

**IN THE  
SUPREME COURT OF THE UNITED STATES**

---

RAYMOND BRIGHT,  
*Petitioner,*

v.

STATE OF FLORIDA,  
*Respondent.*

---

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

---

**BRIEF IN OPPOSITION**

---

JAMES UTHMEIER  
ATTORNEY GENERAL OF FLORIDA

Office of the Attorney General  
3507 E. Frontage Rd., Ste. 200  
Tampa, Florida 33607  
Telephone: (813) 287-7900  
scott.browne@myfloridalegal.com  
capapp@myfloridalegal.com

SCOTT A. BROWNE  
Chief Assistant Attorney General  
*Counsel of Record*

JASON W. RODRIGUEZ  
SENIOR ASSISTANT ATTORNEY GENERAL

COUNSEL FOR RESPONDENT

---

---

**CAPITAL CASE**  
**QUESTION PRESENTED**

Raymond Bright beat twenty-year-old Derrick King and sixteen-year-old Randell Brown to death with a hammer. During closing argument in his September 2017 resentencing, the prosecutor argued, “by his actions, he now is in the criminal justice system, and as a result, you have a choice as to whether he should get death or whether he should get life. Well, Raymond Bright never gave each of these victims a choice, did he?” (RS2:1207.) His penalty-phase jury unanimously recommended death and a judge followed that recommendation. Bright’s resentencing direct appeal counsel did not argue the prosecutor’s comment was reversible error.

Years later, Bright argued that appellate counsel ineffectively failed to argue the prosecutor’s comment violated Florida law prohibiting “same mercy” arguments. The Florida Supreme Court held Bright suffered no appellate prejudice. The prosecutor’s argument did not constitute reversible error given the comments minor nature and the strength of the aggravation. Bright asks this Court to decide whether the court below properly analyzed prejudice for his appellate ineffectiveness claim.

This Court should instead decline certiorari over the following question:

- I. Did the court below correctly hold Bright suffered no prejudice from appellate counsel’s failure to raise a same-mercy argument prohibited only by Florida law on direct appeal?

## TABLE OF CONTENTS

|                                                                                                              |     |
|--------------------------------------------------------------------------------------------------------------|-----|
| QUESTION PRESENTED .....                                                                                     | i   |
| TABLE OF CONTENTS.....                                                                                       | ii  |
| TABLE OF AUTHORITIES .....                                                                                   | iii |
| OPINION BELOW.....                                                                                           | 1   |
| JURISDICTION.....                                                                                            | 1   |
| CONSTITUTIONAL PROVISIONS INVOLVED.....                                                                      | 2   |
| STATEMENT OF THE CASE AND FACTS .....                                                                        | 2   |
| REASONS FOR DENYING THE PETITION .....                                                                       | 7   |
| A. Bright Abdicated His Duty to Show His Question Presented Merits<br>this Court’s Review.....               | 8   |
| B. Bright’s Petition Lacks Clarity.....                                                                      | 9   |
| C. Not Raised Below. ....                                                                                    | 12  |
| D. Bright’s Question Is Intertwined with Dispositive Florida Law<br>Resolved Against Him Below. ....         | 13  |
| E. Bright Appears to Seek a Fact-Bound Decision Inappropriate for<br>Certiorari.....                         | 15  |
| F. This Court’s Precedent Already Answers Bright’s Legal Question<br>Consistent with the Decision Below..... | 15  |
| CONCLUSION .....                                                                                             | 19  |

## TABLE OF AUTHORITIES

### Cases

|                                                                                                    |                                  |
|----------------------------------------------------------------------------------------------------|----------------------------------|
| <i>Adams v. Robertson</i> ,<br>520 U.S. 83 (1997) .....                                            | 12                               |
| <i>Bowles v. Russell</i> ,<br>551 U.S. 205 (2007) .....                                            | 1                                |
| <i>Bright v. Sec’y, Fla. Dep’t of Corr.</i> ,<br>SC2024-0876, <i>Amended Habeas Petition</i> ..... | 6                                |
| <i>Bright v. State</i> ,<br>299 So. 3d 985 (Fla. 2020) ( <i>Bright III</i> ).....                  | 3-5                              |
| <i>Bright v. State</i> ,<br>432 So. 3d 485 (Fla. 2026) ( <i>Bright IV</i> ) .....                  | 1, 3-4, 6-7, 9-10, 12, 14-15, 17 |
| <i>Bright v. State</i> ,<br>90 So. 3d 249 (Fla. 2012) ( <i>Bright I</i> ).....                     | 3                                |
| <i>Briseno v. Cockrell</i> ,<br>274 F.3d 204 (5th Cir. 2001) .....                                 | 16                               |
| <i>Cash v. Maxwell</i> ,<br>565 U.S. 1138 (2012) .....                                             | 15                               |
| <i>Chapman v. California</i> ,<br>386 U.S. 18 (1967) .....                                         | 16                               |
| <i>City &amp; County of San Francisco, Calif. v. Sheehan</i> ,<br>575 U.S. 600 (2015) .....        | 12                               |
| <i>Coleman v. Balkcom</i> ,<br>451 U.S. 949 (1981) .....                                           | 8                                |
| <i>Cooper v. California</i> ,<br>386 U.S. 58 (1967) .....                                          | 14                               |

|                                                                                                          |    |
|----------------------------------------------------------------------------------------------------------|----|
| <i>Darden v. Wainwright</i> ,<br>477 U.S. 168 n.12 (1986) .....                                          | 13 |
| <i>Davis v. Jacobs</i> ,<br>454 U.S. 911 (1981) .....                                                    | 2  |
| <i>Erlinger v. United States</i> ,<br>602 U.S. 821 (2024) .....                                          | 16 |
| <i>Evitts v. Lucey</i> ,<br>469 U.S. 387 (1985) .....                                                    | 16 |
| <i>Gibson Distrib. Co., Inc. v. Downtown Dev. Ass’n of El Paso, Inc.</i> ,<br>439 U.S. 1000 (1978) ..... | 1  |
| <i>Heflin v. United States</i> ,<br>358 U.S. 415 n.7 (1959) .....                                        | 1  |
| <i>Illinois v. Gates</i> ,<br>462 U.S. 213 (1983) .....                                                  | 12 |
| <i>Limtiaco v. Camacho</i> ,<br>549 U.S. 483 (2007) .....                                                | 1  |
| <i>Lowe v. State</i> ,<br>259 So. 3d 23 (Fla. 2018) .....                                                | 18 |
| <i>Missouri v. Jenkins</i> ,<br>495 U.S. 33 (1990) .....                                                 | 2  |
| <i>Murray v. Giarratano</i> ,<br>492 U.S. 1 (1989) .....                                                 | 1  |
| <i>N.C.P. Mktg. Group, Inc. v. BG Star Productions, Inc.</i> ,<br>556 U.S. 1145 (2009) .....             | 13 |
| <i>Owen v. Fla. Dep’t of Corr.</i> ,<br>686 F.3d 1181 (11th Cir. 2012) .....                             | 16 |
| <i>Pennsylvania v. Finley</i> ,<br>481 U.S. 551 (1987) .....                                             | 1  |

|                                                                                        |           |
|----------------------------------------------------------------------------------------|-----------|
| <i>Pfau v. Ault</i> ,<br>409 F.3d 933 (8th Cir. 2005) .....                            | 16        |
| <i>Pinkney v. Sec’y, Fla. Dep’t of Corr.</i> ,<br>876 F.3d 1290 (11th Cir. 2017) ..... | 14        |
| <i>Reed v. State</i> ,<br>875 So. 2d 415 (Fla. 2004) .....                             | 17        |
| <i>Rhodes v. State</i> ,<br>547 So. 2d 1201 (Fla. 1989) .....                          | 13, 19    |
| <i>Samia v. United States</i> ,<br>599 U.S. 635 (2023) .....                           | 18        |
| <i>Satterwhite v. Texas</i> ,<br>486 U.S. 249 (1988) .....                             | 16, 18    |
| <i>Smith v. Robbins</i> ,<br>528 U.S. 259 (2000) .....                                 | 11, 14-18 |
| <i>State v. Bright</i> ,<br>200 So. 3d 710 (Fla. 2016) ( <i>Bright II</i> ) .....      | 3         |
| <i>State v. DiGuilio</i> ,<br>491 So. 2d 1129 (Fla. 1986) .....                        | 16        |
| <i>Strickland v. Washington</i> ,<br>466 U.S. 668 (1984) .....                         | 6, 9, 16  |
| <i>United States v. Johnston</i> ,<br>268 U.S. 220 (1925) .....                        | 15        |
| <i>Webb v. Webb</i> ,<br>451 U.S. 493 (1981) .....                                     | 12        |
| <i>Wolf v. State</i> ,<br>416 So. 3d 1117 (Fla. 2025) .....                            | 13        |
| <i>Woodford v. Visciotti</i> ,<br>537 U.S. 19 (2002) .....                             | 11        |

|                                                                |       |
|----------------------------------------------------------------|-------|
| <i>Yee v. City of Escondido</i> ,<br>503 U.S. 519 (1992) ..... | 8, 12 |
|----------------------------------------------------------------|-------|

## **Statutes**

|                           |     |
|---------------------------|-----|
| 28 U.S.C. § 2101(c).....  | 1-2 |
| 28 U.S.C. § 2101(d) ..... | 1   |

## **Rules**

|                        |       |
|------------------------|-------|
| Sup. Ct. R. 10 .....   | 8, 15 |
| Sup. Ct. R. 14.4 ..... | 9, 11 |

## **OPINION BELOW**

Bright seeks certiorari review over the Florida Supreme Court’s decision rejecting his postconviction challenges to his sentence. *Bright v. State*, 432 So. 3d 485 (Fla. 2026), *reh’g denied*, No. SC2023-1735, 2026 WL 1361728 (Fla. May 15, 2026).

## **JURISDICTION**

This Court lacks statutory jurisdiction over Bright’s untimely Petition. 28 U.S.C. § 2101(c), which applies to civil cases, governs the time to file certiorari petitions challenging postconviction decisions. *Heflin v. United States*, 358 U.S. 415, 418 n.7 (1959) (explaining postconviction certiorari petitions are governed by 28 U.S.C. § 2101(c)).<sup>1</sup> Civil litigants have 90 days from the lower court’s denial of rehearing to file a certiorari petition. 28 U.S.C. § 2101(c); *Limtiaco v. Camacho*, 549 U.S. 483, 487 (2007) (explaining the time to file a petition runs from when the lower court denies rehearing if a rehearing motion is filed). That 90-day time limit is jurisdictional. *See, e.g., Bowles v. Russell*, 551 U.S. 205, 212 (2007) (explaining this Court has repeatedly held 28 U.S.C. § 2101(c)’s “statute-based filing period for civil cases is jurisdictional” while 28 U.S.C. § 2101(d) is not); *Gibson Distrib. Co., Inc. v. Downtown Dev. Ass’n of El Paso, Inc.*, 439 U.S. 1000 (1978) (dismissing a petition for “want of jurisdiction” because it was not timely filed under § 2101(c)).

It appears Bright did not timely file his Petition under 28 U.S.C. § 2101(c). The

---

<sup>1</sup> *See also Pennsylvania v. Finley*, 481 U.S. 551, 556–57 (1987) (explaining a postconviction proceeding is “not part of the criminal proceeding itself, and it is in fact considered to be civil in nature”); *Murray v. Giarratano*, 492 U.S. 1, 8 (1989) (plurality opinion) (applying *Finley* to capital proceedings).

Florida Supreme Court denied rehearing on May 15, 2026, so the Petition was due on August 13, 2026. Undersigned counsel checked the docket several times before and after that date, yet no Petition was timely docketed. Nor did Bright seek an extension from a “justice of the supreme court.” *See* 28 U.S.C. § 2101(c).

Notwithstanding the jurisdictional August 13, 2026, due date for the Petition, the undersigned discovered the Petition was docketed August 28, 2026. The electronic docket backdates the Petition’s filing to August 13, 2026, but the Petition itself is dated “August 20, 2026.” Based on all this, it seems the Petition was neither properly nor timely filed but improperly backdated on the docket. *Cf. Missouri v. Jenkins*, 495 U.S. 33, 49 (1990) (“The time for applying for certiorari will not be tolled when it appears that the lower court granted rehearing or amended its order solely for the purpose of extending that time.”). It therefore appears this Court lacks jurisdiction because the Petition is untimely. *See* 28 U.S.C. § 2101 (c). This Court should deny<sup>2</sup> the untimely Petition for lack of jurisdiction.

### **CONSTITUTIONAL PROVISIONS INVOLVED**

The State accepts Petitioner’s statement of the constitutional provisions.

### **STATEMENT OF THE CASE AND FACTS**

Bright murdered Derrick King and Randell Brown nearly twenty years ago and comes to this Court seeking review over a resentencing direct appeal ineffectiveness claim.

---

<sup>2</sup> This Court denies certiorari petitions even when it lacks jurisdiction over them as a matter of efficiency. *See Davis v. Jacobs*, 454 U.S. 911, 912 (1981) (Stevens, J., concurring in denial of certiorari).

### **A. Facts of the Crime**

Around the early morning hours of February 19, 2008, Raymond Curtis Bright beat twenty-year-old Derrick King and sixteen-year-old Randell Brown to death with a hammer in his home. *Bright v. State*, 90 So. 3d 249, 252–55 (Fla. 2012) (*Bright I*). “King received thirty-eight blunt impact injuries to his head and about twenty injuries to his extremities,” including several defensive wounds. *Bright v. State*, 299 So. 3d 985, 1003 (Fla. 2020) (*Bright III*). King was “alive when these injuries were inflicted and” he suffered. *Id.* “Brown had at least eight skull fractures and fourteen other independent injuries to his body, some of which were consistent with defensive wounds.” *Bright v. State*, 432 So. 3d 485, 493 (Fla. 2026) (*Bright IV*). Bright confessed to both killings but claimed self-defense. *Bright I*, 90 So. 3d at 253–54.

### **B. Pre-Resentencing Proceedings**

A jury rejected his self-defense claim, finding him guilty of both first-degree murders, and recommended death by an 8-4 vote. *Bright I*, 90 So. 3d at 254, 256. The Florida Supreme Court affirmed both convictions and death sentences. *Id.* at 265. Bright then attacked his convictions and death sentences in Florida’s postconviction system and won a resentencing. *State v. Bright*, 200 So. 3d 710, 742 (Fla. 2016) (*Bright II*). But his dual first-degree murder convictions survived. *Id.* at 715.

### **C. 2017 Resentencing and Direct Appeal**

Bright’s resentencing occurred in September 2017. (RS2:5–1294.) The Florida Supreme Court summarized the aggravation and mitigation on direct appeal. *See Bright III*, 299 So. 3d at 993–98.

During closing arguments, the prosecutor argued: “Isn’t it ironic that in terms

of – you have a choice. By his actions, he now is in the criminal justice system, and as a result, you have a choice as to whether he should get death or whether he should get life. Well, Raymond Bright never gave each of these victims a choice, did he?”

*Bright IV*, 432 So. 3d at 502.

After closing, the court instructed the jury:

You must follow the law as set out in these instructions. If you fail to follow the law, your decision would be a miscarriage of justice. There’s no reason for failing to follow the law in this case, and we’re all depending upon you to make a wise and legal decision in this matter.

Your decisions must be based only upon the evidence that you have heard from the testimony of witnesses and have seen in the form of exhibits in evidence and from these instructions.

Your decision must not be based upon the fact that you feel sorry for anyone or are angry at anyone.

. . . .

Your decisions should not be influenced by feelings of prejudice, racial or ethnic bias or sympathy. Your decisions must be based upon the evidence and the law contained in these instructions.

(RS2:1269–70.)

The jury unanimously recommended death for both murders. For King’s murder, the State proved two aggravators beyond reasonable doubt: (1) heinous, atrocious, or cruel (HAC) (proven by King’s numerous wounds and defensive wounds), and (2) Prior Violent Felony (proven by contemporaneous murder of Brown and a robbery conviction). *Bright III*, 299 So. 3d at 995–96. The jury rejected all statutory mitigation, and all but one juror found no catchall mitigation either. *Id.* at 996. “The jury unanimously found that the aggravating factors were sufficient to warrant a

sentence of death and that those factors outweighed the mitigating circumstances. Ultimately, the jury unanimously found that Bright should be sentenced to death for the murder of King.” *Id.*

The jury likewise unanimously recommended death for Brown’s murder. “Unlike King, the jury did not find that the murder was especially heinous, atrocious, or cruel.” *Id.* Instead, the death sentence for Brown’s murder rested on Bright’s prior violent felonies, a robbery and King’s murder. *Id.*

The sentencing judge followed the jury’s recommendation, finding the “aggravating circumstances heavily outweigh the mitigating circumstances, and that death is the proper penalty the Court should impose for the murders of Derrick King and Randall Brown.” *Id.* at 996–97.

Bright argued on appeal that the prosecutor made four improper comments during closing argument, but the comment about Bright not giving his victims a choice was not among them. *Id.* at 998–1002. The Florida Supreme Court found three of the comments proper and the last, regarding the burden of proof for mitigating circumstances, was cleared up by the jury instructions. *Id.* The Court therefore affirmed Bright’s resentencing death sentences for the murders of King and Brown. *Id.* at 1012.

#### **D. “Same Mercy” Appellate Ineffectiveness Claim**

Years later, Bright properly filed a state habeas petition in the Florida Supreme Court. He argued his resentencing direct-appeal counsel ineffectively failed to assert reversible error occurred when the prosecutor made the argument about

Bright not giving the victims a choice. That argument, Bright contended, was an impermissible “same mercy” argument prohibited by Florida Law. *See Bright v. Sec’y, Fla. Dep’t of Corr.*, SC2024-0876, *Amended Habeas Petition* at 13–18.

The Florida Supreme Court found Bright suffered no prejudice from resentencing direct appeal counsel’s omission. *Bright IV*, 432 So. 3d at 502–03. The court first explained that the framework for assessing ineffective assistance of appellate counsel claims “mirrors the *Strickland*<sup>3</sup> standard for ineffective assistance of trial counsel: the petitioner must demonstrate deficient performance and resulting prejudice.” *Id.* at 502. Prejudice for ineffective assistance of appellate counsel claims requires the defendant to show “any deficiency compromised the appellate process to such a degree as to undermine confidence in the correctness of the result.” *Id.* “In other words, the deficiency must concern an issue which is error affecting the outcome, not simply harmless error.” *Id.*

In analyzing Bright’s appellate ineffectiveness claim, the court assumed, but did not decide, that the issue was preserved. *Id.* “Even so, appellate counsel’s failure to raise the same-mercy argument on direct appeal does not support a finding of prejudice.” *Id.* at 502. Under Florida law, “a mercy argument standing alone does not constitute reversible error,” especially when made in passing. *Id.*

Here, considering the entire closing, the State did not dwell upon or emphasize the mercy comments. Namely, the State did not implore the jury to recommend death as a result of Bright’s failure to show mercy. Considering these facts along with the strength of the evidence against Bright and the gravity of the aggravators, we find that any error would have been harmless. As such, Bright cannot show that appellate

---

<sup>3</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).

counsel's failure to raise this claim prejudiced him.

*Id.* at 502–03. The Florida Supreme Court therefore denied relief. *Id.*

### **E. Certiorari Petition**

Bright filed a certiorari petition seeking review of one question presented:

1. Are a trial or appellate court's analyses of 1) the weight of evidence of guilt and/or 2) the gravity of aggravators proven beyond a reasonable doubt appropriate factors in evaluating the effectiveness of trial or appellate counsel when it comes to *Strickland*'s application to the process underlying a jury's recommendation following the weighing of aggravating and mitigating factors, -- a necessarily moral judgment?

(Pet. at i.) The State opposes certiorari.

### **REASONS FOR DENYING THE PETITION**

Bright asks this Court to review whether the Florida Supreme Court correctly applied this Court's settled precedent governing ineffective assistance of appellate counsel claims to his resentencing counsel's failure to raise a "same mercy" argument. He also seems to suggest this Court should decide: (1) if the strength of guilt-phase evidence is relevant while assessing prejudice for a claim that resentencing appellate counsel provided ineffective assistance; and (2) if the strength of penalty-phase evidence and aggravation is relevant while assessing prejudice for a claim that resentencing appellate counsel provided ineffective assistance.

This Court should deny review because Bright abdicated his duty of showing his question presented is important enough for certiorari review; his Petition lacks clarity; he did not raise his question below; his question presented is intertwined with dispositive state-law matters resolved against him below; he seeks a fact-specific rule

with little precedential value; and the decision below correctly decided his claim.

**A. Bright Abdicated His Duty to Show His Question Presented Merits this Court’s Review.**

A petition for certiorari should both provide the Respondent notice of the grounds for certiorari and assist the court in selecting cases. *Yee v. City of Escondido*, 503 U.S. 519, 535–36 (1992). But Bright’s Petition makes no effort to even try explaining why his alleged “misapplication of a properly stated rule of law” warrants this Court’s review. *See* Sup. Ct. R. 10. Nor does he noticeably assert any usual certiorari criteria apply. *See* Sup. Ct. R. 10. Instead, Bright filed a three-page merits brief complaining about the Florida Supreme Court’s analysis. (Pet. at 5–8.)

That hobbles both the State’s ability to respond and this Court’s ability to decide whether his question presented merits review. The importance of Bright’s question *to him* provides no reason to grant certiorari after all. *See Coleman v. Balkcom*, 451 U.S. 949, 956 (1981) (Rehnquist, J., dissenting from denial of certiorari) (recognizing a capital defendant’s questions presented were important “only to petitioner himself and therefore” were “not suitable candidates for the exercise of our discretionary jurisdiction”). Bright does not provide a single citation to any case indicating the Florida Supreme Court made a legal error and, seemingly, misreads the decision below as importing a review of the guilt-phase evidence into an appellate resentencing ineffectiveness claim. This Court should deny review because Bright abdicated his duty to explain why his question is important enough for certiorari.

## **B. Bright's Petition Lacks Clarity**

The lack of clarity in Bright's Petition provides another standalone reason to deny certiorari. *See* Sup. Ct. R. 14.4 (explaining lack of clarity is a reason to deny certiorari). Bright's three-page request for this Court to grant certiorari lacks sufficient clarity to even consider granting certiorari. (Pet. at 5–8.) He agrees *Strickland's* prejudice analysis governs the underlying claim, describes that analysis, and then states the question is “whether the Florida Supreme Court's decision so mangles this Court's analysis that it requires further definition of its holding in *Strickland*, or at least considering the contours of *Strickland* as it relates to penalty phase analysis.” (Pet. at 5–8.) He then notes the Florida Supreme Court assumed the underlying “same mercy” argument was preserved, right before discussing a separate *trial counsel* ineffectiveness claim, which Bright asserted in the state postconviction court below but did not appeal.<sup>4</sup> (Pet. at 5–6.) He never explains what that abandoned claim has to do with the question he asks this Court to review.

Next, he seemingly argues the court below misconstrued the facts by holding the State neither dwelled upon the “same mercy” argument nor directly implored the jury to recommend death because Bright did not show the victims mercy. (Pet. at 6–

---

<sup>4</sup> That ineffective assistance of trial counsel claim asserted trial counsel ineffectively failed to preserve the “same mercy” argument for appeal. (RSPCR:4253–54.) The postconviction court found counsel testified “at the Evidentiary Hearing that she chose to not take the Court up on its curative instruction offer because she did not want to draw additional attention to the improper ‘same mercy’ argument.” (*Id.*) But the Florida Supreme Court mentioned none of this in its opinion. And it's not clear, given the court's assumption Bright preserved the issue, why the postconviction court's resolution of a separate trial counsel ineffectiveness claim has any relevance to Bright's ineffective assistance of resentencing direct appeal counsel claim.

7.) Then he complains that the resentencing judge, when counsel first objected, did not realize she was making a same-mercy objection. (Pet. at 7.) He does not explain what that argument has to do with the question he asks this Court to review.

Bright also seems to misread the Florida Supreme Court’s opinion as using the strength of *guilt* to reject his resentencing direct appeal ineffectiveness claim. (Pet. at 7.) But the court below did no such thing. It recognized the prejudice question required Bright to prove “any deficiency compromised the appellate process to such a degree as to undermine confidence in the correctness of the result. In other words, the deficiency must concern an issue which is error affecting the outcome, not simply harmless error.” *Bright IV*, 432 So. 3d at 502–03 (cleaned up). Considering the brevity and indirect nature of the State’s “same mercy” argument, “along with the strength of the evidence against Bright and the gravity of the aggravators,” the court found “that any error would have been harmless” if asserted in the resentencing direct appeal. *Id.* at 502–03. For that reason, Bright could not show “that appellate counsel’s failure to raise this claim prejudiced him.” *Id.* The Florida Supreme Court never said it used evidence of *guilt* in its analysis.

Bright’s Petition lacks any clarity on why he believes the Florida Supreme Court imported a guilt-phase strength analysis into its no-prejudice holding. He provides no argument supporting this point and simply assumes error when none is apparent. His failure to make any argument supporting his position shows it lacks clarity. And his “readiness to attribute error is inconsistent with the presumption that state courts know and follow the law.” *See Woodford v. Visciotti*, 537 U.S. 19, 24

(2002).

The Petition next devolves into a discussion about whether aggravators should be proven in the guilt phase before stating that “is not at issue here.” (Pet. at 7–8.) But he concedes that discussion is irrelevant to his Petition, so its inclusion only further muddies Bright’s certiorari request.

Bright’s final argument continues his guilt-based misreading of the opinion below while also taking issue with using the penalty-phase evidence and aggravation from Bright’s resentencing to find no prejudice on appeal. (Pet. at 8.) He does not explain why it is improper to consider aggravation when deciding whether the court below would have reversed on resentencing direct appeal if Bright raised the “same mercy” argument there. *See Smith v. Robbins*, 528 U.S. 259, 285 (2000). After all, a defendant asserting ineffective assistance of appellate counsel has “the burden of demonstrating prejudice. That is, he must show a reasonable probability that, but for his counsel’s unreasonable failure” to brief the proposed issue, “he would have prevailed on his appeal.” *Id.*

Taking all this together, Bright’s Petition’s is anything but laser focused on the question he asks this Court to answer, its importance, or any other reason for granting certiorari. His meandering failure to “present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition.” *See Sup. Ct. R. 14.4.* Bright provides the State no clear argument to respond to, and this Court no clear way to decide certiorari’s appropriateness. That lack of clarity warrants

denying certiorari. *See Yee v. City of Escondido*, 503 U.S. 519, 535–36 (1992).

### **C. Not Raised Below.**

Bright’s state habeas petition never asserted the strength of the penalty-phase evidence against him and aggravation were irrelevant to his appellate ineffectiveness claim. Nor did he argue in rehearing that the Florida Supreme Court erroneously imported a guilt-phase prejudice analysis into Bright’s claim challenging resentencing appellate counsel’s effectiveness. The Florida Supreme Court’s opinion does not discuss either of those issues either. *Bright IV*, 432 So. 3d at 502–03.

When “the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary.” *Webb v. Webb*, 451 U.S. 493, 495 (1981). This Court seldom grants certiorari when a defendant fails to “carry that burden.” *See Adams v. Robertson*, 520 U.S. 83, 90 (1997).

And Bright cannot here. Neither his state habeas petition nor motion for rehearing asserted the positions he now advances before this Court. That provides, at minimum, a strong prudential reason to decline certiorari. *See Illinois v. Gates*, 462 U.S. 213, 222 (1983) (explaining the requirement a petitioner present the same issue below allows a state court to deny relief “on an adequate and independent state ground”). This “Court does not ordinarily decide questions that were not passed on below.” *City & County of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 609 (2015). It should deny certiorari here rather than address questions Bright asks for the first time in his certiorari Petition.

**D. Bright’s Question Is Intertwined with Dispositive Florida Law Resolved Against Him Below.**

This Court should also decline review because the federal question Bright presents is intertwined with dispositive questions of Florida law. Federal issues wrapped in antecedent questions of state law are rarely appropriate subjects for certiorari. *See N.C.P. Mktg. Group, Inc. v. BG Star Productions, Inc.*, 556 U.S. 1145, 1578 (2009) (statement of Kennedy, J., respecting the denial of certiorari).

Bright’s Petition presents no exception to that rule. The underlying “same mercy” argument that Bright says resentencing direct-appeal counsel should have advanced is an argument based solely on state law. *See Wolf v. State*, 416 So. 3d 1117, 1139 (Fla. 2025) (Sasso, J., concurring) (explaining the Florida Supreme Court has never provided a “doctrinal justification” for holding “same mercy” arguments improper, just *ipse dixit* proclaimed they were improper, and the prohibition on “same mercy” arguments was born out of a “distorted application of the principle that counsel should not make arguments outside the evidence that was introduced at trial”); *Rhodes v. State*, 547 So. 2d 1201, 1206 (Fla. 1989) (finding “same mercy” arguments “an unnecessary appeal to the sympathies of the jurors”).

Federal law demands far more before finding a constitutional violation. *See Darden v. Wainwright*, 477 U.S. 168, 181–83 & n.12, n.13 (1986) (setting out the standard for due process claims governing prosecutorial misconduct in closing and finding neither due process nor Eighth Amendment violations despite the prosecutor’s egregious comments). And most courts, including the Eleventh Circuit, have held “same mercy” arguments perfectly proper. *See Wolf*, 416 So. 3d at 1139

(Sasso, J., concurring) (collecting cases holding “same mercy” arguments proper).

The Florida Supreme Court currently disagrees on state law grounds, as is its right. But state courts alone determine when violations of state law constitute reversible error on appeal. *Cooper v. California*, 386 U.S. 58, 62 (1967) (holding when “state standards alone have been violated, the State is free, without review by us, to apply its own state harmless-error rule to such errors of state law”). And the Florida Supreme Court has unambiguously held that a violation of its state-law-based “same mercy” rule did not warrant reversal in Bright’s resentencing direct appeal. *Bright IV*, 432 So. 3d at 502–03. That dispositive state-law holding resolves what would have happened had Bright raised the “same mercy” argument on direct appeal in a way no federal court can second guess. *See Pinkney v. Sec’y, Fla. Dep’t of Corr.*, 876 F.3d 1290, 1297–99 (11th Cir. 2017) (explaining ineffective assistance of appellate counsel claims automatically fail if the issue could not prevail under state law).

The Florida Supreme Court’s state-law holding means there is no doubt about whether Bright would have “prevailed on appeal” if his resentencing direct appeal counsel raised the “same mercy” issue. *See Robbins*, 528 U.S. at 285. He would not have. *Bright IV*, 432 So. 3d at 502–03. Since Bright’s federal question about his resentencing direct appeal counsel’s effectiveness is intertwined with a dispositive state law question, which the state court answered against Bright and no federal court can second guess, certiorari should be denied.

**E. Bright Appears to Seek a Fact-Bound Decision Inappropriate for Certiorari.**

To the extent Bright’s Petition simply asks this Court to reevaluate the evidence and decide the harmless error question itself, his question does not merit this Court’s review. A “petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings.” Sup. Ct. R. 10. This Court simply does not “grant a certiorari to review evidence and discuss specific facts.” *United States v. Johnston*, 268 U.S. 220, 227 (1925); *Cash v. Maxwell*, 565 U.S. 1138 (2012) (statement of Sotomayor, J., respecting the denial of certiorari) (“Mere disagreement with” a “highly factbound conclusion is” an “insufficient basis for granting certiorari.”).

Bright’s Petition at points quibbles more about facts and their import than law. (See Pet. at 5–8.) The Florida Supreme Court below held Bright did not show a reasonable probability he would have prevailed on appeal because the court would have found the issue harmless. *Bright IV*, 432 So. 3d at 502–03. That was indisputably the correct analysis. See *Robbins*, 528 U.S. at 285. If Bright is asking this Court to simply disagree with the factbound conclusion the court below reached after reviewing the penalty phase evidence and finding any error would have been harmless in the resentencing appeal, that question is not appropriate for certiorari.

**F. This Court’s Precedent Already Answers Bright’s Legal Question Consistent with the Decision Below.**

Finally, this Court need not grant certiorari and decide this question when its existing precedent already answers it consistent with the decision below. This Court held long ago that due process requires direct appeal counsel to provide effective

assistance. *Evitts v. Lucey*, 469 U.S. 387, 397 (1985). The *Strickland* standard governs such appellate ineffectiveness claims and requires a showing of deficient performance and prejudice, meaning no reasonable counsel would have failed to assert the claim and there is a reasonable probability the appellate court would have reversed if that claim had been raised. *See Smith v. Robbins*, 528 U.S. 259, 285–89 (2000) (explaining prejudice is not presumed and requires the defendant to “show a reasonable probability that, but for his counsel’s unreasonable failure to” raise an issue, “he would have prevailed on his appeal”).

Federal appellate courts routinely hold defendants raising appellate ineffectiveness claims suffer no prejudice if the proposed issue would have been deemed harmless on appeal. *E.g., Briseno v. Cockrell*, 274 F.3d 204, 210–12 (5th Cir. 2001); *Pfau v. Ault*, 409 F.3d 933, 941 (8th Cir. 2005); *Owen v. Fla. Dep’t of Corr.*, 686 F.3d 1181, 1202 (11th Cir. 2012). Those holdings are logically compelled by *Robbins* because, under both federal and Florida law, a litigant cannot prevail on appeal if the appellate court deems the error harmless beyond reasonable doubt. *See, e.g., Chapman v. California*, 386 U.S. 18, 22–26 (1967); *State v. DiGuilio*, 491 So. 2d 1129, 1130–39 (Fla. 1986). *See also Satterwhite v. Texas*, 486 U.S. 249, 257 (1988) (explaining the usual *Chapman* standard applies to penalty-phase errors because reviewing courts can make an “intelligent judgement” about whether the erroneous admission of evidence might have affected the capital jury).

Harmless error analyses are generally fact-specific and involve a detailed review of the record and error. *See Erlinger v. United States*, 602 U.S. 821, 861 (2024)

(Kavanaugh, J., dissenting with Alito, J.) (acknowledging this Court usually leaves harmless error analyses to lower courts because they often “are fact-intensive and require painstaking analysis of a large record”).

The Florida Supreme Court applied these straightforward rules to reject Bright’s resentencing appellate counsel ineffectiveness claim. *Bright IV*, 432 So. 3d at 502–03. Consistent with *Robbins*, the court below found Bright would not have prevailed on appeal if his appellate counsel asserted the “same mercy” issue because it constituted only harmless error. *Bright IV*, 432 So. 3d at 502–03. The court based that holding on the strength of the resentencing evidence against Bright, including the strong aggravation, and its own prior determination that, under state law, “a mercy argument standing alone does not constitute reversible error.” *Id.* (citing *Merck v. State*, 975 So. 2d 1054, 1062 (Fla. 2007)); see also *Reed v. State*, 875 So. 2d 415, 438 (Fla. 2004) (collecting cases proving this rule). Nothing in the opinion supports Bright’s strained reading that the court imported a review of the guilt-phase evidence into its analysis. *Bright IV*, 432 So. 3d at 502–03. The Florida Supreme Court committed no legal error and the resentencing evidence, including the aggravation, supports its holding that the “same mercy” violation was harmless error at most.

Nor did it commit any factual error. The prosecutor’s argument took up seven lines in a resentencing closing argument that spanned thirty-eight pages and never directly asked the jury to recommend death because Bright showed no mercy. (RS:1171–1209.) The presiding judge also only overruled defense counsel’s objection to the comment at sidebar, so the jury never heard it approve the comment. (RS:1208.)

The decision below comports with *Robbins* because appellants do not prevail on harmless errors. And *Satterwhite* proves harmless error analyses do apply to errors in capital penalty phases. Those analyses, by their nature, require courts to review the strength of the evidence below and determine whether an error could have affected the outcome. The Florida Supreme Court did that. So, there is no legal or factual error below for this Court to correct.

The presumption Bright’s jury followed the law further supports the Florida Supreme Court’s harmless error holding. *See Samia v. United States*, 599 U.S. 635, 647 (2023) (reaffirming the direct appeal presumption that jurors follow the law and recognizing that to “disregard or to make unnecessary exceptions to” that presumption “would make inroads into the entire complex code of criminal evidentiary law, and would threaten other large areas of trial jurisprudence”); *Lowe v. State*, 259 So. 3d 23, 52 (Fla. 2018) (“In a capital case, the gravity of the proceeding and the concomitant juror responsibility weigh even more heavily, and it can be presumed that the penalty phase jurors will take special care to understand and follow the law.”).

The resentencing court told Bright’s jury the prosecutor’s closing was not evidence; that it was required to apply the law it was instructed on; that it could only consider specific aggravating facts to support death; that it had to consider mitigation; that its decision had to be based on weighing the aggravation and mitigation; and that its decision could not be based on anger or sympathy. (RS:1169, 1257, 1262–63, 1269–70). If the jurors followed those instructions, any “unnecessary

appeal” to their sympathies would not have swayed them. *Cf. Rhodes v. State*, 547 So. 2d 1201, 1206 (Fla. 1989).

The Florida Supreme Court correctly applied this Court’s straightforward ineffective assistance of appellate counsel precedent to find Bright suffered no prejudice below. Its decision aligns with this Court’s decisions and guiding framework. There is no legal or factual error for this Court to correct and, therefore, no reason to grant certiorari here.

For all these reasons, this Court should deny certiorari on Bright’s sole question presented.

### **CONCLUSION**

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JAMES UTHMEIER  
ATTORNEY GENERAL OF FLORIDA

/s/ SCOTT A. BROWNE  
SCOTT A. BROWNE  
Chief Assistant Attorney General  
*Counsel of Record*

Office of the Attorney General  
3507 E. Frontage Rd., Ste. 200  
Tampa, Florida 33607  
Telephone: (813) 287-7900  
scott.browne@myfloridalegal.com  
capapp@myfloridalegal.com

JASON W. RODRIGUEZ  
SENIOR ASSISTANT ATTORNEY GENERAL

COUNSEL FOR RESPONDENT