

No. 26-5697

IN THE
SUPREME COURT OF THE UNITED STATES

CURTIS W. BEASLEY,

Petitioner,

v.

RICHARD COMERFORD,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR SEPTEMBER 29, 2026, AT 6:00 P.M.

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

CHRISTINA Z. PACHECO
Special Counsel, Assistant
Attorney General

JONATHAN S. TANNEN
Senior Assistant Attorney General

COUNSEL FOR RESPONDENT

CAPITAL CASE
QUESTION PRESENTED

Whether the Eleventh Circuit erred by denying a certificate of appealability from the district court's denial of an untimely and procedurally improper Federal Rule of Civil Procedure 60(b) motion that sought to vacate the district court's 2010 judgment denying Beasley's petition for writ of habeas corpus?

TABLE OF CONTENTS

QUESTION PRESENTED	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
OPINION BELOW	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISIONS INVOLVED.....	1
STATEMENT OF THE CASE AND FACTS	1
REASONS FOR DENYING THE PETITION	5
I. The Eleventh Circuit’s Unpublished Order Is Not Binding Precedent and Does Not Conflict With Any Decision by This Court or Another United States Court of Appeals.	5
II. Beasley’s Rule 60(b) Motion Was Procedurally Improper and Time- Barred and Failed to State a Basis for Federal Habeas Relief.....	8
CONCLUSION.....	14

TABLE OF AUTHORITIES

Cases

<i>Allen v. Ornoski</i> , 435 F.3d 946 (9th Cir. 2006).....	13
<i>Atkins v. Virginia</i> , 536 U.S. 304 (2002)	4, 12-13
<i>Beasley v. Sec’y, Dep’t of Corr.</i> , No. No. 8:09-cv-01962, 2026 WL 2870929 (M.D. Fla. Sept. 24, 2026)	4-5, 11
<i>Beasley v. Sec’y, Fla. Dep’t of Corr.</i> , No. 8:09-cv-01962, (M.D. Fla. Mar. 30, 2010)	2-4
<i>Beasley v. State</i> , 18 So. 3d 473 (Fla. 2009)	2
<i>Beasley v. State</i> , 234 So. 3d 553 (Fla. 2018)	3
<i>Beasley v. State</i> , 774 So. 2d 649 (Fla. 2000)	2, 12
<i>Beasley v. State</i> , No. SC2026-1399, 2026 WL 2854502 (Fla. Sept. 22, 2026).....	1-3, 11, 13
<i>BLOM Bank SAL v. Honickman</i> , 605 U.S. 204 (2025).....	4
<i>Fernandez v. United States</i> , 146 S. Ct. 1292 (2026).....	9
<i>Ford v. Wainright</i> , 477 U.S. 399 (1986).....	4
<i>Gonzalez v. Crosby</i> , 545 U.S. 524 (2005).....	5, 8-9
<i>Gonzalez v. Thayer</i> , 565 U.S. 134 (2012).....	8
<i>Gregg v. Georgia</i> , 428 U.S. 153 (1976).....	12

<i>Holland v. Florida</i> , 560 U.S. 631 (2010)	8
<i>Hurst v. Florida</i> , 577 U.S. 92 (2016)	3
<i>Hurst v. State</i> , 202 So. 3d 40 (Fla. 2016)	3
<i>Kemp v. United States</i> , 596 U.S. 528 (2022)	4, 9-11
<i>Liljeberg v. Health Services Acquisition Corp.</i> , 486 U.S. 847 (1988)	11
<i>Madison v. Alabama</i> , 586 U.S. 265 (2019)	12
<i>Mills v. Comm’r, Ala. Dep’t of Corr.</i> , 102 F.4th 1235 (11th Cir.)	10
<i>Occhicone v. State</i> , 436 So. 3d 465 (Fla. 2026)	13
<i>Osbourne v. Sec’y, Fla. Dep’t of Corr.</i> , 968 F.3d 1261 (11th Cir. 2020)	5
<i>Rivers v. Guerrero</i> , 605 U.S. 443 (2025)	8-9
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005)	4, 12-13
<i>Slack v. McDaniel</i> , 529 U.S. 473 (2000)	7
<i>Smithers v. State</i> , 420 So. 3d 460 (Fla. 2025)	13
<i>Spencer v. State</i> , 434 So. 3d 709 (Fla. 2026)	13
<i>State v. Poole</i> , 297 So. 3d 487 (Fla. 2020)	3
<i>Thompson v. Oklahoma</i> , 487 U.S. 815 (1988)	13

<i>Trotter v. State</i> , 428 So. 3d 68 (Fla. 2026)	13
--	----

<i>Woodson v. North Carolina</i> , 428 U.S. 280 (1976)	13
---	----

Statutes

28 U.S.C. § 1254	1
28 U.S.C. § 2244	5, 8-9
28 U.S.C. § 2253	5-8
28 U.S.C. § 2254	3, 9

Rules

11th Cir. R. 36-2	7
Sup. Ct. R. 10	1, 6
Fed. R. Civ. P. 60	3-5, 9, 10, 7-11, 14
Fla. R. Crim. P. 3.851	2

OPINION BELOW

The opinion from which Petitioner seeks certiorari review is the Eleventh Circuit's unpublished order denying his application for a certificate of appealability (COA) and motion for stay of execution. *Beasley v. Sec'y, Fla. Dep't of Corr.*, No. 26-13446 (11th Cir. Sept. 25, 2026).

JURISDICTION

Petitioner seeks to invoke this Court's jurisdiction under 28 U.S.C. § 1254. Respondent agrees that this Court has the authority to grant review under that statute but denies that this is an appropriate case for the exercise of this Court's discretionary jurisdiction, as the Eleventh Circuit's order is unpublished and has no precedential value, does not conflict with any decision by this Court or any other United States court of appeals, and does not decide any important or unsettled question of federal law. *See* Sup. Ct. R. 10(a), (c).

CONSTITUTIONAL PROVISIONS INVOLVED

Respondent accepts Petitioner's statement regarding the constitutional and statutory provisions involved.

STATEMENT OF THE CASE AND FACTS

Petitioner, Curtis Wilkie Beasley, is an inmate in the custody of the Florida Department of Corrections who was convicted of first-degree murder and sentenced to death for the 1995 bludgeoning murder of Carolyn Monfort. *Beasley v. State*, No. SC2026-1399, 2026 WL 2854502 (Fla. Sept. 22, 2026). At the time of the murder, Beasley was staying temporarily at Monfort's home and was doing maintenance work

at an apartment complex that Monfort managed. Monfort knew Beasley through her daughter's former husband, who was a high school classmate of Beasley's. *Id.* The evidence at Beasley's trial established that Beasley brutally beat Monfort to death on or about August 21, 1995, stole several \$100 bills from her, and stole her car. The medical examiner documented extensive bruises, lacerations, and blunt force injuries to Monfort's head and face, as well as defensive injuries to her hands, upper arms, and left forearm. *Id.*

The evidence further established that after committing the murder, Beasley fled first to Miami and then to Alabama, where he lived and worked under an assumed name until he was eventually apprehended. *Id.* at *2. Following his arrest, Beasley was brought back to Florida to face charges for the first-degree murder and robbery of Monfort and the grand theft of her car. *Id.* The jury found Beasley guilty as charged. At the conclusion of Beasley's penalty phase, the jury recommended the death penalty by a vote of 10 to 2. The trial court followed the jury's recommendation and sentenced Beasley to death. *Id.* The Florida Supreme Court affirmed Beasley's convictions and death sentence on direct appeal. *Beasley v. State*, 774 So. 2d 649, 653-75 (Fla. 2000). The convictions and death sentence became final on March 21, 2001, upon the expiration of Beasley's time to file a certiorari petition to this Court. *Beasley*, 2026 WL 2854502, at *2 (citing Fla. R. Crim. P. 3.851(d)(1)(A)).

In the years since, Beasley has filed numerous collateral challenges in state and federal court, all of which were rejected. *See Beasley v. State*, 18 So. 3d 473 (Fla. 2009) (affirming denial of initial state-court motion for postconviction relief); *Beasley*

v. Sec’y, Fla. Dep’t of Corr., No. 8:09-cv-01962, Doc. 21 (M.D. Fla. Mar. 30, 2010) (denying petition for writ of habeas corpus), *certificate of appealability denied*, No. 10-11750 (11th Cir. Oct. 15, 2010), *cert. denied*, 563 U.S. 906 (2011); *Beasley v. State*, 234 So. 3d 553 (Fla. 2018) (affirming denial of successive state-court postconviction motion challenging nonunanimous jury recommendation under *Hurst*¹).

On August 26, 2026, Governor DeSantis signed Beasley’s death warrant, and his execution is scheduled for Tuesday, September 29, 2026, at 6:00 p.m. *Beasley*, 2026 WL 2854502, at *3. Beasley thereafter filed a motion for stay of execution and successive motion for postconviction relief in state circuit court. The circuit court denied those motions, and the Florida Supreme Court affirmed those decisions on appeal. *Id.* at *3-8. On September 24, 2026, Beasley filed a petition for a writ of certiorari in this Court seeking review of the Florida Supreme Court’s decision, which remains pending. *See Beasley v. Florida*, Nos. 26-5678 & 26A405.

Pertinent here, Beasley, on September 23, 2026, also filed a motion in federal district court under Federal Rule of Civil Procedure 60(b) seeking to vacate the district court’s March 30, 2010, judgment denying his 28 U.S.C. § 2254 petition for writ of habeas corpus. The motion sought to add a new claim for federal habeas relief alleging that Beasley’s age of 77 years old and corresponding cognitive decline should render him exempt from execution under the Eighth Amendment. Beasley argued that the district court’s 2010 judgment should be vacated under Rule 60(b) because

¹ *Hurst v. Florida*, 577 U.S. 92 (2016); *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), *receded from in part by State v. Poole*, 297 So. 3d 487 (Fla. 2020).

his new claim constituted “newly discovered evidence” under Rule 60(b)(2) or qualified as “any other reason that justifies relief” under Rule 60(b)(6). *Beasley v. Sec’y, Fla. Dep’t of Corr.*, No. 8:09-cv-01962, Doc. 37 (M.D. Fla. Sept. 23, 2026).

The district court denied the motion. It held, first, that the motion was untimely because it was based on “newly discovered evidence” under Rule 60(b)(2), and a motion filed under that sub-rule must be filed “no more than a year after the entry of the judgment.” *Beasley v. Sec’y, Dep’t of Corr.*, No. No. 8:09-cv-01962, 2026 WL 2870929, at *1 (M.D. Fla. Sept. 24, 2026) (quoting Fed. R. Civ. P. 60(c)). Moreover, Beasley could not use the “catch-all” provision of Rule 60(b)(6) to circumvent the time bar, because that sub-rule “is available only when Rules 60(b)(1) through (b)(5) are inapplicable.” *Id.* at *1-2 (quoting *BLOM Bank SAL v. Honickman*, 605 U.S. 204, 211 (2025), and *Kemp v. United States*, 596 U.S. 528, 533 (2022)).

Additionally, the district court held that even if Rule 60(b)(6) applied, Beasley’s motion was nonetheless meritless because he had not raised any “extraordinary circumstances” warranting relief. *Id.* at *2 (quoting *BLOM Bank*, 605 U.S. at 207). It agreed with Respondent that this Court’s precedent recognizes only three categorical exemptions from execution under the Eighth Amendment: (1) individuals who are mentally incompetent at the time of execution, *Ford v. Wainright*, 477 U.S. 399, 405 (1986); (2) individuals who are intellectually disabled, *Atkins v. Virginia*, 536 U.S. 304, 317 (2002); and (3) individuals who were under the age of 18 at the time of their capital offense, *Roper v. Simmons*, 543 U.S. 551, 578 (2005). *Beasley*, 2026 WL 2870929 at *2. Beasley did not qualify for any of those categories nor contend that he

does. Accordingly, the district court found that Beasley was not entitled to any relief under either Rules 60(b)(2) or 60(b)(6). *Id.* The district court further concluded that Beasley had not “made a substantial showing of the denial of a constitutional right” to warrant a COA. *Id.* at *2-3 (quoting 28 U.S.C. § 2253(c)(1)).

Beasley then sought a COA from the Eleventh Circuit. The Eleventh Circuit denied Beasley’s application in a two-paragraph unpublished order. The Eleventh Circuit noted in its order that the district court had likely erred by denying the Rule 60(b) motion rather than dismissing it as an unauthorized second or successive federal habeas petition. *Beasley*, No. 26-13446, at 2 (citing 28 U.S.C. § 2244(b); *Gonzalez v. Crosby*, 545 U.S. 524, 530-32 (2005); *Osbourne v. Sec’y, Fla. Dep’t of Corr.*, 968 F.3d 1261, 1264 (11th Cir. 2020)). Regardless, the Eleventh Circuit found that Beasley had not made a substantial showing of the denial of a constitutional right. Therefore, it denied Beasley’s application for a COA and denied as moot his motion for a stay of execution that was based on that application. *Id.*

Beasley now seeks certiorari review by this Court of the Eleventh Circuit’s order. As set forth below, his petition must be denied.

REASONS FOR DENYING THE PETITION

I. The Eleventh Circuit’s Unpublished Order Is Not Binding Precedent and Does Not Conflict With Any Decision by This Court or Another United States Court of Appeals.

Beasley’s petition challenges a brief, unpublished order determining that he was not entitled to a COA under § 2253(c). That subsection states that in a habeas corpus proceeding brought by a state prisoner, the prisoner may not appeal from a

final order unless a circuit justice or judge issues a COA. § 2253(c)(1)(A). And a COA may be granted “only if the applicant has made a substantial showing of the denial of a constitutional right.” § 2253(c)(2). Here, the Eleventh Circuit cited that standard and determined that Beasley had not made the requisite showing.

Separate from the merits of Beasley’s arguments, the Eleventh Circuit’s order presents no question of federal law that warrants review by this Court. The rules of this Court state that certiorari review will be granted “only for compelling reasons.” Sup. Ct. R. 10. When the petitioner seeks review of a decision made by United States courts of appeals, the court of appeals must typically have entered a decision that: “conflicts with the decision of another United States court of appeals, a state court of last resort, or this Court on an important question of federal law”; “so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power”; or “decided an important question of federal law that has not been, but should be, settled by this Court.” *Id.*, R. 10(a), (c). A petition for writ of certiorari “is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” *Id.*, R. 10.

The Eleventh Circuit’s order satisfies none of the grounds described in this Court’s Rule 10. The order contains no legal analysis other than its brief notation that “the district court likely erred in denying Beasley’s motion instead of dismissing it as second or successive” *Beasley*, No. 26-13446, at 2. Significantly, Beasley does not address that aspect of the Eleventh Circuit’s order in his Petition; instead,

he focuses exclusively on the district court's conclusion that the Rule 60(b) motion was time-barred, Pet. at 13-16, which the Eleventh Circuit did not address. Aside from its observation that the Rule 60(b) motion was likely barred as an unauthorized second or successive petition, the Eleventh Circuit merely quoted the standard for a COA under § 2253(c) and stated, without analysis, that Beasley's age-of-execution claim "does not meet that standard." *Beasley*, No. 26-13446, at 2.

On its face, the order below does not conflict with any decision by this Court or another United States court of appeals. Beasley, notably, does not argue otherwise. Nor did it decide any important and unsettled question of federal law. The Eleventh Circuit did not say whether it agreed with the district court that the Rule 60(b) motion was time-barred, whether it was finding that Beasley's age-of-execution claim failed to state a cognizable claim for relief under the Eighth Amendment, or whether it was endorsing the district court's reasoning on either or both of those points. The Eleventh Circuit merely stated, aside from its note that the motion should likely have been dismissed as unauthorized, that Beasley's claim did not meet the § 2253(c) standard for a COA and that it was therefore denying both a COA and the motion for stay of execution. Moreover, the order is unpublished and, therefore, does not constitute binding precedent even if it could be construed as an endorsement of the district court's reasoning. *See* 11th Cir. R. 36-2 ("Unpublished opinions are not considered binding precedent, but they may be cited as persuasive authority.").

The COA analysis is a procedural rule mandating a "threshold inquiry into whether the circuit court may entertain an appeal." *Slack v. McDaniel*, 529 U.S. 473,

482 (2000). “The COA process screens out issues unworthy of judicial time and attention and ensures that frivolous claims are not assigned to merits panels.” *Gonzalez v. Thayer*, 565 U.S. 134, 145 (2012). In that sense, it serves a “gatekeeping function” and furthers “Congress’ intent in AEDPA ‘to eliminate delays in the federal habeas review process.’” *Id.* at 144-45 (quoting *Holland v. Florida*, 560 U.S. 631, 648 (2010)). Here, the Eleventh Circuit’s order reflects that the court of appeals properly performed its gatekeeping role and determined that Beasley was not entitled to appellate review under the standard prescribed by § 2253(c). Under these facts, there is no issue of federal law that would warrant a writ of certiorari.

II. Beasley’s Rule 60(b) Motion Was Procedurally Improper and Time-Barred and Failed to State a Basis for Federal Habeas Relief.

In addition to the lack of any basis for certiorari review under this Court’s Rule 10, the Petition should also be denied because Beasley’s Rule 60(b) motion was, on its face, procedurally improper, time-barred, and meritless.

First, as the Eleventh Circuit indicated, the Rule 60(b) motion was subject to dismissal as an unauthorized second or successive federal habeas petition. This Court has held that a Rule 60(b) motion “counts as a second or successive application if that filing ‘attacks the federal court’s previous resolution of a claim on the merits’ or ‘seeks to add a new ground for relief’ not addressed by the judgment.” *Rivers v. Guerrero*, 605 U.S. 443, 453 (2025) (quoting *Gonzalez*, 545 U.S. at 532). Under § 2244(b)(3)(A), a federal habeas petitioner may not file a second or successive application for federal habeas relief without first “mov[ing] in the appropriate court of appeals for an order authorizing the district court to consider the application.” This Court has further

explained that a petitioner may not use Rule 60(b) to circumvent “the gauntlet of § 2244(b), no matter how [the filing] is labeled.” *Rivers*, 605 U.S. at 451. As this Court very recently noted, “allowing movants to use a Rule 60(b) motion to make merits arguments . . . would permit movants to ‘circumvent’ the strict statutory habeas standards, including ‘that a successive habeas petition be precertified by the court of appeals.’” *Fernandez v. United States*, 146 S. Ct. 1292, 1301 (2026) (quoting *Gonzalez*, 545 U.S. at 531-32). “And the Rule could not be applied to habeas proceedings in a manner ‘inconsistent with’ § 2254.” *Id.* (quoting *Gonzalez*, 545 U.S. at 529).

Here, Beasley attempted to use Rule 60(b) to raise a new claim for federal habeas relief asserting that his execution at the age of 77 years old while allegedly suffering cognitive decline would violate the Eighth Amendment. Beasley, however, never sought authorization from the Eleventh Circuit to file a second or successive habeas petition as required by § 2244(b). Because Rule 60(b) cannot be used to circumvent § 2244(b), Beasley was not entitled to any relief. *See Fernandez*, 146 S. Ct. at 1301; *Rivers*, 605 U.S. at 453; *Gonzalez*, 545 U.S. at 529-32.

Second, Beasley’s Rule 60(b) motion was also time-barred, as the district court found. Beasley asserted in the district court that his motion was based on “newly discovered evidence” pursuant to Rule 60(b)(2). However, motions brought under Rule (b)(2) may be filed “no more than a year after the entry of the judgment or order or the date of the proceeding.” Fed. R. Civ. P. 60(c)(1); see *Kemp*, 596 U.S. at 531 (explaining that a motion subject to the time limit of Rule 60(c)(1) must be “filed ‘within a reasonable time,’ and, at most, one year after the entry of the order under

review”). In this case, the district court’s judgment denying federal habeas relief that Beasley sought to reopen was entered on March 30, 2010. Therefore, the Rule 60(b) motion was untimely by more than fifteen years.

In an effort to circumvent that basic fact, Beasley argued in the district court, and continues to argue here, that his motion was cognizable under Rule 60(b)(6). Motions under that sub-rule need only be filed “within a reasonable time.” *Kemp*, 596 U.S. at 531 (quoting Fed. R. Civ. P. 60(c)(1)). But Rule 60(b)(6) “is available only when Rules 60(b)(1) through (b)(5) are inapplicable.” *Id.* at 533. Consequently, a federal habeas petitioner may not invoke Rule 60(b)(6) as an end-run around the one-year constraint of subsection (c)(1) for motions that fall within the reasons for relief stated in subsections (b)(1), (b)(2), and (b)(3). *See id.* at 531-39 (holding that because the petitioner’s Rule 60(b) motion alleged a “mistake” within the meaning of subsection (b)(1), it was subject to the one-year limit of subsection (c)(1) and could not be saved by the petitioner’s attempt to recharacterize it as a motion brought under subsection (b)(6)); *see also Mills v. Comm’r, Ala. Dep’t of Corr.*, 102 F.4th 1235, 1239-41 (11th Cir.) (holding that “no reasonable jurist could conclude that the district court abused its discretion in denying the motion for relief under Rule 60(b)(6)” where the petitioner sought “relief on grounds identical to those on which he premised his requests for relief under Rule 60(b)(2) and (b)(3),” and noting that if the court were to find otherwise, “the one-year limit in subsection (c)(1) would be superfluous”), *cert. denied*, 144 S. Ct. 2600 (2024). Because Beasley’s underlying age-of-execution claim is based on (in Beasley’s own words) newly discovered evidence, Rule 60(b)(6) does

not apply. In turn, the district court correctly found that Beasley cannot use that sub-rule to avoid the one-year time limitation of Rule 60(b)(2).

Third, the district court further correctly concluded that, even if Rule 60(b)(6) applied, Beasley was still not entitled to any relief. For a judgment to be vacated under Rule 60(b)(6), “‘extraordinary circumstances’ must justify reopening.” *Kemp*, 596 U.S. at 533 (quoting *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 863 n.11 (1988)). The district court correctly determined that there were no such circumstances. Beasley claimed that he should be granted federal habeas relief from his death sentence because he is 77 years old and suffering “cognitive decline” as an effect of aging. However, this Court has never recognized such a claim. As the district court observed, this Court has recognized only three categorical exemptions from execution: (1) individuals who are mentally incompetent at the time of execution (*Ford*); (2) individuals who are intellectually disabled (*Atkins*); and (3) individuals who were under the age of 18 at the time of their capital offense (*Roper*). *Beasley*, 2026 WL 2870929, at *2. Beasley does not claim that he falls within any of those categories. *Id.* The state courts, in rejecting the same claim, likewise noted that Beasley did not allege either incompetency or intellectual disability. *Beasley*, 2026 WL 2854502, at *4. To the contrary, while Beasley’s counsel argued in the state circuit court that they should be given more time for a psychologist to conduct testing, they affirmatively represented “that the issues being explored by the psychologist d[id] not involve a concern with respect to competency.” *Id.* at *5.

Furthermore, Beasley's contention that *Roper*, *Ford*, and *Atkins* should be extended to him as an elderly person with age-related decline has no basis in the Constitution or applicable case law. This Court has determined that juveniles and the intellectually disabled are less culpable for the murders they committed. *See Roper*, 543 U.S. at 571; *Atkins*, 536 U.S. at 319; *see also Gregg v. Georgia*, 428 U.S. 153, 183 (1976) (explaining the penological purpose of the death penalty is linked to the culpability of the individual for their criminal conduct). By contrast, the elderly do not have diminished culpability as a class. And in contrast to a person who is incompetent at the time of his execution, whose "concept of reality is so impaired that he cannot grasp the execution's meaning and purpose or the link between his crime and its punishment," *Madison v. Alabama*, 586 U.S. 265, 269 (2019) (cleaned up), there is no obvious reason why a person in his 70s cannot or should not be held accountable for a murder he committed (as here) in his 40s. Beasley, again, does not contend that he is incompetent under *Ford* or incapable of appreciating the reason for his execution. Beasley's assertion that his execution does not serve any valid retributive purpose is refuted by the Florida Supreme Court's direct appeal opinion, which documents the extreme brutality of the murder of Carolyn Monfort for which Beasley was sentenced to death. *See Beasley*, 774 So. 2d at 654-55, 660.

Moreover, Beasley points to no case extending the categorical bar of *Roper*, *Ford*, and *Atkins* to the elderly or persons with cognitive decline. As the Florida Supreme Court noted in rejecting Beasley's age-of-execution claim, it has consistently rejected similar arguments from other death-sentenced inmates, and this Court has

denied certiorari review in every such case. *See Beasley*, 2026 WL 2854502, at *4 (collecting cases).² A similar claim has also been rejected in federal court. In *Allen v. Ornoski*, 435 F.3d 946 (9th Cir. 2006), the defendant argued that it would be cruel and unusual punishment to execute him due to his “old age and physical infirmities.” *Id.* at 951. The district court rejected the claim, and the Ninth Circuit refused to even issue a certificate of appealability on the question because (1) the logic of this Court’s “evolving standards of decency” jurisprudence did not justify applying it to the elderly, and (2) there were no objective indicia that any national consensus had formed against the practice of executing the elderly. *Id.* at 952-55.

Beasley, likewise, has not demonstrated any national consensus against the execution of elderly capital offenders. To establish that evolving standards of decency prohibit a particular punishment, courts examine legislative enactments and state practice. *See Atkins*, 536 U.S. at 316; *Roper*, 543 U.S. at 563; *see also Thompson v. Oklahoma*, 487 U.S. 815, 822 (1988) (stating that this Court determines what the evolving standards of decency are by evaluating the “work product of state legislatures and sentencing juries”); *Woodson v. North Carolina*, 428 U.S. 280, 293 (1976) (explaining that “two crucial indicators of evolving standards of decency respecting the imposition of punishment in our society” are “jury determinations and legislative enactments”). *Beasley* identifies nothing that would support a finding of a

² *See Occhicone v. State*, 436 So. 3d 465, 472-73 (Fla.), *cert. denied*, No. 26-5158, 2026 WL 2164217 (U.S. July 28, 2026); *Spencer v. State*, 434 So. 3d 709, 718-19 (Fla.), *cert. denied*, No. 25-7648, 2026 WL 1827690 (U.S. June 25, 2026); *Trotter v. State*, 428 So. 3d 68, 73-74 (Fla.), *cert. denied*, 146 S. Ct. 755 (2026); *Smithers v. State*, 420 So. 3d 460, 464-66 (Fla.), *cert. denied*, 146 S. Ct. 323 (2025).

national consensus. Whether Florida law provides more protection for *law-abiding* persons of advanced age says nothing about society's views about executing capital offenders who happen to be in the same age range. If anything, the fact that the Florida Legislature has not prohibited the execution of such individuals cuts against the suggestion that such a punishment would offend any evolving standard of decency. Nor does the alleged relative infrequency of executions of elderly capital offenders demonstrate any national consensus. Beasley's observation about the frequency of executions involving the elderly fails to suggest, let alone prove, a causal connection between the infrequency of the practice and a societal aversion to that practice. Pet. at 18. Such statistics may reflect a variety of factors unrelated to societal norms, including lengthy appellate review or that older capital offenders are more likely to die on death row before their appeals are exhausted.

In the end, Beasley's Rule 60(b) motion identified no cognizable basis for federal habeas relief. And even if it had, the motion was nonetheless procedurally improper and time-barred. For all of the above reasons, Beasley has identified no issue of federal law to warrant a writ of certiorari from this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

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

Respectfully submitted,

JAMES UTHMEIER
ATTORNEY GENERAL OF FLORIDA

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

CHRISTINA Z. PACHECO
Special Counsel, Assistant
Attorney General

JONATHAN S. TANNEN
Senior Assistant Attorney General

COUNSEL FOR RESPONDENT

September 28, 2026