defense presented testimony to suggest that a variety of medical events and circumstances caused Defendant's intellectual functioning to decline over time, the fact remains that despite those events, Defendant consistently obtained IQ scores reflecting average intellectual functioning. Although the defense argues that the cumulative effect of various events, including voluntary substance abuse, could explain the decline in IQ scores, that evidence is not of such weight that it produces a firm belief, without hesitation, that Defendant has significantly subaverage intellectual functioning.

This Court finds that Dr. Prichard's testimony is most credible on this matter, and the most credible explanation for the decline shown in the IQ scores in 1991 and 2006 is an intentional underperformance by Defendant.

Therefore, for the above reasons, Defendant fails the first prong of the test for intellectual disability.

Adaptive Behavior

Dr. Martell testified that Defendant has deficits in all three domains, conceptual, social, and practical, and that the deficits were in existence prior to age 18.[77] Dr. Prichard testified that Defendant's school records showed "serious deficits in adaptive skills and especially in [the] social domain."[78] Dr. Prichard testified that Defendant had adaptive deficits in the practical domain as a child.[79] Dr. Prichard testified that Defendant had adaptive deficits in the conceptual domain as a juvenile.[80] Dr. Prichard was not sure that Defendant presently has adaptive deficits, stating that Defendant is currently in a restrictive environment.[81]

There is some conflicting testimony and evidence regarding adaptive behavior. For example, Dr. Martell testified that during his examination of Defendant on April 17, 2019, Defendant stuttered, mumbled, and stammered.[82] However, Dr. Martell testified that he listened to Defendant's prison phone calls and did *not* recall hearing Defendant stutter in them.[83]

Further, Dr. Cunningham testified that during his interview with Defendant, he "exhibited limited vocabulary" and did not understand the word "symptoms" and the word "floss."[84] Dr. Cunningham testified that Defendant exhibited "delayed word retrieval."[85] Similarly, James Sewell testified that during his representation of Defendant concerning his

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[77] T. 341.
[78] T. 802-803.
[79] T. 862.
[80] T. 863.
[81] T. 862-863.
[82] T. 327.
[83] T. 436.
[84] T. 113.
[85] T. 114.

retrial in 1992, Defendant appeared to have a limited vocabulary and was easily distracted.[86] Mr. Sewell testified that it appeared to him that Defendant had issues with his memory.[87] Dr. Hagerott testified that during her observation of Defendant in 1992 he had difficulty accessing words, slurred his speech, and his "articulation was poor."[88]

However, in the phone calls from 2017 that Defendant made from prison, this Court finds that Defendant in general did not appear to struggle with word retrieval, memory, or that his articulation was poor. The conversations appeared fluid, and Defendant initiated and prompted conversational topics to his family members.

Although there is some conflicting evidence regarding adaptive behavior, both the defense and the State presented testimony that Defendant had adaptive deficits as a child. The defense also presented evidence suggesting that Defendant presently has deficits in adaptive behavior. Dr. Prichard's testimony as to present deficits was inconclusive.

Based on these circumstances, this Court finds no basis to disregard the testimony presented by the defense and State, and therefore this Court finds that Defendant satisfies the second prong of the test for intellectual disability. However, Defendant's adaptive deficits are not of a severity that would suggest his intellectual functioning is comparable to that of a person with significantly subaverage intellectual functioning.

Age of Onset

Because Defendant fails to satisfy the first prong of the test for intellectual disability, Defendant's claim fails. Nevertheless, *even if* Defendant's IQ scores as an adult were a true

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[86] T. 283-284.
[87] T. 286.
[88] T. 226.

representation of his intellectual functioning at the time of those tests, he fails to show by clear and convincing evidence that significantly subaverage intellectual functioning manifested prior to age 18.

Dr. Ouaou's testimony focused on brain development, and he testified that the developmental period is considered to extend to approximately age 25.[89] Defendant points to various instances of illnesses, including a diagnosis of meningitis at age 12, to argue that subaverage intellectual functioning with concurrent adaptive deficits manifested prior to age 18. The defense points to evidence that Defendant was hospitalized at about age 2 or 3 for Roseola,[90] and that at age 5 he was placed on Ritalin for ADHD.[91] There is evidence that Defendant hit his head against another child's head while playing volleyball at about age 12.[92]

However, as noted earlier, Defendant *consistently* obtained average IQ scores as a child. Although Defendant was hospitalized in 1979 at about age 12 with meningitis, his IQ score about two years later at age 14 was essentially consistent with his prior IQ score, which indicates to this Court that Defendant's intellectual functioning was unaffected by that illness or any other condition or event in Defendant's history relied on by Defendant. Notably, Dr. Mills testified that "in general insults to the brain are evident within weeks to months and occasionally years."[93] Indeed, the Court finds that weeks, months, and years passed after the occurrence of many of the events argued by the defense, and yet Defendant's IQ scores throughout that period of time remained consistently average.

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[89] T. 653.
[90] T. 551.
[91] T. 550; 586.
[92] T. 557.
[93] T. 541, 548.

In sum, there is no competent, substantial evidence showing that any of the health issues, events, and diagnoses argued by the defense affected Defendant's intellectual functioning. Defendant's behavior and school performance were problematic from an early age and continued to remain problematic throughout his school years, while his IQ remained average. Even if, hypothetically speaking, Defendant presently has significantly subaverage intellectual functioning, the evidence presented by the defense is not of such weight to produce a firm belief, without hesitation, that the condition manifested prior to age 18. Therefore, Defendant fails to show by clear and convincing evidence that he satisfies the third prong of the test for intellectual disability.

Conclusion as to Intellectual Disability

Defendant fails to show clear and convincing evidence that he satisfies the first and third prongs of the test for intellectual disability. Even if Defendant had satisfied the first prong, he fails to show clear and convincing evidence that the condition manifested prior to age 18, and therefore, he is not entitled to relief.

As to Defendant's argument that Florida law violates federal law and clinical standards to the extent that it would prevent this Court from conforming its decision to professional standards, this Court is bound to follow the law of the State of Florida, including the procedural rules promulgated by the Supreme Court of Florida and its caselaw. State v. Lott, 286 So. 2d 565, 566 (Fla. 1973).

CHANGE IN THE LAW

This Court held the evidentiary hearing on Defendant's claim and considered it on the merits because this Court previously concluded that it was constrained to do otherwise based on the Walls mandate.[94] However, now with the clarified guidance Nixon provides on the law of the case doctrine, this Court finds that Defendant's claim should be denied because Hall does not apply retroactively, and therefore Defendant is not entitled to reconsideration of whether he is intellectually disabled.

Ruling

Therefore, it is **ORDERED AND ADJUDGED** that Defendant's intellectual disability claim is **DENIED**.

Defendant has the right to appeal within 30 days of the rendition of this Order.

DONE AND ORDERED in Fort Walton Beach, Okaloosa County, Florida.

WFS/eeb

[94] Walls v. State, 213 So. 3d 340 (Fla. 2016).

Copies to:

Charmaine M. Millsaps, AAG, Office of the Attorney General,
charmaine.millsaps@myfloridalegal.com
John Molchan, ASA, Office of the State Attorney, jmolchan@osa1.org
Hannah Nowalk, ASA, Office of the State Attorney, hnowalk@osa1.org

Kara R. Ottervanger, Office of the Federal Public Defender, kara_ottervanger@fd.org
Julissa R. Fontán, Assistant CCRC-Middle, fontan@ccmr.state.fl.us
Natalia C. Reyna-Pimiento, Assistant CCRC – Middle, reyna@ccmr.state.fl.us

By: Frannie A. Natalie
eSigned by Frannie Natalie
on 11/22/2021 08:38:07 VI6epBwf

Judicial Assistant

Copies furnished to the following via U.S. mail by the Clerk:

Frank A. Walls, DC# 112850, Union Correctional Institution, P.O. Box 1000, Raiford, FL 32083

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

FRANK ATHEN WALLS,

***Petitioner*,**

vs.

STATE OF FLORIDA,

Respondent.

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

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, DECEMBER 18, 2025, AT 6:00 P.M.

APPENDIX C

Florida Supreme Court decision related to intellectual disability litigation.

Filing # 166933646 E-Filed 02/16/2023 11:00:11 AM

Supreme Court of Florida

No. SC22-72

FRANK A. WALLS,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

February 16, 2023

PER CURIAM.

Frank A. Walls, a prisoner under sentence of death, appeals an order denying his latest successive postconviction motion, which sought relief under *Hall v. Florida*, 572 U.S. 701 (2014).[1] For the reasons given below, we affirm.

Background

Early one morning in 1987, Walls broke into a mobile home then occupied by Edward Alger and Ann Peterson. Using curtain cords, Walls tied them up. Alger managed to get loose, and a

1. We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const.

struggle ensued. Ultimately, Walls tackled Alger, slashed his throat, and then shot him in the head several times—killing him.

Walls then turned his attention to Peterson, who was at that time helpless and in tears. Though Peterson posed no threat to him, Walls shot her in the head from close range. Peterson began screaming. In response, Walls forced Peterson's face into a pillow and again shot her in the head from close range. She died as a result of these gunshot wounds.

Based on these events, the State charged Walls with two counts of first-degree murder and other crimes. A jury found Walls guilty as charged on both murder counts and recommended a sentence of death for the murder of Peterson. Following the sentencing hearing, the circuit court sentenced Walls to death. On appeal, we reversed his convictions and death sentence, holding that a correctional officer committed a *Massiah*[2] violation during Walls's pretrial detention. *Walls v. State*, 580 So. 2d 131, 132-35 (Fla. 1991) (plurality opinion); *id.* at 135 (Grimes, J., concurring).

2. *Massiah v. United States*, 377 U.S. 201 (1964).

On remand, a jury found Walls guilty of both first-degree murder counts and again recommended a death sentence for the murder of Peterson. Accepting that recommendation, the circuit count imposed the death sentence. This time, we affirmed in all respects. *Walls v. State*, 641 So. 2d 381, 391 (Fla. 1994). Walls then filed a petition for certiorari in the Supreme Court, which was denied. *Walls v. Florida*, 513 U.S. 1130 (1995).

Since then, Walls has challenged his death sentence numerous times, including on the basis that he is intellectually disabled. He first raised an intellectual-disability claim shortly after the Supreme Court decided *Atkins v. Virginia*, which held that the Eighth Amendment forbids execution of the intellectually disabled. 536 U.S. 304, 321 (2002). Following a lengthy evidentiary hearing, the circuit court denied Walls's *Atkins* claim. We affirmed, noting that Walls had never scored 70 or below on an IQ test. *Walls v. State*, 3 So. 3d 1248 (Fla. 2008) (table decision) (citing *Cherry v. State*, 959 So. 2d 702 (Fla. 2007)).

Seven years later, Walls raised his second intellectual-disability claim—this time relying on *Hall v. Florida*. That decision held that *Cherry*'s bright-line test created "an unacceptable risk

that persons with intellectual disability will be executed." *Hall*, 572 U.S. at 704. Reasoning in part that *Hall* did not apply to cases on collateral review, the circuit court summarily denied Walls's claim. We disagreed, determining that *Hall* was retroactive under our state law. *Walls v. State*, 213 So. 3d 340, 346 (Fla. 2016) (applying retroactivity test set forth in *Witt v. State*, 387 So. 2d 922 (Fla. 1980)). In light of that determination, we reversed the summary denial and remanded for an evidentiary hearing. *Id.* at 341, 347.

Over four years later, the evidentiary hearing took place. Ultimately, the circuit court denied Walls's motion, giving two reasons for its ruling. First, relying on intervening case law from this Court, *see Phillips v. State*, 299 So. 3d 1013 (Fla. 2020); *Nixon v. State*, 327 So. 3d 780 (Fla. 2021), the circuit court concluded that *Hall* was not retroactive and, thus, *Hall* could not provide a basis for relief. Second, on the merits, the court found that Walls failed to prove that he was intellectually disabled under section 921.137, Florida Statutes (2021). Walls now appeals.

Analysis

Walls argues that the circuit court erred in multiple respects in denying his intellectual-disability claim. We decline to reach his

merits-based argument and instead affirm on the basis that *Hall* is not retroactive.[3]

Walls's death sentence became final in 1995. Thus, to benefit from *Hall*—a decision that issued almost 20 years later—Walls must show that *Hall* is retroactive. Our decision in *Phillips*, however, forecloses that argument. In that decision, we held that *Hall* is not retroactive under federal or state law, receding from prior case law to the contrary. *Phillips*, 299 So. 3d at 1018-24.

Recognizing the hurdle *Phillips* poses, Walls contends that *Phillips* was wrongly decided. And in the alternative, he argues that our decision in *State v. Okafor*, 306 So. 3d 930, 933-35 (Fla. 2020) (applying finality-of-judgment principles in concluding that we lacked authority to simply reinstate death sentence when time period for recalling our mandate vacating death sentence had expired), and the law-of-the-case doctrine preclude application of *Phillips* in this particular case. But we have already rejected arguments to recede from *Phillips* and have instead consistently applied its holding in the postconviction context, *see, e.g.*,

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3. Our review in this case is de novo. *See Rogers v. State*, 327 So. 3d 784, 787 n.5 (Fla. 2021).

Thompson v. State, 341 So. 3d 303, 304 (Fla. 2022) (death sentence final in 1993); *Pittman v. State*, 337 So. 3d 776, 777 (Fla. 2022) (death sentence final in 1995); *Nixon*, 327 So. 3d at 781 (death sentence final in 1991); *Freeman v. State*, 300 So. 3d 591, 593 (Fla. 2020) (death sentence final in 1991); *Cave v. State*, 299 So. 3d 352, 353 (Fla. 2020) (death sentence final in 1999), even in cases where we had remanded for additional proceedings in light of *Hall*, *see, e.g.*, *Thompson*, 341 So. 3d at 306; *Nixon*, 327 So. 3d at 782.

For instance, in *Nixon*, we affirmed the denial of a *Hall*-based intellectual-disability claim. 327 So. 3d at 784. In so doing, we stated that *Phillips* was the controlling law that governed on appeal, concluding: "It would be inconsistent with that controlling law for us to entertain Nixon's successive, *Hall*-based challenge to the trial court's order here." *Id.* at 783. We further stressed that the law-of-the-case doctrine did not compel a different analysis. *Id.* Again, noting that *Phillips* had issued after our mandate in Nixon's prior appeal, we applied an exception to the law-of-the-case doctrine for intervening changes in controlling law. *Id.*

We reached a similar conclusion in *Thompson*, a case that involved a remand instruction requiring the circuit court to hold a

new evidentiary hearing on Thompson's *Hall*-based intellectual-disability claim. *Thompson*, 341 So. 3d at 305. On remand, the circuit court declined to hold an evidentiary hearing and summarily denied the claim on the authority of *Phillips*. *Id.* Thompson argued on appeal that *Okafor* required the circuit court to hold an evidentiary hearing in compliance with the remand instruction. *Id.* Disagreeing with that argument, we distinguished *Okafor* based on the fact that Thompson's death sentence remained intact. *Id.* at 305-06. Additionally, consistent with *Nixon*, we concluded that *Phillips* constituted an intervening change in law for purposes of an exception to the law-of-the-case doctrine. *Id.* at 306. Accordingly, we followed *Phillips* and held that *Hall* did not apply in Thompson's case. *Id.* Based on this analysis, we affirmed the summary denial of Thompson's intellectual-disability claim. *Id.*

Accordingly, consistent with *Nixon* and *Thompson*,[4] we conclude that Walls does not get the benefit of *Hall*. As a

4. We reject Walls's argument to recede from *Nixon* and *Thompson*.

consequence, his *Hall*-based intellectual-disability claim fails regardless of the evidence presented at his evidentiary hearing.[5]

Conclusion

Based on the above analysis, we affirm the circuit court's ruling.

It is so ordered.

MUÑIZ, C.J., and CANADY, POLSTON, COURIEL, GROSSHANS, and FRANCIS, JJ., concur.
LABARGA, J., dissents with an opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

LABARGA, J., dissenting.

Because I continue to adhere to my dissent in *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020) (receding from *Walls v. State*, 213 So.

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5. Walls also argues that application of *Phillips* would result in a due-process violation, claiming that the decision was both "unexpected and indefensible." We reject this argument. Of significance, federal and state courts alike have concluded that *Hall* is not retroactive. *See State v. Lotter*, 976 N.W.2d 721, 741 (Neb. 2022) (relying on *Phillips* in holding that *Hall* is not retroactive); *State v. Jackson*, 157 N.E.3d 240, 253 (Ohio Ct. App. 2020) (refusing to apply *Hall* retroactively; listing *Phillips* as example of "substantial and growing body of case law" declining "to apply *Hall* and *Moore [v. Texas*, 581 U.S. 1 (2017),] retroactively"); *In re Payne*, 722 Fed. Appx. 534, 538 (6th Cir. 2018) (noting body of federal case law finding *Hall* not retroactive).

3d 340 (Fla. 2016), and holding that *Hall v. Florida*, 572 U.S. 701 (2014), does not apply retroactively), I dissent to the majority's decision affirming the denial of Walls's successive motion for postconviction relief.

An Appeal from the Circuit Court in and for Okaloosa County,
William Francis Stone, Judge
Case No. 461987CF000856XXXAXX

Eric Pinkard, Capital Collateral Regional Counsel, and Julissa R. Fontán, Assistant Capital Collateral Regional Counsel, Middle Region, Temple Terrace, Florida; and Kara R. Ottervanger, Office of the Federal Public Defender, Tallahassee, Florida,

for Appellant

Ashley Moody, Attorney General, and Charmaine M. Millsaps, Senior Assistant Attorney General, Tallahassee, Florida,

for Appellee