

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

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JAMES AREN DUCKETT,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

**DEATH WARRANT SIGNED
EXECUTION SET JULY 28, 2026, AT 12:00 P.M. EDT**

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July 24, 2026

CAPITAL CASE

QUESTIONS PRESENTED

James Duckett has been on death row for over thirty-five years for a crime he steadfastly maintains he did not commit. Since he was convicted, Mr. Duckett has amassed a substantial body of evidence refuting his guilt. In 2003, for the first time he had access to DNA testing, however, due to the limitations in technology, no results were obtained. Under warrant, all parties agreed DNA testing here would be probative because identity remains an issue. While Mr. Duckett was permitted to test one piece of evidence, at the State's insistence, it was tested using testing that could not produce a definitive result. Because the evidence was consumed, Mr. Duckett promptly requested testing of other similar nature evidence.

Florida state courts erected arbitrary hurdles to deny Mr. Duckett's access to DNA testing. Florida statutory procedures for obtaining DNA testing run afoul of the Due Process Clause of the Fourteenth Amendment as set forth in this Court's precedents. This Court has explicitly recognized that capital prisoners have a liberty interest in obtaining DNA testing (*see Gutierrez v. Saenz*, 606 U.S. 305 (2025); *Skinner v. Switzer*, 562 U.S. 521 (2011); *Dist. Atty's Office for 3rd Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009)) and a property interest in not being arbitrarily denied access to state-created investigatory procedures. *See Logan v. Zimmerman Brush*, 455 U.S. 422 (1982).

The question presented is:

Whether the Florida Supreme Court's imposition of arbitrary procedural barriers, contrary to its own rules and state statutes, violated Petitioner's right under Florida law to DNA testing that would demonstrate his innocence or warrant a reduction of his sentence thereby depriving Petitioner of due process and rendering illusory his state-created right to prove his innocence through newly discovered evidence.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner James Aren Duckett, a death-sentenced Florida inmate, was the Petitioner/Appellant in the Florida Supreme Court.

Respondent State of Florida was the Respondent/Appellee in the Florida Supreme Court.

LIST OF DIRECTLY RELATED PROCEEDINGS

In accordance with Supreme Court Rule 14.1(b)(iii), the following proceedings relate to the case at issue in this Petition:

Underlying Trial:

Fifth Judicial Circuit Court in and for Lake County, Florida
State of Florida v. James Aren Duckett, Case No. 1987-CF-1347
Judgment Entered: June 30, 1988

Direct Appeal:

Florida Supreme Court, Case No. SC1960-72711
James Aren Duckett v. State of Florida, 568 So. 2d 891 (Fla. 1990)
Judgment Entered: September 6, 1990
Rehearing Denied: November 14, 1990
Mandate Issued: December 17, 1990

Initial Postconviction Proceedings:

Fifth Judicial Circuit Court in and for Lake County, Florida
State of Florida v. James Aren Duckett, Case No. 1987-CF-1347
Judgment Entered: November 26, 2001

Florida Supreme Court, Case No. SC01-2149
James Aren Duckett v. State of Florida, 918 So. 2d 224 (Fla. 2005)
Judgment Entered: October 6, 2005
Rehearing Denied: December 22, 2005
Mandate Issued: January 9, 2006

United States Supreme Court, Case No. 05-11235
James Aren Duckett v. State of Florida, 549 U.S. 846 (2006)
Judgment Entered: October 2, 2006

State Habeas Proceedings:

Florida Supreme Court, Case No. SC02-1300
James Aren Duckett v. James V. Crosby, 918 So. 2d 224 (Fla. 2005)
Judgment Entered: October 6, 2005
Rehearing Denied: December 22, 2005
Mandate Issued: January 9, 2006

Federal Habeas Proceedings:

United States District Court, Middle District of Florida,
Case No. 5:07-cv-6-Oc-10GRJ
James Aren Duckett v. Sec'y, Fla. Dep't of Corr. and Attorney General,
701 F. Supp. 2d 1245 (M.D. Fla. Mar. 25, 2010) (unreported)
Judgment Entered: March 26, 2010
Motion to Alter or Amend Denied: June 1, 2010
Application for COA Denied: August 23, 2010

United States Court of Appeals, Eleventh Circuit, Case No. 10-13095
James Aren Duckett v. Sec'y, Fla. Dep't of Corr., Case No. 10-13095 (11th Cir.
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Application for COA Denied: October 26, 2010

United States Supreme Court, Case No. 10-10986
James Aren Duckett v. Sec'y, Fla. Dep't of Corr., 565 U.S. 860 (2011)
Judgment Entered: October 3, 2011

First Successive Postconviction Proceedings:

Fifth Judicial Circuit Court in and for Lake County, Florida
State of Florida v. James Aren Duckett, Case No. 1987-CF-1347
Judgment Entered: June 9, 2008

Second Successive Postconviction Proceedings:

Fifth Judicial Circuit Court in and for Lake County, Florida
State of Florida v. James Aren Duckett, Case No. 1987-CF-1347
Judgment Entered: March 15, 2013

Florida Supreme Court, Case No. SC13-719
James Aren Duckett v. State of Florida, 148 So. 3d 1163 (Fla. 2014)
Judgment Entered: June 26, 2014
Rehearing Denied: October 6, 2014
Mandate Issued: October 23, 2014

Third Successive Postconviction Proceedings:

Fifth Judicial Circuit Court in and for Lake County, Florida
State of Florida v. James Aren Duckett, Case No. 1987-CF-1347
Judgment Entered: April 1, 2016

Florida Supreme Court, Case No. SC16-793
James Aren Duckett v. State of Florida, 231 So. 3d 393 (Fla. 2017)
Judgment Entered: October 12, 2017

Rehearing Denied: December 28, 2017
Mandate Issued: January 16, 2018

United States Supreme Court, Case No. 17-8388
James Aren Duckett v. State of Florida, 138 S. Ct. 2625 (2018)
Judgment Entered: June 11, 2018

Fourth Successive Postconviction Proceedings:

Fifth Judicial Circuit Court in and for Lake County, Florida
State of Florida v. James Aren Duckett, Case No. 1987-CF-1347
Judgment Entered: June 18, 2018

Florida Supreme Court, Case No. SC18-1190
James Aren Duckett v. State of Florida, 260 So. 3d 230 (Fla. 2018)
Judgment Entered: December 28, 2018
Mandate Issued: January 17, 2019

United States Supreme Court, Case No. 18-8683
James Aren Duckett v. State of Florida, 139 S. Ct. 2964 (2019)
Judgment Entered: June 10, 2019

Fifth Successive Postconviction Proceedings (Under Warrant):

Fifth Judicial Circuit Court in and for Lake County, Florida
State of Florida v. James Aren Duckett, Case No. 35-1987-CF-1347
Judgment Entered: March 17, 2026

Florida Supreme Court, Case No. SC2026-0449
James Aren Duckett v. State of Florida, 428 So. 3d 40 (Fla. 2026)
Stay of Execution Granted: March 26, 2026

James Aren Duckett v. State of Florida, 429 So. 3d 1006 (Fla. 2026)
Motion to Lift Stay Denied: March 30, 2026

James Aren Duckett v. State of Florida, No. 2026-0449, 2026 WL 1970442
(Fla. July 8, 2026) (unreported)
Judgment Entered: July 8, 2026
Mandate Issued: July 8, 2026

Second State Habeas Proceedings (Under Warrant):

Florida Supreme Court, Case No. SC2026-0450
James Aren Duckett v. State of Florida, 428 So. 3d 40 (Fla. 2026)
Stay of Execution Granted: March 26, 2026

James Aren Duckett v. State of Florida, 429 So. 3d 1006 (Fla. 2026)
Motion to Lift Stay Denied: March 30, 2026

James Aren Duckett v. Sec’y, Fla. Dep’t of Corr., No. SC2026-0450,
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Judgment Entered: July 8, 2026
Mandate Issued: July 8, 2026

Postconviction DNA Testing Proceedings (Under Warrant):

Fifth Judicial Circuit Court in and for Lake County, Florida
State of Florida v. James Aren Duckett, Case No. 35-1987-CF-1347
Judgment Entered: April 1, 2026

Florida Supreme Court, Case No. SC2026-0528
James Aren Duckett v. State of Florida, 431 So. 3d 990 (Fla. 2026)
Judgment Entered: April 30, 2026
Mandate Issued: April 30, 2026

Sixth Successive Postconviction Proceedings (Under Warrant):

Fifth Judicial Circuit Court in and for Lake County, Florida
State of Florida v. James Aren Duckett, Case No. 35-1987-CF-1347
Judgment Entered: July 17, 2026

Florida Supreme Court, Case No. SC2026-1083
James Aren Duckett v. State of Florida, No. SC2026-1083, 2026 WL 2137081
(Fla. July 24, 2026) (unreported)
Judgment Entered: July 24, 2026
Mandate Issued: July 24, 2026

Second Postconviction DNA Testing Proceedings (Under Warrant):

Fifth Judicial Circuit Court in and for Lake County, Florida
State of Florida v. James Aren Duckett, Case No. 35-1987-CF-1347
Judgment Entered: July 17, 2026

Florida Supreme Court, Case No. SC2026-0528
James Aren Duckett v. State of Florida, No. SC2026-1084, 2026 WL 2137081
(Fla. July 24, 2026)
Judgment Entered: July 24, 2026
Mandate Issued: July 24, 2026

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CITATIONS TO OPINIONS AND ORDERS BELOW

The Florida Supreme Court's consolidated opinion affirming the denial of state postconviction relief and denying Mr. Duckett's petition for writ of habeas corpus is unreported. *Duckett v. State*, No. SC2026-0449, 0450, 2026 WL 1970442 (Fla. July 8, 2026) (Pet. App. A). The state circuit court's order denying Mr. Duckett's motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.851 is unreported. (Pet. App. B). The Florida Supreme Court's opinion remanding Mr. Duckett's Rule 3.853 proceedings is reported as *Duckett v. State*, 431 So. 3d 990 (Fla. 2026) (Pet. App. H). Following the Florida Supreme Court's opinion affirming the denial of relief under warrant, Mr. Duckett filed an additional motion for postconviction relief and a motion for additional postconviction DNA testing, the state circuit court's order denying both of Mr. Duckett's motions is unreported (Pet. App. J). The Florida Supreme Court's consolidated opinion affirming the denial of postconviction relief and the denial of postconviction DNA testing is unreported, *Duckett v. State*, No. SC2026-1083 & SC2026-1084 2026 WL 2137081 (Fla. July 24, 2026). (Pet. App. I).

STATEMENT OF JURISDICTION

The Florida Supreme Court issued its consolidated order affirming the denial of postconviction relief and denying Mr. Duckett's petition for writ of habeas corpus on July 8, 2026. The mandate issued immediately thereafter. The Florida Supreme Court issued its consolidated order on the second proceedings affirming the denial of postconviction relief and postconviction DNA testing on July 24, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Florida Rule of Criminal Procedure 3.853 provides as follows:

(b) Contents of Motion. The motion for postconviction DNA testing must be under oath and must include the following:

(1) a statement of the facts relied on in support of the motion, including a description of the physical evidence containing DNA to be tested and, if known, the present location or last known location of the evidence and how it originally was obtained;

(2) a statement that the evidence was not previously tested for DNA, or a statement that the results of previous DNA testing were inconclusive and that subsequent scientific developments in DNA testing techniques likely would produce a definitive result establishing that the movant is not the person who committed the crime;

(3) a statement that the movant is innocent and how the DNA testing requested by the motion will exonerate the movant of the crime for which the movant was sentenced, or a statement how the DNA testing will mitigate the sentence received by the movant for that crime;

(4) a statement that identification of the movant is a genuinely disputed issue in the case and why it is an issue or an explanation of how the DNA evidence would either exonerate the defendant or mitigate the sentence that the movant received;

(5) motion; and (6) a statement of any other facts relevant to the a certificate that a copy of the motion has been served on the prosecuting authority.

(c) Procedure.

(1) On receipt of the motion, the clerk of the court must notify the assigned judge.

(2) The court must review the motion and deny it if it is facially insufficient. If the motion is facially sufficient, the prosecuting authority must be ordered to respond to the motion within 30 days or such other time as may be ordered by the court.

(3) On receipt of the response of the prosecuting authority, the court must review the response and enter an order on the merits of the motion or set the motion for hearing.

(4) In the event that the motion must proceed to a hearing, the court may appoint counsel to assist the movant if the court determines that assistance of counsel is necessary and on a determination of indigency under section 27.52, Florida Statutes.

(5) The court must make the following findings when ruling on the motion:

(A) Whether it has been shown that physical evidence that may contain DNA still exists.

(B) Whether the results of DNA testing of that physical evidence likely would be admissible at trial and whether there exists reliable proof to establish that the evidence containing the tested DNA is authentic and would be admissible at a future hearing.

(C) Whether there is a reasonable probability that the movant would have been acquitted or would have received a lesser sentence if the DNA evidence had been admitted at trial.

(6) If the court orders DNA testing of the physical evidence, the cost of the testing may be assessed against the movant, unless the movant is indigent. If the movant is indigent, the state must bear the cost of the DNA testing ordered by the court.

(7) The court-ordered DNA testing must be ordered to be conducted by the Department of Law Enforcement or its designee, as provided by statute. However, the court, on a showing of good cause, may order testing by another laboratory or agency certified by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) or Forensic Quality Services, Inc. (FQS) if requested by a movant who can bear the cost of such testing.

(8) The results of the DNA testing ordered by the court must be provided in writing to the court, the movant, and the prosecuting authority.

(d) Time Limitations. The motion for postconviction DNA testing

may be filed or considered at any time following the date that the judgment and sentence in the case becomes final.

(e) Rehearing. The movant may file a motion for rehearing of any order denying relief within 15 days after service of the order denying relief. The time for filing an appeal must be tolled until an order on the motion for rehearing has been entered.

(f) Appeal. An appeal may be taken to the appropriate appellate court only from the final order disposing of the motion. All final orders denying relief must include a statement that the defendant has the right to appeal within 30 days of the rendition of the order. All nonfinal, nonappealable orders entered under this rule should include a statement that the defendant has no right to appeal the order until entry of the final order.

The Eighth Amendment to the United States Constitution provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides:

[N]or shall any State deprive any person of life, liberty, or property, without due process of law.

INTRODUCTION

Without this Court's intervention, in three days, Florida will execute James Duckett, after having arbitrarily denied him statutory DNA testing in a case where both parties agreed identity is an issue and results could lead to an acquittal. The Florida Supreme Court upheld the circuit court's denial of Mr. Duckett's petition for DNA testing, made pursuant to a state statute specifically providing for such postconviction requests, by interpreting the Rule to include a temporal limitation and to likewise preclude access to any information concerning the testing or testing decisions, thereby creating a process "fundamentally inadequate to vindicate the substantive rights

provided.” *Dist. Atty’s Office for 3rd Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009).

Notwithstanding the foregoing, the state circuit court summarily denied relief and the Florida Supreme Court affirmed, finding both claims untimely, procedurally barred, and/or legally insufficient (Pet. App. I). Even the most cursory review of Mr. Duckett’s claims and arguments on appeal shows that when affirming Mr. Duckett’s convictions and death sentence the court did not base its decision on the review of the individual record in this case. Indeed, there is a sense that the court did not review Mr. Duckett’s pleadings and record, and instead, simply adopted the State’s argument as fact.

Permitting the state court’s decision denying potentially exculpatory DNA testing to stand, and Mr. Duckett’s execution to go forward, would compound previous injustices in this case and contravene the Florida DNA statute’s dual purposes of ensuring that the innocent are not wrongfully convicted and that the criminal legal process reveals the truth of what happened. “DNA testing has an unparalleled ability to both exonerate the wrongly convicted and to identify the guilty,” *Osborne*, 557 U.S. at 55, and the public has an interest in the assurance that the State is not executing an innocent man. Due process requires that this Court remand these proceedings to the circuit court for additional DNA testing before “the most irremediable and unfathomable of penalties” is imposed. *Ford v. Wainwright*, 477 U.S. 399, 411 (1986). Any other result is a fundamental miscarriage of justice that will leave an indelible stain on this state’s history.

STATEMENT OF THE CASE¹

A. Legal Background

This Court's decisions hold that, when a state grants defendants the right to establish their innocence with DNA evidence, the procedures the state provides for vindicating that right must comply with due process. When a state creates a substantive right to prove one's innocence through DNA testing, that right triggers the Constitution's due process guarantee. The Fourteenth Amendment's Due Process Clause "imposes procedural limitations on a State's power to take away protected entitlements." *Osborne*, 557 U.S. at 67. That's because "a person's liberty is equally protected, even when the liberty itself is a statutory creation of the State." *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974). Put differently, a "state-created right" can "beget yet other rights to procedures essential to the realization of the parent right." *Osborne*, 557 U.S. at 68 (quoting *Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 463 (1981)). Thus, even though there's no freestanding constitutional right to DNA testing, when a state grants defendants the right to prove their innocence with DNA evidence, the state's procedures for obtaining that testing must comply with due process. *See id.* at 68, 72.

Long before DNA testing existed, the Court recognized that rights created by state law were a form of "property" protected from arbitrary deprivation. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428-31 (1981) (citing cases). The particular

¹ Citations to the record refer to the Appendix or the records on appeal in this case. All other citations shall be self-explanatory.

statutory entitlement at issue in *Logan* was access to a state adjudicatory procedure for determining whether petitioner had been subjected to impermissible employment discrimination. Although he timely filed his claim, the tribunal to adjudicate it – through no fault of his – failed to convene within the time period provided by state law. As a result, the Illinois Supreme Court held, Logan lost his right to pursue his claim. The Court reversed.

In light of the competing interests involved – including “the importance of the private interest and the length or finality of the deprivation; the likelihood of governmental error; and the magnitude of the governmental interests involved, *id.* at 434 (citing, e.g. *Mathews v. Eldridge*, 424 U.S. 319 (1976) (citation modified)) – this Court concluded that to deprive Logan of his statutory rights in such “a random manner” presented “an unjustifiably high risk that meritorious claims will be terminated.” *Logan*, 455 U.S. at 434-35.

What is true of Mr. Logan is a fortiori true of Mr. Duckett. He has a private interest of the highest order in pursuing his statutory rights; the risk of government error is high; the costs to the government of granting him his statutory rights are low; and he has, through no fault of his own, been deprived of those rights in a random manner.

B. Relevant Facts Presented at Trial

The case against Mr. Duckett was entirely circumstantial. On the night of the murder, Mr. Duckett, a police officer, was running radar and saw Ms. McAbee and a young man behind a dumpster at the Circle K store across the street. After determining Ms. McAbee was underage, he went to speak with the two about the curfew in Mascotte. The boy went with his uncle who was doing laundry next to the Circle K, and Mr.

Duckett spoke with Ms. McAbee in his car. Ms. McAbee then exited the car and was last seen going around the building in the direction of her home which was less than 400 feet behind the Circle K. Mr. Duckett drove off in the opposite direction. The next morning, Ms. McAbee's body was found fully clothed, face down in the lake past her home. The medical examiner determined that Ms. McAbee had been sexually assaulted, strangled, and drowned.

The case against Mr. Duckett consisted of four central components: Grace Gwendolyn Gurley, the only witness who puts the victim driving off in Mr. Duckett's car; a pubic hair found on the victim that was allegedly consistent with Mr. Duckett's; tire tracks found at the scene that allegedly matched those found on the police car Mr. Duckett was driving; and fingerprints of Ms. McAbee that were found on the hood of Mr. Duckett's police car. In postconviction, Mr. Duckett presented substantial evidence undermining the state's case. Following trial, Gurley admitted in six separate statements, including a sworn deposition and a sworn affidavit, that the testimony she gave at Mr. Duckett's trial was not true, explaining that she agreed to lie at trial when detectives promised her she would get out of her jail sentence earlier if she cooperated with them. Ms. Gurley's recantation was corroborated by a wealth of evidence in postconviction, including testimony of the two other individuals with her that night and evidence that she was released from her jail sentence earlier. When called to testify in postconviction, she elected to exercise her Fifth Amendment right to remain silent due to Florida's perjury laws which would have found her guilty if she changed her trial testimony in any manner.

The trial testimony of FBI Agent Malone was also fully rebutted in postconviction. Questions regarding the veracity of Malone's testimony in this and other cases prompted several independent reviews by the DOJ and FBI of his work and testimony in every case in which he testified. Based upon these independent reviews provided by the DOJ and FBI, Mr. Duckett's jury heard false, unreliable and misleading testimony from the FBI agent who testified at his trial. Similarly, evidence presented in postconviction refuted the tire track evidence and the fingerprint evidence. None of the evidence relied upon by the state in gaining Mr. Duckett's conviction survived postconviction proceedings unscathed. So much so, that in these warrant proceedings, the circuit court agreed that "identity was an issue at trial, and that if DNA testing of the sperm indicated it did not belong to the Defendant, there would have been a reasonable probability of an acquittal" (WR1. 748), a point with which the State did not disagree.

C. Forensic Evidence Collection and Preliminary Examination

The medical examiner collected vaginal swabs, fingernail scrapings, and evidence from Ms. McAbee's underwear and jeans, and provided them to FDLE for analysis. FDLE serologist Margaret Tabor identified male reproductive cells on the victim's jeans, Q5, and underwear, Q6, and extracted biological evidence from underwear cuttings and mounted it onto slides, one of which was identified as Exh. 14, Q6(3), sub. 001. The jeans and underwear were sent to Lifecodes for DNA analysis but the jeans did not yield any detectable DNA and "insufficient high molecular weight human DNA was isolated" from the underwear. No attempt was made to test the slide for DNA because testing was not sophisticated enough to test that minute amount. Tabor also made slides of the smears

from the extracts, labeled Q5, Q6(1), and Q6(2). These slides and the fingernails scrapings were not tested or processed in 1987 before Mr. Duckett's trial where he was ultimately convicted and sentenced to death following the jury's 8-to-4 recommendation.

The Florida Supreme Court remanded Mr. Duckett's case for DNA testing on March 21, 2003, for the trial court to "determine whether clothing exist[ed] that [could] be tested for DNA . . . " (WR. 632). Following submissions from the parties, the trial court determined that certain items of evidence should be tested, including the slide identified as Exhibit 14, Q6(3), sub. 001. Other than the Q6(3) slide, FDLE examiner Emily Booth conducted analysis on the submitted evidence and concluded that no profile could be obtained from any of the evidence. Examiner Booth testified that "due to the compromised nature of the slide, she was concerned that any attempt by her to unmount the slide would destroy the material on the slide and no DNA profile would be obtained" (WR. 632).

Pursuant to Examiner Booth's conclusions and the testimony of her supervisor regarding other possible methods of testing the slide, Mr. Duckett thereafter investigated the potential for obtaining a DNA profile on the Q6(3) slide from an outside agency. Each agency expressed the same concerns stated by Examiner Booth and confirmed that the questioned slide would be consumed entirely in the testing (WR. 632). No further DNA analysis was attempted on slide Q6(3), and it was preserved at LCSO for the possibility of testing in the future when technology progressed. Ms. Booth also did not examine the three additional slides, noting that they were broken and she did not have a procedure to do so (PC-R1-SV. 2305-07).

Notably, Booth's examination of the evidence she did analyze relied heavily on the previous analysis of the items done by Tabor in 1987. This is concerning given that DNA testing in 1987 was not yet conceivable as a method for determining identity. Booth took her own samples from the underwear extracts, items Q6(1)-Q6(3) but microscopic examinations showed no sperm. Booth also indicated the jeans, Q5, failed to indicate sperm or blood, but it is unclear what analysis she performed. The cutting of the jeans with sperm curiously had gone missing between trial and the 2003 examination by Booth (PC-R1-SV. 2293-94, 2298).

Booth indicated the vaginal swabs, Q43 and Q43a, had no cotton remaining on the wooden sticks and that she reviewed the items under a microscope and did not see sperm. However, no chemical tests or further assessment was completed (PC-R1-SV. 2306-08). A smear was made of the vaginal swab, also Q43, which indicated the presence of cellular debris, possibly epithelial cells, but no further analysis was conducted (PC-R1-SV. 2307). Booth testified she poured the fingernail scrapings, Q30 and Q31, into a chemical solution without looking at them under a microscope first and they yielded no probative results (PC-R1-SV. 2310-12).

The postconviction court issued an order requiring that “*any* biological evidence . . . be stored in a manner to insure the quality of the evidence is maintained . . . until this case is closed, either by acquittal of [Mr. Duckett] . . . or by execution . . .” (PC-R1-SV. 2206) (emphasis added).

D. Warrant Postconviction Proceedings

On February 27, 2026, Governor DeSantis signed Mr. Duckett's death warrant, and his execution was initially set for March 31, 2026. The Florida Supreme Court

issued an expedited briefing schedule requiring the circuit court proceedings to be concluded by Friday, March 13, at 11:00 a.m. (WR. 23). To meet this tight schedule, the circuit court ordered Mr. Duckett to file his motion for postconviction relief by March 8 at 1:00 p.m.

On March 5, Mr. Duckett moved for postconviction DNA testing of slide Q6(3) pursuant to Florida Rule of Criminal Procedure 3.853 (WR1. 433-543, 629-740). Mr. Duckett focused on the Q6(3) slide because DNA evidence of this nature from the victim's underwear left by the true perpetrator would conclusively exonerate him.

Mr. Duckett obtained an affidavit from Booth, in which she indicated that based upon her review of the case file and her recognition of the degradation of the biological materials, the method of testing most likely to obtain a valid profile on the slide was Single Nucleotide Polymorphism ("SNP") testing as opposed to Short Tandem Repeat ("STR") (WR1. 658-60).

Mr. Duckett had been referred to Othram, Inc., a leading laboratory in forensic testing, both because it conducts SNP using Forensic-Grade Genome Sequencing ("FGGS"), a specialized optimized application of Whole Genome Sequencing ("WGS"), and because Othram conducts the exact testing for FDLE, which does not offer SNP at all. Mr. Duckett retained David Mittelman, Ph.D., Chief Executive Officer and cofounder of Othram to obtain an affidavit explaining that SNP testing "would provide the most reliable method of extraction of testable DNA from the Q slide" (WR1. 728-40). Mittelman noted that "the technology used at Othram is relatively new and thus is not available for use in most laboratories," and that Othram was capable of conducting the

testing “within one to two weeks from receipt of the slide” (WR1. 536). Mr. Duckett simultaneously moved the court to grant a 30-day stay of execution to allow for the SNP testing to be conducted and for a full and fair evidentiary hearing once results were received (WR1. 544-50).

Mr. Duckett filed his motion on March 5, just six days after his execution warrant was signed. The circuit court held an impromptu hearing on the motion the next day, March 6 at noon. Due to an error with the court’s email notification to defense counsel, counsel was not notified of the hearing until it had begun, when the court’s judicial assistant sent an email asking if defense counsel intended to join the hearing already in progress. Mr. Duckett thus had no opportunity to prepare the expert, who they had just met a few days previously, before putting him on as an expert witness. During a short 15-minute recess, counsel was able to reach Dr. Mittelman and he agreed to appear via Zoom to answer the court’s questions. This was the only time Mr. Duckett was able to present expert testimony. The State, however, had an FDLE analyst appear for the hearing. The State did not elicit any questions as to the requisite type of testing or the length of time required to conduct testing.

The State indicated that it did not object to DNA testing on slide Q6(3) and agreed that the factual prerequisites set forth in Rule 3.853(c)(5)(A)-(C) had been met (WR1. 792-95). The State did not dispute that the results of testing would be admissible. The hearing focused on how long testing would take and who would conduct the testing. Mr. Duckett maintained that due to the condition of the item, SNP testing, rather than STR testing, was the testing technique most like to produce a definitive result. Fla. R. Crim.

P. 3.853(b)(2). While SNP testing could take slightly longer if the DNA is highly degraded, Dr. Mittelman assured the court that “we’re talking about . . . weeks and not months.” (WR1. 818).

Because FDLE is not capable of conducting STR testing, Mr. Duckett suggested Othram should conduct the test. Othram is a leading lab in SNP analysis, could do the testing within the warrant period, and had a previous relationship with FDLE. Dr. Mittelman confirmed that Othram conducts testing for FDLE regularly and was available at any time to begin the testing, which would take from days to a few weeks (WR1. 815, 818). The State was adamant that any testing should be done by FDLE and that “there [had] been no showing that that . . . SNP DNA testing . . . is necessary.” (WR1. 791). Dr. Mittelman explained that the decision as to whether SNP or STR testing would be appropriate is made at the quantification step after dismounting the slide (WR1. 813-14); and the State asserted that FDLE should be the one to review the evidence, conduct the quantification step, and “make the determination whether SNP testing its necessary or appropriate.” (WR1. 799).

The court granted testing, finding that the results of the DNA testing would likely be admissible at trial or a future hearing, “that identity was an issue at trial, and that if DNA testing of the sperm indicated that it did not belong to [Mr. Duckett], there would have been a reasonable probability of an acquittal” (WR1. 748). The rule allows an outside lab to conduct testing if good cause is shown, however, the court declined to exercise its discretion on the issue. Instead, the court ruled that FDLE would conduct the quantification analysis, and if it was deemed SNP was appropriate, FDLE would

send the sample to another lab as its designee (WR1. 806, 819-20).

Mr. Duckett's postconviction claims under warrant were due Sunday, March 8. Because Mr. Duckett intended to use the results in support of his motion alleging his actual innocence, Mr. Duckett requested the circuit court stay the warrant proceedings until the DNA testing concluded. Although the circuit court had granted the motion for testing and at that time it was unclear when the testing would be completed, the court denied his motion as "premature" (WR1. 742, 825-26, 828).

Mr. Duckett timely filed his postconviction motion in which he asserted a claim of actual innocence; however, because results of the DNA testing were outstanding, Mr. Duckett provisionally asserted the issue and expressly sought leave to amend his motion once upon receipt of the results (WR1. 884-926). He further argued that records produced for the first time under warrant showed the State had in fact withheld information that the FBI sought to reexamine Mr. Duckett's case based on questions regarding FBI Agent Michael Malone's microscopic hair comparison analysis at trial, which forced Duckett to piecemeal his challenges to the false forensic testimony presented at his trial. In Claim II, Mr. Duckett asserted that the unreasonably truncated and surprise nature of Florida's warrant process has served to deprive him of his right to full, fair, and meaningful postconviction proceedings in violation of due process, because he was having to proceed with filing his 3.851 motion when its resolution unequivocally turned on the results of impending DNA testing permitted by the court. Mr. Duckett simultaneously renewed his motion for a stay of all proceedings until the return of the DNA (WR1. 927-33).

i. FDLE's recommendation as to testing.

On March 10, the circuit court held a case management conference on the motion and denied an evidentiary hearing on Mr. Duckett's claims. The court also addressed the status of the DNA testing. LCSO had delivered the Q6(3) slide to the FDLE Crime Laboratory in Orlando the day prior, on Monday, March 9. FDLE also received buccal swabs from Mr. Duckett and Ms. McAbee's mother as reference samples for comparison.

FDLE informed the court and parties that it expected quantification results on March 12 and was ordered to promptly provide the parties with the results and recommendation for testing. Mr. Duckett was given three hours from that disclosure for his experts to review the data and file any challenges to FDLE's testing choice (WR1. 981-83). If STR was recommended and Mr. Duckett did not file a challenge within that time, FDLE could begin conducting STR testing (WR1. 981).

Mr. Duckett requested a stay again. The State argued that a seven-day extension at the Florida Supreme Court "would give us enough time to have the DNA results back and do what we need to do" (WR1. 1032-33). The court requested a seven-day extension from the Florida Supreme Court to file its final order which was due in just three days, which was granted and the circuit court was given until "Wednesday, March 18, 2026, or within 12 hours of receiving DNA results, whichever occurs first" to file a status report (WR1. 1074).

The State told Mr. Duckett's counsel on the evening of March 11 that FDLE completed the quantification. Neither the State nor FDLE would disclose to Mr. Duckett what FDLE's results revealed. Counsel contacted the State and FDLE several times to no avail. Mr. Duckett's three-hour window to analyze FDLE's recommendation for

testing was set to begin at 8:00 a.m. on March 12. Mr. Duckett’s counsel again contacted FDLE that morning and heard nothing in return. At 9:06 a.m. the court set a hearing for 11:00 a.m. to address the million-dollar question—which testing did FDLE recommend? (WR1. 1076). Counsel filed a renewed motion for stay, detailing the events of the prior 19 hours, and requesting that the court preclude FDLE from moving forward.

At the hearing, FDLE announced that it agreed with the defense that the “best course of action” was to process the DNA using SNP (WR1. 1116).

ii. FDLE chose a lab based on expediency, without input of experts

FDLE’s results were significant and instructive. Until then, the existence of usable DNA evidence on this slide was uncertain and largely speculative. Mr. Duckett argued below that because the amount of DNA recovered appeared to be very limited, careful coordination was required to determine the best testing strategy and that testing decisions must be made carefully to avoid consuming the sample in a way that prevents the most informative analysis.

Deputy Director of Forensic Services Leigh Clark confirmed that FDLE was unable to do the testing and listed four accredited labs that do: Othram, DNA Labs International (“DLI”), Bode Laboratories, and Signature Science. Although FDLE expressly stated, “We presently have our SNP testing needs met by Othram in Texas,” for the first time, FDLE informed the court that it was not in a position to contract with any lab as its designee in this case and that the parties would be the client. This proved to be false. When the court later ordered that DLI conduct the testing, FDLE completed the contract and listed itself as the initiating agency. FDLE was also the main point of

contact. Despite the circuit court ordering CCRC-South to pay for the testing, DLI would not even update counsel as to the testing progress (*see* WR2-S2. 342). Indeed, the lab told undersigned counsel that all communications and information regarding the testing were required to go through FDLE per the AG.

After revisiting Rule 3.853, the court determined good cause existed for a private lab to conduct the testing—a fact that Mr. Duckett had argued a week earlier. The court asked Ms. Clark to give a recommendation and she again asserted she is not an expert in SNP testing (WR1. 1128). Nonetheless, the court maintained that FDLE was to figure out a lab (WR1. 1115). The court directed FDLE to inquire of each lab “their technical capabilities, capacity to perform the testing, the location of the lab that will perform the testing, and their anticipated timeline to complete such testing.” (WR1. 1092). Before FDLE returned the results of its inquiry, the court entered an order that night directing FDLE to select a lab.

After court, FDLE contacted each lab, except Othram, and sent the information to all parties that evening but did not select a lab. At 9:06 p.m. the court set a hearing for 9:00 a.m. the following morning. FDLE’s research indicated that Othram was the best choice—the lab offered the fastest turnaround time, the most advanced technology, and greater capability for analysis of the results on the back end of the testing. Indeed, Othram was the only lab that could do both the testing and conduct the requisite analysis.

On March 13, Ms. Clark again appeared and reported only *some* of the information gathered from the labs. Because the court only scheduled the hearing the

night before, Dr. Mittelman was unable to appear and Mr. Duckett was unable to offer testimony from a scientist experienced in the testing at hand and rebut any misinformation. Instead, the court relied on Ms. Clark's representations regarding SNP despite her testimony that she is not trained on nor does she conduct SNP testing (WR1. 1131, 1135).

Mr. Duckett requested SNP testing be conducted using WGS, which is specifically designed for degraded samples. On March 12, Ms. Clark agreed "that it would be best for the private lab that would be conducting SNP testing to have the capabilities for a whole genome sequencing. . . ." because "you would want a professional who performs whole genome sequencing to make that decision [on whether WGS was necessary] based on the quantitation [sic] data" (WR1. 1135, 1130-31) (emphasis added). Ms. Clark told the court that FDLE was "not in a position to be able to make a recommendation as to whole genome sequencing or not." (WR1. 1131). Ms. Clark clarified that the only recommendation FDLE could make was that SNP technology should be used (WR1. 1131).

Although Dr. Mittelman indicated WGS would take only 1-2 weeks, Ms. Clark testified that WGS would take 6-8 weeks (WR1. 733, 1158). Upon learning that DLI and Signature Science offered a different kit, ForenSeq Kintelligence, which would only take 15 days, on March 13, Ms. Clark changed her testimony: "in my opinion the whole genome sequencing is not necessary, and I do not believe that type of testing would be performed by Othram or DNA labs in this example" (WR1. 1158). Ms. Clark testified March 12 that the question about length of time "would be better posed to the entity

that's actually going to perform the testing," (WR1. 1133-34), yet the only accredited lab certified to do SNP testing who provided an estimate on WGS testing was Othram, and that time limit was significantly shorter than the 6-8 weeks asserted by Ms. Clark. The statement was patently wrong as Dr. Mittelman indicated Othram would conduct WGS. Having no experience herself, Ms. Clark did an about face from her previous testimony and opined that whole genome sequencing is "overkill" (WR1. 1159). Instead of following the dictates of the science, the determination of who was to do the testing and the method of testing that was chosen was primarily driven by the perceived time limits which were not supported by the record and by the State's demands.

It was never determined whether DLI found Kintelligence to be the best option based on their analysis or if they simply did the testing they were told to by FDLE.² Indeed, it was never determined whether Kintelligence is approved for mixed samples containing male DNA. What was established, however, is that Kintelligence, which was designed for forensic genetic genealogy, is primarily meant for other types of DNA analysis and is not used for scientific questions like the one in Mr. Duckett's case (WR1. 1161). That means that DLI did not have the capability to conduct the analysis of the data required in this case—a point Ms. Clark mentioned in her email to the parties but conveniently left out of her summary to the court (*See* WR2. 156) ("DLI does not perform statistical analysis of Y-SNP results and therefore cannot provide a probability determination of data obtained in testing.").

² In their initial response to Ms. Clark, DLI had stated they would conduct the testing at its Utah laboratory – where they conduct WGS testing - and that it would take closer to a month (WR. 1233-35).

The circuit court relied on the unsupported assertions FDLE made to the court and found that Ms. Clark opined WGS is not necessary and that the Kintelligence kit is “capable of providing a DNA profile for comparison to a known sample” and “would yield results in approximately fifteen days” (WR1. 1144). The court directed DLI to conduct the testing and use Kintelligence, “or any other such testing methods. . . .” (WR1. 1144). The slide was transported to DLI.

On March 13, the parties learned that the testing would likely be completed on or before March 27. Although the circuit court had additional time to address the DNA results, at the behest of the State, on March 17, ten days before the results returned, the circuit court denied all of Mr. Duckett’s claims, including his claim of actual innocence which was reliant on the outstanding results of the DNA testing.

Mr. Duckett appealed and promptly moved for a stay, which the Florida Supreme Court granted (WR2. 27). The court, however, did not rule on Mr. Duckett’s motion to stay until after briefing was submitted. This is notable because significant litigation occurred thereafter and the court refused to allow Mr. Duckett to supplement his briefing before the court ruled on his appeal.

iii. DLI’s testing required additional analysis, yet the circuit court refused to permit Mr. Duckett to have a bioinformaticist read the data, as recommended by FDLE.

Following the delivery of the Q slide to DLI, DLI refused to communicate with Mr. Duckett’s counsel regarding any aspect of the DNA analysis. Before the DNA testing results were returned, Mr. Duckett had moved for the testing protocols, data, and results of testing, and explained that these items are necessary to assess the testing conducted and ascertain additional information. The State objected.

On March 27, 2026, undersigned counsel received the results of the DNA testing conducted by DLI via email from Ms. Clark. The results were reported as inconclusive and DLI was unable to obtain a profile. The testing *did* yield data. The issue, however, is that DLI did not have the capability to conduct the requisite analysis to determine if a profile could be obtained—a problem FDLE was aware of when submitting the sample to DLI (WR2-S2. 308). Ms. Clark expressly stated that “[a] qualified bioinformaticist may be able [sic] provide an opinion and calculation based on the Y SNP results,” (WR2-S2. 308), and suggested that either Othram or Parabon Nanolabs, Inc., would be capable of further reviewing the Y SNP data.

The State moved to lift the Florida Supreme Court’s stay. Mr. Duckett requested time to litigate outstanding issues in his Rule 3.853 proceeding given that the testing was inconclusive and FDLE’s indication that further analysis could still yield a profile that could exonerate him. The Florida Supreme Court rejected the State’s arguments and on March 30 ruled that the circuit court retained “concurrent jurisdiction to rule on motions related to DNA testing and successive claims filed by the petitioner” (WR2. 51). The Court directed the circuit court to file a Status Report on all pending issues by Thursday, April 2, 2026, at 5:00 p.m. *Id.*

Mr. Duckett filed public records demands to the State Attorney, FDLE, and the Attorney General requesting communication between each agency and DLI, seeing as DLI would not communicate with CCRC-South, but did communicate with the State. From FDLE, Mr. Duckett also requested the DLI case file and additional materials required for an expert to conduct a thorough assessment of the testing.

Despite being given time to address the matters, the circuit court again moved as quick as possible through the proceedings. On March 31, the circuit court scheduled a same-day status hearing at noon and a subsequent hearing for the next morning, at 9:00 a.m. The March 31 hearing, like every previous hearing, was not noticed as an evidentiary hearing and did not provide the defense with sufficient time or notice to secure expert attendance. Also, as with every previous hearing, the defense did not learn until the hearing if the State was bringing a witness or who that witness would be. Of note, when Mr. Duckett requested that DLI appear at an earlier hearing to answer questions, they did not attend and the court ruled that even if they had attended, counsel would be precluded from asking them questions (WR1. 1202). Ms. Clark from FDLE and Rachel Oefelein, Ph.D., from DLI were present, although both were questioned by the court, neither were sworn as witnesses. Both confirmed that further statistical analysis of the Y SNP data from DLI was possible and that the sample had been consumed (WR2. 195-96).

Mr. Duckett requested an evidentiary hearing to present scientific testimony, and requested to have another lab analyze the testing data as suggested by FDLE (WR2. 189). Mr. Duckett again requested that the court send the data to Othram, the only lab suggested that was accredited to do the testing and was capable of reading the data. The State argued that the inconclusive result ended the inquiry (WR2. 188).

The State again made an unfounded and absurd claim that the Defense deliberately created a conflict with Othram labs (WR2. 193). Mr. Duckett explained at every turn in his warrant proceedings, there is no conflict. Mr. Duckett picked the lab

because of its ongoing relationship with FDLE. Indeed, after it was known that Mr. Duckett retained Othram, the circuit court ruled that FDLE was permitted to choose “Othram as its designee” (WR1. 749). Despite the absurdity of this argument, at the March 31 hearing the court agreed with the State’s argument and removed Othram as a potential lab to do the requested analysis of DLI’s data, despite the fact that they were the most qualified agency for the job (WR2. 207-08).

The parties were permitted to file written pleadings in which, Mr. Duckett urged the circuit court to hold an evidentiary hearing,

At the April 1 hearing, Mr. Duckett’s counsel urged the court to hold an evidentiary hearing as required by *Cardona v. State*, 109 So. 3d 241, 247-48 (Fla. 4th DCA 2013), to hear from the scientists on the anticipated scope and procedure of any further analysis. This did not happen in the hearings determining who should do the testing and what testing should be done. Mr. Duckett highlighted the various facts at issue in this case and the necessity of a hearing to address them. He further requested, as he had in each of his pleadings and at prior hearings, that he sought from the State records and data to provide the court with valid facts and evidence upon which it could rely.

The State boldly asserted, for the first time, and without a scintilla of evidence, that no further analysis was required because “we already know these are inculpatory not exonerating” (WR2-S. 239) (“[T]hese numbers don’t exclude Duckett.”); (“[E]ither one of those numbers incorporate it. They are both evidence of guilt.”); (WR2. 271) (“He does not have any new evidence of his innocence. The only thing on the table is evidence

including him.”). It is unclear what number the State was referencing because there was no report, and thus no number reported. Counsel was baffled, noting that she felt a “little bit like we’ve entered - - we’re Alice in – in Wonderland . . .” (WR2. 271). One can only describe the world in which the State can make such absurd and unfounded statements in litigation which will determine whether he lives or dies as a Wonderland.

The circuit court did not hold a hearing and no experts provided any sworn testimony concerning SNP data calculations. The only information provided was that the data needed to be read by a bioinformaticist, which the court denied.

Mr. Duckett appealed and on April 30, the Florida Supreme Court reversed and remanded “for the underlying testing data to be provided for a statistical analysis, as directed by [FDLE].” *Duckett v. State*, 431 So. 3d at 992. (Pet. App. H). However, the court denied Mr. Duckett’s appeal as to the court’s denial of the records sought, holding that the records fail to “relate to a colorable claim for postconviction relief.” *Id.* at 997 (Pet. App. H, p. 4).

Mr. Duckett had Othram review the data. The State also had the data analyzed by Parabon Nanolabs. The labs disagreed on the ability to determine an outcome. Parabon, albeit with caution, reported a likelihood ratio that supports Mr. Duckett having contributed to the evidentiary sample (WR1-S2. 2330). But as outlined in Othram’s analysis, there are significant concerns regarding the validity of these findings, and insufficient information was provided with the report to determine the scientific validity of the evaluation (WR1-S2. 2342). One area of concern is that Parabon reported that due to the low and uneven coverage in the sample, they were only able to

identify 27 loci that provided significant data to allow them to be analyzed - out of a potential 10,230 SNP markers that this particular kit identifies and out of millions of SNP markers that each individual has. Parabon's report stated that of the 27 loci, 25 were consistent with Mr. Duckett and 2 were "not observed in the suspect profile." (WR1-S2 2333). The report then states that the 2 loci may "*reflect contributions from an unknown individual*", or be stochastic effects of artifact (WR1-S2 2333) (emphasis added). The State has never asserted nor is there any evidence that there could be two separate contributors to the sample so if in fact the loci reflect contributions from an unknown individual, this excludes Mr. Duckett.

Othram also addressed issues with the Kintelligence Kit for analyzing the biological material in this case, noting that it was not developed as a probabilistic genotyping platform for highly degraded, low-template DNA mixtures (WR1-S2. 2347). Mr. Duckett moved for an evidentiary hearing on the DNA results, which was denied (WR1-S1. 2197, 2262).

The Florida Supreme Court dismissed Mr. Duckett's 3.853 appeal for lack of jurisdiction, finding that Mr. Duckett's "request for an evidentiary hearing [was] not authorized, and the . . . order denying that request [was] not appealable." *Duckett v. State*, SC2026-0959, 2026 WL 1895689, at *1 (Fla. July 1, 2026).

Mr. Duckett immediately moved to relinquish jurisdiction to file additional claims and for supplemental briefing to address the impact of the 3.853 litigation on his proceedings that had been stayed since March 26. The court denied the motions, disposed of Mr. Duckett's pending 3.851 appeal and habeas petition, and vacated the

stay of execution. *Duckett v. State*, SC2026-0449 & SC2026-0450, 2026 WL 1970442, at *1 (Fla. July 8, 2026). The court specifically found Mr. Duckett’s actual innocence claim meritless because he did “not have a viable newly discovered evidence claim based on the DNA testing results” from the Q slide, which were inconclusive. *Id.* at *4.

The following day, with no execution date, Mr. Duckett filed a successive postconviction motion asserting that the State knowingly selected a destructive testing methodology that was unsuitable, and unable to produce a definitive result, in violation of the rule, when a technique more likely to produce a definitive result existed, thereby permanently eliminating any opportunity for independent testing of the best evidence to exonerate Mr. Duckett. Mr. Duckett explained that the appropriate remedy was to test the remaining evidence in the case. Nothing changed, identity remains at issue. Mr. Duckett then filed a second motion for DNA testing pursuant to Rule 3.853, requesting the court grant SNP testing of additional intimate evidence collected as part of the criminal investigation (WR3. 36).

In response, on July 14, the Governor reset Mr. Duckett’s execution for two weeks later, July 28, at 12:00 p.m. The lower court summarily denied both motions on July 17. The Florida Supreme Court consolidated Mr. Duckett’s appeals. Affirming, the court determined the 3.853 motion was procedurally barred because the items Mr. Duckett sought to have tested could have been included in the initial request for testing on March 5. (Pet. App. I). The court further found the motion for testing meritless because the record establishes that “no identifiable or testable genetic material.” (Pet. App. I, p. 1). As to the 3.851, the court determined Mr. Duckett has failed to show bad faith,

dismissing the State's insistence against WGS was only because it would "unreasonably delay Duckett's execution" and "the laboratory it chose could provide adequate testing." (Pet. App. I, p. 2).

This Petition now follows.

REASONS FOR GRANTING THE WRIT

"[I]n death cases," the Florida Supreme Court has, in the past, prided itself on the fact that it "has taken care to ensure all necessary protections are in place before one forfeits his or her life . . ." *Asay v. State*, 210 So. 3d 1, 18 (Fla. 2016). Regrettably, as the decision in Mr. Duckett's case establishes, the Florida Supreme Court has abdicated its responsibility to conduct meaningful appellate review in capital postconviction cases, particularly those in a successor posture, and instead, "in its regular practice . . . has become a rubber stamp for lower court death-penalty determinations." *Barclay v. Florida*, 463 U.S. 939, 973 (1983) (Stevens, J., concurring in the judgment). This Court's intervention is warranted at this time "even though [its] labors may not provide posterity with a newly minted rule of law," and its review of Mr. Duckett's case is "especially important" given the "current popularity of capital punishment" in Florida. *Kyles v. Whitley*, 514 U.S. 419, 455-56 (1995) (Stevens, J., concurring). The bottom line is that the Florida courts agree that DNA results excluding Mr. Duckett would exonerate him, yet the court refuses to allow him to test the evidence.

The Florida Supreme Court's construction of Rule 3.853 violates due process and threatens to send an innocent man to his death. Due process requires states to provide adequate procedures to "vindicate" state-created substantive rights, including a prisoner's right to prove his innocence with new evidence. *Osborne*, 557 U.S. at 68-69.

This case and the question it present are exceptionally important and warrant plenary review. DNA testing has the power to conclusively show what the evidence produced in postconviction has already indicated—Mr. Duckett is innocent.

I. The Due Process Guarantee Means that State Courts cannot use Rule 3.853 to Arbitrarily Deny Prisoners their State-created Right to Prove their Innocence through DNA Testing.

The State of Florida has created a statutory procedure through which persons convicted of a felony or who have entered a plea of guilty or nolo contendere can obtain postconviction DNA testing and then use exculpatory results from that testing to secure postconviction relief. Fla. Stat. § 925.11. Florida Rule of Criminal Procedure 3.853 offers a process specific to capital defendants in postconviction proceedings, wherein defendants can obtain postconviction DNA testing and then use exculpatory results from that testing to secure postconviction relief in the form of a new trial or a new penalty phase proceeding. These processes, established by the State, for obtaining access to DNA testing must comport with fundamental fairness and due process. *Osborne*, 557 U.S. at 69.; *see also Skinner v. Switzer*, 562 U.S. 521, 530 (2011) (permitting a due process claim under 42 U.S.C. § 1983 where a state official refuses to release biological evidence for testing, thereby depriving a prisoner of “his liberty interests in utilizing state procedures to obtain reversal of his conviction and/or to obtain a pardon or reduction of his sentence”); *see also Gutierrez v. Saenz*, 606 U.S. 305, 314 (2025). Rule 3.853, as construed by the Florida Supreme Court, failed to fulfill that command. The state court’s construction of the rule violated due process by arbitrarily preventing access to DNA testing that could exonerate Mr. Duckett.

A. When the state court puts in place mechanisms to analyze DNA but places an

improper temporal limitation not contemplated by the rule due process is violated

Rule 3.853 does not have a statute of limitations. Capital litigants are permitted to request postconviction DNA testing at any time. Rule 3.853 neither includes a temporal limitation nor does it preclude successive motions. The state court relied upon *Reynolds v. State*, 192 So. 3d 41 (Fla. 2015), to impose an arbitrary and indefensible time restriction to Rule 3.853 motions; however, *Reynolds* does not apply. In *Reynolds*, the state court determined that a capital postconviction litigant was procedurally barred from DNA testing because the courts had already determined years earlier that he did not meet the requirements of Rule 3.853. Finding the evidence of guilt overwhelming, the court determined DNA testing would not lead to an acquittal or lesser sentence. *Id.* In that appeal, the court determined that the extra items Mr. Reynolds requested be tested in his successive motion could have been included in his initial motion. Mr. Reynolds offered no reason for why he was testing the items years later, but more importantly, the state court denied his motion as procedurally barred because his motion simply sought to relitigate claims the court conclusively determined were meritless. That is not the case here. The courts *have* determined that DNA results would be admissible in Mr. Duckett's case to establish his innocence.

The history of Rule 3.853 reflects a deliberate recognition that postconviction DNA testing should not be constrained by arbitrary filing deadlines. When Rule 3.853 was initially passed, Florida litigants were provided only two years to move for testing. In 2004, that limitations period was extended to four years, and in 2005, it was eliminated entirely. In support of the change, the Florida Bar Criminal Rules

Committee took the formal position that DNA testing must be a “meaningful component of Florida's criminal justice system—to help ensure that the real perpetrators of crimes are punished, that the freedom of innocent people is protected, and that the public's trust and confidence in the judicial process are not diminished.” The elimination of any filing deadline reflects the rule’s purpose: to prioritize the truth-seeking function of DNA testing over procedural time bars where justice may depend on scientific evidence.

Imposing judicially created time limitations or applying procedural bars to foreclose otherwise meritorious requests undermines the legislative purpose by denying litigants access to the substantive rights the statute was enacted to secure. A procedural rule should not be construed or applied in a manner that effectively nullifies a substantive statutory right absent a clear expression of legislative intent. Construing Rule 3.853 to impose limitations not found in the statute would frustrate the remedial purpose of Florida's postconviction DNA testing framework and produce a result contrary to the intent of its authors, whose objective was to ensure access to potentially exculpatory DNA evidence rather than to erect procedural obstacles that prevent its consideration.

By refusing to consider a facially sufficient motion based on an extra-textual timeliness requirement, the state court effectively resurrected a limitations period that the Florida legislature deliberately abolished, thereby depriving Mr. Duckett of the procedural protections guaranteed by Rule 3.853 and violating due process.

The Court has repeatedly applied these when criminal charges have been based on unforeseeable judicial interpretations of criminal statutes. Thus, in *Bouie v. City of*

Columbia, 378 U.S. 347 (1964), this Court established that an unforeseeable judicial interpretation of a statute that contradicts the statute’s plain text violates the Due Process Clause—operating as the judicial equivalent of an ex post facto law. The Court held that “an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an ex post facto law, such as Art. I, § 10, of the Constitution forbids.” *Id.* at 353. *See also Marks v. U.S.*, 430 U.S. 188, 191-92 (1977) (applying *Bouie*’s fair-warning principle to the retroactive broadening of judicial standards); *Shuttlesworth v. Birmingham*, 382 U.S. 87, 90-92 (1965) (holding that a person cannot be penalized for failing to comply with an unconstitutional or nonexistent legal requirement); *Cole v. Arkansas*, 333 U.S. 196, 201 (1948) (holding that due process requires judgment and appeal on the legal theory actually given notice of and tried). As this Court has pointed out in finding that a change in state evidentiary standards violated the Ex Post Facto Clause, “[t]here is plainly a fundamental fairness interest, even apart from any claim of reliance or notice, in having the government abide by the rules of law it establishes to govern the circumstances under which it can deprive a person of his or her liberty or life.” *Carmell v. Texas*, 529 U.S. 513, 533 (2000). The Florida Supreme Court contravened this basic due process requirement when it set temporal limitations on testing that the statute clearly prohibits.

While these cases arise in the criminal-charging context, their animating principle—that due process forbids the retroactive application of unforeseeable judicial constructions—extends to any deprivation of a constitutionally protected interest. The Florida Supreme Court contravened this basic principle determining that Mr. Duckett’s

filing was “untimely,” notwithstanding that Rule 3.853 contains no filing deadline whatsoever. Such bait and switch “notice” is incompatible with over century of this Court’s due process jurisprudence. *Cf. NAACP v. Alabama ex rel. Patterson*, 357 U. S. 449, 457 (1958) (“Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified re-liance upon prior decisions, seek vindication in state courts of their federal constitutional rights.”); *Cruz v. Arizona*, 598 U.S. 17, 26-27 (2023) (applying *NAACP v. Alabama ex rel. Patterson* in context of unforeseeable appellate court decision that broke with prior state precedent).

B. When the state court puts in place mechanisms to analyze DNA and summarily denies a motion to test the evidence even after the movant meets the criteria of the rule, due process is violated.

The circuit court found that Mr. Duckett’s initial motion for postconviction DNA testing, filed on February 27 following the signing of Mr. Duckett’s execution warrant, met the pleading requirement of Rule 3.853. The court granted DNA testing and determined that “that identity was an issue at trial, and that if DNA testing of the sperm indicated that it did not belong to [Mr. Duckett], there would have been a reasonable probability of an acquittal.” (WR1. 748). The State did not dispute the admissibility of the results (WR1. 747).

Following the failed testing of the Q6(3) slide using unsuitable technology unable to produce a definitive result, in violation of Rule 3.853, at the behest of the State, Mr. Duckett was left with no other choice but to seek testing of the remaining similar items. Despite previously determining that Mr. Duckett met all three criteria of Rule 3.853, that identity is an issue and that probative results excluding Mr. Duckett could

exonerate him, that the evidence at issue may have DNA, and that the evidence would be admissible at a trial, the state courts denied testing of the additional items.

The state court adopted the State's argument that Mr. Duckett failed to assert that the items contain biological material to be tested. In so doing, the court improperly construed Rule 3.853 in two ways. First, the rule requires the court find that the evidence "may contain DNA." Fla. R. Crim. P. 3.852(c)(5)(A). The court has placed an improper heightened burden requiring a conclusive statement asserting the existence of DNA before an expert can even review and analyze the evidence. Moreover, where the record was silent as to this issue, the state court adopted the State's facts, which remain in dispute and are refuted by the record, or filled in the gaps with its own interpretations and assumptions of the record.

Second, the court's construction of Rule 3.853 "bars consideration of evidence that must be considered" in making the determination that testing is warranted. *See Hall v. Florida*, 575 U.S. 701 (2014) (finding that Florida's use of a bright-line IQ score cut off precluded review relevant evidence that must be considered in determining whether a capital defendant is intellectually disabled). Rule 3.853(b)(2) requires defendants seeking testing to assert that "subsequent scientific developments in DNA testing techniques likely would produce a definitive result" yet the court's interpretation of the rule precludes consideration of the very scientific information that the rule requires.

C. When the state court puts in place a mechanism to analyze DNA but precludes parties from speaking to the analyst who conducted the testing about their qualifications, the testing conducted, and the protocols used in the laboratories, due process is violated

The Rule likewise does not provide a mechanism for capital defendants to access

any information regarding the testing, including records and contact with the lab itself. There is no provision for access to records or entitlement to contact the lab. Because Rule 3.853 does not address the issue directly, the courts interpret 3.853 as not requiring access, thus defendants are outright denied the ability to know anything about the testing, its progress and decisions made, or have any input on decisions impacting costs, which the defendant will bear if an outside lab conducts the testing.

When Mr. Duckett was denied access to the records in his Rule 3.853 proceedings, he sought records pursuant to Rule 3.852, the rule governing capital postconviction records requests. The court again denied his request and the state court affirmed on appeal, finding that Mr. Duckett could not establish that the records would lead to a colorable claim. *Duckett*, 431 So. 3d at 997 (Pet. App. H, p. 4).

In establishing the statutory right to testing, the court must provide access to the process, which includes information about the testing decisions and process. In precluding access to this necessary information, the procedure to access DNA testing “is fundamentally inadequate to vindicate the substantive rights provided.” *Osborne*, 557 U.S. at 69.

CONCLUSION

Mr. Duckett, through counsel, diligently filed a DNA motion with no active execution date and with plenty of time to complete the DNA testing. *Cf. Logan*, 455 U.S. at 429-30 (“[T]he Fourteenth Amendment’s Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedures, when such an action would be ‘the equivalent of denying them an opportunity to be heard upon their claimed right[s].’” (quoting *Boddie v. Connecticut*,

401 U.S. 371, 380 (1971)).

The Florida legislature explicitly granted prisoners the right to DNA testing for the purpose of enabling them to pursue potentially meritorious claims of innocence. Rather than allow Mr. Duckett access to this right, as statutorily guaranteed by Florida, the State signed a warrant and then cried delay.

This Court should reject that invitation. Mr. Duckett has a due process right to obtain the DNA testing that may result in his walking out of prison as a free man, or at least reducing his sentence of death, *Gutierrez*, 606 U.S. at 314-15 (quoting *Skinner*, 562 U.S. at 530) that is of considerably greater weight than the respondents' asserted interest in executing him first. *See Reed v. Goertz*, 146 S. Ct. 936 (2026) (Sotomayor, J., dissenting from the denial of certiorari). "It is inexplicable why [the Florida state courts refused to allow the additional testing], despite the very substantial possibility that such testing would exculpate [Mr. Duckett] and identify the real killer. *Id.* at 939 (2026) (Sotomayor, J., dissenting).

For the reasons set forth above, this Petition for Writ of Certiorari to review the judgment of the Florida Supreme Court should be granted.

Respectfully submitted,

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