No. _____

IN THE

Supreme Court of the United States

JESSE GUARDADO ,

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
THURSDAY, NOVEMBER 5, 2026, AT 6:00 PM

Karin Moore*
**Counsel of Record*
Florida Bar Number 351652
Karin.Moore@ccrc-north.org

Capital Collateral Regional Counsel - North
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922

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Appendix A

Guardado v. State, No. SC2026-1605
(Fla. October 29, 2026).

Supreme Court of Florida

No. SC2026-1605

JESSE GUARDADO,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

October 29, 2026

PER CURIAM.

Jesse Guardado was sentenced to death twenty years ago for brutally murdering seventy-five-year-old Jackie Malone. The Governor has signed a warrant for Guardado's execution, currently set for November 5, 2026. Guardado appeals the denial of his successive motion for postconviction relief. He also seeks a stay of his execution. We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const.; *see also State v. Fourth Dist. Ct. of Appeal*, 697 So. 2d 70, 71 (Fla. 1997) (holding "that in addition to our appellate jurisdiction over sentences of death, we have exclusive jurisdiction to review all

types of collateral proceedings in death penalty cases"). For the reasons that follow, we affirm the denial of postconviction relief. We also deny his request for a stay of execution.

I

In 2004, Guardado wanted to rob a local grocery store to pay for his crack cocaine habit and for repairs to his truck.[1] *Guardado v. State* (*Guardado I*), 965 So. 2d 108, 110 (Fla. 2007). His attempt failed after an employee intervened. Still desperate for money, Guardado decided to rob Malone because she lived in a secluded area and he shared a close relationship with her. Guardado had rented from Malone, stayed as a guest in her home, and received her assistance on multiple occasions.

Guardado armed himself with a metal "breaker bar" and a kitchen knife before driving to Malone's residence. After arriving, he

1. At the time of these crimes, Guardado had served concurrent prison sentences—twenty years out of Orange County for robbery with a deadly weapon and fifteen to twenty years out of Seminole County for robbery and robbery with a weapon. *Guardado v. State* (*Guardado I*), 965 So. 2d 108, 110 (Fla. 2007). Guardado was conditionally released on January 1, 2003, with supervision set to expire on February 6, 2014. Malone was murdered on September 13, 2004.

knocked repeatedly on the front door until Malone awoke. When she came to the door, Guardado identified himself. Malone greeted him, and he told her he needed to use the telephone. Malone let him inside. When she turned her back, Guardado pulled out the breaker bar he had concealed in his pants and repeatedly struck her in the head. Malone raised her hands to defend herself before falling to the living room floor. Believing she was still alive, Guardado then stabbed her several times—including in the heart—and slashed her throat. After the brutal attack, Guardado went to Malone's bedroom and stole her jewelry box, briefcase, purse, and cell phone.

Guardado waived counsel and pleaded guilty to first-degree murder.[2] *Id.* at 113. Court-appointed counsel represented Guardado for the penalty phase, and a jury unanimously recommended that he be sentenced to death for Malone's murder. *Id.* at 111. At sentencing, the trial court found five aggravating

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2. Guardado also pleaded guilty to robbery with a weapon. *Guardado I*, 965 So. 2d at 112. For this count, the trial court sentenced him to thirty years in prison, set to run consecutively to the murder count. *Id.*

factors: (1) the capital felony having been committed by a person on conditional release supervision; (2) the defendant having been previously convicted of a felony involving the use or threat of violence to the person; (3) the capital felony having been committed while the defendant was engaged in the commission of a robbery with a weapon; (4) the capital felony being especially heinous, atrocious, or cruel (HAC); and (5) the crime having been committed in a cold, calculated and premeditated manner (CCP). *Id.* at 112. Guardado asked the trial court not to consider any statutory mitigating factors, but the court still found nineteen nonstatutory mitigating factors. *Id.* Ultimately, the trial court sentenced Guardado to death. *Id.* at 111-13.

In 2005, Guardado directly appealed, raising four issues.[3] *Id.* at 113-18. This Court affirmed Guardado's judgment and sentence

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3. Guardado raised the following issues: (1) whether the trial court erred by failing to conduct an adequate inquiry under *Nelson v. State*, 274 So. 2d 256 (Fla. 4th DCA 1973), after Guardado expressly asked the court to remove his court-appointed counsel; (2) whether the trial court erred by instructing the jury it could consider the HAC aggravator; (3) whether the trial court erred by instructing the jury that it could consider the CCP aggravator; and (4) whether the trial court erred by denying his motion to dismiss on the ground that Florida's death penalty was unconstitutional

of death. *Id.* at 120. The United States Supreme Court denied Guardado's petition for certiorari. *Guardado v. Florida*, 552 U.S. 1197 (2008).

Guardado next sought postconviction relief under Florida Rule of Criminal Procedure 3.851. *Guardado v. State* (*Guardado II*), 176 So. 3d 886, 889 (Fla. 2015). He filed his initial postconviction motion in October 2008 and an amended motion in June 2010. *Id.* at 892. Following an evidentiary hearing, the circuit court denied relief, and we affirmed.[4] *Id.* at 899.

In 2017, Guardado filed a successive postconviction motion arguing that he was entitled to relief under *Hurst v. Florida*, 577

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under *Ring v. Arizona*, 536 U.S. 584 (2002). *Guardado I*, 965 So. 2d at 113-18.

4. Guardado raised the following ineffective assistance of counsel claims on appeal: (1) counsel failed to conduct a reasonable mitigation investigation by not contacting ten potentially mitigating witnesses; (2) counsel failed to expand the mitigation investigation when it became apparent that further investigation was necessary; (3) counsel failed to object when two prospective jurors were struck for cause; and (4) counsel failed to strike three allegedly biased jurors who ultimately served on the jury. *Guardado II*, 176 So. 3d at 893-99.

U.S. 92 (2016).[5] *Guardado v. State* (*Guardado V*), 238 So. 3d 162, 162-63 (Fla. 2018). The circuit court continued the postconviction proceedings to allow Guardado's filing a habeas petition with this Court. *Id.*; *Guardado v. Jones* (*Guardado III*), 226 So. 3d 213, 214 (Fla. 2017). This Court denied that petition. *Guardado III*, 226 So. 3d at 215. Guardado then filed a motion for rehearing, which this Court also denied. *Guardado v. Jones* (*Guardado IV*), No. SC17-389, 2017 WL 4150352 (Fla. Sep. 19, 2017). The United States Supreme Court denied Guardado's certiorari petition that followed. *Guardado v. Jones*, 584 U.S. 922 (2018).

After this Court denied habeas relief, the circuit court summarily denied Guardado's successive rule 3.851 motion. *Guardado V*, 238 So. 3d at 163. This Court affirmed, holding that Guardado's claims had already been rejected in the habeas

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5. A few years prior to the filing of Guardado's successive motion for postconviction relief, he joined as a party to a petition seeking to invoke this Court's all writs jurisdiction. This Court transferred the petition to the Eighth Judicial Circuit Court, where it was ultimately dismissed for lack of jurisdiction. *Morrison v. Bondi*, No. SC15-1481 (Fla. Oct. 8, 2015); *Morrison v. Bondi*, No. 63-2015-CA-00099 (Fla. 8th Cir. Ct. Mar. 4, 2016).

proceeding. *Id.* at 164. The United States Supreme Court again denied certiorari relief. *Guardado v. Florida*, 586 U.S. 1004 (2018).

Guardado then sought federal habeas relief, asserting five claims. *Guardado v. Sec'y, Fla. Dep't of Corr.*, No. 4:15cv256-RH, 2022 WL 22863709, at *2 (N.D. Fla. Jan. 19, 2022). The district court denied the petition and denied a certificate of appealability. *Id.* at *21. Guardado moved to amend or alter the judgment or to reconsider the denial of the certificate of appealability, but the district court denied the motion. *Guardado v. Sec'y, Fla. Dep't of Corr.*, No. 4:15cv256-RH, 2022 WL 22863708, at *1 (N.D. Fla. Feb. 22, 2022). The denial of Guardado's petition was affirmed on appeal. *Guardado v. Sec'y, Fla. Dep't of Corr.*, 112 F.4th 958, 995 (11th Cir. 2024). The United States Supreme Court once again denied Guardado's petition for certiorari relief. *Guardado v. Dixon*, 145 S. Ct. 2822 (2025).

On October 5, 2026, Governor DeSantis signed a death warrant for Guardado's execution.

Guardado timely filed the successive motion for postconviction relief at issue here, raising three claims: (1) that Florida's clemency process is unconstitutional because it denies death-sentenced

individuals the minimal due process required; (2) that Guardado's death sentence is unreliable under the Sixth, Eighth, and Fourteenth Amendments due to counsel's representation at trial and in initial postconviction proceedings; and (3) that Florida's warrant process is unconstitutional because that process deprives Guardado of a full and fair postconviction proceeding, in violation of his due process rights, and fails to satisfy the heightened reliability required in capital cases.

On October 14, 2026, the circuit court held a *Huff*[6] hearing and found that Guardado was not entitled to an evidentiary hearing. On October 19, 2026, the circuit court entered its order summarily denying Guardado's successive motion for postconviction relief. Guardado now timely appeals that order and asks that we stay his execution.

II

Summary denial of a successive postconviction motion is appropriate "[i]f the motion, files, and records in the case conclusively show that the movant is entitled to no relief." Fla. R.

6. *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

Crim. P. 3.851(f)(5)(B). In reviewing a circuit court's summary denial, we accept as true the defendant's allegations to the extent that they are not conclusively refuted by the record. *Cole v. State*, 392 So. 3d 1054, 1061 (Fla. 2024). A circuit court's decision whether to grant an evidentiary hearing on a rule 3.851 motion "is tantamount to a pure question of law, subject to de novo review." *Marek v. State*, 14 So. 3d 985, 1000 (Fla. 2009) (citing *State v. Coney*, 845 So. 2d 120, 137 (Fla. 2003)).

A

In his first argument on appeal, Guardado challenges the circuit court's denial of his clemency process claim, arguing Florida's clemency process violates the Due Process Clause of the Fourteenth Amendment. Guardado argues that clemency in Florida is a nullity because it has not been granted to a death-sentenced defendant since 1983 and because the current Governor has expressly stated that he will not grant clemency to murderers or felony sex offenders. In support, Guardado relies on Justice O'Connor's concurrence in *Ohio Adult Parole Authority v. Woodard* for the proposition that clemency proceedings require "some minimal procedural safeguards." 523 U.S. 272, 289 (1998)

(O'Connor, J., concurring in part and concurring in the judgment) (emphasis omitted).

Although we have acknowledged Justice O'Connor's concurrence, we have never adopted a requirement of specific procedural safeguards applicable to the clemency process. *See Marek*, 14 So. 3d at 998 (noting that "none of the opinions in [*Woodard*] required any specific procedures or criteria to guide the executive's signing of warrants for death-sentenced inmates"). Instead, we have repeatedly emphasized that Florida's clemency process rests in the unfettered discretion of the Governor. Art. IV, § 8(a), Fla. Const.; Fla. R. Exec. Clem. 4 ("The Governor has the unfettered discretion to deny clemency at any time, for any reason."); *see Johnston v. State*, 27 So. 3d 11, 25 (Fla. 2010) ("no specific procedures are mandated"); *Zakrzewski v. State*, 415 So. 3d 203, 211 (Fla.), *cert. denied*, 146 S. Ct. 57 (2025); *Chavez v. State*, 132 So. 3d 826, 831-32 (Fla. 2014); *Carroll v. State*, 114 So. 3d 883, 887-89 (Fla. 2013).

Here, Guardado received clemency review.[7] Indeed, Guardado's death warrant states that clemency "was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate." So even taking as true his allegations about the Governor's blanket policy, Guardado points to no authority prohibiting the executive branch from considering the offense of the conviction when "determining whether to exercise the 'grace' of clemency." *See Bryan v. DeSantis*, 343 So. 3d 127, 129 (Fla. 1st DCA 2022) (holding Governor's denial of inmate's clemency application for commutation of sentence for sexual battery by adult on victim less than twelve years of age did not violate inmate's right to due process, even though Governor denied clemency applications of all individuals convicted of murder or felony sex offenses). As in *Bryan*, Guardado has not been denied all access to the statutorily established clemency process, identified any procedures the Governor violated, or demonstrated that the Governor failed to consider any required criteria. "[I]t is not our

7. In March 2026, Guardado received notice that his clemency interview was scheduled for July 2026. He alleges he only learned that the clemency process had concluded when his death warrant was signed on October 5, 2026.

prerogative to second-guess the application" of this exclusively executive function. *See Bundy v. State*, 497 So. 2d 1209, 1211 (Fla. 1986). So Guardado cannot establish a due process violation.

Because Guardado received a clemency proceeding, and he challenges only its sufficiency, his claim was properly denied by the circuit court. We affirm.

B

Next, Guardado argues that the circuit court erred in denying his second claim, in which he contends that counsel's performance at trial and in the initial postconviction proceedings makes his death sentence unreliable under the Sixth, Eighth, and Fourteenth Amendments.

Guardado's argument amounts to multiple ineffective assistance of counsel claims. As to trial counsel, Guardado asserts that counsel inadequately prepared for the penalty phase by failing to both investigate mitigation leads and present additional mitigating evidence, these failures allegedly preventing the jury from hearing Guardado's full background.[8] Guardado argues that, had

8. Guardado identifies several categories of mitigation that he contends could have been presented at trial, including his remorse;

the jury heard the additional mitigation evidence, it would not have returned a unanimous recommendation of death. He also contends that initial postconviction counsel likewise failed to discover or develop this mitigation evidence.

Guardado also alleges deficiencies in his initial postconviction representation more broadly. He asserts that his first appointed counsel had been barred from capital cases; that replacement counsel did not investigate mitigation evidence and did not pursue several claims; and that he went several years without representation in state court. Guardado alleges that these failures prevented the presentation of evidence that would have lessened his culpability and that, as a result, his death sentence is disproportionate and inconsistent with the individualized sentencing required by the Eighth Amendment.

Guardado's claims are untimely. A defendant must file a postconviction motion within one year after the judgment and

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leads referenced in Dr. James Larson's report (including childhood sexual abuse and drug and alcohol abuse); his stay at the Dozier School for Boys; additional sexual abuse and substance abuse as an adult; and his lack of tools to succeed upon release from prison and supervision.

sentence become final, absent certain exceptions. *See* Fla. R. Crim. P. 3.851(d)(1)-(2); *Ferguson v. State*, 101 So. 3d 362, 366 (Fla. 2012) ("Claims raised pursuant to rule 3.851 must meet either the timeliness requirements provided in section (d)(1) or the exceptions provided in section (d)(2)."). The factual basis for these arguments was available long before the death warrant was signed, and Guardado does not allege or show that any exception under rule 3.851(d)(2) applies. *See Cole*, 392 So. 3d at 1061-62 (finding the "harsh conditions at the Dozier School were exposed long ago" and rejecting a claim based on that evidence as untimely); *Bates v. State*, 416 So. 3d 312, 320 (Fla.) (holding as untimely claims about mitigation omitted from a penalty phase that occurred decades ago), *cert. denied*, 146 S. Ct. 66 (2025).

The claims likewise could have been raised in prior proceedings and are therefore procedurally barred. *See Jennings v. State*, 422 So. 3d 107, 114 (Fla.), *cert. denied*, 146 S. Ct. 402 (2025); *Rogers v. State*, 409 So. 3d 1257, 1263 (Fla.), *cert. denied*, 145 S. Ct. 2695 (2025). Guardado's allegations are not new, and even if they were, they could have been raised in earlier postconviction proceedings. Nearly two decades have passed since

Guardado's penalty phase and initial postconviction proceedings; accordingly, the claims are barred. *See Atkins v. State*, 663 So. 2d 624, 626 (Fla. 1995) (holding that a procedural bar applies to issues which should have been raised in prior collateral proceedings); *Jones v. State*, 419 So. 3d 619, 624 (Fla.), *cert. denied*, 146 S. Ct. 79 (2025); *Bates*, 416 So. 3d at 320; *Gudinas v. State*, 412 So. 3d 701, 712 (Fla.) (holding that a defendant's claim is procedurally barred because it could have been previously raised), *cert. denied*, 145 S. Ct. 2833 (2025). Guardado's invocation of the concept of manifest injustice does not dissuade us from this conclusion. *See Reaves v. State*, No. SC2026-1512, 2026 WL 3071534, at *4 (Fla. Oct. 14), *cert. denied*, 2026 WL 3132759 (U.S. Oct. 20, 2026). The circuit court therefore correctly denied this claim.

C

Finally, Guardado argues that the expedited warrant process deprives him of due process, fundamental fairness, the right to effective counsel, and access to counsel. The circuit court correctly denied this claim because our precedent has repeatedly rejected similar challenges.

Guardado contends that he did not receive the same fair notice as the attorney general, citing comments made by an assistant attorney general at the scheduling hearing. The assistant attorney general had remarked that a warrant could be issued at any time during the past year given the pace at which the Governor has been signing warrants. Guardado also asserts that, under section 922.052, Florida Statutes, he was not eligible for a warrant until the clemency process was concluded, and that he did not learn that clemency had been denied until the warrant was signed. But Guardado has long been on notice that a warrant could be issued: his death sentence was imposed in 2005, and his sentence became final in 2008.

We have repeatedly held that expedited warrant proceedings do not violate due process. *See, e.g.*, *Jennings*, 422 So. 3d at 118-19; *Jones*, 419 So. 3d at 625. Due process in post-warrant litigation requires only notice and an opportunity to be heard. *Bates*, 416 So. 3d at 321; *Tanzi v. State*, 407 So. 3d 385, 390 (Fla.), *cert. denied*, 145 S. Ct. 1914 (2025). So we have rejected similar challenges to the length of the warrant period. *See Barwick v. State*, 361 So. 3d 785, 789-90 (Fla. 2023); *Hutchinson v. State*, 416

So. 3d 273, 279-80 (Fla.), *cert. denied*, 145 S. Ct. 1914 (2025); *Zakrzewski*, 415 So. 3d at 210-11; *Bell v. State*, 415 So. 3d 85, 106-07 (Fla.), *cert. denied*, 145 S. Ct. 2872 (2025).

Guardado cannot establish that the thirty-one-day warrant period deprives him due process because he "has not identified any matter on which he was denied notice and an opportunity to be heard." *Jones*, 419 So. 3d at 625. Guardado's allegations of gamesmanship and an unlevel playing field do not undermine the application of our existing precedent here. The circuit court properly denied relief.

III

We affirm the summary denial of Guardado's successive motion for postconviction relief. We also deny his request for a stay of execution and request for oral argument. No motion for rehearing will be considered by this Court. The mandate shall issue immediately.

It is so ordered.

COURIEL, C.J., and MUÑIZ, GROSSHANS, FRANCIS, and BARRIOS, JJ., concur.
TANENBAUM, J., concurs with an opinion.
LABARGA, J., concurs in result.

TANENBAUM, J., concurring.

Capital collateral counsel should keep in mind that part IV of chapter 27, Florida Statutes, and Florida Rule of Criminal Procedure 3.851(h) do not give license to submit frivolous claims in the post-conviction court or here, even if there is an active death warrant. Rule 3.851(h), in particular, simply establishes a post-warrant expedited process for the rare, last-minute, *meritorious* claim for post-conviction relief. It should not be mistaken for an invitation to submit just one more successive post-conviction motion—any motion—for the mere sake of filing one, regardless of whether it wholly lacks merit. More to the point, an active death warrant does not exempt counsel from complying with Rule Regulating the Florida Bar 4-3.1, which precludes a lawyer from asserting an issue in a proceeding "unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law."

An Appeal from the Circuit Court in and for Walton County,
J. Ryan Love, Judge
Case No. 662004CF000903CFAXMX

Dawn Macready, Capital Collateral Regional Counsel, Karin Moore, Assistant Capital Collateral Regional Counsel, Lisa M. Fusaro, Assistant Capital Collateral Regional Counsel, and Merribeth Bohanan, Assistant Capital Collateral Regional Counsel, Northern Region, Tallahassee, Florida,

for Appellant

James Uthmeier, Attorney General, Jason W. Rodriguez, Special Counsel and Assistant Attorney General, and Charmaine M. Millsaps, Special Counsel and Assistant Attorney General, Tallahassee, Florida,

for Appellee

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Appendix B

The First Judicial Circuit, In and For Walton County, Florida, Order Denying Defendant's Successive Motion to Vacate Judgments of Conviction and Sentence, dated October 19, 2026.

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR WALTON COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

JESSE GUARDADO,
Defendant.
_____/

Case No.: 2004 CF 000903
S. Ct. No.: SC2005-2035

DEATH WARRANT SIGNED FOR EXECUTION- NOVEMBER 5, 2026

ORDER DENYING SUCCESSIVE MOTION TO VACATE JUDGMENT AND DEATH SENTENCE AND DIRECTIONS TO CLERK

THIS MATTER came before the Court on Defendant's Successive Motion to Vacate Judgment and Death Sentence Under Fla. R. Crim. P. 3.851 After Death Warrant Signed, as well as the appendix thereto, both filed on October 12, 2026. On October 13, 2026, the State filed its response. On October 14, 2026, a *Huff*[1] hearing was held to determine whether there was any need for an evidentiary hearing. The Court heard argument as to the claims raised in Defendant's motion and determined there was no need for an evidentiary hearing. Having reviewed the motion and attachments, the State's response, the record, and case law, and having heard and carefully considered argument of counsel, the Court finds as follows:

PROCEDURAL HISTORY

On October 19, 2004, Defendant entered a guilty plea to one count each of first-degree murder and robbery with a weapon. On October 13, 2005, he was sentenced to death for first-degree murder after the jury returned a unanimous recommendation that he be sentenced to death. Defendant's convictions and sentences were affirmed on direct appeal. *Guardado v. State*, 965 So. 2d 108 (Fla. 2007), *cert. denied, Guardado v. Fla.*, 552 U.S. 1197 (2008).

[1] *Huff v. State*, 622 So. 2d 982, 983 (Fla. 1993).

Defendant's initial Florida Rule of Criminal Procedure 3.851 motion was filed on October 15, 2008, and his amended motion was filed on June 1, 2010, which was denied on March 30, 2012, after an evidentiary. The order denying postconviction relief was affirmed on appeal in 2015. *Guardado v. State*, 176 So. 3d 886 (Fla. 2015). Defendant filed a successive rule 3.851 motion on July 5, 2016, raising a claim under *Hurst v. Florida,* 136 S.Ct. 616 (2016). The motion was denied by the order of September 28, 2017, which was affirmed on appeal in March 2018. *Guardado v. State*, 238 So. 3d 162 (Fla. 2018), *cert. denied, Guardado v. Fla.*, 586 U.S. 1004 (2018).

DEFENDANT'S GROUNDS FOR POSTCONVICTION RELIEF

CLAIM I

Defendant claims that Florida's clemency process denies the required minimal due process clause of the Fourteenth Amendment. He alleges the clemency review provided to him violated the federal constitution because clemency has been so infrequently granted that it is a nullity and that Governor Ron DeSantis has expressly stated he will not grant clemency to murderers or felony sex offenders. In support of this latter allegation, Defendant includes in his appendix a copy of a press release dated March 10, 2021, regarding revision of the rules of clemency and stating that "the Governor unilaterally exercised his clemency powers to deny the pending clemency applications of all murderers and felony sex offenders."

A rule 3.851 motion must be filed within one year after the defendant's judgment and sentence become final. *See* Fla. R. Crim. P. 3.851(d)(1). Defendant's motion was filed outside this time limit, and he does not allege that his claim qualifies for any of the exceptions provided in rule 3.851(d)(2). Defendant could have challenged the clemency process well before the issuance of the death warrant and fails to allege otherwise. *See Ferguson v. State*, 101 So. 3d

362, 366 (Fla. 2012). Therefore, this claim is untimely.[2] It is also procedurally barred as a claim that could have been raised in a prior proceeding. *See Jennings v. State*, 422 So. 3d 107, 114 (Fla. 2025); *Rogers v. State*, 409 So. 3d 1257, 1263 (Fla. 2025); Fla. R. Crim. P. 3.851(e)(2).

The Supreme Court of Florida has repeatedly rejected challenges to Florida's clemency process, including those based on the Fourteenth Amendment. *See Zakrzewski v. State*, 415 So. 3d 203, 211 (Fla. 2025); *Carroll v. State*, 114 So. 3d 883, 888 (Fla. 2013). "Clemency is solely the prerogative of the Governor. No specific procedures are required in clemency proceedings…." *Muhammad v. State*, 132 So. 3d 176, 199 (Fla. 2013). *See also Marek v. State*, 14 So. 3d 985, 998 (Fla. 2009) (finding that none of the opinions in *Ohio Adult Parole Authority v. Woodard,* 523 U.S. 272 (1998), "required any specific procedures or criteria to guide the executive's signing of warrants for death-sentenced inmates").

Defendant admits he had a clemency review. His death warrant states that executive clemency for Defendant, "as authorized by Article IV, Section 8(a), of the Florida Constitution, was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate." Even if the Governor had a policy of denying clemency for all murderers, consideration of the offense of conviction is proper. *See Bryan v. DeSantis*, 343 So. 3d 127, 129 (Fla. 1st DCA 2022). Defendant's challenge to the sufficiency of the review process is without merit. *See Carroll*, 114 So. 3d at 889.

CLAIM 2

Defendant raises claims that his representation at trial and in initial postconviction proceedings renders his death sentence unreliable under the Sixth, Eighth, and Fourteenth

[2] At the *Huff* hearing, defense counsel questioned what Defendant could have gained by petitioning for clemency earlier where the Governor stated he would deny it to murderers. This argument does not excuse the untimeliness of Defendant's claim.

Amendments. He alleges that penalty phase counsel failed to investigate various issues in mitigation, including Defendant's remorse; leads referenced in the report of Dr. James Larson, such as Defendant's childhood sexual abuse, as well as drug and alcohol abuse; his tortuous stay at the Dozier School for Boys; further sexual and drug and alcohol abuse as an adult; and his lack of tools to succeed upon his release from prison and supervision. Defendant also alleges that his first postconviction counsel was removed and barred from capital cases and that replacement counsel failed to investigate mitigation evidence and abandoned several claims. He further alleges he was without counsel in state court between 2018 and 2025. Defendant asserts that the individualized sentencing required by the Eighth Amendment requires a proper consideration of the true proportionality of Defendant's culpability.[3]

In effect, Defendant raises multiple claims regarding ineffective assistance of counsel. However, Defendant's claims are filed outside the time limit of rule 3.851(d)(1), and he does not allege or show that his claims qualify for any of the exceptions provided in rule 3.851(d)(2). Indeed, it is clear his claims are based upon matters and events that were known or available at trial, during initial postconviction proceedings, or years before the death warrant was signed. For example, according to the items in the appendix to Defendant's motion, the information in support of his claims of ineffectiveness of counsel was available at least by 2016. While he also includes in the appendix a report dated July 2, 2026, prepared for purposes of Defendant's upcoming clemency review, there is no allegation that the report would make his claims timely. Defendant's references to constitutional amendments, including the Eighth Amendment, do not

[3] At the *Huff* hearing, defense counsel acknowledged that the raising of this claim was necessary to preserve it for federal review. The Court notes that counsel made a similar acknowledgment as to Defendant's clemency claim during the hearing held on October 8, 2026, on the demands for public records.

provide him a right to present mitigating evidence at any time. *See Hutchinson v. State*, 416 So. 3d 273, 281 (Fla. 2025). Therefore, his claims are untimely. *See Cole v. State*, 392 So. 3d 1054, 1062 (Fla. 2024) (finding that "the harsh conditions at the Dozier School were exposed long ago"); *Bates v. State*, 416 So. 3d 312, 319-320 (Fla. 2025) (finding a claim that counsel failed to present additional mitigation was untimely). Defendant's claims are also procedurally barred. *See Bates*, 416 So. 3d at 320.

Moreover, Defendant's claim of ineffective assistance of postconviction counsel is not cognizable under rule 3.851. *See Barwick v. State*, 361 So. 3d 785, 791 (Fla. 2023); *Banks v. State*, 150 So. 3d 797, 800 (Fla. 2014). His allegations that he was without postconviction counsel for several years are insufficient to show a denial of due process. *See Jennings*, 422 So. 3d at 118 (finding that a gap in representation was not a denial of due process); *Asay v. State*, 210 So. 3d 1, 27–28 (Fla. 2016).

CLAIM 3

Defendant claims Florida's warrant process deprives him of a full and fair postconviction proceeding. He argues that the truncated warrant litigation schedule deprives him of due process, fundamental fairness, and his rights to effective counsel and access to counsel. He asserts that the signing of his death warrant while three other individuals are under death warrant limits his access to counsel. Defendant alleges that under section 922.052, Florida Statutes, he was not eligible for a warrant until the clemency process was concluded and that he was not made aware that his clemency was denied until receipt of the warrant on October 5, 2026. *See* § 922.052(2)(b), Fla. Stat. He alleges the Attorney General has access to advance notice of those set to be executed before the end of the Governor's term and that the lack of advance notice to Defendant of the death warrant is unfair ad unprofessional. He asserts the short period between

the signing of the death warrant and the execution imposes a "fire drill" approach that gives rise to the danger that substantial legal claims will be inadequately considered or not considered at all. He alleges the accelerated time frame hindered counsel from fully investigating and presenting Defendant's post-warrant claims for relief. At the *Huff* hearing, defense counsel further argued that the office of the Capital Collateral Regional Counsel-North is understaffed and dealing with strict deadlines for other clients.

The Governor has "broad discretion in selecting which death warrants to sign and when." *See Zakrzewski*, 415 So. 3d at 210. An expedited warrant schedule does not deprive a defendant of due process. *See Jones*, 419 So. 3d at 625. Defendant has been on notice of an impending death warrant since his death sentence was imposed in 2005 and his sentence became final in 2008. *See Jennings*, 422 So. 3d at 114; *Jones*, 419 So. 3d at 625–26. The Court also notes that the Notice of Finality required by section 922.052(2)(a) was filed with the Florida Supreme Court on June 27, 2025. *See Guardado v. State*, SC2005-2035 (Fla. June 27, 2025). Otherwise, Defendant is not entitled to notice of when the death warrant will be signed. *See Marek*, 14 So. 3d at 998. Additionally, the Governor is not precluded from signing a death warrant while another execution is pending. *See Silvia v. State*, 437 So. 3d 435, 440–41 (Fla. 2026); *Zakrzewski*, 415 So. 3d at 210-211.

CCRC-N was appointed to represent Defendant by the order of August 21, 2025, and Defendant has been represented by counsel in these proceedings. Defendant has no right to effective assistance of collateral counsel. *See Barwick*, 361 So. 3d at 791; *Zack v. State*, 911 So. 2d 1190, 1203 (Fla. 2005). Thus, his claims that he is denied effective counsel and access to counsel are insufficient to warrant relief. *See Silvia*, 437 So. 3d at 440–41; *Zakrzewski*, 415 So. 3d at 211.

REQUEST FOR STAY OF EXECUTION

Defendant requests a stay of his execution to allow him and counsel time to investigate and pursue legal claims without the expedited warrant schedule and that he be allowed to amend his motion should new claims, facts, or legal precedent become available. In light of the Court's findings as to Defendant's claims as discussed above, the Court finds Defendant fails to raise substantial grounds for relief warranting a stay. *See Barwick*, 361 So. 3d at 791; *Chavez v. State*, 132 So. 3d 826, 832 (Fla. 2014).

Accordingly, it is

ORDERED AND ADJUDGED Defendant's Successive Motion to Vacate Judgment and Death Sentence Under Fla. R. Crim. P. 3.851 After Death Warrant Signed is **DENIED**. Pursuant to Florida Rule of Criminal Procedure 3.851(h)(8), the **Clerk of Court** is **DIRECTED** to electronically transmit a copy of this order to the Supreme Court of Florida and to the attorneys of record and to otherwise comply with the requirements of the October 5, 2026, order of the Supreme Court of Florida.

DONE AND ORDERED in Chambers at the Walton County Courthouse, DeFuniak Springs, Florida.

eSigned by CIRCUIT COURT JUDGE J RYAN LOVE in 04000903CFAXMX on 10/19/2026 09:10:32 se+LZh+6

J. RYAN LOVE
Circuit Judge

JRL/awg

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing Order Denying Successive Motion to Vacate Judgment and Death Sentence has been furnished by e-service (unless otherwise indicated) to:

Karin Moore, Assistant CCRC-North; karin.moore@ccrc-north.org
Lisa M. Fusaro, Assistant CCRC-North; lisa.fusaro@ccrc-north.org;
eservice@ccrc-north.org
Merribeth Bohanan, Assistant CCRC-North; merribeth.bohanan@ccrc-north.org

Charmaine M. Millsaps, Senior Assistant Attorney General;
charmaine.millsaps@myfloridalegal.com
Jason Rodriguez, Assistant Attorney General; jason.rodriguez@myfloridalegal.com
Stephen D. Ake, Senior Assistant Attorney General; stephen.ake@myfloridalegal.com
capapp@myfloridalegal.com
amahjah.wallace@myfloridalegal.com
arianna.balda@myfloridalegal.com
mary.sprinkle@myfloridalegal.com
marilyn.muir@myfloridalegal.com
scott.brown@myfloridalegal.com

Matthew Casey, Assistant State Attorney; mcasey@osa1.org
Bridgette Myers Jensen, Assistant State Attorney; bjensen@osa1.org

Debra Rescigno, Senior Attorney, Florida Department of Corrections;
debra.rescigno@fdc.myflorida.com
CO-GCCapLit@fdc.myflorida.com
CourtFilings@fdc.myflorida.com

Kelly R. Forren, Assistant General Counsel, Florida Department of Corrections;
kelly.forren@fdc.myflorida.com

Lindsey Brigham, Esq.; lindseybrigham@fdle.state.fl.us

Walton County Court Reporters

Jesse Guardado (DC# 324342)
Florida State Prison
P.O. Box 800
Raiford, FL 32083
(by U.S. mail)

By: Joy Stewart eSigned by Joy Stewart in 04000903CFAXMX on 10/19/2026 09:24:24 WStStWep
Deputy Clerk