

***** 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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI – Vol. I

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

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2026 WL 1970442

Only the Westlaw citation is currently available.

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Supreme Court of Florida.

James Aren DUCKETT, Appellant,

v.

STATE of Florida, Appellee.

James Aren Duckett, Petitioner,

v.

State of Florida, Respondent.

No. SC2026-0449, No. SC2026-0450

|

July 8, 2026

Synopsis

Background: After convictions and death sentence for first-degree murder and sexual battery were affirmed on direct appeal, [568 So.2d 891](#), denial of multiple state motions for postconviction relief were affirmed, see 918 So.2d 224, 2008 WL 10675331, 148 So.3d 1163, 231 So.3d 393, and [260 So.3d 230](#), and denial of federal habeas petition, [701 F. Supp.2d 1245](#), defendant filed motion for postconviction DNA testing. Motion was granted, after which he filed fifth successive motion for postconviction relief. The Circuit Court, 5th Judicial Circuit, Lake County, [Brian Jerome Welke](#), J., summarily denied motion. Defendant appealed, moved for stay of execution, and filed petition for writ of habeas corpus. Motion to stay execution was granted pending completion of DNA testing. The Supreme Court, [431 So.3d 990](#), remanded for underlying data to be provided to defendant so that analysis could be performed. On remand, the Circuit Court denied defendant's request for evidentiary hearing and subsequent request for rehearing.

Holdings: The Supreme Court held that:

death warrant period of almost four months did not violate due process;

any possible error in circuit court's summary denial of defendant's fifth successive motion for postconviction relief, after it had granted defendant's motion for postconviction DNA testing but before testing was completed, did not violate due process; and

results of postconviction DNA retesting of swab from child victim's underwear mounted on slide, which defendant sought to prove that sperm was not his, did not constitute newly discovered evidence that would prove defendant's actual innocence.

Affirmed; petition for writ of habeas corpus denied; stay of execution lifted.

[Labarga](#), J., concurred in result.

Procedural Posture(s): Appellate Review; Post-Conviction Review.

An Appeal from the Circuit Court in and for Lake County, [Brian Jerome Welke](#), Judge, Case No. 351987CF001347AXXXXX

And an Original Proceeding – Habeas Corpus

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Opinion

PER CURIAM.

***1** Nearly four decades ago, James Aren Duckett was convicted of the sexual battery and first-degree murder of eleven-year-old Teresa McAbee. For the latter crime, he was sentenced to death. On February 27, 2026, Governor Ron

DeSantis signed a warrant scheduling Duckett's execution for March 31, 2026.

Following issuance of the death warrant, Duckett submitted several filings, including a motion for postconviction DNA testing pursuant to [section 925.11, Florida Statutes](#), and [Florida Rule of Criminal Procedure 3.853](#). The circuit court granted that motion. Subsequently, Duckett filed his fifth successive motion for postconviction relief under [Florida Rule of Criminal Procedure 3.851](#). Before DNA testing was finalized, the circuit court summarily denied that motion. Duckett appealed that order and moved for a stay of execution. He also petitioned for a writ of habeas corpus and requested oral argument.

On March 26, 2026, we stayed Duckett's execution to allow for DNA testing to be completed. Later, the laboratory carrying out the testing reported its findings. According to the Florida Department of Law Enforcement (FDLE), those findings were inconclusive. Duckett requested the full results of his DNA testing to allow for further analysis. After this Court's intervention, Duckett obtained those results and an analysis of the underlying data.¹ That analysis, however, also concluded that the results were inconclusive.

With these issues resolved, we now address Duckett's appeal and habeas petition. For the reasons that follow, we affirm the circuit court's order summarily denying Duckett's fifth successive postconviction motion. We also deny his habeas petition.² Accordingly, we lift the stay of execution previously imposed and decline to hold oral argument.

I

On the night of May 11, 1987, Duckett was the only police officer on patrol for the city of Mascotte, Florida. Between 10:00 and 11:00 p.m., he noticed a young girl, Teresa McAbee, loitering outside a convenience store with a sixteen-year-old boy. After asking the store clerk for Teresa's name and age, Duckett approached Teresa and ultimately sat her in the front passenger seat of his patrol car—the last place she was seen alive. The next morning, her body was found in a lake less than a mile from the store. According to the medical examiner, Teresa had been sexually assaulted, strangled, and drowned.

Circumstantial evidence gathered by investigators implicated Duckett as the perpetrator. Among other things, unique tracks

found at the murder scene matched tires from Duckett's patrol car. The police also discovered Teresa's and Duckett's comingled fingerprints on the hood of his car, even though he denied having seen her sit there.

In light of these facts and others, a jury found Duckett guilty of first-degree murder and sexual battery. As to the first-degree murder conviction, the jury recommended he receive the death penalty by an eight-to-four vote. Subsequently, the trial court found two aggravating circumstances: (1) that Duckett murdered Teresa McAbee during the commission of, or immediately after, a sexual battery; and (2) that her murder was especially heinous, atrocious, or cruel. Weighing those aggravators against the mitigating evidence offered by the defense, the court accepted the jury's recommendation and sentenced Duckett to death.

^{*2} Duckett appealed to this Court, raising both guilt-and penalty-phase claims, but we affirmed his convictions and death sentence. [Duckett v. State](#), 568 So. 2d 891, 891 (Fla. 1990). Since then, Duckett has unsuccessfully sought postconviction relief in both state and federal court. See [Duckett v. State](#), 918 So. 2d 224, 227 (Fla. 2005) (affirming denial of initial postconviction motion and denying habeas petition); [State v. Duckett](#), Nos. 87-CF-1347(01), 88-CF-0262, 2008 WL 10675331 (Fla. 5th Cir. Ct. June 9, 2008) (denying first successive postconviction motion, no appeal taken); [Duckett v. McDonough](#), 701 F. Supp. 2d 1245, 1250 (M.D. Fla. 2010) (denying federal habeas petition); [Duckett v. State](#), 148 So. 3d 1163, 1166 (Fla. 2014) (affirming denial of second successive postconviction motion); [Duckett v. State](#), 231 So. 3d 393, 395 (Fla. 2017) (affirming denial of third successive postconviction motion); [Duckett v. State](#), 260 So. 3d 230, 230-31 (Fla. 2018) (affirming denial of fourth successive postconviction motion).

On February 27, 2026, the Governor signed Duckett's death warrant. This prompted Duckett to file a motion, which he later amended, seeking postconviction DNA testing under [section 925.11](#) and rule 3.853.³ [Duckett v. State \(Duckett VI\)](#), 431 So. 3d 990, 992 (Fla. 2026). As we explained in our [Duckett VI](#) opinion:

The sample he wanted tested was a 1987 swab from the victim's underwear mounted on a slide (called “Q-6(3)”), which had continuously been in the State's possession. The swab contained a small number of sperm heads. Duckett contended that DNA testing would show that the sperm was

not his, meaning that someone else committed the murder and he is actually innocent.

Over two decades ago, during Duckett's initial postconviction proceedings, we were informed that certain items of clothing introduced into evidence could possibly be tested for DNA, including Q-6(3). We relinquished jurisdiction to the circuit court to allow for determination of “whether there in fact existed clothing that could be tested for DNA.” On remand, the examiner for FDLE determined that because Q-6(3) had deteriorated and contained too few sperm heads, the DNA testing methods then available would not have produced any conclusive results. The examiner added that any attempt to test the sample would have destroyed it. Outside agencies confirmed the FDLE examiner's concerns. Thus, no testing was performed on Q-6(3).

Id. (citations omitted).

Noting these background facts, Duckett argued that the sample should be tested using newer technology capable of producing more reliable DNA results from small, deteriorated samples. The State agreed that testing could be conducted, and the circuit court granted Duckett's [rule 3.853](#) motion. *Id.* The sample “was ultimately sent to a private laboratory requested by the State called DNA Labs International, Inc. (DLI).” *Id.* at 992-93.

Two days after his motion for DNA testing was granted, Duckett filed his fifth successive postconviction motion under [rule 3.851](#), in which he raised two claims. For his first claim, he asserted that (1) his impending execution is unconstitutional because he is actually innocent; (2) the forthcoming DNA testing results would provide newly discovered evidence of his actual innocence;⁴ and (3) newly discovered evidence shows the State violated *Brady*⁵ by failing to disclose a 2012 letter sent from the U.S. Department of Justice to the State Attorney's Office regarding expert testimony offered at his guilt-phase trial. As for his second claim, Duckett argued that the truncated nature of the warrant process is unconstitutional. He also moved for a stay of execution.

*3 Although DNA testing was not yet complete, the circuit court issued an order summarily denying Duckett's successive postconviction motion and declining to stay his execution. *Duckett VI*, 431 So. 3d at 993. Duckett appealed that order. *Id.* At the same time, he moved for a stay of execution

and petitioned for a writ of habeas corpus. *Id.* We granted Duckett's motion to stay his execution. See *Duckett v. State*, 428 So. 3d 40, 40 (Fla. 2026) (citing § 922.06(1), Fla. Stat.).

Testing was completed the next day. FDLE filed DLI's report and relayed in an email that the report indicated the testing was “inconclusive.” *Duckett VI*, 431 So. 3d at 993. This was because “neither FDLE nor DLI ha[d] the capability to complete the testing process by performing a statistical analysis on the data that was generated.” *Id.* Duckett requested that FDLE and DLI release the underlying testing data to him so that such an analysis could be performed. *Id.* at 994.⁶ The circuit court denied this request. *Id.*

On appeal, we partially reversed, holding that the circuit court erred in denying Duckett the full results of the DNA testing. *Id.* at 997.⁷ Accordingly, we remanded for the underlying data to be provided to Duckett so that the statistical analysis, referenced by FDLE, could be performed. *Id.*

Subsequently, Duckett sent the underlying data to a bioinformaticist for analysis.⁸ That expert opined that “the dataset did not contain sufficient information to support a reliable contributor conclusion.” He added: “I cannot state, to a reasonable degree of scientific certainty, that James Duckett either is or is not a contributor to the evidentiary DNA mixture. The available data are insufficient to support either an inclusion or an exclusion.”⁹

Upon receiving this analysis, Duckett requested an evidentiary hearing on DLI's testing process. The circuit court denied this request, reasoning that the [rule 3.853](#) motion had already been “fully resolved,” Duckett had received the complete results of the DNA testing, and he had not filed a new [rule 3.851](#) motion seeking postconviction relief. The court denied Duckett's subsequent motion for rehearing.¹⁰

Accordingly, we now turn to Duckett's pending appeal and habeas petition.

II

We begin with Duckett's appeal of the circuit court's order summarily denying his fifth successive postconviction motion.¹¹ We review de novo the summary denial of this motion and affirm if the claims raised therein “are untimely, procedurally barred, legally insufficient, or refuted by the

record.” *Hutchinson v. State*, 416 So. 3d 273, 279 (Fla.) (citing *Cole v. State*, 392 So. 3d 1054, 1060-61 (Fla. 2024)), *cert. denied*, — U.S. —, 145 S. Ct. 1980, 221 L.Ed.2d 750 (2025); *see also* Fla. R. Crim. P. 3.851(f)(5)(B).

A

*4 First, Duckett argues that the warrant proceedings have denied him due process of law. He objects to the truncated and “surprise” nature of the warrant process as well as the circuit court’s handling of issues related to the DNA testing. In particular, he asserts that the court violated his due process rights by denying his fifth successive postconviction motion before DNA results became available. This claim fails.

To the extent Duckett bases this claim on the warrant period’s length and unanticipated issuance, we have rejected these same arguments countless times before. *See Jones v. State*, 419 So. 3d 619, 625-26 (Fla.) (collecting cases), *cert. denied*, — U.S. —, 146 S. Ct. 79, 222 L.Ed.2d 1240 (2025). Notably, given our stay of execution, Duckett’s warrant period has lasted almost four months—far longer than other warrant periods that we have found constitutionally acceptable. *See id. at 625* (rejecting claim that thirty-day warrant period violates due process).

Duckett also directs his due process arguments at the circuit court’s handling of the DNA testing process during the warrant period. But these arguments, assuming they have any merit, have been rendered moot by later developments. Although the circuit court summarily denied Duckett’s fifth successive postconviction motion before DNA testing was completed, we then stayed his execution. Thereafter, we ordered that Duckett be provided the full results of his testing so that a statistical analysis could be performed on the underlying data. *See Duckett VI*, 431 So. 3d at 997. Duckett obtained the analysis he sought, and the results were not favorable to him. In light of all this, we are satisfied that the requirements of due process were met. *See Barwick v. State*, 361 So. 3d 785, 790 (Fla. 2023) (“Due process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided.” (quoting *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016))).

B

Second, Duckett contends that he is actually innocent and his execution would therefore violate the Eighth and Fourteenth Amendments to the U.S. Constitution. This claim is meritless.

As an initial matter, Duckett does not have a viable newly discovered evidence claim based on the DNA testing results. To prove such a claim, Duckett must show two things: (1) that the evidence was not known by the trial court, himself, or his counsel at the time of trial, and that neither he nor his counsel could have known of it by the exercise of diligence; and (2) that the evidence is “of such nature that it would probably produce an acquittal on retrial.” *Preston v. State*, 970 So. 2d 789, 797 (Fla. 2007) (quoting *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998)). Assuming he has made the first showing, he has failed to make the second. Based on the analysis conducted by Duckett’s own expert, the DNA testing results were inconclusive. Thus, he has not shown that this DNA evidence, considered alongside all the evidence introduced at trial and throughout his postconviction proceedings, would probably lead to an acquittal on retrial.

So, Duckett is left to assert a freestanding actual innocence claim based on the evidence he has presented throughout his postconviction proceedings. However, “Florida does not recognize an independent claim of actual innocence in postconviction proceedings.” *Sweet v. State*, 293 So. 3d 448, 453 (Fla. 2020) (citing *Elledge v. State*, 911 So. 2d 57, 78 (Fla. 2005)). And as we have held, “Florida’s refusal to recognize postconviction actual innocence claims does not violate the Eighth Amendment.” *Id. at 454* (citing *Tompkins v. State*, 994 So. 2d 1072, 1088-89 (Fla. 2008)).

*5 Accordingly, Duckett is not entitled to relief on any of the grounds asserted on appeal, and we affirm the circuit court’s order.

III

We now consider Duckett’s habeas petition, in which he again brings a claim of actual innocence and further argues that this Court’s piecemeal adjudication of the claims raised throughout his various postconviction proceedings denied him due process. He contends that judicial intervention is necessary to prevent a manifest injustice based on the cumulative effect of the alleged errors made in disposing of his prior postconviction claims.

The claims raised in Duckett's habeas petition essentially duplicate those on appeal, and they fail for the same reasons given above. Insofar as he seeks to relitigate our decisions in his earlier postconviction proceedings, his claims are procedurally barred. *See Bates v. State*, 416 So. 3d 312, 322 (Fla.) (citing Fla. R. Crim. P. 3.851(e)), *cert. denied*, — U.S. —, 146 S. Ct. 66, 222 L.Ed.2d 1190 (2025).

Accordingly, we deny Duckett's habeas petition.

IV

For the foregoing reasons, we affirm the summary denial of Duckett's fifth successive postconviction motion.

Additionally, we deny his habeas petition. Having denied relief, we lift our stay of execution. No motion for rehearing will be considered. The mandate shall issue immediately.

It is so ordered.

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

LABARGA, J., concurs in result.

All Citations

--- So.3d ----, 2026 WL 1970442

Footnotes

- 1 See *Duckett v. State (Duckett VI)*, 431 So. 3d 990, 992 (Fla. 2026).
- 2 We have jurisdiction. See art. V, § 3(b)(1), (9), Fla. Const.
- 3 Duckett also filed demands for public records from several agencies under Florida Rule of Criminal Procedure 3.852(h) and (i). After a hearing, the circuit court granted some of those demands, ordering the relevant agencies to produce the records by the scheduled deadline. The court, however, denied the rest of the demands based on the agencies' respective objections. Duckett has not challenged these denials on appeal.
- 4 "Per our scheduling order and absent a stay, Duckett was required to file his successive postconviction motion before DNA testing results were available." *Id.* at 993 n.4.
- 5 *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).
- 6 Additionally, Duckett again filed public records demands under rule 3.852(i), this time seeking the testing data as well as DLI's testing process and protocols. *Id.*
- 7 We affirmed the circuit court's denial of Duckett's public records demands. *Id.*
- 8 The State also had the data sent for analysis by another bioinformaticist. We do not rely on that expert's report in reaching our conclusions here.
- 9 In *Duckett VI*, we recognized this outcome was possible. See 431 So. 3d at 995 n.11 ("[I]t is possible that, after conducting the statistical analysis that FDLE suggests is possible in this case, the entity performing the analysis will be unable to offer a definitive conclusion based on a comparison of Duckett's known DNA and the profile generated from the sample.").
- 10 Duckett appealed the denial of his request for an evidentiary hearing, but we dismissed for lack of jurisdiction.
- 11 Duckett does not appeal the circuit court's denial of his *Brady* claim.

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**IN THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY,
FLORIDA**

SC1960-72711

CASE NO.: 35-1987-CF-001347-AXXX-XX

STATE OF FLORIDA,

Plaintiff,

**DEATH WARRANT SIGNED;
EXECUTION SCHEDULED FOR
MARCH 31, 2026, AT 6:00 P.M.**

v.

JAMES AREN DUCKETT,

Defendant.

**ORDER ON DEFENDANT'S SUCCESSIVE MOTION TO VACATE
JUDGMENTS OF CONVICTIONS AND SENTENCE WITH
REQUEST FOR LEAVE TO AMEND AND FOR EVIDENTIARY
HEARING**

THIS CAUSE came before the Court on Defendant's Successive Motion to Vacate Judgment of Convictions and Sentence with Request for Leave to Amend and for Evidentiary Hearing, filed herein on March 8, 2026, pursuant to Rule 3.851, Florida Rules of Criminal Procedure. (electronic court docket #1256). On March 10, 2026, the State filed a Response to the postconviction motion (electronic court docket

#1258). On March 10, 2026, the Court held a hearing pursuant to *Huff v. State*, 622 So. 2d 982 (Fla. 1993). At the *Huff* hearing, the Defendant was represented by Attorneys Courtney Hammer of Capital Collateral Regional Counsel South Region of Florida ("CCRC-S"), and Mary Elizabeth Wells, appearing in person, and Britteny Lacy of CCRC-S, appearing by Zoom. The State of Florida was represented by Attorneys Charmaine Millsaps, Nicole Smith, and Naomi Nichols of the Attorney General's Office, appearing by Zoom. Fifth Judicial Circuit State Attorneys Kenneth Nunnelly and Tom Wieczorek, who also represented the State of Florida, attended in person. Counsel for the Florida Department of Corrections and the Defendant's Federal Public Defender observed were also present on Zoom. Court Reporter Shannon Massingill of Ryan Reporting was present in person. On March 10, 2026, this Court entered a written order on the *Huff* hearing determining that the claims presented in the Defendant's successive motion for postconviction relief could be decided as a matter of law without an evidentiary hearing. (electronic court docket #1268). The Court also motioned the Florida Supreme Court for an extension of time, due to having not received DNA test results. The Motion was granted, with instructions to file a status report within 12 hours of DNA

results being available or by 5:00 P.M. on Wednesday, March 18, whichever occurred first. On March 16, 2026, this Court filed the Status Order with the Florida Supreme Court. However, since there are no other pending issue concerning the Defendant's "Successive Motion to Vacate Judgments of Convictions and Sentences of Death with Request for Leave to Amend and for Evidentiary Hearing," this Court will issue its order on the Defendant's "Successive Motion to Vacate Judgments of Convictions and Sentences of Death with Request for Leave to Amend and for Evidentiary Hearing."

Having considered the Defendant's "Successive Motion to Vacate Judgments of Convictions and Sentences of Death with Request for Leave to Amend and for Evidentiary Hearing," the State's Response, the official court file, legal argument of counsel, and the relevant legal authority, the Court makes the following findings of fact and conclusions of law:

Facts

a. The facts as testified at trial and "set forth in extensive detail" by the Florida Supreme Court are:

The murder [of Teresa McAbee] occurred in May 1987. At the time, Duckett worked as a police officer for the City of Mascotte. He was the only officer on patrol from 7 p.m. on May 11 to 7 a.m. on May 12. Between 10 and 10:30 p.m. on May 11, Teresa McAbee, an eleven-year-old girl, walked a short distance from her home to a convenience store to purchase a pencil. She left the store with a sixteen-year-old Mexican boy, who was doing laundry next door. They walked over to the convenience store's dumpster and talked for about twenty minutes before Duckett approached them. Duckett entered the store and asked for the girl's name and age. The clerk advised him that Teresa was between ten and thirteen years old. Stating that he was going to check on her, Duckett left the store and walked toward the dumpster, where he located the two children. Duckett testified that he conversed with the children and instructed Teresa to return home.

The sixteen-year-old boy testified that, after speaking with Duckett, he went to the laundromat to wait for his uncle, who arrived soon thereafter; that Duckett and Teresa were standing near the patrol car; and that Duckett asked the uncle the nephew's age. Subsequently, Duckett suggested that the uncle talk to his nephew while he spoke to Teresa. According to the uncle and the boy, Duckett placed Teresa in the passenger's side of his patrol car and shut the door before proceeding to the driver's side. The uncle also testified that he never saw Teresa touch the hood of Duckett's car.

At about 11 p.m., Teresa's mother walked to the convenience store, searching for her daughter. The clerk told her that Duckett may have taken her daughter to the police station. For about an hour the mother and her sister drove around Mascotte in search of Teresa. During this time, the mother did not see a police car. She next went to the Mascotte police station and, finding no one there, drove a short distance to the Groveland police station. There, she told an officer that she wanted to report her daughter as

missing. The officer told her that he would contact a Mascotte officer to meet her at the Mascotte police station.

Teresa's mother returned to the Mascotte police station and waited fifteen to twenty minutes before Duckett arrived. Duckett told her that he had spoken with Teresa at the store; that she had been in his police car; and that he had directed her to return home. The mother filed a missing person report with Duckett.

Duckett drove to the mother's home to obtain a picture of Teresa, called the police chief to inform him of the missing person report, and advised the chief that he had made a flyer and did not need any help. Duckett then returned to the convenience store with a flyer but told the clerk not to post it because it was not a good picture. Although he told the clerk that he would return with a better one, he never did. Duckett did bring flyers to two other convenience stores. The clerk at one store testified that, while the police usually drove by every forty-five minutes to an hour, Duckett drove by at 9:30 p.m. but failed to return until he brought the flyer later that evening. A tape of Duckett's radio calls indicated none between 10:50 p.m. and 12:10 a.m. At 1:15 a.m., Duckett went to the uncle's house to question his nephew about Teresa, then around 3 a.m. returned to the mother's home.

Later that morning, Teresa's body was found in a lake less than a mile from the convenience store where Teresa was last seen. A medical examiner testified that the perpetrator had sexually assaulted the victim while she was alive, strangled her, and drowned her, causing her death. Before this incident, the victim had not engaged in any sexual activity. Blood was found on her underpants, but not in or about Duckett's patrol car. Semen was discovered on her jeans.

A technician for the sheriff's department examined the tire tracks at the murder scene and concluded they were very

unusual. While leaving the crime scene, he observed that the tracks of a Mascotte police car appeared to be similar. He stopped his vehicle, examined the tracks, and determined that they were consistent with the tracks at the crime scene. An expert at trial corroborated this evaluation. The tracks were made by Goodyear Eagle mud and snow tires, which are designed for northern driving. While the local tire center had not sold any of those particular tires during its nine years of existence, it had received two sets by mistake and placed them on the two Mascotte police cars.

Evidence revealed that the vehicle that left the impressions had driven through a mudhole. However, no evidence was presented that Duckett cleaned his vehicle, and no debris from the scene was found in or on his vehicle. Evidence was also presented that Duckett was neat and clean later that night, as if he had just come on duty.

Both Duckett's and Teresa's fingerprints were discovered on the hood of Duckett's patrol car. Duckett's prints were commingled with the victim's, whose prints indicated that she had been sitting backwards on the hood and had scooted up the car.

A pubic hair was found in the victim's underpants. While other experts could not reach a conclusion by comparing that hair with Duckett's pubic hair, one FBI special agent, who had been qualified in forty-two states as an expert in hairs and fibers, concluded that it was highly probable that it was Duckett's. The expert also testified that the pubic hair did not match the hairs of the sixteen-year-old boy, the uncle, or the others who were in contact with the victim that evening.

Before his arrest, Duckett gave a statement in which he denied driving his vehicle to the lake that evening. He further stated that the victim had not been on the hood of

his patrol car and that he had stopped at the Jiffy store for coffee after the girl went home.

The State presented the testimony of three young women who allegedly had sexual encounters with Duckett. The first woman, a petite nineteen-year-old, testified that in January or February 1987 she ran into Duckett while she was looking for her boyfriend. Duckett told her that he, too, was searching for her boyfriend, and drove her in his patrol car. While in the car, Duckett placed his hand on her shoulder and attempted to kiss her. After she refused to kiss him, he desisted and she left the car. The second woman, a petite eighteen-year-old, stated that, on May 1, 1987, Duckett picked her up while she was walking along the highway. After Duckett drove her to a remote area in an orange grove, he parked the car, placed his hand on her breast, and attempted to kiss her. When she refused to kiss him, he desisted and drove her to where she requested. The third woman, a petite seventeen-year-old, testified that on two occasions, once in February or March 1987, and again in April or May 1987, she voluntarily met Duckett at a remote area while he was on patrol and performed oral sex on him.

Duckett testified at trial. He admitted many of the facts surrounding the incident, including his encounter with Teresa, but denied driving off with her and killing her. He also denied any involvement with the three young women.

The jury found Duckett guilty of sexual battery and first-degree murder. In the penalty phase, the State presented no additional testimony, but Duckett presented four witnesses. The jury recommended a sentence of death by an eight-to-four vote. The trial judge found two aggravating circumstances (that the murder was committed during the commission of, or immediately after, a sexual battery; and that the murder was especially heinous, atrocious, or cruel), and one statutory mitigating circumstance (that Duckett had no significant history of prior criminal activity).

The trial judge also concluded that Duckett's family background and education gave rise to nonstatutory mitigation. For the murder, the trial judge sentenced Duckett to death, concluding that the aggravating circumstances outweighed the mitigating circumstances; and for the sexual battery conviction, the judge sentenced him to life imprisonment for the mandatory minimum of twenty-five years.

Duckett v. State, 568 So. 2d 891, 892-94 (Fla. 1990).

Procedural History

b. On October 27, 1987, the Defendant was charged by Indictment with First Degree Murder from a Premeditated Design. (Exhibit A, Indictment). Defendant was also charged in case 1988-CF-262 by Information with Capital Sexual Battery; the two cases were consolidated for trial.

c. The Defendant was tried and convicted. (Exhibit B, Verdict) The jury recommended death by a vote of eight to four (Exhibit C, Advisory Sentence). The Trial Judge imposed a sentence of death. (Exhibit D, Sentencing Order; Exhibit E, Sentencing Transcript). On direct appeal, the Defendant raised four claims: "(1) whether the trial court erred in denying his motion for a judgment of acquittal based on his claim that the circumstantial evidence did not exclude all reasonable hypotheses of innocence; (2) whether the trial court erred

in admitting the testimony of the three female witnesses under the *Williams* rule; (3) whether the trial court erred in qualifying Michael Malone as an expert in the field of hair analysis; and (4) whether the trial court erred in imposing the death penalty." *Duckett v. State*, 568 Fla. 891, 894 (Fla. 1990). The Florida Supreme Court found that (1) the State satisfied its burden of proof, (2) no *Williams* rule error occurred for two witnesses, and while the third should not have been admitted, the error was harmless, (3) there was no error in qualifying Michael Malone as an expert, and (4) Defendant's status as a police officer was not improperly used as a nonstatutory aggravating factor. *Duckett v. State*, 568 Fla. 891, 895 (Fla. 1990).

d. Defendant filed an initial 3.850 Motion to Vacate on May 1, 1992 and an Amended 3.850 Motion to Vacate on June 12, 1992. These were then combined into a Consolidated First and Second Amended Motion to Vacate Judgment of Convictions and Sentences With Special Request for Leave to Amend, filed November 15, 1994. Defendant's motion argued (1) access to the files and records pertaining to Defendant's case in the possession of the Florida Parole Commission, the Board of Executive Clemency and State Attorney's Office were withheld, (2) Defendant was denied adversarial testing at

trial because, critical, exculpatory evidence was not presented to the jury,¹ (3) Defendant was denied effective assistance of counsel by failing to investigate and prepare to refute aggravating factors and establish mitigation factors, (4) the prosecutor's inflammatory and improper comments, arguments and conduct rendered the conviction fundamentally unfair, and the failure of defense counsel to object was ineffective assistance of counsel, (5) Defendant was denied his rights under *Ake v. Oklahoma*, 470 U.S. 68 (1985) by the failure to obtain an adequate mental health evaluation and provide the necessary background information to a mental health consultant, (6) Defendant was denied his right to a reliable capital sentence because the jury did not receive instructions guiding and channeling its sentencing discretion by explaining the limiting constructions of the aggravating factors and the aggravating factors were improperly argued and applied, (7) the jury was misled by arguments and instructions which unconstitutionally and inaccurately diluted its sense of responsibility for sentencing, and the failure to object was ineffective assistance of

¹ This claim involved the following subparts: (a) impeachment of the testimony of witness Gwendolyn Gurley (b) *Williams* rule testimony (c) newly discovered evidence (d) issues with the investigation procedure and other potential suspects (e) evidence contradicting the State's forensic evidence and (f) evidence corroborating Defendant's testimony.

counsel, (8) the penalty phase instructions shifted the burden to Defendant to prove that death was inappropriate, the trial judge employed this improper standard, and the failure to object was ineffective assistance of counsel, (9) the procedural and substantive errors at trial could not be harmless when viewed as a whole and deprived Defendant of a fundamentally fair trial, (10) evidence was legally insufficient to convince a rational trier of fact of Defendant's guilt beyond a reasonable doubt, and the failure of trial counsel to apply the correct standard was ineffective assistance, (11) Defendant's absence during critical stages of the proceedings violated Defendant's rights to due process and a fair trial, and the failure of trial counsel to ensure his presence was ineffective assistance, (12) the death sentence was enacted pursuant to a pattern and practice of prosecutors, courts and juries to discriminate on grounds of race and sex, (13) the Florida rule prohibiting Defense counsel from interviewing jurors violates the federal and Florida constitutions, and (14) the death penalty is cruel and unusual punishment in that it is applied in an arbitrary and capricious manner. (Exhibit F, Consolidated First and Second Motion to Vacate Judgments of Conviction).

After a *Huff* hearing and several evidentiary hearings, the motion was denied August 12, 2001 (Exhibit G, Order Denying Consolidated First and Second Amended Motions to Vacate Judgments of Conviction and Sentences with Special Request for Leave to Amend, Docket # 772). The court found that (1) there was no evidence of improperly withheld material, (2) the exculpatory evidence was either not credible, procedurally barred, or speculative and without factual support, and therefore would not have led to a different result, (3) the claimed mitigation was cumulative and the decision not to present it was tactical, (4) the claim of prosecutorial misconduct was procedurally barred, (5) the decision not to retain a mental health expert was tactical, and there was no evidence of mental health problems such that the use of an expert would have led to a different result (6) the claim of improper instruction on aggravating factors was procedurally barred, and defense counsel was not ineffective, (7) the claim of misleading instructions was procedurally barred and the instructions appropriately characterized the jury's role, (8) the death penalty is not cruel and unusual punishment as a matter of law (9) the claim of cumulative error was legally insufficient and/or procedurally barred, (10) the claim of insufficient circumstantial evidence was raised on

direct appeal and therefore barred, (11) Defendant was present at all critical proceedings, (12) the claim of discriminatory application of the death penalty was legally insufficient and procedurally barred, (13) claims regarding juror interviews were without legal merit and procedurally barred, and (14) Florida's death penalty procedures were constitutional.

e. Defendant appealed the denial of his postconviction motion on ten grounds:

"(1) he was denied an adversarial testing because certain exculpatory evidence was not presented; (2) he was denied effective assistance of counsel for failure to investigate, develop, and present mitigation evidence and failure to obtain and present psychological testing; (3) the rule preventing counsel from interviewing jurors violates the federal and Florida constitutions; (4) prosecutorial misconduct rendered Duckett's conviction and sentence fundamentally unfair; (5) his counsel's failure to obtain an adequate mental health evaluation and to provide necessary background information to a mental health consultant denied Duckett a fair trial; (6) the two aggravating factors were constitutionally vague and improperly argued and applied; (7) the jury was misled by argument and instructions which unconstitutionally diluted its sense of responsibility; (8) the penalty phase jury instructions improperly shifted the burden to Duckett to prove that death was inappropriate; (9) Duckett's absence from critical stages of the proceedings violated his rights to due process and a fair trial; and (10) the death penalty constitutes cruel and unusual punishment."

Duckett v. State, 918 So. 2d 224, 231 (Fla. 2005), *cert. denied* 549 U.S. 846 (2006). Claim 1 included several subclaims “(a) State witness Gwen Gurley; (b) hair evidence; (c) tire tracks; (d) fingerprints; (e) a pencil; (f) Williams rule evidence; (g) other unheard evidence; (h) unheard corroborating evidence; and (i) cumulative analysis.” *Id.* at FN6 (Fla. 2005).

f. The Florida Supreme Court found that claims 3, 6, 7, 9, and 10 were procedurally barred, because they should have been raised on direct appeal. *Id.* at 231. It also found claims 1(g), 1(h) and 4 were legally insufficient, summarily denied claim 8 as without merit, and found claim 5 presented identical issues as claim 2. *Id.* It addressed claims 1(a)-(f) and 2 on the merits. As to ground 1(a), it found that trial counsel presented adequate impeachment of witness Gurley (presenting prior felony convictions and examining her on inconsistencies in her testimony) and that there was no reasonable probability of a different outcome at trial. *Id.* at 232-234. Regarding claims 1(b)-1(f), it found that Michael Malone was correctly qualified as an expert, that a 1997 report was not *Brady* material because it was not and could not have been suppressed by the State in a 1988 trial, that the arguments regarding tire tracks were conclusory and legally

insufficient, that the decision not to present a fingerprint expert was tactical (since trial counsel had in fact received a report from an expert and determined it would not assist the defense), and that the claim regarding a pencil was legally insufficient because it failed to address prejudice. *Id* at 234-235. As to Claim 1(f), it found that an objection to consolidation would have been futile. *Id* at 236. As to claim 2, the Florida Supreme Court found that the proposed mitigation testimony and evaluation demonstrating a lack of mental health problems or sadistic tendencies were cumulative, and trial counsel was not deficient for failing to present them. *Id* at 236-237.

g. Defendant also petitioned the Florida Supreme Court for a writ of habeas corpus, raising four claims "(1) he is innocent and his execution would be a miscarriage of justice; (2) his direct appeal does not meet constitutional requirements because the State failed to disclose pertinent facts necessary to the Court's review; (3) appellate counsel failed to raise numerous meritorious issues on direct appeal; and (4) Duckett's death sentence violates the United States Supreme Court's decisions in *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), and *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000)." *Duckett v. State*, 918 So. 2d 224,

239 (Fla. 2005). The first was denied as legally insufficient, the second denied as being addressed as part of the 3.850 motion, the third denied as insufficiently pled and the fourth denied as without merit, because *Ring* does not apply retroactively. *Id* at 239-240.

h. During oral arguments on appeal, Defense and the State indicated that DNA testing might be possible on certain items of clothing. The Florida Supreme Court relinquished jurisdiction to the trial court for DNA testing of the clothing. *Duckett v. State*, 918 So. 2d 224, 230 (Fla. 2005). No usable DNA was detected on the items tested. (Exhibit H, Final Order and Report to Supreme Court on DNA Testing). Defense and State agreed not to test one potential sample (a slide containing sperm) because testing would consume the sample, and it would therefore be prudent to wait for possible future scientific advances that might allow for testing of then-undetectable material.

i. During the proceedings in the trial court for DNA testing, Defendant filed a request for several other items found at the crime scene be tested for DNA. (Exhibit H at 3). The trial court found that the request exceeded the scope of the mandate relinquishing jurisdiction. Defendant also filed a motion arguing that testing was necessary to comply with *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d

215 (1963) and *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). The Court likewise found that the motion exceeded the scope of jurisdiction relinquished by the Florida Supreme Court. (Exhibit I, Order on Defendant's Motion for Compliance with Brady and Kyles). Both decisions were appealed and affirmed as being outside the scope of the trial court's jurisdiction on relinquishment. *Duckett v. State*, 918 So. 2d 224, 238-239 (Fla. 2005)

j. Defendant filed for federal habeas corpus relief, raising sixteen claims. *Duckett v. McDonough*, 701 F.Supp 2d 1245 (M.D. Fla. 2010). These claims corresponded to the ten claims raised in his appeal of the postconviction motion, the two claims raised regarding his postconviction DNA testing, and the four claims raised in his state habeas petition. All claims were denied.

k. Defendant filed his first "Successive Motion to Vacate Conviction and Sentence with Request to Amend" on April 1, 2008. The Motion was denied without prejudice due to exceeding the permitted length, and refiled on November 27, 2010 (Exhibit J, Defendant's Successive Motion to Vacate Judgments of Conviction and Sentence with Special Request for Evidentiary Hearing). Defendant's motion raised four claims: (1) Defendant's convictions and

sentence violated the Sixth and Eighth Amendments under *Porter v. McCollum*, 130 S. Ct. 447 (2009), (2) newly discovered evidence regarding false testimony of Gwen Gurley required Defendant receive a new trial; cumulative analysis of all testimony presented was warranted and Defendant was denied is due process rights to a fair trial under the Fifth, Sixth, Eighth and Fourteenth Amendments, (3) Defendant's due process rights were violated when he was prohibited from presenting evidence on his behalf at the prior evidentiary hearing, on the basis that witness Gwen Gurley asserted her Fifth Amendment right to remain silent due to the perjury statute, and (4) newly discovered evidence concerning the State's hair expert required the Defendant receive a new trial.

I. Defendant subsequently filed an amendment on January 24, 2012, which added new claim (5), newly discovered evidence from an independent examiner hired by the FBI reviewing the work of the State's hair expert required a new trial and (6), that the failure to apply *Porter v. McCollum*, 130 S. Ct. 447 (2009) to Defendant's previous postconviction claims was arbitrary and capricious (Exhibit K, Defendant's Amendment to Successive Motion to Vacate Judgments

of Conviction and Sentence with Special Request for Evidentiary Hearing).

m. A preliminary Order was filed on February 13, 2012 (Exhibit L, Order). It summarily denied claims 1 and 6 as failing to state a basis of relief and claim 3 as successive. Defense was given leave to file another amendment consolidating claims 4 and 5. Another amendment was duly filed August 28, 2012 (Exhibit M, Defendant's Second Amendment to Successive Motion to Vacate Judgements of Conviction and Sentence with Special Request for Evidentiary Hearing). Following a *Huff* hearing, the request for an evidentiary hearing as to claim 7 (the consolidated hair expert claims 4 and 5) was denied. Exhibit N, Order Denying Evidentiary Hearing on Amended Claim VII). A final order was then filed on November 6, 2012. (Exhibit O, Order Denying Successive Motion to Vacate).

The order reiterated the denials of claims 1 and 6 (the *Porter* claims) as without merit under Florida law, found claims 2 and 3 (the perjury claims) to be untimely, refuted by the record and successive, and found claim 7 to provide no basis for relief, because the limitations of hair analysis were fully explored at trial.

n. Defendant appealed, arguing “that (A) the circuit court erred in summarily denying his claim that newly discovered evidence demonstrates that a Federal Bureau of Investigation (FBI) analyst's testimony at trial regarding hair evidence was erroneous and this Court should remand his case to the postconviction court for an evidentiary hearing on this claim; (B) the failure to apply the United States Supreme Court's decision in *Porter v. McCollum*, 558 U.S. 30, 130 S.Ct. 447, 175 L.Ed.2d 398 (2009), retroactively to his claims violates his constitutional rights to due process and equal protection; (C) newly discovered evidence that a trial witness recanted her testimony requires that Duckett be granted a new trial; and (D) section 837.021, Florida Statutes (1997), relating to perjury by contradictory statement, is invalid.” *Duckett v. State*, 148 So. 3d 1163, 1165-1166 (Fla. 2014) *cert. denied* 584 U.S. 1035 (2018). The Florida Supreme Court found that (1) the newly discovered evidence “[did] not give rise to reasonable doubt as to Defendant's culpability”, 148 So. 3d at 1168-1169 (2) *Porter* was not a fundamental change to the law and did not apply retroactively, *Id.* at 1169 (3) the affidavits by Gwen Gurley's adult children testimony did not meet the pleading requirements because they failed to plead why they were not previously available and

recantation evidence making substantially the same claims had previously been rejected, *Id.* at 1170 and (4) the challenge to section 837.021 Fla. Stat (1997) was not timely raised and thus procedurally barred. *Id.*

o. Defendant filed his second successive motion August 25, 2015. (Exhibit P, Defendant's Successive Motion to Vacate Judgments of Conviction and Sentences with Special Request for Evidentiary Hearing and Leave to Amend Docket #1069). Defendant's motion argued that Defendant was deprived of his right to due process because either the State withheld evidence that was material and exculpatory in nature and/or knowingly presented misleading evidence and/or defense counsel unreasonably failed to discover and present exculpatory evidence, and/or favorable evidence constituted newly discovered evidence of innocence, citing a report on hair fiber analysis. The postconviction court considered this as four separate claims: (1) a claim that the State had withheld evidence in violation of *Brady*, (2) that the State had knowingly presented false or misleading testimony in violation of *Giglio*, (3) that Defense counsel had been ineffective, violating *Strickland*, and (4) that the report constituted newly discovered evidence. (Exhibit Q, Order on Defendant's Successive

Motion). The court concluded that the report could not have been known to either the State or Defense counsel, and requiring denial of the *Brady*, *Giglio*, and *Strickland* claims. It further found that, while it met the first prong of the newly discovered evidence standard, it was not of such a nature it would probably produce a different result on retrial, because it the report presented no information that had not been presented in the previous postconviction claim that the Florida Supreme Court found “did not give rise to a reasonable doubt as to Duckett’s culpability.”

p. Defendant appealed, arguing “the postconviction court erred in summarily denying: (1) Duckett’s newly discovered evidence claim regarding Malone’s trial testimony; (2) Duckett’s *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), claim; (3) Duckett’s *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972), claim; and (4) Duckett’s cumulative error claim.” *Duckett v. State*, 231 So. 3d 393 (Fla. 2017) *cert. denied* 584 U.S. 1035 (2018). The Florida Supreme Court found (1) the newly discovered evidence “would not probably produce and acquittal on retrial even when it is considered cumulatively with all of the admissible evidence that could be introduced” *Id.* at 400 (2) the trial court’s finding that there was no

evidence in any of the documents that the prosecutor knew of any problems regarding hair analysis was supported by competent substantial evidence, *Id.* (3) Defendant had not shown that the testimony, taken in its full context, was false, *Id.* and (4) Defendant did not establish any guilt phase errors that would either individually or cumulatively entitle him to a new guilt phase *Id.* at 402.

q. Defendant filed his third successive postconviction motion on January 12, 2017. (Exhibit R, Defendant's Successive Motion to Vacate Judgments of Conviction and Sentences with Special Request for Evidentiary Hearing and Leave to Amend). The Motion claimed that (1) Defendant's death sentence violated the Sixth Amendment under *Hurst v. Florida*, 136 S. Ct. 616 (2016), (2) Defendant's death sentence violated *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), and *Perry v. State*, 210 So. 3d 630 (Fla. 2016), and the Eighth and Fourteenth Amendments, (3) the retroactivity rulings in *Asay v. State*, 210 So. 3d 1 (Fla. 2016) and *Mosley v. State*, 209 So. 3d 1248 (Fla. 2016) violate *Furman v. Georgia*, 408 U.S. 238 (1972), and (4) the court was required to revisit the previous newly discovered evidence claims and determine whether a different outcome would result. An amendment was filed on March 13, 2018, which added the claim that (5) Defendant

was entitled to resentencing under the revised section 921.141 Fla. Stat. (2017). (Exhibit S, Amendment to Defendant's Successive Motion to Vacate Judgments of Conviction and Sentences with Special Request for Evidentiary Hearing and Leave to Amend).

q. The trial court found that claims (1), (2), (4) and (5) were barred, because *Hurst* did not apply to Defendant under *Asay* and its progeny, and that claim (3), which directly challenged *Asay*, had been rejected in *Lambrix v. State*, 227 So. 3d 112 (Fla. 2017). (Exhibit T, Order on Defendant's Successive Motion) The trial court therefore denied the motion. Defendant appealed, and the Florida Supreme Court affirmed, finding that *Hurst* did not apply retroactively to Defendant's sentence. *Duckett v. State*, 260 So. 3d 230 (Fla. 2018) *cert. denied* 587 U.S. 1053 (2019).

Current Successive Motion

r. In the current motion, the Defendant raises two claims for relief in his "Successive Motion to Vacate Judgment of Convictions and Sentence with Request for Leave to Amend and for Evidentiary Hearing." The Defendant argues that the claims require the Court to vacate the Defendant's conviction and sentence of death or stay the

Defendant's execution to provide counsel additional time to fully litigate any claims it may discover.

Claim One

s. The Defendant's first claim is labelled as an actual innocence claim, divided into five subparts. The Court considers subpart (a) to provide Defendant's account of the procedural history at trial rather than presenting claims for relief. Similarly, subpart (b) presents a procedural history of Defendant's postconviction proceedings. Insofar as Defendant's assertion that those previous postconviction proceedings have brought the State's case into question might be construed as a claim, such a claim would be successive and procedurally barred, as these claims were fully litigated in the previous postconviction proceedings and may not now be relitigated. Additionally, "actual innocence" is not cognizable as an independent claim in Florida postconviction proceedings. *Sweet v. State*, 293 So. 3d 448, 453-454 (Fla. 2020).

t. Defendant raises two substantive points that require addressing: 1. a *Brady* claim related to a letter and an email sent by the FBI to the State Attorney's Office December 4, 2012, and

December 21, 2012, respectively, and 2. a newly discovered evidence claim relating to DNA testing.

u. Although the Florida Supreme Court previously held that “the State is under a continuing duty throughout all proceedings to comply with *Brady*... [and] [t]his duty extends to postconviction proceedings” *Duckett v. State*, 918 So. 2d 224 (Fla. 2005), the U.S. Supreme Court later held that “*Brady* is the wrong framework” in postconviction proceedings, and instead the issue is whether the proceeding is “fundamentally unfair” *Dist. Att’y Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 68-69, 129 S. Ct. 2308, 174 L. Ed.2d 38 (2009). Florida subsequently recognized that *Osborne* “reject[ed] *Brady*’s applicability at the postconviction stage” *Dailey v. State*, 279 So. 3d 1208, 1217 (Fla. 2019).

v. Additionally, even under the *Brady* standard, the results of the proceedings would not have been different. The record demonstrates that Defendant’s first successive motion for postconviction relief motion was filed November 27, 2010 (Exhibit J) and then amended on January 24, 2012 (Exhibit K) and September 19, 2012 (Exhibit M). Notably, the second amendment bases its claim on a report filed by Steve Roberson, described as an independent investigator for the FBI.

According to the Motion, Mr. Roberson's investigation was initiated at the prompting of Defense counsel upon learning that Defendant's case had not been included in previous reviews, and was completed May 16, 2011. An evidentiary hearing on that claim was denied on November 6, 2012, (Exhibit N) and the claim itself was denied on legal grounds on March 15, 2013 (Exhibit O). Notably, at a December 18, 2012, hearing, Defense conceded that while the order denying an evidentiary hearing had not explicitly denied the claim, it was "fairly clear – I think the claims are likely to be denied," and that the primary purpose of the final order was to consolidate the claims for appellate purposes. (Exhibit U, Transcript of December 18, 2012, 3-5). Although Defense received leave to file a final brief, no brief was filed.

w. The letter cited by Defendant bears the date December 4, 2012, and the email December 21, 2024. It therefore cannot have affected any of the proceedings related to the hair analysis first successive postconviction motion, because that claim was decided on legal grounds that had been fully argued prior to the letter, and premised on factual grounds – the 2011 Roberson report and FBI reviews – that had already conducted. The fact that the FBI had requested information could not change those grounds, nor can it have

any bearing on either Mr. Roberson report. Nor could it affect Defendant's lack of inclusion in previous audits or review of FBI hair analysis, and therefore their relevance in this case. Likewise, according to Defense's Motion, the State's denials that a letter existed occurred December 16, 2000, June 5, 2002, September 18, 2003, and September 19, 2012, in other words, before the letter was sent.

Conversely, the failure to disclose the letter cannot be the cause of the "piecemeal" nature of Defendant's litigation, since the subsequent report that the second successive motion would be based on had not yet been written and that claim could not have been brought or adjudicated regardless. (Exhibits P and Q). By then the fact that the FBI had been interested in Defendant's case was known to Defense and uncontested by the State. The result of that interest – the 2014 report – was fully and completely litigated in postconviction proceedings.

x. Defendant also raises a claim of actual innocence based on newly discovered DNA evidence. However, as Defendant admitted at the *Huff* hearing that in the absence of obtaining the DNA results, Defendant "cannot meet the burden" and that this claim is "a

placeholder.” (Exhibit V, Transcript of March 10, 2026 Hearing).

Accordingly, there is currently no factual basis for this claim.

Claim Two

x. The Defendant’s second postconviction claim for relief is that the expedited postconviction proceedings are a violation of Defendant’s due process rights.

y. The Florida Supreme Court has held that to succeed in a claim that warrant proceedings violate due process, a defendant must identify a matter on which he has not received notice and an opportunity to be heard. *Bell v. State*, 415 So. 3d 85 (Fla. 2025); *Tanzi v. State*, 407 So. 3d 385 (Fla. 2025). Defendant pointed to a number of challenges it has as a result of Court’s scheduling order and the Defendant’s requirement to comply with it. The Court is both aware of the difficulties presented by the limited time, and commends the attorneys for their efforts and diligence. Nonetheless, the only matter which Defendant points to that has not been addressed at this time,

and therefore requires specific discussion, is the DNA testing results based upon the Defendant's most recent 3.853 motion.

z. The material Defendant seeks to have tested has been known since at least 2003. (Exhibit H) Extensive testimony was taken as to the possibility of testing at that time, including possible degradation and limited size of the sample (Exhibit W, Transcript of October 3, 2003, Hearing). The decision not to test the material in order to allow for future scientific advances can only be characterized as explicitly a tactical choice by counsel and Defendant. (Exhibit H "Defendant elects not to request testing on the slide at this time"). Defendant does not allege that this decision was outside the bounds of effective assistance of counsel. Nor could such a claim be supported. According to the affidavits filed by Defense's own experts, new testing techniques have indeed been developed since 2003 that offer an improved chance of obtaining a result, including the SNP testing that he has now sought (Exhibit X, Affidavit of Emily Booth Docket; Exhibit Y, Affidavit of David Mittleman Docket). Defendant therefore could have brought this claim at any time since 2003, or at minimum since SNP testing was developed. While the same reasoning that led Defendant to delay in 2003 – the possibility of additional developments in DNA testing – has

still applied since, the fact remains that the decision not to seek testing has been just that – a decision. Thus, the opportunity for Defendant to be heard on his DNA testing claim has existed not for the 14 days since the death warrant issued, but for more than eight years. *See Johnston v. State*, 27 So.3d 11, FN2 (Fla. 2010) (urging postconviction counsel not wait for the eve of execution to seek DNA testing under 3.853). That Defendant tactically chose not to exercise that opportunity cannot be the basis for a due process violation. *See Hayward v. State*, 183 So. 3d 286 (Fla. 2015) (inability to present witness testimony due to decision of defense counsel not to present witness by video conference was not a due process violation).

Stay of Execution

aa. The Court has previously addressed the Defendant's request for a stay of execution in its "Order Denying Defendant's Motion for Stay of Execution" entered on March 6, 2026.

Based upon the foregoing, it is

ORDERED AND ADJUDGED:

1. The Defendant's "Order On Defendant's Successive Motion to Vacate Judgment of Convictions and Sentence with Request for Leave to Amend and for Evidentiary Hearing" is hereby DENIED.

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

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

4. This Order with attachments shall also be transmitted by the
Clerk of Court to the Supreme Court of Florida.

5. The Lake County Clerk of the Court shall transmit the record
to the Supreme Court of Florida no later than noon March 18, 2026.

DONE AND ORDERED in chambers in Tavares, Florida on this
17th day of March, 2026.



BRIAN J. WELKE, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I do hereby certify that copies of this Order have been provided
this 17th day of March, 2026 by e-mail to:

Hon. Daniel B. Merritt, Jr.
Chief Judge, Fifth Judicial Circuit
jweeks@circuit5.org

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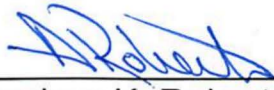
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IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR LAKE COUNTY

STATE OF FLORIDA

VS.

CASE NO.: 1987-CF-1347

**DEATH WARRANT SIGNED;
Execution Scheduled for
March 31, 2026 at 6:00 P.M.**

JAMES AREN DUCKETT,

DEFENDANT.

**ORDER ON DEFENDANT'S AMENDED MOTION FOR
POSTCONVICTION DNA TESTING**

THIS CAUSE came to be heard before the Court on Defendant's Amended Motion for Postconviction DNA Testing pursuant to Fla. R. Crim. Pro. 3.853. The Court, having considered the motion and response, argument of counsel, relevant authority, testimony, and having been otherwise fully advised, finds as follows.

Defense filed the initial motion on Thursday, March 5, 2026, at 3:45 p.m., with supporting affidavits. The motion was not under oath as required by 3.853(b), thus facially insufficient. However, in the interest of judicial economy, on March 6, 2026, at 8:17 a.m., the Court ordered a response from the State and set a hearing for Noon on March 6, 2026. The hearing was held at Noon on March 6, 2026, and the Court addressed the issue of the lack of an oath in the Defendant's Motion. The

parties agreed to proceed with the hearing on the Defendant's Amended Motion for Postconviction DNA Testing, and the Court would issue an order thereon, pending the filing of an amended motion with an oath. The Amended Motion with an oath has now been filed.

For the Defendant's Motion, the Court has to consider 3.853(c)(5)(A-C) which states,

(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.

Defense and the State agree that there exists potential DNA evidence in the form of a slide containing a sperm sample taken from the crime scene and that the DNA slide is located with the Lake County Sheriff's Office as evidence number Q6(3). The Court therefore finds that the requirement of 3.853(c)(5)(A) is met.

Similarly, the State agreed with Defense that any resulting evidence would likely be admissible and expressed no reservations regarding its authenticity. The Court therefore likewise finds that the requirements of 3.853(c)(5)(B) are met.

The State took issue with Defense's citation of challenges to the trial evidence on postconviction relief, arguing this is improper under *Everett v. State*, 377 So. 3d 1123 (Fla. 2024). However, Defense contended that even absent the postconviction challenges, if DNA results can be obtained and if those results exclude Defendant, there would be a reasonable probability of producing an acquittal at trial. The State did not disagree. *See Everett v. State*, 377 So. 3d 1123, 1128 (Fla. 2024) (the question presented by a 3.853 motion is whether there is a reasonable probability that an objectively reasonable factfinder would have acquitted a defendant if the purported DNA evidence was admitted at trial). Having reviewed the record, the Court agrees that identity was an issue at trial, and that if DNA testing of the sperm indicated that it did not belong to Defendant, there would have been a reasonable probability of an acquittal. Accordingly, the Court finds that the requirements of 3.853(c)(5)(C) are met.

Also, the State agreed that the Defendant is indigent, thus there is no dispute that the State must bear the cost of the DNA testing under Fla. R. Crim. Pro. 3.853(c)(6).

The primary issues of dispute were who would test the sample and what tests would be used. Concerning this issue, Fla. R. Crim. Pro. 3.853(c)(7), states

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.

Naturally, the State argued that the Florida Department of Law Enforcement (FDLE) must perform the testing however, the Defense wanted Dr. David Mittleman with Othram Labs to conduct the testing. The State argued FDLE should decide what tests are used and the Defense wanted the use of SNP DNA testing compared to SRT.

Following the argument of counsel, and testimony from Ms. McCaskill of the Florida Department of Law Enforcement DNA section and Dr. David Mittleman of Othram Lab, it was agreed by the parties that the appropriate procedure would be to order the sample to be submitted to the FDLE for testing. FDLE will determine which tests are appropriate, SRT or SNP testing. And if FDLE chooses to use Othram Lab as its designee under 3.853(c)(7), it may do so. It was elicited from testimony that on occasion FDLE contracts with Dr. David Mittleman (Othram Labs) to test samples. It is within FDLE's discretion under 3.8553(c)(7), to determine which tests are appropriate and if FDLE or Dr. David Mittleman (Othram Labs) performs the testing.

The Court also notes, as requested during the hearing, that if FDLE does the testing, the Court has no objection to Dr. Mittleman observing any FDLE testing if FDLE permits it. However, this Court does not order FDLE to allow Dr. Mittleman

to be present nor should testing be delayed to allow him to attend. That decision is at the sole discretion of FDLE.

The State also requested that Defendant be ordered to submit a buccal swab for comparison, and Defense raised no objections.

Therefore, it is hereby **ORDERED AND ADJUDGED** that:

1. Defendant's Amended Motion for Postconviction DNA Testing is **GRANTED**.

2. The Lake County Sheriff's Office shall forthwith deliver evidence number Q6(3) to the Florida Department of Law Enforcement in Orlando, attention Meridith McCaskill.

3. The Defendant, James Duckett, is ordered to submit to the collection of a DNA sample from him for comparison purposes.

4. The Defendant, James Duckett, is determined to be indigent, and costs shall be paid by the State.

DONE AND ORDERED in chambers in Tavares, Florida on this 6 day of March, 2026.



BRIAN WELKE, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I do hereby certify that copies of this Order have been provided this 6 day of March, 2026 by e-mail to:

Hon. Daniel B. Merritt, Jr.
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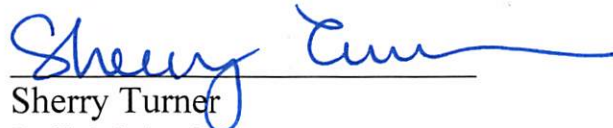
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428 So.3d 40 (Mem)
Supreme Court of Florida.

James Aren DUCKETT, Appellant(s)

v.

STATE of Florida, Appellee(s)

SC2026-0449 & SC2026-0450

|

MARCH 26, 2026

Lower Tribunal No(s): 351987CF001347AXXXXX

Opinion

The execution of James Aren Duckett, scheduled for 6:00 p.m., Tuesday, March 31, 2026, is hereby stayed pending further order of this Court.

Nearly four decades ago, Duckett was convicted of sexual battery and first-degree murder. For the latter crime, he was sentenced to death. Following issuance of the death warrant, Duckett filed a motion for postconviction DNA testing under [Florida Rule of Criminal Procedure 3.853](#). The State agreed that the evidence Duckett wanted tested¹ was potentially exculpatory and did not object to his motion as untimely. Instead, the State focused its arguments on the testing process. In line with the State's position, the circuit court granted Duckett's motion for DNA testing but permitted the State to exercise complete control over the location, timing, and method of testing. The court-ordered DNA testing has not yet been completed.

Meanwhile, two days after his [rule 3.853](#) motion was granted, Duckett filed a successive postconviction motion under [Florida Rule of Criminal Procedure 3.851](#). He raised several claims, including that the forthcoming DNA testing results would provide newly discovered evidence of his actual innocence. *See Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998). Although initially requesting (and receiving) a scheduling extension from this Court to allow the DNA testing to be finalized, the circuit court ultimately issued a final order summarily denying the successive postconviction motion.

Duckett appeals that order. He also moves for a stay of execution and petitions for a writ of habeas corpus. Finally, he moves to strike the State's response to his motion to stay in the pending appeal.

Based on our review of the record and the arguments of the parties, we hereby exercise our discretion and grant Duckett's motion to stay his execution. *See* § 922.06(1), *Fla. Stat.* (“The execution of a death sentence may be stayed ... incident to an appeal.”). The State shall provide this Court a report addressing the status of the DNA testing no later than Friday, March 27, 2026, at 5:00 p.m. Further, in light of these rulings, we deny as moot Duckett's motion to strike.

MUÑIZ, C.J., and [LABARGA](#), [COURIEL](#), [GROSSHANS](#), [FRANCIS](#), and [SASSO](#), JJ., concur.

[TANENBAUM](#), J., dissents with an opinion.

[TANENBAUM](#), J., dissenting.

The defendant stands convicted of raping and murdering an eleven-year-old girl in 1987. The trial court sentenced him to death for the murder in 1988. The conviction and sentence became final in 1990. For three decades after that, the defendant pursued post-conviction motions and other litigation in state and federal court. The last of those efforts came to an end in 2019. The defendant did nothing further until the Governor finally signed a death warrant on February 27, 2026.

At that point, the defendant took advantage of this court's post-death-warrant relief *41 process set out in [Florida Rule of Criminal Procedure 3.851\(h\)](#). Under that rule, he once again asked the trial court for relief from the judgment and sentence, asserting two claims.

In one claim, he asserted his actual innocence—as he had in a prior, unsuccessful habeas petition. The defendant rooted his actual-innocence claim in what he still hopes will be the exonerating results of a DNA test not yet conducted. He characterized this claim as a “placeholder,” because he, days earlier, had filed a motion for DNA testing under [Florida Rule of Criminal Procedure 3.853](#). The defendant asserted that he was seeking testing under a “new” methodology, even though that methodology has been available since, at the latest, 2024—but likely years earlier.² He failed to explain why he waited until the Governor signed the warrant to pursue all of this, which he clearly could have done sooner with the exercise of some diligence.

The other claim challenged the constitutionality of the “surprise nature of [the Governor's] death warrants” and

the compressed schedule set for any further post-conviction proceedings. He made this claim even though Florida law states the following:

Within 30 days after receiving the letter of certification from the clerk of the Florida Supreme Court [that the defendant's direct appeal and initial post-conviction proceedings are complete], the Governor shall issue a warrant for execution if the executive clemency process has concluded, directing the warden to execute the sentence within 180 days, at a time designated in the warrant.

§ 922.052(2)(b), Fla. Stat. Save for the clemency process, the defendant likely was eligible for a warrant as of 2011.

The trial court denied the first claim because, obviously, the defendant failed to provide a factual basis for it—the defendant being unable to point to any actual DNA evidence demonstrating his innocence. The trial court denied the second claim because, the court explained, the defendant had years to pursue the innocence claim he was then asserting but simply had made the “tactical choice” not to—making the warrant process no surprise at all. The trial court's order denying this post-warrant, successive, post-conviction motion is a final one now subject to our review in case number 26-449.

Yet, there still is pending in the trial court the defendant's DNA-testing motion. The State did not oppose the motion in substance (curiously, not raising as an issue the motion's timeliness and coincidence with the death warrant); it only challenged who should do the testing. The State contended that it (not some third party, as suggested by the defendant) should retain control over the testing. The trial court granted the defendant's [rule 3.853](#) motion, allowing the State to retain the control it requested. The parties are still awaiting the outcome. The trial court still has jurisdiction over that separate matter, which is not the subject of the appeal in case number 26-449.

***42** The concern prompting this court's action today is whether the DNA testing will be completed and results known before the execution on March 31, 2026. The onus

undoubtedly is on the State to ensure this happens, and we should trust that the State will. If the results cannot be obtained in time, we should trust the Governor to stay the execution on his own. *See* § 922.06(1), Fla. Stat. (authorizing a stay “only by the Governor or incident to an appeal”). At all events, though, this court does not have the *statutory* authority it claims to issue the current stay.

As I just noted, the order denying the [rule 3.851](#) motion—the final order on appeal—is separate from the one granting the [rule 3.853](#) motion—a non-final order that is *not* on appeal. The outcome of the DNA testing currently being conducted would be outside the record we are considering to determine whether the trial court erred in conclusively denying the defendant's latest [rule 3.851](#) motion, which the trial court did based on the evidence and argument presented in the motion at the time it was considered.³ There is no basis for staying the execution *in the context of this appeal* (in case number 26-449), which relates only to the trial court's order on the [rule 3.851](#) motion. We have the record we need to dispose of the appeal without further delay, meaning [section 922.06, Florida Statutes](#), does not give us the authority to stay the execution, and a writ of injunction issued to the Department of Corrections (which is what a “stay” otherwise would be) is not “necessary to the complete exercise of [our appellate] jurisdiction” here. [Art. V, § 3\(b\)\(7\), Fla. Const.](#) I would deny the motion filed in this case and proceed to disposition.

This is not to say the defendant does not have an avenue for relief, if some action from this court becomes necessary before the execution. Along with his appeal, the defendant filed a petition for a habeas writ in this court, in case number 26-450. In that petition, he asserts actual innocence as a basis for relief, relying in part on what he hopes is an exonerating result. The defendant seeks a stay of execution in that case as well. Given that the State already has agreed to the new testing but also sought to maintain control over when that testing is complete, I would hold the motion in case number 26-450 in abeyance for now and await the State's status report that the court is now ordering.

The death warrant is effective until April 7, 2026. If, based on those reports, it becomes clear that the testing will not be completed and the results known before March 31, then I would favor a stay, but one to be issued as a writ in preservation of our habeas jurisdiction. Presumably, the results would be known by the end of the ***43** warrant period. Exonerating results could support some action by this court in the habeas proceeding. That, after all, is what habeas

writ is there for. We have much more flexibility under the auspices of habeas to act promptly and meet any underlying contingencies, if necessary. See [Art. V, § 3\(b\)\(9\)](#), [Fla. Const.](#)

All Citations

428 So.3d 40 (Mem)

Footnotes

- 1 The evidence is a swab from the victim's underwear.
- 2 Over twenty years ago, in fact, this court—in the middle of the defendant's appeal from denial of his initial post-conviction motion, after oral argument—relinquished jurisdiction to the trial court to determine whether there was any clothing in evidence that could be subjected to DNA testing. See [Duckett v. State](#), 918 So. 2d 224, 230 (Fla. 2005). There was one slide, but “Duckett informed the circuit court by letter [upon relinquishment] that he did not wish to pursue testing of Q–6(3) based on the unlikelihood of obtaining a DNA profile under current technology and the fact that the sample would be consumed in any attempted test.” *Id.* Fast forward to 2026, and, on the eve of his execution, it is that same Q–6(3) slide the defendant now wants tested.
- 3 As to the first claim, the trial court, in essence, determined that the defendant failed to present newly discovered facts to overcome [rule 3.851](#)'s one-year time bar applicable to the first claim. See [Fla. R. Crim. P. 3.851\(d\)\(2\)\(A\)](#) (precluding consideration of a motion under [rule 3.851](#) if filed more than one year “after the judgment and sentence become final,” unless the motion asserts newly discovered facts that “could not have been ascertained earlier” through “due diligence”). The defendant's characterization of his first claim as a “placeholder” was an acknowledgement that, at the time of filing, he could not “predicate” the claim on “facts” that “were unknown to [him or his lawyer] and could not have been ascertained by the exercise of due diligence.” *Id.* As mentioned in the margin, the slide now subject to testing has been known for decades at this point, so that could not have constituted a newly discovered fact. And the existence of a new DNA testing methodology was a fact, but not an exonerating one by itself. Meanwhile, the trial court determined that the second claim (regarding the “surprise” nature of the Governor's signing of the defendant's death warrant) flew in the face of logic. DNA testing results are not relevant to the correctness of the trial court's determination as to either claim.

429 So.3d 1006 (Mem)
Supreme Court of Florida.

James Aren DUCKETT, Appellant/Petitioner(s)
v.
STATE of Florida, Appellee/Respondent(s)

SC2026-0449, SC2026-0450
|
MARCH 30, 2026

Lower Tribunal No(s): 351987CF001347AXXXXX

Opinion

The circuit court continues to have concurrent jurisdiction to rule on motions related to DNA testing and successive claims filed by the petitioner and nothing in this Court's prior scheduling order precludes these additional filings. The circuit court shall provide this Court a status report on all pending issues by Thursday, April 2, 2026, at 5:00 pm. The State's motion to lift stay of execution is denied. Appellant's motion to relinquish jurisdiction is denied as moot.

MUÑIZ, C.J., and [LABARGA](#), [COURIEL](#), [GROSSHANS](#), [FRANCIS](#), and [SASSO](#), JJ., concur.

[TANENBAUM](#), J., dissents in part with an opinion.

[TANENBAUM](#), J., dissenting in part.

For more than three decades, the defendant has sat on death row for killing an eleven-year-old girl after raping her. The defendant's last post-conviction-relief effort came in 2019. The Governor's recent warrant for the defendant's execution prompted the defendant to throw a Hail Mary pass, one that sought to use newer DNA-testing technology to test an evidentiary slide that contained a sample swabbed from the victim's underwear during the 1987 murder investigation. Florida law entitles the defendant to this DNA testing at any time once the judgment and sentence become final, provided that the Florida Department of Law Enforcement ("FDLE") conducts the testing and that the results would "exonerate" him. See § 925.11(1), (2)(h), Fla. Stat.

The trial court granted the defendant's last-minute request for DNA testing and ordered that FDLE conduct or supervise the testing. This court stayed the defendant's execution, ostensibly as a precaution because the State retained control

over the testing (which the statute happens to require) and the testing had not yet been completed—no one of course wanting to proceed with an execution while a DNA test is pending. Well, the State reported on Friday that the testing was complete, and the results were inconclusive, meaning there *still* is no exonerating evidence that demonstrates the defendant's actual innocence.

As I noted in my prior dissent, the test results at all events are not relevant to the defendant's appeal in case number 26-0449, which pertains only to the denial of his post-death-warrant, successive motion for post-conviction relief that the defendant filed and the trial court denied. The defendant's "due process" challenge in that motion to the "surprise" nature of the Governor's death warrant had zero merit on its face. And without the new exonerating DNA evidence that the defendant was hoping for, his successive claim asserting innocence in the same motion remains time-barred, as the trial court originally ruled.

The trial court's final order denying the defendant's last-ditch effort has been with us for review in accordance with our warrant schedule, and the trial court's order in that respect appears to have been the correct disposition. By definition, a final order means that all judicial labor has come to an end as to the cause at hand (here, the post-conviction claims asserted ***1007** in the successive rule 3.851 motion). That undoubtedly is the case here, so no further proceedings could be had on that already denied motion that could justify continuing this court's stay.

Meanwhile, the rule 3.853 motion seeking DNA testing—in essence, a discovery motion filed as a matter of statutory right—had been previously granted, and the DNA testing now has been completed. Neither the defendant nor the State separately has challenged the ruling on the motion in this court. There being no exonerating evidence produced because of that testing, there is nothing further for the trial court to do regarding that motion either. Indeed, as has been the case for decades, the defendant has not produced any exonerating evidence to justify delaying his execution, which has been a long time coming.

This court should simply proceed to dispose of the defendant's appeal.¹ The stay need only be continued for so long as necessary to allow this court to finalize and issue that appellate disposition. Instead, the court unnecessarily (and without authority) injects further delay at the behest of the defendant. This court cited [section 922.06\(1\), Florida](#)

[Statutes](#), in its last order as its authority to issue the current stay. But that provision authorizes this court to issue a stay only when “incident to an appeal.” It was unclear even last week what appeal the stay was incident to, given that we already have a final order for review, and there is nothing further we need to decide the current appeal—any DNA-testing results submitted in the trial court being outside the record for this appeal anyway. Now that the results are in, we know that even our habeas jurisdiction is not implicated by the DNA testing.² Any continued proceedings in the trial court—though I do not see what else there is to do—could have no bearing on our present appellate jurisdiction, or even our habeas jurisdiction. I agree that we should deny the motion to relinquish jurisdiction, but we should grant the motion to lift the stay, effective on a date that reasonably allows us to promptly dispose of the appeal in case number 26-0449.

Justice for the victim and her family has been delayed far too long. The defendant's time is up, and we should not stand in the way any further than is necessary to complete our appellate work post haste.

A True Copy

Test:

John A. Tomasino

Clerk, Supreme Court

All Citations

429 So.3d 1006 (Mem)

Footnotes

- 1 As I noted in my previous dissent, though consolidated, the habeas petition is a separate proceeding. It requires considerations that differ from those involved in the appeal. It makes no sense, then, to delay disposition of the appeal in case number 26-0449 (of what clearly is a final order) merely based on what *may* transpire (however unlikely that may be) in connection with the separate, non-appeal habeas proceeding—the only avenue for relief possibly remaining for the defendant pending his execution.
- 2 I noted earlier that if there were to be a stay at all, it would be as a writ of injunction to protect our habeas jurisdiction in case number 26-0450—to protect against the very unlikely event that the last-minute DNA-testing results exonerated the defendant.

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC2026-0528

EXECUTION STAYED

JAMES AREN DUCKETT,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

**ON APPEAL FROM THE CIRCUIT COURT
OF THE FIFTH JUDICIAL CIRCUIT,
LAKE COUNTY, FLORIDA**

LOWER CASE NO. 1987-CF-1347

INITIAL BRIEF OF APPELLANT

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April 7, 2026

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REQUEST FOR ORAL ARGUMENT

Mr. Duckett respectfully requests oral argument by counsel pursuant to Florida Rule of Appellate Procedure 9.320. The resolution of the issues involved in this action will determine whether Mr. Duckett lives or dies. Mr. Duckett has raised meritorious issues that warrant an opportunity to be heard before this Court. A full opportunity to argue the issues at oral argument is appropriate in this case because of the seriousness of the claims at issue and the penalty that the State seeks to impose on Mr. Duckett.

CITATIONS TO THE RECORD

References to the record will note the relevant proceeding on appeal and page number: Direct Appeal (R. ____); Postconviction Record on Appeal and proceedings after remand, SC01-2149 (PC-R1. ____) and Transcripts (PC-R1-T. ____); Successive Postconviction Record on Appeal, SC13-719 (PC-R2. ____); Successive Postconviction Record on Appeal, SC16-793 (PC-R3. ____); Warrant Record on Appeal, SC2026-0449 (WR. ____); and Warrant Record on Appeal—3.853 proceedings, SC2026-0528 (WR2. ____), supplemental (WR2-S. ____), and sealed (WR2-S2. ____). All other references and citations are self-explanatory or explained herein.

STATEMENT OF THE CASE AND FACTS

On February 27, 2026, the Governor signed an execution warrant for Mr. Duckett, setting his execution for March 31. The State of Florida seeks to execute Mr. Duckett for the murder and sexual battery of Teresa McAbee, for which he has steadfastly maintained his innocence for nearly 40 years.

This Court has stayed the execution pending litigation of DNA testing of a critical piece of biological evidence extracted from Ms. McAbee's underpants. The material was extracted pre-trial and mounted onto a slide identified as Exhibit 14, Q6(3), sub. 001 ("Q slide") (WR. 433-543; 629-740). No attempt was made to test Q slide for DNA at the time of trial because DNA testing was not sophisticated enough to test such a minute amount. In 2003, on appeal from the denial of his postconviction motion, this Court remanded Mr. Duckett's case for DNA testing (WR. 632). The circuit court determined that the Q Slide and certain other items of evidence should be tested. FDLE analyst Emily Booth tested several of the items, except the Q slide, but could not obtain a profile. At a hearing, Ms. 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). No further DNA analysis was attempted, and the slide was preserved at Lake County Sheriff's Office

for the possibility of testing in the future when technology progressed.¹

Under warrant, Mr. Duckett filed a Motion for DNA testing pursuant to Rule 3.853. Mr. Duckett obtained an affidavit from former FDLE analyst Booth indicating 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”) (WR. 658-60).

Mr. Duckett was 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., 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” (WR. 728-40). He 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” (WR. 536).

¹ Mr. Duckett sought the opinion of an numerous experts in the field who all expressed the same concerns (WR. 1498-99).

Mr. Duckett filed his motion on March 5 and the lower court held an impromptu hearing the next day. Because Mr. Duckett's team had no notice and only learned of the hearing as it was beginning, they had no opportunity to prepare the expert, who they had just met a few days previously, before putting him on as an expert witness.² 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.³ The State agreed that it did not object to DNA testing, just to the type of testing and the lab that would conduct it.⁴ The hearing focused on how long testing would take and who would conduct the testing. Dr. Mittelman explained 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 (WR. 815, 818).

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

² Counsel learned of the hearing when they received emails asking if they were going to join the Zoom hearing in progress.

³ The State presented an FDLE analyst but did not elicit any questions as to the requisite type of testing or the length of time required to conduct testing.

⁴ The State did not dispute that the results of testing would be admissible.

an acquittal” (WR. 748). Although the Rule provides for an outside lab to conduct testing if good cause is shown, the State was adamant the rule required FDLE to conduct the testing. As this Court found in its Order staying the execution, the circuit court “permitted the State to exercise complete control over the location, timing, and method of testing” (WR2. 27). Ultimately, 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 (WR. 806, 819-20).

The FDLE Crime Laboratory in Orlando completed the quantification completed on March 11. The results were significant and instructive. Until FDLE successfully retrieved the biological evidence from the Q slide, the existence of usable DNA evidence 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. He emphasized that testing decisions must be made carefully to avoid consuming the sample in a way that prevents the most informative analysis.

At a hearing held March 12, FDLE announced that it agreed with the defense that the “best course of action” was to process the DNA using SNP (WR. 1116). Leigh Clark, Deputy Director of Forensic Services, confirmed

that FDLE was unable to do the testing and listed four accredited labs that do: Othram, DNA Labs International (“DLI”), Bode Laboratories (“Bode”), 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 (WR. 1115). FDLE explained that the parties would be the client.⁵

When asked to give her recommendation, Ms. Clark provided an analogy to make the point again that she was not an expert in SNP testing (WR. 1128). Notwithstanding this answer, the court maintained that its order stood and FDLE was to perform the testing or figure out a lab (WR. 1115).⁶ 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 directed FDLE to inquire of each lab “their technical

⁵ This proved to be false. When the lower court later ordered the sample be sent to DLI, FDLE completed the contract and listed itself as the initiating agency. FDLE was also the main point of contact. Despite the lower court ordering CCRC-South 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.

⁶ Despite previously agreeing FDLE could designate another lab to perform SNP testing as it’s designee, the State suddenly objected to any other lab conducting the testing and to the evidence leaving the state (WR. 1121).

capabilities, capacity to perform the testing, the location of the lab that will perform the testing, and their anticipated timeline to complete such testing.” (WR. 1092). Before FDLE returned the results of its inquiry, the court entered an order directing FDLE to select a lab.

FDLE contacted each lab, except Othram, and sent the information to all parties the same evening but did not, however, 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 sensitive 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 this hearing the night before, Dr. Mittelman was unable to appear due to a previously scheduled appointment. 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.

Mr. Duckett requested SNP testing be conducted using WGS, which

is specifically designed for degraded samples. At the March 12 hearing, 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**” (WR. 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.” (WR. 1131). Ms. Clark clarified that the *only* recommendation FDLE could make was that SNP technology should be used (WR. 1131).

Although Dr. Mittelman testified at the March 6 hearing that WGS would take only 1-2 weeks, and that he could start immediately, Ms. Clark testified that WGS would take 6-8 weeks (WR. 733, 1158). Upon learning that DLI and Signature Science offered a different kit, ForenSeq Kintelligence, which would only take 15 days, 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” (WR. 1158).⁷ The statement was patently wrong

⁷ Ms. Clark testified the day prior that the question about length of time “would be better posed to the entity that’s actually going to perform the testing,” (WR. 1133-34), yet the only accredited lab certified to do SNP

as Dr. Mittelman indicated Othram would conduct WGS. Having no experience herself, Ms. Clark opined that whole genome sequencing is “overkill” (WR. 1159). Instead of following the dictates of the science, the determination of who was to do the testing and the method of testing performed 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 this to be the best option based on their analysis or if they simply did the testing they were told to by FDLE.⁸ Indeed, it was never determined whether Kintelligence is approved for mixed samples containing male DNA. What was established, however, is that Kintelligence is meant for other types of DNA analysis and is not used for scientific questions like the one in Mr. Duckett’s case (WR. 1161). That means that DLI does 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.”).

testing who provided an estimate on WGS testing was Othram, and that time limit was significantly lower than that asserted by Ms. Clark.

⁸ DLI’s initial response envisioned a test that would take closer to a month and would be conducted in their Utah facility (WR. 1233-35).

The lower court issued an order, relying on the unsupported assertions FDLE made to the court, and directed the evidence to be tested by DLI (WR. 1144).

Meanwhile, on March 10, the lower court moved this Court for a 7-day extension of time, noting that testing would be completed no later than March 18. Acknowledging that the DNA results “would have a reasonable probability of producing an acquittal at trial if favorable to Defendant,” the court specifically requested the time “to receive the results of the DNA testing under [] 3.853(c)(8) so as to fully adjudicate the matter.” (WR. 972). This Court granted the extension, in part, ordering the lower court to file a status report “no later than 5:00 p.m., Wednesday, March 18, 2026, or within 12 hours of receiving DNA results, whichever occurs first” (WR. 1074).

On March 13, the parties learned that the testing would likely be completed on or before March 27. This Court granted the lower court an extension to address the DNA results and the lower court had the authority to issue a stay. Yet, at the behest of the State, on March 17, the lower court ruled on Mr. Duckett’s warrant proceedings and denied all claims, including his claim of actual innocence which was reliant on the outstanding results of the DNA testing. Mr. Duckett appealed to this Court and promptly moved for a stay, which this Court granted (WR2. 27).

On March 27, 2026, Ms. Clark sent an email to the parties with the results of the DNA testing conducted by DLI. The results were reported as inconclusive and DLI was unable to obtain a profile. Notably, the testing *did* yield data. The issue, however, is that DLI does not have the capability to conduct the requisite analysis to determine if a profile can be obtained—a problem FDLE was aware of when submitting the sample to DLI (WR2-S2. 308). Ms. Clark expressly stated that the analysis is not yet over. While FDLE is unable to provide an opinion on the results of the tests, Ms. Clark suggested that “[a] qualified bioinformaticist may be able [sic] provide an opinion and calculation based on the Y SNP results.” (WR2-S2. 308). Ms. Clark suggested that either Othram or Parabon Nanolabs, Inc., would be capable of further reviewing the Y SNP data—the same two labs Ms. Clark suggested initially when the lower court was gathering information about which lab should conduct the testing in this case. *Id.*; (WR. 1165-66, 1169).

In anticipation of the DNA testing results, on March 25, Mr. Duckett filed below a *Motion Requesting Testing Protocol, Data, and Results of DNA Testing* (WR2. 1-13). He explained that these items are necessary to assess the testing conducted and ascertain additional information. The State responded, arguing that Mr. Duckett is entitled to only the results and no other underlying data or protocols (WR2. 14-26). Mr. Duckett’s motion and

the State's response were pending at the time the results issued and this Court entered its Orders staying the execution.

The State surprisingly moved to lift the stay and conclude Mr. Duckett's Rule 3.853 proceedings immediately after filing the results with this Court, tersely asserting that "[t]he SNP DNA results were inconclusive" and that the stay should be lifted "[b]ecause the SNP DNA testing is complete and the results do not exonerate [Mr.] Duckett." Mot. to Lift Stay, Mar. 27, 2026. The State further moved in this Court and in the circuit court to dismiss Mr. Duckett's discovery requests and to preclude any further filings, arguing that any such filings violated *Jimenez v. Bondi*, 259 So. 3d 722 (Fla. 2018), because they were not contemplated by the scheduling order. The State argued that Mr. Duckett was not entitled to any further litigation because the inconclusive DNA results did not exonerate him.

Mr. Duckett responded, requesting 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. Resp. to State's Mot. to Lift Stay, Mar. 27, 2026. Mr. Duckett specifically noted that Rule 3.853(b)(2) contemplates testing to a definitive result. Mr. Duckett asserted that both Rule 3.853 and due process demand that he have the opportunity to have his expert review the testing data from

DLI and assess the reliability of the results and litigate any related issues. Mr. Duckett also filed a motion to relinquish.

This Court rejected the State's arguments and entered an Order denying the State's motion to lift the stay. The Order clarified that the lower 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 lower court to file a Status Report on all pending issues by Thursday, April 2, 2026, at 5:00 p.m. *Id.*

Once the Court ruled that Mr. Duckett was permitted to litigate his outstanding Rule 3.853 issues, Mr. Duckett filed public records demands to the State Attorney's Office ("SAO-5"), FDLE, and the Attorney General's Office ("AG") requesting communication between each agency and DLI. As Mr. Duckett explained above, 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 and analysis of the testing completed in order to render any further opinion (See WR2-S2. 345).

On March 31, the lower court scheduled a status hearing for the same day at noon and a subsequent hearing for the next morning, April 1, at 9:00 a.m. At the March 31 hearing, the lower court announced it intended to

address Mr. Duckett's motion for the protocols and testing data. Present were Ms. Clark from FDLE and Rachel Oefelein, Ph.D., from DLI, both of whom confirmed that further statistical analysis of the Y SNP data from DLI is possible.⁹ Dr. Oefelein advised that the lab conducting the analysis recommended by the FDLE would be conducting a quantitative analysis, not further testing of the biological evidence itself, and that the review should not require a lengthy amount of time. Ms. Clark verified the information relayed by Dr. Oefelein, and that this was the suggested course of action in her March 27 email to try and ascertain more definitive results. The court inquired of both as to whether the sample had been consumed, which both confirmed was true (WR2. 195-96).

Mr. Duckett requested the court hold an evidentiary hearing and hear from the scientists and subsequently permit another lab to analyze the testing data and determine whether conclusive results could be obtained (WR2. 189).¹⁰ Mr. Duckett again requested that the court send the data to

⁹ This 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. Additionally, although both Ms. Clark and Dr. Oefelein were questioned by the court, neither were sworn as witnesses.

¹⁰ When defense counsel requested that a representative from DLI appear at an earlier hearing to answer questions, they did not attend and the

Othram, the only lab suggested that is accredited to do the testing and is capable of reading the data. The State argued that the inconclusive result ended the inquiry (WR2. 188). In response to the question about which lab should read the data, the State made an unfounded and absurd claim that the Defense deliberately created a conflict with Othram labs (WR2. 193).¹¹

The lower court permitted the parties to file responses to arguments made at the hearing. Mr. Duckett was given until 3:00 p.m. and the State was given until 4:00 p.m. It was unclear until the court entered its order at 7:52 p.m. whether there would be a hearing the following morning (WR2. 155) (“And if necessary, we’ll have the hearing in the morning”). In his pleading, Mr. Duckett asserted that this Court could have agreed with the State’s argument that the results were inconclusive and no further analysis was warranted and could have lifted the Stay precluding any further review of the DNA results. This Court did not do that. Mr. Duckett further urged the lower court to hold an evidentiary hearing, as required by *Cardona v. State*,

defense were informed by the court that even if they had attended, counsel would be precluded from asking them questions (WR. 1202).

¹¹ As Mr. Duckett has explained at every turn in this warrant, there is no conflict. Indeed, after it was known that Mr. Duckett retained Othram, the lower court ruled that FDLE was permitted to choose “Othram as its designee” (WR. 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 are the most qualified agency for the job (WR2. 207-08).

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.¹² Mr. Duckett explained that he wants nothing more than to have the evidence properly examined using the testing methods and analysis most likely to produce a testable profile (See WR2. 127).

The State's pleading, arguing that an inconclusive result was the end of the necessary inquiry, highlighted the very need for an evidentiary hearing as it focused on scientific information not in evidence and in dispute.

In the 7:52 p.m. order, the court stated it would determine whether Mr. Duckett is "entitled to the data from the DNA testing for its own independent analysis" at the hearing (WR2. 156-57). The court also further noted that it would address Mr. Duckett's "remaining discovery requests" (WR2. 157).

At the April 1 hearing, Mr. Duckett's counsel urged the court to hold an evidentiary hearing wherein the experts would provide testimony as to the outstanding factual issues. 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 seeks from the State records and data to provide the Court with valid facts

¹² This did not happen in the hearings determining who should do the testing and what testing should be done.

and evidence upon which it can rely.

In response, the State asserted boldly, 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); *id.* at 238-39 (“[T]hese numbers don’t exclude Duckett.”); *id.* at 239 (“[E]ither one of those numbers incorporate it. They are both evidence of guilt.”); “He does not have any new evidence of his innocence. The only thing on the table is evidence including him.” (WR2. 271). It is unclear what number the State is referencing because there is 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.

Despite FDLE’s clear statements that DLI was unable to read the data here and assess whether additional probative information can be gained, the State further claimed Mr. Duckett is not entitled to any underlying data because the numbers do “not matter” in postconviction (WR2. 271). The lower court did not hold a hearing and no experts provided any sworn testimony concerning SNP data calculations. The only information provided to the court was that the data needs to be read by a bioinformaticist.

The lower court entered a written order denying Mr. Duckett's request to have the inconclusive data read by a qualified expert and his records demands. Mr. Duckett addresses each of the court's grounds in turn.

SUMMARY OF ARGUMENTS

1. The lower court erred when it denied Mr. Duckett access to the DNA testing data and precluded him from having the testing fully analyzed by a bioinformaticist as was recommended by the FDLE. Further, the court's failure to grant him the requisite evidentiary hearings regarding the scientific analysis of the DNA was error. The court's order was factually and legally erroneous, precluded meaningful appellate review, and denied Mr. Duckett his rights under the Fifth, Sixth, and Eighth and Fourteenth Amendments and presents a risk that an innocent man will be executed without being given the opportunity to fully analyze the DNA results.

2. The lower court abused its discretion in denying Mr. Duckett access to public records wherein he met the requirements of Rule 3.852(i) and directly refuted the sole objection to the records. Further, the lower court erred when it made findings of fact contradicted by the record. The records—communications with a private laboratory concerning DNA testing and the underlying testing case file and accompanying laboratory documents—are directly related to Mr. Duckett's litigation of his Rule 3.853

motion which is the basis for his newly discovered evidence claim that he is innocent, a recognized colorable claim.

STANDARD OF REVIEW

Factual determinations are reviewed for competent substantial evidence. *Goodwin v. State*, 91 So. 3d 182 (Fla. 4th DCA 2012). Questions of law are reviewed de novo. *Reynolds v. State*, 192 So. 3d 41 (Fla. 2015). The lower court's findings as to testing procedures are submit to de novo review "to determine whether they employ a method generally accepted by the scientific community." *Cardona*, 109 So. 3d 241.

ARGUMENT 1

The Lower Court's Denial Of Full Analysis Of The DNA Evidence, As Recommended By The FDLE, Denied Mr. Duckett Due Process And A Full And Fair Hearing Contrary To The Fifth, Eighth And Fourteenth Amendments To The U.S. Constitution and the Corresponding Provisions Of The Florida Constitution.

Mr. Duckett has consistently professed his innocence of the charges supporting his death sentence. Rule 3.853 was promulgated to avoid the precise injustice that Mr. Duckett faces, to make sure that the wrongly convicted, like Mr. Duckett, do not become the wrongly executed. See *Zollman v. State*, 820 So. 2nd 1059, 1062 (Fla. 2nd DCA 2002), (quoting *In re Amend. to Fla. R. Crim. P. Creating Rule 3.853*, 807 So. 2d 633, 636 (Fla. 2001) (Anstead, J., concurring)). Both the State and the lower court agreed

that Mr. Duckett had met his burden under Rule. 3.853, satisfying each prong required to obtain testing:

[T]he Court agrees that identity was an issue at trial, and that if DNA testing of the sperm indicated that it did not belong to Defendant, there would have been a reasonable probability of an acquittal.

(WR. 748). Yet when rubber met the road, the court inexplicably applied the brakes, in an order that appears to be more concerned with complying with the strict timeline resulting from litigating under warrant rather than ensuring that an innocent man is not put to death. The court's decision precluding Mr. Duckett from completing the analysis on the DNA results, potentially excluding him as the perpetrator of the crime, denied both the spirit and the letter of the law. The lower court's 2 ½ page order is replete with errors and contains no citations to the record and only cites three cases, none of which support the proposition that a defendant who has met his burden under Rule 3.853 to obtain DNA testing should be forced to stop the inquiry before fully analyzing the testing to determine the result. Instead, the court relies on findings that are factually incorrect, contrary to the record, and not consistent with controlling law.

A. The court's finding that no testimony or reasoning was presented as to how the information sought by Defendant could lead to Defendant's exoneration is erroneous (WR2. 163).

It is unclear whether the court based this statement on a finding that

the requested analysis cannot exclude Mr. Duckett as the perpetrator, or a finding that defendant failing to adequately support his request for the further analysis with argument and testimony, but either way the court is wrong. Because the court fails to expand on the statement or to provide citations to the record, Mr. Duckett is left guessing what was meant by it.

After DLI submitted the inconclusive result, the State began asserting the argument, with no evidence in support, that these results were actually inculpatory. See *infra*, p. 13. Nowhere in the results reported by DLI is there an assertion that the results are inculpatory or inclusive; nowhere in the email from Ms. Clark is there such an indication; nowhere in the statements made by either Ms. Clark or Dr. Oefelein do they state that the results are inculpatory or inclusive. To the extent the circuit court is reading a finding that an inconclusive result is only consistent with an inclusion, and is inconsistent with an exclusion, that interpretation is not supported by any evidence in the record, nor by science, and would be contrary ISO/IEC 17025 accreditation requirements which DLI is bound by.¹³

To the extent the court faults Mr. Duckett for failing to present testimony in support of his arguments, the fault lies with the process and not

¹³ ANAB accreditation requires labs to produce accurate, objective, and unambiguous results which prohibits reporting definitive conclusions (inclusion or exclusion) when data is inconclusive.

Mr. Duckett. The court consistently held hearings with either little or no notice, precluding Mr. Duckett from presenting his expert to dispute the erroneous testimony of the FDLE or from questioning the representative from DLI about the anticipated testing. The only time Mr. Duckett was able to present expert testimony was in the initial hearing on the Rule 3.853 hearing, a hearing which he learned about as it was happening. The court did not confirm that the April 1 hearing regarding whether the defense would be entitled to the data to conduct the necessary analysis until 7:52 p.m. the night before, and at no time did the court indicate that this was an evidentiary hearing nor that counsel should present expert testimony.

To the extent that the court is asserting that Mr. Duckett failed to argue how this testimony would provide support for his innocence claim, that finding is belied by the record where Mr. Duckett, both in motions and in the hearings, has repeatedly argued that he believed the DNA evidence, if capable of producing a result, would exclude him. (See, e.g., WR2-S. 241, 247, 260, WR2. 127, 189, 190).

It is possible, though unclear from the lower court's order due to the complete lack of explanation, that the court misunderstood the import of the inconclusive result and failed to appreciate the critical distinction between the result obtained by DLI and the analysis that a forensic bioinformaticist

could conduct on the test results. Because the court held no evidentiary hearings, there was no testimony regarding what an inconclusive result meant.

DLI could not do what was needed to obtain a result and FDLE knew that likelihood existed yet allowed the evidence to be sent to them for testing. The agency that could have conducted the more sensitive WGS testing, completed it in the same or less time as Kintelligence, and provided the court with the full analysis of the result, Othram, was left standing in the wings because the State adamantly professed they were conflicted, and ignored testimony that they could do the testing in less time than the chosen agency. It is hard to imagine how this result comports with due process.

When an analyst declares a result inconclusive, that declaration is not a finding of fact. It is an acknowledgment that the standard methodology has reached its limit. It means the data, as processed through the tools that DLI used, cannot support a statistically reliable conclusion under the laboratory's established protocols. That is precisely the testimony, albeit unsworn, that DLI representative Dr. Oefelein provided to the court (WR2. 203).

But inconclusive does not mean *uninformative*. It means *unresolved by conventional means*. That does not mean the inquiry should end, especially when there are ways to resolve the issue and get a conclusive

result, as Ms. Clark recommended in her email to the court (WR2-S2. 308). A forensic bioinformaticist brings a fundamentally different toolkit to the same raw data. Their discipline sits at the intersection of computer science, statistics, and molecular biology, and it enables them to interrogate DNA evidence at a depth that DLI could not reach. This is the analysis that could provide the court with an exclusion or inclusion. There is no question that this analysis falls squarely within both the spirit and the letter of Rule. 3.853.

It is precisely because FDLE's analysis of the Q slide resulted in low-template samples, that FDLE recommended SNP testing rather than STR testing. Additionally, the sample was a mixed DNA sample, containing genetic material from two or more contributors.¹⁴ Low-template and mixed DNA samples—precisely the kind most likely to be declared inconclusive—contain signal that is obscured by noise, dropout, drop-in, and stochastic effects. A forensic informaticist can apply deconvolution algorithms to separate the overlapping genetic signals of multiple contributors, reconstruct partial profiles with quantified uncertainty, and assess whether a known individual can be statistically included or excluded from a mixture.

¹⁴ It is unclear without analysis of the full results, a full report, or testimony from the analyst, whether this mixed sample is a result of DLI mixing the sperm fraction and the epithelial fractions together prior to conducting the testing, or for some other reason.

A forensic bioinformaticist can also serve a critical validation function. They can review the raw electropherogram data—the foundational output of the DNA typing process—and assess whether the original analyst's interpretation was the only reasonable one, or whether alternative interpretations of the same data are statistically supportable. In cases where the original analysis has declared a result inconclusive, a bioinformaticist may be able to demonstrate that the data, properly modeled, actually supports an *exclusion* of the defendant. That is not a minor distinction. That is potentially the difference between conviction and acquittal. Leaving out this critical step, when the state agent has recommended it, is inconsistent with the purpose of Rule 3.853.

B. The court erroneously found that reanalyzing the test results could not generate new evidence on which his actual innocence claim could rest (WR2. 163).

As with the previous finding, the court provides no analysis nor record citations, so once again Mr. Duckett is left trying to guess the support for this statement. The lower court found, when granting the DNA testing, that if the DNA testing excluded Mr. Duckett, there is a reasonable probability of an acquittal at trial; and Mr. Duckett continued to argue throughout the proceedings that the additional testing would provide him evidence of exclusion, which was needed to permit him to supplement his Rule 3.851

motion as the State had agreed he could do (WR2-S. 260). As with the previous finding discussed above, this finding is not supported by the record and thus deserves no deference.

C. The lower court's finding that it is uncontroverted that Defendant's DNA testing could have been previously performed is clearly erroneous, contrary to the record, and irrelevant to the question before the court (WR2. 163).

In perhaps the most inexplicable holding in the circuit court's order, the court found that it is "uncontroverted that Defendant's DNA testing could have previously been performed, long before [] the death warrant was signed" (WR2-S. 234). Not only is this contrary to the record, it is contrary to the law as the statute contains no timing requirement. The State conceded as much at the April 1 hearing (WR2-S. 261).

Uncontroverted refers to information that is accepted as true and is not disputed by any party involved in the legal case. That could not be further from the truth in this case. As this Court previously found, the State did not object to the timeliness when they agreed to the DNA testing (WR2. 27). Yet it continued to present argument regarding timeliness, unsupported by facts or evidence. Mr. Duckett has repeatedly pointed out that no evidence has been presenting regarding when any testing method became available, and at no point agreed that the science was available to obtain a result earlier (see, e.g., WR2-S. 240-43). Because the circuit court's factual findings are

clearly erroneous and lack evidentiary support, this Court should reverse. In addition to its factual errors, the circuit court misapplied the governing law. Questions of law are reviewed de novo, and no deference is owed to the circuit court's legal conclusions.

Rule 3.853 contemplates this approach of testing to a definitive result. See Fla. R. Crim. P. 3.853(b)(2) (The contents of a motion for postconviction DNA testing require a statement 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.”). Both Rule 3.853 and due process demand that he have the opportunity to have a bioinformaticist review the testing data from DLI and assess the reliability of the results and litigate any related issues.

This distinction matters not as an academic exercise, but because the defendant's right to present a complete defense guaranteed by the Sixth and Fourteenth Amendments includes the right to confront the full evidentiary record with the best available scientific tools. Mr. Duckett has the burden but he cannot meet his burden if the court will not permit him to take the necessary step, as advocated for by the FDLE, and conduct the full examination of the data that is required. He is entitled to expert analysis that can interrogate that evidence at its deepest level and, where the data

supports it, offer a statistically grounded result.

The lower court's ruling produces an outcome that conflicts with established public policy embodied in Rule 3.853. Rule 3.853 reflects the justice system's priority of correcting wrongful convictions. Not allowing the defendant to complete the analysis on the testing fails to provide him the tools to correct his wrongful conviction.

"DNA testing has an unparalleled ability to both exonerate the wrongly convicted and to identify the guilty," *Dist. Atty's Office for 3rd Jud. Dist. v. Osborne*, 557 U.S. 52, 55 (2009), and the public has an interest in the assurance that the State is not executing an innocent man. "Executing the innocent is inconsistent with the Constitution," "contrary to the contemporary standards of decency," "shocking to the conscience," and "offensive to a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Herrera v. Collins*, 506 U.S. 390, 419 (1993) (internal quotations and citations omitted) (O'Connor, J., concurring). "The execution of a legally and factually innocent person would be a constitutionally intolerable event." *Id.* The additional scientific analysis by a qualified bioinformaticist as recommended by a state agent is warranted.

D. The lower court's failure to conduct an evidentiary hearing to determine who, where, and how the DNA would be tested denied Mr. Duckett due process.

The lower court erred by failing to conduct adequate hearings “relating to the procedures for DNA testing.” *Cardona*, 109 So. 3d at 242. Before determining what testing should be conducted, who would conduct it, the qualifications of the analysts to conduct said results and report them to the court, and the anticipated costs to the defendant, an evidentiary hearing should have been held. *Id.* That did not occur. *Cardona* squarely addresses the issue of when an evidentiary hearing is mandated pursuant to Rule 3.853. The issue presented in *Cardona* was whether the lower court erred in not holding an evidentiary hearing before ordering specific testing procedures. The appellate court found that because the issue was a scientific issue rather than a legal issue, an evidentiary hearing was warranted to hear from the scientists on the anticipated scope and procedure. *Id.* at 241, 247, 248. Mr. Duckett was denied the requisite hearing both before the initial testing and when the court was considering whether to permit the analysis by the bioinformaticist.

Had the initial hearings been held, it is unlikely that DLI would have been permitted to test the Q slide with Kintelligence, or to conduct any testing due to their inability to conduct the full analysis. It is possible that the failure to conduct evidentiary hearings before ordering the testing by DLI has irreparably harmed Mr. Duckett by destroying the entire sample with

testing that was not formulated for this type of inquiry. Unfortunately, that can no longer be resolved. But this Court can and should remand for an evidentiary hearing with respect to the analysis recommended by Ms. Clark, the qualifications of the potential bioinformaticists, and the costs to the defendant of said analysis. Mr. Duckett wants nothing more than to have the evidence properly examined using the testing methods and analysis most likely to produce a testable profile. This approach is consistent with Rule 3.853 and supported by case law. “The intent of the statute, and the companion rule, is to establish a methodology for a convicted defendant to have physical evidence examined for possible exoneration. . . .” *Id.* at 246.

By denying Mr. Duckett the right to have the DNA results fully analyzed, the lower court denied Mr. Duckett due process and essentially made Rule 3.853 unavailable to him. Where the State of Florida extends a right or a liberty interest, the right or liberty interest may only be extinguished in a manner that comports with due process. *See Evitts v. Lucey*, 469 U.S. 387 (1985) (State must operate whatever programs it does establish subject to the protections of the Due Process Clause). To grant a substantive right and then not allow the defense an opportunity to fully exercise the right is a due process violation contrary to the Eighth and Fourteenth Amendments. *Cf. Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998) (due

process protection applies to the right to seek clemency).

E. Conclusion

The lower court relies on facts not in evidence. The order makes blanket conclusions, yet no testimony supports the conclusion and it's impossible to determine, without further support, the bases of the conclusions. A trial court abuses its discretion when it bases its ruling on matters outside the record. Because the circuit court's order is flawed both factually and legally, it cannot stand.

ARGUMENT 2

The Lower Court Abused Its Discretion In Denying Mr. Duckett Access To Public Records In Violation Of The Fifth, Eighth, And Fourteenth Amendments To The U.S. Constitution And The Corresponding Provisions Of The Florida Constitution.

After this Court confirmed the lower court retained jurisdiction to rule on motions relating to the DNA testing results, Mr. Duckett filed demands for additional public records to FDLE, SAO-5, and AG pursuant to Rule 3.852(i). From FDLE, Mr. Duckett sought DLI's case file, including, *inter alia*, a copy of the electronic SNP testing data files and marker data generated for each sample tested, as well as DLI's procedures and protocols for SNP testing and use of the ForenSeq Kintelligence kit. Due to the lack of transparency in the testing process, Mr. Duckett's demands to each agency requested

communications and materials exchanged between the agencies and DLI from March 5, 2026, to present (WR2-SS. 345, 368, 390). None of the agencies filed written responses or objections, and FDLE did not appear at the April 1 hearing where Mr. Duckett's demands were addressed.¹⁵ Rather, the lone argument concerning the demands came from ASA Nunnelley, who blanketly asserted that "the defense is not entitled to attorney work product" and urged the court to deny the demands "in all effects." (WR2-S. 287-88).

The lower court, in turn, found Mr. Duckett's demands were "neither 'relevant to a subject matter of a proceeding under rule 3.851' nor 'reasonably calculated to lead to the discovery of admissible evidence' as required by Fla. R. Crim. Pro. 3.852." (WR2. 163). The lower court erred in denying him access to these materials in violation of due process and equal protection guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution and the corresponding Florida Constitution provisions.

A. "[A]ccess to public records is an essential ingredient in any meaningful postconviction review." *Sims v. State*, 753 So. 3d 66, 71 n.10 (Fla. 2000) (Anstead, J., concurring).

This Court promulgated Rule 3.852 to govern the production of public

¹⁵ FDLE's lack of appearance is curious as the agency appeared at nearly every other hearing regarding the DNA testing and the agency was served on the court's order wherein the court noted the demands would be addressed at the hearing. Mr. Duckett submits that the agency waived any putative objections by failing to respond or appear at the hearing.

records for capital postconviction defendants. Rule 3.852, however, “was never intended to, and, indeed, [can]not, diminish a citizen’s constitutional right to access to public records.” *In re Amends. to Fla. R. Crim. P. Cap. Postconviction Recs. Prod.*, 683 So. 2d 475, 477 (Fla. 1996) (Anstead, J., specially concurring); *Sims*, 753 So. 3d at 71-72 (Anstead, J., concurring). Rather, it was designed “to promote the prompt and efficient processing of capital cases in a fair, just, and constitutionally sound manner.” *In re Amends. to Fla. R. Crim. P. 3.851, 3.852, et. seq.*, 797 So. 2d 1213, 1216 (Fla. 2001). “[A]ccess to public records [remains] an essential ingredient in any meaningful postconviction review,” *Sims*, 753 So. 3d at 71 n.10 (Anstead, J., concurring), and in safeguarding a death-sentenced individual’s due process rights under both the federal and state constitutions. See *Evitts*, 469 U.S. at 401. “[E]xecution is the most irremediable and unfathomable of penalties,” *Ford v. Wainwright*, 477 U.S. 399, 411 (1986), and the need for absolute transparency is at its apex when the State “tinker[s] with the machinery of death.” *Callins v. Collins*, 510 U.S. 1141, 1130 (1994) (Blackmun, J., dissenting).

B. The Lower Court Erred in Determining That Mr. Duckett’s Demands Were Neither Relevant to the Subject Matter of a Rule 3.851 Proceeding Nor Reasonably Calculated to Lead to the Discovery of Admissible Evidence.

The lower court’s findings are belied by the record in this proceeding.

Moreover, they stem from the erroneous narrative peddled by the State that the DNA testing process and Rule 3.853 proceedings are over by virtue of the inconclusive results DLI reported through FDLE on March 27. Mr. Duckett's demands satisfied Rule 3.852(i), and the lower court abused its discretion in finding that he was not entitled to the records at issue.

1. Mr. Duckett's demands were relevant to a claim of actual innocence based on newly discovered evidence which is cognizable in a Rule 3.851 proceeding.

This Court has long held that newly discovered evidence is a basis for supporting a claim of actual innocence in a Rule 3.851 proceeding. The lower court recognized this fact and the State conceded as much when it agreed to DNA testing on the Q slide and maintained that Mr. Duckett would be able to amend his 3.851 motion or file a new claim upon receipt of favorable results. Both FDLE and DLI confirmed that further analysis by an appropriate lab could yield a probative result, and the records sought in Mr. Duckett's demands are directly relevant to his claim that he was wrongfully convicted and sentenced to death for a crime he did not commit.

2. Mr. Duckett's demands were reasonably calculated to lead to the discovery of admissible evidence.

At bottom, the lower court unequivocally determined when it granted Mr. Duckett's 3.853 motion that any resulting evidence derived from the DNA testing would likely be admissible at a subsequent proceeding as

required by Rule 3.853(c)(5)(B) (WR. 747). As such, a requesting access to the underlying data from the SNP testing DLI conducted is reasonably calculated to lead to the discovery of admissible evidence and the categorical opposite of a “fishing expedition”—particularly when uncontroverted representations from FDLE and DLI confirm that further analysis by a qualified lab could reach a definitive result. The case file and corresponding protocols are critical for any reviewing examiner to adequately review assess the testing.

Moreover, this Court recognized that the lower court “permitted the State to exercise complete control over the location, timing, and method of testing.” (WR. 27). This level of unilateral authority, however, cloaked the process in a layer of secrecy that undermines the integrity of the 3.853 proceedings. Mr. Duckett’s request for communications and materials are public records subject to disclosure and their relevance cannot be considered in a vacuum. It is undisputed that these communications exist, and transparency is required where the ultimate penalty is at stake.

CONCLUSION AND RELIEF SOUGHT

Mr. Duckett urges this Court to reverse the lower court, maintain the existing stay of execution, remand to the circuit court for a full and fair opportunity to be heard at an evidentiary hearing, direct that the additional

DNA analysis be conducted, and grant such other relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND FONT

Pursuant to Fla. R. App. P. 9.045, I hereby certify that the Initial Brief of the Appellant has been produced in Ariel, 14-point font. Counsel further certifies that this brief exceeds the 25-page limit imposed by this Court on April 2, 2026, and that a Motion to Exceed Page Limitations is being filed simultaneously with this brief.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing pleading has been electronically filed through the Florida State Courts e-filing portal and served to the parties listed below on April 7, 2026.

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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC2026-0528

EXECUTION STAYED

JAMES AREN DUCKETT,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

**ON APPEAL FROM THE CIRCUIT COURT
OF THE FIFTH JUDICIAL CIRCUIT,
LAKE COUNTY, FLORIDA
LOWER CASE NO. 1987-CF-1347**

REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY – ARGUMENT 1

The briefing schedule in Mr. Duckett’s Rule 3.853 appellate proceedings highlights his prior criticism of the ‘fire drill approach” to reviewing his claims. Despite the fact that there is no impending execution and the warrant week has concluded, he is required to file his reply brief 5 hours after receiving the State’s response. There is no question that this impacts his ability to adequately reply to the State’s substantive arguments. Mr. Duckett is entitled to proceedings that meet constitutional scrutiny. See *United States v. Cronin*, 466 U.S. 644, 656 (1984).

The State focuses much of its argument on the purported failure to show good cause. This argument both ignores the record and misconstrues the status of the case. We are beyond most of the State’s arguments—testing was granted. What greater cause could be shown than the State’s own lab (FDLE) recommending that the data be read by a qualified expert? The recommendation came after FDLE told the court and the parties that DLI, the lab performing the testing, does not have the capability to assess the data for the question at hand, *i.e.*, the analysis is not complete. The State’s reliance on *Osborne* to assert Mr. Duckett is not entitled to the analysis of the DNA data here is misplaced (AB. at 8). Unlike *Osborne* and the other cases cited by the State, the court here *granted* DNA testing and

determined that the results could lead to a possible acquittal. It was the court that then truncated the process and precluded full analysis of the sample. The court's actions here are the very definition of a due process denial.

The State's recitation of the facts are misleading. The State suggests Mr. Duckett was outright granted the "specialized type of testing" he requested and that it did not object (AB. at 8-9). Mr. Duckett requested SNP testing because it was his understanding that this was only available testing that could potentially get a result. He was granted the testing only after FDLE performed quantification analysis and opined that SNP was the "best course of action" (WR. 1116). The State did not then agree to SNP testing, it tried to move Heaven and earth to preclude it (WR. 1115). Even after FDLE testified they did not do SNP testing and that it would have to go to another lab, the State vehemently objected to any other lab conducting the testing (WR. 1121, 1122).¹

The State's reliance on *Ziegler* and *Everett* for the premise that Mr. Duckett has failed to show he is entitled to testing are likewise misplaced (AB. at 11). In both cases, the court denied DNA testing outright, determining that the movant's failed to establish that the results would lead to an acquittal.

¹ "The position of the state is that we absolutely object to any testing that is not done by [FDLE] and we absolutely object to this sample leaving the state [sic] of Florida under any circumstances whatsoever" (WR. 1121).

We are past that. In Mr. Duckett's case, the court permitted testing and made findings that the results of this sample would indeed meet the requirements of 3.853 and could exonerate Mr. Duckett. And the State agreed. The court's refusal to conduct a complete analysis of the testing is an abuse of discretion and fails to comport with the dictates of due process and Mr. Duckett's Fifth, Eighth, and Fourteenth Amendment rights.

In an attempt to minimize FDLE's determination that further analysis is necessary here, the State suggests that data is only relevant at trial and that statistical calculations are only necessary when making a "match" determination so as to prove identity beyond a reasonable doubt. Not only is this wrong, there is no record evidence that the statistical calculations will make a match, only the State's arguments. In its insistence that no one look further into the DNA here, the State forgets that statistical calculations are also used to *exclude* contributors. These arguments again highlight the need for a full evidentiary hearing. A scientist must explain the significance and meaning of the testing and the data.

FDLE indicated that further analysis is required here because DLI cannot read the data any further. Indeed, at a prior hearing, FDLE confirmed that the kit used, Kintelligence, is not used for this type of question, therefore

DLI does not have the ability to do the back-end analysis.² Mr. Duckett is not requesting retesting, as the State suggests in citing *King* (AB. at 15); he is asking that the testing already done be adequately analyzed to completion. by a qualified expert.

Mr. Duckett cannot meet his burden under Rule 3.851 and establish his newly discovered evidence claim that the DNA in this case shows that he did not murder Ms. McAbee. That is true. But at this point, Mr. Duckett's inability to meet that burden is because the lower court failed to permit the full analysis of the DNA evidence in this case. The State's assertion that the discovery sought is not relevant to any viable claim is disingenuous at best. The State is aware that its own lab opined further analysis is required of the testing data and that results could be obtained. These results, as the lower court determined, could lead to his exoneration.

The State's insistence in arguing that any further analysis would only establish Mr. Duckett's guilt is reckless and unfounded. Neither FDLE nor DLI who the State now claims is a "State witness"³ testified to that effect. The

² The State's attempt to bolster the abilities of the Kintelligence test by asserting that it has been found to be more sensitive than another unknown test is irrelevant (AB. at 21).

³ The irony of this is that the State has lodged repeated accusations of conflict throughout the proceedings at Mr. Duckett for retaining Othram to assist him in providing the necessary information he needed to meet his burden when filing a Rule 3.853 motion—a conflict that the State argued

State's conclusion that "[i]f a person cannot be excluded, they are included" (AB. at 24) is based on absolutely no record evidence.

It is shocking that the State has fought so hard against the use of Othram Labs as they are, per FDLE's testimony, the only agency accredited to do SNP testing AND qualified to do the further analysis by an informaticist of DLI's test results recommended by FDLE. In fact, just today, the State of Florida recognized Othram's success in this field in its announcement of its partnership with Othram to investigate cold cases.⁴ ("The evidence was there, what was missing was the ability to interpret it. This project changes that.")

The State's entire argument challenging the requirement that the lower court hold an evidentiary hearing is incorrect and reliant on cases addressing Rule 3.851 proceedings, not Rule 3.853. Mr. Duckett's claims on

precluded him from doing anything in the case—yet, the State, who took complete control over the location, timing, and method of the testing, is permitted to make the agency paid for by the defense its witness and control what information that agency shares. It appears the State is also permitted to instruct that agency not to speak with Othram as well, as DLI analyst Oefelein indicated in her unsworn questioning at the March 31 hearing that she failed to contact Othram to see if they could do the analysis, despite the fact Othram was one of the two agencies recommended by FDLE.

⁴ 'AG James Uthmeier joins Law Enforcement in Miami to Announce Statewide Cold Case Initiative': <https://www.youtube.com/live/1Ng0P7WuKI8> ("Othram is leading the nation, a company that has proven success when it comes to advanced forensic DNA analysis.")

appeal in this proceeding concern his Rule 3.853 matter. *Cardona* controls. The lower court was required to hold a hearing to address the disputes concerning the DNA testing. Contrary to the State's assertion, Mr. Duckett cannot be faulted for not presenting an expert at the two post-result hearings as the State suggests. The lower court set the first hearing, March 31, as a status and scheduled the status for noon—just 3 hours after his order issued. The second hearing was scheduled for the following morning at 9:00 a.m. During the noon hearing, the court indicated the hearing the following morning may not be held. In the court's 7:52 p.m. order indicating the hearing would move forward, the court announced it intended to address whether additional analysis of the data was required. The court never instructed the parties that it would be an evidentiary hearing and to call witnesses. Mr. Duckett had requested the opportunity to present experts at the status and in the pleading that followed. The court never announced that the April 1 hearing was his moment to do so. The court permitted Mr. Duckett to argue that the law required an evidentiary hearing and then subsequently entered a finding that Mr. Duckett did not present expert testimony to show how the information "could lead to Defendant's exoneration." The court never told Mr. Duckett that was the question it sought to have answered. To then fault him for failing to present testimony, when he repeatedly requested to do so, turns

the system on its ear.

The State's argument that Mr. Duckett could have requested DNA earlier is unsupported by the record and is a red herring. As Mr. Duckett argued in his initial brief, Rule 3.853 contains no time requirement, and, in any event, the State waived any argument to timeliness when it agreed that Mr. Duckett had met his burden under Rule 3.853. And, even if it were relevant, the State cites to the date the Kintelligence kit became available—regardless of whether the kit was used or the lab had become accredited for the testing at that point—when FDLE admitted that Kintelligence was not formulated for this type of inquiry. The record is devoid of any evidence as to when the sample in this case could have or should have been tested. And, arguably, with the inconclusive result, without further analysis, we still do not know if the science is advanced enough to produce a definitive result. Certainly, DLI was unable to obtain a result using Kintelligence.

The State's arguments both at the hearings and in its Response are just that, argument, and not evidence. The State does exactly as it cautioned the court not to do—dismiss the need for expert testimony and allow attorneys to tell the court about the science. The State is not an expert on the development of DNA testing technology and its arguments as to when Mr. Duckett could have requested testing are wholly unsupported by the

record and by the science. Mr. Duckett requested representatives from DLI at the court's status held on Monday, March 16, 2026, to which the State objected via email to the Defense asking any questions of the experts. At the hearing, the lower court announced that Mr. Duckett would not be permitted to ask any questions of the DLI representative should they appear (WR. 1202). At the hearing held March 13, the court had instructed that he wanted a representative be present for the Monday hearing. Over email, FDLE notified the parties that a representative would not be present. DLI indicated they would not be present unless specifically requested. FDLE indicated it would arrange a representative to be present. No one from DLI showed.

The breakneck speed of hearings, and the knee-jerk determination of who best to examine this critical slide that holds the secret of who actually killed Ms. McAbee, does not comport with due process. In the first hearing, which Mr. Duckett learned about as it was occurring, he did the best he could at presenting evidence to the court through a scientist who actually does SNP testing, Dr. Mittelman. Due to the lack of notice, counsel had no opportunity to speak with Dr. Mittelman about what testing he could offer, to prep him for the hearing at hand, or to discuss the additional questions that might be relevant to the proceedings. Counsel has never worked with Dr. Mittelman before this case and had only met him a few days before the

hearing.⁵

ARGUMENT II

Most of the State's arguments were not asserted below, and therefore, must be deemed waived. Only the State Attorney objected below, claiming that communications with DLI are exempt from disclosure as work product. The court did not sustain this objection. The lower court denied the records finding only that the records were not "relevant to a matter of a proceeding under rule 3.851' nor 'reasonably calculated to lead to the discovery of admissible evidence'" (WR. 163). DLI communicated with the State concerning the DNA testing in this case, yet refused to communicate with the Defense⁶ at the direction of the State. DNA testing is nuanced. Each lab offers different technology, has varying thresholds for the amount of biological material necessary to conduct testing, and different capabilities in reading the data that is output from testing. All of this informs how the sample

⁵ Dr. Mittelman stated that he and counsel had just met, but due to the rush job required of the court reporter, it did not make it into the transcript.

⁶ It is beyond comprehension that CCRC-South was ordered to pay for the testing, but was completely cut out of the process. CCRC-South is a State agency and is accountable for its spending, yet the lower court ordered it pay for testing without any further parameters. CCRC-South was not permitted to participate in the selection of the lab, have any say in the type of testing, nor access to the testing data once it was complete. DLI was essentially given a blank check to conduct testing without any recourse or discussion with the agency that was ordered to pay.

is handled and the type of testing a lab performs. Mr. Duckett is entitled to communications between DLI and the identified state agencies about the testing in this case.

The lack of transparency through this process raises questions as to the State's intention of ensuring a conclusive result was yielded. From the outset, the State has refused to use the premier DNA lab in SNP testing which FDLE uses for all of its other SNP needs, has refused to ensure that the most sensitive technology be used and instead agreed to the use of a kit not appropriate for the testing in this case, and now refuses to permit the requisite analysis of the data.

The State's arguments illustrate a lack of understanding of DNA analysis. The protocols are required, as explained below, to understand how the testing was conducted, which may impact the reading of the data. For example, the protocols indicate the lab's thresholds. The thresholds inform the back-end assessment. As Mr. Duckett requested, a scientist can explain why the case file and additional laboratory documents are needed to get a full picture of the testing and the possibility for reading additional information.

CONCLUSION AND RELIEF SOUGHT

Mr. Duckett urges this Court to reverse the lower court, and remand to for a full and fair opportunity to be heard at an evidentiary hearing.

Respectfully submitted,

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Pursuant to Fla. R. App. P. 9.045, I hereby certify that the Reply Brief of the Appellant has been produced in Arial 14- point font. Pursuant to Fla. R. App. P. 9.210(a)(2)(D), this brief complied with the Court Ordered 10-page limit.

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I HEREBY CERTIFY that a true copy of the foregoing pleading has been electronically filed through the Florida State Courts e-filing portal and served to the parties listed below on April 8, 2026.

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431 So.3d 990

Supreme Court of Florida.

James Aren DUCKETT, Appellant,

v.

STATE of Florida, Appellee.

No. SC2026-0528

I

April 30, 2026

Synopsis

Background: Movant for postconviction relief from death sentence, which had been affirmed on direct appeal in murder case, 568 So.2d 891, requested that he be provided the underlying DNA testing data necessary for an analysis and opinion by a qualified bioinformaticist, and movant also requested public records of the testing data and the testing process and protocols of the private laboratory that generated the data. The Circuit Court, 5th Judicial Circuit, Lake County, Brian Welke, J., denied requests. Movant appealed.

Holdings: The Supreme Court held that:

the Court had jurisdiction to review circuit court's order;

under rule on motions for postconviction DNA testing and statute on postsentencing DNA testing, movant was entitled to have the underlying DNA testing data; but

circuit court did not abuse its discretion when it denied movant's request for public records related to laboratory's testing process and protocols.

Affirmed in part, reversed in part, and remanded.

Tanenbaum, J., dissented and filed opinion.

Procedural Posture(s): Appellate Review; Post-Conviction Review.

An Appeal from the Circuit Court in and for Lake County, Brian Welke, Judge, Case No. 351987CF001347AXXXXX

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Opinion

PER CURIAM.

***991** James Aren Duckett is a prisoner under sentence of death whose execution has been stayed. In this case, he appeals the circuit court's order denying his request to be provided the underlying DNA testing data necessary for an analysis and opinion by a qualified bioinformaticist. That data was generated by a private laboratory that tested a DNA sample relevant to Duckett's guilt or innocence. Duckett also appeals the circuit court's denial of his demands for public records in which he sought the testing data as well as information pertaining to the private laboratory's testing process ***992** and protocols.¹

For the reasons that follow, we reverse the circuit court's denial of Duckett's request for the underlying DNA testing data.² However, we affirm the court's denial of his public records demands insofar as they sought information regarding the testing process and protocols. Consistent with these holdings, we remand for the underlying testing data to be provided for a statistical analysis, as directed by the Florida Department of Law Enforcement (FDLE). Further, if a dispute arises regarding the extent of the data necessary for analysis, the circuit court shall hold an evidentiary hearing to resolve the dispute.

I

On February 27, 2026, Governor Ron DeSantis signed a warrant scheduling Duckett's execution for March 31, 2026. Following issuance of the death warrant, Duckett filed a

motion, which he later amended, seeking postconviction DNA testing under section 925.11, Florida Statutes, and Florida Rule of Criminal Procedure 3.853. The sample he wanted tested was a 1987 swab from the victim's underwear mounted on a slide (called "Q-6(3)"), which had continuously been in the State's possession. The swab contained a small number of sperm heads. Duckett contended that DNA testing would show that the sperm was not his, meaning that someone else committed the murder and he is actually innocent.

Over two decades ago, during Duckett's initial postconviction proceedings, we were informed that certain items of clothing introduced into evidence could possibly be tested for DNA, including Q-6(3). *Duckett v. State*, 918 So. 2d 224, 230 (Fla. 2005). We relinquished jurisdiction to the circuit court to allow for determination of "whether there in fact existed clothing that could be tested for DNA." *Id.* On remand, the examiner for FDLE determined that because Q-6(3) had deteriorated and contained too few sperm heads, the DNA testing methods then available would not have produced any conclusive results. *Id.* The examiner added that any attempt to test the sample would have destroyed it. *Id.* Outside agencies confirmed the FDLE examiner's concerns. Thus, no testing was performed on Q-6(3). *Id.*

Noting these background facts, Duckett argued in his rule 3.853 motion that Q-6(3) should be tested using Single Nucleotide Polymorphism (SNP), a technology that allows for more reliable DNA testing of small, deteriorated samples. He requested that Q-6(3) be sent to a private laboratory³ because FDLE does not have the capability to perform SNP testing.

The State agreed that Q-6(3) was potentially exculpatory and therefore focused its arguments on the testing process. Essentially accepting the State's position, the circuit court granted Duckett's motion for DNA testing. Per section 925.11(2)(h), the court permitted the State to exercise complete control over the location, timing, and method of testing. When it became clear that FDLE could not complete the SNP testing, Q-6(3) was ultimately sent to a ***993** private laboratory requested by the State called DNA Labs International, Inc. (DLI).

Meanwhile, two days after his rule 3.853 motion was granted, Duckett filed his fifth successive postconviction motion under Florida Rule of Criminal Procedure 3.851, in which he claimed, among other things, that the forthcoming DNA results would provide newly discovered evidence of his

actual innocence.⁴ At the *Huff*⁵ hearing, the circuit court learned that DNA testing would not be completed within the timeline contemplated by our scheduling order. Therefore, the circuit court asked us for an extension of time to allow the DNA testing to be completed and thereby give the court the opportunity to "fully adjudicate the matter." We granted that request in part and issued a revised scheduling order.

At a subsequent status conference, FDLE explained that testing would likely be completed around March 27, 2026, a date beyond the timeframe contemplated by our revised scheduling order. In light of this and other facts, Duckett asked the circuit court to stay the execution and to delay ruling on his successive postconviction motion until the DNA testing was completed. The State, by contrast, urged the court to rule on the motion and allow Duckett to file another successive rule 3.851 motion based on the DNA results, if they were favorable to him. Agreeing with the State, the court issued a final order summarily denying Duckett's successive postconviction motion and declining to stay the execution. As for Duckett's newly discovered evidence claim, the court ruled there was currently no factual basis for granting relief because it had yet to receive the DNA results.

Duckett appealed the summary denial of his successive postconviction motion. He also moved for a stay of execution and petitioned for a writ of habeas corpus. That appeal (case number SC2026-0049) and petition (case number SC2026-0450) are still pending before us.⁶ Meanwhile, Duckett filed a motion in circuit court requesting that FDLE provide him the testing data and protocols as soon as the DNA results became available.

On March 26, 2026, we exercised our discretion and granted Duckett's motion for a stay of execution to allow for completion of the DNA testing. *See* § 922.06(1), Fla. Stat. (2025) ("The execution of a death sentence may be stayed ... incident to an appeal.").⁷

Testing was completed the following day. The Certificate of Analysis conveyed that the DNA indicated at least one male contributor. The report went on to conclude that "[d]ue to the limited nature of the DNA calls obtained from this sample, it is not suitable for genealogical comparisons or phenotype and ancestry estimations." In an accompanying email, FDLE relayed that the testing was "inconclusive" and noted that neither FDLE nor DLI has the capability to complete the testing process by performing a statistical analysis on the

data that was generated.⁸ However, ***994** FDLE suggested that a qualified bioinformaticist may be able to perform that analysis and, thus, provide statistical calculations.

At this point, the State asked us to lift the stay of execution, whereas Duckett requested that we relinquish jurisdiction to the circuit court. On March 30, 2026, we issued an order explaining that the circuit court continued to have concurrent jurisdiction to rule on motions related to DNA testing and successive claims filed by Duckett and that nothing in our prior scheduling order precluded these additional filings. Accordingly, we declined to lift the stay and denied Duckett's motion to relinquish as moot.⁹

Thereafter, Duckett asked the circuit court to order that the underlying testing data be released by the State and DLI for a qualified bioinformaticist to perform a statistical analysis. He asserted that this analysis could exonerate him and requested that the circuit court hold an evidentiary hearing to resolve any related factual issues. He also filed public records demands under Florida Rule of Criminal Procedure 3.852(i), seeking the testing data as well as DLI's testing process and protocols. In response, the State asserted that the testing results did not exonerate Duckett but actually inculpate him. It further argued that no analysis of the testing data was necessary because any such analysis would only affect the degree of inculpation. The State also objected to the disclosure of DLI's testing process and protocols. Finally, it contended that no evidentiary hearing was required.

After holding two status conference hearings with less than a day's notice and at which no sworn testimony was permitted, the circuit court issued an order denying Duckett's request for the testing data. The court found that Duckett had failed to establish how the information he sought could lead to his exoneration. The court also denied his public records demands on the basis that they were neither "relevant to the subject matter of a proceeding under rule 3.851" nor "reasonably calculated to lead to the discovery of admissible evidence." Fla. R. Crim. P. 3.852(i)(2)(C).

Duckett appeals that order, which concluded rule 3.853 proceedings in circuit court.

II

Though neither party raises the issue, we begin by addressing our jurisdiction to review the challenged order.

See JJTB, Inc. v. Schmidt, 415 So. 3d 129, 132 (Fla. 2025) ("Subject matter jurisdiction is uniquely unwaivable because it concerns a court's constitutional or statutory authority to hear a certain type of case, and the parties cannot confer such authority on a court." (citing *MCR Funding v. CMG Funding Corp.*, 771 So. 2d 32, 35 (Fla. 4th DCA 2000))). We are satisfied that we have jurisdiction.

Section 925.11(3)(a) provides that "[a]n appeal from the court's order on the petition for postsentencing DNA testing may be taken by any adversely affected party." Likewise, rule 3.853 provides that "[a]n appeal may be taken to the appropriate appellate court only from the final order disposing of the motion." Fla. R. Crim. P. 3.853(f). Lastly, Florida Rule of Appellate Procedure 9.140 confirms that "[a] defendant may appeal ... orders denying relief under" rule 3.853. Fla. R. App. P. 9.140(b)(1)(D).

Here, the challenged order denied Duckett the relief he sought under rule 3.853, namely for the complete results of ***995** his DNA testing. In other words, the order "adversely affected" him. § 925.11, Fla. Stat. Moreover, the order here is "final" as required by rule 3.853(f) because it concluded the rule 3.853 proceedings and brought "an end to the judicial labor," *S. L. T. Warehouse Co. v. Webb*, 304 So. 2d 97, 99 (Fla. 1974). Notably, we have exercised appellate jurisdiction to review final orders denying capital defendants' motions for postconviction DNA testing, citing the constitutional provision giving us authority to review death-penalty appeals. *E.g.*, *Everett v. State*, 377 So. 3d 1123, 1125 (Fla. 2024); *Reynolds v. State*, 373 So. 3d 1124, 1125 (Fla. 2023).¹⁰

III

Duckett argues that the circuit court erred in denying his request for the underlying testing data necessary for a qualified bioinformaticist's analysis and opinion. He contends that without this data he has not been provided the complete testing results, to which he is entitled under section 925.11 and rule 3.853. On this record, we agree.

Section 925.11(2)(i) provides that "[t]he *results* of the DNA testing ordered by the court shall be provided to the court, the sentenced defendant, and the prosecuting authority." (Emphasis added); *see also* Fla. R. Crim. P. 3.853(c)(8). In this case, we are persuaded that the complete "results" include the underlying testing data, not simply DLI's report that testing was "inconclusive" when it (and

FDLE) lacks the capability to provide the analysis that FDLE suggested may be possible.¹¹ Our reasoning is twofold.

First, to grant a motion for postconviction DNA testing, section 925.11 requires the court to find, among other things, that “the results of DNA testing of that physical evidence would be admissible at trial.” § 925.11(2)(f) 2., Fla. Stat.; *see also* Fla. R. Crim. P. 3.853(c)(5)(B). As the State readily concedes, an expert testifying at trial must provide statistical calculations of the testing data when reporting DNA results. *See Brim v. State*, 695 So. 2d 268, 271 (Fla. 1997). An expert cannot simply say there is a “match” between the defendant’s DNA and the profile obtained from testing. Against this backdrop, the statute’s reference to “the results of DNA testing ... be[ing] admissible at trial” suggests that those “results” include the testing data necessary for a DNA expert to offer an opinion at trial.

Second, FDLE itself has suggested that Duckett has received incomplete testing results. On several occasions, it has indicated *996 that the “results” include the testing data upon which DLI’s “inconclusive” finding was made. Namely, in an email, FDLE confirmed that the testing “yielded results for Y (male-specific) SNPs” but that both FDLE and DLI have “no mechanism to provide a statistical weight associated with only the Y SNP results.” FDLE therefore suggested the following course:

A qualified bioinformaticist may be able [to] provide an opinion and calculation based on the *Y SNP results*. Speaking only from personal awareness of entities working in this space, I believe Parabon Nanolabs, Inc. and/or Othram, Inc. would be capable of further reviewing the *Y SNP data*.

(Emphasis added.) This phrasing equates the “Y SNP results” with the “Y SNP data,” which has yet to be analyzed. FDLE says that another laboratory might be able to perform that analysis on the testing data. Accordingly, this email (along with other statements by FDLE) supports the conclusion that without the underlying data, Duckett has not been supplied complete testing results.¹²

The State disagrees.¹³ Citing the circuit court’s ruling below, it argues Duckett failed to show how any analysis of the testing data would exonerate him. In the State’s view, it was proper for the circuit court to impose a burden on Duckett to demonstrate, through expert testimony or otherwise, how that analysis would lead to his exoneration.¹⁴ This argument is meritless.

The circuit court’s imposition of this exoneration-based burden *at this stage* has no basis in section 925.11 or rule 3.853. Upon granting Duckett’s motion for postconviction DNA testing, the court found that he had met the requirements of the statute and rule—i.e., that he carried his burden. Once that ruling was made, Duckett was not required to establish anything else to receive the complete results of that testing. Therefore, the circuit court compounded its error in denying Duckett’s request for the underlying data based on his failure to carry a burden that is without legal foundation.

For all of these reasons, we reverse the circuit court’s order to the extent it denied Duckett’s request for the underlying DNA testing data necessary for analysis.

IV

Duckett also claims the circuit court abused its discretion in denying his *997 demands for additional public records, in which he sought information about DLI’s testing process and protocols.¹⁵ We find no abuse of discretion.

The circuit court rejected Duckett’s demands on the basis that this information was not “relevant to a subject matter of a proceeding under rule 3.851” or “reasonably calculated to lead to the discovery of admissible evidence.” *See* Fla. R. Crim. P. 3.852(i)(2)(C). We agree that Duckett has failed to allege, as rule 3.852 and our precedent require, how DLI’s testing process and protocols could relate to a colorable claim for postconviction relief. *See Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019). Instead, he seeks this information only as possible impeachment evidence. Therefore, we affirm the circuit court’s denial of these demands as to the testing process and protocols.

V

For the foregoing reasons, we affirm in part, reverse in part, and remand for the full results of Duckett's DNA testing—namely, the underlying data—to be provided to him so that the statistical analysis he seeks may be performed by a qualified bioinformaticist. Furthermore, we instruct the circuit court to hold an evidentiary hearing if any dispute arises as to the extent of the data necessary for analysis.

It is so ordered.

NO MOTION FOR REHEARING WILL BE ALLOWED.

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

TANENBAUM, J., dissents with an opinion.

TANENBAUM, J., dissenting.

The court has no jurisdiction to consider the appeal in this case. We should dismiss.

I

A

When Florida's citizens revised Article V of their constitution in 1956, they modernized “the Florida judicial system at the appellate level,” creating district courts of appeal that would have the “final and absolute” word “in most instances” of review. *Jenkins v. State*, 385 So. 2d 1356, 1357–58 (Fla. 1980). That is to say, the district courts were “meant to be courts of final, appellate jurisdiction” regarding nearly all trial court final judgments and orders. *Lake v. Lake*, 103 So. 2d 639, 642 (Fla. 1958); *cf.* Art. V, § 5(c), Fla. Const. (1956) (providing for the right to appeal “all final judgments or decrees” to the district court “except those from which appeals may be taken direct to the supreme court or to a circuit court”); *id.* § 4(b) (limiting the right to directly appeal a trial court's final judgment to the supreme court to several very narrow categories, including “judgments imposing the death penalty”).

The objective was to relieve the supreme court's extreme case congestion. *Jenkins*, 385 So. 2d at 1358–59. This court's power, in turn, was “limited and strictly prescribed.” *Id.* at 1357 (commenting in the context of this court's power “to

review decisions of the district courts of appeal”); *cf. Mystan Marine, Inc. v. Harrington*, 339 So. 2d 200, 200 (Fla. 1976) (“The jurisdiction of this Court extends only to the narrow class of cases enumerated in Article V, Section 3(b) of the Florida Constitution.” (emphasis supplied)). Doing so would *998 leave the supreme court to “function[] as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice.” *Jenkins*, 385 So. 2d at 1357–58.

For this approach to work, though, this court would have to be careful “not to venture beyond the limitations of its own powers by arrogating to itself the right to” engage in review not provided for by the constitution. *Lake*, 103 So. 2d at 642. Yet the court did not heed its own caution, continuing to construe its jurisdiction ever more broadly, once again resulting in “a staggering case load.” *Jenkins*, 385 So. 2d at 1358. The supreme court ultimately urged another constitutional amendment, one that would further limit its jurisdiction and essentially save it from its own accretions of authority. *See id.* at 1358–59. The voters approved that amendment, which went into effect in 1980.

To be sure, these increasing jurisdictional limitations still left in place the court's express power to “hear appeals from final judgments of trial courts imposing the death penalty.” Art. V, § 3(b)(1), Fla. Const. (1980). Against the historical backdrop just described, though, there is no good reason to read this grant of jurisdiction more broadly than others—so no justification for this court's repeated “venture[s] beyond the limitations” that section 3(b)(1) expressly establishes regarding review of death penalty judgments. *Lake*, 103 So. 2d at 642.

“Our state Constitution is a limitation upon power,” so “constitutional jurisdiction” cannot be expanded if doing so “result[s] in a diminution of the constitutional jurisdiction of some other court.” *Harry E. Prettyman, Inc. v. Fla. Real Est. Comm'n*, 92 Fla. 515, 109 So. 442, 445 (1926) (internal quotations omitted); *cf. Hodgson v. Bowerbank*, 9 U.S. 303, 304, 5 Cranch 303, 3 L.Ed. 108 (1809); *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 491, 103 S.Ct. 1962, 76 L.Ed.2d 81 (1983). The rule under our modern constitutional structure is that the district court of appeal has exclusive appellate jurisdiction over *all* trial court final judgments and orders “not directly appealable to the supreme court or a circuit court.” Art. V, § 4(b)(1), Fla. Const.

Considering, then, the constitutional provision granting this court limited direct review authority in matters involving the death penalty, the text could not be plainer. A final judgment *that imposes the death penalty* is appealable to this court (so *not* appealable to the district court of appeal). But if a trial court order to be reviewed is *not* one imposing the death penalty, it is *not* appealable to this court, *only* to the district court. Reading the scope of our authorized review any more broadly than what the clear text provides necessarily aggrandizes what should be our own narrow appellate authority at the expense of the broad jurisdiction the constitution expressly gives to the district courts of appeal.¹⁶

***999 B**

That, unfortunately, is what continues to happen in cases like this. Do not lose sight of the only matter on review in this so-called appeal: an order denying free-floating discovery requests related to DNA testing that was both ordered and completed, requests unmoored from any ongoing proceeding attacking the legality of a judgment and death sentence subject to this court's appellate jurisdiction.

To be clear, the petition for DNA testing is not a collateral proceeding attacking the legality of the judgment. A petition filed under section 925.11, Florida Statutes, opens a parallel proceeding, advancing a separate right of action to obtain testing if certain criteria are met. The DNA testing is not a discovery device adjunct to a collateral attack. And the statute is not death-specific. It authorizes DNA testing for any felony, not just in cases in which death has been imposed. *See* § 925.11(1), Fla. Stat. The trial court ordered the DNA testing the defendant requested, the testing was conducted, and the results were provided.

The lab's certificate of analysis said the following as its “results/conclusion”:

These [extracted] items were combined into a single sample for DNA analysis. The DNA profile obtained from this sample indicates at least one male contributor. Due to the limited nature of the DNA calls obtained from this sample, it is not

suitable for genealogical comparisons or phenotype and ancestry estimations.

The report attached pages of data purporting to show how that testing was conducted. This is all that section 925.11 requires. *See* § 925.11(2)(i), Fla. Stat. (“The results of the DNA testing ordered by the court shall be provided to the court, the sentenced defendant, and the prosecuting authority.”). There is no statutory provision that authorizes follow-up discovery once the results are provided or that provides for continued proceedings to challenge the integrity or accuracy of the testing or the results.¹⁷ Simply put, even this independent ***1000** statutory proceeding, filed in the closed criminal case, is over.

This court's mandate affirming the trial court's “judgment imposing the death penalty” made that judgment absolutely final in 1990, upon which the trial court lost jurisdiction forever—save for consideration of an *authorized* collateral attack. The trial court summarily denied the post-warrant collateral attack as one that was time-barred—that is, as one *not* authorized by this court's rules. Indeed, as the defendant admitted during a hearing under rule 3.851(f)(5) (B), his last-minute, post-warrant collateral attack under the rule lacked any exonerating DNA test results constituting newly discovered evidence that would except him from the time bar.¹⁸

The requests the court now purports to address were made even though there was no pending collateral attack on the judgment imposing the death penalty. It is quite clear, then, that the order on review does not impose the death penalty, and it does not reject an attack on the judgment that originally did.¹⁹ Jurisdiction to review this order can find no textual support in our constitution.

***1001 II**

A

The majority's response to the clear conflict described above is to rely primarily on the court's “longstanding precedent” that claims exclusive review authority over “all types of collateral proceedings in death penalty cases.” *State v. Fourth Dist. Ct. of Appeal*, 697 So. 2d 70, 71 (Fla. 1997) (emphasis supplied). By “collateral proceedings,” the court in *Fourth*

District seems to have been referencing matters beyond just post-conviction challenges to a *judgment* imposing the death penalty. Before and since, the court has routinely expanded its authority based on its own apparent, non-textual view that it has perpetual authority over the *case* in which the death penalty was imposed, even if the judgment itself has become final and not subject to further attack.²⁰ Having taken more of a “might makes right” approach starting in the 1990s and continuing through present day, this court never has engaged in a textual analysis to support this otherwise raw exercise of power—routinely citing only to past practice instead. *See, e.g., Fourth Dist.*, 697 So. 2d at 71 (citing two decisions from the 1990s for support, even though the court in both instances simply took jurisdiction, without any textual consideration); *Trepal v. State*, 754 So. 2d 702, 705–06 (Fla. 2000) (noting that the court has “been less than precise in defining our authority to” review interlocutory orders “in cases involving death-sentenced defendants”; quoting the constitutional provision giving jurisdiction to review a judgment “imposing the death penalty”; then string-citing cases in which the court previously “review[ed] interlocutory discovery orders in capital collateral proceedings ... although absent an express statement of how the Court determines whether to exercise its jurisdiction”).

Though the majority continues this primary reliance on past practice for authority, it does cite four provisions purportedly supporting its jurisdictional claim. First, it cites Article V, section 3(b)(1) of the Florida Constitution, but as explained above, the plain text does not support that claim. Once again, textual treatment of the phrase “judgment imposing the death penalty” demonstrating how the court could have jurisdiction over a mere discovery order, is not on offer. Second, it cites section 925.11(3), which simply restates the constitutional proposition under Article V, section 4(b)(1)—that a trial court's order granting or denying the petition is appealable by the adversely affected party.²¹ The statute does not specify that, in a “death *1002 case,” the appeal must go to this court; it merely states that an appeal “may be taken,” presumably from the final order granting or denying the petition. § 925.11(3)(a), Fla. Stat. Even if it did state that in a death case, the appeal would go to this court, that likely would be an unconstitutional expansion of this court's constitutionally prescribed jurisdiction, as suggested earlier. Third, the majority cites Florida Rule of Criminal Procedure 3.853 and Florida Rule of Appellate Procedure 9.140(b)(1) (D). Neither rule specifies that an appeal could or must be taken to the supreme court, and this court cannot expand

its own constitutional jurisdiction—a substantive matter—by procedural rule.²²

It has been said that “death is different.” *Fitzpatrick v. State*, 527 So. 2d 809, 811 (Fla. 1988); *Yacob v. State*, 136 So. 3d 539, 546 (Fla. 2014) (quoting *Fitzpatrick*); *cf. Furman v. Georgia*, 408 U.S. 238, 306, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (Stewart, J., concurring) (observing that the “penalty of death differs from all other forms of criminal punishment, not in degree but in kind”). True though this may be, an active death warrant does not excuse a departure from our supposed “commitment to the supremacy-of-text principle”—our “recogni[tion] that the words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *Planned Parenthood of Sw. & Cent. Fla. v. State*, 384 So. 3d 67, 77 (Fla. 2024) (internal quotations and brackets omitted). If it is true that “we give the words of the constitution their plain, usual, ordinary, and commonly accepted meanings at the time they were written,” *City of Tallahassee v. Fla. Police Benevolent Ass'n, Inc.*, 375 So. 3d 178, 183 (Fla. 2023), we should do so consistently, all the time.

A “longstanding precedent” that demonstrably deviates from the clear text is not immune from reconsideration, regardless of the context and regardless of whether anyone has asked for that reconsideration. *Cf. Gamble v. United States*, 587 U.S. 678, 724–25, 139 S.Ct. 1960, 204 L.Ed.2d 322 (2019) (Thomas, J., concurring) (“The true irony of our modern *stare decisis* doctrine lies in the fact that proponents of *stare decisis* tend to invoke it most fervently when the precedent at issue is least defensible.”). We must continuously police our own jurisdictional boundaries; no one can do it for us. Ensuring that we act only within constitutional constraints is an ongoing exercise in self-discipline. Doing so is the true demonstration of judicial restraint.

Our duty always is to apply the law as written. As this court has said:

In a case where we are bound by a higher legal authority—whether it be a constitutional provision, a statute, or a decision of the Supreme Court—our job is to apply that law correctly to the case before us. When we are convinced that a precedent clearly conflicts with

the law we are sworn to uphold,
precedent normally must yield.

State v. Poole, 297 So. 3d 487, 507 (Fla. 2020); *see id.* (noting that “reliance interests are lowest in cases ... involving procedural and evidentiary rules” (internal quotations omitted)); *see also Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 248, 139 S.Ct. 1485, 203 L.Ed.2d 768 (2019) (noting that *stare decisis* “is at its weakest” *1003 when we interpret the Constitution because our interpretation can be altered only by constitutional amendment” (internal quotations omitted)).

B

In the end, the defendant is gaming the process set out in section 925.11 to delay execution of his sentence, which he has yet to demonstrate is unlawful, despite his having had decades to do so. His effort, misguided as it is, should have taken place in the context of a pending rule 3.851 motion, where he *would* bear the burden of showing “how” the new information “will” exonerate him. *Hitchcock v. State*, 866 So. 2d 23, 27–28 (Fla. 2004); *Reynolds v. State*, 373 So. 3d 1124, 1126–27 (Fla. 2023). Instead, he is being permitted to circumvent this burden and obtain further delay, using the pending death warrant to manufacture urgency—regarding a closed trial-court proceeding—where none exists. *Cf. Reynolds*, 373 So. 3d at 1127 & n.6 (noting the defendant’s failure to pursue DNA testing on certain items in an earlier motion “despite [his] being aware of the[] existence” of items to be tested and the availability of DNA testing methods); *Arango v. State*, 437 So. 2d 1099, 1104 (Fla. 1983) (criticizing “the all too frequent and questionable practice of waiting until the eleventh hour to raise or prosecute issues which could have and should have been raised months or years before”); *Evans v. Bennett*, 440 U.S. 1301, 1307, 99 S.Ct. 1481, 59 L.Ed.2d 756 (1979) (Rehnquist, J., in chambers) (criticizing how, in a death warrant context, “‘hydraulic pressure’ [can be] brought to bear upon any judge or group of judges [that] inclines them to grant last-minute stays in matters of this sort just because no mortal can be totally satisfied that within the extremely short period of time allowed by such a late filing he has fully grasped the contentions of the parties and correctly resolved them”).

There is no constitutional basis for our intervention in this matter, and the pending death warrant by itself cannot supply

it. No textual defense of this court’s exercise of jurisdiction in cases like this one has ever been offered, not before and not today. None exists. Our previous exercises of jurisdiction, and the one in this case, have been demonstrated here to be wrong—expressly contrary to the plain jurisdictional statements in the Florida Constitution.

The defendant has had his “day in court”—many days, in fact. Over the decades, this court has rejected his legal challenges to his conviction and sentence of death. Continuing Justice Rehnquist’s point from before:

There must come a time, even when so irreversible a penalty as that of death has been imposed upon a particular defendant, when the legal issues in the case have been sufficiently litigated and relitigated that the law must be allowed to run its course. If [our holdings] are to be anything but dead letters, capital punishment when imposed pursuant to the standards laid down in those cases is constitutional; and when the standards expounded in those cases and in subsequent decisions of this Court bearing on those procedures have been complied with, the State is entitled to carry out the death sentence. Indeed, just as the rule of law entitles a criminal defendant to be surrounded with all the protections which do surround him under our system prior to conviction and during trial and appellate review, the other side of that coin is that when the State has taken all the steps required by that rule of law, its will, as represented by the legislature which authorized the imposition of the death sentence, and the state *1004 courts which imposed it and upheld it, should be carried out.

Evans, 440 U.S. at 1303, 99 S.Ct. 1481.

The appeal should be dismissed for lack of jurisdiction.

All Citations

431 So.3d 990, 51 Fla. L. Weekly S108

Footnotes

- 1 As explained in greater detail below, we have jurisdiction. See art. V, § 3(b)(1), Fla. Const.; § 925.11(3)(a), Fla. Stat. (2025); see also Fla. R. Crim. P. 3.853(f).
- 2 To the extent Duckett's public records demands also sought the testing data, we decline to address whether the circuit court abused its discretion in denying the production of such records. Our opinion today renders moot any dispute over the correctness of the circuit court's ruling in this respect.
- 3 Duckett asked that the testing be performed by Othram, Inc. He noted that this laboratory had the appropriate capabilities and that FDLE had an existing contract with it.
- 4 Per our scheduling order and absent a stay, Duckett was required to file his successive postconviction motion before DNA testing results were available.
- 5 *Huff v. State*, 622 So. 2d 982 (Fla. 1993).
- 6 No one disputes that these matters are within this Court's jurisdiction.
- 7 Justice Tanenbaum dissented.
- 8 In the email, FDLE explained that although testing “yielded results for Y (male-specific) SNPs,” DLI “has no mechanism to provide a statistical weight associated with only the Y SNP results,” which means it is “unable to report a match between Mr. Duckett's Y SNPs and those detected in the sample.” By the same token, according to FDLE, this meant DLI also was unable to report an exclusion.
- 9 Justice Tanenbaum dissented in part.
- 10 The dissent argues, in part, that we do not have jurisdiction to address collateral matters in cases where the death penalty has been imposed. None of the cases cited by the dissent lead to that conclusion. Longstanding precedent says just the opposite. See *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”); *Willacy v. State*, No. SC2026-0519, 431 So.3d 254, 260-61 (Fla. Apr. 15), cert. denied, No. 25-7220, — U.S. —, — S.Ct. —, — L.Ed.2d —, 2026 WL 1074143 (U.S. Apr. 21, 2026); *Trepal v. State*, 754 So. 2d 702, 705-06 (Fla. 2000). We are not convinced that our precedent is “clearly erroneous,” *State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020), nor has either party asked us to revisit our prior holdings in this regard.
- 11 We note that “inconclusive” is not synonymous with “incomplete.” Duckett has not received the complete results because he has not been given the underlying data. Nevertheless, it is possible that, after conducting the statistical analysis that FDLE suggests is possible in this case, the entity performing the analysis will be unable to offer a definitive conclusion based on a comparison of Duckett's known DNA and the profile generated from the sample.

- 12 The dissent does not expressly engage with our interpretation of section 925.11. It merely asserts, without elaboration, that Duckett has received the testing results. We simply disagree.

Relatedly, the dissent contends that Duckett has requested the underlying data only to impeach DLI's testing process. While Duckett may have sought information regarding DLI's testing *process and protocols* for that purpose, we have denied those requests. But Duckett has also repeatedly asserted (at the status conferences and in his briefing) that a statistical analysis of the underlying data—which neither DLI nor FDLE is able to perform—could exonerate him. Although the dissent suggests that this analysis could never be exonerating, we do not find evidentiary support for that conclusion in the record before us.

- 13 We observe that in various statements in its answer brief, the State (whether intentionally or not) draws an equivalence between the DNA testing “results” and the testing data. See, e.g., Answer Brief of Appellee at 6 (“Duckett presented no testimony or affidavits to demonstrate that statistical analysis of the results could yield any exculpatory evidence.”); *id.* at 13 (“To label the results as anything other than ‘inconclusive’ requires statistical analysis.”); *id.* (noting that “[t]he lower court denied the motion for statistical analysis of the SNP DNA results”).
- 14 Even so, as noted above, the State insisted that an evidentiary hearing was unnecessary.
- 15 As we have noted, Duckett also sought the testing data in these records demands. Given our holding, we decline to address the denial of those demands, finding any dispute regarding them to now be moot.
- 16 I recently explained the historical basis for this court also having jurisdiction over a collateral attack on a judgment imposing the death penalty under this constitutional provision. See *Willacy v. State*, No. SC2026-0519, 431 So.3d 254, 265-67 (Fla. Apr. 15) (Tanenbaum, J., concurring in part and dissenting in part) (observing that this court's affirmance of the judgment imposing the death penalty merges with that judgment, such that a motion filed under Florida Rule of Criminal Procedure 3.851 attacking the underlying absolutely final judgment proceeds under our jurisdiction in a way mirroring the coram nobis proceeding that a rule 3.851 proceeding replaced), *cert. denied*, No. 25-7220, — U.S. —, — S.Ct. —, — L.Ed.2d —, 2026 WL 1074143 (U.S. Apr. 21, 2026).
- 17 The defendant nevertheless gets away with using as a red herring the Florida Department of Law Enforcement (“FDLE”) analyst's characterization about the results and her lack of qualification to offer an opinion about those results’ being inconclusive. The FDLE analyst could not offer an opinion at a hypothetical new trial because she did not conduct the testing, so her comments do not matter. The information being commented on would be inadmissible hearsay. Cf. *Linn v. Fossum*, 946 So. 2d 1032, 1038–39 (Fla. 2006); *Smith v. Arizona*, 602 U.S. 779, 796–98, 144 S.Ct. 1785, 219 L.Ed.2d 420 (2024). Still, the defendant now wants, basically, the “source code” for the testing so that his expert can review and perhaps opine about the reliability of the test results quoted above. The defendant undoubtedly is using the DNA testing process as an impermissible “fishing expedition.” Cf. *Hitchcock v. State*, 866 So. 2d 23, 27 (Fla. 2004) (“Rule 3.853 is not intended to be a fishing expedition.”).

Simply put, though section 925.11 establishes an independent right of action, the action is disposed of once the testing is ordered and the results provided. It does not create a new “mini-trial” over whether the DNA testing results are probative of the defendant's guilt or innocence. Any evidentiary hearing instead would occur in a *pending* rule 3.850 or rule 3.851 proceeding. By contrast, the only purpose of the testing under the statute is to produce results from existing evidence that a defendant contends will definitively *exonerate* him. See § 925.11(1), Fla. Stat. Exonerating results presumably would be clear and unambiguous, and they would easily support a prompt vacatur of the judgment upon proper post-conviction motion or habeas petition. That is not what the defendant here is seeking.

The defendant wants data he can feed to an expert he would hire to testify about the testing. But there are clear limits to what such a “bioinformaticist” could testify to that would be probative of the defendant’s *actual* innocence—given that the proposed expert is not the one who conducted the DNA testing, either. The defendant then is not looking for admissible, clearly exonerating evidence; he is seeking evidence to impeach an expert (the lab analyst who *did* conduct the test) who, at best, could testify only why the results do not conclusively *inculpate* him. Any such impeachment evidence could not give rise to doubt about the legality of the judgment imposing the death penalty, which is what a new rule 3.851 motion would have to be based on at this point.

The majority’s reliance on *Brim v. State*, 695 So. 2d 268, 271 (Fla. 1997), for its approach is misplaced. That decision addressed the application of the now-defunct *Frye* standard to DNA testing. See *Murray v. State*, 692 So. 2d 157, 161 (Fla. 1997) (noting that in *Brim*, “we reaffirmed our adherence to the *Frye* test for the admissibility of DNA evidence, and clarified that each stage of the DNA process, i.e., the methodology for determining DNA profiles, as well as the statistical calculations used to report the test results—both of which are at issue in the instant case—are subject to the *Frye* test”). With this court’s amendment to Florida Rule of Evidence 90.704, “[f]acts or data that are otherwise inadmissible may not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert’s opinion substantially outweighs their prejudicial effect.” *In re Amends. to Fla. Evidence Code*, 278 So. 3d 551, 552 n.4 (Fla. 2019).

- 18 The majority correctly notes that there is no dispute this court has jurisdiction in case numbers 2026-0449 and 2026-0450. The former involves the final order summarily denying the defendant’s last rule 3.851 motion. The latter is the defendant’s habeas petition. Our jurisdiction, however, is not free-form; it is tied to the order to be reviewed or the writ being sought. The jurisdiction we have in those two cases cannot support manufacturing jurisdiction over the order in this case, an order produced in a separate proceeding that could have no direct effect on the merits under consideration in case numbers 2026-0449 and 2026-0450.
- 19 Notably, the defendant still has not attempted to file a new motion under rule 3.851, claiming his actual innocence and relying on the results of the DNA test. Cf. *Everett v. State*, 377 So. 3d 1123, 1126 (Fla. 2024) (taking the defendant to task for alleging that the DNA testing “*could* result in an acquittal” rather than explaining that the testing “*will* exonerate” him); *Hitchcock*, 866 So. 2d at 27–28 (criticizing the defendant for failing to meet his burden to explain “*how*” the testing will exonerate him). The defendant already has received all that the statute guarantees to him: the testing of a sample, and the results of that sample. It did not turn out as he had hoped, obviously—otherwise right now he would be vigorously pursuing a new post-conviction motion, claiming that the results exonerate him.
- 20 As I previously explained, “[a]bsent an attack on the judgment and death sentence previously affirmed, this court’s appellate jurisdiction under section 3(b)(1) is not implicated in any way,” and an active warrant does not “give us extraordinary appellate review powers.” *Willacy*, 431 So.3d at 268 (Tanenbaum, J., concurring in part and dissenting in part). At the same time, contrary to the majority’s characterization, I do not question our *writ* authority, under Article V, section 3(b)(7), to address urgent interlocutory matters, provided there is an independent basis for our appellate jurisdiction—like a pending rule 3.851 proceeding. *Id.* Here, we do not have jurisdiction because that appellate jurisdictional hook is missing.
- 21 The Legislature created a separate right of action to have DNA testing ordered. § 925.11(1), Fla. Stat. (“Petition for Examination”). The defendant moved for a DNA test under the statute and Florida Rule of Criminal Procedure 3.853, and that motion was granted. That grant of relief presumably was a final order that would be appealable as such to the district court having geographical jurisdiction. He did not appeal the order with a claim that he was “adversely affected,” so that matter is final and absolute. At all events, the order for a DNA test itself has no effect on the “judgment imposing the death penalty.”

- 22 The Florida Constitution gives this court authority to define jurisdiction by rule only with respect to a district court of appeal's authority to review specified non-final orders. See Art. V, § 4(b)(1), Fla. Const. (providing that a district court of appeal “may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court”).

2026 WL 2137081

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION HAS NOT BEEN RELEASED
FOR PUBLICATION IN THE PERMANENT
LAW REPORTS. UNTIL RELEASED, IT IS
SUBJECT TO REVISION OR WITHDRAWAL.

Supreme Court of Florida.

James Aren Duckett, Appellant(s)

v.

State of Florida, Appellee(s)

SC2026-1083, SC2026-1084

|

JULY 24, 2026

Lower Tribunal No(s): 351987CF001347AXXXXX

Opinion

***1** James Aren Duckett is a prisoner under sentence of death. In February, Governor Ron DeSantis signed a warrant directing that sentence to be carried out. Due to post-warrant litigation, Duckett is now scheduled to be executed at 12:00 noon on Tuesday, July 28, 2026. At issue here is the circuit court's denial of Duckett's sixth successive postconviction motion and his second post-warrant motion for DNA testing. We affirm the circuit court's rulings.¹ We therefore deny Duckett's motion for a stay of execution.

To recap briefly, almost forty years ago, Duckett was convicted of the sexual battery and first-degree murder of eleven-year-old Teresa McAbee.² Shortly after Duckett's warrant was signed, he filed a motion pursuant to section 925.11, Florida Statutes, and Florida Rule of Criminal Procedure 3.853 seeking DNA testing of a sample taken from the victim's underwear.³ He also filed his fifth successive motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.851. The circuit court granted his DNA request but denied his rule 3.851 motion. We stayed Duckett's execution to allow for DNA testing to be completed. Ultimately, the results of that testing did not exonerate Duckett. Accordingly, we affirmed the denial of Duckett's rule 3.851 motion, denied his petition for a writ of habeas corpus, and lifted our stay of execution. *See Duckett v. State*, No. SC2026-0449, 2026 WL 1970442, at *1 (Fla. July 8, 2026).

Subsequently, Duckett filed another motion for DNA testing, in which he sought testing of several other items.⁴ He also filed his sixth successive motion for postconviction relief. The circuit court summarily denied both motions. Duckett appeals.

We begin with the circuit court's summary denial of Duckett's latest motion for postconviction DNA testing. As an initial matter, this motion is procedurally barred. Duckett was aware of the items he now wants tested when he filed his prior motion for DNA testing on March 5, 2026—more than four months ago. *See Reynolds v. State*, 373 So. 3d 1124, 1126 (Fla. 2023). He has failed to identify any valid reason he could not have requested this testing sooner. *Id.* at 1127 n.6.

Duckett's motion for postconviction DNA testing is also meritless. As the circuit court noted, the record clearly shows that the items Duckett now wants to test contain no identifiable or testable genetic material.⁵ Thus, the motion does not “includ[e] a description of the physical evidence containing DNA to be tested.” § 925.11(2)(a) 1., Fla. Stat. (emphasis added); *see also* Fla. R. Crim. P. 3.853(b)(1) (same).

***2** We next address the summary denial of Duckett's sixth successive postconviction motion. As alluded to above, the circuit court previously granted Duckett's request for DNA testing on a sample taken from the victim's underwear. Duckett acknowledged that the testing would destroy the sample, rendering future testing impossible. The sample was sent to a private laboratory in Deerfield Beach, Florida, to be tested using a process known as Single Nucleotide Polymorphism (SNP), which “allows for more reliable DNA testing of small, deteriorated samples.” *Duckett v. State*, 431 So. 3d 990, 992 (Fla. 2026).⁶ Specifically, the laboratory used a ForenSeq Kintelligence Kit. As expected, the specimen was totally consumed in the testing process.

In his sixth successive postconviction motion, Duckett argued that the State violated his due process rights by declining his request to send the sample to a laboratory in Texas that uses an SNP testing method known as Whole Genome Sequencing (WGS). Relying on *Arizona v. Youngblood*, 488 U.S. 51 (1988), he alleges the State destroyed the sample in bad faith.⁷ We disagree.

Under *Youngblood*,⁸ if potentially exculpatory evidence is “totally consumed” as a result of testing ordered by the State,

due process is violated only if the defendant can “show bad faith by the State in failing to preserve [the] evidence.” *McDonald v. State*, 952 So. 2d 484, 494-95 (Fla. 2006) (citing *King v. State*, 808 So. 2d 1237, 1242-43 (Fla. 2002)). As we have explained, a finding of bad faith requires that the State intentionally destroy evidence it believes would exonerate the defendant. See *Guzman v. State*, 868 So. 2d 498, 509 (Fla. 2003) (citing *Youngblood*, 488 U.S. at 57).

Duckett has failed to show bad faith. First of all, the State agreed to test the sample using a newer DNA technology that only a private laboratory could perform. Moreover, given that the sample was small and deteriorated, the parties knew the sample would be consumed in the process and that an inconclusive result was possible—perhaps probable. The total consumption of the sample without conclusive results was an unfortunate byproduct of the testing that Duckett himself requested.

Furthermore, the State gave reasonable grounds for its objection to the Texas laboratory testing. For one, the State wanted to keep the sample in Florida. Additionally, the State believed WGS would unreasonably delay Duckett's execution and that the laboratory it chose could provide adequate testing. The State's actions under these circumstances do not amount to bad faith. Consequently, Duckett cannot prevail on his *Youngblood* claim.

For the reasons given above, we affirm the summary denial of Duckett's rule 3.853 motion and sixth successive rule 3.851 motion. Having rejected Duckett's claims on appeal, we decline to stay his execution. No motion for rehearing will be considered.

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

LABARGA, J., concurs with an opinion.

TANENBAUM, J., concurs in part and dissents in part with an opinion.

LABARGA, J., concurring.

While I concur with the majority's decision to affirm the summary denial of relief, I strongly disagree with the dissent's characterization of Duckett's postconviction motion as frivolous and, even more so, with the suggestion that Duckett's counsel should be ordered to show cause why sanctions should not be levied against them.

*3 In these most serious of cases, where death warrants have been signed and execution dates are imminent, counsel on both sides have a solemn obligation to the process. They are guided by their professional and ethical responsibilities, with the understanding that even those condemned to death and facing execution are entitled to access to our courts.

TANENBAUM, J., concurring in part and dissenting in part. As the majority notes in the margin, *Youngblood* stems from pre- or in-trial due process concerns, similar to those addressed in *Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Agurs*, 427 U.S. 97 (1976); and *California v. Trombetta*, 467 U.S. 479 (1984). The defendant does not have the same rights to due process regarding post-conviction DNA testing under section 925.11, Florida Statutes, certainly not after all that has transpired in this case. After all, what would be the relief if the defendant *had* demonstrated that the State destroyed samples in bad faith—decades after he was put on death row? Vacate his murder conviction and let him walk? Commute his sentence? Even presuming its application here for the sake of argument is a perilous analytical road to go down.

The defendant's latest, and presumably last, post-conviction motion under Florida Rule of Criminal Procedure 3.851 was both time-barred and frivolous, undoubtedly filed only for the purpose of unreasonably delaying his execution further. We should affirm the summary denial in case number SC2026-1083 on that basis alone but also order his counsel to show cause why there should not be sanctions imposed.

As to the matter under case number SC2026-1084 (an appeal from the denial of yet another motion for DNA testing under Florida Rule of Criminal Procedure 3.853), we simply should dismiss for lack of jurisdiction. See *Duckett v. State*, 431 So. 3d 990, 997–1004 (Fla. 2026) (Tanenbaum, J., dissenting).

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STEPHEN D. AKE

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LAKE CLERK

NICOLE ROCHELLE SMITH

COURTNEY MARIE HAMMER

MARY WELLS

BRITTNEY LACY

All Citations

HON. DANIEL B. MERRITT, JR.

--- So.3d ----, 2026 WL 2137081

CHARMAINE MILLSAPS

Footnotes

- 1 We have jurisdiction. See art. V, § 3(b)(1), Fla. Const.
- 2 The facts of Duckett's case are recounted more fully in our prior opinion. See *Duckett v. State*, No. SC2026-0449, 2026 WL 1970442, at *1-3 (Fla. July 8, 2026).
- 3 The sample was a swab containing a small number of sperm heads.
- 4 These included cuttings from the victim's underwear and jeans, vaginal swabs and smears, fingernail scrapings, and the packaging containing some of these items.
- 5 When these items were examined in 2003, no DNA was found on them because they either were degraded or did not contain any DNA in the first place.
- 6 The Florida Department of Law Enforcement currently does not have the capability to perform SNP testing.
- 7 Duckett also cites *California v. Trombetta*, 467 U.S. 479 (1984), but that case does not apply here because the exculpatory value of the sample was not "apparent." *Id.* at 489.
- 8 *Youngblood* involved the alleged destruction of evidence by the State during testing performed before trial. See 488 U.S. at 54. The U.S. Supreme Court has not addressed this issue in the postconviction process, but for purposes of this opinion we assume its reasoning applies.

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA

CASE NO. 1987 CF 1347
DIVISION: BJW

STATE OF FLORIDA,

v.

JAMES AREN DUCKETT,
Defendant.

ACTIVE DEATH WARRANT
Execution scheduled for
July 28, 2026, at 12:00 noon

**ORDER SUMMARILY DENYING DEFENDANT'S
POSTCONVICTION MOTIONS**

THIS CAUSE came before the Court on Defendant's Successive Motion to Vacate Judgements of Conviction and Sentence with Request for Leave to Amend for Evidentiary Hearing filed under Fla. R. Crim. Pro. 3.851 and Defendant's Motion for Postconviction DNA Testing under Fla. R. Crim Pro. 3.853, both filed July 9, 2026. The Court finds as follows:

The Court determined it has jurisdiction to rule on the pending motions following the Florida Supreme Court's scheduling order on July 15, 2026, and as a result, this Court held a hearing on July 16, 2026, under *Huff v. State*, 622 So. 2d 982 (Fla. 1993) and Fla. R. Crim. Pro. 3.851(5)(b) to hear legal arguments to determine whether an evidentiary hearing was necessary on Defendant's motions. The Court finds that an evidentiary hearing is not

necessary on Defendant's claims for relief. Defendant's Motions can be resolved by a review of the record and the prevailing case law.

Procedural History and Facts

This case's procedural history, as well as the facts of the case, were recounted in the Order on Defendant's previous *Successive Motion to Vacate Judgment of Convictions and Sentence with Request for Leave to Amend and for Evidentiary Hearing*, attached as Exhibit A. Following the issuance and appeal of that order, the Florida Supreme Court stayed the execution to allow for the completion of pending DNA testing. After the DNA results were received, Defendant filed for additional information regarding the underlying test results and procedures and methods used. This Court denied the requests and the Florida Supreme Court reversed this Court as to the data but affirmed as to Defendant's other discovery requests. After the underlying data was provided, Defendant requested an evidentiary hearing on the DNA results, which was denied; the Defendant appealed. On appeal, the denials of Defendant's *Successive Motion for Postconviction Relief* and *Motion for Evidentiary Hearing* were affirmed, and the Florida Supreme Court lifted the Stay of Execution on July 8, 2026. On July 14, 2026, the Governor reset the execution under Fla. Stat. 922.06(2)(a) for July 28, 2026, at 12:00 noon. On July 15, 2026, the Florida Supreme Court issued a scheduling

order requiring all proceedings in this Court be completed by July 17, 2026, at 5:00 p.m.

Motion to Vacate

Defendant's Successive Motion to Vacate Judgements of Conviction and Sentence with Request for Leave to Amend for Evidentiary Hearing raises claims under *California v. Trombetta*, 467 U.S. 479, 485 (1984) and *Arizona v. Youngblood*, 488 U.S. 51 (1988).

In considering a *Youngblood* claim, a court must determine whether the evidence was materially exculpatory or merely potentially useful. If it was materially exculpatory, a due process violation has occurred. If the evidence was merely potentially useful, the defendant must then show that the destruction was the result of bad faith.

Whether evidence is materially exculpatory or merely potentially useful depends on whether it is apparent that the evidence is exculpatory. Thus, "evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant" is not materially exculpatory. *Youngblood* 488 U.S. at 57. As a result, courts have repeatedly held that material consumed in testing is not materially exculpatory, and the defense must demonstrate bad faith. *McDonald v. State*, 952 So. 2d 484, 494-95 (Fla. 2006) ("we have previously

held that if evidence is lost or totally consumed during testing, the burden is on the defendant to show bad faith by the State in failing to preserve evidence"); *see also United States v. Stevens*, 935 F.2d 1380 (3d Cir.1991); *People v. Wartena*, 156 P. 3d 469, 475 (Colo. 2007) ("federal and state courts alike have concluded that the Due Process Clause places no constraints on the good faith consumptive or destructive testing of evidence by the prosecution.")

Here, Defendant's claim of bad faith rests on the assertion that the testing method used "could not garner the necessary results." However, this is contrary to Defendant's position in its previous motions. Even after this Court ordered the testing to be performed by DLI using the Kintelligence testing kit, the Defendant consistently asserted that such testing could or would provide exculpatory evidence. *See Defense Motion for Clarification/Reconsideration of March 16, 2016 Status Report* ("The DNA evidence at question may provide conclusive evidence that Mr. Duckett is innocent.") attached as Exhibit B; *Affidavit of David Mittleman* attached as Exhibit C. ("Testing approaches that target a limited number of SNP markers may generate results"). Nor did Defendant assert that *only* whole genome sequencing could provide exculpatory results, merely that it was more likely to do so. *See Affidavit of David Mittleman* (whole genome sequencing

“reduces the risk of consuming evidentiary material without producing a reliable or interpretable result”). Thus, the choice presented was between two options for which both could have produced exonerating results; the necessity of balancing Defendant’s claimed greater chance of a result against the necessity to expedite proceedings (the expedited proceedings were the effect of the Defendant’s choice to wait until the filing of the warrant to request testing.) Furthermore, there is no constitutional entitlement to a particular type of testing. *Youngblood* 488 U.S. at 59.

Likewise, the Defendant’s assertion that the State “acted in bad faith by willfully ignoring testimony regarding what test was needed to get a result,” is contrary to the record, which shows that the testimony was that “whole genome sequencing is not necessary.” *Transcript of March 12, 2026, Hearing* attached as Exhibit D. While that testimony represented an opinion that Defense’s expert disagreed with, the State does not commit bad faith merely by presenting an opinion that disagreed with the Defendant’s expert.

Moreover, neither *Trombetta* nor *Youngblood* involved consumptive testing. In *Trombetta*, the issue presented was whether law enforcement had violated defendant’s due process rights when it failed to preserve the sample of the defendant’s breath that was used for testing when such preservation “technically feasible.” 467 U.S. at 482. Similarly, in *Youngblood*, the issue

was not that a sample was consumed in testing but rather that after taking samples, law enforcement had not refrigerated nor froze the clothing from which samples were taken to preserve them.

Here, Defendant acknowledged that the sample would likely be consumed by testing and yet requested it anyway. See *Motion for DNA Testing* attached as Exhibit E. This was confirmed in testimony, see *March 12, 2026 Transcript* at 15 (“So either way the sample’s consumed”; “Yes”). Defendant did not claim that an alternative testing method existed that would preserve the sample and does not claim so now. Thus, the issue here is not a failure by the State to preserve evidence when it otherwise could have, which occurred in *Trombetta* and *Youngblood*, but rather that it was not possible to test the sample in any manner without consuming it. Florida courts have found that where consumption of a sample was unavoidable, the sample is not truly “evidence” to begin with. *Houser v. State*, 474 So. 2d 1193 (Fla. 1985), *superseded by statute on other grounds*, (consumptive testing does not violate due process under *Trombetta* because a sample “has no inherent evidential value.”) Instead, the evidence consists of the results of the testing (“The evidence at trial is not the sample, rather, it is the results of tests performed on the sample.”) *Id.* Therefore, even if an object containing DNA is unavoidably consumed in testing, the State does not fail to preserve

evidence, and no constitutional violation occurs where the results of the testing are still available for comparison. *McDonald v. State*, 952 So. 2d 484, 495 (Fla. 2006) (“even if the bloodstain may have been unavoidably consumed in the DNA testing, the DNA materials from the test are not “lost or destroyed” because comparisons can still be made”); *Gordon v. State*, 863 So.2d 1215, 1220–22 (Fla. 2003) (“Florida courts have held that the unavoidable consumption of testing material does not trigger a constitutional violation.”)

Defendant argued at the *Huff* hearing that the due process challenge does not present a claim that a specific test was required, but rather that the proper procedure was not followed in determining the type of testing to be used. However, neither *Youngblood* nor *Trombetta* imposes any specific procedural requirement for such a determination, nor does Fla. R. Crim. Pro. 3.851. Insofar as the Defendant presents factual allegations in support of a contention of bad faith, they are simply that the State took a contrary position to Defendant’s own. This also is not legally sufficient.

Accordingly, the Court finds that Defendant’s Successive Motion to Vacate Judgements of Conviction and Sentence with Request for Leave to Amend for Evidentiary Hearing must be denied.

Motion for Postconviction DNA Testing

Defendant's Motion requests DNA testing of a variety of items that were previously tested in 2003. Defendant asserts that these items contain genetic material that, if tested, would be exculpatory.

This claim is procedurally barred. Defendants may not bring postconviction claims that could or should have been brought during prior proceedings. *Reynolds v. State*, 373 So. 3d 1124, 1126 (Fla. 2023). This includes DNA testing of items that were previously known of but not raised. *Id.* at 1127. Although Defendant argued that the time frame between the motions at issue here and in *Reynolds* were different, it is the nature of the motion as successive and not the time between them that bars the claim.

Additionally, to state a claim under Fla. R. Crim. Pro. 3.853(b), a motion must include "a statement of the facts relied on in support of the motion, including a description of the physical evidence containing DNA to be tested" as well as 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." While Defendant asserts that the items at issue include genetic material, this assertion is refuted by the record. The un rebutted testimony in 2003 was that items (a)-(k) listed in the Defendant's

Motion for Post Conviction DNA Testing lacked any biological material when chemically tested and microscopically examined. See *Report* attached as Exhibit F; *Transcript of October 3, 2023, Hearing* at 23-48 attached as Exhibit G. In other words, it was not that the tests were inconclusive, but rather that the samples lacked material to test. Testimony at the hearing also indicated that items (j)-(l) of the Defendant's Motion were consumed during the testing process. See *Transcript* at 49-52. More importantly, as a result of a hearing held in October 2003, the Defendant's counsel, Mary E. Wells, in a letter to the Circuit Court dated January 14, 2004, acknowledged that slide Q6(3) is "the only piece of evidence that still remains for DNA testing..." See *Correspondence January 14, 2004, attached as Exhibit H*. Thus, Defendant has failed to include a description of physical evidence containing DNA or that the previous results were inconclusive.

The State cites to *State v. King*, 808 So. 2d 1237, 1249 (Fla. 2002), for the proposition that Rule 3.853 does not allow retesting, however, that holding was specific to retesting of the same type of DNA technology used previously (STR testing in *King*), see *Knighen v. State*, 927 So. 2d 239 (Fla. 2d DCA 2006), not retesting with a different type of technology (testing material previously tested with STR using SNP) as is proposed here. Nonetheless, the Motion must be denied for the previously stated reasons.

It is therefore ORDERED AND ADJUGDED that the Defendant's Successive Motion to Vacate Judgements of Conviction and Sentence with Request for Leave to Amend for Evidentiary Hearing and Motion for Postconviction DNA Testing, are DENIED.

DONE AND ORDERED in chambers in Tavares, Florida on this 17 day of July, 2026.


BRIAN WELKE, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

17 I do hereby certify that copies of this Order have been provided this day of July, 2026 by e-mail to:

Hon. Daniel B. Merritt, Jr.
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