

CAPITAL CASE

No. _____

In the Supreme Court of the United States

DUSTY RAY SPENCER,

Petitioner,

v.

STATE OF FLORIDA,

Respondents.

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

**THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, JUNE 25, 2026, AT 6:00 P.M.**

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APPENDIX A

The opinion of the Florida Supreme Court *Spencer v. State*, SC2026-0880

Supreme Court of Florida

No. SC2026-0880

DUSTY RAY SPENCER,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

June 18, 2026

PER CURIAM.

Dusty Ray Spencer is a prisoner under sentence of death for the murder of his wife, Karen Spencer. Governor DeSantis issued a death warrant on May 26, 2026, setting Spencer’s execution for June 25, 2026. Spencer appeals from the trial court’s order summarily denying his third successive motion for post-conviction relief filed under Florida Rule of Criminal Procedure 3.851. He also requests a stay of execution. We have jurisdiction. *See* Art. V, § 3(b)(1), 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 set out below, we affirm the summary denial of post-conviction relief and deny Spencer’s request for a stay of execution.

I

On January 18, 1992, Spencer murdered his wife and business partner, Karen Spencer. This Court previously set out these facts:

In early December 1991, Karen asked Spencer to move out of the house. On December 10, 1991, Spencer confronted Karen about money which she had withdrawn from the business account. During this argument, Spencer choked and hit Karen and threatened to kill her. Spencer was arrested after Karen reported the incident to the police. According to Karen’s account to a police officer, Spencer called her from jail the next day and stated that he was going to finish what he had started as soon as he got out of jail.

Although Karen asked Spencer to return home during the holidays, she asked him to leave again after Christmas was over. While Spencer was drinking with friends on New Year’s Day, he told one friend that he should take Karen out on their boat and throw her overboard. Two days later he told that friend that Karen refused to go out on the boat anymore.

On January 4, 1992, Spencer returned to Karen’s home and got into a fight with Karen in her bedroom.

Karen's teenage son Timothy Johnson was awakened by this fight. When Timothy entered his mother's bedroom, he saw Spencer on top of Karen, hitting her. When Timothy tried to intervene, Spencer struck him in the head with a clothes iron. Spencer followed Timothy back to his bedroom and struck him several more times with the iron. Spencer told Timothy, "You're next; I don't want any witnesses." Karen fled the house and sought help from a neighbor. When Timothy attempted to summon help on the telephone, Spencer yanked the phone cord from the wall. Spencer then fled the house and left town. Timothy and Karen were taken to the hospital and treated for their injuries. At the hospital, Karen told the treating physician that Spencer had hit her with an iron. At trial, the physician stated that Karen's wounds were consistent with having been inflicted with an iron.

Spencer returned to Karen's house on the morning of January 18, 1992. Timothy was again awakened by a commotion, grabbed a rifle from his mother's bedroom, and found Karen and Spencer in the backyard. Timothy testified that Spencer was hitting Karen in the head with a brick, and that he observed a lot of blood on Karen's face. Timothy tried to shoot Spencer, but the rifle misfired and he instead struck Spencer in the head with the butt of the rifle, which was shattered by this impact. Spencer pulled up Karen's nightgown and told her to "show your boy your pussy." He then slapped Karen's head into the concrete wall of the house. Karen told Spencer to "stop." When Timothy attempted to carry his mother away, Spencer threatened him with a knife. Timothy ran to a neighbor's house to summon aid.

When the police arrived at the scene, they found Karen dead. She had been stabbed four or five times in the chest, cut on the face and arms, and had suffered blunt force trauma to the back of the head. The medical examiner testified that cuts on Karen's right hand and arm were defensive wounds and that death was caused

by blood loss from two penetrating stab wounds to the heart and lung.

Spencer v. State, 645 So. 2d 377, 379–80 (Fla. 1994).

A jury found Spencer guilty of first-degree murder, aggravated assault, aggravated battery, and the lesser-included offense of attempted second-degree murder. *Id.* at 380. The jury then recommended a death sentence by a seven-to-five vote. *Id.* The trial court agreed and sentenced Spencer to death. *Id.*

On direct appeal, we affirmed¹ Spencer’s first-degree murder conviction but vacated the death sentence and remanded for reconsideration, concluding that the trial court had improperly found an aggravating factor and failed to consider two statutory mitigating circumstances. *Id.* at 385. After hearing additional argument from the parties on remand, the trial court again imposed a death sentence. *Spencer v. State*, 691 So. 2d 1062, 1063 (Fla. 1996).² We affirmed that sentence on appeal. *Id.* at 1066. For

1. There was no majority opinion, but there was a majority to affirm the judgment of conviction.

2. The trial court determined the State had proven two aggravating factors: (1) previous conviction of another violent felony based upon Spencer’s contemporaneous convictions and (2) the murder was especially heinous, atrocious, or cruel (“HAC”).

post-conviction timeliness purposes under Florida Rule of Criminal Procedure 3.851, finality occurred when the United States Supreme Court denied certiorari review on October 6, 1997. *See Spencer v. Florida*, 522 U.S. 884 (1997).

Over the years since, on multiple occasions, Spencer has asserted unsuccessful collateral challenges to both the judgment and death sentence, in both state and federal courts. *See Spencer v. State*, 842 So. 2d 52 (Fla. 2003) (affirming denial of Spencer's initial motion for post-conviction relief and denying habeas relief); *Spencer v. State*, 23 So. 3d 712 (Fla. 2009) (unpublished table decision) (affirming summary denial of Spencer's first successive motion for post-conviction relief); *Spencer v. State*, 259 So. 3d 712 (Fla. 2018) (affirming summary denial of Spencer's second successive motion for post-conviction relief); *Spencer v. Florida*, 587

Spencer, 691 So. 2d at 1063. It also found two statutory mitigating circumstances: (1) Spencer committed the murder while under extreme mental or emotional disturbance and (2) his ability to appreciate the criminality of his conduct or conform his conduct to the law was impaired. *Id.* The trial court also identified several non-statutory mitigating circumstances, including Spencer's history of drug and alcohol abuse, paranoid personality disorder, childhood sexual abuse by his father, honorable military service, good employment record, and ability to function in a structured environment without women. *Id.*

U.S. 1028 (2019) (denying Spencer’s petition for writ of certiorari); *Spencer v. Crosby*, No. 6:03-CV-991-ORL-28, 2006 WL 7069916 (M.D. Fla. Sep. 7, 2006) (denying habeas relief); *Spencer v. Sec’y, Dep’t of Corr.*, 609 F.3d 1170 (11th Cir. 2010) (affirming denial of habeas relief); *Spencer v. McNeil*, 562 U.S. 1203 (2011) (denying Spencer’s petition for writ of certiorari).

On May 26, 2026—twenty-nine years after Spencer’s death sentence became final and fifteen years following disposition of Spencer’s last collateral effort—Governor DeSantis signed Spencer’s death warrant, setting his execution for June 25, 2026. Spencer subsequently filed a demand for additional public records, one directed to the Florida Department of Corrections (“the department”) under section 27.7081(8), Florida Statutes, and Florida Rule of Criminal Procedure 3.852(i), seeking records related to Florida’s lethal injection protocol. The department and the state attorney’s office both filed objections to the demand.

In conjunction with his public-records demand, Spencer also filed his third successive motion for post-conviction relief, making two claims: (1) that the department’s alleged failure to follow its published lethal injection protocol violates his rights under the

Eighth and Fourteenth Amendments to the United States Constitution and corresponding provisions of the Florida Constitution; and (2) that his execution would constitute cruel and unusual punishment under the Eighth Amendment, given his advanced age and status as an elderly person. The trial court denied Spencer's public-records demand and, in a separate order, summarily denied his motion for post-conviction relief.

Spencer now seeks relief from this Court, raising two issues related to his latest post-conviction motion.³

II

The trial court has the authority to summarily deny a successive motion for post-conviction relief if either it fails to sufficiently "allege factual elements sufficient to constitute a basis for the collateral relief sought" or "the record conclusively shows no entitlement to relief." *State v. Weeks*, 166 So. 2d 892, 897 (Fla. 1964) (internal quotations omitted); *see also State v. Reynolds*, 238 So. 2d 598, 600 (Fla. 1970) (holding that the trial court "may make a summary disposition" when it determines that the motion either

3. Spencer does not raise the denial of his public-records demand as a basis for vacating the trial court's summary denial.

“is defective in form or substance and insufficient to state a prima facie case entitling the prisoner to relief” or “appears to be sufficient, but the files and records in the case *conclusively* refute the allegations or otherwise *conclusively* preclude relief”); *Muhammad v. State*, 426 So. 2d 533, 535 (Fla. 1982) (“If the motion and the record and files of the case conclusively show that the movant is not entitled to relief, the motion may be denied without an evidentiary hearing.”); Fla. R. Crim. P. 3.851(f)(5)(B).

In reviewing the trial court’s summary denial, we must treat the defendant’s “allegations as true except to the extent that they are conclusively rebutted by the record.” *Harich v. State*, 484 So. 2d 1239, 1241 (Fla. 1986); *see also Tompkins v. State*, 994 So. 2d 1072, 1081 (Fla. 2008). “The defendant bears the burden of establishing a prima facie case based upon a legally valid claim. Mere conclusory allegations are not sufficient to meet this burden.” *Freeman v. State*, 761 So. 2d 1055, 1061 (Fla. 2000). “We must examine each claim to determine if it is legally sufficient, and, if so, determine whether or not the claim is refuted by the record.” *Id.*

Applying these principles here, we conclude that the trial court’s summary denial was not error meriting any appellate relief.

A

Spencer first argues that the department's alleged failure to adhere to its published lethal injection protocol violates his rights under the Eighth and Fourteenth Amendments to the United States Constitution and corresponding provisions of the Florida Constitution. Relying on records disclosed within another inmate's post-warrant litigation, Spencer claims the department routinely deviates from its published lethal injection protocol.

Spencer describes several examples of alleged maladministration of that protocol: record logs listing the ad hoc removal of lethal injection drugs from inventory, use of expired drugs—in particular, etomidate—during some executions, failure to contemporaneously document and accurately record the type and amount of drugs used during executions, and the administration of incorrect drug doses. He maintains these alleged deviations from Florida's constitutional lethal injection protocol create risk of needless pain and suffering. He also contends that, because of his cirrhosis, Florida's lethal injection protocol poses a heightened risk of pain and suffering as applied to him.

The trial court summarily denied relief, concluding the claim was both untimely and without merit. We agree on both points.

At the outset, the claim is untimely. Rule 3.851(d)(1) requires that a “motion to vacate judgment of conviction and sentence of death must be filed by the defendant within 1 year after the judgment and sentence become final.” Spencer’s judgment and sentence became final nearly thirty years ago. Rule 3.851(d)(2) provides three exceptions to raising a post-conviction claim outside of the one-year timeframe:

(A) the facts on which the claim is predicated were unknown to the movant or the movant’s attorney and could not have been ascertained by the exercise of due diligence, or

(B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or

(C) postconviction counsel, through neglect, failed to file the motion.

Spencer has not demonstrated that any exception applies here.

Spencer’s motion described his cirrhosis as “longstanding,” and his attached, supporting medical declaration referenced scarring effects associated with his “significant past medical history

of cirrhosis” occurring secondary to COVID in 2020. At his *Huff*⁴ hearing, Spencer’s lawyer acknowledged that the cirrhosis diagnosis “has been in the record since 2012.” Yet Spencer did not assert the condition as a basis for challenging Florida’s lethal injection protocol until after the signing of his death warrant, his lawyer insisting that any earlier challenge would have been “deemed premature because he was not eligible for execution at that time,” thus placing him in a “Catch-22.” Not so.

The exceptions provided by rule 3.851—most relevant here being the exception under subdivision (d)(2)(A)—do not permit a capital defendant to wait indefinitely until a death warrant is issued; the clock instead runs from the date of discoverability, even for a claim in a post-warrant motion. *Cf. Mills v. State*, 684 So. 2d 801, 805 (Fla. 1996) (applying discoverability requirement in review of post-warrant motion and finding claim procedurally barred because the witness on which it relied testified at the original trial and had been available since then); *Glock v. Moore*, 776 So. 2d 243, 251 (Fla. 2001) (finding claim in post-warrant motion for relief to be

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

procedurally barred because it was based on information available in publicly available reports “for a number of years”). Florida’s “current three-drug protocol has remained essentially unchanged since 2017.” *Randolph v. State*, 422 So. 3d 166, 172 (Fla.), *cert. denied*, 146 S. Ct. 819 (2025). According to Spencer’s own papers, his cirrhosis diagnosis is not new. He has known about it for years. We have consistently rejected arguments that method-of-execution claims are ripe during post-warrant litigation when a medical condition was discovered years earlier. *See Lukehart v. State*, SC2026-0736, 2026 WL 1480328, at *4 (Fla.) (documented kidney disease in 2023), *cert. denied*, 25-7491, 2026 WL 1530138 (U.S. June 1, 2026); *Randolph*, 422 So. 3d at 172–73 (diagnosed with lupus in 1990); *Tanzi v. State*, 407 So. 3d 385, 392 (Fla.) (medical conditions present as early as November 2009), *cert. denied*, 145 S. Ct. 1914 (2025); *Rogers v. State*, 409 So. 3d 1257, 1266–67 (Fla.) (experts testified about porphyria diagnosis during penalty phase), *cert. denied*, 145 S. Ct. 2695 (2025); *Cole v. State*, 392 So. 3d 1054, 1064–65 (Fla.) (suffered from Parkinson’s since 2017), *cert. denied*, 145 S. Ct. 109 (2024).

Moreover, Spencer does not meaningfully identify how the alleged deviations from protocol might exacerbate his cirrhosis, causing needless suffering. Nor does he explain why any cirrhosis-related risk would arise only in the context of those deviations. To the contrary, Spencer concedes that his cirrhosis poses a risk “even if the protocol is followed.” Because his asserted cirrhosis is untethered from the alleged deviations from protocol, the claim does not rest on a new operative factual predicate and remains untimely under rule 3.851.

Even if the claim was timely, though, it would nevertheless fail on the merits. To prevail on a method-of-execution claim, Spencer must “(1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain.” *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017) (citing *Glossip v. Gross*, 576 U.S. 863, 877 (2015)); *Bucklew v. Precythe*, 587 U.S. 119, 139–40 (2019) (reconfirming “that anyone bringing a method of execution claim alleging the infliction of

unconstitutionally cruel pain must meet the *Baze-Glossip* test”⁵).

Spencer falls short of meeting this standard. His allegations center on the purported deviations from protocol indicated by the records in his possession. Here, the relevant “question is not whether protocol deviations occurred,” but whether Spencer’s “allegations would demonstrate a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering.” *Heath v. State*, 426 So. 3d 1253, 1262 (Fla.), *cert. denied*, No. 25-6746, 2026 WL 363902 (U.S. Feb. 10, 2026). They do not. As we recently explained:

The alleged failure to document the removal of drugs from inventory until one or two days after an execution would not, without more, show a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering during an execution. Nor would the alleged failure to log the removal of etomidate from inventory establish such a risk where the autopsy indicates the drug was, in fact, administered. . . . [The defendant’s] suggestion that inventory removals . . . reflect amounts less than required by the protocol show that incorrect doses were used is speculative and [the defendant] does not allege that such incorrect doses would create a demonstrated risk of severe pain. The same is true of the alleged use of expired drugs.

Id.

5. *Baze v. Rees*, 553 U.S. 35 (2008).

Spencer’s cirrhosis-based claim fares no better. He insists the amount of etomidate used during the execution could spike his blood pressure, rupture his esophageal varices, and cause severe bleeding. He submitted an affidavit from Dr. Joel Zivot, who opined to those possible effects. “But speculative and conclusory allegations that lethal injection protocols present a substantial risk of serious harm are insufficient to warrant an evidentiary hearing.” *Id.* at 1261. Spencer’s allegations concerning the potential interaction between etomidate and his cirrhosis remain speculative and do not “establish that the method of execution presents a substantial and imminent risk that is sure or very likely—in other words, a virtual certainty—to cause serious illness and needless suffering.” *Id.* at 1262. Accordingly, Spencer has failed to demonstrate the “virtual certainty” of needless suffering required to make a viable Eighth Amendment claim.

Finally, Spencer also failed to identify a known and available alternative method of execution that would significantly reduce the alleged risk of pain, instead claiming that doing so would be “impractical.” *See Glossip*, 576 U.S. at 877 (requiring a capital defendant making a method-of-execution challenge to identify an

alternative method). A proposed alternative method must be “feasible, readily implemented, and in fact significantly reduce[] a substantial risk of severe pain.” *Tanzi*, 407 So. 3d at 393 (alteration in original) (quoting *Glossip*, 576 U.S. at 877). Spencer has made no such showing.

Accordingly, the trial court did not err in denying an evidentiary hearing and summarily denying this claim.

B

Spencer next argues his execution would violate the Eighth Amendment because he is seventy-four years old and an elderly person. He asks this Court to recognize a categorical exemption from execution based on advanced age, contending his execution would otherwise constitute cruel and unusual punishment and offend evolving standards of decency. The trial court properly summarily denied this claim.

As a threshold matter, this claim is untimely and procedurally barred. Spencer has not demonstrated that any exception to the one-year filing requirement imposed by rule 3.851(d)(1) applies. As the trial court observed, Spencer is now seventy-four years old, yet he did not raise this claim until nearly a decade after reaching the

age at which he now contends a categorical exemption from execution should apply. Indeed, he identifies no meaningful distinction arising within the year before filing: his age obviously always being known, and the mere progression from one year in age to the next then not creating a new factual predicate every time under rule 3.851. *See Smithers v. State*, 420 So. 3d 460, 465 (Fla.) *cert. denied*, 146 S. Ct. 323 (2025) (“While Smithers is correct that he could not have known exactly when his death warrant would be signed, he has known for several years that upon the signing of his death warrant and the exhaustion of any related successive postconviction process, he would fall within the class of individuals that he now seeks to exempt from execution due to advanced age. Thus, his claim is untimely and fails to meet any exception provided in rule 3.851(d)(2).”).

Even so, we have rejected similar requests to recognize a categorical exemption from execution based on advanced age.⁶ *See*

6. To the extent Spencer points to Florida statutory provisions enhancing punishments for criminal offenses committed against victims aged sixty-five or older as evidence of evolving standards of decency, those enactments do not alter our analysis. Neither the United States Supreme Court nor this Court has recognized a

generally id.; *Trotter v. State*, 428 So. 3d 68 (Fla.), *cert. denied*, 146 S. Ct. 755 (2026). The only age-based exemption from execution recognized by the United States Supreme Court is for individuals under the chronological age of eighteen when they committed the offense. *See Roper v. Simmons*, 543 U.S. 551, 578 (2005).

Indeed, as we explained in *Smithers*:

Because the Supreme Court has interpreted the Eighth Amendment to limit 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 . . . those whose chronological age was over eighteen years at the time of their capital crime(s).

420 So. 3d at 465 (emphasis omitted) (quoting *Gudinas v. State*, 412 So. 3d 701, 713 (Fla. 2025)).

We have explained 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.”

Barwick v. State, 361 So. 3d 785, 794 (Fla. 2023) (addressing the conformity clause of Article I, section 17 of the Florida

categorical exemption from execution based on advanced age, and those provisions do not supply a basis to do so.

Constitution). No decision from the Supreme Court has read the Eighth Amendment as categorically exempting defendants of advanced age from execution, and we are not about to create one now. Spencer is thus foreclosed from relief on this basis.

III

For these reasons, we affirm the trial court's summary denial of Spencer's third successive motion for post-conviction relief, and we decline to stay his execution.

No oral argument is necessary, and no motion for rehearing will be considered. 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.

An Appeal from the Circuit Court in and for Orange County,
James Craner, Judge – Case No. 481992CF000473000AOX

Eric Pinkard, Capital Collateral Regional Counsel, Julissa Fontán, Assistant Capital Collateral Regional Counsel, and John “Jack” LoBianco, Assistant Capital Collateral Regional Counsel, Middle Region, Temple Terrace, Florida,

for Appellant

James Uthmeier, Attorney General, Tallahassee, Florida, Joshua E. Schow, Assistant Attorney General, Tampa, Florida, and Doris

Meacham, Special Counsel, Assistant Attorney General, Tampa,
Florida,

for Appellee

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APPENDIX B

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

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NUMBER: 1992-CF-473-A-O
Supreme Court: SC1960-85119

STATE OF FLORIDA,

Plaintiff,

v.

ACTIVE DEATH WARRANT

DUSTY RAY SPENCER,

Defendant.

_____ /

ORDER ON DEFENDANT'S SUCCESSIVE MOTION

THIS MATTER came before the Court on Defendant's Successive Motion to Vacate Judgment and Conviction of Sentence of Death After Death Warrant Signed, filed on June 3, 2026. After reviewing the Motion, the State's Answer to Spencer's Third Successive Postconviction Motion, filed on June 4, 2026, and the relevant case law, the Court finds as follows:

Procedural History

On February 6, 1992, Defendant was charged by Indictment with Murder in the First Degree (Count One), Aggravated Assault (Count Two), Attempted Murder in the First Degree (Count Three),

and Aggravated Battery (Count Four). An Amended Indictment was filed on October 14, 1992, with the same charges, but reflecting a different cause of death of the victim. On November 7, 1992, after a jury trial, he was found guilty as charged on Counts One, Two, and Four, and of the lesser included offense of Attempted Murder in the Second Degree on Count Three. On November 13, 1992, Defendant filed a Motion for New Trial, which the Court denied on December 4, 1992. On December 9, 1992, the jury recommended by a seven to five vote that the Court impose the death penalty on Count One. On December 21, 1992, Defendant was sentenced to death on Count One, and consecutive terms of five years on Count Two, and fifteen years on Counts Three and Four, with credit for 338 days' time served.

Defendant appealed, and on September 22, 1994, the Florida Supreme Court affirmed the judgment, but remanded for reconsideration of the death sentence by the judge. The Mandate was issued on January 5, 1995. *Spencer v. State*, 645 So. 2d 377 (Fla. 1994), reh'g denied (December 6, 1994). On January 18, 1995, the Court resentenced Defendant to death. Defendant appealed, and the Florida Supreme Court affirmed the sentence on September 12, 1996. The Mandate was issued on May 14, 1997. *Spencer v. State*, 691 So. 2d 1062 (Fla. 1996), reh'g denied (April 14, 1997), cert. denied 522 U.S. 884 (October 6, 1997).

On July 16, 1998, Defendant filed a Motion for Postconviction Relief, followed by an Amended Motion for Postconviction Relief on September 24, 1999. The State filed a Response on November 5, 1999. The Court denied the motion on April 27, 2000, following an evidentiary hearing. Defendant appealed, and the Florida Supreme Court affirmed with a Mandate issued on April 24, 2003. *Spencer v. State*, 842 So. 2d 52 (Fla. 2003), reh'g denied (March 25, 2003).

On July 17, 2003, Defendant filed a Petition for Writ of Habeas Corpus with the U.S. District Court for the Middle District of Florida, which was denied on September 7, 2006. *Spencer v. Crosby*, 2006 WL 7069916 (M.D. Fla. 2006). Defendant appealed, and the U.S. Court of Appeal for the Eleventh Circuit affirmed. *Spencer v.*

Secretary, Dep't of Corr., 609 F.3d 1170 (11th Cir. 2010), cert. denied *Spencer v. McNeil*, 562 U.S. 1203 (2011).

On October 29, 2007, Defendant filed a Successive Motion for Postconviction Relief, and the State filed a Response on November 15, 2007. The Court denied the motion on February 5, 2008, then vacated its Order on March 17, 2008, following a Motion for Rehearing. On October 3, 2008, the Court denied the Successive Motion for Postconviction Relief. Defendant appealed, and the Florida Supreme Court affirmed with a Mandate issued on December 14, 2009. *Spencer v. State*, 23 So. 3d 712 (Fla. 2009).

On January 9, 2017, Defendant filed a second Successive Motion for Postconviction Relief requesting relief pursuant to *Hurst v. Florida*, 577 U.S. 92 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). The State filed a Response on March 1, 2017. On May 1, 2017, the Court denied the motion. Defendant appealed, and the Florida Supreme Court affirmed with a Mandate issued on December 31, 2018. *Spencer v. State*, 259 So. 3d 712 (Fla. 2018), reh'g denied *Spencer v. State*, 2018 WL 7137676, SC 17-1269 (Fla. 2018), cert. denied 587 U.S. 1028 (2019).

On May 26, 2026, the Governor of the State of Florida signed and issued the "death warrant" as to Defendant's case. On the same date, the Florida Supreme Court issued a scheduling order for SC1960-85119/481992CF000473000AOX. On May 28, 2026, this Court issued a Scheduling Order.

On May 28, 2026, Defendant filed demands for additional discovery from the Florida Department of Corrections. The State Attorney's Office and Florida Department of Corrections filed objections on May 29, 2026. The Court heard oral arguments and rendered an order denying Defendant's demand on May 29, 2026. Defendant filed a Successive Motion for Postconviction Relief on June 3, 2026, and the State filed a Response on June 4, 2026. A second case management conference was held on June 4, 2026, and the Court entered a written order addressing whether an evidentiary hearing was necessary. This Order follows.

FACTS OF THE CASE

Spencer was charged with the first-degree murder of his wife Karen Spencer, who was also Spencer's partner in a painting business. In early December 1991, Karen asked Spencer to move out of the house. On December 10, 1991, Spencer confronted Karen about money which she had withdrawn from the business account. During this argument, Spencer choked and hit Karen and threatened to kill her. Spencer was arrested after Karen reported the incident to the police. According to Karen's account to a police officer, Spencer called her from jail the next day and stated that he was going to finish what he had started as soon as he got out of jail.

Although Karen asked Spencer to return home during the holidays, she asked him to leave again after Christmas was over. While Spencer was drinking with friends on New Year's Day, he told one friend that he should take Karen out on their boat and throw her overboard. Two days later he told that friend that Karen refused to go out on the boat anymore.

On January 4, 1992, Spencer returned to Karen's home and got into a fight with Karen in her bedroom. Karen's teenage son Timothy Johnson was awakened by this fight. When Timothy entered his mother's bedroom, he saw Spencer on top of Karen, hitting her. When Timothy tried to intervene, Spencer struck him in the head with a clothes iron. Spencer followed Timothy back to his bedroom and struck him several more times with the iron. Spencer told Timothy, "You're next; I don't want any witnesses." Karen fled the house and sought help from a neighbor. When Timothy attempted to summon help on the telephone, Spencer yanked the phone cord from the wall. Spencer then fled the house and left town. Timothy and Karen were taken to the hospital and treated for their injuries. At the hospital, Karen told the treating physician that Spencer had hit her with an iron. At trial, the physician stated that

Karen's wounds were consistent with having been inflicted with an iron.

Spencer returned to Karen's house on the morning of January 18, 1992. Timothy was again awakened by a commotion, grabbed a rifle from his mother's bedroom, and found Karen and Spencer in the backyard. Timothy testified that Spencer was hitting Karen in the head with a brick, and that he observed a lot of blood on Karen's face. Timothy tried to shoot Spencer, but the rifle misfired and he instead struck Spencer in the head with the butt of the rifle, which was shattered by this impact. Spencer pulled up Karen's nightgown and told her to "show your boy your pussy." He then slapped Karen's head into the concrete wall of the house. Karen told Spencer to "stop." When Timothy attempted to carry his mother away, Spencer threatened him with a knife. Timothy ran to a neighbor's house to summon aid.

When the police arrived at the scene, they found Karen dead. She had been stabbed four or five times in the chest, cut on the face and arms, and had suffered blunt force trauma to the back of the head. The medical examiner testified that cuts on Karen's right hand and arm were defensive wounds and that death was caused by blood loss from two penetrating stab wounds to the heart and lung. The medical examiner also testified that all of the wounds occurred while Karen was alive and that she probably lived for ten to fifteen minutes after receiving the stab wounds in the chest. According to the medical examiner, Karen suffered three impacts to the back of the head that were consistent with her head being hit against a concrete wall. Because this impact would have caused Karen to lose consciousness, the medical examiner testified that the defensive wounds had to have occurred before the head trauma.

Spencer v. State, 645 So. 2d 377, 379-380 (Fla. 1994).

ANALYSIS AND RULING

Florida Rule of Criminal Procedure 3.851 “applies to all postconviction motions filed on or after January 1, 2015, by defendants who are under sentence of death.” Fla. R. Crim. P. 3.851(a). “Any motion to vacate judgment of conviction and sentence of death must be filed by the defendant within 1 year after the judgment and sentence become final.” Fla. R. Crim. P. 3.851(d)(1).

Subsection (d)(2) states that no motion will be considered beyond the time limitation unless it alleges (1) 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 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).

“For an otherwise untimely claim to be considered timely as newly discovered evidence, it must be filed within a year of the date

the claim became discoverable through due diligence.” *Mungin v. State*, 320 So. 3d 624, 625-26 (Fla. 2020) (citing *Reed v. State*, 116 So. 3d 260, 264 (Fla. 2013)).

A postconviction motion filed after a death warrant has been signed is an expedited proceeding. Fla. R. Crim. P. 3.851(h)(3). Summary denial is appropriate where the record refutes successive postconviction claims. Fla. R. Crim. P. 3.851(f)(5)(B). Summary denial of purely legal claims is also appropriate where such claims are without merit under controlling precedent. *See Mann v. State*, 112 So. 3d 1158, 1162-63 (Fla. 2013). A trial court should summarily deny “successive claims where those claims are untimely, procedurally barred, legally insufficient, or refuted by the record.” *Hutchinson v. State*, 416 So. 3d 273, 279 (Fla. 2025).

CLAIM ONE – LETHAL INJECTION: FLORIDA DEPARTMENT OF CORRECTIONS’ FAILURE TO FOLLOW THE PUBLISHED EXECUTION BY LETHAL INJECTION PROCEDURES IS A VIOLATION OF DUSTY SPENCER’S EIGHTH & FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION.

Defendant alleges that there has routinely been maladministration of the execution process by the Florida Department of Corrections (“FDOC”). He claims that documents

obtained from a federal lawsuit by a recently executed inmate, Frank Walls¹, indicates that FDOC has not competently carried out its own Execution of Lethal Injection Procedures, which implicates the constitutional rights of individuals sentenced to death. Defendant's Motion at 2-3. Defendant states that he is placed in imminent danger of needless pain and suffering, which is compounded by his physical health ailments, including cirrhosis of the liver. *Id.* at 3.

Defendant contends that FDOC has a history of not following procedures such as ad hoc recordkeeping regarding the removal of lethal injection drugs from inventory; the administration of incorrect drug doses during certain executions; the use of expired drugs during certain executions; and the failure to contemporaneously document and accurately record the amount of drugs used in executions. *Id.* at 3-5. He states that the documented and repeated failure to comply with its own protocol destroys confidence in FDOC's proper administration of his execution, thus leading to a "sure or very likely risks of sufficiently imminent danger." *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017). Defendant's Motion at 8.

¹ *Walls v. Dixon*, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025).

Additionally, as applied to him, Defendant is concerned with how his health will affect the execution. He has “a slew of medical issues including a diagnosis of cirrhosis of the liver.” *Id.* Counsel for Defendant consulted with Dr. Joel Zivot, M.D., a physician practicing anesthesiology and critical care, who provided a declaration supporting his claim. Dr. Zivot found that the drug etomidate, even if administered consistent with protocol, “[t]he results of this will be the exaggerated toxicity of etomidate, including an exaggerated hemodynamic impact that might spike up his blood pressure. In that instance, his esophageal varices might burst, and blood will pour from his mouth, choke him, and be easily visible to witnesses.” *Id.* He further states that he has compromised venous access, which he claims is a prominent issue and will complicate the administration of the execution drugs. *Id.* at 11. Dr. Zivot states that Defendant is at constant risk of excessive bleeding if such complications arise. *Id.* at 12.

To challenge a method of execution under the Eighth Amendment's prohibition of cruel and unusual punishment, Defendant must “(1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause

serious illness and needless suffering and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain.” *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017) (citing *Glossip v. Gross*, 576 U.S. 863, 877 (2015)); *Bucklew v. Precythe*, 587 U.S. 119, 139-40 (2019) (reconfirming that anyone bringing a method-of-execution claim alleging the infliction of unconstitutionally cruel pain must meet the *Baze-Glossip*² test). *Cole v. State*, 392 So. 3d 1054 (Fla. 2024).

The Court finds that Defendant has failed to establish either prong of the *Baze-Glossip* test. The substantially same claim involving alleged maladministration of lethal injection procedures based on the same documents was addressed in *Heath v. State*, 426 So. 3d 1253, 1261-62 (Fla. Feb. 3, 2026), and *Trotter v. State*, 428 So. 3d 68 (Fla. 2026). In both instances, the court found that “[n]one of [the] allegations would establish that the method of execution presents a substantial and imminent risk that is sure or very likely – in other words, a virtual certainty – to cause serious illness and needless suffering.” *Trotter*, 428 So. 3d at 73 (citing *Heath*, 426 So.

² *Baze v. Rees*, 553 U.S. 35 (2008) (plurality opinion).

3d at 1262). Even with the inclusion of Dr. Zivot’s medical findings, which appear to be conclusory, Defendant’s claim does not reach the level of virtual certainty of needless suffering. *See Heath v. State*, 426 So. 3d 1253, 1261-62 (Fla. Feb. 3, 2026) (stating that “speculative and conclusory allegations that lethal injection protocols present a substantial risk of serious harm are insufficient to warrant an evidentiary hearing” (citing *Cole v. State*, 392 So. 3d 1054, 1065 n.18 (Fla. 2024))), cert. denied, 2026 WL 363902, — U.S. —, (U.S. Feb. 10, 2026).

Additionally, Defendant failed to identify any alternative method of execution.^{3 4} A proposed alternative method must be “feasible, readily implemented, and in fact significantly reduce[] a substantial risk of severe pain.” *Tanzi v. State*, 407 So. 3d 385, 393 (Fla.) (alteration in original) (quoting *Glossip*, 576 U.S. at 877, 135 S.Ct. 2726), cert. denied, — U.S. —, 145 S. Ct. 1914, 225 L.Ed.2d 654

³ At the Huff hearing held on June 4, 2026, Attorney Fontan stated that Defendant did not want an alternative method pled. However, the law allows for three alternatives, namely the electric chair, gas chamber, and firing squad.

⁴ Defendant argues in support of his position that the pausing of executions to investigate for Eighth Amendment concerns of cruel and unusual punishment has occurred in other states, such as Tennessee, Arizona, Missouri, and California. In *Heath*, this idea was proposed as an alternative method, which was rejected by the Florida Supreme Court because it did not meet the standard of “feasible, readily implemented, and in fact significantly reduce[] a substantial risk of severe pain.” *Tanzi v. State*, 407 So. 3d 385, 393 (Fla.) (alteration in original) (quoting *Glossip*, 576 U.S. at 877, 135 S.Ct. 2726), cert. denied, — U.S. —, 145 S. Ct. 1914, 225 L.Ed.2d 654 (2025).

(2025). Without providing any alternative, the claim must fail as legally insufficient.

As to Defendant's argument that due to his health conditions, the lethal injection protocol's use of etomidate may have an adverse effect during his execution, this claim is untimely. His long-standing diagnosis of cirrhosis of the liver, since 2012, was discoverable more than a year ago. State's Answer, Appendix A. Additionally, Florida's "current three-drug protocol has remained essentially unchanged since 2017." *Randolph v. State*, 422 So. 3d 166, 172 (Fla.), cert. denied, — U.S. —, 146 S. Ct. 819, 223 L.Ed.2d 239 (2025). The Florida Supreme Court has repeatedly rejected arguments that method of execution claims are ripe during warrant litigation when the worsening medical condition was discovered years earlier. See *Cole*, 392 So. 3d at 1064 (Parkinson's disease since 2017); *Tanzi v. State*, 407 So. 3d at 392 (medical conditions since 2009); *Rogers v. State*, 409 So. 3d 1257, 1266-67 (Fla.) (porphyria diagnosis), cert. denied, — U.S. —, 145 S. Ct. 2695, 221 L.Ed.2d 963 (2025); *Randolph*, 422 So. 3d at 172-73 (lupus diagnosis since 1990).

CLAIM TWO – EXECUTING THE ELDERLY: THE EXECUTION OF DUSTY SPENCER IS CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE UNITED STATES CONSTITUTION, AMEND. VIII BECAUSE OF MR. SPENCER’S ADVANCED AGE AND STATUS AS AN ELDERLY PERSON.

Defendant claims that the execution of elderly people offends the evolving standards of decency and constitutes cruel and unusual punishment. Defendant’s Motion at 12. He puts forth the argument that Florida laws seek to protect the elderly, especially those over the age of 65, such as reclassification and enhancement of penalties for offenses against elderly victims. *Id.* at 13. Defendant states that the goals of our capital punishment system, retribution and deterrence, are not served by the execution of the elderly. “[A] punishment is ‘excessive’ and unconstitutional if it (1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime. A punishment might fail the test on either ground.” *Coker v. Georgia*, 433 U.S. 584, 592 (1977); *See also Roper v. Simmons*, 543 U.S. 551, 578, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). *Id.* at 14. Defendant analogizes the findings that it is cruel and unusual punishment to execute the mentally insane, intellectually disabled,

and juveniles, to the elderly in his case, because the purpose of deterrence or retribution is not served. *See Ford v. Wainwright*, 477 U.S. 399 (1986) (holding, the Eighth Amendment prohibits states from inflicting the penalty of death upon a prisoner who is insane); *Atkins v. Virginia*, 536 U.S. 304 (2002) (holding, executions of the intellectually disabled is cruel and unusual punishment prohibited by the Eighth Amendment); *Roper* (holding, the execution of individuals who are juveniles at the time of their capital offense is prohibited by the Eighth and Fourteenth Amendment). Therefore, he concludes that capital punishment amounts to cruel and unusual punishment as it pertains to him at the age of 74 years old.

The State argues that Defendant's claims are untimely, procedurally barred, and meritless. The Court agrees for the reasons stated *infra*.

Defendant did not appear to make a timeliness argument in his Motion, however, at the Huff hearing, counsel stated that the argument has become ripe since the signing of his death warrant by the Governor. This same argument was rejected in *Smithers v. State*, 420 So. 3d 460 (Fla.), cert. denied --- U.S. ---, 146 S.Ct. 323, 223 L.Ed.2d 143 (2025). The circuit court had concluded the claim was

untimely since the defendant sought an “exemption to execution for the elderly, which he defines as those individuals age sixty-five years or older. By that definition, his claim became ripe when he turned sixty-five; therefore, he could have or should have raised his claim in prior proceedings rather than waiting until after the signing of his death warrant.” *Id.* at 465. In upholding the decision, the Florida Supreme Court stated that “[Smithers] has known for several years that upon the signing of his death warrant and the exhaustion of any related successive postconviction process, he would fall within the class of individuals that he now seeks to exempt from execution due to advanced age.” *Id.*

Currently, Defendant is 74 years old and should have brought this claim within one year of turning 65. As it is brought well outside the one-year time frame, Defendant’s claim is untimely and procedurally barred.

The Court further finds Defendant’s argument to be meritless pursuant to binding precedent. “Presently, the United States Supreme Court—and this Court—recognize only one age-based death penalty exemption, which prohibits the imposition of the death penalty on individuals who were under the chronological age of 18 at

the time that their capital crimes were committed.” *Smithers*, 420 So. 3d at 465 (citing *Roper*, 543 U.S. at 578).

As such, the Court is bound by the conformity clause of the Florida Constitution, meaning 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.” *Ford v. State*, 402 So. 3d 973, 979 (Fla.) (quoting *Barwick v. State*, 361 So. 3d 785, 794 (Fla. 2023)), cert. denied, — U.S. —, 145 S. Ct. 1161, 221 L.Ed.2d 225 (2025). In *Trotter*, the defendant argued that there has not been a categorical exemption addressed for the elderly by the United States Supreme Court; therefore, the court was not bound by the conformity clause. The Florida Supreme Court declined to expand the protections under the Eighth Amendment in its decision in *Gudinas v. State*, 412 So. 3d 701, 712 (Fla. 2025), stating:

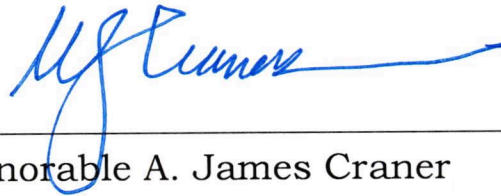
While the states are required to adhere to the Supreme Court's Eighth Amendment jurisprudence, neither the Eighth nor Fourteenth Amendments require states to expand the protections afforded by the Eighth Amendment or to interpret their own corresponding state constitutional prohibitions against cruel and unusual punishment in a more expansive manner than the Supreme Court has interpreted the federal prohibition.

For the same reasoning, the Florida Supreme Court in *Trotter* and *Smithers* rejected the same claim that capital punishment is unconstitutional for elderly inmates.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that:

1. Defendant's Successive Motion to Vacate Judgment and Conviction of Sentence of Death After Death Warrant Signed, filed on June 3, 2026, is **DENIED**.

DONE AND ORDERED at Orlando, Orange County, Florida, on June 9, 2026.



Honorable A. James Craner
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System to include the following:

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If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact ADA Coordinator, 425 North Orange Avenue, Suite 510, Orlando, Florida 32801, (407) 836-2303 at least 7 days before your scheduled court appearance, or immediately on receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.