No. _____

IN THE

SUPREME COURT of the UNITED STATES

DOMINICK OCCHICONE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY, JULY 28, 2026 AT 6:00 P.M.

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APPENDIX A

Opinion(Fla., July 21, 2026)

Supreme Court of Florida

No. SC2026-1042

DOMINICK A. OCCHICONE,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

July 21, 2026

PER CURIAM.

Dominick A. Occhicone, a prisoner under sentence of death for whom a death warrant has been signed and an execution set for July 28, 2026, appeals the circuit court's order summarily denying his second successive motion for postconviction relief filed under Florida Rule of Criminal Procedure 3.851. Occhicone also moves for a stay of execution. We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const. For the reasons that follow, we affirm the denial of postconviction relief, and we deny the motion for a stay of execution.

I. BACKGROUND

Occhicone was sentenced to death for the 1986 first-degree murder of his ex-girlfriend's mother. On direct appeal, this Court recounted the facts of the case as follows:

> In the early morning hours of June 10, 1986[,] Occhicone awakened his former girlfriend by knocking on the sliding glass door to her bedroom in a house she shared with her children and her parents. The woman refused to talk with him and he left. He returned an hour or so later, armed with a handgun, and cut the telephone lines and roused the household. When the woman's father confronted him outside the house, Occhicone shot him. The woman and her daughter fled the house while Occhicone was breaking into it through a locked door. Once inside[,] Occhicone shot the woman's mother four times.

Occhicone v. State, 570 So. 2d 902, 904 (Fla. 1990).

Later, in a postconviction appeal, we described some of the pertinent proceedings as follows:

> At trial, Occhicone asserted a voluntary intoxication defense[,] claiming that his level of intoxication on the night of the murders, as well as his documented drinking habit, prevented him from having the requisite mental state to premeditate the murders. However, the jury found him guilty and recommended the death penalty for both murders by a seven-to-five vote.
>
> Although the trial judge sentenced Occhicone to life in prison for the murder of his ex-girlfriend's father, he sentenced him to death for the murder of her mother. In support of the death sentence, the trial judge found three aggravating factors: (1) previous conviction of a violent

> felony; (2) murder committed during a burglary; and (3) murder committed in a cold, calculated, and premeditated manner. As statutory mitigation, the trial judge found that the murder was committed while Occhicone was under the influence of extreme mental and emotional disturbance. Finally, as nonstatutory mitigation, the judge found that Occhicone was a good prisoner and had acclimated to his custodial environment.

Occhicone v. State, 768 So. 2d 1037, 1039 (Fla. 2000).

This Court's affirmance of Occhicone's judgment and death sentence, *Occhicone*, 570 So. 2d at 903, became final for postconviction timing purposes in 1991, when the U.S. Supreme Court denied certiorari review. *Occhicone v. Florida*, 500 U.S. 938 (1991); *see* Fla. R. Crim. P. 3.851(d)(1)(B) ("For the purposes of this rule, a judgment is final . . . on the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed.").

In the decades since, Occhicone has unsuccessfully challenged his convictions and sentence in state and federal courts. *See Occhicone v. Singletary*, 618 So. 2d 730, 730-31 (Fla. 1993) (denying state habeas petition); *Occhicone v. State*, 768 So. 2d at 1039 (affirming denial of initial motion for postconviction relief); *Occhicone v. State*, 235 So. 3d 299, 300 (Fla. 2018) (affirming denial of first successive motion for postconviction relief); *Occhicone v.*

Moore, No. 8:01CV2136T27TGW, 2005 WL 1073936, at *30 (M.D. Fla. Mar. 31, 2005) (denying federal habeas petition); *Occhicone v. Crosby*, 455 F.3d 1306, 1307 (11th Cir. 2006) (affirming denial of federal habeas relief); *Occhicone v. McDonough*, 549 U.S. 1122 (2007) (denying certiorari review of denial of federal habeas relief).

After Governor Ron DeSantis signed Occhicone's death warrant on June 26, 2026, Occhicone filed a second successive motion for postconviction relief under rule 3.851 raising three claims: (1) that recently reported shortages of etomidate, when combined with the Florida Department of Corrections' alleged failure to follow its published lethal injection procedures, violates Occhicone's rights under the Fourteenth Amendment and corresponding provisions of the Florida Constitution; (2) that Occhicone's execution violates the Eighth Amendment due to his status as an elderly person; and (3) that executing Occhicone given the number and pace of executions in Florida over the past two years would be unconstitutional under the Eighth Amendment and corresponding provisions of the Florida Constitution and would result in a manifest injustice given the unique circumstances of his case. The circuit court summarily denied all three claims, as well

as Occhicone's post-warrant request for public records and his motion for a stay of execution. This appeal followed.

II. ANALYSIS

A. Post-Warrant Request for Public Records

Occhicone first argues that the circuit court erred in denying his post-warrant request for public records from the Florida Department of Corrections (FDC) under rule 3.852(i).[1] Occhicone sought records concerning FDC's procurement, storage, handling, monitoring, preparation, use, disposal, and testing of etomidate; compliance with execution procedures, including consciousness checks and post-execution debriefings; and related research, expert consultations, solicitations, and communications with federal and state agencies. Occhicone asserted that the records would demonstrate that FDC has repeatedly failed to carry out executions in compliance with its own procedures and lethal injection protocol, which he alleged violates his rights to due process and equal

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1. Although Occhicone filed his request under both subdivisions 3.852(h) and (i), and the circuit court denied the request under both subdivisions, on appeal, Occhicone only argues that the circuit court erred in denying the request under subdivision 3.852(i).

protection under the Fourteenth Amendment and corresponding provisions of the Florida Constitution. His allegation that FDC has failed to follow its own procedures and protocol relating to lethal injection stems from a heavily redacted reproduction of putative FDC lethal injection drug inventory logs that surfaced in a federal lawsuit filed by Frank Walls, who was executed in December 2025.

In his request, Occhicone also claimed that there was a current shortage of etomidate, which indicated that he was at risk of being treated differently under the law and FDC protocols from other similarly situated capital defendants under warrant, thereby violating his equal protection rights.[2] He explained that he had

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2. Etomidate is the first drug administered under Florida's current lethal injection protocol. As to the reported etomidate shortage referenced in his public records request, Occhicone does not allege that FDC itself lacks a supply of etomidate. Rather, he argues that because a nationwide shortage exists, it is unconscionable for FDC to proceed with his execution given the dose of etomidate administered during an execution and the recent pace of executions in Florida. Occhicone did not argue below and does not argue on appeal that any authority recognizes a generally reported shortage of etomidate in clinical settings as a basis for relief under rule 3.851. He also contends that without access to the requested records, he cannot determine whether FDC intends to deviate from its protocol during his execution by using a drug other than etomidate, administering a dosage inconsistent with the protocol, or using expired etomidate. In essence, he speculates that the reported shortage will cause FDC to depart from its protocol in

concerns about the possibility of expired or soon to be expired etomidate being used in his execution and sought the requested records "just to make sure he's being treated fairly in relation to everybody else."

FDC objected to Occhicone's public records request, arguing that the requested records were confidential and statutorily exempt from disclosure; did not relate to a colorable claim for postconviction relief; and were overly broad and unduly burdensome. The circuit court denied the request, agreeing with FDC on each ground. We review the denial of public records requests for an abuse of discretion, *Muhammad v. State*, 132 So. 3d 176, 200 (Fla. 2013), and find no such abuse here.

Occhicone argues that the circuit court abused its discretion in denying his request because the records are necessary to fully

---

the future. But speculative allegations of misconduct—particularly speculative allegations that FDC may engage in *future* misconduct—do not establish a colorable claim for postconviction relief. *See, e.g.*, *Heath v. State*, 426 So. 3d 1253, 1262-63 (Fla.), *cert. denied*, No. 25-6746, 2026 WL 363902 (U.S. Feb. 10, 2026); *Trotter v. State*, 428 So. 3d 68, 72-73 (Fla.), *cert. denied*, 146 S. Ct. 755 (2026); *King v. State*, No. SC2026-0336, 2026 WL 672101, at *5-6 (Fla. Mar. 10), *cert. denied*, 146 S. Ct. 1802 (2026); *Spencer v. State*, No. SC2026-0880, 2026 WL 1757938, at *5-6 (Fla. June 18), *cert. denied*, No. 25-7648, 2026 WL 1827690 (U.S. June 25, 2026).

investigate the drugs to be used in his execution, and the circuit court's decision to prevent that investigation violates his rights to due process and equal protection under the Fourteenth Amendment by leaving him unable to develop claims based on FDC's alleged use of expired etomidate and the reported ongoing shortage of etomidate. He further contends that the denial itself violates procedural due process by constraining his ability to challenge the constitutionality of his execution. Moreover, he argues it violates his right of access to the courts under article I, section 21 of the Florida Constitution by preventing him from obtaining evidence necessary to establish his constitutional claims.

Because Occhicone failed to show that the records requested related to a colorable claim for postconviction relief, the circuit court was right to deny the request.

Occhicone argues that the plain language of the rule only requires that the records are "relevant to the subject matter" of a proceeding or "reasonably calculated to lead to the discovery of admissible evidence," not the higher burden the circuit court imposed by requiring that they relate to a colorable claim. We recently rejected both contentions in *Willacy v. State*, 431 So. 3d

254, 262 (Fla.), *cert. denied*, No. 25-7220, 2026 WL 1074143 (U.S. Apr. 21, 2026).

In *Willacy*, we explained that "we have long recognized the requirement of a nexus between the requested records and a colorable claim for postconviction relief." *Id.* (citing *Sims v. State*, 753 So. 2d 66, 70 (Fla. 2000); *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019); *Asay v. State*, 224 So. 3d 695, 700 (Fla. 2017)). That is "because the rule 'is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief.' " *Id.* (quoting *Sims*, 753 So. 2d at 70).

The "colorable claim" requirement is not a judicial gloss on rule 3.852. It follows from the rule's own command that requested records be "relevant to a postconviction proceeding or reasonably calculated to lead to admissible evidence," because "the relevancy of the requested records . . . is directly measured by their connection to a colorable claim for relief." *Id.* This limitation ensures that records requests reflect "a focused investigation into some legitimate area of inquiry" rather than an eleventh-hour delay tactic. *See id.* ("Rule 3.852 is not intended for use by defendants as . . . 'nothing more than an eleventh-hour attempt to delay the

execution rather than a focused investigation into some legitimate area of inquiry.' " (omission in original) (quoting *Sims*, 753 So. 2d at 70)).

Occhicone acknowledges that he sought records to conduct "a full investigation into the drugs" that are to be used for his execution, and he argues that the circuit court's decision left him unable to form claims based on FDC's alleged use of expired etomidate and the reported ongoing shortage of etomidate. But seeking public records to conduct a "full investigation" is precisely what the colorable-claim requirement guards against. Occhicone sought to discover whether a claim might exist, rather than seeking records to support an existing claim. That is a misuse of the rule. *Id.* at 263; *Heath v. State*, 426 So. 3d 1253, 1265 (Fla.), *cert. denied*, No. 25-6746, 2026 WL 363902 (U.S. Feb. 10, 2026).

Occhicone's remaining constitutional arguments are likewise without merit. He contends that denying his public records request violated his rights to due process and equal protection under the Fourteenth Amendment, as well as his right of access to the courts under article I, section 21 of the Florida Constitution. Those arguments all depend on the flawed premise that rule 3.852 entitled

him to the requested records. And, as we explained in *Hitchcock v. State*, 431 So. 3d 514, 523 (Fla.), *cert. denied*, No. 25-7255, 2026 WL 1170862 (U.S. Apr. 30, 2026), "no constitutional right exists to discover grievances or to litigate effectively once in court." The circuit court's denial of Occhicone's records request did not violate his constitutional rights. *See King v. State*, No. SC2026-0336, 2026 WL 672101, at *6 (Fla. Mar. 10) (rejecting a claim that the denial of a post-warrant public records demand violated due process and explaining that the Court has "previously rejected efforts to morph a challenge to the denial of a public records demand into a constitutional challenge"), *cert. denied*, 146 S. Ct. 1802 (2026); *Randolph v. State*, 422 So. 3d 166, 172 (Fla.) (collecting cases rejecting constitutional challenges premised on the denial of postconviction public records requests), *cert. denied*, 146 S. Ct. 819 (2025).

B. Claim That Occhicone's Execution Violates His Right to Equal Protection

To the extent Occhicone also challenges the summary denial of the first claim in his successive motion independent of the denial of his public records request, we affirm. The gist of Occhicone's claim

appears to be that, given the alleged nationwide shortage of etomidate and FDC's alleged past deviations from its own execution protocols, FDC will deviate from the protocols in Occhicone's case and thereby violate his right to equal protection. There are several reasons why the circuit court was right to deny this claim.

First, Occhicone's claim that he is entitled to relief based on the possibility that FDC will deviate from its lethal injection protocol is speculative and foreclosed by this Court's recent decisions addressing materially similar claims. *See, e.g.*, *Heath*, 426 So. 3d at 1261-63; *Trotter v. State*, 428 So. 3d 68, 72-76 (Fla.), *cert. denied*, 146 S. Ct. 755 (2026); *King*, 2026 WL 672101, at *4-6; *Spencer v. State*, No. SC2026-0880, 2026 WL 1757938, at *4-6 (Fla. June 18), *cert. denied*, No. 25-7648, 2026 WL 1827690 (U.S. June 25, 2026).

Second, Occhicone's equal protection claim is not based on any claimed membership in a suspect class, and he cannot prevail under a "class of one" theory. Such claims are available only "where the plaintiff alleges that [he] has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). This test reflects the

constitution's protection against "intentional and arbitrary discrimination." *Id.* (quoting *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 445 (1923)). Occhicone does not allege that he will be the victim of intentional discrimination.

Finally, there is Occhicone's argument that "his equal protection rights will be violated by the use of extremely expired etomidate during his execution." Aside from being speculative, this allegation neither identifies any disparate treatment nor alleges that a deviation from the protocol would subject him to a "substantial and imminent" risk of "severe pain" in violation of the Eighth Amendment. *Glossip v. Gross*, 576 U.S. 863, 878 (2015).

We find no error in the circuit court's denial of Occhicone's equal protection claim.

C. Claim That Occhicone's Execution Violates the Eighth Amendment Due to His Status as an Elderly Person

Occhicone next argues that the circuit court erred in denying his claim that his execution would constitute cruel and unusual punishment under the Eighth Amendment and corresponding provisions of the Florida Constitution because of his status as an elderly person. Occhicone insists that he is not seeking a

categorical bar based on old age. Instead, he argues that his execution would constitute cruel and unusual punishment because of the "totality of the circumstances." Occhicone points to his history of substance abuse; sleep deprivation on death row; poor hearing and vision; cardiac issues; kidney disease; an enlarged prostate; and the general physical deterioration associated with advanced age. We find no error in the circuit court's denial of this claim, which is untimely and in any event lacks merit.

1. The Claim is Untimely

Occhicone has not established that this claim is timely. Rule 3.851 limits the filing of a motion for postconviction relief to within one year of the date the defendant's conviction and sentence became final, unless the motion alleges one of the following exceptions set forth in subdivision (d)(2):

> (A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or
>
> (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or
>
> (C) postconviction counsel, through neglect, failed to file the motion.

And any claim based on facts that were previously unknown must still be brought within one year of the date that the factual basis for the claim became discoverable. *Heath*, 426 So. 3d at 1267.

Occhicone's judgment and sentence became final thirty-five years ago, and he has not alleged that any of these exceptions to the one-year time limit apply to this claim. Nor did he allege that any of the circumstances underlying his claim that he is "so elderly and vulnerable" that his execution would violate the Eighth Amendment arose or became known to him only within the last year. *See Spencer*, 2026 WL 1757938, at *6 (observing that a seventy-four-year-old defendant under an active death warrant identified no meaningful circumstances arising within the year preceding a successive postconviction claim and that the mere progression from one year in age to the next does not create a new factual predicate every year under rule 3.851). Thus, Occhicone's claim that he is too old to be executed based on his individual circumstances is untimely.

2. The Claim Lacks Merit

Even if this claim were timely, it would fail on the merits. We are unpersuaded by Occhicone's attempt to avoid our recent

decisions in *Smithers v. State*, 420 So. 3d 460 (Fla.), *cert. denied*, 146 S. Ct. 323 (2025), *Trotter*, 428 So. 3d 68, and *Spencer*, 2026 WL 1757938. In those cases, we rejected claims seeking a categorical exemption from execution based on the defendant's advanced age. *Smithers*, 420 So. 3d at 465-66; *Trotter*, 428 So. 3d at 73-74; *Spencer*, 2026 WL 1757938, at *6-7.

Whether Occhicone seeks a categorical or as-applied exemption based on his advanced age is a distinction without a difference. Either way, he asks this Court to recognize an age-based exemption that the U.S. Supreme Court has never recognized. The conformity clause of article I, section 17 of the Florida Constitution precludes that. It provides that "[t]he prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution." This means that the Supreme Court's interpretation of the Eighth Amendment sets both the floor and the ceiling for protection from cruel and unusual punishment in

Florida. *Barwick v. State*, 361 So. 3d 785, 794 (Fla. 2023). Occhicone has identified no authority that would allow our Court to vacate his death sentence based on the combination of his age and the litany of infirmities from which he allegedly suffers. That plea sounds in clemency, which of course is the province of the executive branch.

Finally, we note Occhicone's argument that the passage of forty years has drained his execution of any deterrent value. In our view, this is merely a variation of the assertion that a prolonged stay on death row renders an execution unconstitutional. That is another claim this Court has already rejected. *See, e.g.*, *Dillbeck v. State*, 357 So. 3d 94, 103 (Fla. 2023) (rejecting as "facially invalid" the claim that executing a defendant after more than thirty years on death row violates the Eighth Amendment).

D. Claim Based on the Number and Pace of Executions in Florida

In his final issue on appeal, Occhicone argues that the circuit court erred in summarily denying his claim that his execution would violate the Eighth Amendment and result in a manifest injustice due to the number and pace of executions in Florida over

the past two years and the unique circumstances of his case. Occhicone advances three distinct theories in support of this claim: (1) that the number and pace of executions in Florida over the past two years have inflicted psychological and emotional harm on the correctional staff at Florida State Prison, such that carrying out his execution would be cruel and unusual; (2) that his advanced age, Catholic faith, Italian heritage, and the opposition of religious leaders and members of the community to the death penalty in his case render his execution a manifest injustice; and (3) that his death sentence is unconstitutional and manifestly unjust because it was imposed based on a seven-to-five jury recommendation that would be insufficient under the current version of section 921.141, Florida Statutes. Occhicone is not entitled to relief under any of these theories.

1. The Rate and Pace of Executions Do Not Violate Occhicone's Eighth Amendment Rights or Result in a Manifest Injustice

Purporting to assert a claim on his own behalf and on behalf of prison staff, Occhicone contends that the rate and pace of executions in 2025 and 2026 have traumatized and are "wrecking" the mental health of the staff at Florida State Prison. He claims

that it is cruel and emotionally damaging to make him watch the prison staff, with whom he has developed close relationships, carry the emotional burden of an execution. Occhicone seeks relief in the form of a six-month moratorium on executions to allow experts to study the effect of the recent executions on prison staff. Such relief is unavailable under rule 3.851, which is a vehicle for seeking vacatur of a conviction or sentence of death.

To the extent Occhicone raises an Eighth Amendment claim, it fails on the merits. Occhicone has identified no authority recognizing an Eighth Amendment injury premised on a prisoner's exposure to the suffering of others. Nor does he identify any legal support for his assertion that, due to his own Catholic faith and certain community members' opposition to the death penalty in his case, executing him would constitute a manifest injustice.

2. Occhicone's Execution Will Not Violate the Eighth Amendment or Create a Manifest Injustice Despite the Seven-to-Five Death Recommendation

Under current Florida law, the imposition of a death sentence requires the recommendation of at least eight penalty-phase jurors. § 921.141(2)(c), Fla. Stat. (2026). Occhicone argues that executing him based on the seven-to-five death recommendation in his case

would therefore violate the Eighth Amendment and constitute a manifest injustice.[3] The circuit court was right to deny this claim.

The claim is untimely, because the current version of Florida's death penalty statute has been in effect since 2023, several years before Occhicone filed the instant motion under rule 3.851. Moreover, changes in our state's death penalty law and jurisprudence mean that death row inmates will not all have been sentenced under identical procedures. That variation does not render Occhicone's death sentence a manifest injustice.

III. CONCLUSION

For the reasons stated above, we affirm the circuit court's order summarily denying Occhicone's second successive motion for postconviction relief, and we deny his motion for a stay of execution.

No motion for rehearing will be entertained by this Court. The

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3. Occhicone maintains that this claim is distinct from one brought under *Hurst v. Florida*, 577 U.S. 92 (2016), or *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). To the extent that this claim could be construed as a *Hurst* claim, Occhicone previously sought relief under *Hurst* in his first successive motion for postconviction relief, and we rejected that claim on appeal. *Occhicone*, 235 So. 3d at 300.

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.

An Appeal from the Circuit Court in and for Pasco County,
Pat Siracusa, Jr., Judge – Case No. 511986CF001355CFAXWS

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No. _____

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

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THIS IS A CAPITAL CASE WITH AN EXECUTION SCHEDULED FOR TUESDAY JULY 28, 2026 AT 6:00 P.M.

APPENDIX B

Initial Brief (July 13, 2026)

Filing # 252318408 E-Filed 07/13/2026 01:37:33 PM

IN THE SUPREME COURT OF FLORIDA
CASE NO: SC2026-1042
EXECUTION SCHEDULED FOR JULY 28, 2026 at 6:00 PM

DOMINICK OCCHICONE,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PASCO COUNTY, FLORIDA
Lower Tribunal No. 1986-CF-1355

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REQUEST FOR ORAL ARGUMENT

Undersigned counsels for the Appellant respectfully requests the opportunity to present oral argument pursuant to Fla. R. App. P. 9.320. This is a capital case, which presents novel issues of constitutional significance and the resolution of the issues presented will determine whether Dominick Occhicone ("Occhicone") will live or die, and a complete understanding of the complex factual, legal and procedural history and the arguments presented are critical to the proper disposition of this appeal.

JURISDICTIONAL STATEMENT

This is a timely appeal from the trial court's final order denying a successive motion for postconviction relief from a sentence of death. This Court has plenary jurisdiction over death penalty cases. Fla. Const. art. V, § 3(b)(1); *Orange County v. Williams*, 702 So.2d 1245 (Fla. 1997).

PRELIMINARY STATEMENT ABOUT THE RECORD

The postconviction record on appeal for the current successive 3.851 motion consists of one volume and is referenced to as "PCROA" followed by the page number. The Appellant will be referred to as "Occhicone" or "Appellant," interchangeably.

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JUDGEMENT AND SENTENCE UNDER APPEAL

See App. A - Judgment and Sentence. See App. B – State's Statement of Case History.

WARRANT PROCEEDINGS

Occhicone timely filed a demand for additional public records pursuant Rule 3.852(i) to the Florida Department of Corrections ("FDOC"). PCROA 51-61. FDOC filed an objection. PCROA 82-99. The lower court conducted a public records hearing on July 2, 2026, at 2:00 p.m., PCROA 208-231 and shortly afterward issued an order denying Occhicone's demand. PCROA 111-121. Occhicone filed his Successive Motion to Vacate Judgment and Sentence, PCROA 123-149, raising three claims and simultaneously filed a Motion for Stay of Execution on July 6, 2026. PCROA 202-207. The State filed its responses to Occhicone's motions, PCROA 232-263, on July 8, 2026. The State asserted the claims raised should be summarily denied as untimely, procedurally barred, and/or meritless.

The circuit court conducted a case management conference ("CMC") on July 8, 2026, and heard argument on Occhicone's Successive Motion to Vacate Judgment and Sentence and his Motion for a Stay of Execution. PCROA 279-310. At the conclusion of the

hearing the circuit court indicated it was denying an evidentiary hearing and summarily denying all claims raised by Occhicone. The circuit court entered its Final Order Denying Defendant's Motion to Vacate Judgment of Conviction and Sentence of Death after Death Warrant Signed and Denying Defendant's Motion for Stay: Directions to Clerk on July 10, 2026. PCROA 311-330. Occhicone timely filed a Notice of Appeal on July 10, 2026. PCROA 331-333.

STANDARD OF REVIEW

This is an appeal from a Successive Motion under Fla. R. Crim. P. 3.851. The Court reviews the summary denial of a successive Rule 3.851 motion *de novo*. *See Davis v. State*, 417 So. 3d 242, 247 (Fla. 2025). A summary denial will be upheld only "if the motion is legally insufficient or procedurally barred, or if its allegations are conclusively refuted by the record." *Sparre v. State*, 391 So. 3d 404, 405 (Fla. 2024). If a court determines a claim is conclusively refuted by the record, it must attach the portion(s) of the record, or at least reference those parts of the record, which justify summary disposition. *See* Fla. R. Crim. P. 3.851(f)(5)(F).

Because the circuit court denied postconviction relief without an evidentiary hearing, this Court must accept the factual allegations

presented in Occhicone's motion and in this appeal as true to the extent they are not conclusively refuted by the record. *Ventura v. State*, 2 So. 3d 194, 197-98 (Fla. 2009). Further, this Court "review[s] the trial court's application of the law to the facts *de novo*." *Green v. State*, 975 So. 2d 1090, 1100 (Fla. 2008). A postconviction court's decision whether to grant an evidentiary hearing is likewise subject to de novo review. *Rose v. State*, 985 So. 2d 500, 505 (Fla. 2008).

The evidence upon which Occhicone is relying to raise the arguments in these proceedings were unknown to the trial court, counsel, or Appellant at the time of his trial and the facts could not have been discovered through due diligence. *See* Fla. R. Crim. P. 3.851(d)(2)(A); *Robinson v. State*, 707 So. 2d 688, 691 n.4 (Fla. 1998): *Jones v. State*, 591 So. 2d 911, 914-15 (Fla. 1991); *Hallman v. State*, 371 So. 2d 482, 485 (Fla. 1979). Secondly, the newly discovered evidence would probably yield a less severe sentence. *Long v. State*, 271 So. 3d 938, 942 (Fla. 2019); *Walton v. State*, 246 So. 3d 246, 249 (Fla. 2018) (quoting *Swafford v. State,* 125 So. 3d 760, 767 (Fla. 2013). The evidence upon which Appellant relies is based on information obtained within the past calendar year.

SUMMARY OF THE ARGUMENT

The circuit court erred when it summarily denied Occhicone's Rule 3.851 motion. First, the circuit court abused its discretion and erred in denying Occhicone's claim the recently revealed shortages of etomidate, combined with FDOC's failure to follow their published protocols, creates a violation of Occhicone's Fourteenth Amendment rights under the United States Constitution and the corresponding provisions of the Florida Constitution. Additionally, the circuit court erred in denying Occhicone's extremely narrow public records demands pursuant to Florida Rule of Criminal Procedure 3.852, thereby creating a manifest injustice should the execution of Occhicone proceed.

The circuit further erred by denying Occhicone's claim his execution would violate his Eighth Amendment rights, based on the evolving standards of decency that mark a maturing society, due to being almost 81 years of age; the oldest in modern times. Occhicone has a right to individualized sentencing and is not arguing for the creation of a new class. Executing the elderly and infirmed Occhicone serves no retributive or deterrent value and would therefore be a manifest injustice which shocks the conscience and is beneath the

dignity of this State.

Finally, the lower court erred in denying Appellant's claim that his execution is a manifest injustice, due to the rate and pace of executions in Florida negatively affecting the psychological and emotional health of correction staff. Occhicone prays for a six-month pause. Occhicone is a devout Catholic and executing him shocks the conscience. Appellant's seven to five jury never would have recommended death, had they known he would be executed 40 years later, under a standard which is no longer legal.

ARGUMENT ONE

THE TRIAL COURT ABUSED ITS DISCRETION[1] AND VIOLATED OCCHICONE'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS IN VIOLATION OF THE FOURTEENTH AMENMENT TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION WHEN IT DENIED HIS DEMAND FOR PUBLIC RECORDS PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.852 AND HIS SUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE

Occhicone raised violations of his equal protection and due process rights in violation of the Fourteenth Amendment to the United States Constitution and corresponding provisions of the

[1] *Hannon v. State*, 228 So. 3d 505, 511 (Fla. 2017).

Florida Constitution in his Successive Motion to Vacate Judgment and Sentence filed on July 6, 2026. PCROA 123-149. The State, and to some extent the circuit court, attempts to reframe this claim as a method of execution claim required to be pled under the Eighth Amendment which is an incorrect reading of Occhicone's claims. So far in 2026, the State of Florida has executed 10 men by lethal injection, with Dennis Sochor scheduled to be executed on July 14 – two weeks before Occhicone, and after carrying out 19 executions in 2025.[2] All but one of these executions has been conducted using the Execution by Lethal Injection Procedures[3] dated February 18, 2025 created by FDOC without oversight by any other agency. Although other defendants have previously raised claims based on records filed in previous death warrant litigation showing clear evidence FDOC has engaged in the reckless maladministration of these protocols, Occhicone raises a new and critical distinction for himself and society as a whole. The distinction is based on the widely reported shortage

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[2] Executions & Deaths on Florida's Death Row https://fladeathpenalty.substack.com/p/executions (last accessed July 2, 2026)

[3] Hereinafter referred to as the procedure(s) or protocol(s) interchangeably. App. C

of etomidate, the first drug required to be used pursuant to the FDOC protocols. This distinction means his claim was not ripe until Governor DeSantis signed his execution warrant on June 26, 2026, because until Occhicone's execution using these protocols was scheduled there was no way to know the etomidate shortage would still be a concern.

The circuit court's decision to prohibit Occhicone from a full investigation into the drugs to be used for *his* lethal injection further violates the Fourteenth Amendment, as all prisoners being executed by the State of Florida are entitled to be treated the same, as well as guaranteed FDOC is following its self-imposed protocols, rather than being differentiated between in arbitrary and capricious manners by being given different drugs, whether those differences are the drugs injected, the amounts of the drugs injected, or expired drugs being injected. This prohibition results in a manifest injustice which "shocks the conscience," and demands correction.[4]

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[4]LSD Law Legal Dictionary (March 2026) *What is manifest injustice? simple definition & meaning · LSD Law*. Available at: https://definitions.lsd.law/manifest-injustice (Last Accessed July 2, 2026)

A. Etomidate Shortage

Etomidate is a short-acting intravenous anesthetic agent used to induce general anesthesia and for sedation in critically ill patients. It has particular value in emergency medicine and intensive care units due to its hemodynamic stability and is specifically used for patients at risk of hypotension, it is preferred for use in rapid sequence intubation procedures,[5] and is a valuable tool for anesthesiologists and critical care physicians.[6] As of April 7, 2026, less than 13 weeks before Governor DeSantis signed the execution warrant for Occhicone, the American Society of Health-System Pharmacists reported an ongoing shortage of etomidate.[7] Pharmaceutical Executive also reported this shortage in its April 2026 issue,[8] The results of pharmaceutical shortages have wide-

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[5]https://synapse.patsnap.com/article/what-is-etomidate-used-for (last accessed July 4, 2026)

[6]https://www.longdom.org/open-access/etomidate-mechanism-of-action-clinical-uses-and-side-effects-101923.html (last accessed July 3, 2026)

[7]https://www.ashp.org/drug-shortages/current-shortages/drug-shortage-detail.aspx?id=873&loginreturnUrl=SSOCheckOnly (last accessed July 3, 2026)

[8] *Nicholas Jacobus, Top Drugs at Risk of Supply Shortages: Report; Supply Chain Chokepoints Are Converging to Expose Deep Structural Vulnerabilities in the U.S. Drug Supply, With New Data Showing That*

reaching impacts across society, not just for Occhicone. This shortage of a critical and beneficial drug creates ethical issues based on overall human rights forcing physicians to allocate resources to the individuals who will benefit most of the use of the available drugs.[9] "Doctors and pharmaceutical experts have raised growing concerns about the shortages in recent months. The American Medical Association has reiterated its concern that drug shortages are an "urgent public health crisis" and a threat to national security."[10] As recently as July 1, 2026, the Utah Bureau of Emergency Medical Services also reported on the shortage of this critical medication.[11]

The standard therapeutic dose for etomidate in adult patients is a range of 0.2 to 0.6 milligrams per kilogram of body weight and should be calculated and administered by trained professionals who

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Even Medicines Not Currently in Shortage May Be One Disruption Away From Crisis., Pharmaceutical Executive (2026)

[9]http://Drug Shortage and Ethical Issues: Integrating Multidisciplinary Perspectives with a Shared Ethical Framework – PMC (last accessed July 3, 2026)

[10]http://'An urgent public health crisis': Why so many people are struggling to get medicine BBC.com (last accessed July 3, 2026)

[11]*Utah EMS Medication Shortage Information,* Bureau of Emergency Medical Services (July 1, 2026), https://ems.utah.gov/utah-ems-education-shortage-information/

can properly evaluate adjustments based on specific patient considerations, such as the elderly or individuals with certain medical conditions.[12] The protocols require the administration of a 200mg dose of etomidate without regard to the weight of the individual involved, which has been referred to as a "massive dose" by this Court in *Long v. State*, 271 So.3d 938, 944 (Fla. 2019). Considering the ongoing shortage, it is unconscionable for FDOC to proceed considering the quantity of the etomidate used for executions and the pace of death warrants in Florida.

B. Due Process

Occhicone has a due process right as established by the Fourteenth Amendment to the United States Constitution and the corresponding provision of Florida's Constitution. Florida's interest in the timely enforcement of judgments handed down by its courts must be weighed against Occhicone's continued interest in his life. *See Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) ("[I]t is incorrect . . . to say that a prisoner has been deprived of all

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[12]Science Insights Team, *What Is the Standard Etomidate Dose for Intubation?*, ScienceInsights (Nov. 26, 2025), https://scienceinsights.org/what-is-the-standard-etomidate-dose-for-intubation/

interest in his life before his execution.") (O'Connor, J., plurality opinion). "Due process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided." *Barwick v. State*, 361 So. 3d 785, 790 (Fla. 2023) (quoting *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016)). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)(quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

Evidence has been introduced as part of the federal litigation related to the execution of Frank Walls which raises serious and concerning questions regarding FDOC's compliance with its self-imposed procedures. *Walls v. Dixon,* No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025). Based on a plain reading of the heavily redacted FDOC logs provided in the *Walls* case, FDOC has routinely maladministered the critical phases of the execution process, specifically related to the maintenance and use of etomidate.[13]

In the months since the records were introduced in the *Walls* case, FDOC has continued to hide behind claims of confidentiality

[13]See App. D, FDOC Logs

and a rebuttable presumption of correctness to refuse to provide Occhicone, and every other petitioner, any additional information showing compliance with their procedures. The opportunity to be heard is a fundamental requirement of due process. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (internal quotation omitted). This is an opportunity which must be granted at a meaningful time and in a meaningful manner. *Armstrong*, 380 U.S. at 552. At a minimum, due process requires the deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case. *Id.* at 550. It has long been recognized "execution is the most irremediable and unfathomable of penalties; that death is different." *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (citing *Woodson v. North Carolina,* 428 U.S. 280, 305 (1976)). This distinction is nowhere more critical than on the verge of executing an almost 81-year-old man using etomidate, when there are known shortages of this drug combined with the evidence of ongoing maladministration by FDOC of their protocols involving the exact same drug. During the hearing on the demand for these records, PCROA 223, as well as in the filed demand, PCROA 58, Occhicone offered to work with FDOC to further narrow the items

demanded, specifically to include only the vials of etomidate set aside for his execution. However, FDOC continues to object, thereby further withholding critical information about the validity of the etomidate to be used to execute Occhicone. FDOC continues to argue this demand is vague, overbroad, or confidential, however those arguments are disingenuous, considering this concession to an extremely limited request for information. Meriam-Websters Dictionary defines overbroad as "too widely applicable or applied" and defines broad as "wide in range or amount." The records demanded by Occhicone were limited to only those involving etomidate, and as stated above Occhicone offered to further limit them to only those involved in *his* execution. Additionally, these records could easily be provided in a way so as to not disclose any of the limited information deemed protected by Section 945.10(1)(j)1, Florida Statutes; by redaction of the names of those involved in the execution as well as the manufacturer's information, thereby permitting Occhicone to fully investigate and litigate his due process rights.

When other states have experienced similar documented errors in their administration of lethal injection protocols with a substantial difference – they paused further lethal injection executions until the

errors were investigated and resolved.[14] But not Florida, which continues to recklessly administer its protocol despite documented errors including: preparing lower dosages of drugs than required, administering expired drugs, and preparing unauthorized drugs altogether.

C. Equal Protection

As previously stated, Occhicone has a liberty interest in his life. *Ohio Adult Parole Auth. v. Woodard*, 523 U.S at 289. Distinctions in state criminal laws which impinge upon fundamental rights must be strictly scrutinized. *See Eisenstadt v. Baird*, 405 U.S. 438, 447 (1972). Occhicone does not need to be a member of a "protected class" to raise this issue, although arguably based on the added protections provided to the elderly under Florida law he could be considered part

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[14]In 2022 Tennessee Governor Bill Lee and in 2023 Arizona Governor Katheen Hobbs each suspended executions pending independent review after concerns were raised about compliance with lethal injection protocols. Governor Bill Lee, Statement on Oscar Smith Temporary Reprieve, Governor of Tennessee (April 21, 2022), Statement on Oscar Smith Temporary Reprieve; Arizona Exec. Order No. 5 (January 30, 2023). In Missouri and California courts stepped in either suspending executions or encouraging the governor to take action over similar concerns. *Taylor v. Crawford*, No. 05-4173-CV-C-FJG, 2006 WL 1779035, at *4 (W.D. Mo. June 26, 2006); *Morales v. Tilton*, 465 F. Supp. 2d 972, 973 (N.D. Cal. 2006)

of the protected class of the elderly. Regarding the status of a class of one, the United States Supreme Court has recognized the standard for litigation. *See City of Cleburne, Tex. v. Cleburne Living Ctr.,* 473 U.S. 432, 439 (1985) and *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

Regarding the status of a class of one, it has been held:

> The Equal Protection Clause of the Fourteenth Amendment commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that all persons similarly situated should be treated alike. *Plyler v. Doe,* 457 U.S. 202, 216, 102 S. Ct. 2382, 2394, 72 L.Ed.2d 786 (1982)."

City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). And also:

> Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. See *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 340 (1923); *Allegheny Pittsburgh Coal Co. v. Commission of Webster Cty.*, 488 U.S. 336, 109 S. Ct. 633, 102 L.Ed.2d 688 (1989). In so doing, we have explained that "'[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted

> agents.'" *Sioux City Bridge Co.*, supra, at 445, 43 S. Ct. 190 (quoting *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 352, 38 S. Ct. 495, 62 L. Ed. 1154 (1918)).

Vill. of Willowbrook v. Olech, 528 U.S. 562, 564 (2000). *See also Clubside, Inc. v. Valentin*, 468 F.3d 144, 159 (2d Cir. 2006) (requiring an "extremely high degree of similarity" between the plaintiff and those similarly situated).

Occhicone has a right to substantive and procedural due process related to the death penalty being administered in a fair, consistent, and reliable manner. *Arbelaez v. Butterworth*, 738 So. 2d 326 (Fla. 1999). Occhicone's constitutional rights are being violated by virtue of being treated differently from similarly situated capital litigants subject to Florida's lethal injection protocol.

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DRUG NAME: Etomidate 40mg/20mL Package size: 20 x 20mL (10 vials) Page:

[redacted]

PREVIOUS BALANCE: 330

BALANCE			DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)
320			4/8/25	[redacted]			5/31/2025	-10
310			5/1/25	[redacted]			5/31/2025	-10
	300		5/15/25	[redacted]			5/31/25	-10
	400		5/23/25	[redacted]			1/31/2027	+100
	390		5/29/25	[redacted]			5/31/2025	-10
-10		380	6/12/25	[redacted]			6/30/2025	
-50		330	6/25/25	[redacted]			6/30/2025	
-10		320	7/28/25	[redacted]			7/31/2025	
2025	-20	300		8/1/25	[redacted]			7/31/2
025	-10	290		8/19/25	[redacted]			1/31/2
025	-10	280		8/20/25	[redacted]			1/31/2
1/31/2025	-10	270		9/17/25	[redacted]			
1/31/2025	-10	260		9/30/25	[redacted]			

App. D

FDOC recorded the preparation of etomidate with an expiration date of January 31, 2025, during the executions of Kayle Bates on August 19, 2025; Curtis Windom on August 28, 2025; David Pittman on September 17, 2025; and Victor Jones on September 30, 2025.[15] Although there are reports of emergency use authorization[16] being given for use of etomidate after its expiration date, it has only been extended by six months,[17][18] which was

[15]See App. D, FDOC Logs
[16]*Utah EMS Medication Shortage Information, supra* at 11
[17]https://www.fda.gov/media/164122/download
[18]*Utah EMS Medication Shortage Information, supra* at 11

exceeded by FDOC in these executions. The Federal Drug Administration requires manufacturers to provide data regarding the shelf-life of their medications, as well as expiration dates so the public is guaranteed the medications being administered have not degraded to the point of not providing the intended benefit or causing unintended side effects.[19] Without being able to further investigate the drugs to be used in his execution, Occhicone has reason to assert his equal protection rights will be violated by the use of extremely expired etomidate during his execution.

Considering the volume of errors documented in the FDOC records surrounding Florida's unprecedented pace of carrying out executions, Occhicone has legitimate concerns he is not going to receive the same constitutionally protected protocols he is guaranteed under the Fourteenth Amendment if the state is permitted to execute him on the schedule set forth by Governor DeSantis; especially if he is not given access to the additional records he demanded. The unequal treatment Occhicone would receive if he were executed would further violate his rights to equal protection and

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[19]https://www.fda.gov/drugs/pharmaceutical-quality-resources/expiration-dates-questions-and-answers

fundamental fairness, specifically since he was denied the right to a full and fair evidentiary hearing on these claims. This Court has held when there is "any question" whether a claim is sufficient for an evidentiary hearing, "the Court will presume" one is required. *Jackson v. State*, 147 So.3d 469, 485 (2014)(Quoting *Walker v. State*, 88 So.3d 128, 135 (Fla. 2012).

In *Arthur v. Thomas*, 674 F.3d 1257 (11th Cir. 2012), the Eleventh Circuit Court addressed an equal protection claim by an Alabama death row inmate, and found the petitioner only had to show enough facts to constitute a plausible equal protection claim and had done so by alleging "Alabama has substantially deviated from is execution protocol." *Id.* at 1263. *Arthur* alleged significant deviations from the established execution protocol and that court found as follows:

> In light of Arthur's other allegations regarding the veil of secrecy that surrounds Alabama's execution protocol, it is certainly not speculative and indeed plausible that Alabama will disparately treat Arthur because the protocol is not certain and could be unexpectedly changed for his execution. (Footnote omitted.)

Id. The Court then remanded the case for further factual development. That is what needs to happen in this case, which is on

point with *Arthur*. Summarily denying Occhicone's claims violates his right to due process and access to the courts under the Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

The *Walls* records indicate FDOC is practicing its lethal injection protocol in an ad hoc manner, devoid of uniformity in treatment and specifically indicating the use of expired etomidate, Occhicone has a constitutional right pursuant to the Equal Protection Clause of the 14th Amendment as selectively incorporated into state application. Occhicone's claim applies to the actions of a state agency and legitimately effects the way he will be put to death. Occhicone respectfully requests this Court reverse the lower court's ruling and remand with instructions to grant the additional records request.

Although the judicial and executive branches have been made aware of these concerns, no one in either branch has attempted to explain the irregularities showing maladministration of their protocols to any of the petitioners who have sought additional information. Instead of pausing executions to investigate, FDOC has continued executions at an unprecedented rate and without

any judicial review of the issue. The routine maladministration exposed by the FDOC logs impacts critical and delicate phases of the execution process and raises grave concerns regarding the preparation and implementation of the written execution protocol.

D. Record Demand

Similar to his due process right, Occhicone also has an explicit right under the Florida Constitution to access the courts because "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Art. 1 § 21, Fla. Const. By not allowing Occhicone access to crucial records, even as Occhicone has offered to further negotiate and streamline the request to satisfy any specific FDOC concerns, this court is denying Occhicone access to the courts to prove his due process rights will be violated if his execution proceeds without intervention.

Florida has a long history of public access to government records guaranteed in the Florida constitution:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically

> made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Fla. Const. Art. I, §24(a). Stressing how important this right is, the Florida legislature codified it in Section 119.01(a), Florida Statutes, "General state policy on public records," which provides "[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person." It goes on to say: "Providing access to public records is a duty of each agency." *Id.* The records Occhicone sought are clearly public records under Section 119.011(12), Florida Statutes, which defines a public record as all documents and records, regardless of form, "made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency" including "any material prepared in connection with official business which is intended to perpetuate, communicate, or formalize knowledge of some type." *Shevin v. Byron, Harless, Schaffer, Reid, and Associates, Inc.*, 379 So. 2d 633, 640 (1980).

"If there is any doubt as to whether a matter is a public record

subject to disclosure, the doubt is to be resolved in favor of disclosure." *Everglades Law Center v. South Florida Water Management District*, 290 So. 3d 123, 129 (Fla. 4th DCA 2019) (citing, *Morris Publ'g Grp., LLC v. Fla. Dep't of Educ.*, 133 So. 3d 957, 960 (Fla. 1st DCA 2013)). Public records laws are "to be construed liberally in favor of the state's policy of open government." *Id.*

The lower court prevented Occhicone from accessing critical public records in violation of his Florida Constitutional rights under Article I, Section 24 and in violation of Florida Statutes, when it denied his Rule 3.852 demand for additional public records in contravention of Chapter 119, "Public Record Laws;" Section 27.7081, Florida Statutes; and Fla. R. Crim. P. 3.852. FDOC failed to assert any legitimate claim the records sought are excluded by a statutorily recognized exemption and/or confidentiality provision, which precludes the agencies from fulfilling their duties to make the records available for public copying or inspection as there is an extremely limited exemption to the public records laws:

> Information or records that identify or could reasonably lead to the identification of any person or entity that participates in, has participated in, or will participate in an execution, including persons or entities administering, compounding, dispensing, distributing, maintaining,

> manufacturing, ordering, preparing, prescribing, providing, purchasing, or supplying drugs, chemicals, supplies, or equipment necessary to conduct an execution in compliance with chapter 922.

Section 945.10(1)(j)1, Florida Statutes. The plain meaning of this statute makes it clear the Florida legislature did not intend to prevent all access to records related to lethal injection, but rather any information leading to the identity of individuals involved in the lethal injection process. Occhicone does not seek any identifying information and has agreed such information can be redacted according to the statute.

Denying access to these records is problematic because there is no way for anyone to ever challenge FDOC's actions based on this "Catch-22" lethal injection protocol loop. *See Trotter v. Florida*, 146 S. Ct. 755, 756 (2026) (Justice Sotomayor's Statement regarding the denial of the application for a stay of execution). Accordingly, Florida's public records litigation process for capital postconviction inmates amounts to no process at all.

It is a procedural due process concern whenever a state agency tasked with carrying out executions withholds information and "has constrained the ability of death-row inmates to challenge

the constitutionality of [their states'] execution process." *First Amendment Coalition of Arizona, Inc. v. Ryan,* 938 F.3d 1069, 1072 (9th Cir. 2019). Occhicone's request was too narrowly tailored to be considered a "fishing expedition." *Sims v State,* 753 So. 2d 66, 70 (Fla. 2000).

Although this Court has long recognized FDOC is entitled to a presumption it will comply with the lethal injection protocol, Occhicone argues FDOC has lost that presumption based on the multitude of errors apparent in the records discussed above. *Long v. State, 271 So. 3d 938 (Fla. 2019*). In Section 922.105(7), Florida Statutes, the Florida Legislature delegated the creation of procedures for the execution of inmates sentenced to death by lethal injection to FDOC, rather than creating procedures within the Administrative Procedures Act in Chapter 120, Florida Statutes. This procedure forces Occhicone to raise any concerns about his equal protection rights in court pursuant to Fla. R. Crim. Proc. 3.852, where he has been denied access to the additional records he has requested, despite neither the state nor FDOC refuting Occhicone's allegations. Based on these errors, Occhicone has clearly established his entitlement to the records demanded from FDOC regarding violations

of his constitutionally protected equal protection rights. The requirements for a demand for additional public records are set forth in Rule 3.852(i)(1), Fla. R. Crim. P., which requires capital postconviction counsel to file an affidavit which:

> (A) attests that collateral counsel has made a timely and diligent search of the records repository; and
> (B) identifies with specificity those public records not at the records repository; and
> (C) establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence; and
> (D) shall be served in accord with subdivision (c)(1) of this rule.

No where does the rule require Occhicone to establish a "colorable claim" as argued by FDOC in its objection to production of the records or the trial court in its denial of his demand. The plain language of the rule only requires Occhicone to establish the records are "relevant to the subject matter" of a proceeding or "reasonably calculated to lead to the discovery of admissible evidence," not the higher burden imposed by the trial court of a colorable claim.

E. Conclusion

Considering the ongoing shortage of etomidate, combined with FDOC's history of administering expired doses of etomidate

in prior executions, the most obvious and viable alternative would be for Florida to pause executions, allow this extremely important medication to be used by those suffering acute and immediate medical concerns who can gain the most benefit from its intended use, conduct an independent review of FDOC's lethal injection practices, document and explain the errors which have plagued recent applications of the lethal injection protocol, and provide additional training and reform as necessary before resuming executions using lethal injection. As noted, other states faced with similar errors in the implementation of a lethal injection protocol have similarly halted executions, which is what Florida should do, while pharmacists are alerting the world to shortages of this medication, rather than using some of the limited amount of etomidate available to end the life of an almost 81-year old man when it could be used for a life-saving procedure, thereby perpetrating a manifest injustice upon not just Occhicone, but society as a whole. Relief is proper.

ARGUMENT TWO

THE EXECUTION OF DOMINICK OCCHICONE IS CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND

THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION DUE TO OCCHICONE'S STATUS AS AN ELDERLY PERSON

On June 25, 2026, a plethora of news stories throughout Florida ran with some version on the headline "74-year-old man becomes oldest inmate executed in modern times".[20] "How old is too old for the death penalty? That is the debate taking place over Florida today," reported newscasts across the state regarding the execution of Dusty Spencer.[21] Many calling it "historic," as Spencer was reportedly the oldest prisoner put to death in our state's history. A day later, on June 26th, Governor DeSantis chose to immediately surpass that record by signing an execution warrant for Occhicone who is almost 81-years old.

Occhicone is not claiming his sentence is prohibited by the Eighth Amendment based on being in a "class" of elderly people,

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[20]Curt Anderson, *74-year-old man becomes oldest inmate executed in modern Florida history*, NBC News, https://www.nbcnews.com/news/us-news/74-year-old-man-becomes-oldest-inmate-executed-modern-florida-history-rcna351870 (last accessed July 2, 2026)

[21]Execution of 74-year-old inmate reignites debate over death penalty, Fox 35 Orlando, https://www.fox35orlando.com/video/fmc-vcczjfgwxlokp3om (last accessed July 2, 2026)

rather the issue is because the execution of the death sentence upon Occhicone, after nearly four decades on death row, would constitute cruel and unusual punishment based on his individual age and condition, now that he is nearing 81 years old.

A. Execution of the Elderly Defies the Evolving Standards of Decency of the Eighth Amendment and the Corresponding Provisions of the Florida Constitution

The evolving standards of decency mark the progress of a maturing society. *Trop v. Dulles*, 356 U.S. 86, 101 (1958). Evolving standards of decency dictate when a punishment has become "cruel and unusual." It is through this framework the Eighth Amendment is interpreted; not only by its text, history, and original purpose, but by the current standards of society. *Roper v. Simmons*, 543 U.S. 551 (2005). The analysis is not restricted to the method in which a death sentence is ultimately carried out but rather the contemporary values of the society carrying it out. *Ford v. Wainwright*, 477 U.S. 399, 406 (1986). Contemporary values determine whether a particular punishment comports with the fundamental human dignity the Eighth Amendment protects. *Id.* While the rights guaranteed by the Eighth Amendment are rooted in history, the manner in which we

protect those values is a matter of contemporary law. *Id.* "Once a substantive right or restriction is recognized in the Constitution, therefore, its enforcement is in no way confined to the rudimentary process deemed adequate in ages past." *Id.*

In applying the evolving standards of decency analysis to the question of whether it was acceptable to execute mentally retarded individuals, the *Atkins* court drew objective indicia of society's standards not only from pertinent legislative enactments but also state practices. *Atkins v. Virginia*, 536 U.S. 304, 305 (2002). Although not controlling, the *Roper* court expanded those criteria to include legislative enactments, state practices, and "our own judgement," also relying on international law as constructive. *Roper v. Simmons*, 543 U.S. 551 (2005). The question of exempting elderly inmates can be decided similarly, even though Occhicone is not arguing a class exception to *all* elderly inmates.

I. Legislative Enactments of the United States Offer Additional Protections and Services to Elderly Persons

Many protections for the elderly can be found in federal law. The United State has a long history of enacting legislation specifically for

its elderly citizens, dating as far back as 1920.[22] In 1965, Congress passed the Older Americans Act, which has been routinely reauthorized and expanded, most recently in 2020. 42 U.S.C.A. § 3001. Congress declared it is " in keeping with the traditional American concept of the inherent dignity of the individual in our democratic society," that " the older people of our Nation are entitled to," certain objectives and it is the "duty and responsibility of the governments of the United States, of the several States and their political subdivisions…" to secure those opportunities for older Americans. *Id.* They have continued to uphold this duty by passing further protections specifically geared towards older Americans. In 2010, Congress passed the Elder Justice Act. Which created the Elder Justice Coordinating Council. 42 U.S.C.A. § 1397j. Part of the objective of this legislation is to encourage States to protect children and adults who are unable to protect their own interests. In 2017 Congress passed the Elder Abuse Prevention and Prosecution Act ("EAPPA"), 34 U.S.C.A. § 21701. The EAPPA mandated an Elder Justice Coordinator within the office of the Attorney General, the

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[22]See App. F - Chronological list of legislation enacted for older Americans.

Department of Justice, and the Federal Trade Commission. *Id.* This led to the Elder Justice Initiative within the U.S. Department of Justice, the purpose of which is to combat elder abuse and promote justice for older Americans.[23]

The legislation cited above is a clear indicia the standard of decency in American society at large, is one which venerates the inherent dignity of its citizens to such a degree society has made it the duty and responsibility of the government to protect the dignity of elder Americans who cannot protect it themselves as well as to protect their physical and financial interests – all in an effort to promote justice. Furthermore, the federal legislation urges the States to make additional protections for elderly people.

II. Legislative Enactments of the State of Florida Consider Elderly People to be Vulnerable and Afford Them Additional Protections

The State of Florida has enacted many legislative protections for elderly people. Florida has sentencing enhancements reclassifying criminal offenses based on the victim's age. Section 784.08(1), Florida Statutes, imposes a minimum term of prison for anyone

[23]U.S. Department of Justice, *Elder Justice Initiative,* https://www.justice.gov/elderjustice (Last Accessed July 10, 2026).

convicted of the offense of aggravated assault or aggravated battery upon a person 65 years of age or older and misdemeanor offenses of the same nature can be enhanced to a felony, regardless of knowledge of the victim's age. These protections are not limited to just violent offenses: Section 812.0145, Florida Statutes, enhances criminal penalties for theft offenses committed against people 65 years or older and Section 817.5695(2), Florida Statutes, protects individuals 65 years or older from exploitation. "Obviously, the statute was enacted to protect the elderly, not the criminals, the theory behind the statute being that he or she who assaults elderly people does so at his or her peril." *State v. Nelson*, 577 So. 2d 971, 972 (Fla. 4th DCA 1991).

Florida already recognizes elderly people require specialized care. Chapter 430, Florida Statutes, establishes the Department of Elderly Affairs, the stated purpose of which is to advise, assist, and protect the state's elderly citizens to the fullest extent.[24] Florida

[24]Fla. Stat. 430.602(2) defines "Elderly person" as meaning any person 60 years of age or over who is currently a resident of this state and has an intent to remain in this state.

Statutes Chapter 825, Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults, defines "elderly person" as one:

> 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

Abuse of an elderly person is defined as the intentional infliction of physical or psychological injury upon an elderly person or disabled adult. Section 825.102(1)(a), Florida Statutes. Fragility and cognitive decline are recognized as significant factors in the vulnerability of older adults by "Florida's Elder Abuse Benchbook," (2025).[25]

> **How Aging Affects the Brain**
> The aging brain experiences a gradual decline in neurotransmitter activity, which slows communication between nerve cells. [Footnote Omitted]. This can result in slower processing speeds, difficulty retrieving words, and minor forgetfulness. Additionally, the hippocampus, responsible for memory formation, and the prefrontal cortex, which governs decision-making and reasoning, tend to shrink over time. [Footnote Omitted]. These changes can make it harder to process new information and react quickly to complex situations, which can be

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[25]Protecting the Vulnerable; Florida's Elder Abuse Benchbook,"(2025) https://www.flcourts.gov/content/download/2456475/file/FINAL%20Elder%20Abuse%20Benchbook%20(with%20cover)%20(0826).pdf (Last Accessed June 30, 2026)

> particularly concerning when making legal or financial decisions.

Florida's Elder Abuse Benchbook, (2025). The *Benchbook* section above acknowledges the general deterioration of aging as a factor towards the increased vulnerability of the elderly, regardless of the physical and mental diseases related to those of advanced age. *Id.* In fact, the elderly are considered so vulnerable that injunctions are available against the possibility of their exploitation. Section 825.1035, Florida Statutes. This injunction is unique as it allows intervention even when the adult cannot or does not initiate legal action, allowing surrogates to act in their interest. *Id.* This injunction offers a low-barrier protective option without the need to prove incapacity of the elderly person. *Id.*

The examples above clearly show the State of Florida has provided vast protections beyond those afforded to the rest of the population for those they deem elderly. The repeated stated purpose in doing so is the increased vulnerability which comes from the advancement of age. Occhicone who is soon to be 81, is deserving of the same principles and protections.

III. The Practices of Other States Signal the Standard of Decency of American Society Does Not Comport with

Executing the Elderly

It is not the practice of other states to execute elderly people. Only 23 states currently execute anyone. Out of the minority of states who do, only ten have executed a person over the age of 65 in the last ten years.[26] The Death Penalty Information Center Database shows 248 people have been executed since 2016, of which only 31 were 65 or older. Only 26% of the executed were elderly despite it being widely known the death row population is aging.[27] The numbers get even smaller when accounting for inmates 70 and above. In the past 10 years there have only been 12 executions of those 70 and above, spread across merely seven states. Only six have executed someone 75 or older and only one state, Alabama has executed a person over 80, in 2018.

Florida is an outlier when it comes to executing the elderly. Since 2016 Florida has executed eight people age 65 or older, twice

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[26]Death Penalty Information Center, *Execution Database,* https://deathpenaltyinfo.org/facts-and-research/data/executions (Last Accessed July 10, 2026).

[27]Elizabeth Rapaport, A Modest Proposal: The Aged of Death Row Should Be Deemed Too Old to Execute, 77 Brook. L. Rev. (2012). Available at: https://brooklynworks.brooklaw.edu/blr/vol77/iss3/5

as many as the next state. Texas executed four people 65 and older in the same time frame. Florida accounted for a quarter of those 70 and above executed in the last 10 years - more than any other state. While it is true the population of death row is aging, the average age of those executed in 2025 was 52.3; however, the average age of those executed in Florida in 2025 was 60.68.[28] Similarly, the average age of those executed in Florida so far in 2026 is 59.78. This does not even take into account Sochor who is 74, and Occhicone who is 80. With the average age of the defendant executed in Florida being nearly eight years older than in the rest of the country, it is startlingly obvious Florida is outside of the norm of not executing elderly inmates. In fact, if the State of Florida executes Occhicone on July 28th, it will be in the shameful minority of only two states who have ever executed an octogenarian.

The legislative enactments of the United States, the State of Florida, along with the practices of other States, indicate the standard of decency in America has evolved beyond executing the

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[28]Death Penalty Information Center, *Time on Death Row*, https://deathpenaltyinfo.org/death-row/death-row-time-on-death-row, (Last Accessed July 10, 2026).

elderly. The only thing left to be determined is this Court's own judgement that executing an elderly vulnerable person is beyond keeping with the Eighth Amendment values of the American people. *Roper v. Simmons*, 543 U.S. 551 (2005).

B. The Reduction of Sentences Based on Age is Already Contemplated by Both the United States Code and State Law

Absolving elderly inmates from their sentence is not a novel concept. There are already compassionate release programs in place for the reduction of sentences of elderly inmates. Twenty-four states and the District of Columbia offer some form of age-related compassionate release.[29] Even Florida offers compassionate release under conditional medical circumstances. Section 947.149, Florida Statutes. Federal law allows the reduction of an imposed term of imprisonment when the defendant "(i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which the defendant is imprisoned" and "[t]he defendant is not a danger to the

[29]National Conference of State Legislatures' State Medical and Geriatric Parole Laws Database (2024) https://www.ncsl.org/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws (Last Accessed July 1, 2026)

safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g)[.]" 18 U.S.C.A. § 3582. It is important to note this does not require an extraordinary and compelling reason for the reduction. Instead, the law considers the age of the defendant itself to be an extraordinary and compelling reason:

> (2) Age of the Defendant.-- The defendant (A) is at least 65 years old; (B) is experiencing a serious deterioration in physical or mental health because of the aging process; and (C) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

18 U.S.C.A. § 3582, U.S.S.G. 1B1.13.

In *United States v. Lynn*, the Government argued the defendant is "required to show the Court not only that he is "experiencing a serious deterioration in physical or mental health because of the aging process" but also that "his condition substantially diminishes his ability to function in a correctional facility." *United States v. Lynn,* No. CR 89-0072-WS, 2020 WL 3229302, at *3 (S.D. Ala. June 15, 2020). In doing so, the Government argued the inability to function in a correctional facility would be an extraordinary or compelling reason for sentence reduction. *Id.* The court in *Lynn* rejected the Government's additional requirement as erroneous. The court

granted compassionate release to the defendant who was 65, suffering a number of age-related health problems, and had served 30 years of his sentence, finding that in light of his age and condition, he no longer posed a danger to the safety of any person or to the community at large. *Id.* It is undisputed Occhicone is 80 years old, has served 39 years under a sentence of death and, similar to the defendant in *Lynn,* suffers from heart and kidney disease as well as the general deterioration of old age including difficulty seeing, hearing, and getting around. A person in Occhicone's position would qualify for compassionate release under the United States Code.

C. Occhicone Seeks Exemption from Execution Because He is Elderly Based on a Totality of the Circumstances, not a Categorical Bar to the Execution of Those 65 and Older

I. Occhicone's Claim is Distinct from the Age Claims Raised by Smithers, Trotter, and Spencer

Similar age-based claims have recently been litigated in the post warrant litigation of Samuel Smithers, Melvin Trotter, and Dusty Ray Spencer. In *Smithers* it was argued those over the age of 65 should be exempt from execution. *Smithers v. State*, 420 So. 3d 460, 465 (Fla.), cert. denied sub nom. *Smithers v. Florida,* 146 S. Ct. 323, 223 L. Ed. 2d 143 (2025). In *Smithers*, this Court did not consider the

issues of whether executing the elderly is inconsistent with our evolving standards of decency or whether executing the elderly violates federal and state constitutional prohibitions against cruel and unusual punishment where the executions do not have a deterrent or a retributive purpose because they found Smithers' claim to be untimely and procedurally barred and foreclosed by the conformity clause. *Id.* This Court affirmed the circuit court's ruling Smithers, who was 72 at the time of his execution, could and should have raised his claim when he was 65. *Id.*

Melvin Trotter, who turned 65 mere weeks before his execution warrant was signed, sought to revive the claim. Trotter argued imposition of his death sentence at 65 years of age offends the evolving standards of decency and constitutes cruel and unusual punishment. This Court denied the claim, relying on its holding in *Smithers v. State*, 420 So. 3d 460 (Fla.), cert. denied, ––– U.S. ––––, 146 S. Ct. 323, 223 L.Ed.2d 143 (2025) and declined to expand the prohibition against cruel and unusual punishment to include individuals 65 years of age and older. *Trotter v. State*, 428 So. 3d 68, 71 (Fla. 2026), *cert. denied sub nom. Trotter v. Florida*, 146 S. Ct. 755 (2026).

Dusty Ray Spencer, who was 74, also asked the court to recognize a categorical exemption from execution based on advanced age. *Spencer v. State*, No. SC2026-0880, 2026 WL 1757938, at *6 (Fla. June 18, 2026), *cert. denied sub nom. Spencer v. Fla.*, No. 25-7648, 2026 WL 1827690 (U.S. June 25, 2026). This Court denied his claim as untimely because he did not raise the claim until nearly a decade after reaching the age at which he contends a categorical exemption from execution should apply. *Id.* This Court also denied the claim on the basis categorical exemptions are ruled by the conformity clause:

> "We have explained that the Supreme Court's interpretation of the Eighth Amendment is both the floor and the ceiling for protection from cruel and unusual punishment in Florida... No decision from the Supreme Court has read the Eighth Amendment as categorically exempting defendants of advanced age from execution, and we are not about to create one now. Spencer is thus foreclosed from relief on this basis."

Id.

Occhicone raises a subtle but important distinction: Occhicone seeks Eighth Amendment relief from execution based on his age and condition, he does not seek a categorical bar to the execution of those 65 and older. Because he does not argue a categorical bar based on age, this Court's precedent in *Smithers, Trotter,* and *Spencer* does not

apply. The claim is timely because Occhicone had no way of knowing at what age and in what condition he would be at the time his execution warrant was signed. Nor can the claim be precluded by the conformity clause because no categorical exemption is being sought.

II. The Determination of Age is Not Based on Class, but is a Fact Specific Analysis of The Vulnerability of the Individual at the Time of Injury

Occhicone further proposes the protections afforded to elderly persons are not based only on a specific age, such as 60 or 65, but based on a culmination of factors, foremost being their vulnerability, manifest at the time the warrant is signed. Age alone is not a constitutionally protected class. *Gregory v. Ashcroft*, 501 U.S. 452, 470, 111 S. Ct. 2395, 2406, 115 L. Ed. 2d 410 (1991)("This Court has said repeatedly that age is not a suspect classification under the Equal Protection Clause"). Instead, the focus is on the vulnerability of the individual. Chapter 415, Florida Statutes, dealing with adult protective services categorizes a vulnerable adult as any person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or

developmental disability or dysfunction, or brain damage, OR the infirmities of aging (emphasis added).

The court in *Watson v. State*, 95 So.3d 977, 981 (Fla. 1st DCA 2012) opined a person's chronological age is not a reliable indicator of his or her ability to function independently in the world, as individual effects of aging vary greatly.[30] In *Watson,* the court reversed a conviction of abuse of an elderly person even though the victim was unquestionably over 60 years old as was statutorily required.[31] The *Watson* court held:

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[30]In the past aging was thought to be invariably accompanied by diminution in mental and other capacities. A persons [*sic*] abilities [*sic*] were thought to deteriorate in direct proportion to their [*sic*] age. Almost every investigation that has been undertaken on the topic has shown definitively that chronological age and functional ability are not related. Aging as a process of wearing out is related to the concept of biological age, but biological age and chronological age are not correlative .... The concept that a person at age sixty-five, or for that matter seventy or seventy-two inexorably has suffered a loss of ability and functional capacity is completely at variance with known facts .... There is no rational basis for taking age sixty-five as a milestone as [*sic*] either physical or mental capacity. O'Neil V. Baine: Application of Middle-Level Scrutiny to Old-Age Classifications, 127 U. Pa. L. Rev. 798, 812 (1979)

[31]Section 825.101(5) defines the term "elderly person" as follows: "Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

> "The purpose of section 825.102 is to provide additional protection for individuals sixty years of age or older when the infirmities of aging result in a dysfunction that impairs their ability to provide adequately for their own care and protection. Even if a person is sixty years of age or older, a person does not qualify as an "elderly person" within the meaning of the statute if he or she does not have an age-related impairment of his or her "ability ... to provide adequately for the person's own care or protection."

Id. The *Watson* court found the victim, who was 79 years old, was <u>not</u> an "elderly person" within the meaning of the statute because he remained active, exercised regularly to stay in shape, lived alone, and functioned successfully without assistance and because the State failed to present any evidence the infirmity of aging had impaired the victim's ability to care for himself.

This is further supported by *Grasso v. Grasso*, 131 F. Supp. 3d 1303, 1305 (M.D. Fla. 2015), where the court's analysis hinged not on whether Grasso was an "elderly person" at all but whether Grasso was a "vulnerable adult." Grasso, who was 86 years old, spent most of the day home alone and unassisted, took care of the cats, did housework including the dishes and cooked routinely. Grasso did not need help showering, getting dressed, brushing her teeth, eating, or

changing her own sheets, nor did she have any noted cognitive issues for which she would need to see a mental health professional. However, the court noted Grasso was an octogenarian, had limited ambulatory abilities, needed a cane to walk, was unable to go up and downstairs, had severe eye problems, was unable to drive, and could not pick up her medication on her own. Furthermore, the court noted Grasso was in a state of grief due to mourning and financially unsophisticated. Based on these facts, the court in *Grasso* found there was a genuine issue of material fact as to whether Grasso was a "vulnerable adult."

It is clear from the analysis in *Watson* and *Grasso* that "elderly person" is not a class, because if it were a class, simply to be over the age of 60 would be enough. Instead, a fact-specific analysis was necessary as to the "elderly person" in question based on their individual level of vulnerability, considering their physical, mental, and emotional state at the time of the incident. Similarly, a case-by-case analysis must be conducted to determine when an individual is so elderly and vulnerable, their execution would be violative of the Eighth Amendment, considering the physical, mental, and emotional state of the person when the execution warrant is issued.

Considering the above, old age comes early to prisoners. Prisoners are more likely to suffer age related impairments than their non-prison counterparts of the same age. Prison health experts treat the onset of old age in prison as commencing as early as fifty.[32] A history of drug and alcohol abuse and impoverished backgrounds combined with the health damaging effects of prison life have led to a consensus that age 50 or 55 is considered elderly for prisoners.[33] Furthermore, the more rigorous conditions of confinement on death row takes an even greater toll on the minds and bodies of the confined, exacerbating their decline.[34] It is understood the rigors of prison life cause inmates to have a psychological age of ten to fifteen years older than their non-incarcerated counterparts.[35]

Occhicone is set to be executed just one month shy of his 81st birthday. He has a history of substance abuse, drinking alcohol since the age of 16 and smoking marijuana daily from the age of 24 until the time of his arrest around the age of 40. Occhicone has now been

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[32]Rapaport, *supra* at 27
[33]Timothy Curtin, *The Continuing Problem of America's Aging Prison Population and the Search for a Cost-Effective and Socially Acceptable Means of Addressing It*, 15 ELDER L.J. 473 (2007)
[34]Rapaport, *supra* at 27
[35]Curtin, *supra* at 33

incarcerated for 40 years, with 39 of those spent on death row. He stated he never slept more than three consecutive hours a night since arriving on death row. He stated he slept a solid 6 hours for the first time on death row only after arriving on death watch. Occhicone has poor hearing and requires the use of a hearing aid. Occhicone's vision is so poor he is no longer able to read, even with the aid of eyeglasses, despite having had two cataract surgeries. Occhicone has limited function of his kidneys - varying between 40-60% function - and his most recent MRI shows multiple cysts on his right kidney. Occhicone has heart issues including hypertension, an irregular heartbeat, sometimes skipping a beat, and sometimes speeding up, as well as a blockage of the aorta. An electrocardiogram showed Occhicone has a left anterior fascicular block, indicating cardiac issues. Like many men of his age, Occhicone suffers from an enlarged prostate causing leakage and constipation requiring medication. Occhicone's urinalysis shows cloudy urine which can be indicative of prostate cancer or kidney disease. Occhicone's blood panel also shows elevation of a thyroid stimulating hormone which indicates hypothyroidism. Occhicone suffer from arthritis as well as degeneration of his left hip, left knee, lumbar spine, and spondiylitic

changes to the lumbar spine, also known as spinal osteoarthritis or degenerative disc disease. This leads Occhicone to have a hunched appearance and get easily winded walking, despite the assistance of prison guards. In fact, Occhicone requires assistance with the basic tasks of daily life, including needing the aid of a prison guard to get in and out of the shower, as well as the aid of two guards, while Appellant struggled to breathe, to go up and downstairs. After considering Occhicone's physical condition and adjusting for the increased psychological age of inmates, Occhicone has the mental age of someone 90-95 years old. By any metric, Occhicone would be considered elderly and vulnerable.

D. Executing Occhicone Serves No Retributive or Deterrent Value and Would be a Manifest Injustice Against Eighth Amendment Values

It is well established in this nation the death penalty serves only two purposes: retribution and deterrence. *Lackey v. Texas*, 514 U.S. 1045, 1421 (1995). A punishment is considered excessive and unconstitutional if it "(1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime. A punishment

might fail the test on either ground." *Coker v. Georgia*, 433 U.S. 584, 592 (1977); See also, *Atkins v. Virginia*, 536 U.S. 304 (2002) ("Unless the imposition of the death penalty on a mentally retarded person 'measurably contributes to one or both of these goals, it 'is nothing more than the purposeless and needless imposition of pain and suffering,' and hence an unconstitutional punishment"). Capital punishment is excessive when "it is grossly out of proportion to the crime, or it does not fulfill the two distinct social purposes served by the death penalty: retribution and deterrence of capital crimes." *Kennedy v. Louisiana*, 554 U.S. 407, 441 (2008).

An execution without retributive value is tantamount to vengeance. *See, Ford,* 477 U.S. at 410 ("this Court is compelled to conclude that the Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane. Whether its aim be to protect the condemned from fear … or to protect the dignity of society itself from the barbarity of exacting mindless vengeance, the restriction finds enforcement in the Eighth Amendment"). The point of retribution is for the criminal sentence to be directly related to the culpability of the perpetrator. *Tison v. Arizona*, 481 U.S. 137 (1987). There is no greater culpability in death than there is in a

sentence of life. The execution of Occhicone no longer serves any retributive value based on his advanced age and would serve only the purpose of vengeance, offending the dignity of our society.

Dusty Ray Spencer's execution set a record in Florida as the oldest man to be executed at 74 years of age. If Dennis Sochor is executed on July 14, 2026, he will surpass that record by being two weeks older. Occhicone is almost 81. The current spate of executions in Florida seems targeted at one of the most vulnerable segments of the population and even more so of the prison population. The interests of the accused must be weighed against the interests of the victims, only then is justice served. In Florida it has been determined the interest of justice requires mandatory appeals for the accused and appeals take time. A death sentence executed 40 years after a crime serves no deterrent value. Governor DeSantis' comments reflect the fact the decades between conviction and execution dilute the deterrent effect of the death penalty. Without discarding the entire modern day criminal justice schema of appeals, there is no deterrent effect of the death penalty.

Manifest injustice refers to an error in a legal proceeding which is so fundamentally unfair or wrong that it shocks the conscience.[36] In this post-conviction context, the inquiry focuses on whether a manifest injustice will occur if the error is not corrected. *State v. Gordon*, No. F08-9192, 2014 WL 8396818, at *3 (Fla .Cir .Ct. Aug. 12, 2014). When manifest injustice has occurred, this Court has the responsibility to correct the injustice if it can. *Id.* (See also, *State v. Owen*, 696 So. 2d 715, 720 (Fla. 1997) "this Court has "the power to reconsider and correct erroneous rulings"). The execution of an octogenarian is a manifestly unjust use of the State's power, and this Court can and should correct it.

The execution of Occhicone at the frail and vulnerable age of almost 81, after spending 39 years awaiting death, serves no retributive or deterrent value, violative of the Eighth amendment of the American Constitution, and is therefore manifestly unjust. "A sanction is… beyond the State's authority to inflict if it makes 'no measurable contribution' to acceptable penal goals." *Roper*, 543 U.S. at 589. As such, the execution of Occhicone is so fundamentally

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[36]LSD Law Legal Dictionary (March 2026), *supra* at 4

unfair, so wrong, it shocks the conscience of the people of Florida and of this Court and demands correction. Under Section 775.082, Florida Statutes, when a death sentence is found to be unconstitutional, it must be commuted to a life sentence. This Court has both the duty and the ability to thwart the manifest injustice of Occhicone's impending execution by converting it to a life sentence. Granting Occhicone relief from execution does not categorically exempt any other offender from the possibility of death as a sanction for their offense, nor does it exempt Occhicone from punishment. Furthermore, the penal goals of the State have been and will continue to be satisfied by the continued confinement of Occhicone for the rest of his natural life. Relief is proper.

ARGUMENT THREE

PUTTING OCCHICONE TO DEATH AFTER THE UNPRECEDENTED AMOUNT AND PACE OF EXECUTIONS THE PAST TWO YEARS, PARTICULARLY DURING THIS CALENDAR YEAR, WOULD VIOLATE OCCHICONE'S EIGHTH AMENDMENT RIGHTS TO THE UNITED STATES CONSITUTION AND THE CORRESPONDING PROVISIONS OF FLORIDA'S CONSTITUTION. ALSO, EXECUTING OCCHICONE WOULD RESULT IN A MANIFEST INJUSTICE THAT "SHOCKS THE CONSCIENCE," DUE TO THE UNIQUE CIRCUMSTANCES OF HIS CASE

Florida is causing psychological trauma on their staff at the Florida State Prison ("FSP"), with impacts which reverberate to their homelife and beyond into the broader community - like a "butterfly" effect. The rate and pace of executions is wrecking the mental health of staff as FSP. Executions have taken place in Florida at a rate unprecedented in modern times. This State executed nineteen souls in 2025 and Occhicone is the twelfth death warrant signed by Governor DeSantis this year.[37] These executions have taken a toll on the psyche of correctional staff and are causing a moral injury to the State. Occhicone's case presents the occasion for a pause to assess the damage which has been done and survey the mental health of the correctional staff. Moreover, Occhicone has unique qualities as an elderly devout Catholic of Italian descent. His impending execution has caused quite an uproar among religious leaders in the community. Lastly, when also factoring in Occhicone's seven to five jury recommendation, which would not be legal under current Florida law, looking at the totality of the circumstances surrounding Occhicone, executing the soon to be 81-year-old defendant would

[37]https://deathpenaltyinfo.org, *supra* at 26

truly be a shock to the conscience and a *manifest injustice*. (*See citations on pages 7 and 52 supra, incorporated by reference*).

The appellant understands the circuit court is bound by precedent from this Court and the USSC, when it comes to granting Occhicone a life sentence. That said, the circuit court erred in denying an evidentiary hearing for Occhicone to establish evidentiary support for this claim. Occhicone simply requests an evidentiary hearing at this juncture. *See Booker v. State*, 969 So. 2d 186, 195 (Fla. 2007).

A. This Court Should Order a Six-Month Pause on Executions, to Allow for Experts to Study and Assess the Psychological and Emotional Damage Done to the Execution Team, Based on the Amount and Pace of Executions From 2025 and Continuing in 2026. It Would Violate Occhicone's Eighth Amendment Rights to be Subjected to Execution by Staff He Has Bonded With, and Allowing Further Executions at This Pace Will Result in a Manifest Injustice

Toward the conclusion of the CMC, PCROA 308, the circuit judge invoked the name of one of the victims, Martha Artzner, saying she indeed "deserves to be mentioned." Occhicone remembers both victims from his crime and is forever sorry for his actions as a mentally ill alcoholic forty years ago. Forty years is a long time.

Article 1 § 16(b)(10), Fla. Const., speaks to the rights of crime victims, but after forty years it is well past any concept of a prompt conclusion to Occhicone's postconviction proceedings. At this point, there is a new, overriding, need for Florida to protect its citizens. In this claim, other victims deserve to be mentioned as well; those being the victims Florida is creating by executing individuals at an unfathomably unhealthy rate. What is happening in Florida is psychologically unhealthy, and truly abnormal, "the effects of which reverberate through Florida Society and create new victims - like a "butterfly effect." The men and women on death-watch are internalizing their trauma and taking it home, which if not effectively managed, can create generational trauma.[38]

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[38]https://desertwaters.com/correctional-families-collateral-damage/ : "Negative consequences of correctional work can be thought of as falling in two broad categories:

- the ways families are affected by lifestyle changes and external demands imposed on them when their loved one becomes a correctional employee; and
- the ways families are negatively affected by their loved one's Corrections Fatigue – negative changes in their loved one's personality, health, and functioning – work-related changes that keep adding up over time."

The lower court was mistaken about Occhicone lacking "standing" to raise this claim. PCROA 326. It is cruel and unusual under the Eighth Amendment to execute Occhicone, considering how he has developed an emotional bond with his death-watch staff, who are in charge of caring for his needs every day, leading up to the moment they strap him to a gurney and push chemicals in his body until he's dead. Executions carry a heavy emotional burden for all involved, and for Occhicone to have daily interaction with weary staff, young enough to be his children or grandchildren, it is psychologically damaging for Occhicone to witness their suffering. It indeed *superadds* to his final death sentence considering the unprecedented and unnatural pace of executions in Florida. Occhicone pleads this claim on behalf of himself and for the members of death-watch, including Warden Polk, with whom he has bonded. The pace of executions in Florida is causing psychological damage and moral injury. The lower court erred in opining Occhicone lacked "standing" on this subclaim:

> In the decades since *Batson*, this Court's cases have vigorously enforced and reinforced the decision, and guarded against any backsliding. See *Foster*, 578 U. S. ——, 136 S.Ct. 1737, 195 L.Ed.2d 1; *Snyder v. Louisiana*,

> 552 U.S. 472, 128 S.Ct. 1203, 170 L.Ed.2d 175 (2008); *Miller-El v. Dretke*, 545 U.S. 231, 125 S.Ct. 2317, 162 L.Ed.2d 196 (2005) (*Miller-El II*). Moreover, the Court has extended *Batson* in certain ways. A defendant of any race may raise a *Batson* claim, and a defendant may raise a *Batson* claim even if the defendant and the excluded juror are of different races. See *Hernandez*, 347 U.S. at 477–478, 74 S.Ct. 667; *Powers*, 499 U.S. at 406, 111 S.Ct. 1364. Moreover, *Batson* now applies to gender discrimination, to a criminal defendant's peremptory strikes, and to civil cases. See *J. E. B. v. Alabama ex rel. T. B.*, 511 U.S. 127, 129, 114 S.Ct. 1419, 128 L.Ed.2d 89 (1994); *Georgia v. McCollum*, 505 U.S. 42, 59, 112 S.Ct. 2348, 120 L.Ed.2d 33 (1992); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 616, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991).

Flowers v. Mississippi, 588 U.S. 284, 301 (2019). "Death is different," and similar to a defendant whose race or gender does not match the challenged juror, a defendant who is challenging his execution under the Eighth Amendment has standing alongside those with whom he is sharing his harrowing final days and hours, during his impending death. The suffering is a communal shared experience, only Occhicone's executioners would carry the trauma long after Occhicone's death at the hands of the State.

On June 16, 2026, Ohio's Governor Mike DeWine made the monumental statement that Ohio should abolish the death penalty.[39] Directly relevant to this claim, Governor DeWine addressed the mental health of the execution team:

> "During a news conference, he said data indicates the death penalty is not working as intended to deter crime, even as it brings years of pain to victims' loved ones and **takes a toll on the mental health of state employees who serve on execution teams**."

Id (emphasis added). Governor DeWine is a devout Catholic.[40] The seasoned Republican Governor in Ohio is demonstrating compassion and leadership by addressing the psychological needs of his employees. "Death is different," and executions take a psychological toll on the men and women who are tasked with caring for and preparing inmates for execution. Former Florida State Prison Warden, Ron McAndrew, following the most recent execution, has advised Florida staff to stop taking part in executions, based on the trauma it causes, which can lead to deep mental health issues and

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[39]Republican Gov. Mike DeWine says Ohio should abolish the death penalty | AP News

[40]https://catholicsmobilizing.org/a-statement-from-krisanne-vaillancourt-murphy-on-gov-mike-dewines-press-conference-on-the-death-penalty/

substance abuse.[41] Mr. McAndrew is still haunted from the three executions he oversaw decades ago, so to imagine the pace of what Warden Polk and his staff are going through in 2025-26 is particularly devastating. What has occurred in Florida in the past two years at FSP is not normal and no correctional officer could be psychologically prepared for what they have been put through, over and over again. Many share Mr. McAndrew's opinion based on their own experiences. One revealing NPR article provides the powerful testimony of former wardens: *"It does no more than increase the number of victims while producing no positive outcomes,"* says Frank Thompson, former superintendent, Oregon State Penitentiary. Catarino Escobar, a former correctional officer on the execution team at the Nevada State Prison, asks, "But what happens to your spirit? What happens when your spirit connects with him that you just executed?"[42] A telling quote to the Equal Justice Initiative states: *After serving as the warden of Parchman Farm, where he oversaw six executions, Don Cabana became an outspoken critic of the death*

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[41] Florida | Former prison warden who oversaw executions urges corrections workers to not participate in them

[42] NPR: How working on prison executions harms people and changes their views : NPR, November 16, 2022, 4:01PM ET by Chiara Eisner

penalty. "There is a part of the warden that dies with his prisoner," he said. Mr. Cabana spent the rest of his life campaigning for abolition.[43]

Warden Polk's behavior in regard to several men who were slowly transitioning out of this world—a truly sacred event--are described as follows (emphasis added):

> **James Ernest Hitchcock (April 30, 2026)**: about three minutes into the execution, the **team warden briefly flicked Hitchcock's face and yelled his name two times as he shook his shoulders, with no response** WUSF — reported by both WUSF.[44]
> **Chadwick Scott Willacy (April 22, 2026)**: shortly after the lethal injection began, **a warden shook Willacy and shouted his name, with no response** PBS — PBS News.[45]
> **Melvin Trotter (Feb. 24, 2026)**: the **prison warden checked Trotter's face and shouted his name**, but there was no reaction PBS — PBS News/NBC News[46]

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[43]Equal Justice Initiative: The Death Penalty and Regret, May 30, 2023
[44]https://www.wusf.org/courts-law/2026-04-30/man-who-killed-teen-relative-slated-to-be-floridas-sixth-inmate-executed-this-year
[45]https://www.pbs.org/newshour/nation/man-convicted-of-setting-neighbor-on-fire-during-1990-burglary-is-executed-in-florida
[46]https://www.pbs.org/newshour/nation/man-put-to-death-for-1986-killing-of-grocery-store-owner-in-floridas-2nd-execution-this-year

Dusty Ray Spencer (~June 2026): the warden then shook Spencer and shouted his name several times without a response Fox News — Fox News.[47]

Warden Polk should not be placed in such a psychologically damaging position, shouting at, touching, and shaking souls as they finally leave this world. There is no peace involved. Such a process is crude, not natural, and nor is it emotionally healthy for the execution team. To imagine what Warden Polk has to carry inside and take home with him, sometimes with a "spiritual advisor" bearing witness to the crude actions, truly shocks the conscience. Warden Polk is not a medical professional. What he is experiencing is not psychologically, nor emotionally healthy.

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[47]https://www.foxnews.com/us/florida-executes-74-year-old-wifes-murder-becoming-oldest-inmate-put-death-states-modern-history

Particularly, during this stretch of death warrants directed toward elderly inmates, the unnatural death-watch scene is causing staff to deal with the trauma of caring for and preparing senior citizens to die. The staff already has to understand death and suffering are part of their own personal lives, as they may have been caregivers and/or witnesses to their own family members who are aging to the point of infirmity. Now, beyond what they may be experiencing in their private lives with their parents, grandparents, aunts, uncles, and close friends who are physically and mentally

deteriorating, Florida is forcing them to care for the soon to be 81-year-old defendant. The staff is understanding Occhicone's humanity and humor and may be reminded of their own elderly loved ones. As argued in Argument Two, correctional staff is helping Occhicone stand, walk, and care for himself, with the knowledge he is set to be executed in an unnatural death.

Occhicone suffers for the victims his execution may leave behind at the Florida State Prison. His prayers and humanity go out to the entire staff that is caring for him on death-watch, and those who may take part in his execution. He raises this important issue as a component of his Eighth Amendment rights, because he has standing as a fellow citizen, sharing in the human condition with people taking part in his tragic execution. There are collateral effects beyond Occhicone. Executing Occhicone would be a conscience shocking manifest injustice.

In this claim, Occhicone is merely requesting a 6-month pause for experts to go into FSP to evaluate the death-watch staff, including Warden Polk, to assess the emotional and psychological damage which has been done. The rate and pace of death warrants in Florida is causing extreme damage and psychological trauma. Former FSP

Warden Ron McAndrew knows such a trauma very well. Now, during this rash of death warrants from 2025-26, it is time to assess the psychological and emotional damage which has been done.

B. Occhicone, as a Devout Catholic of Italian Descent, With the Support of Religious Leaders Who Do Not Want His Execution to Proceed Forward. Executing Occhicone Would Be a Manifest Injustice and Shock the Conscience

Occhicone is a proud Italian-American citizen. His father immigrated from Italy and was naturalized as an American citizen. Italy does not allow for capital punishment. Like Governor DeWine,

Occhicone is a devout Catholic. Considering Occhicone's devout Catholic faith, the words of Pope Leo IV, who on September 30, 2025 stated: "Someone who says, 'I'm against abortion' but says, 'I'm in favor of the death penalty,' is not really pro-life," should carry great weight.[48] Preserving Occhicone from execution promotes the sanctity of all human life. Occhicone is a deeply spiritual man, whose faith teaches him Christ died for his sins so he could be redeemed. Occhicone's religious convictions are valid mitigation for this Court to consider. *See*, *generally*, *Farina v. Secretary, Florida Department of Corrections*, 536 Fed. Appx. 966, 982 (11th Cir. 2013); and *Franklin v. Lynaugh*, 487 U.S. 164, 186 (1988).

Faith leaders in Florida are concerned about the rate of executions in this state over the past year. *See* A Joint Letter from Florida Faith Leaders on the Expansion of Florida's Death Penalty and Pace of Executions, addressed to Governor DeSantis dated July 8, 2025, and correspondence titled RE: Request to Pause Signing of

[48]Pope Leo XIV Calls Support for the Death Penalty 'Not Really Pro-Life,' Death Penalty Information Center, https://deathpenaltyinfo.org/pope-leo-xiv-calls-support-for-the-death-penalty-not-really-pro-life

Death Warrants and Engage in Further Dialogue, from the Florida Conference of Catholic Bishops, also dated July 8, 2025. The letter from the Bishops concludes with a reference to *"the teachings of our Church on the sanctity of human life and the common good."* Mere weeks ago, Catholic leaders were urging Governor DeSantis to halt executions, according to the Miami Herald[49] Occhicone has a strong relationship with his faith, and it would be a manifest injustice to execute this extremely elderly man in the twilight of his life.

C. It Would be a Violation of the Eighth Amendment and a Manifest Injustice to Execute Occhicone, Considering the Seven to Five Death Recommendation from His 1987 Jury, Which Would be Illegal Under Current Florida Law

The jury returned a guilty verdict on both counts on September 18, 1987. The penalty phase trial began on September 21, 1987. The jury returned a recommendation for the death penalty by a seven to five vote on both counts on September 22, 1987, which would not be a legal sentence under current Florida law. Currently, pursuant to Section 921.141, Florida Statutes, for a defendant to be sentenced to death, eight jurors must vote for death for there to be a valid death

[49]https://www.miamiherald.com/news/politics-government/state-politics/article316238604.html (Last accessed July 12, 2026)

recommendation. If Occhicone's jury had known it would take forty years for his death sentence to manifest, and he would be a feeble 81-year-old by that time, as well as knowing their death recommendation would prove to be illegal by the time the execution occurred, they never would have recommended a death sentence.

It is a violation of Occhicone's Eighth Amendment rights to execute him based on a currently illegal seven to five jury recommendation. Moreover, it would be a manifest injustice and a shock to the conscience, to execute an 81-year-old man for a forty-year-old case, based on a standard which is no longer legal. At the CMC, the state argued the jury was "aware," and it is a large "political issue," regarding the length of time between sentence and execution. However, forty years is far beyond what any jury in 1987 could reasonably contemplate. His jury did not expect him to look like he does now, App. E. by the time he would finally be executed and based on a recommendation that would longer be legal. Rather, this is a manifest injustice and shock to the conscience.

The "qualitative difference between death and other penalties calls for a greater degree of reliability when the death sentence is imposed." *Lockett v. Ohio*, 438 U.S. 586, 604 (1978). Occhicone's

death sentences are unconstitutional in every state that still retains the death penalty in this nation. In all but two states which still impose the death penalty, the jury vote must be unanimous to impose a sentence of death. Of the two states not requiring a unanimous verdict, Florida has the lowest threshold, requiring only eight votes to impose a death sentence. *See* Section 921.141(2)(c), Florida Statutes (2023), ("If at least eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of death. If fewer than eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of life imprisonment without the possibility of parole"). Occhicone's death sentences were imposed with fewer than eight jurors voting for death.

Due to Florida's arbitrary decision to deny *Hurst*[50] relief to defendants whose death sentences were finalized prior to June 24, 2002, Occhicone's unconstitutional death sentences were never vacated nor was he afforded the benefit of a resentencing hearing unlike approximately 145 other individuals with nonunanimous jury

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[50]*Hurst v. Florida*, 577 U.S. 92 (2016)

recommendations.[51] An arbitrary denial of Mr. Occhicone's serious constitutional claims is inconsistent and erroneous. Moreover, finality does not require the State of Florida to execute Occhicone. *See Sanders v. United States*, 373 U.S. 1, 8 (1963) (holding "[c]onventional notions of finality of litigation have no place where life or liberty is at stake and infringement of constitutional rights is alleged"). The interests of finality and justice would still be achieved if this Court found his death sentences unconstitutional and remanded for the circuit court to impose life sentences without the possibility of parole.

For the sake of preventing an unconstitutional and manifestly unjust execution, this Court's intervention is necessary. Relief is proper.

CONCLUSION AND RELIEF SOUGHT

In light of the facts and legal arguments presented above, Occhicone contends his constitutional rights for equal protection and

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[51] *Resentencing Status of Florida Prisoners Sentenced to Die by Non-Unanimous Juries*, DEATH PENALTY INFORMATION CENTER, https://deathpenaltyinfo.org/stories/florida-prisoners-sentenced-to-death-after-non-unanimous-jury-recommendations-whose-convictions-became-final-after-ring (last visited July 24, 2025)

due process under the Fourteenth Amendment of the Constitution of the United States, as well as his right not to be subject to cruel and unusual punishment under the Eighth Amendment and corresponding provisions of the Florida Constitution, has been violated. Occhicone respectfully requests his death sentence be vacated, alternatively for this case to be remanded to the circuit court to conduct an evidentiary hearing, as well as for the entry of a stay of his execution, and all future executions, for at least six months and until such time as a study can be done to determine the psychological impacts of the current volume of executions on the members of the execution teams involved and so all of these issues can be fully litigated.

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.045, we hereby certify that the Initial Brief of the Appellant has been produced in Bookman Old Style14-point font. This brief complies with the requirements of Fla. R. App. P. 9.210(a)(2)(D), as it has less than 75 pages and 13,996 words.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that, on July 13, 2026, we electronically filed the foregoing with the Clerk of the Circuit Court by using the

Florida Courts e-portal filing system which will send a notice of electronic filing to the following: the Honorable Pat Siracusa, West Pasco Judicial Center, 7530 Little Road, New Port Richey, Florida 34654, CPizzuto@jud6.org; Sara Macks, Assistant State Attorney, Pasco County State Attorney's Office, West Pasco Judicial Center, 7530 Little Road, New Port Richey, Florida 34654, saramacks@flsa6.gov, appealeservice@flsa6.gov; Rick A. Buchwalter, Michael W. Mervine, and Suzanne Glickman, Assistant Attorneys General, 3507 E. Frontage Road, Suite 200, Tampa, Florida 33607, rick.buchwalter@myfloridalegal.com, michael.mervine@myfloridalegal.com, suzanne.glickman@myfloridalegal.com, paula.montlary@myfloridalegal.com, elizabeth.bueter@myfloridalegal.com, stephanie.tesoro@myfloridalegal.com, arianna.balda@myfloridalegal.com, marilyn.muir@myfloridalegal.com, scott.browne@myfloridalegal.com, stephen.ake@myfloridalegal.com, and capapp@myfloridalegal.com.; Debra Rescigno, William Gwaltney, and Kristen Lonergan, Counsel for the Florida Department

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WE HEREBY FURTHER CERTIFY a copy of the foregoing will be provided in person to, Dominick Occhicone, DC# 226426, Florida State Prison, P.O. Box 800, Raiford, Florida 32083, on July 17, 2026.

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No. _____

IN THE

Supreme Court of the United States

DOMINICK OCCHICONE

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY JULY 28, 2026 AT 6:00 P.M.

APPENDIX C

Appendix E(July 13, 2026)

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PASCO COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

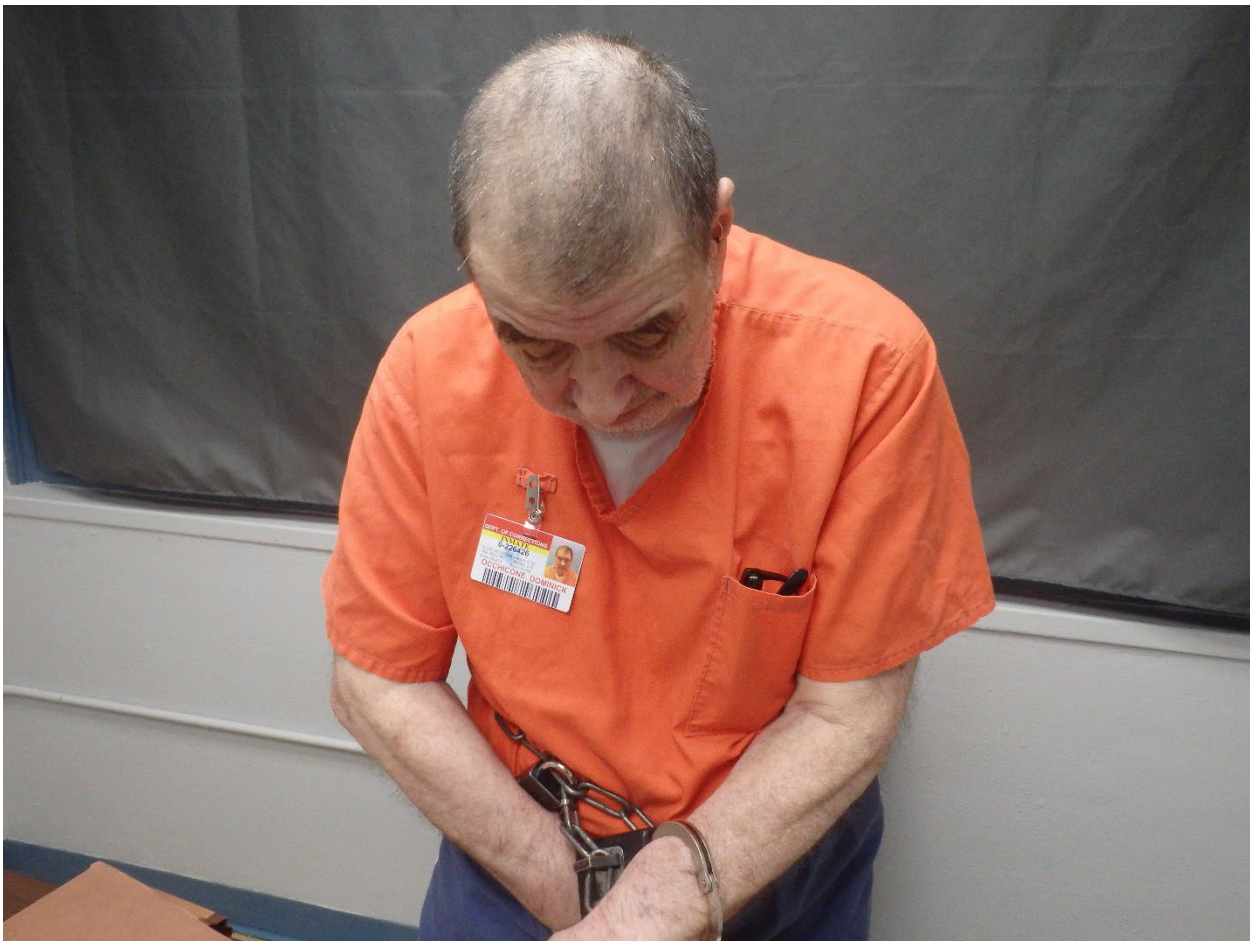
v.

DOMINICK OCCHICONE
Defendant.

CASE NO: 1986-CF-1355
Emergency Capital Case
Death Warrant Signed
Execution Scheduled For
July 28, 2026

APPENDIX E TO DEFENDANT'S SUCCESSIVE RULE 3.851 MOTION TO VACATE SENTENCE OF DEATH (PHOTOGRAPHS OF DEFENDANT)

KRONOS


INMATE
OCCIDENTAL DOMINICA

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that, on July 8, 2026, we electronically filed the foregoing with the Clerk of the Circuit Court by using the Florida Courts e-portal filing system which will send a notice of electronic filing to the following: the Honorable Pat Siracusa, West Pasco Judicial Center, 7530 Little Road, New Port Richey, Florida 34654, CPizzuto@jud6.org; Sara Macks, Assistant State Attorney, Pasco County State Attorney's Office, West Pasco Judicial Center, 7530 Little Road, New Port Richey, Florida 34654, saramacks@flsa6.gov, appealeservice@flsa6.gov; Rick A. Buchwalter, Michael W. Mervine, and Suzanne Glickman, Assistant Attorneys General, 3507 E. Frontage Road, Suite 200, Tampa, Florida 33607, rick.buchwalter@myfloridalegal.com, michael.mervine@myfloridalegal.com, suzanne.glickman@myfloridalegal.com, paula.montlary@myfloridalegal.com, elizabeth.bueter@myfloridalegal.com, stephanie.tesoro@myfloridalegal.com, arianna.balda@myfloridalegal.com, marilyn.muir@myfloridalegal.com, scott.browne@myfloridalegal.com, stephen.ake@myfloridalegal.com, and capapp@myfloridalegal.com.; Debra Rescigno, William Gwaltney, and Kristen Lonergan, Counsel for the Florida Department of Corrections, 501 S. Calhoun Street, Tallahassee, Florida 32399-2500, Debra.Rescigno@fdc.myflorida.com, William.Gwaltney@fdc.myflorida.com, Kristen Lonergan@fdc.myflorida.com, Kelly.Forren@fdc.myflorida.com, CO-GCCapLit@fdc.myflorida.com, Courtfilings@fdc.myflorida.com; and the Florida Supreme Court, warrant@flcourts.org, canovak@flcourts.org.

WE HEREBY FURTHER CERTIFY a copy of the foregoing sent by U.S. Mail to, Dominick Occhicone, DC# 226426, Florida State Prison, P.O. Box 800, Raiford, Florida 32083, on July 8, 2026.

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WITH AN EXECUTION SCHEDULED FOR
TUESDAY JULY 28, 2026 AT 6:00 P.M.

APPENDIX D

February12, 2025 Lethal Injection Protocols

FLORIDA DEPARTMENT OF CORRECTIONS

GOVERNOR
RON DESANTIS

SECRETARY
RICKY DIXON

February 18, 2025

The Honorable Ron DeSantis
Executive Office of Governor Ron DeSantis
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Dear Governor DeSantis:

I have carefully reviewed the Execution by Lethal Injection Procedures issued by my Department. Pursuant to these procedures, I represent the following:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Sincerely,

Ricky D. Dixon
Secretary

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EXECUTION BY LETHAL INJECTION PROCEDURES

PURPOSE: To establish the procedures for the execution by lethal injection of inmates sentenced to death, pursuant to the dictates of Chapter 922, Florida Statutes and adhering to the requirements imposed under the Constitution of the State of Florida and the United States Constitution. The foremost objective of the lethal injection process is a humane and dignified death.

APPLICATION: This procedure applies to any execution by lethal injection conducted pursuant to Chapter 922, Florida Statutes. This procedure supersedes the Florida Department of Corrections *Execution by Lethal Injection Procedures* dated March 10, 2023.

DEFINITIONS:

(1) **Execution team**, where used herein, refers to correctional staff and other persons who are selected by the team warden designated by the Secretary to assist in the administration of an execution by lethal injection, and who have the training and qualifications, including the necessary licensure or certification, required to perform the responsibilities or duties specified. Individuals on the execution team will be referred to as "execution team member" or "team member" in these procedures.

(2) **Executioner**, where used herein, refers to an individual selected by the team warden to initiate the flow of lethal chemicals into the inmate. The executioner's sole function is to inject the chemicals into the IV access port by physically pushing the chemicals from the syringe. The executioner is only authorized to carry out this specific function under the direction of the team warden. An executioner shall be an adult, undergo a criminal background check and be sufficiently trained to administer the flow of lethal chemicals. The executioner must demonstrate to the satisfaction of the team warden that s/he is competent, trained, and of sufficient character to carry out the required function under the team warden's direction.

(3) **Institutional warden**, where used herein, refers to the warden of Florida State Prison, who shall be responsible for handling support functions necessary to carry out the lethal injection process.

(4) **Minister of religion**, where used herein, refers to a spiritual advisor requested by an inmate to attend an execution as permitted by section 922.11, Florida Statutes. The name of the requested minister of religion must be provided by the inmate to the institutional warden in writing on FDC Form DC6-236 within five days of the issuance of the Governor's Warrant of Execution. A minister of religion shall be an adult and shall undergo a criminal background check. The institutional warden shall also conduct a review process of the individual as described in Florida Department of Corrections rules and policies applicable to visitor approvals and to spiritual advisor visits. Such a

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review will be performed even if the requested minister of religion has been previously approved for regular visitation purposes. Prior to final approval, the institutional warden may also conduct interviews of the requested minister of religion or their associates. The institutional warden may undertake any investigation necessary to verify that the minister of religion is recognized by their organized religious body as qualified to perform religious functions as a representative of the religious organization or group. The institutional warden may waive any component of the review process if the requested minister of religion is a chaplain currently employed by the Florida Department of Corrections. Candidates not employed by the Florida Department of Corrections must also execute a Spiritual Advisor Execution Agreement. The agreement is attached hereto as Appendix A.

(5) **Team warden**, where used herein, refers to the warden designated by the Secretary. The team warden shall be a person who has demonstrated through experience, training, and good moral character the ability to perform an execution by lethal injection. The team warden has the final and ultimate decision making authority in every aspect of the lethal injection process. No deviation from any part of this procedure is authorized unless approved and directed by the team warden.

SPECIFIC PROCEDURES:

(1) **Receipt of Warrant:** These execution procedures will commence upon receipt of the Governor's Warrant of Execution. The institutional warden will schedule the execution for a date and time certain that is within the period of time designated in the warrant. The institutional warden will provide a copy of the Warrant of Execution to the Department's Secretary and General Counsel, deliver a copy to the named inmate and the team warden, and notify the Florida Department of Law Enforcement (FDLE), any state correctional institutions, and any local agencies that may be affected by the issuance of the warrant and of the date and time selected for the execution.

(2) **Selection of the Executioners:**

(a) The team warden will select two (2) executioners who are fully capable of performing the designated functions to carry out the execution. The team warden will provide each executioner with a copy of this procedure and will explain fully their respective duties and responsibilities and assure that each executioner is trained for the function assigned. The identities of the executioners will be kept strictly confidential as provided by statute.

(b) The team warden will designate one (1) of the selected executioners as the primary executioner and the other as the secondary executioner. The primary executioner will be solely responsible for administering the flow of lethal chemicals into the inmate during the execution. The secondary executioner will be present and available during the execution to assume the role of the primary executioner if the primary executioner becomes unable for any reason, as determined by the team warden, to carry out his/her functions.

(3) **Selection of the Execution Team:** The team warden will designate the execution team members and verify that each team member has the training and qualifications, and possesses current, necessary licensure or certification, required to perform the responsibilities or duties specified. The team warden will ensure that all execution team members and other involved

staff have been adequately trained to perform their requisite functions in the execution process. The team warden shall select personnel with sufficient training and experience to perform the technical procedures needed to carry out an execution by lethal injection, including the mixing of the chemicals and placement of the venous access lines. The identities of any team members with medical qualifications shall be strictly confidential.

(a) The team warden shall select the team member(s) responsible for achieving and monitoring peripheral venous access from the following classes of trained professionals: a phlebotomist currently certified by the American Society for Clinical Pathology (ASCP), American Society of Phlebotomy Technicians (ASPT) or American Medical Technologists (AMT); a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(b) The team warden shall select the team member(s) responsible for achieving and monitoring central venous access, if necessary, from the following classes of trained professionals: an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(c) The team warden shall select the team member(s) responsible for examining the inmate prior to execution to determine health issues from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(d) The team warden shall select the team member(s) responsible for attaching the leads to the heart monitors and observing the monitors during the administration of execution from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(e) The team warden shall select the team member(s) responsible for purchasing, maintaining and mixing the lethal chemicals from the following classes of trained professionals: a physician, licensed under Chapter 458 or Chapter 459, Florida Statutes; or, a pharmacist licensed under Chapter 465, Florida Statutes.

(f) The team warden shall select other execution team members to carry out the following tasks:

1. Showering and preparation of the inmate.
2. Ensuring that the equipment necessary for an execution is in proper working order.
3. Escorting the inmate from his/her cell to the execution chamber.
4. Applying restraints to the inmate prior to applying the heart monitor leads and acquiring venous access.

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5. Maintaining the open telephone line with the Office of the Governor.
6. Reporting the actions inside the executioner's room to the team warden.
7. Maintaining the checklists that detail the events surrounding the execution.
8. Escorting the minster of religion.
9. Opening and closing the window covering to the witness gallery and turning on and off the public address (PA) system.

This list is not intended to be exhaustive. There may be other necessary tasks to carry out an execution and such tasks will be assigned by the team warden.

Each execution team member is responsible and authorized to raise concerns that become apparent during the execution and bring them to the attention of the team warden.

(4) **Training of the Execution Team and Executioners:** There shall be sufficient training to ensure that all personnel involved in the execution process are prepared to carry out their distinct roles for an execution. All team members shall be instructed on the effects of each lethal chemical. All simulations or reviews of the process shall be considered training exercises. The team warden, or his/her designee, will conduct simulations of the execution process on a quarterly basis at a minimum or more often as needed as determined by the team warden. Additionally, a simulation shall be conducted prior to the scheduled execution. All persons involved with the execution should participate in the simulations. If a person cannot attend the simulation, the team warden shall provide for an additional training opportunity or otherwise ensure that the person is adequately trained to complete his or her assigned task. There shall be a written record of any training activities. The simulations should anticipate various contingencies. Examples of possible contingencies shall include:

(a) Issues related to problems with equipment needed to carry out an execution.

(b) Problems related to venous access of the inmate, including the necessity to obtain an alternate venous access site during the execution process.

(c) The inmate is not rendered unconscious after the administration of the etomidate injection.

(d) Combative inmate.

(e) Incapacity of any execution team member or executioner.

(f) Unanticipated medical emergency concerning the inmate, an execution team member or executioner.

(g) Problems related to the order and security at the Florida State Prison, including but not limited to disturbances, unrest or resistance.

(h) Power failure or other facility problems.

This list is not meant to be exhaustive and only provides examples of the types of contingencies that could arise during the course of an execution. The team warden is responsible for ensuring that training addresses, at a minimum, the above situations.

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(5) **Use of Checklists:** Compliance with this procedure will be documented on appropriate checklists. Upon completion of each step in the process, an execution team member will indicate when the step has been completed. Prior to the administration of the lethal chemicals, the team warden will consult with the designated team member and verify that all steps in the process have been performed properly. At the conclusion of the process, the team warden will again consult with the designated team member and verify that the remaining steps in the process were performed properly. The team warden will then sign the forms, attesting that all steps were performed properly.

(6) **Purchase and Maintenance of Lethal Chemicals:** A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

(7) **FDLE Monitors:**

(a) Two (2) FDLE agents shall serve as monitors and shall be responsible for observing the actions of the execution team and the condition of the condemned inmate at all times during the execution process.

(b) The first FDLE agent shall be located in the executioner's room and is responsible for observing the preparation of the lethal chemicals and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two (2) minute intervals. A copy of the log shall be provided to the team warden and shall be available at the post execution debriefings.

(c) The second FDLE agent shall be located in the execution chamber and will be responsible for keeping a detailed log of what is occurring in the execution chamber at a minimum of two (2) minute intervals. A copy of the log shall be provided the team warden and shall be available for the post execution debriefings.

(8) **Approximately One (1) Week Prior to Execution:**

(a) The team warden will designate one or more execution team members to review the inmate's medical file and to make a limited physical examination of the inmate to determine whether there are any medical issues that could potentially interfere with the proper administration of the lethal injection process. The team member(s) will verbally report his/her findings to the team warden as soon as is practicable following the file review and physical examination. The results of this examination shall be documented in the inmate's file. After reviewing the results of the examination which should include a determination of the best access site and conferring with the team member(s) that performed the examination, the team warden shall conclude what is the more suitable method of venous access (peripheral or femoral) for the lethal injection process given the individual circumstances of the condemned inmate based on all information provided.

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(b) If a team member reports any issue that could potentially interfere with the proper administration of the lethal injection process, the team warden will consult with any or all of the members of the execution team and resolve the issue.

(9) **On the Day of Execution:**

(a) A food service director, or his/her designee, will personally prepare and serve the inmate's last meal. The inmate will be allowed to request specific food and non-alcoholic drink to the extent such food and drink costs forty dollars ($40) or less, is available at the institution, and is approved by the food service director.

(b) The inmate will be escorted by one (1) or more team members to the shower area where a team member of the same sex will supervise the showering of the inmate. Immediately thereafter, the inmate will be returned to his/her assigned cell and issued appropriate clothing. A designated member of the execution team will obtain and deliver the clothing to the inmate.

(c) A designated execution team member will ensure that the telephone in the execution chamber is fully functional and that there is a fully-charged, fully-functional cellular telephone in the execution chamber. Telephone calls will be placed from the telephone to ensure proper operation. Additionally, a member of the team shall ensure that the two-way audio communication system and the visual monitoring equipment are fully functional.

(d) A designated execution team member will ensure that the PA system is fully functional.

(e) The only staff authorized to be in the execution chamber area are members of the execution team and others as approved by the team warden, including two monitors from FDLE.

(f) A designated execution team member, in the presence of one or more additional team members and an independent observer from FDLE, will prepare the lethal injection chemicals as follows, ensuring that each syringe used in the lethal injection process is appropriately labeled, including the name of the chemical contained therein:

(1) Etomidate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe and needle will be used to draw fifty milliliters (50mls) of etomidate injection 2mg/ml from one or more vials containing same, for a total of one hundred milligrams (100mg) of etomidate injection. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube), clearly labeled with the number one (1), and placed in the first slot on a stand designed to hold eight (8) such syringes in separate slots. The stand will be clearly labeled with the letter "A." This process will be repeated with a second syringe, which will be clearly labeled with a number two (2) and placed in the second slot on stand "A." Two additional syringes will be drawn in the same manner, fitted with the blunt cannula, and clearly labeled with the numbers one (1) and two (2), respectively. These two syringes will be placed in the first two slots on a second stand that has been clearly labeled with the letter "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

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(2) Rocuronium bromide injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw five hundred milligrams (500mg) of rocuronium bromide injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing five hundred milligrams (500mg) of rocuronium bromide injection, for a total of two thousand milligrams (2000mg). Two syringes will be clearly labeled with the numbers four (4) and five (5), respectively, and placed into slots four (4) and five (5) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately and placed in slots four (4) and five (5), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(3) Potassium acetate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw one hundred twenty milliequivalents (120mEq) of potassium acetate injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing one hundred twenty milliequivalents (120mEq) of potassium acetate injection, for a total of four hundred eighty (480) milliequivalents. Two syringes will be clearly labeled with the numbers seven (7) and eight (8), respectively, and placed into slots seven (7) and eight (8) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately, and placed in slots seven (7) and eight (8), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(4) Saline solution: A sterile, disposable twenty cubic centimeter (20cc) syringe will be used to draw twenty milliliters (20ml) of sterile saline solution from one or more vials containing same. This procedure will be repeated until there are four (4) syringes, each containing twenty milliliters (20ml) of sterile saline solution, for a total of eighty (80) milliliters. Each syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). Two syringes will be clearly labeled with the numbers three (3) and six (6), respectively, and placed into slots three (3) and six (6) on stand "A." This procedure will be repeated with the other two syringes, each of which will be placed in slots three (3) and six (6), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(g) The execution team member who has prepared the lethal chemicals will transport them personally, in the presence of one or more additional members of the execution team, to the executioner's room. Stand "A" will be placed on the worktop for use by the primary executioner, to be used during the execution by lethal injection. Stand "B" will be placed on a shelf underneath the worktop within easy reach of the executioners should they be needed during the execution. Stand "B" will not be used unless expressly ordered to be used by the team warden. The lethal chemicals will remain secure until the executioners arrive. No one other than the executioners will have access to the lethal chemicals, unless a stay is granted, in which case the execution team member who

prepared the lethal chemicals will retrieve them from the locked room and dispose of them according to state and federal law.

(h) A designated execution team member will prepare, using an aseptic technique, two (2) standard intravenous (IV) infusion sets, each consisting of a pre-filled, sterile plastic bag of normal saline for IV use (a solution of sodium chloride at 0.9% concentration) with an attached drip chamber, a long sterile tube fitted with a back check valve and a clamp to regulate the flow, a connector to attach to the access device, and an extension set fitted with a luer lock tip for a blood cannula to allow for the infusion of the lethal chemicals into the line. The extension set that will be used to infuse the lethal chemicals into the primary injection line will be clearly marked with a "1," and the additional extension set that will be attached to the secondary injection line will be clearly marked with a "2."

(i) The team warden will explain the lethal injection preparation procedure to the inmate and ensure the provision of any medical assistance or care deemed appropriate. The inmate will be offered and, if accepted, will be administered intramuscular injections of hydroxyzine, in appropriate dosages relative to weight, to ease anxiety.

(j) Authorized media witnesses will be picked up at the designated media on-looker area located at New River Correctional Institution by two (2) designated Department of Corrections escort staff, transported to the main entrance of Florida State Prison as a group, cleared by security, and escorted to the population visiting park, where they will remain until being escorted to the witness room of the execution chamber by the designated escort staff.

(k) The team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each execution team member. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. Upon the arrival of the executioners to perform their duties, the team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each executioner. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. If one or both of the executioners is disqualified, the team warden will continue to select and test as many additional executioners as is necessary to ensure the presence of two qualified executioners at the execution.

(10) **Approximately Thirty (30) Minutes Prior to Execution:**

(a) A designated execution team member will establish telephone communication with the Office of the Governor on behalf of the team warden. The team warden will communicate with the Office of the Governor to determine whether any cause for delay exists. The phone line will remain open to the Office of the Governor during the entire execution procedure. The team member will use this open line to report the ongoing activities of the execution team and other personnel to the Office of the Governor.

(b) When the team warden determines that no cause for delay remains, a designated member of the execution team will escort the two (2) executioners into the executioner's room, where they will remain until the execution process is complete.

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(c) The team warden will read the Warrant of Execution to the inmate. The inmate may waive the reading of the warrant.

(d) Designated members of the execution team will apply wrist restraints to the inmate and escort him/her from his cell to the execution chamber.

(e) Designated members of the execution team will assist the inmate, if necessary, in positioning himself/herself onto the execution gurney in the execution chamber.

(f) Designated members of the execution team will secure the restraining straps.

(g) One or more designated members of the execution team will attach the leads to two (2) heart monitors to the inmate's chest, ensuring that the monitors are operational both before and after the chest restraints are secured.

(h) Unless the team warden has previously determined to gain venous access through a central line, a designated team member will insert one intravenous (IV) line into each arm at the medial aspect of the antecubital fossa of the inmate and ensure that the saline drip is flowing freely. The team member will designate one IV line as the primary line and clearly identify it with the number "1." The team member will designate the other line as the secondary line and clearly identify it with the number "2." If venous access cannot be achieved in either or both of the arms, access will be secured at other appropriate sites until peripheral venous access is achieved at two separate locations, one identified as the primary injection site and the other identified as the secondary injection site.

(i) If peripheral venous access cannot be achieved, a designated team member will perform a central venous line placement, with or without a venous cut-down (wherein a vein is exposed surgically and a cannula is inserted), at one or more sites deemed appropriate by that team member. If two sites are accessed, each line will be identified with a "1" or a "2," depending on their identification as the primary and secondary lines.

(j) One or more designated members of the execution team will remove, one at a time, from the pole attached to the gurney, the two (2) saline bags and pass the bags, along with the extension sets attached to lines labeled "1" and "2," through a small opening into the executioner's room, where a team member will hang the bags on separate hooks inside the room. The designated team member(s) will ensure that the tubing from the IV insertion points to the bags has not been compromised and that the saline drip is flowing freely. The team member will be responsible for continuously monitoring the viability of the IV lines prior to and during the administration of the execution.

(11) **Approximately Fifteen (15) Minutes Prior to Execution:**

(a) Official witnesses will be secured in the witness room of the execution chamber by two designated Department of Corrections escort staff.

(b) Authorized media witnesses will be secured in the witness room of the execution chamber.

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(c) The only persons authorized in the witness room are: twelve (12) official witnesses, including family members of the victim, four (4) alternate official witnesses, one (1) nurse or medical technician, twelve (12) authorized media representatives, one (1) representative from the Department's public affairs office, one (1) designated staff escort, and one (1) designated team member. Counsel for the convicted person and a minister of religion requested by the convicted person may also be present. Any exception must be approved by the institutional warden.

(d) The institutional warden may deny access to the institution to any visitor, official witness or other person he or she deems a risk to the security of the institution. In the event there is reasonable suspicion that an individual may initiate or attempt to initiate a violent or disruptive act prior to, during, or following an execution, that person will not be permitted to witness the execution and will be escorted off the prison grounds immediately.

(e) The execution chamber will be secured. Only the team warden, one (1) additional execution team member and one (1) FDLE monitor shall be allowed in the chamber during the administration of the execution. Any exceptions or contingencies must be approved by the team warden.

(f) The executioner's room will be secured. Only the executioners, the team member reporting actions in the executioner's room to the warden, the team member reporting actions to the Office of the Governor, the team member observing the heart monitors, the team member maintaining the checklists, and the FDLE agent assigned to the executioner's room shall be allowed in the executioner's room. Any exception must be approved by the team warden.

(12) **Administration of Execution:**

(a) An execution team member will open the covering to the witness gallery window. The team warden will use the open telephone line to determine from the Governor whether there has been a stay of execution. If the team warden receives a negative response, s/he will then proceed with the execution.

(b) An execution team member will turn on the PA system. The team warden will permit the inmate to make an oral statement, which will be broadcast into the witness gallery over the PA system. At the conclusion of the inmate's statement, or if the inmate declines to make a statement, the team warden will announce that the execution process has begun. A designated member of the execution team will turn off the PA system.

(c) In the presence of the secondary executioner and within sight of one (1) or more execution team members and one (1) of the FDLE monitors, the primary executioner will administer the lethal chemicals in the following manner:

(1) The executioner will remove from the stand on the worktop the syringe labeled number one (1), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

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(2) The executioner will remove from the stand on the worktop the syringe labeled number two (2), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(3) The executioner will remove from the stand on the worktop the syringe labeled number three (3), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(4) At this point, the team warden will assess whether the inmate is unconscious. The team warden must determine, after consultation, that the inmate is indeed unconscious. If the inmate is unconscious and the team warden orders the executioners to continue, the executioners shall proceed to step (12)(c)(6).

(5) In the event that the inmate is not unconscious, the team warden shall signal that the execution process is suspended and note the time and order the window covering to the witness gallery to be closed. The execution team shall assess the viability of the secondary access site. If the secondary access site is deemed viable, then the team member shall designate this site as the new primary access site. If the secondary access site is compromised, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the team has secured a viable access site, the team warden shall order the drapes to be opened and signal that the execution process will resume. The executioners will then be directed to initiate the administration of lethal chemicals from stand "B" into the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline. The executioners will continue to use the remaining chemicals from stand "B" throughout the execution at the direction of team warden. The team warden will then again proceed to step (12)(c)(4) and assess whether the inmate is unconscious.

(6) The executioner will remove from the stand on the worktop the syringe labeled number four (4), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(7) The executioner will remove from the stand on the worktop the syringe labeled number five (5), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension

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set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(8) The executioner will remove from the stand on the worktop the syringe labeled number six (6), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(9) The executioner will remove from the stand on the worktop the syringe labeled number seven (7), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(10) The executioner will remove from the stand on the worktop the syringe labeled number eight (8), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(11) The primary executioner shall at all times administer the lethal injection chemicals. Only if the primary executioner becomes incapacitated shall the secondary executioner administer the lethal chemicals. At no time shall more than one (1) executioner inject any lethal chemicals to complete the execution.

(d) If at any time during the administration of the lethal chemicals the primary venous access becomes compromised, the team warden shall order the execution process stopped and order the window covering to the witness gallery to be closed. The execution team shall assess the primary access site and assess the viability of the secondary access site and take appropriate remedial action at the access site, if necessary. If neither access site is viable, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the execution team has secured a viable access site, the warden shall order the drapes to be opened and direct that the execution process will resume using the newly established primary line. The executioners will be directed to initiate the administration of lethal chemicals from stand "B" into the IV set attached to the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline, labeled number three (3). The team warden will then proceed to step (12)(c)(4), as described above.

(e) Throughout the execution process, one (1) or more designated execution team members will observe the heart monitors. If the heart monitors reflect a flat line reading during or following the complete administration of the lethal chemicals, a physician will examine the inmate to determine whether there is complete cessation of respiration and heartbeat.

(f) Once the inmate is pronounced dead by the physician, a designated member of the execution team will record the time of death on the appropriate lethal injection procedures checklist.

(g) The team warden will notify the Governor via the open phone line that the sentence has been carried out and the time of death.

(h) A designated execution team member will turn on the PA system. The team warden shall make the following announcement to the witnesses in the gallery: "The sentence of the State of Florida vs. [Inmate Name] has been carried out at [time of day]."

(i) The designated team member will close the window covering to the witness gallery.

(j) The designated Department of Corrections escort staff will escort all witnesses, all of the media pool and any other individuals who are not members of the execution team from the witness room and the execution chamber.

(13) **Immediate Post-Execution Procedures:**

(a) Designated execution team members will dispose of the equipment and any remaining chemicals as required by state and federal law.

(b) The institutional warden will coordinate the entry of hearse attendants for recovery of the inmate's body.

(c) The inmate's body will be removed from the execution table by hearse attendants under the supervision of the designated team member.

(d) The institutional warden, or his/her designee, will obtain a certification of death from the physician and will deliver the certification to the hearse attendants prior to their departure.

(e) The inmate's body will be transported by the hearse attendants to the medical examiner's office in Alachua County for an autopsy.

(f) The team warden shall conduct a brief debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution. Subsequent debriefings will take place, as appropriate.

(14) **Follow-Up Procedures:**

(a) The institutional warden will forward the Warrant of Execution and a signed statement of the execution to the Secretary of State.

(b) The institutional warden will file an attested copy of the Warrant of Execution and a signed statement of the execution with the clerk of the court that imposed the sentence.

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(c) The institutional warden, or his/her designee, will advise central office records by e-mail of the inmate's name and the date and time of death by execution.

(15) **Periodic Review and Certificate from Secretary:** There will be a review of the lethal injection procedure by the Secretary of the Florida Department of Corrections, at a minimum of once every two years, or more frequently as needed. The review will take into consideration the available medical literature, legal jurisprudence, and the protocols and experience from other jurisdictions. The Secretary of the Department of Corrections shall, upon completion of this review, certify to the Governor of the State of Florida confirming that the Department is adequately prepared to carry out executions by lethal injection. The Secretary will confirm with the team warden that the execution team satisfies current licensure and certification and all team members and executioners meet all training and qualifications requirements as detailed in these procedures. A copy of the certification shall be provided to the Attorney General and the institutional warden shall provide a copy to a condemned inmate and counsel for the inmate after a warrant is signed.

The certification shall read:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

RICKY D. DIXON
SECRETARY

2/18/2025
DATE

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No. _____

IN THE

Supreme Court of the United States

DOMINICK OCCHICONE

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY JULY 28, 2026 AT 6:00 P.M.

APPENDIX E

Circuit Order Denying Relief (July 10, 2026)

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY CRIMINAL DIVISION

STATE OF FLORIDA,

v.

DOMINICK OCCHICONE,
SPN: 0011019, Defendant. /

CASE NO.: CRC1986-1355CF
UCN: 521986CF001355CFAXWS

DIVISION: 3

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

THIS CAUSE came before the Court upon Defendant's Motion to Vacate Judgment of Conviction and Sentence of Death after Death Warrant Signed, filed July 6, 2026, pursuant to Florida Rule of Criminal Procedure 3.851. The State filed responses to Defendant's motions on July 8, 2026. The Court held an initial hearing on the motion and response where the parties made arguments as to purely legal issues and the need for an evidentiary hearing on July 8, 2026. Having heard the argument of counsel, and having considered the motion, response, relevant portions of the record, and applicable law, the Court finds as follows:

Procedural History

On September 18, 1987, a jury found Defendant guilty of the first-degree murder of Raymond and Martha Artzner. After a penalty phase, the jury recommended death by a 7-to-5 vote for each victim. On November 9, 1987, the Court sentenced Defendant to death for the murder of Mrs. Artzner.[1] The Florida Supreme Court affirmed Defendant's convictions and sentences on appeal. *Occhicone v. Florida,* 570 So. 2d 902 (Fla. 1990). The mandate issued on January 31, 1991. On or about May 20, 1991, the United States Supreme Court denied Defendant's petition for writ of certiorari. *Occhicone v. Florida,* 500 U.S. 938 (1991). Defendant subsequently filed a petition for writ of habeas corpus with the Florida Supreme Court, which was denied. *Occhicone v. State,* 618 So. 2d 730 (Fla. 1993). The mandate issued on June 7, 1993.

On May 20, 1993, Defendant filed his first postconviction motion. After orders denying several claims and ordering an evidentiary hearing on others, the Court issued its final order

[1] The Court sentenced Defendant to life imprisonment without the possibility of parole for 25 years as to Mr. Artzner.

denying Defendant's motion on May 18, 1998. Defendant appealed the denial of his motion for postconviction relief with the Florida Supreme Court. On June 29, 2000, the Florida Supreme Court affirmed the Court's order denying Defendant's postconviction claims. *Occhicone v. State,* 768 So. 2d 1037 (Fla. 2000). The mandate issued on November 13, 2000. Defendant subsequently filed collateral motions for relief in federal court, each of which was denied. *Occhicone v. Secretary, Dept. of Corrections,* 2005 WL 1073936 (M.D. Fla. 2005); *Occhicone v. Secretary, Dept. of Corrections,* 455 F.3d 1306 (11th Cir. 2006); and *Occhicone v. McDonough,* 549 U.S. 1122 (2007).

On September 12, 2014, Defendant sought public records from the Florida Department of Corrections (DOC). The Court ordered the State and Department to file objections to Defendant's public records request; however, no other orders were issued after this.

On January 9, 2017, Defendant filed a successive motion to vacate death sentence, alleging that he is entitled to relief pursuant to *Hurst v. Florida*, 136 S. Ct. 616 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). On May 18, 2017, the Court entered a final order dismissing Defendant's motion. Defendant appealed the dismissal of his successive motion for postconviction relief, and on January 30, 2018, the Florida Supreme Court affirmed the Court's order. *Occhicone v. State,* 235 So. 3d 299 (Fla. 2018). The mandate issued on February 15, 2018.

On June 26, 2026, Governor Ron DeSantis signed a death warrant for Defendant. The Governor has set an execution week for the week beginning at 12:00 noon on Tuesday, July 28, 2026, through 12:00 noon on Tuesday, August 4, 2026. Defendant's execution has been set for Tuesday, July 28, 2026, at 6:00 p.m. Both the Florida Supreme Court and this Court have issued scheduling orders for resolving any motions filed in this case in an expedited manner.

Motion for Postconviction Relief

Defendant's motion raises three claims. Claim One argues shortages of etomidate and the DOC's failure to follow their own lethal injection protocol violates Defendant's 14th Amendment rights and requests a reconsideration of the denial of Defendant's public records request. Claim Two argues that the execution of Defendant constitutes cruel and unusual punishment under the 8th Amendment due to his status as an elderly person. Claim Three argues that the pace and number of recent executions violates Defendant's Eighth Amendment rights, that executions should be paused due to the effect on execution team staff, that executing Defendant shocks the conscience

due to his religious status, and that the 7-to-5 jury recommendation for death would be an illegal sentence under current law.

An initial motion under rule 3.851 must be brought within one year of the date the judgment and sentence became final. *See* Fla. Rule Crim. P. 3.851(d)(1). Because Defendant's motion was clearly not filed within one year of the date the judgment became final, each of these claims are timely only if an exception is present. *See* Fla. R. Crim. P. 3.851(d). The rule provides three exceptions to the timeliness requirement:

> (A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or
>
> (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or
>
> (C) postconviction counsel, through neglect, failed to file the motion.

Fla. R. Crim. P. 3.851(d)(2). A motion under rule 3.851 filed after the warrant is signed is automatically considered a successive motion. Fla. R. Crim. P. 3.851(h)(5). Such a claim shall be dismissed if "it fails to allege new or different grounds for relief and the prior determination was on the merits; or, if new and different grounds are alleged, the trial court finds there was no good cause for failing to assert those grounds in a prior motion." Fla. R. Crim. P. 3.851(e)(2).

"If the motion, files, and records in the case conclusively show that the movant is entitled to no relief, the motion may be denied without an evidentiary hearing." Fla. R. Crim. P. 3.851(5). Conversely, the Court must hold an evidentiary hearing when a movant makes a facially sufficient claim requiring a factual determination. *Mann v. State*, 112 So. 3d 1158, 1161 (Fla. 2013). Vague and conclusory allegations are not sufficient to require a hearing. *Valle v. State*, 70 So. 3d 530, 550 (Fla. 2011).

Claim One

In Claim One, Defendant argues that because of a shortage of etomidate and DOC's failure to follow its own lethal injection protocols, his execution would violate his 14th Amendment rights. Defendant points to a report by the American Society of Health-System Pharmacists from April 7, 2026, finding that there is an ongoing shortage of etomidate, one of the drugs used as a part of DOC's lethal injection protocol. Defendant urges that this shortage impacts society as a

whole and violates Defendant's due process rights under the 14th Amendment to be treated the same as all others subjected to execution by lethal injection. Defendant argues that the denial of his request to access DOC records relating to its lethal injection procedure denies him the ability to prove the violation of his due process rights. Defendant alleges that documentation from the *Walls v. Nixon*[2] federal lawsuit raises concerns about DOC's compliance with its own lethal injection protocols, especially as it relates to the use and maintenance of etomidate. Defendant argues that during the hearing on the public records request, Defendant offered to work with DOC to narrow the records requested to include only the vials of etomidate set aside for Defendant's execution. Defendant contends that DOC can no longer argue that the demand is "vague, overbroad, or confidential" because no confidential information would be disclosed.

Defendant goes on to assert that the records in the *Walls* litigation demonstrate that DOC is not following its own lethal injection protocols and Defendant's rights under the 14th Amendment will be violated by the routine maladministration by DOC of the lethal injection procedures. Finally, Defendant avers that §945.10(1)(j)1 was not intended to preclude access to all records related to the lethal injection process and that denial of access to the records leaves defendant with no ability to challenge DOC's actions. Defendant claims that DOC has lost the presumption of compliance with the protocol based on the errors he articulated and argues that he has established a colorable claim and as such, will be denied his 14th Amendment rights if not given access to the records he seeks.

The State responds that Defendant's claim is untimely and fails to state a colorable claim for relief. The State asserts that Defendant's Eighth Amendment challenge is difficult to decipher, but that such a claim is untimely because the current protocol has been in place since 2017. The State goes on to opine that although this claim is presented through different constitutional theories, all of the arguments are premised upon the same speculative allegation of DOC's future failure to follow its lethal injection protocol. The State contends that Defendant fails to state a colorable Eighth Amendment method-of-execution claim. The first prong of such a claim requires a defendant to establish that the challenged method presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering[3]. The State avers that Defendant's reliance on the records from the *Walls* case to speculate that DOC will deviate from

[2] No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025).
[3] *Asay v. State,* 224 So. 3d 695, 701 (Fla. 2017).

its lethal injection protocol fails to establish this risk. The State further asserts that relief cannot be based on the tenuous and speculative assumption that etomidate shortages affecting commercial products would translate to shortages of DOC's etomidate, and thus, a risk that DOC will deviate from the protocol and cause harm to Defendant. The second requirement of a method-of-execution claim is to identify a feasible, readily implemented alternative method of execution that would significantly reduce the alleged risk of severe pain.[4] The State points out that Defendant has not pled a feasible, readily implemented alternative and thus, his claim is insufficient.

Nevertheless, the State also argues that Defendant's theory conflicts with the settled presumption of compliance by DOC with its protocol and instead relies on unsupported assumptions that DOC will deviate from its protocol. The State contends that such speculation does not state a colorable claim for relief.

As it relates to Defendant's additional request for public records, the State maintains that rule 3.852 prohibits the type of exploratory discovery that Defendant seeks. The State reminds the Court that Defendant's request is not related to a colorable postconviction claim and that denial of records requests in that circumstance has been affirmed by the Florida Supreme Court in *Twilegar v. State,* 175 So. 3d 242, 250 (Fla. 2015) and *Willacy v. State,* 431 So. 3d 254, 263-64 (Fla. 2026). The State goes on to opine that Defendant's attempt to repackage his discovery request under Chapter 119 of the Florida Statutes that govern public access to records is misplaced and that capital postconviction discovery is dictated instead by rule 3.852. The State asserts that the due process clause does not provide Defendant the right to seek records based on speculative claims, nor does he identify any disparate treatment as part of his equal protection argument. The State asserts that Defendant has not pled a legally cognizable basis for postconviction relief and that because his claim is speculative, it may be summarily denied.

1. Florida Supreme Court Precedent Dictates the Denial of this Claim on the Merits

As an initial matter, Defendant starts his claim with an argument that a shortage of etomidate impacts society, including Defendant, and creates ethical issues about who should be using this drug. Defendant argues that this is a life-saving drug with particular application in emergency medicine and its shortage requires allocation of resources to those who would benefit the most from its use. However, as a standalone claim, this allegation does not allege any legal claim for relief. Defendant cites to no case law or legal principles that support that this shortage

[4] *Tanzi v. State,* 407 So. 3d 385, 393 (Fla. 2025) (internal citation omitted).

allows for relief under rule 3.851. Additionally, in that Defendant is arguing that this Court has any authority to dictate which medication is used by DOC in their lethal injection protocol, such an argument misplaced. The Florida Supreme Court has held that "it is not a judicial function to determine the appropriate dose or identity of the chemicals used in the lethal injection process." *Schwab v. State,* 995 So. 2d 992, 932 (Fla. 2008). The Court reasoned that decisions regarding both the methodology and chemicals in this process should be left to the DOC. *Id.* (citing *Lightbourne v. State,* 969 So. 2d 326, 352 (Fla. 2007) (quoting *Sims v. State,* 754 So. 2d 657, 670 (Fla. 2000)). Consequently, it is not within this Court's purview to make policy decisions about who etomidate should be allocated to or how it should be used, especially in the context of rule 3.851 proceedings.

Although not pled this way in his rule 3.851 motion, at the initial hearing on the motion, Defendant alleges that this shortage is newly discovered evidence. However, it appears that Defendant is actually attempting to argue the timeliness of the claim under the one-year requirement of rule 3.851. The evidence of the etomidate shortage would not meet the newly discovered evidence test. This test requires that evidence must have been unknown at the time of trial, could not have been discovered through use of due diligence, and would likely produce an acquittal at retrial. *See Dailey v. State*, 279 So. 3d 1208,1212-13 (Fla. 2019) (internal quotations and alterations omitted).

Further, Defendant goes on in this claim to argue that based on the records in the *Walls v. Nixon* case, DOC has failed to follow its own lethal injection protocol in recent executions. In that Defendant is arguing that the shortage of etomidate creates a higher likelihood that DOC will deviate from its lethal injection protocol, this is purely speculation. "Conclusory and speculative allegations are insufficient to warrant an [e]videntiary [h]earing" under Rule 3.851. *Jimenez v. State,* 265 So. 3d 462, 474 (Fla. 2018) (quoting *Knight v. State,* 923 So. 2d 389, 399 (Fla. 2005)). Defendant has offered no connection between the report he cites from American Society of Health-System Pharmacists and the availability of DOC's supply of lethal injection drugs. Instead, he merely assumes that because of the reported shortage, it must follow that DOC does not possess the necessary etomidate and will deviate from its procedures. Defendant has offered no support for this assertion and only offers speculation, which is insufficient to warrant an evidentiary hearing as to this claim.

Defendant's claim that records in the *Walls v. Nixon* case demonstrate DOC has maladministered its own protocol in prior executions, and will do so in here in violation of Defendant's Fourteenth Amendment, is also without merit[5]. These claims have been addressed by the Florida Supreme Court in several recent decisions, including *Heath v. State,* 426 So. 3d 1253, 1261 (Fla. 2026) and *Spencer v. State,* 2026 WL 1757938 (Fla. June 18, 2026). A successful challenge to a method of execution requires a defendant to "(1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain." *Heath,* 426 So. 3d at 1261. The Court in *Heath* goes on to note that "speculative and conclusory allegations that lethal injection protocols present a substantial risk of serious harm are insufficient to warrant an evidentiary hearing." *Id.* (citing *Cole v. State,* 392 So. 3d 1054, 1065 n. 18 (Fla. 2024) (citing *Jimenez,* 265 So. 3d at 474)). The defendants in *Heath* and *Spencer* relied on the same records from the *Walls* case to argue that DOC was maladministering its protocol, as Defendant does here[6]. As explained in both *Heath* and *Spencer* in relation to the basis for this argument, "[t]he question is not whether protocol deviations occurred but whether the defendant's allegations would demonstrate a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering." *Heath,* 426 So. 3d at 1262; *Spencer,* 2026 WL 1757938 at *5.

Defendant, here, does not allege that the current method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering. It may be implied from Defendant's motion that he is arguing DOC previously deviated from its lethal injection protocols and will do so for Defendant, especially because of the shortage of etomidate, causing him a risk of suffering. However, this is speculative and thus, without merit. Both *Heath* and *Spencer* held that the records in *Walls* do not demonstrate a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and that such allegations are

[5] Defendant does not allege an Eighth Amendment challenge and in fact specifically denied that he is alleging an Eighth Amendment violation in the initial hearing held on July 8, 2026. However, Defendant's argument that DOC has been, and will in Defendant's execution, deviate from its protocols, especially coupled with the inference that the shortage of etomidate will play some part in the deviation from protocols, alludes to an Eighth Amendment challenge. The Court will address that analysis.

[6] Similar to Defendant here, the defendant in *Spencer* also made claims that his Fourteenth Amendment rights would be violated by DOC's failure to adhere to its lethal injection protocols. *Spencer,* 2026 WL 1757938 at *3.

speculative.[7] The only support Defendant provides in his claim are suppositions based on these records. Further, in alleging his Fourteenth Amendment claim, Defendant does not assert what disparate treatment he would be subject to, other than the same assumptions that DOC will not follow protocol. As noted above, "[c]onclusory and speculative allegations are insufficient to warrant an [e]videntiary [h]earing" under Rule 3.851. *Jimenez,* 265 So. 3d at 474 (quoting *Knight,* 923 So. 2d at 399). As such, Defendant's contention that DOC's failure to follow its own protocol will violate his Fourteenth Amendment rights to be treated the same as others subject to execution, along with the implication this hypothetical scenario will also violate his Eighth Amendment rights, is entirely speculative and fails to meet the required standard. Additionally, Defendant does not plead any allegations identifying a sufficient alternate method of execution that would "significantly reduce [] a substantial risk of severe pain." *See Spencer,* 2026 WL 1757938 at *6 (quoting *Tanzi v. State,* 407 So 3d 385, 393 (Fla. 2025) (internal citation omitted). As such, Defendant's claim is legally insufficient.

Finally, as to the section in Defendant's motion labeled "Records Demand," Defendant appears to reargue the public records demand that was previously denied. This Court declines to reconsider its denial of Defendant's demand for public records, relying on the legal authority and analysis previously stated in the order denying his demand for public records. This Court notes, however, Defendant's allegation in the due process section of this claim that his offer to further narrow his request to only the vials of etomidate set aside for his own execution is far narrower in scope than his original request, and can no longer be deemed vague, overbroad, or at risk of disclosing confidential information. Even this narrower request is still rooted in speculation based on the records from *Walls.* As explained in this Court's prior order, the Florida Supreme Court in *King* held that such an allegation requires speculation and conjecture and thus, does not support a colorable claim for relief, reasoning that "alleged failures in documenting the movement of drugs into and out of inventory does not give rise to a cognizable equal protection or due process injury."

[7] The Court noted that alleged failures to document removal of drugs from the inventory until a day or two later, the alleged failure to log the removal of etomidate from the inventory when an autopsy showed the drug was administered, and the allegation that lidocaine was administered are all insufficient to show the required substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering during an execution. *Heath,* 426 So. 3d at 1262. The Court further held that the allegations that inventory removals showing "amounts less than required by the protocol show that incorrect doses were used is speculative," as well as the alleged use of expired drugs. *Id.*

King v. State, No. SC2026-0336, 2026 WL 672101 at *5 (Fla. Mar. 10, 2026), *cert. denied sub nom. King v. Fla.,* 224 L. Ed. 2d 184 (Mar. 16, 2026).

What's more, any claim that Defendant's Fourteenth Amendment rights are being violated due to the Court's denial is without merit. Defendant has not alleged that he is being treated differently from similarly situated defendants seeking records in post-warrant litigation. In fact, like here, the defendant in *Heath* also argued that "the circuit court's decision to block any further investigation violates the Fourteenth Amendment." *Heath,* 426 So. 3d at 1261. The basis for Heath's records request was substantially similar to Defendant's here: that "errors in the drug logs, problems with the preparation of the drugs, or problems with the drugs themselves" evinced a concern that DOC maladministered its protocol and a full investigation was necessary before his execution. *Id.* at 1263. This argument was unsuccessful and the Court found no error in the trial court's denial because his claim that records related to a colorable claim for relief was meritless. *Id.* Defendant has not demonstrated that the denial of his records request has violated his Fourteenth Amendment rights.

Based on the foregoing, Claim One is **denied**.

Claim Two

In Claim Two, Defendant asserts that execution of Defendant is cruel and unusual punishment pursuant to the Eighth Amendment due to Defendant's status as an elderly person. Defendant points to the execution of inmate Dusty Spencer at the age of 74 and discusses news articles discussing the issue of executing an inmate of that age. Defendant contends that his sentence violates the Eighth Amendment not because of his membership in a "class" but because he is 80 years old. Defendant asserts that the analysis for whether a punishment is cruel and unusual is governed by the evolving standards of decency and that contemporary law dictates whether a punishment violates the Eighth Amendment. Defendant analogizes case law evaluating the acceptability of executed "mentally retarded individuals" to the question of whether elderly inmates should be executed. Defendant discusses the laws defining and protecting elderly persons in Florida and cites to Florida's Elder Abuse Benchbook to discuss the deterioration caused by aging and vulnerability of the elderly.

Defendant moves on to further examine law and cases relating to the compassionate release of elderly inmates. Defendant compared his case to *United States v. Lynn*[8] in which the Court granted compassionate release to a 65-year-old defendant who had numerous age-related health problems and had served 30 years of his sentence; and the inmate in *Nash v Ryan*[9], a 94-year-old inmate who was granted a stay due to his age and cognitive decline and then was permitted to go to a medical facility where he died at the age of 94. Defendant points out that he is 80 years old, has served 39 years of his sentence, and suffers from heart disease, kidney disease, and the general deterioration of old age and avers that a person in his position would qualify for compassionate release under the United States Code.

Defendant cites to *Smithers v. State*[10] and *Trotter v. State*[11] and avers that those cases are distinguishable from the instant case. Defendant contends that the Court in *Smithers* found his claim was untimely and procedurally barred and therefore it did not consider whether executing the elderly is inconsistent with the evolving standards of decency or whether it violates cruel and unusual punishments "where the executions do not have a deterrent or retributive purpose." *Smithers,* 420 So. 3d at 465. Defendant goes on to discuss *Trotter,* where the Court declined to apply the prohibition against cruel and unusual punishment to persons 65 or older after Trotter argued that executing him at 65 years old offended evolving standards of decency and constituted cruel and unusual punishment. *Trotter,* 428 So. 3d at 71. Defendant argues that he is not seeking a categorical bar to executing those older than 65, but that he seeks relief based on the totality of his own circumstances. Defendant points to an article explaining that "prisoners are more likely to suffer age related impairments than their non-prison counterparts of the same age" due to backgrounds that include drug, alcohol, and poverty, combined with the effects of a life in prison. Defendant asserts that he has a history of drug and alcohol abuse, does not get enough sleep, has kidney disease, heart issues, prostate issues, and requires assistance in his daily tasks, and thus, should be considered elderly and vulnerable.

Defendant brings up the ages of two recent inmates who were executed and alleges that recent executions appear to target a vulnerable population. Defendant also contends the death

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[8] No. CR 89-0072-WS, 2020 WL 3229302 (S.D. Ala. June 15, 2020).

[9] 581 F.3d 1048 (9th Cir. 2009), *abrogated by Ryan v. Gonzales,* 568 U.S. 57, 133 S. Ct. 696, 184 L. Ed. 2d 528 (2013).

[10] 420 So. 3d 460 (Fla. 2025).

[11] 428 So. 3d 68 (Fla. 2026).

penalty is not a deterrent to crime when the execution is carried out so long after the conviction. Defendant argues that he is frail and vulnerable and executing him 39 years after his conviction serves no retributive or deterrent value and thus, is a manifest injustice. Defendant contends that relief granted to him would not categorically exempt other offenders from the death penalty.

The State responds that this claim is untimely and procedurally barred. The State asserts that because Defendant's claim relies on his aging to exempt him from execution, his claim became ripe years ago when he first started aging. The State highlights that Florida law defines an elderly person as someone who has reached the age of 60 and suffers from "the infirmities of aging."[12] The State points out that Defendant is 80 years old and it is unlikely that any age-related decline occurred for the first time in just the past year. Instead, the State argues that this claim is barred because Defendant could have pursued this claim for many years prior to the death warrant being signed. The State compares this case to *Smithers,*[13] in which the defendant also argued the claim did not ripen until the death warrant was signed, yet the Court found the claim untimely because for several years, the defendant was aware that he would fall within the class of persons who were of advanced age.

The State also avers that this claim fails on the merits. The State points out that the only bars to execution recognized by the United State Supreme Court are persons who are mentally incompetent at the time of execution, those who are intellectually disabled, and those who were under 18 years old at the time of the offense. The State argues that Defendant does not fall under any of these categories, but instead asks the court to recognize a new category exempting elderly inmates from execution. The State avers that there is no precedent from the United States Supreme Court, r any other court, recognizing an exception for elderly offenders. The State asserts that Florida courts are bound by the Supreme Court's interpretation of the Eighth Amendment and that the Florida Supreme Court has rejected the argument that executions are unconstitutional in the case of inmates of advanced age. The State argues that Florida courts are prohibited from extending age-related exemptions to execution beyond what is currently permitted by the United States Supreme Court.

The State notes that Defendant has not identified any jurisdiction that permits a bar from execution based on advanced age and that the lack of a prohibition on executing elderly inmates

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[12] §825.101(4), Fla. Stat. (2026).
[13] *Smithers,* 420 So. 3d at 465.

by the Florida Legislature demonstrates Defendant's execution does not offend the evolving standards of decency. The State contends that Defendant attempts to differentiate his own claim from those brought in *Smithers* and *Trotter,* by arguing that those cases sought a categorical ban for all inmates over 65, while he is seeking relief on an individual basis and is not suggesting a categorical ban on executions of the elderly should be established. The State asserts, however, that the Florida Supreme Court addressed these claims as ones arguing cruel and unusual punishment based on those defendants' statuses as elderly persons, and thus, Defendant's claim is not distinguished.

Finally, the State argues that Defendant's execution still serves a retributive and deterrent effect, asserting that his attempt to compare advanced age to the impairments of "mental retardation" is misplaced because intellectual disability diminishes culpability in a way that advanced age at the time of execution does not. The State contends that Defendant's execution would still serve deterrent and retributive purposes because "it aptly demonstrates that regardless of the time one spends on death row, Florida will not hesitate to put one to death."

1. Defendant's Claim is Untimely and Procedurally Barred

Defendant asserts that the claim based on his advanced age was not ripe until the death warrant was signed. However, this Court disagrees. While Defendant attempts to distinguish his own claim by asserting he is not arguing a categorical exemption from execution, the reasoning in *Spencer v. State* still applies. *Spencer,* 2026 WL 1757938 at *6. The Court in *Spencer* found that the defendant "identifi[ed] no meaningful distinction arising within the year before filing: his age always being known, and the mere progression from one year in age to the next then not creating a new factual predicate every time under rule 3.851." *Spencer,* 2026 WL 1757938 at *6 (citing *Smithers,* 420 So. 3d at 465). Defendant has not shown a meaningful distinction arising within the past year such that a claim based on his advancing age is timely. Defendant cites to an article discussing the higher likelihood of prisoners to suffer age-related decline due to histories of drug and alcohol abuse, poverty, and the prison environment. Defendant points to his own history of drug and alcohol abuse, his lack of sleep in prison, and lists his health problems, including those owing to age-related decline. However, Defendant does not allege that any of these facts demonstrate a "meaningful distinction" within the past year that would deem this claim timely. Defendant does not allege that his health issues began within the last year and in fact, Defendant has been well aware of his own history of drug and alcohol abuse and his lack of sleep in prison

for decades prior to the signing of the death warrant. As such, Defendant's claim is untimely and thus, procedurally barred.

2. Florida Supreme Court Precedent Dictates the Denial of This Claim on the Merits

Even assuming this claim is properly before this Court, it is meritless. As noted above, Defendant attempts to distinguish his claim from the claims in *Spencer* and *Trotter*- by arguing that he is not proposing a categorial bar to execution for those over 65 years old, but that he is seeking relief under the Eighth Amendment due to his own status as an elderly person. The Florida Supreme Court in *Spencer* explained that the only exception from execution based on age is for those under the age of 18 when the offense was committed. *See Spencer,* 2026 WL 1757938, at *6 (citing *Roper v. Simmons,* 543 U.S. 551, 578, 125 S. Ct. 1183 (2005)). The Court goes on to explain that it is bound by the precedent of the Supreme Court and is precluded from extending "Florida's prohibition against cruel and unusual punishment to exempt . . . those whose chronological age was over eighteen years at the time of their capital crime(s)." *Spencer,* 2026 WL 1757938, at *6 (quoting *Smithers,* 420 So. 3d at 465) (internal citation omitted). There is no United States Supreme Court or Florida Supreme Court precedent allowing this Court to create a bar to execution based on advanced age, either categorically or on an individual basis.[14]

In Defendant's claim seeking relief on an individual basis, as opposed to a categorical ban, he cites to several Florida laws protecting the elderly due to their vulnerability and an article discussing the higher likelihood of prisoners to suffer age-related decline due to histories of drug and alcohol abuse, poverty, and the prison environment. Defendant raises his own history of drug and alcohol abuse, his sleep difficulties in prison, and his litany of health issues and age-related physical conditions to reason that the totality of the circumstances show that he is elderly and vulnerable and thus, should be spared from execution. However, Defendant has not demonstrated how his circumstances separate him from other elderly prisoners such that he could overcome the holding in *Spencer*[15] denying a categorical exemption for elderly inmates from the death penalty

[14] Defendant cites to an article from the Brooklyn Law School Law Review which discusses the case of *Nash v. Ryan,* 581 F.3d 1048 (9th Cir. 2009). Defendant contends that he was granted a stay due to his age and age-related cognitive decline. However, as the State also points out, this case is distinguishable from the instant case because *Nash* centered on Defendant's "rapidly deteriorating mental health" and questions of whether he was entitled to competence in habeas proceedings and whether his mental health rendered him incompetent to appeal. *Nash,* 581 F.3d at 1051, 1058. The case does not discuss Nash's age, but instead is purely focused on his mental capacity. Defendant in the instant case only alleges various physical ailments; he does not allege any mental incompetence or significant cognitive decline comparable to the defendant's in *Nash*.

[15] The defendant in *Spencer* was 74 years old, suffered from cirrhosis of the liver, and argued that the drugs used during lethal injection could "rupture his esophageal varices and cause severe bleeding." *Spencer,* 2026 WL

based on similar health and vulnerability arguments. Consequently, this Court cannot reach beyond existing United States Supreme Court precedent and extend this exception from execution to Defendant on this basis.

Defendant also asserts that his Eighth Amendment claim must be addressed by applying the evolving standards of decency and that the execution of Defendant does not serve a retributive or deterrent effect. He argues that the question of whether elderly offenders should be exempted from the death penalty is comparable to the exemption granted in *Atkins v. Virginia*[16] to "mentally retarded offenders." *Atkins,* 536 U.S. at 321. However, that Court held that there was no retributive or deterrent effect on executing offenders in that class because of the "lesser culpability of the mentally retarded offender." *Id.* at 319. As part of his comparison, Defendant contends that his execution no longer serves any retributive value due to his advanced age. Retribution is "the interest in seeing that the offender gets his 'just [desserts].'" *Id.* "The heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender." *Tison v. Arizona,* 481 U.S. 137 (1987). Defendant offers no reason why his age negates society's interest in ensuring he is punished for his offense. Nor does Defendant demonstrate that he has a lesser personal culpability for his offense comparable to that of mentally disabled offenders merely because 40 years after his crime, he has aged significantly.
Based on the foregoing, Claim Two is **denied**.

Ground Three

In Claim Three, Defendant argues that the number and speed at which executions have been completed would violate Defendant's Eighth Amendment rights, cites to the effect on the mental health of correctional staff, alleges that execution violates Defendant's Catholic religion, and avers that the 7-to-5 jury death recommendation would be illegal under current law. Defendant argues that for all of these reasons, executing him would amount to a manifest injustice.

Defendant contends that recent rate of execution is negatively affecting those DOC employees that are members of death watch by causing them to deal with the trauma of caring for and preparing and elderly inmate to die. Defendant argues that an evidentiary hearing would allow, Defendant and the members of death watch would testify about their relationship and experiences.

1757938 at *4-5. Like here, it was also argued in this case that Spencer's execution would "constitute cruel and unusual punishment and offend evolving standards of decency." *Id.* at *6.

[16] 536 U.S. 304 (2002).

Defendant seeks a six month pause of executions for experts to evaluate the staff and assess the emotional and psychological damage.

Defendant goes on to discuss that his Italian American heritage and his Catholic faith. Defendant contends that "preserving [him] from execution promotes the sanctity of all human life" and that his religious beliefs are "valid mitigation" to be considered. Defendant also points to a letter penned by the Florida Conference of Catholic Bishops and addressed to the governor, condemning the rate of Florida's executions. Defendant contends that based on his strong relationship with his faith, it would be a manifest injustice to execute him. Defendant finally argues that his 7-to-5 jury recommendation for death would not be a legal sentence under current Florida law and thus, illegal to execute him on such a recommendation.

The State responds that Defendant's request for this Court to pause executions for six months due to the psychological toll on prison staff is not cognizable in a rule 3.851 motion. The State reasons that this claim challenges neither the validity of Defendant's judgment or his death sentence. The State interprets this claim as a type of "conditions of confinement" claim. The State cited to *Cole v. State*[17] for the proposition that these types of claims are not a basis for relief under rule 3.851 and should be brought under a separate action pursuant to 42 U.S.C. § 1983. In that Defendant is attempting to assert a *Lackey* claim,[18] the State avers that the Florida Supreme Court has rejected these arguments. The State further argues that Defendant's contention that executing him is manifestly unjust due to his Catholic faith and its denunciation of the death penalty is lacks merit.

Finally, the State asserts that Defendant's claim that his 7-to-5 jury recommendation of death is illegal under current Florida law and thus, it is a manifest injustice to execute him is not well taken. The State brands Defendant's argument an attempt to relitigate his *Hurst* claim, which is procedurally barred, even though he uses a different argument to make the same claim. The State also avers that Defendant's contention that the jury would not have recommended the death penalty had they known it would have taken so many years for the sentence to be carried out is pure speculation. The State argues that the public is well aware that those offenders sentenced to death

[17] 392 So. 3d 1054 (Fla. 2024).

[18] A *Lackey* claim refers to *Lackey v. Texas,* 514 U.S. 1045 (1995) and is a claim in which a defendant asserts that executing a prisoner after many years on death row constitutes cruel and unusual punishment.

go through years of appeals and are typically not executed for decades and that there is no reason that the jury in Defendant's case would expect otherwise.

1. Defendant Lacks Standing to Raise the Issue of Mental Health Effects on DOC Staff

Defendant requests this Court order a six month pause on executions so that experts may evaluate the emotional and psychological effect on death-watch staff and the warden at the prison facility. This part of claim three, however, does not raise any violation of *Defendant's* rights. In fact, during the initial hearing held on July 8, 2026, counsel for Defendant specifically argued that Defendant was not claiming the rate of executions is unconstitutional as to him, but instead to the staff. Instead, the claim speculates that the warden, execution team, and death-watch staff are suffering harms, alleging facts such as "staff may have been caregivers . . . to their own family members," they "may be reminded of their own elderly loved ones," and other assumptions about the staff at the prison. These are purely speculative assumptions not based in any concrete fact and it bears repeating that conclusory and speculative allegations are insufficient to warrant an [e]videntiary [h]earing" under Rule 3.851. *Jimenez,* 265 So. 3d at 474 (quoting *Knight,* 923 So. 2d at 399). Further, Defendant has not alleged any authority demonstrating hist standing to assert a claim for relief on behalf of the DOC employees[19], nor does Defendant provide any legal authority allowing this Court to pause executions based on the mental health of DOC employees.

As part of his claim, Defendant has rebuked the "unprecedented" rate of executions that have taken place in 2025 and 2026. In that Defendant is attempting to seek relief on this basis, it has been well established that the governor has absolute discretion in whom to execute and when. *See Hutchinson v. State,* 416 So. 3d 273, 280 (Fla. 2025); *see also Bolin v. State,* 184 So. 3d 492, 502-03 (Fla. 2015); *Gore v. State,* 91 So. 3d 769, 780 (Fla. 2012). As such, there is no authority for this Court to grant relief based on the pace and amount of recent executions.

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[19] While there appears to be a lack of case law on an issue such as defendant raises, this Court draws comparison to *Ziemba v. Rell,* 409 F.3d 553 (2d Cir. 2005). In that case, the defendant brought a class action suit to stay another prisoner's execution because news of the execution would "increase the risk that [he] or other suicide-prone class members will attempt to harm themselves" and that the prison lacked the resources to prevent such harm. *Id.* at 554. The Court reiterated that standing required an injury in fact, that is "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual and imminent, not conjectural or hypothetical," a causal connection between the injury and the conduct, and must be likely that the "injury will be redressed by a favorable decision." *Id.* at 545-55. This Court held that the claim was not "sufficiently non-conjectural or non-hypothetical to constitute a cognizable injury in fact," nor was the "redressability sufficiently non-speculative." *Id.* at 555. Florida employs a similar test of injury in fact, causal connection, and redressability. *See Pet Supermarket v. Eldridge,* 360 So. 3d 1201, 1205 (Fla. 3d DCA 2023). As such, this Court finds that Defendant's attempt to seek relief on behalf of DOC employees for harm they may or may not be suffering does not meet the test for standing, and like the claim in *Ziemba,* is too conjectural and speculative.

2. Defendant's Claim of Manifest Justice on the Basis of Religion is Meritless

Defendant alleges that it would be a manifest injustice to execute him due to his strong Catholic faith, a faith that condemns the death penalty. However, Defendant provides no legal basis or case law that a defendant's religion alone is sufficient to stay an execution or grant relief under rule 3.851. Defendant points to case law for the proposition that his "religious convictions are valid mitigation for this Court to consider." However, if Defendant is arguing that his religion is mitigation, this should have been presented during the penalty phase at his trial and thus is untimely to present at this juncture.

3. Defendant's Claim that His Sentence is Illegal Under Current Florida Law is Untimely and Meritless

Defendant alleges that under current Florida law, his 7-to-5 jury recommendation of death would be illegal, as §921.141, Fla. Stat. requires at least eight jurors to recommend death in order to sentence a defendant to death. Defendant's sentence, however, is not illegal. First, such an argument is untimely. Florida's law regarding the number of jurors required to recommend a sentence of death became effective in April 2023. *See State v. Lyons,* 392 So. 3d 281, 283 (Fla. 2d DCA 2024). As it has been more than one year since the current statute has gone into effect, this claim is untimely. What's more, the 2023 change to § 921.141, Fla. Stat., has been held to be a "procedural change that has no substantive effect" and thus "does not constitute an ex post facto law" that would affect Defendant's sentence. *State v. Victorino,* 372 So. 3d 772, 778 (Fla. 5th DCA 2023) (quoting *Victorino v. State,* 241 So. 3d 48, 50 (Fla. 2018)). Further, in the event that Defendant is attempting to reargue his prior *Hurst*[20] claim, this was previously addressed on the merits in this Court's 2017 order and is thus, procedurally barred. Regardless, Defendant's sentence remains legal. It is well-established that *Hurst's* requirement for a unanimous jury recommendation does not apply retroactively to defendants with sentences finalized prior to *Ring v. Arizona.*[21] *See Asay v. State,* 210 So. 3d 1, 22 (Fla. 2016). Defendant's sentence was finalized in 1991 when the mandate issued from Defendant's direct appeal. As such, any claim that Defendant is entitled to relief under rule 3.851 or a stay of his execution on this basis is meritless.

Based on the foregoing, Claim Three is **denied**.

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[20] *Hurst v. Florida,* 577 U.S. 92 (2016).
[21] 536 U.S. 584 (2002).

Motion to Stay

Defendant also filed a motion to stay. Defendant requests this Court enter a stay of his execution to litigate the constitutional issues raised in his rule 3.851 motion without the constraints of the accelerated death warrant time frame. Defendant also seeks additional time to negotiate with DOC about his records request. Defendant contends that Claims Two and Three of his rule 3.851 motion require a stay of the proceeding so that prison staff witnesses may be coordinated. Defendant cites to *State v. Branch*[22] to argue that when substantial grounds exist upon which relief may be granted, a stay is appropriate. Defendant further avers that a stay of execution would ensure him full due process because of the condensed time frame after a death warrant is signed. Lastly, Defendant requests this Court enter a stay until there is no longer a shortage of etomidate.

This Court finds it would not be appropriate to grant a stay at this time. This Court has now rejected Defendant's claims within the timeframe set by the Florida Supreme Court and Defendant has not presented substantial grounds warranting an evidentiary hearing or relief under rule 3.851. Additionally, Defendant has not cited any authority permitting this Court to enter a stay on for an undetermined amount of time due to an etomidate shortage he has not shown impacts him. The Court does not anticipate that the Florida Supreme Court or the federal courts will be unable to review these claims under the time constraints required by the warrant. Further, if this Court is incorrect in that assessment, the Florida Supreme Court or the federal courts have the power to issue a stay as well. Defendant's motion to stay is therefore denied.

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[22] 2018 WL 4560536 (Fla. Cir. Ct. Feb. 1, 2018).

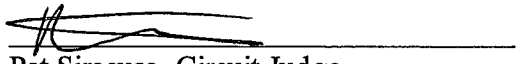
Accordingly, it is

ORDERED AND ADJUDGED that Defendant's Motion to Vacate Judgment of Conviction and Sentence of Death after Death Warrant Signed is hereby **DENIED** as fully explained in the body of this order. The Florida Supreme Court's June 26, 2026, scheduling order requires a notice of appeal to be filed by 1:00 p.m., Friday, July 10, 2026.

IT IS FURTHER ORDERED AND ADJUDGED that Defendant's Motion for Stay of Execution is hereby **DENIED.**

THE CLERK OF THE CIRCUIT COURT IS HEREBY DIRECTED to transmit the record of these proceedings to the Clerk of the Supreme Court of Florida **immediately**. No notice of appeal shall be required.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this 10th day of July, 2026. A true and correct copy of this order has been furnished to the parties listed below.



Pat Siracusa, Circuit Judge

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No. _____

IN THE

Supreme Court of the United States

DOMINICK OCCHICONE

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY JULY 28, 2026 AT 6:00 P.M.

APPENDIX F

Order Denying Demand for FDOC Records (July 2, 2026)

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY CRIMINAL DIVISION

STATE OF FLORIDA,

v.

DOMINICK OCCHICONE,
SPN: 0011019, Defendant. /

CASE NO.: CRC1986-1355CF
UCN: 521986CF001355CFAXWS

DIVISION: 3

ORDER ON 3.852(H) AND 3.852(I) ADDITIONAL PUBLIC RECORDS DEMAND

THIS CAUSE came before the Court upon "Defendant's Demand for Additional Public Records Florida Department of Corrections (FDOC)", filed June 30, 2026, and, pursuant to Florida Rule of Criminal Procedure 3.852, and responses and objections thereto, filed July 2, 2026. The Court conducted a hearing on these requests and objections on July 2, 2026. Having conducted a hearing and heard the argument of counsel, and having considered the requests, objections, relevant portions of the record, and applicable law, the Court finds as follows:

Procedural History

On September 18, 1987, a jury found Defendant guilty of the first-degree murder of Raymond and Martha Artzner. After a penalty phase, the jury recommended death by a 7-to-5 vote for each victim. On November 9, 1987, the Court sentenced Defendant to death for the murder of Mrs. Artzner.[1] The Florida Supreme Court affirmed Defendant's convictions and sentences on appeal. *Occhicone v. Florida,* 570 So. 2d 902 (Fla. 1990). The mandate issued on January 31, 1991. On or about May 20, 1991, the United States Supreme Court denied Defendant's petition for writ of certiorari. *Occhicone v. Florida,* 500 U.S. 938 (1991). Defendant subsequently filed a petition for writ of habeas corpus with the Florida Supreme Court, which was denied. *Occhicone v. State,* 618 So. 2d 730 (Fla. 1993). The mandate issued on June 7, 1993.

On May 20, 1993, Defendant filed his first postconviction motion. After orders denying several claims and ordering an evidentiary hearing on others, the Court issued its final order

[1] The Court sentenced Defendant to life imprisonment without the possibility of parole for 25 years as to Mr. Artzner.

denying Defendant's motion on May 18, 1998. Defendant appealed the denial of his motion for postconviction relief with the Florida Supreme Court. On June 29, 2000, the Florida Supreme Court affirmed the Court's order denying Defendant's postconviction claims. *Occhicone v. State,* 768 So. 2d 1037 (Fla. 2000). The mandate issued on November 13, 2000. Defendant subsequently filed collateral motions for relief in federal court, each of which was denied. *Occhicone v. Secretary, Dept. of Corrections,* 2005 WL 1073936 (M.D. Fla. 2005); *Occhicone v. Secretary, Dept. of Corrections,* 455 F.3d 1306 (11th Cir 2006); and *Occhicone v. McDonough,* 549 U.S. 1122 (2007).

On September 12, 2014, Defendant sought public records from the Department of Corrections (DOC). The Court ordered the State and Department to file objections to Defendant's public records request; however, no other orders were issued after this.

On January 9, 2017 Defendant filed a successive motion to vacate death sentence, alleging that he is entitled to relief pursuant to *Hurst v. Florida*, 136 S. Ct. 616 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). On May 18, 2017, the Court entered a final order dismissing Defendant's motion. Defendant appealed the dismissal of his successive motion for postconviction relief, and on January 30, 2018, the Florida Supreme Court affirmed the Court's order. *Occhicone v. State,* 235 So. 3d 299 (Fla. 2018). The mandate issued on February 15, 2018.

On June 26, 2026, Governor Ron DeSantis signed a death warrant for Defendant. The Governor has set an execution week for the week beginning at 12:00 noon on Tuesday, July 28, 2026, through 12:00 noon on Tuesday, August 4, 2026. Defendant's execution has been set for Tuesday, July 28, 2026, at 6:00 p.m. Both the Florida Supreme Court and this Court have issued scheduling orders for resolving any motions filed in this case in an expedited manner.

Analysis

Defendant's request seeks records under Florida Rule of Criminal Procedure 3.852, subsections (h) and (i). Defendant's requests do not differentiate between the two rules, but rather his request cites both rules. Requests under these subsections are only available when they meet certain requirements enumerated in the rule. Under either subsection, the Florida Supreme Court "has long acknowledged that the public records procedure under Florida Rule of Criminal Procedure 3.852 'is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief.'" *Muhammad v. State*, 132 So. 3d 176, 200 (Fla. 2013); *accord Bowles v. State*, 276 So. 3d 791, 796 (Fla. 2019); *Long v. State*, 271 So.

3d 938, 948 (Fla. 2019); *Branch v. State*, 236 So. 3d 981, 984 (Fla. 2018). "[W]here a defendant cannot demonstrate that he or she is entitled to relief on a claim or that records are relevant or may reasonably lead to the discovery of admissible evidence, the trial court may properly deny a records request." *Bowles*, 276 So. 3d at 795 (internal quotations omitted).

Rule 3.852(h)(3) allows collateral counsel to request the production of records after a death warrant is signed. Requests under this subsection are limited to agencies from which collateral counsel has previously requested records. Collateral counsel may request any record

(A) that was not previously the subject of an objection;

(B) that was received or produced since the previous request; or

(C) that was, for any reason, not produced previously.

Fla. R. Crim. P. 3.852(h)(3). Additionally, a request under this subsection may be denied if the records sought "are overbroad, of questionable relevance, and unlikely to lead to discoverable evidence." *Muhammad*, 132 So. 3d at 201. The rule is intended to provide for an update of information previously received or requested and does not allow defendants to delay public records requests until a warrant is signed. *Sims v. State*, 753 So. 2d 66, 70 (Fla. 2000).

Under rule 3.852(i), collateral counsel may request records that do not fall under subsections (e), (f), (g), and (h) of rule 3.852. A demand under subsection (i) need not be to an agency from which records were previously requested. *Muhammad*, 132 So. 3d at 202. The Court may order the production of records only if the Court finds the following:

(A) collateral counsel has made a timely and diligent search of the records repository;

(B) collateral counsel's affidavit identifies with specificity those additional public records that are not at the records repository;

(C) the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and

(D) the additional records request is not overly broad or unduly burdensome.

Fla. R. Crim. P. 3.852(i)(2). Collateral counsel must file an affidavit attesting to each of these requirements with the demand. Additionally, after a warrant is signed, "a defendant must show how the requested records relate to a colorable claim for postconviction relief and good cause as

to why the public records request was not made until after the death warrant was signed." *Muhammad*, 132 So. 3d at 202.

Defendant's Demand

Defendant has filed one demand on June 30, 2026, seeking a number of records from the Florida Department of Corrections (DOC). Defendant's demand seeks the following:

> (a) Written records/checklists, logs, and/or memorandums documenting "completion of each step in the process," specifically including any references to the removal and disposal of any etomidate used during the lethal injection process, as required in subsection (5) of FDOC's procedure, "Use of Checklists;" from February 18, 2025 to the present;
> (b) Written records/checklists, logs, and/or memorandums documenting and tracking whether the etomidate, one of the "pharmaceutical agents (lethal injection chemicals)" are within their "date range" for use, have reached, or surpassed their expiration dates," and documenting the maintenance and proper storage of the etomidate as required by subsection (6) of FDOC's procedure, "Purchase and Maintenance of Lethal Chemicals;" from February 18, 2025 to the present;
> I Written records/checklists, logs, and/or memorandums documenting the need for refrigeration, proper temperature range for storage, and/or monitoring for compliance of temperature and handling of the etomidate, as required in subsection (6) of FDOC's procedure, "Purchase and Maintenance of Lethal Chemicals;" from February 18, 2025 to the present;
> (d) Written records/checklists, logs, and/or memorandums documenting the disposal of expired and otherwise compromised etomidate, as required in subsection (6) of FDOC's procedure, "Purchase and Maintenance of Lethal Chemicals;" from February 18, 2025 to the present;
> I Memorandums, records, checklists, and/or logs from the execution team member and independent observer from FDLE documenting their observations and compliance with the preparation of etomidate used in the lethal injection process as found in subsection (9)(f) of FDOC's procedure, "On the Day of Execution;" from February 18, 2025 to the present;
> (f) Forms and documentation of the methodologies and medical instrumentation utilized by Execution Team Members to assess and monitor the inmate's depth and sustained level of consciousness ("consciousness checks") including the training, level of competency, and proficiency; from February 18, 2025 to the present;
> (g) Documentation, checklists, and memorandum of the team warden's debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose

during the execution, a required in subsection (13)(f) of FDOC's procedure, "Immediate Post-Execution Procedures;" from February 18, 2025 to the present;
(h) Records relating to any research and/or experiments done by the DOC, or on behalf of DOC, with respect to etomidate from March 10, 2023 to the present;
(i) Correspondence, from March 10, 2023 to the present, with any federal agency including the Drug Enforcement Administration (DEA), the Food and Drug Administration (FDA), the Federal Bureau of Prisons (BOP), or the Department of Justice (DOJ) relating to Florida's execution procedures for etomidate. This would include, but is not limited to, application or registration for permits and/or licenses or permits required by any federal agency in connection with the purchase, storage, use, research, and disposal of etomidate.
(j) Records relating to any consultation with experts (medical or otherwise) with respect to etomidate, including, for examples, faxes, letters, minutes or notes of meetings, telephone call records, or notes, including any internal communications within DOC and/or staff from March 10, 2023 to the present;
(k) Any correspondence with any Florida state agency including the Florida Department of Health, from March 10, 2023, through the present, relating to the acquisition of etomidate.
(l) Records relating to how the DOC obtained etomidate including purchase orders, prescriptions, contracts, invoices, bills, payments, emails, letters, or any other communication relating to the procurement of etomidate from March 10, 2023 to the present;
(m) Records relating to DOC's solicitation of bids for etomidate from March 10, 2023 to the present.

Defendant argues that these records are relevant to a claim that DOC has failed to carry out executions in accordance with the lethal injection protocol required by Chapter 922 of the Florida Statutes. Defendant contends that DOC's failure to comply with its own procedures violates his due process and equal protection rights. Counsel for Defendant attests that they made a timely and diligent search of the records repository; identified with specificity that the records are not at the repository; and that the records are relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

Defendant asserts that the requested records are reasonably calculated to lead to the discovery of evidence to support his claim that DOC has repeatedly deviated from its lethal injection procedures. Defendant also points to a report by the American Society of Health-System Pharmacists from April 7, 2026 regarding a shortage of Etomidate, reasoning that he is further at risk of unequal treatment under the law and DOC protocols as it relates to similarly situated capital

defendants under warrant. Defendant differentiates current Florida Supreme Court precedent, explaining that he is not alleging the protocol itself is unconstitutional, but DOC's failures to properly follow the protocols in place, especially related to the reported shortage of Etomidate. Defendant points to records from prior executed persons, alleging that these records show DOC failed to contemporaneously document and accurately log the drugs used during executions in violation of their own protocol. Defendant also alleges that DOC utilized expired Etomidate in at least four prior executions in 2025. Further, Defendant contends that lidocaine, a drug that is not part of the current protocols, was "removed" with no indication of how it was used.

During the hearing, the Defense argued that Defendant's case is different than the body of case law on these issues. The Defense first noted that none of the defendants in prior cases have reached the age that this Defendant has. Further, the Defense highlighted a report from the American Society of Health System Pharmacists from April of this year that there is a shortage of etomidate. The Defense argued that it shocks the conscience to say that this drug will be used to end lives, especially of an almost 81-year-old man, when there is a shortage of it for the purpose of saving lives in society. The Defense asserted that the documented shortage of etomidate distinguishes this Defendant from prior death warrants involving the same request for records.

In rebuttal, after DOC's argument before the Court, the Defense contended that this case is distinguishable from the *King*[2] case argued by DOC because that case was decided prior to the active shortage of etomidate. The Defense further requested another hearing on this issue and inquired if just the vials of etomidate set aside for Defendant could be provided.

DOC Response

DOC filed a response on July 2, 2026. The response indicates DOC's objection to Defendant's request for records. DOC first cites to §§945.10(1)(g) and (j), Fla. Stat., noting that those subsections exempt from public disclosure information "which identifies an executioner or any person prescribing, preparing, compounding, dispensing, or administering a lethal injection," or any persons and entities "administering, compounding, dispensing, distributing, maintaining, manufacturing, ordering, preparing, prescribing, providing, purchasing, or supplying drugs, chemicals, supplies, or equipment necessary to conduct an execution…" DOC points out that the

[2] *King v. State,* No. SC2026-0336, 2026 WL 672101 (Fla. Mar. 10, 2026), *cert. denied sub nom. King v. Fla.,* 224 L. Ed. 2d 184 (Mar. 16, 2026)

Florida Supreme Court has consistently upheld orders sustaining its objections regarding the disclosure of records as to the lethal injection protocol.[3]

DOC also argues that Defendant has not demonstrated how his records request is related to a colorable claim, as required by 3.852, nor has he failed to show good cause for such a request. DOC further contends that the request is overly broad and unduly burdensome and amounts to an impermissible fishing expedition. DOC notes that Defendant is challenging not the protocol itself, but that DOC's lack of compliance with its own protocol, coupled with the American Society of Health System Pharmacists report that there is a shortage of etomidate, puts him at risk of DOC "maladministering" their protocols and violating his equal protection rights. DOC argues this is unsubstantiated and speculative and does not present a colorable claim that would overcome the strong presumption that DOC is following its protocol.[4] They further note that Defendant's reliance on the *Walls v. Dixon* records is misplaced because the argument that those records demonstrate that DOC is not following their execution procedures has been repeatedly rejected by the Florida Supreme Court.[5]

DOC also directly addressed some of the specific requests made by Defendant. DOC contends that demands for records relating to how the protocol drugs are selected, obtained, and stored has also been rejected by the Supreme Court as unrelated to a colorable claim for relief.[6] DOC noted that documentation regarding training and experience of execution team members would not be permitted to be released, again citing §945.10(1)(g), Fla. Stat. Finally, DOC contends that the Florida Supreme Court has also rejected requests by Defendants for internal DOC communications with other state agencies regarding lethal injection procedures[7].

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[3] DOC cites to *Asay v. State,* 224 So. 3d 695 (Fla. 2017); *Hannon v. State,* 228 So. 3d 505 (Fla. 2017); *Branch v. State,* 236 So. 3d 981 (Fla. 2018); *Jimenez v. State,* 265 So. 3d 462 (Fla. 2018); *Long v. State,* 271 So. 3d 938 (Fla. 2019); *Bowles v. State,* 276 So. 3d 791 (Fla. 2019); *Dailey v. State,* 283 So. 3d 782 (Fla. 2019); *King v. State,* No. SC2026-0336, 2026 WL 672101 (Fla. Marc. 10, 2026); *Willacy v. State,* 431 So. 3d 254 (Fla. 2026); *Heath v. State,* 426 S0. 3d 1253 (Fla. 2026); and *Trotter v. State,* 428 So. 3d 68 (Fla. 2026).

[4] DOC cites to *Long v. State,* 271 So. 3d 938 (Fla. 2019); *Hannon v. State,* 228 So. 3d 505 (Fla. 2017); *Baze v. Rees,* 553 U.S. 35 (2008); *Cole v. State,* 392 S0. 3d 1054 (Fla. 2024); *Branch v. State,* 236 So. 3d 981 (Fla. 2018).

[5] DOC cites to *King v. State,* No. SC2026-0336, 2026 WL 672101 (Fla. Marc. 10, 2026); *Spencer v. State,* No. SC2026-0880, 2026 WL 757938 (Fla. June 18, 2026); *Lukehart v. State,* No. SC2026-0736, 2026 WL 1480328 (Fla. May 27, 2026); *Hitchcock v. State,* 431 So. 2d 514 (Fla. 2026); *Willacy v. State,* 431 So. 3d 254 (Fla. 2026); *Heath v. State,* 426 S0. 3d 1253 (Fla. 2026); and *Trotter v. State,* 428 So. 3d 68 (Fla. 2026).

[6] DOC cites *Brewer v. Landrigan,* 131 S. Ct. 445 (2010); *Valle v. State,* 70 So. 3d 530 (Fla. 2011); *Asay v. State,* 224 So. 3d 695 (Fla. 2017); *Hannon v. State,* 228 So. 3d 505 (Fla. 2017); *Branch v. State,* 236 So. 3d 981 (Fla. 2018); *Jimenez v. State,* 265 So. 3d 462 (Fla. 2018); *Long v. State,* 271 So. 3d 938 (Fla. 2019); *Bowles v. State,* 276 So. 3d 791 (Fla. 2019); *Dailey v. State,* 283 So. 3d 782 (Fla. 2019).

[7] DOC cites to *Correll v. State,* 184 So. 3d 478 (Fla. 2015); *Hannon,* 228 So. 3d at 509; and *Long,* 271 So. 3d at 946.

During the hearing, DOC reiterated its stance that the Florida Supreme Court has repeatedly held that the lethal injection protocol is constitutional and record demands of the execution procedures are not related to a colorable claim for postconviction relief and thus, not subject to disclosure. DOC noted that every warrant case in 2026 has held this way and rejected demands that include records about etomidate, including *Heath*, *Trotter*, *Knight*, *Spencer*, *Hitchcock*, *Willacy*, and *Lukehart*, all of which were cited in their response. DOC pointed to *King*, noting that the defendant in that case sought the same records that Defendant is seeking here and raised the same equal protection claim based on maladministration of the lethal injection protocol. DOC also noted that *King* relied on the Walls records, however his record requests were fully rejected after a thorough analysis that there was no disparate treatment and no burden on fundamental rights. DOC argued that the only difference here is the shortage claim being made by Defendant. DOC, however, asserted that a sentence in Defendant's request from a professional association of pharmacists about a shortage is not a claim that DOC has a shortage of etomidate and cannot be used to support that claim. Finally, DOC argued that a defendant must show good cause as to why he did not seek the records prior to now, noting that this is an old case and Defendant has had years to request these records.

At this hearing, the parties agreed that should Defendant raise a medical or mental health claim in his successive motion, the State would receive discovery on those issues. The Defense had no objection to DOC releasing the records relevant to those claims to the State. DOC advised the Court that an order would be required to permit them to release the records.

Findings and Conclusions

While the Defense makes an interesting policy argument, this Court agrees with DOC. Defendant is not entitled to production of the demanded records because they are exempt from disclosure by statute, they do not relate to a colorable claim for postconviction relief, are overly broad, and unduly burdensome. DOC is correct that §945.10(1)(g) and (j) exempts the records that Defendant is seeking from disclosure.

Further, as noted above, a defendant must show how the requested records relate to a colorable claim for postconviction relief. *See Muhammad,* 132 So. 3d at 202. Defendant cannot do so here. A similar claim was made in *Heath v. State,* 426 So. 3d 1253, 1263-64 (Fla. 2026). In *Heath*, the defendant sought records from numerous executions that occurred in 2025, arguing

errors in the logs and issues with the drugs themselves in order to argue that DOC failed to properly follow its own protocols, putting him at risk of needless suffering. *Id.* at 1261, 1263-64. The defendant in *Heath* referred to the same *Walls* case and noted the same concerns with records from that lawsuit as Defendant does here. Ultimately, the Court in *Heath* agreed with the trial court that the defendant's records request was overly broad and unduly burdensome. *Id.* at 1264. The Court further found that the defendant's contention that the records related to a colorable claim for postconviction relief lacked merit. *Id.* at 1263.

The Florida Supreme Court again reiterated its position in *King v. State,* No. SC2026-0336, 2026 WL 672101 (Fla. Mar. 10, 2026), *cert. denied sub nom. King v. Fla.,* 224 L. Ed. 2d 184 (Mar. 16, 2026). The defendant in *King* requested "various records, checklists, and logs relating to the procedures for the use and maintenance of the chemicals used in the lethal injection protocol," the same or substantially similar request as Defendant here and the defendant in *Heath.* While Defendant in the instant case attempts to distinguish this case from prior Florida Supreme Court precedent, the request for additional records in *King* was based on an equal protection claim alleging "maladministration of DOC of [its] protocol," like Defendant's here. *Id.* at *3-4. The Court held that such an allegation requires speculation and conjecture and thus, King had not asserted a colorable claim for relief, reasoning that "alleged failures in documenting the movement of drugs into and out of inventory does not give rise to a cognizable equal protection or due process injury." *Id.* at *5. The Florida Supreme Court has continued to uphold orders denying requests for documents such as Defendant has requested here. *See e.g. Willacy v. State,* 431 So. 3d 254 (Fla. 2026); *Trotter v. State,* 428 So. 3d 68 (Fla. 2026) As such, this Court finds that not only would it be highly burdensome for DOC to comply with such a request within the expedited warrant period, Defendant does not set out any colorable claim for relief. Defendant's request for records from DOC is therefore denied.

Accordingly, it is

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ORDERED AND ADJUDGED that Defendant's demand for public records from the Florida Department of Corrections, is hereby **DENIED** as stated in more detail above.

IT IS FURTHER ORDERED AND ADJUDGED that should Defendant raise a medical or mental health claim in his successive motion, the Florida Department of Corrects is authorized to release records relevant to those issues to the State immediately upon the filing of the successive postconviction motion.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this 2nd day of July, 2026. A true and correct copy of this order has been furnished to the parties listed below.

SIGNED

JUL 02 2026

Pat Siracusa, Circuit Judge

PAT SIRACUSA
CIRCUIT JUDGE

cc:
Hon. Bruce Bartlett, State Attorney, Sara Macks, Assistant State Attorney; Elaine Babiarz, Assistant State Attorney, 7530 Little Road, New Port Richey, FL 34654
elainebabiarz@sa6.gov
saramacks@sa6.gov

Hon. James Uthmeier, Attorney General; Rick Buchwalter, Senior Assistant Attorney General, Michael Mervine, Special Counsel, Assistant Attorney General; Suzanne Glickman, Senior Assistant Attorney General
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Ricky Dixon, Secretary
Florida Department of Corrections
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Tallahassee, Florida 32399-2500
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CO-GCCapLit@fdc.myflorida.com
Courtfilings@fdc.myflorida.com

No. _____

IN THE

Supreme Court of the United States

DOMINICK OCCHICONE

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE WITH AN EXECUTION SCHEDULED FOR TUESDAY JULY 28, 2026 AT 6:00 P.M.

APPENDIX G

Demand for FDOC Records (June 30, 2026)

Filing # 251521382 E-Filed 06/30/2026 02:26:41 PM

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PASCO COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

DOMINICK OCCHICONE,
Defendant.
_____/

CASE NO: 1986-CF-1355
Emergency Capital Case
Death Warrant Signed
Execution Scheduled For
July 28, 2026

DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS FLORIDA DEPARTMENT OF CORRECTIONS ("FDOC')

To: **Ricky D. Dixon, Secretary**
Florida Department of Corrections
501 South Calhoun Street,
Tallahassee, FL 32399-2500
Debra.Rescigno@fdc.myflorida.com
William.Gwaltney@fdc.myflorida.com
Kristen Lonergan@fdc.myflorida.com
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Courtfilings@fdc.myflorida.com

COMES NOW, Dominick Occhicone, by and through undersigned counsel, and requests from **RICKY D. DIXON, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS ("FDOC")**, under Florida Rule of Criminal Procedure 3.852(h) and (i), additional public records pertinent to this case.

1. Mr. Occhicone is under a death sentence and subject to execution by lethal injection under Florida Statute §922.105. A death warrant was signed by Florida's governor on June 26, 2026. The governor has scheduled Mr. Occhicone's execution for July 28, 2026.
2. Undersigned counsel attests that the requested records detailed below are reasonably calculated to lead to the discovery of admissible evidence in that such records demonstrate Florida Department of Corrections has repeatedly failed to carry out executions in

compliance with the lethal injection protocol proscribed by Chapter 922 of Florida Statutes. Therefore, the Florida Department of Corrections' failure to comply with its procedure violates Mr. Occhicone's due process and equal protection rights pursuant to the Fourteenth Amendment to the U.S. Constitution and corresponding provisions of the Florida Constitution.

3. Undersigned counsel attests that:
    a. counsel has made a timely and diligent search of the records repository;
    b. counsel has identified with specificity the public records that are not at the records repository;
    c. the records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.
4. A capital post-conviction defendant "bears the burden of demonstrating that the records sought [pursuant to Fla. R. Crim. P. 3.852] relate to a colorable claim for postconviction relief." *Branch v. State*, 236 So. 3d 981, 984 (Fla. 2018) (citing *Chavez v. State*, 132 So.3d 826, 829 (Fla. 2014) and *Mann v. State*, 112 So. 3d 1158, 1163 (Fla. 2013)). This Court may order the production of records if "the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and … the additional records request is not overly broad or unduly burdensome." Fla. R. Crim. P. 3.852(i). The records that undersigned counsel are requesting relate to colorable claims for postconviction relief as discussed below. The records requested are neither overly broad nor unduly burdensome.

5. The requested records are reasonably calculated to lead to the discovery of admissible evidence which would support Mr. Occhicone's claim the FDOC has repeatedly deviated from its lethal injection procedures/protocol. Additionally, the American Society of Health-System Pharmacists reported on April 7, 2026 there is a current shortage of Etomidate which further indicates Mr. Occhicone is at risk of being treated differently under the law and FDOC protocols from other similar situated capital defendants under warrant, thereby violating his equal protection rights under the United States Constitution. Denying Mr. Occhicone these records would present a due process violation of his Fourteenth Amendment rights. Furthermore, a successive Rule 3.851 motion based on issues discovered would be timely as it is the drugs available for use and the procedures being employed by FDOC *at the time of execution* that are relevant.
6. Florida Supreme Court precedent does not preclude this Court from finding Mr. Occhicone has met his burden for demonstrating the records sought below pertain to a colorable claim for relief. The Florida Supreme Court has upheld the constitutionality of Florida's protocol. Asay v. State, 224 So. 3d 695 (Fla. 2017). However, the Florida Supreme Court's precedent is that of an *entirely different issue than is presented here*. Mr. Occhicone is not arguing that the protocol *itself* is unconstitutional. Mr. Occhicone seeks records which demonstrate FDOC's failure to follow its own policies and procedures, specifically related to a shortage of etomidate presents a violation of his Fourteenth Amendment rights. Specifically, this Demand concerns the Department's failure to follow the protocols, rather than whether those protocols are constitutional.
7. The following violations of the procedure/protocol can be seen from the records obtained in *Walls v. Dixon*, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025) (See, Appendix A,

10/22/2025 Florida Department of Corrections' Response to FOIA Request - Part 1 through June 2025/Part 2 through Sep. 2025) :

a. Based on the limited records obtained in *Walls*, FDOC has failed to contemporaneously document and accurately log or record the drugs used during executions in violation of their lethal injection procedure/protocol. For starters, FDOC did not record the removal of etomidate at any time near the execution of the late Michael Bell on July 15, 2025. Concerningly, the pharmaceutical, lidocaine, which is not specified in its procedure/protocol, was removed and arguably used in at least 2 men executed in 2025. For example, on or around the time of the executions of Edward James and Michael Tanzi, FDOC removed injectable lidocaine, an anesthetic drug not called for in the lethal injection protocol, with no indication how this drug was used by FDOC. *Id.*

b. Based on the limited records obtained in *Walls*, FDOC has administered expired drugs during the execution of at least four men executed in 2025. Apparently, FDOC administered etomidate with an expiration date of January 31, 2025, during the executions of Victor Jones on September 30, 2025, David Pittman on September 17, 2025; Curtis Windom on August 28, 2025; and Kayle Bates on August 19, 2025. *Id.*

8. FDOC may argue reliance on *Lightbourne v. McCollum* which was decided 19 years ago for the proposition that FDOC is entitled to a presumption that they will properly carry out their duties as it relates to executions. 969 So. 2d 326, 342 (Fla. 2007). Reliance on *Lightbourne* is misplaced, considering it was an Eighth Amendment case, and the relevant factors at issue here are the February 18, 2025, protocols as they relate to Mr. Occhicone's

Fourteenth Amendment rights. The State should no longer be protected by a finding from nearly 20 years ago when *present day* records support the conclusion the Florida Department of Corrections is no longer following, or at the very least having problems, with their procedures/protocol and carrying out executions by lethal injection reliably and without deviation. Mr. Occhicone is merely seeking records at this juncture. An agency which is in compliance with the requirements of the law and their procedures/protocols should be willing to share proof of that compliance. Withholding relevant information only enables an agency to evade accountability. The limited records discovered by federal counsel representing the late Frank Walls, call into question the reliability of FDOC's "take our word for it" argument.

9. Mr. Occhicone is entitled to information about the reliability and effectiveness of the drugs and procedures being used to execute him, and whether he is going to be subjected to the same protocol as all other capital defendants under warrant based on an equal protection analysis. Further denying him the opportunity to access records related to how Florida intends to carry out his execution on July 28, 2026, would violate his right to due process under the Fourteenth Amendment to the United States Constitution and the corresponding provisions of the Florida Constitution.

10. An affidavit pursuant to Fla. R. Crim. P. 3.852(i) is attached to this demand and hereby incorporated into this demand. Mr. Occhicone demands the records requested be copied, indexed, and delivered to the records repository by your agency pursuant to the trial court's scheduling order with a courtesy copy delivered via e-mail to undersigned counsel.

11. On February 18, 2025, FDOC Secretary Ricky Dixon provided Florida's governor his certification of FDOC's "EXECUTION BY LETHAL INJECTION PROCEDURES" and

outlined the procedures and policies surrounding carrying out executions by lethal injection. (See Appendix B, "Execution by Lethal Injection Procedures," dated Feb. 18, 2025).

12. The public records requested are as follows:

    a. Written records/checklists, logs, and/or memorandums documenting "completion of each step in the process," specifically including any references to the removal and disposal of any etomidate used during the lethal injection process, as required in subsection (5) of FDOC's procedure, "Use of Checklists;" from February 18, 2025 to the present;

    b. Written records/checklists, logs, and/or memorandums documenting and tracking whether the etomidate, one of the "pharmaceutical agents (lethal injection chemicals)" are within their "date range" for use, have reached, or surpassed their expiration dates" and documenting the maintenance and proper storage of the etomidate as required in subsection (6) of FDOC's procedure, "Purchase and Maintenance of Lethal Chemicals;" from February 18, 2025 to the present;

    c. Written records/checklists, logs, and/or memorandums documenting the need for refrigeration, proper temperature range for storage, and/or monitoring for compliance of temperature and handling of the etomidate, as required in subsection (6) of FDOC's procedure, "Purchase and Maintenance of Lethal Chemicals;" from February 18, 2025 to the present;

    d. Written records/checklists, logs, and/or memorandums documenting the disposal of expired and otherwise compromised etomidate, as required in subsection (6) of

FDOC's procedure, "Purchase and Maintenance of Lethal Chemicals;" from February 18, 2025 to the present;

e. Memorandums, records, checklists, and/or logs from the execution team member and independent observer from FDLE documenting their observations and compliance with the preparation of etomidate used in the lethal injection process as found in subsection (9)(f) of FDOC's procedure, "On the Day of Execution;" from February 18, 2025 to the present;

f. Forms and documentation of the methodologies and medical instrumentation utilized by Execution Team Members to assess and monitor the inmate's depth and sustained level of consciousness ("consciousness checks") including the training, level of competency, and proficiency; from February 18, 2025 to the present;

g. Documentation, checklists, and memorandum of the team warden's "debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution, as required by as required in subsection (13)(f) of FDOC's procedure, "Immediate Post-Execution Procedures;" from February 18, 2025 to the present;

h. Records relating to any research and/or experiments done by the DOC, or on behalf of DOC, with respect to etomidate from March 10, 2023 to the present.

i. Correspondence, from March 10, 2023 to the present, with any federal agency including the Drug Enforcement Administration (DEA), the Food and Drug Administration (FDA), the Federal Bureau of Prisons (BOP), or the Department of Justice (DOJ) relating to Florida's execution procedures for etomidate. This would include, but is not limited to, application or registration for permits and/or licenses,

or permits and/or licenses required by any federal agency in connection with the purchase, storage, use, research, and disposal of etomidate.

j. Records relating to any consultation with experts (medical or otherwise) with respect to etomidate, including, for example, faxes, letters, minutes or notes of meetings, telephone call records, or notes, including any internal communications within DOC and/or staff from March 10, 2023 to the present.

k. Any correspondence with any Florida state agency including the Florida Department of Health, from March 10, 2023, through the present, relating to the acquisition of etomidate.

l. Records relating to how the DOC obtained etomidate including purchase orders, prescriptions, contracts, invoices, bills, payments, emails, letters, or any other communication relating to the procurement of etomidate from March 10, 2023 to the present.

m. Records relating to DOC's solicitation of bids for etomidate from March 10, 2023 to the present.

13. Mr. Occhicone is further open to negotiating a fair process of access to the FDOC records in a manner that protects his Fourteenth Amendments rights, and corresponding rights under the Florida Constitution, as well as maintaining the statutorily established confidentiality of the members of the execution team and manufacturer of the pharmaceutical agents (lethal injection chemicals).

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY on June 30, 2026, we electronically filed the foregoing with the Clerk of the Circuit Court by using the Florida Courts e-portal filing system which will send a notice of electronic filing to the following: the Honorable Shawn Crane, Chief Judge, Sixth Judicial Circuit, West Pasco Judicial Center, 7530 Little Road, New Port Richey, Florida 34654 at lsmith@jud6.org; Sara Macks, Assistant State Attorney, Pasco County State Attorney's Office, West Pasco Judicial Center, 7530 Little Road, New Port Richey, Florida 34654 at saramacks@flsa6.gov and appealeservice@flsa6.gov; Rick A. Buchwalter, Michael W. Mervine, and Suzanne Glickman, Assistant Attorneys General, 3507 E. Frontage Road, Suite 200, Tampa, Florida 33607 at rick.buchwalter@myfloridalegal.com, Paula.Montlary@myfloridalegal.com, michael.mervine@myfloridalegal.com, suzanne.glickman@myfloridalegal.com, and capapp@myfloridalegal.com; and the Florida Supreme Court, at warrant@flcourts.org and canovak@flcourts.org.

WE HEREBY FURTHER CERTIFY a copy of the foregoing has been sent via U.S. mail to, Dominick Occhicone, DC# 226426, Florida State Prison, P.O. Box 800, Raiford, Florida 32083, on June 30, 2026.

/s/Ali Andrew Shakoor
Ali Andrew Shakoor
Florida Bar No.: 0669830
Assistant CCRC-M
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/s/ Debra Roganne Bell
Debra Roganne Bell
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AFFIDAVIT OF COLLATERAL COUNSEL

I, Mahham Syed, having been duly sworn or affirm, do hereby depose and say the above statements are true and correct.

Mahham Syed
Florida Bar No.: 1049535
Assistant CCRC-M

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

SWORN TO OR AFFIRMED AND SUBSCRIBED before me this 29th day of June, 2026, by Mahham Syed, who is personally known to me or who provided the following identification _____.

NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires: 4/30/28

SHEILA M. RODRIGUEZ DAVILA
Commission # HH 492797
Expires April 30, 2028