

***** CAPITAL CASE *****

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BILLY LEON KEARSE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

VOLUME I

**DEATH WARRANT SIGNED
EXECUTION SET MARCH 3, 2026, AT 6:00 P.M.**

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*** CAPITAL CASE ***

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IN THE SUPREME COURT OF THE UNITED STATES

BILLY LEON KEARSE,

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v.

STATE OF FLORIDA,

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ON PETITION FOR WRIT OF CERTIORARI
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APPENDIX A

**DEATH WARRANT SIGNED
EXECUTION SET MARCH 3, 2026, AT 6:00 P.M.**

Billy Leon Kearsse v. State of Florida, No. SC2026-0251 & SC2026-0250,
2026 WL 523132 (Fla. Feb. 25, 2026), Florida Supreme Court Opinion Affirming
Denial of Postconviction Relief Under Warrant

2026 WL 523132

Only the Westlaw citation is currently available.

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Supreme Court of Florida.

Billy Leon KEARSE, Appellant,

v.

STATE of Florida, Appellee.

Billy Leon Kearse, Petitioner,

v.

State of Florida, Respondent.

No. SC2026-0251, No. SC2026-0250

February 25, 2026

An Appeal from the Circuit Court in and for St. Lucie County, [Michael Carlton Heisey](#), Judge Case No. 561991CF000136AXXXXX

And an Original Proceeding – Habeas Corpus

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Opinion

PER CURIAM.

*1 Billy Leon Kearse, a prisoner under sentence of death for whom a death warrant has been signed and an execution set for March 3, 2026, appeals the circuit court's final order summarily denying his sixth successive motion for postconviction relief filed under [Florida Rule of Criminal Procedure 3.851](#). Kearse also petitions this Court for a writ of habeas corpus and has filed two pending motions for a stay of execution. We have jurisdiction. *See art. V, § 3(b)*

(1), (9), Fla. Const.; *see also State v. Fourth Dist. Ct. of Appeal*, 697 So. 2d 70, 71 (Fla. 1997) (holding “that in addition to our appellate jurisdiction over sentences of death, we have exclusive jurisdiction to review all types of collateral proceedings in death penalty cases”). For the reasons that follow, we affirm the circuit court's order denying relief below, and we deny Kearse's habeas petition and motions for a stay of execution.

I. BACKGROUND

Kearse was charged with first-degree murder and robbery with a firearm in the 1991 killing of Fort Pierce police officer Danny Parrish. After Parrish stopped Kearse for driving the wrong way down a one-way street, Kearse failed to produce a driver's license and gave him false names. Parrish then ordered Kearse to exit the car and attempted to handcuff him. Kearse resisted, grabbed Parrish's gun, and fired fourteen shots, thirteen of which struck Parrish. Parrish later died from his injuries at the hospital. Kearse was apprehended shortly thereafter and confessed to shooting Parrish. *Kearse v. State*, 662 So. 2d 677, 680 (Fla. 1995).

The jury convicted Kearse of first-degree murder and robbery with a firearm. After this Court affirmed those convictions but granted Kearse a new penalty phase, *see id. at 685-86*, a second penalty phase jury unanimously recommended that Kearse be sentenced to death in 1996. The trial court followed that recommendation, finding two aggravating factors: (1) the murder was committed during a robbery; and (2) the murder was committed to avoid arrest and hinder law enforcement, and the victim was a law enforcement officer engaging in the performance of his official duties (merged into one factor). *Kearse v. State*, 770 So. 2d 1119, 1123 (Fla. 2000). The trial court determined that the mitigating circumstances—Kearse's age at the time of the murder; the fact that he confessed; his acceptable behavior at trial; and a number of circumstances relating to his difficult childhood—were insufficient to outweigh the aggravating factors. *Id.*

On direct appeal after the resentencing, this Court affirmed Kearse's death sentence, *id. at 1135*, which became final when the United States Supreme Court denied certiorari review in 2001, *see Kearse v. Florida*, 532 U.S. 945, 121 S.Ct. 1411, 149 L.Ed.2d 352 (2001); Fla. R. Crim. P. 3.851(d)(1)(B) (“For purposes of this rule, a judgment is final ... on the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed.”).

In the decades since, Kearse has unsuccessfully challenged his convictions and sentence in state and federal court. See *Kearse v. State*, 969 So. 2d 976, 981 (Fla. 2007) (affirming denial of initial motion for postconviction relief and denying first state habeas petition); *Kearse v. State*, 11 So. 3d 355 (Fla. 2009) (affirming denial of successive motion for postconviction relief); *Kearse v. State*, 75 So. 3d 1244 (Fla. 2011) (unpublished table decision) (affirming denial of successive motion for postconviction relief); *Kearse v. Tucker*, 100 So. 3d 1148 (Fla. 2012) (unpublished table decision) (denying second state habeas petition); *Kearse v. State*, No. 561991CF000136A (Fla. 19th Cir. Ct. July 15, 2016) (dismissing successive motion for postconviction relief); *Kearse v. State*, No. SC17-346, 2017 WL 5951617, at *1 (Fla. May 9, 2017) (dismissing for lack of jurisdiction appeal of dismissal of successive motion for postconviction relief); *Kearse v. State*, 252 So. 3d 693, 694 (Fla. 2018) (affirming denial of successive motion for postconviction relief); *Kearse v. Sec'y, Fla. Dep't of Corr.*, 2022 WL 3661526, at *1 (11th Cir. Aug. 25, 2022) (affirming denial of federal habeas relief).

*2 Governor Ron DeSantis signed Kearse's death warrant on January 29, 2026. Kearse then filed a sixth successive motion for postconviction relief under [rule 3.851](#), raising three claims: (1) there is newly discovered evidence that Kearse was unconstitutionally deprived of a fair penalty phase proceeding because the jury was improperly influenced by the presence of uniformed law enforcement officers in the courtroom; (2) Kearse's death sentence is unconstitutional because newly discovered evidence establishes that he is intellectually disabled; and (3) the truncated nature of Florida's death warrant process violates due process. The circuit court summarily denied these three claims. The circuit court also denied Kearse's related motion for a juror interview, his motion to declare unconstitutional the "clear and convincing evidence" standard of proof for establishing intellectual disability set forth in [section 921.137\(4\)](#), [Florida Statutes](#), and his post-warrant public records requests made on February 9, 2026, under [Florida Rule of Criminal Procedure 3.852](#). Kearse now contests the denial of claims one and two of his postconviction motion, and in the course of his challenge, he also asserts that the circuit court erred in denying his motion to interview a juror, his motion to declare [section 921.137\(4\)](#) unconstitutional, and his post-warrant public records requests filed on February 9, 2026.

II. ANALYSIS

A. Claim That Newly Discovered Evidence Shows That Kearse Was Unconstitutionally Deprived of a Fair Penalty Phase Because the Jury Was Subject to Improper Influences

Kearse first argues that the circuit court erred in summarily denying his claim that he was unconstitutionally deprived of a fair penalty phase proceeding in 1996 because the jury was subject to improper external influences. In support of this claim, Kearse asserted that a recent Facebook comment posted by a penalty phase juror (Juror M) constitutes newly discovered evidence that (1) uniformed law enforcement officers were present in the 1996 courtroom; and (2) their presence created an atmosphere that influenced Juror M, such that Kearse did not receive a fair trial under the Sixth and Fourteenth Amendments of the U.S. Constitution. Juror M's social media comment, posted on February 3, 2026, reads in full:

I was a Juror at the second trial, for a possible resentencing of the young man that killed Danny. At the end of that 2nd trial, his death sentence remained. It was one of the hardest things I've ever done, but there was no doubt it was the right sentence. I'll never forget the respect and support shown to Danny in that courtroom. Every day, no matter how long the trial went, the back of the courtroom was filled with Leo's ¹ from every city and county in the state, so much support and respect from his fellow Leo's. They would stand there for several hours, never wavering. I remember silently hoping that his family and friends would know how much he was loved.

For the reasons explained below, we agree with the circuit court's conclusion that this claim is untimely and procedurally barred.

Florida Rule of Criminal Procedure 3.851(d)(1) requires that defendants file any motion to vacate judgment of conviction and sentence of death within one year after their judgment and sentence become final. Because Kearse's successive postconviction claim was filed well beyond the one-year time limit for filing such motions, Kearse must establish that “the facts on which the claim is predicated were unknown [by him and his attorney] ... and could not have been ascertained by the exercise of due diligence.” Fla. R. Crim. P. 3.851(d)(2) (A). Moreover, “any claim of newly discovered evidence in a death penalty case must be brought within one year of the date such evidence was discovered or could have been discovered through the exercise of due diligence.” *Glock v. Moore*, 776 So. 2d 243, 251 (Fla. 2001).

Kearse's claim is untimely because it is premised on facts that could have been discovered decades ago with due diligence. His second penalty phase occurred in 1996, and our affirmance of his death sentence became final in 2001. The presence of uniformed officers in the courtroom during the second penalty phase would have been readily observable. To the extent that the officers' presence could have raised constitutional concerns, Kearse had ample opportunity to investigate any potential undue influence on the jury. Whatever the relevance of Juror M's Facebook post, it merely discloses information that due diligence could have uncovered long ago.

*3 In addition, this Court has held that “in an active [death] warrant case, a postconviction claim that could have been raised in a prior proceeding is procedurally barred.” *Rogers v. State*, 409 So. 3d 1257, 1263 (Fla.), cert. denied, — U.S. —, 145 S. Ct. 2695, 221 L.Ed.2d 963 (2025). This rule applies to Kearse's claim here, which he could have raised long ago on appeal or in an earlier postconviction proceeding. The circuit court was right to deny Kearse's claim as procedurally barred.

B. Motion for a Juror Interview

Kearse also argues that the circuit court erred in denying his February 9, 2026, motion to interview Juror M. Because Kearse failed to establish good cause for filing his motion nearly three decades late or to assert a legally valid basis for the juror interview, the circuit court did not err in denying his motion.

We review the circuit court's denial of Kearse's motion for a juror interview for abuse of discretion. *Anderson v. State*, 18 So. 3d 501, 519 (Fla. 2009). Florida Rule of Criminal Procedure 3.575 requires that a motion to interview a juror be filed “within 10 days after the rendition of the verdict, unless good cause is shown for the failure to make the motion within that time.” Fla. R. Crim. P. 3.575 (emphasis added). As we recently explained in *Bates v. State*, 398 So. 3d 406, 407 (Fla. 2024), “the timing contemplated by the rule suggests that the best time for a rule 3.575 motion is on the heels of trial, and thus in connection with a direct appeal, when memories are fresh and facts more readily ascertained.” A rule 3.575 motion requires that a party have reason to believe that the verdict may be subject to legal challenge, and it “must set forth allegations that are not merely speculative or conclusory, or concern matters that inhere in the verdict.” *Foster v. State*, 132 So. 3d 40, 65 (Fla. 2013).

Of course, Kearse filed the motion at issue here decades after the expiration of the rule 3.575 deadline. To excuse that delay, Kearse relies exclusively on Juror M's February 3, 2026, social media post. He contends that the post reveals improper external influences on the jury and therefore justifies interviewing Juror M now. But any factual issues raised by Juror M's post—whether about the presence of officers in the courtroom or her reaction to that presence—could have been discovered long ago with due diligence. Kearse has not demonstrated good cause under rule 3.575 to excuse his decades-long delay in seeking a juror interview. See *Bates*, 398 So. 3d at 407-08 (finding that Bates's failure to establish good cause for the long delay was “the end of the matter”). We find no abuse of discretion in the circuit court's denial of Kearse's motion.

C. Public Records Claims

Also related to claim one of his successive motion, Kearse appeals the circuit court's denial of his three post-warrant public records requests made on February 9, 2026, under Florida Rule of Criminal Procedure 3.852(i) to the Office of the Attorney General (OAG), the Office of the State Attorney for the Nineteenth Judicial Circuit (SAO19), and the St. Lucie County Sheriff's Office (SLCSO). Kearse made these requests six days after the February 3, 2026, deadline imposed by the circuit court. Kearse sought records relating to any communication between those three agencies and Juror M. Kearse asserted that he sought these records because he believed they would support his claim that he was deprived of

a fair penalty phase proceeding because Juror M was subject to the improper influence of uniformed law enforcement officers in the courtroom. The circuit court sustained the agencies' objections and denied the requests.

*4 We review the denial of requests for public records for abuse of discretion, *Muhammad v. State*, 132 So. 3d 176, 200 (Fla. 2013), and find none here. We agree with the circuit court that Kearse's requests were untimely filed six days after the deadline imposed by the circuit court's scheduling order. Kearse gave no explanation of why he filed the requests six days late, especially given that he found Juror M's post only nine hours after the deadline had expired. Nor did he seek leave of the court to file a late demand.

Kearse explained that he sought these additional records because an Assistant Attorney General (AAG) in this case had allegedly responded to articles and social media comments on Facebook regarding the signing of Kearse's death warrant.² Kearse asserted that the fact that Juror M's post was deleted within twenty-four hours of the AAG's alleged comment(s) "raise[d] the question of whether there was some sort of misconduct in contacting the juror." Even accepting Kearse's timeline and factual allegations as true, his theory that a state or county agency engaged in misconduct by contacting Juror M about her post is purely speculative and does not provide a basis for a colorable claim of relief. Kearse's February 9, 2026, records requests amount to a fishing expedition rather than a proper basis for obtaining post-warrant public records under rule 3.852. See, e.g., *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019) ("Rule 3.852 is 'not intended to be a procedure authorizing a fishing expedition for records.'" (quoting *Bowles v. State*, 276 So. 3d 791, 795 (Fla. 2019))). Under these circumstances, the circuit court did not abuse its discretion in denying Kearse's requests for additional public records from the OAG, SAO19, or SLCSO filed on February 9, 2026.

Likewise, we reject Kearse's argument that denying him access to these records violates his rights to due process and equal protection under the Eighth and Fourteenth Amendments of the U.S. Constitution and the corresponding provisions of the Florida Constitution. *Cole v. State*, 392 So. 3d 1054, 1066 (Fla.) ("Vague and conclusory allegations on appeal are insufficient to warrant relief." (citing *Heath v. State*, 3 So. 3d 1017, 1029 n.8 (Fla. 2009))), cert. denied, — U.S. —, 145 S. Ct. 109, 219 L.Ed.2d 1355 (2024).

D. Claim That Kearse's Death Sentence Is Unconstitutional Based on Newly Discovered Evidence That Kearse Is Intellectually Disabled

Kearse also argues that the circuit court erred in summarily denying claim two of his successive motion, in which he argued that he is intellectually disabled and categorically exempt from execution under *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002) (holding that the Eighth Amendment prohibits execution of the intellectually disabled). In support of this claim, Kearse provided a report by Robert H. Ouaou, Ph.D., a clinical and forensic neuropsychologist, dated February 8, 2026, indicating that Kearse obtained a full-scale IQ score of 75 on the Wechsler Adult Intelligence Scale, Fifth Edition (WAIS-5)—the most recent revision of the widely used Wechsler Adult Intelligence Scale—administered to him after his death warrant was signed. Kearse argued that the IQ score he obtained on the WAIS-5 on February 2, 2026,³ constitutes newly discovered evidence that he is intellectually disabled.

*5 "[T]o establish intellectual disability as a bar to execution, a defendant must demonstrate (1) significantly subaverage general intellectual functioning; (2) concurrent deficits in adaptive behavior; and (3) manifestation of the condition before age eighteen." *Haliburton v. State*, 331 So. 3d 640, 646 (Fla. 2021). "Significantly subaverage general intellectual functioning" requires performance two or more standard deviations below the mean on an approved standardized intelligence test, and "an 'IQ test result of 75 [i]s squarely in the range of potential intellectual disability.'" *Wright v. State*, 256 So. 3d 766, 771 (Fla. 2018) (alteration in original) (quoting *Brumfield v. Cain*, 576 U.S. 305, 315, 135 S.Ct. 2269, 192 L.Ed.2d 356 (2015)). Further, "adaptive behavior" refers to the degree to which an individual meets standards of personal independence and social responsibility as expected of his age, cultural group, and community. § 921.137(1), Fla. Stat.

Earlier IQ results from the original trial and resentencing established Kearse had an IQ score of 79, while in eighth grade he obtained an IQ score of 78. These scores placed Kearse outside the intellectual disability range. At his 1996 penalty phase, Kearse's own expert testified that although Kearse had low-level intelligence, emotional problems, learning disabilities, and brain dysfunctioning, he was not intellectually disabled. *Kearse*, 969 So. 2d at 991-92. And over the past twenty-five years that Kearse has been engaged

in postconviction litigation, he has never raised a claim that he is intellectually disabled under *Atkins*. At most, in his first state habeas petition, Kearse argued that *Atkins* should be extended to him based on “his age, low level of intellectual functioning, and mental and emotional impairments,” but even then, he did not assert that he was intellectually disabled. *Kearse*, 969 So. 2d at 991.

Kearse argues that his intellectual disability claim is timely now because his newly obtained IQ score of 75 on the WAIS-5 constitutes newly discovered evidence. And he claims that he could not have discovered this IQ score earlier because the WAIS-5 was released in 2024. But Kearse's last-minute, post-warrant IQ score does not qualify as newly discovered evidence, and the circuit court did not err in denying this untimely, procedurally barred, and legally insufficient claim.

Kearse's intellectual disability claim is untimely because it was raised well beyond the one-year time limitation imposed by rule 3.851(d)(1), and none of the exceptions in rule 3.851(d)(2) apply. As we have explained, rule 3.851(d)(2)(A) provides an exception to the one-year time limitation when the facts on which the claim is predicated were unknown to the defendant or counsel and could not have been ascertained by the exercise of due diligence. To be considered timely filed as newly discovered evidence, a claim must be filed within one year of the date upon which the claim became discoverable through due diligence. *Jimenez v. State*, 997 So. 2d 1056, 1064 (Fla. 2008). However, Kearse has failed to establish that he exercised due diligence in discovering his alleged intellectual disability.

Even accepting Kearse's argument that he could not have discovered his IQ score of 75 before the WAIS-5 was released, his claim is still untimely. Kearse's claim was not filed within one year of when his IQ score could have been discovered through the exercise of due diligence. According to Kearse, the WAIS-5 was released in October 2024. Assuming that is true, October 2024 would be the earliest date upon which Kearse's IQ score would have become discoverable through the exercise of due diligence. Thus, to satisfy rule 3.851(d)(2)(A), Kearse's claim would need to have been filed by October 2025 at the very latest. Therefore, Kearse's intellectual disability claim based on his February 2, 2026, IQ score is untimely.⁴

*6 Kearse's intellectual disability claim was also properly denied as procedurally barred. See *Rogers*, 409 So. 3d at 1263 (“[I]n an active [death] warrant case, a postconviction

claim that could have been raised in a prior proceeding is procedurally barred.”). Kearse has engaged in numerous postconviction proceedings over the last two and a half decades. Yet not at trial, on appeal, or in any of his state or federal postconviction proceedings has he raised a claim that he is intellectually disabled under *Atkins*.

Finally, summary denial was proper because Kearse failed to sufficiently plead the second prong—concurrent adaptive deficits—of the intellectual disability standard under section 921.137(1). A defendant must establish that he meets all three prongs of the standard to be found intellectually disabled. § 921.137(1), Fla. Stat. (2025); *Dufour v. State*, 69 So. 3d 235, 252-53 (Fla. 2011). Thus, even if Kearse's last-minute, post-warrant IQ test results were sufficient to raise a factual issue as to prong one of section 921.137(1) (they are not), Kearse is not entitled to relief because he has not alleged any current deficits in adaptive behavior. Under Florida law, the first prong must exist “concurrently” with the second prong, “which this Court has interpreted to mean that the two must exist ‘at the same time.’” *Wright*, 256 So. 3d at 773 (quoting *Dufour*, 69 So. 3d at 248). Kearse has alleged only adaptive deficits that were present during his childhood, relating to his trouble with reading and mathematics, as well as being less emotionally developed than his peers at school. Kearse has not alleged any adaptive deficits that are present now, as would be required to satisfy prong two of section 921.137(1). See *Williams v. State*, 226 So. 3d 758, 771 (Fla. 2017) (finding that the data provided regarding Williams's adaptive deficits was “insufficient to satisfy the second prong of the intellectual disability test because it [did] not address Williams's *current* adaptive behavior” (emphasis added)); *State v. Jackson*, No. 3D22-1451, — So.3d —, —, 2025 WL 3703628, at *6 (Fla. 3d DCA Dec. 22, 2025) (observing that “adaptive deficits must not only be present during childhood and adolescence, but also that impairment must be an ongoing issue”). Adaptive deficits exist when at least one domain—conceptual, social, and/or practical—“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 in the community.” *Wright*, 256 So. 3d at 773. But Kearse did not allege that any of his domains are impaired such that ongoing support is needed, nor did he allege that he is currently receiving support. Because Kearse did not allege current adaptive deficits, he failed to make out a facially sufficient claim that he is intellectually disabled under Florida law. Accordingly, the summary denial of this claim was proper.

E. Motion to Declare Section 921.137(4)'s Standard of Proof for Establishing Intellectual Disability Unconstitutional

Kearse also argues the circuit court erred in denying his motion to declare unconstitutional the “clear and convincing evidence” standard of proof set forth in [section 921.137\(4\), Florida Statutes](#), for establishing intellectual disability. Kearse argues that this standard of proof is too high, imposes a significant risk of an erroneous determination that a defendant is not intellectually disabled, and violates the Eighth Amendment and his right to due process. Because we have already determined that Kearse's intellectual disability claim is untimely, procedurally barred, and legally insufficient as pleaded, we need not and will not consider the constitutionality of [section 921.137\(4\)](#)'s standard of proof for establishing intellectual disability. The circuit court did not err in denying his motion.

F. Habeas Petition

*7 In his habeas petition, Kearse argues that his death sentence is unconstitutional under the Eighth and Fourteenth Amendments of the U.S. Constitution and [article I, section 17 of the Florida Constitution](#), because his age at the time of the murder, coupled with his significantly subaverage intellectual functioning, places him in a category of defendants exempt from execution under *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (holding that the Eighth Amendment prohibits execution of individuals who were under eighteen years of age at the time they committed their capital crime), and *Atkins*, 536 U.S. at 321, 122 S.Ct. 2242. We disagree.

Kearse's claim is procedurally barred. In his initial postconviction motion, Kearse argued that he should be exempt from execution based on an interplay of *Roper* and *Atkins*, and our Court rejected that claim. See *Kearse*, 969 So. 2d at 991-92 (rejecting Kearse's *Atkins* claim because he presented evidence at his penalty phase that he was not intellectually disabled and no evidence to the contrary at his initial postconviction evidentiary hearing, and rejecting his *Roper* claim because he was over the age of eighteen at the time of the murder). Kearse cannot relitigate the issue now. See *Walls v. State*, 423 So. 3d 865, 876 (Fla.) (“Because Walls’ habeas petition seeks only to relitigate an issue that was previously decided, we deny the petition.”), *cert. denied*,

No. 25-6357, — U.S. —, — S.Ct. —, — L.Ed.2d —, 2025 WL 3674295 (U.S. Dec. 18, 2025); *Jones v. State*, 419 So. 3d 619, 629 (Fla.) (denying habeas petition raising intellectual disability claim because it was already litigated), *cert. denied*, — U.S. —, 146 S. Ct. 79, 222 L.Ed.2d 1240 (2025); *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.”).

Even if the claim were not procedurally barred, it is meritless, as we determined in his initial postconviction appeal. Kearse has not established that he is intellectually disabled such that he is among the class of persons categorically exempt from execution under *Atkins*, and *Roper* exempts from execution only those who were under eighteen years of age at the time of their capital crime. This Court cannot extend the protections of *Roper* and *Atkins* to Kearse. As we explained in *Barwick v. State*, 361 So. 3d 785 (Fla. 2023):

The conformity clause of [article I, section 17 of the Florida Constitution](#) provides that “[t]he prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution.” This means that the Supreme Court's interpretation of the Eighth Amendment is both the floor and the ceiling for protection from cruel and unusual punishment in Florida, and this Court cannot interpret Florida's prohibition against cruel and unusual punishment to provide protection that the Supreme Court has decided is not afforded by the Eighth Amendment.

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.

*8 *Id.* at 794 (alteration in original) (rejecting argument that *Roper* should be extended to Barwick because he was nineteen when he committed the murder); see *Stephens v. State*, 975 So. 2d 405, 427 (Fla. 2007) (rejecting claim that *Roper* barred execution of defendant whose chronological age at the time of his crimes was twenty-three). Similarly,

under the Eighth Amendment conformity clause in [article I, section 17 of the Florida Constitution](#), this Court “also lacks the authority to extend *Atkins* to individuals who, like [Kearse], are not intellectually disabled.” *Barwick*, 361 So. 3d at 795 (“[T]he Supreme Court ... has limited the categorical ban announced in *Atkins* so that individuals with mental deficiencies other than intellectual disability are outside the scope of that ban.”). Kearse is not categorically exempt from execution under *Roper*, *Atkins*, or a combination thereof, and we deny his petition.

III. CONCLUSION

For the foregoing reasons, we affirm the circuit court's order summarily denying Kearse's sixth successive motion for

postconviction relief. We also deny Kearse's petition for a writ of habeas corpus and his motions for a stay of execution.

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

It is so ordered.

MUÑIZ, C.J., and COURIEL, GROSSHANS, FRANCIS, SASSO, and TANENBAUM, JJ., concur.

LABARGA, J., concurs in result.

All Citations

--- So.3d ----, 2026 WL 523132

Footnotes

- 1 In this context, the term “Leo's” presumably refers to “law enforcement officers.”
- 2 At the hearing on his February 9 requests, Kearse claimed to have in his possession the social media comments posted by the AAG, but they do not appear in the record.
- 3 The WAIS is one of two tests that can be used to establish “significantly subaverage general intellectual functioning,” the first prong of [section 921.137\(1\)](#), as indicated in [Florida Administrative Code Rule 65G-4.011](#). Although the WAIS-5 is the most recent revision of that test, Kearse's argument framing the WAIS-5 as a “new” test fails because psychological tests are routinely revised to reflect changes in the population and other factors, and such revisions do not automatically render results on earlier tests invalid. See [Hampton v. State](#), 219 So. 3d 760, 777-79 (Fla. 2017) (treating both a defendant's WAIS-IV results from 2013 and WAIS results from 1989 as generally valid, admissible evidence).
- 4 Kearse also argued that he showed “good cause” for filing his challenge now, under warrant, citing [Florida Rule of Criminal Procedure 3.203\(d\)\(4\)\(C\)](#) (2004). Without deciding this rule's applicability, Kearse's argument that he has “good cause” for his delay fails for the same reason it is untimely under [rule 3.851](#).

***** CAPITAL CASE *****

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BILLY LEON KEARSE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

APPENDIX B

**DEATH WARRANT SIGNED
EXECUTION SET MARCH 3, 2026, AT 6:00 P.M.**

State of Florida v. Billy Leon Kearse, Case No. 5611991CF000136A, Circuit Court of
the Nineteenth Judicial Circuit in and for St. Lucie County, Florida,
Order Denying Defendant's Successive Motion for Postconviction Relief,
Motion for Stay of Execution, and Motion to Declare § 921.137(4) Unconstitutional

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR SAINT LUCIE COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

BILLY LEON KEARSE,

Defendant.

FELONY DIVISION

CASE NO. 561991CF000136A

Supreme Court No. SC1960-90310

EMERGENCY CAPITAL CASE

DEATH WARRANT SIGNED

EXECUTION SCHEDULED FOR

MARCH 3, 2026 AT 6:00 P.M.

**ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION FOR POSTCONVICTION
RELIEF, MOTION FOR STAY OF EXECUTION, AND MOTION TO DECLARE
§ 921.137(4) UNCONSTITUTIONAL**

THIS CAUSE came before the Court in chambers on the Defendant's Successive Motion to Vacate Judgments of Conviction and Sentence with Request for Leave to Amend and For Evidentiary Hearing, the Defendant's Motion for Stay of Execution, both filed February 9, 2026, and the Defendant's Motion to Declare § 921.137(4), Fla. Stat. Unconstitutional, filed on February 11, 2026, pursuant to Florida Rule of Criminal Procedure 3.851. On February 11, 2026, the Court conducted a case management (*Huff*¹) hearing after which the Court entered an order determining that the Defendant's claims for relief could be resolved by a review of the record and as a matter of law without an evidentiary hearing. After consideration of the Defendant's Motions, the State's Responses, the court record, along with arguments of counsel and relevant legal authority, the Court finds and orders as follows:

¹ *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In its opinion affirming Defendant's conviction, the Florida Supreme Court summarized the facts of the case as follows:

After Parrish observed Kears driving in the wrong direction on a one-way street, he called in the vehicle license number and stopped the vehicle. Kears was unable to produce a driver's license, and instead gave Parrish several alias names that did not match any driver's license history. Parrish then ordered Kears to exit the car and put his hands on top of the car. While Parrish was attempting to handcuff Kears, a scuffle ensued, Kears grabbed Parrish's weapon and fired fourteen shots. Thirteen of the shots struck Parrish, nine in his body and four in his bullet-proof vest. A taxi driver in the vicinity heard the shots, saw a dark blue vehicle occupied by a black male and female drive away from the scene, and called for assistance on the police officer's radio. Emergency personnel transported Parrish to the hospital where he died from the gunshot injuries.

The police issued a be-on-the-lookout (BOLO) for a black male driving a dark blue 1979 Monte Carlo. By checking the license plate that Officer Parrish had called in, the police determined that the car was registered to an address in Fort Pierce. Kears was arrested at that address. After being informed of his rights and waiving them, Kears confessed that he shot Parrish during a struggle that ensued after the traffic stop.

Kears v. State, 662 So.2d 677, 680 (Fla. 1995) (*Kears I*). The Florida Supreme Court affirmed the Defendant's conviction but reversed and remanded for a new sentencing phase for errors "relate[d] to the penalty phase instructions and the improper doubling of aggravating circumstances.". *Id.* at 685. On direct appeal, the Defendant alleged seven guilt phase errors.²

At resentencing on March 24, 1997, a unanimous jury recommended the death penalty, and the Court again imposed the death sentence the following day. *Kears v. State*, 770 So.2d 1119

² The guilt phase issues alleged error as follows: (1) the giving of the State's special instruction on premeditated murder over objection; (2) the instruction to the jury on escape as the underlying felony of felony murder; (3) the denial of Kears's cause challenges to prospective jurors; (4) the admission of testimony regarding the purpose of a two-handed gun grip; (5) the denial of motions to suppress; (6) the instruction on reasonable doubt denied Kears due process and a fair trial; and (7) the admission of hearsay evidence during the guilt phase. *Kears I*, 662 So.2d at 680–81.

(Fla. 2000) (*Kearse II*), *cert. denied*, 532 U.S. 945, 121 S. Ct. 1411, 149 L.Ed.2d 352 (2001). In aggravation, the trial court found: “murder was committed during a robbery; and the murder was committed to avoid arrest and hinder law enforcement and the victim was a law enforcement officer engaged in performance of his official duties (merged into one factor).” *Kearse II* at 1123. The statutory mitigator of “age” was given “some but not much weight.” *Id.* Kearse offered forty nonstatutory mitigating factors, including his intellectual deficits, but the trial court found only the following established: “Kearse exhibited acceptable behavior at trial; he had a difficult childhood and this resulted in psychological and emotional problems.” *Id.* Kearse raised twenty-two issues³ in his re-sentencing appeal. The court rejected each claim of error and affirmed the death sentence. *Kearse II* at 1135. On March 26, 2000, the United States Supreme Court denied certiorari. *Kearse v. Florida*, 532 U.S. 945 (2000).

Kearse’s initial 3.851 motion for postconviction relief was filed October 3, 2001, and subsequently amended on March 1, 2004, raising several claims and subclaims, all which were

³ He claimed: (1) error to return venue to the county where the offense occurred; (2) error to compel Kearse to comply with a mental health examination; (3) error to deny a continuance; (4) sentence not proportional; (5) error in the evaluation of mitigation; (6) court failed to evaluate nonstatutory mitigation of emotional or mental disturbance; (7) error to deny motion to disqualify the prosecutor; (8) mistrial should have been granted for prosecutor's closing argument comments; (9) error to inform jury Kearse had been found guilty previously and that remand was for re-sentencing; (10) error to deny juror interviews; (11) Kearse's absence during pretrial conferences was involuntary; (12) error to grant State's cause challenge to Juror Jeremy; (13) error to deny Kearse's cause challenges to Jurors Barker and Foxwell; (14) Kearse's compelled mental health examination constituted an unconstitutional one-sided discovery rule; (15) the compelled mental health examination violated the ex post facto clauses of the United States and Florida Constitutions; (16) the compelled mental health examination violated Kearse's federal constitutional rights; (17) the victim impact instruction is vague and gave undue importance to evidence; (18) error in weighing Kearse's age mitigator; (19) “committed during a robbery” aggravator should have been merged with the other aggravators; (20) error to consider “committed during a robbery” aggravator; (21) error to admit photographs of victim; and (22) electrocution is cruel and unusual punishment. *Kearse II* at 1122-23.

rejected by the trial court after an evidentiary hearing and affirmed by the Florida Supreme Court.⁴ On postconviction appeal, Kearsé raised four claims and two claims within his state habeas corpus petition. *Kearsé*, 969 So.2d at 982. The postconviction claims were addressed to: (1) ineffective assistance of penalty phase counsel; (2) error to deny relief on claim of newly discovered evidence; (3) error to deny public records requests; and (4) error to summarily deny several postconviction claims. *Id.* at 982. The state habeas asserted appellate counsel was ineffective and “that both his death sentence and lethal injection are unconstitutional.” *Id.* at 990. The Florida Supreme Court affirmed the denial of postconviction relief and denied the habeas petition. *Id.* at 989, 992.

In the State habeas litigation, the Florida Supreme Court rejected the claim that Kearsé’s low mental functioning and age (eighteen years-three months) at the time of the murder rendered his capital sentence unconstitutional opining:

Kearsé claims that his death sentence is unconstitutional on various grounds. First, he argues that because of his age, low level of intellectual functioning, and mental and emotional impairments he cannot be executed under *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242, 153 L.Ed.2d 335 (2002), which prohibited execution of people with [intellectual disability.] However, Kearsé's own expert at the resentencing testified that he was not [intellectually disabled,] and he presented no evidence at his postconviction hearing that he was. Thus, his sentence is not

⁴ Kearsé claimed: (1) that public records were withheld; (2) that defense counsel failed vigorously to advance Kearsé's position, to cross-examine witnesses at trial and at the motion to suppress hearing, to consult with crime scene, firearm, and medical experts, to request co-counsel at the second penalty phase, to prepare witnesses to testify at the resentencing, to object to the admission of evidence, to argue the age mitigating factor, to present evidence regarding the victim's prior misconduct, to obtain Kearsé's consent to concede aggravating factors, and cumulative error; (3) that the trial court erred in denying a cause challenge, in denying trial counsel's motion for co-counsel, and in rejecting two statutory mental health mitigating factors; (4) that the State knowingly withheld evidence in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); (5) that newly discovered evidence demonstrates the State's expert was biased for the prosecution; (6) that Kearsé's rights under *Ake v. Oklahoma*, 470 U.S. 68, 105 S.Ct. 1087, 84 L.Ed.2d 53 (1985), were denied through the ineffective assistance of counsel and inadequate assistance of mental health experts; (7) that Kearsé's death sentence is fundamentally unfair; (8) that Kearsé was denied the right to a fair trial because of pretrial publicity, the lack of adequate venue, and events in the courtroom at trial; (9) that Florida's death penalty scheme violates *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002); (10) that his death sentence is unconstitutionally based on an automatic aggravator; and (11) that Kearsé is insane to be executed. *Kearsé*, 969 So 2d at 982.

unconstitutional under *Atkins*. See *Hill v. State*, 921 So.2d 579, 584 (Fla.), cert. denied, 546 U.S. 1219, 126 S. Ct. 1441, 164 L.Ed.2d 141 (2006).

Kearse, 969 So. 2d at 991-92. Pointing to *Hill*, 921 So.2d at 584, the Florida Supreme Court also rejected the claim that *Kearse*'s age, "eighteen years and three months old at the time of the crime" combined with "low level intellectual functioning and mental and emotional impairments," bars his execution under *Roper v. Simmons*, 543 U.S. 551 (2005). *Kearse*, 969 So.2d at 991-92.

Thereafter, *Kearse* filed his initial 3.851 motion for postconviction relief on October 3, 2001, subsequently amending it on March 1, 2004. Relief was summarily denied at the trial court and affirmed by the Florida Supreme Court. *Kearse v. State*, 11 So. 3d 355 (Fla. 2009). *Kearse*'s second successive postconviction motion sought reconsideration of prior alleged ineffective assistance of counsel claims based on newly discovered evidence of trial counsel's later disbarment. The Florida Supreme Court affirmed the summary denial of relief. *Kearse v. State*, 75 So. 3d 1244 (Fla. 2011).

Kearse filed a second state habeas petition alleging that *Wyatt v. State*, 71 So. 3d 86 (Fla. 2011) modified the definition of "newly discovered evidence" as it relates to evidence *Kearse* wanted to present within his original postconviction litigation regarding Dr. Martell. *Kearse v. Tucker*, 100 So. 3d 1148 (Fla. 2012) (unpublished). The Florida Supreme Court denied the petition on the merits and declined to revisit its decision in *Kearse*, 969 So. 2d at 987. *Id.*

Kearse filed his third successive postconviction Rule 3.851 motion during the pendency of his federal habeas litigation seeking relief based on *Hurst v. Florida*, 577 U.S. 92 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). The Florida Supreme Court affirmed the trial court's denial of relief stating, "Kearse was sentenced to death following a jury's unanimous recommendation for death... His sentence of death became final in 2001... Thus, *Hurst* does not apply retroactively to

Kearse's sentence of death. *See Hitchcock [v. State]*, 226 So. 3d [216, 217 (Fla. 2017)].” *Kearse v. State*, 252 So. 3d 693, 694 (Fla. 2018), *cert. denied*, 587 U.S. 922 (2019).

Kearse filed his federal habeas corpus petition on July 16, 2009. Ultimately, the petition was denied on the merits on September 1, 2015. Three issues were addressed on appeal: (1) penalty phase counsel's effectiveness in investigating and preparing for Dr. Martell's testimony; (2) penalty phase counsel's effectiveness in failing to investigate and present Officer Parrish's misconduct and difficulties in dealing with the public; and (3) whether under *Atkins* and *Roper*, Kearse's death sentence is unconstitutional under the Eighth Amendment. On August 25, 2022, each claim was rejected. *Kearse v. Sec'y., Fla. Dep't Corr.*, No. 15-15228, 2022 WL 3661526 (11th Cir. 2022), *cert. denied*, 143 S. Ct. 2439 (2023).

On January 29, 2026, Governor Ron DeSantis signed a death warrant to carry out the sentence of death imposed on the Defendant, with execution scheduled for March 3, 2026, at 6 p.m. Thereafter, the Florida Supreme Court issued a scheduling order requiring that all proceedings pending in the trial court be concluded by 11 a.m. on February 12, 2026. During the first status hearing on February 2, 2026, this Court issued a Scheduling Order requiring the Defendant to file any motion for postconviction relief by February 7, 2026, at 1 p.m.

Kearse filed Demands for additional public records on February 3, 2026, all of which were objected to in their entirety. After conducting a hearing, all objections were sustained.

On February 6, 2026, the Florida Supreme Court granted the Defendant's relief for a scheduling modification and issued an amended scheduling order requiring that all proceedings be concluded by the trial court by February 15, 2026, at 11 a.m. As a result, this Court issued an Amended Scheduling Order on February 6, 2026.

Kearse filed three (3) additional Demands for Public Records Pursuant to Florida Rule of Criminal Procedure 3.852(i), a Motion to Interview Jurors, his Successive Rule 3.851 Motion, and a Motion for a Stay of Execution on February 9, 2026. Kearse filed a Second Renewed Emergency Motion to Modify Scheduling Order, Continuance of Case Management Conference, and Stay of Execution on February 10, 2026, making a contemporaneous request in the Florida Supreme Court, *Kearse v. State of Florida*, Case No. SC1960-90310. To maintain compliance with the Florida Supreme Court's revised scheduling order, this Court proceeded with the Second Case Management Conference and *Huff* hearing as scheduled on February 11, 2026.

On February 12, 2026, the Court entered an Order denying Kearse's Second Renewed Emergency Motion to Modify Scheduling Order⁵ and his Motion to Interview Jurors, and cancelled the previously scheduled evidentiary hearing. The Court reserved ruling to address Kearse's Successive Rule 3.851 Motion, Motion for a Stay of Execution, and a Motion to Declare § 921.137(4), Fla. Stat. Unconstitutional. The State has filed responses to each Motion. The Court will address each herein.

APPLICABLE RULE 3.851 PROCEDURAL LAW

A defendant sentenced to death is permitted to file a successive motion for collateral relief, outside of the one-year time limitation, only if the motion conclusively establishes (1) the facts on which the claim is predicated are newly discovered evidence that could not have been discovered through the exercise of due diligence, (2) a newly established and retroactive constitutional right or (3) postconviction counsel, through negligence, failed to file the motion. *James v. State*, 404

⁵ The Florida Supreme Court also denied Kearse's Second Emergency Motion to Modify Scheduling Order and Motion for Stay of Execution on February 12, 2026. *Kearse v. State of Florida*, Case No. SC1960-90310.

So. 3d 317, 324 (Fla. 2025) (outlining these exceptions in a post-warrant context); *Barwick v. State*, 361 So. 3d 785, 795 (Fla. 2023) (finding that successive postconviction claim of exemption from death penalty due to mental deficiencies was procedurally barred because it was substantially argued at trial or could have been raised previously).

Even if an exception exists, successive postconviction claims may still be denied as untimely if the defendant delays in raising those claims. *See Rodgers v. State*, 288 So. 3d 1038, 1039 (Fla. 2019) (to be considered timely filed as newly discovered evidence, the motion must be filed within one year of the date upon which the claim became discoverable through due diligence.). Procedurally barred claims should be summarily denied. *See Rogers v. State*, 409 So. 3d 1257, 1263 (Fla. 2025); *Muhammad v. State*, 603 So.2d 488, 489 (Fla. 1992) (noting “[i]ssues which either were or could have been litigated at trial and upon direct appeal are not cognizable through collateral attack.”). All other claims should be summarily denied “when the motion and the record conclusively demonstrate that the movant is entitled to no relief.” *Kennedy v. State*, 547 So.2d 912, 913 (Fla. 1989); *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020) (“It is incumbent upon the defendant to establish the timeliness of a successive postconviction claim.”); *Morris v. State*, 317 So. 3d 1054, 1071 (Fla. 2021) (a court may summarily deny a postconviction claim that is procedurally barred.)

With this legal precedent in mind, the Court has reviewed the three claims raised in the Defendant’s present successive motion and finds that his claims are untimely, legally insufficient, procedurally barred, or without merit, and therefore, can be summarily denied. Each claim will be addressed individually and with greater specificity below.

GROUND S ALLEGED FOR POSTCONVICTION RELIEF⁶

CLAIM I – Denial of Fair Resentencing

Kearse’s first claim asserts that he was denied a fair resentencing proceeding because the jury was subjected to impermissible influences outside of the evidence that tended to subvert its purpose, in violation of the Sixth and Fourteenth Amendments to the United States. Kearse argues this purported violation necessitates a stay of execution, an evidentiary hearing, and postconviction relief. His claim is based on the February 3, 2026, social media post of Clair H. Matthews (“Juror Matthews”), a juror who served during the Defendant’s 1996 resentencing. The social media post in question reads:

I was a Juror at the second trial, for a possible resentencing of the young man that killed Danny. At the end of that 2nd trial, his death sentence remained. It was one of the hardest things I've ever done, but there was no doubt it was the right sentence. I'll never forget the respect and support shown to Danny in that courtroom. Every day, no matter how long the trial went, the back of the courtroom was filled with Leo's from every city and county in the state, so much support and respect from his fellow Leo's. They would stand there for several hours, never wavering. I remember silently hoping that his family and friends would know how much he was loved.

A review of the record and the totality of the circumstances support summary denial as the claim is untimely, is not based on newly discovered evidence, is procedurally barred, and is without merit.

⁶ Appellate records will be identified as: **Direct Appeal** (“1ROA-R” for the record and “1ROA-T” for the transcript) case number SC1960-79037 – *Kearse I*, 662 So. 2d 677 (Fla. 1995); **Direct Appeal of Resentencing** (“2ROA-R” “2ROA-T”) case number SC1960-90310 – *Kearse II*, 770 So. 2d 1119 (Fla. 2000); **Original Postconviction appeal** (“1PCR”) case number SC05-1876 – *Kearse v. State*, 969 So. 2d 976 (Fla. 2007); **First Successive Postconviction Appeal** (“2PCR”) case number SC08-1986 – *Kearse v. State*, 11 So.3d 355 (Fla. 2009) (unpublished); **Second Successive Postconviction Appeal** (“3PCR”) case number SC11-244 – *Kearse v. State*, 75 So. 3d 1244 (Fla. 2011) (unpublished); and **Third Successive Postconviction Appeal** (“4PCR”) case number SC18-458 – *Kearse v. State*, 252 So. 3d 693 (Fla. 2018). References to the records will be by record type followed by the page number(s). Supplemental records will be designated with “S” preceding the record type.

As this successive postconviction claim was filed well beyond the one-year time limit for filing such motions under Florida Rule of Criminal Procedure 3.851(d)(2), the Defendant must establish that the facts on which the claim is predicated were unknown and could not have been ascertained by the exercise of due diligence. *Hunter v. State*, 29 So. 3d 256, 267 (Fla. 2008). Although Kearsse points to Juror Matthews's social media post as his newly discovered evidence, the claim of uniformed officers in the courtroom was known since his 1991 trial and 1997 resentencing. *See Kearsse*, 969 So.2d at 989. In fact, Kearsse's penalty phase counsel filed a Motion for Order Regulating Courtroom Spectators which was addressed by the Court December 9, 1996, with counsel specifically advising that although there were no officers present in the courtroom at that time, he may seek later relief. (2ROA-R 532-33); (2ROA-T 216-18). Kearsse then claimed within his 2004 postconviction motion that the presence of numerous uniformed officers in the courtroom during his 1991 trial created an "unacceptable risk" of impermissible facts impacting his 1996 resentencing. (2ROA 216-17; 1PCR 1505 *see* 2004 Amended Rule 3.851 motion at page 48 ¶¶ 8-11). The Florida Supreme Court affirmed the summary denial of relief as the claim, based solely on trial counsel's characterization of the 1991 trial, was legally insufficient to support the constitutional claim "because the mere presence of the officers was insufficient to demonstrate a hostile courtroom and Kearsse failed to demonstrate prejudice." *Kearsse*, 969 So. 2d at 989.

Kearsse's claims that he could not have discovered Juror Matthew's prospective regarding law enforcements presence in the courtroom until she posted her social media comment on February 3, 2026, does not explain nor excuse his failure to develop evidence to support this claim previously through other witnesses. Kearsse had his trial counsel's 1996 account of who was in the courtroom during the 1991 trial, counsel's statement regarding the potential for addressing it

during the 1996 resentencing, and Kearsse himself was present for his own penalty phase, as were family members, friends, and defense experts. Kearsse has failed to meet his burden to demonstrate that any of the evidence he references qualifies for the time limit exception provided by Fla. R. Crim. P. 3.851(d)(2)(A). *See Dillbeck v. State*, 357 So. 3d 94, 100 (Fla. 2023).

Even if Kearsse's first claim was timely, it is procedurally barred. As discussed above, in 1996, Kearsse's penalty phase counsel voiced his concern about uniformed officers in the courtroom based on officers in the 1991 courtroom. Counsel did not raise this issue on direct appeal but raised the presence of uniformed officers in the courtroom in the original 2001-2004 postconviction litigation, thus, rendering this claim barred. (1PCR-1504-7) *See Rogers v. State*, 409 So. 3d 1257, 1263 (Fla. 2025) (“[I]n an active warrant case, a postconviction claim that could have been raised in a prior proceeding is procedurally barred.”).

Even if the Court were to agree with the Defendant that his claim was not untimely nor procedurally barred, which it does not, the Court finds the claim meritless. Defendant claims that Matthews purported social media posts remembering the presence of law enforcement and hoping the victim's family found peace and knew he was loved somehow establishes that law enforcement's presence was to “send an implied message to the jury that Mr. Kearsse should get the death penalty.” *Defense Motion* at fn. 10. The Court disagrees and finds the Defendant's interpretation purely speculative.

To establish his claim, Kearsse must show that the presence of law enforcement in the courtroom during his resentencing created either actual prejudice or inherent prejudice. *Woods*, 923 F.2d at 1457. “Actual prejudice requires some indication or articulation by a juror or jurors that they were conscious of some prejudicial effect. *See Pozo v. State*, 963 So.2d 831 (Fla. 4th

DCA 2007). Inherent prejudice...requires a showing by the defendant that there was an unacceptable risk of impermissible factors coming into play.” *Shootes*, 20 So. 3d at 438 (citing *Holbrook*, 475 U.S. at 570). Kears failed to carry his burden.

At best, Juror Matthews social media post indicates some amount of admiration for the family support, and what the Defendant already knew as established by the record, that uniformed officers were in the courtroom and were from multiple agencies across the state. The fact that Matthews believed her decision was a hard one, but proper, does not show misconduct or prejudice. As noted above, the mere presence of law enforcement does not show a hostile courtroom, and no actual or implied prejudice arises from the officers in Kears’s case. *Kears*, 969 So.2d at 989 (announcing that the mere presence of the officers was insufficient to demonstrate a hostile courtroom and Kears failed to demonstrate prejudice). Juror Matthews social media post adds no support for this rejected claim which is untimely, procedurally barred, and without merit.

Accordingly, the Defendant Claim I is summarily denied.

CLAIM II – Intellectual Disability

Kears’s second claim asserts that newly discovered evidence establishes that he is intellectually disabled and that his death sentence violates the Eighth and Fourteenth Amendments to the United States Constitution, citing *Atkins v. Virginia*, 536 U.S. 304 (2002) (barring execution of the intellectually disabled). In support of his claim, Kears provides the report of Dr. Ouaou tendered on February 6, 2026, after an examination on February 2, 2026. This claim is untimely, procedurally barred, and without merit.

As detailed above, for this Rule 3.851 claim to be considered timely outside of the one-year time limitation, it must meet one of the exceptions of Fla. R. Crim. P. 3.851(d)(2), which is

Kearse's burden to establish. *See Dillbeck*, 357 So. 3d at 100. Claims of newly discovered evidence must be filed within one year of when the information was discovered or could have been discovered with due diligence. *Hamilton*, 236 So. 3d 276. Similarly, where a claim of intellectual disability is not timely filed, Rule 3.203(f) requires a showing of "good cause."⁷ Kearse has not demonstrated a valid reason for this untimely filing of his *Atkins* claim.

The Court first notes the procedural history of Kearse's claims regarding his intellectual deficits, which began with the filing of his first postconviction motion in 2001, amended in 2004 after the release of *Atkins*. The record is replete of Kearse's successive postconviction claims thereafter, spanning the years of 2007, 2010, 2016, 2017, and this is outside of his federal habeas litigation. Importantly, the Supreme Court issued *Hall v. Florida*, 572 U.S. 701, in 2014, rejecting Florida's brightline cut off at an IQ score of 70 to prove intellectual disability. Despite *Hall* being issued in 2014, Kearse did not re-raise a claim of intellectual disability.

Kearse's primary argument rests on the contention that newly discovered evidence exists by way of a new evaluation he was administered on February 2, 2026, utilizing the "newly published" Weschler Adult Intelligence Scale, Fifth Edition (WAIS-5), which was only released in October 2024. The Court doesn't dispute the report indicates Kearse's full-scale IQ score of 75, placing him in the 5th percentile of the population and "in the intellectual disability range." *See* Defendant's Motion, attachment F, Report of Robert H. Ouaou, Ph.D. However, the Court disagrees with the Defendant's argument that he could not have brought this claim earlier because the test was only released in October 2024.

⁷ Kearse's his intellectual disability claim is governed by Rule 3.203(d)(4)(c) (2004) as he had an active postconviction motion in 2004. *See* Amendments to Fla. R. Crim. P. & Fla. R. App. P., 875 So.2d 563 (Fla. 2004).

This argument ignores the plain language of the rule in effect at the time Kearsé's first postconviction motion was pending, and it ignores how current precedent clearly establishes such claims are now untimely. *See Pittman v. State*, 417 So. 3d 287, 292 (Fla. 2025), as corrected (Sept. 11, 2025), *cert. denied sub nom. Pittman v. Florida*, 146 S. Ct. 74 (2025) (affirming summary denial of intellectual disability claim under an active death warrant, finding it both time barred and procedurally barred). Psychological tests are routinely revised to reflect changes in the population and other factors and do not render test results on earlier tests invalid. *See Dillbeck*, 304 So. 3d at 288 (rejecting newly discovered evidence claim as untimely which was based upon retention of a new defense expert citing a revision in the Diagnostic and Statistic Manual of Mental Disorders and administration of a quantitative electroencephalogram to the defendant). Kearsé's claim was required to be filed within one year of *Hall* being issued. Failure to do so renders this claim untimely.

Even if Kearsé's claim was timely filed, it is procedurally barred. As addressed previously, claims which either were or could have been raised on direct appeal or in prior postconviction proceedings are not properly raised in a successive postconviction motion. *See Rogers v. State*, 409 So. 3d 1038, 1263 (Fla. 2019) (“[I]n an active [death] warrant case, a postconviction claim that could have been raised in a prior proceeding is procedurally barred.”). Kearsé's case has been in active litigation in state court from 2001 through 2017, and in federal court until 2023; his failure to address the instant claim in a successive postconviction motion renders it procedurally barred. *See Bowles v. State*, 276 So. 3d 791 (Fla. 2019) (affirming the summary denial of an intellectually disability claim because the claim was not timely filed.).

Also problematic, the instant claim has previously been raised and rejected by the Florida

Supreme Court, albeit in combination with his age and emotional impairments. *See Kearsse*, 969 So. 2d at 991-92. While Kearsse’s instant claim as to his intellectual disability is slightly nuanced, it nonetheless has already been rejected:

Kearsse claims that his death sentence is unconstitutional on various grounds. First, he argues that because of his age, low level of intellectual functioning, and mental and emotional impairments he cannot be executed under *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242, 153 L.Ed.2d 335 (2002), which prohibited execution of people with [intellectual disability.] However, Kearsse's own expert at the resentencing testified that he was not [intellectually disabled,] and he presented no evidence at his postconviction hearing that he was. Thus, his sentence is not unconstitutional under *Atkins*. *See Hill v. State*, 921 So.2d 579, 584 (Fla.), *cert. denied*, 546 U.S. 1219, 126 S. Ct. 1441, 164 L.Ed.2d 141 (2006).

See Kearsse, 969 So. 2d at 991-92. Any argument that the procedural bar imposed by Rule 3.851(d)(2) presents has been rejected. *See Ford v. State*, 402 So. 3d 973, 978 (Fla. 2025), *cert. denied sub nom. Ford v. Florida*, 145 S. Ct. 1161 (2025) (“The fact that Ford is not permitted to relitigate issues now does not violate his access to the courts to litigate valid claims in accordance with the procedural rules of this state. The fact that counsel cannot relitigate claims that have already been raised does not deprive him of the right to counsel, who was free to raise appropriate claims. And the application of procedural bars after the signing of his death warrant did not prevent Ford from attempting to show that his case is not among the most aggravated and least mitigated at the appropriate time (or times) and through the appropriate channels, nor did it deprive Ford of an individualized sentencing or otherwise violate the Eighth Amendment or article 1, section 17 of the Florida Constitution.”)

Furthermore, Kearsse’s intellectual disability claim is meritless. The United States Supreme Court held that the Eighth Amendment prohibits the execution of intellectually disabled individuals. *Gudinas v. State*, 412 So. 3d 701, 709 (Fla. 2025) *citing Atkins v. Virginia*, 536 U.S.

304 (2002). To establish an intellectual disability bar to execution, a defendant must prove the disability by clear and convincing evidence. § 921.137(4), Fla. Stat. Florida law defines “intellectual disability” as significantly subaverage general intellectual functioning, concurrent deficits in adaptive behavior, and onset before age 18. § 921.137(1), Fla. Stat. “Significantly subaverage general intellectual functioning” requires performance two or more standard deviations below the mean on an approved standardized intelligence test, while “adaptive behavior” refers to the degree to which an individual meets standards of personal independence and social responsibility as expected of his or her age, cultural group, and community. *Id.* A defendant who fails to prove any one of these three statutory elements cannot be found intellectually disabled. *Haliburton v. State*, 331 So. 3d 640, 646 (Fla. 2021) (emphasis added).

Testimony during both the resentencing trial and the postconviction hearing established that Kearsa suffered from emotional dysfunction, had learning disabilities, problems related to possible brain damage, and a conduct disorder. *Kearsa*, 969 So. 2d at 984. Earlier IQ tests from both the original trial and resentencing established Kearsa had an IQ score of 79, while in eighth grade he had an overall IQ score of 78. (2ROA-T 2124). Kearsa argues the most recent test administered by Dr. Ouaou, which got Kearsa into a range of 70-80, allows him to argue that *Hall* applies, but it also ignores how none of the prior experts diagnosed him as intellectually disabled. Rather, his experts and defense witnesses said he had severe learning disabilities, was emotionally disturbed, and had a conduct disorder. There was also speculation that he had brain damage. *Kearsa*, 969 So. 3d at 984-85. As such, the record demonstrates that this claim is untimely, procedurally barred, and/or meritless.

For the foregoing reasons, Defendant’s Claim II is summarily denied.

CLAIM III – Truncated Nature of Warrant Process

Kearse’s third claim argues that the unreasonably truncated timeframe and surprise nature of the warrant process in Florida has denied him the right to a full, fair, and meaningful postconviction process in violation of the Fourth, Eighth, and Fourteenth Amendments. He further alleges that CCRC-South’s representation of Kearse at a time during overlapping warrants and personal matters of counsel, impacted the ability to fully investigate the case, contact witnesses, and schedule meaningful visits. Notably, Kearse recognizes that his requested relief is unavailing.

While the Court is sympathetic to the issues raised given counsel’s emergency personal matters, neither the Constitution of the United States nor of the State of Florida afford Kearse the right to protest the timeframe of the warrant process. Kearse was provided with a full and fair opportunity to be heard throughout his appeal and postconviction proceedings previously outlined. Kearse’s convictions and sentence became final in 2000, his last postconviction litigation was in 2018, and he has been eligible for death since 2023.

The Court has repeatedly held that the Governor has broad discretion in selecting which death warrants to sign, and when. *See Zakrzewski v. State*, 415 So. 3d 203, 210 (Fla. 2025), *cert. denied sub nom. Zakrzewski v. Florida*, 146 S. Ct. 57 (2025) (finding a thirty-day period between the signing of Zakrzewski’s death warrant and his execution, overlapping with the Fourth of July holiday and the pendency of another inmate’s execution, did not deprive him of meaningful access to counsel and the courts.”); *See Barwick v. State*, 361 So. 3d 785, 789 (Fla. 2023) (rejecting that a 30-day “compressed warrant litigation schedule” denies a capital defendant “his rights to due process.”); *see Tanzi v. State*, 407 So. 3d 385, 390 (Fla. 2025), *cert. denied sub nom. Tanzi v. Dixon*, 145 S. Ct. 1914 (2025) (rejecting the constitutional challenge to a compressed warrant

litigation schedule); *Jones v. State*, 419 So. 3d 619, 625–26 (Fla. 2025), *cert. denied sub nom. Jones v. Florida*, 146 S. Ct. 79 (2025) (“The record refutes Jones's claim that the issuance of his warrant was a “surprise.” Jones's death sentences were imposed thirty-two years ago and have been final for thirty years...in addition to the thirty-two years of notice since the imposition of his death sentences, Jones has been on notice for nearly twelve years that he is ‘warrant-eligible[.]’”).

For these reasons, Defendant’s Claim III is summarily denied.

MOTION FOR STAY OF EXECUTION

This Court agrees with the Defendant’s recitation of Rule 3.851 which provides entitlement to an evidentiary hearing (and a stay of execution) *unless* “the motion, files, and records in the case conclusively show that the movant is entitled to no relief.” Fla. R. Crim. P. 3.851(h)(6). “The death penalty is the gravest sentence our society may impose. Persons facing that most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution.” *Hall v. Florida*, 572 U.S. 701, 724 (2014). Through the Defendant’s considerable postconviction proceedings spanning 25 years, he was afforded more than a fair opportunity to show that the Constitution in some way prohibits his execution. However, as determined herein, the Defendant’s claims did not warrant an evidentiary hearing, are untimely, legally insufficient, procedurally barred, and/or are without merit. Accordingly, Defendant has failed to establish any “substantial grounds upon which relief might be granted.” *Dillbeck v. State*, 357 So. 3d 94, 103 (Fla. 2023).

As such, there is no longer any basis for which a stay can be sought.

MOTION TO DECLARE § 921.137(4), FLA. STAT. UNCONSTITUTIONAL

The Defendant filed his Motion to Declare § 921.137(4), Fla. Stat. Unconstitutional on February 11, 2026. As a preliminary matter, the Court agrees with the State that this Motion is

untimely as it was filed outside the timeframes provided in this Court’s Amended Scheduling Order, and that the argument is essentially an extension of Claim II, which includes an *Atkins* claim. However, the Court declines to dismiss the argument as untimely and unauthorized without consideration of its merit.

After reviewing Kearsse’s challenge to § 921.137(4), Fla. Stat., the Court finds it untimely and procedurally barred. *See Rogers v. State*, 409 So. 3d at 1263 (“[I]n an active [death] warrant case, a postconviction claim that could have been raised in a prior proceeding is procedurally barred.” *Reaves v. State*, 826 So.2d 932, 936 (Fla. 2002) (noting that challenges to the constitutionality of Florida’s capital sentencing statute are procedurally barred from review in a motion for postconviction relief where they were either raised on direct appeal or should have been raised on direct appeal). The record conclusively demonstrates that any facial challenge to § 921.137(4), Fla. Stat. and its clear and convincing standard could have and should have been raised through the litany of postconviction litigation. *See e.g. Haliburton v. State*, 331 So. 3d 640, 652 (Fla. 2021).

Kearsse’s argument is also without merit. The United States Supreme Court reviewed Florida’s intellectual disability statute in *Hall v. Florida*, 572 U.S. 701, 711 (2014). The Court did not find the burden of proof unconstitutional and only held that the Florida Supreme Court’s interpretation of § 921.137 and application of a brightline cut-off IQ level was unconstitutional. *Hall*, 572 U.S. at 711 (stating “[o]n its face this statute could be interpreted consistently with *Atkins* and with the conclusions this Court reaches in the instant case.) This Court is not aware of any legal precedent that holds Florida’s burden of proof required under § 921.137(4), Fla. Stat. unconstitutional.

IT IS HEREBY ORDERED AND ADJUDGED that:

1. The Defendant's Successive Motion to Vacate Judgments of Conviction and Sentence with Request for Leave to Amend and For Evidentiary Hearing, the Defendant's Motion for Stay of Execution, and the Defendant's Motion to Declare § 921.137(4), Fla. Stat. Unconstitutional, are **DENIED**. As to any claim not specifically granted herein, same is **DENIED**.

2. Pursuant to the Florida Supreme Court's revised scheduling order issued February 6, 2026, the Defendant shall file the Notice of Appeal by **Sunday, February 15, 2026, at 1 p.m.**

3. The Clerk of Court shall file the record on appeal, including all warrant filings and complete transcripts of all hearings, with the Florida Supreme Court by **Monday, February 16, 2026, at 12 p.m.**, as directed by the Florida Supreme Court. *See also* Fla. R. Crim. P. 3.851(h)(9).

DONE AND ORDERED in chambers in Fort Pierce, St. Lucie County, Florida, on February 14, 2026.


MICHAEL C. HEISEY
CIRCUIT JUDGE

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***** CAPITAL CASE *****

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BILLY LEON KEARSE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

APPENDIX C

**DEATH WARRANT SIGNED
EXECUTION SET MARCH 3, 2026, AT 6:00 P.M.**

State of Florida v. Billy Leon Kearse, Case No. 5611991CF000136A, Circuit Court of
the Nineteenth Judicial Circuit in and for St. Lucie County, Florida,
Order Following Second Case Management Conference and
Notice of Cancellation of February 13, 2026 Evidentiary Hearing

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR SAINT LUCIE COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

BILLY LEON KEARSE,

Defendant.

FELONY DIVISION

CASE NO. 561991CF000136A

Supreme Court No. SC1960-90310

EMERGENCY CAPITAL CASE

DEATH WARRANT SIGNED

EXECUTION SCHEDULED FOR

MARCH 3, 2026 AT 6:00 P.M.

**ORDER FOLLOWING SECOND CASE MANAGEMENT CONFERENCE AND
NOTICE OF CANCELLATION OF FEBRUARY 13, 2026, EVIDENTIARY HEARING**

THIS CAUSE came before the Court on February 11, 2026, on the Second Case Management Conference pursuant to this Court's February 6, 2026 Amended Scheduling Order and pursuant to the Florida Supreme Court's February 6, 2026 directive to expedite all postconviction proceedings in the trial court following the issuance of a death warrant. The Court finds and orders as follows.

MOTION TO CONTINUE

1. The Defendant filed a Second Renewed Emergency Motion to Modify Scheduling Order, Continuance of Case Management Conference, and for Stay of Execution filed on February 10, 2026 (DE 605), requesting a continuance of the instant hearing for at least 14 days. The request does not comply with the Florida Supreme Court's revised scheduling order issued on February 6, 2026.¹ As such, the Second Case Management Conference proceeded as scheduled.

¹ The Court is aware the Defendant filed a similar request in the Florida Supreme Court on February 10, 2026, *Kearse v. State of Florida*, Case No. SC1960-90310. The request remained pending at the time of the Second Case Management hearing.

PUBLIC RECORDS DEMANDS

2. On February 9, 2026, the Defendant also filed three (3) additional Demands for Public Records Pursuant to Florida Rule of Criminal Procedure 3.852(i) directed to 1) Thomas Bakkedahl, State Attorney, 19th Judicial Circuit (DE 599); 2) James Uthmeier, Attorney General of Florida (DE 600); and Richard R. Del Toro Jr., St. Lucie County Sheriff (DE 600). The Demands all seek records relating to interaction between the respective agencies and Clair H. Matthews (“Juror Matthews”), a juror who served during the Defendant’s 1996 resentencing. The Defendant alleges that Juror Matthews posted a comment on social media regarding her recollection of serving as a juror. Each agency filed a Response and Objection to Defendant’s additional demands (DE 608, 610, 614).

3. The post in question reads:

I was a Juror at the second trial, for a possible resentencing of the young man that killed Danny. At the end of that 2nd trial, his death sentence remained. It was one of the hardest things I've ever done, but there was no doubt it was the right sentence. I'll never forget the respect and support shown to Danny in that courtroom. Every day, no matter how long the trial went, the back of the courtroom was filled with Leo's from every city and county in the state, so much support and respect from his fellow Leo's. They would stand there for several hours, never wavering. I remember silently hoping that his family and friends would know how much he was loved.

4. As an initial matter, the Demands are untimely. This Court’s initial Scheduling Order entered February 2, 2026, required all public records demands to be filed by February 3, 2026, and a hearing on public records objections was held on February 4, 2026. At no time did the Defendant seek leave of Court to file the late demand. *Cf. Jimenez v. Bondi*, 259 So. 3d 722, 726, n. 1 (Fla. 2018) (finding demand untimely where it was filed after the scheduling order deadline on case under warrant).

5. Even if the Demands were timely, they are overly broad and are not reasonably

calculated to lead to a colorable claim for relief given their speculative nature. *See, e.g., Zakrzewski v. State*, 415 So. 3d 203, 212 (Fla. 2025) (affirming trial court’s denial of post-warrant public records demands and observing, “Zakrzewski’s ‘any and all’ requests were overly broad and burdensome”); *and see Tanzi v. State*, 407 So. 3d 385, 391-393 (Fla. 2025), *cert. denied sub nom. Tanzi v. Dixon*, 145 S. Ct. 1914, 225 L. Ed. 2d 654 (2025).

MOTION TO INTERVIEW JUROR

6. The Defendant’s Motion to Interview Juror Matthews filed February 9, 2026 (DE 603) seeks to interview Juror Matthews alleging that he was denied a fair sentencing proceeding due to the “new evidence” regarding the allegedly improper influence on the resentencing jury due to the “overwhelming” presence of uniformed law enforcement officers in the courtroom. The claim is premised on the recent social media post of Juror Matthews referenced in ¶ 3.

7. “Rule 3.575 requires that a motion seeking to interview a juror ‘be filed *within 10 days* after the rendition of the verdict, unless good cause is shown for the failure to make the motion within that time.’” *See Bates v. State*, 398 So. 3d 406, 407 (Fla. 2024) (original emphasis) (quoting Fla. R. Crim. P. 3.575). The Defendant failed to establish “good cause” to excuse the time delay as required. *Id.* Even if the time limitation of Rule 3.575 was not dispositive, the Motion is still untimely as the Defendant failed to satisfy any of the exceptions to the one-year time limit of rule 3.851(d)(1).

8. The Defendant also failed to establish a valid legal basis to interview Juror Matthews. The Motion failed to contain “sworn allegations that, if true, would require the court to order a new trial because the alleged error was so fundamental and prejudicial as to vitiate the entire proceedings.” *Johnson v. State*, 804 So.2d 1218, 1225 (Fla. 2001); *accord Whitton v. State*,

161 So. 3d 314, 332 (Fla. 2014).

9. At best, Juror Matthews social media post reports what the Defendant already knew as established by the record, uniformed officers were in the courtroom and were from multiple agencies across the state. The fact that Matthews believed her decision was a hard one, but proper, does not show misconduct or prejudice, and is not subject to a juror interview. *See Marshall v. State*, 854 So. 2d 1235, 1240 (Fla. 2003) (“A juror is not competent to testify about matters inhering in the verdict, such as jurors’ emotions, mental processes, or mistaken beliefs.”).

HUFF² HEARING

10. On February 9, 2026, the Defendant filed a Successive Motion to Vacate Judgements of Conviction and Sentence of Death with Request for Leave to Amend and for Evidentiary Hearing (DE 602), and the State filed a Response February 11, 2026. After considering arguments of counsel and relevant legal authority, the Court finds that an evidentiary hearing is not warranted to address the Defendant’s claims. *See Huff v. State*, 622 So.2d 982 (Fla. 1993). The Court will rule on the Defendant’s successive postconviction motion based on the record, the relevant legal authority, and counsel’s legal argument.

11. The Court reserves ruling on the Defendant’s Motion for Stay of Execution filed February 9, 2026 (DE 604) and Defendant’s Motion to Declare § 921.137(4), Fla. Stat. Unconstitutional filed on February 11, 2026 (DE 607).

IT IS HEREBY ORDERED AND ADJUDGED that,

1. The Defendant’s Second Renewed Emergency Motion to Modify Scheduling Order, Continuance of Case Management Conference, and for Stay of Execution is **DENIED**.

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

2. The Defendant's Motion to Interview Jurors is **DENIED**.

3. An evidentiary hearing is not required to resolve the claims asserted by the Defendant's successive postconviction motion. The Court's Final Order on the Defendant's Successive Motion to Vacate Judgements of Conviction and Sentence of Death with Request for Leave to Amend and for Evidentiary Hearing, Motion for Stay of Execution, and Motion to Declare § 921.137(4), Fla. Stat. Unconstitutional will be entered on or before Sunday, February 15, 2026, at 11 a.m., as directed by the Florida Supreme Court.

4. **The evidentiary hearing scheduled for February 13, 2026, at 9 a.m. is hereby canceled and stricken from the docket.**

5. The transcript of this hearing shall be filed by the Court Reporter, Esquire Court Reporting, within 24 hours.

6. The Clerk of Court is reminded that the record on appeal, including all warrant filings and complete transcripts of all hearings, is required to be filed with the Florida Supreme Court by **Monday, February 16, 2026, at 12 p.m.**, as directed by the Florida Supreme Court. *See also* Fla. R. Crim. P. 3.851(h)(9).

DONE AND ORDERED in chambers in Fort Pierce, St. Lucie County, Florida, on February 12, 2026.


MICHAEL C. HEISEY
CIRCUIT JUDGE

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