No. _____

IN THE

SUPREME COURT of the UNITED STATES

THOMAS M. OVERTON

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
DEATH WARRANT SIGNED
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, NOVEMBER 19TH, AT 6:00 P.M.

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APPENDIX A

Postconviction orders denying evidentiary hearing and summarily denying relief; Circuit Court of Monroe County, Sixteenth Judicial Circuit, Florida; State of Florida v. Thomas Mitchell Overton, Case No. 1996CF30167; Judgment entered November 4, 2026

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IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

STATE OF FLORIDA, **Plaintiff**	**CASE No.:1996-CF-30167-A-P** **FSC No. SC1960-95404**
v.	
THOMAS M. OVERTON **Defendant.** **_____/**	**DEATH WARRANT SIGNED EXECUTION SCHEDULED FOR NOVEMBER 19, 2026, 6:00 PM**

ORDER ON CASE MANAGEMENT CONFERENCE ("*HUFF* HEARING")

On October 21, 2026, Governor Ron DeSantis signed a death warrant for the execution of Thomas M. Overton ("Defendant") to occur on November 19, 2026, at 6:00 p.m. As a result, the Florida Supreme Court issued a scheduling order requiring all proceedings in this Court to be concluded by Wednesday, November 4, 2026, at 11:00 a.m.

On October 28, 2026, the Defendant filed a Successive Motion to Vacate Judgment of Conviction and Sentences of Death After Death Warrant Signed ("Motion"). On October 30, 2026, The State filed its Response to Defendant's Successive Motion to Vacate Judgment of Conviction and Sentence of Death After Death Warrant Signed. ("Response").

On October 30, 2026, the Court held a case management conference, commonly referred to as a *Huff*[1] hearing, pursuant to Florida Rule of Criminal Procedure 3.851(h)(6). At this hearing, the Cout heard the arguments of counsel regarding whether an evidentiary hearing is required on any of the claims raised in the successive postconviction motion. Having

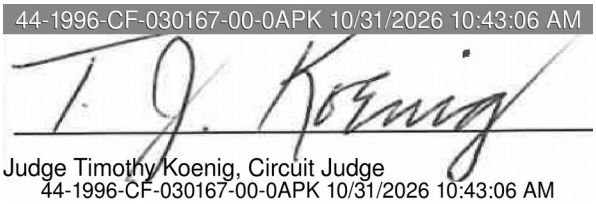
1 *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

reviewed the Motion, the Response, the court record, the applicable law, and having heard from the parties, it is **ORDERED AND ADJUDGED** as follows:

Florida Rule of Criminal Procedure 3.851(f)(5)(B) requires an evidentiary hearing on successive postconviction motions where claims require a factual determination. In this case, an evidentiary hearing is not necessary because the claims can be resolved based on a review of the record and as a matter of law.

The Court will issue its final written order on the successive postconviction motion by Wednesday, November 4, 2026, at 11:00 a.m. as directed by the Florida Supreme Court.

DONE AND ORDERED at Key West, Monroe County, Florida this Saturday, October 31, 2026



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IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff
v.

THOMAS M. OVERTON,
Defendant.
_____/

CASE No.:1996-CF-30167-A-P
FSC No. SC1960-95404

DEATH WARRANT SIGNED
EXECUTION SCHEDULED FOR NOVEMBER 19, 2026

ORDER DENYING DEFENDANT'S MOTION FOR STAY OF EXECUTION

On October 21, 2026, Governor Ron DeSantis signed a death warrant for the execution of Thomas M. Overton ("Defendant") to occur on November 19, 2026, at 6:00 p.m. As a result, the Florida Supreme Court issued a scheduling order requiring all proceedings in this Court to be concluded by Wednesday, November 4, 2026, at 11:00 a.m.

On October 28, 2026, the Defendant filed a Motion for Stay of Execution. On October 30, 2026, the State filed a Response in Opposition to Overton's Motion for a Stay of Execution. Having reviewed the Motion, the Response and being otherwise fully advised in the premises, the Court hereby **DENIES** Defendant's Motion for Stay of Execution as follows:

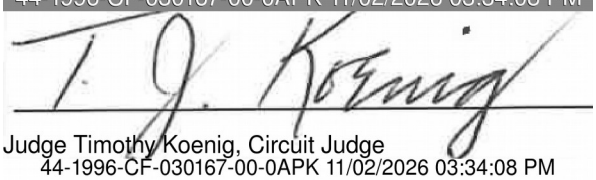
On October 22, 2026, the Court entered a Scheduling Order that provided adequate time for conducting an evidentiary hearing should one be necessary, leaving time to allow for a final written order to be issued by the deadline set by the Supreme Court of Florida. The relief sought in the Motion for Stay of Execution is grounded in the expectation that an

evidentiary hearing will be scheduled. However, the Court held a *Huff* hearing on October 30, 2026, and subsequently determined that an evidentiary hearing is not warranted pursuant to applicable law.

Wherefore, Defendant's Motion for Stay of Execution is **DENIED**.

DONE AND ORDERED at Key West, Monroe County, Florida this Monday, November 2, 2026

44-1996-CF-030167-00-0APK 11/02/2026 03:34:08 PM



Judge Timothy Koenig, Circuit Judge

44-1996-CF-030167-00-0APK 11/02/2026 03:34:08 PM

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IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff
v.

THOMAS M. OVERTON,
Defendant.
_____/

CASE No.: 1996-CF-30167-A-P
FSC No. SC1960-95404

DEATH WARRANT SIGNED
EXECUTION SCHEDULED FOR NOVEMBER 19, 2026, 6:00 P.M.

ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION TO VACATE JUDGMENT OF CONVICTION AND SENTENCE

THIS CAUSE comes before the Court on Defendant's Successive Motion to Vacate Judgment of Conviction and Sentences of Death After Death Warrant Signed ("Motion") filed on October 28th, 2026, pursuant to Florida Rule of Criminal Procedure 3.851. The State filed a Response on October 30th, 2026, and the Court held a Case Management Conference, *Huff*[1] hearing, on that same day. On October 31, 2026, the Court entered an Order on Case Management Conference ruling that an evidentiary hearing is not necessary on Defendant's Motion because the claims can be resolved based on a review of the record and as a matter of law. After considering the Defendant's Motion, the State's Response, the court file and record, the applicable law, as well as the arguments of counsel at the October 30th, 2026, Case Management Conference, the Court makes the following findings and conclusions of law.

Procedural History

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

On February 1, 1999, the Defendant was convicted by a jury of the First Degree Murder of Michael MacIvor, the First Degree Murder of S.M.[2], Killing of an Unborn Child, Burglary of a Dwelling with an Assault or Battery upon a Person, and Sexual Battery Involving Physical Force Likely to Cause Serious Personal Injury. On February 4, 1999, the same jury recommended by a vote of eight to four, that the Court sentence Defendant to death for the First Degree Murder of Michael MacIvor, and by a vote of nine to three that the Court sentence Defendant to death for the First Degree Murder of S.M.

On February 22, 1999, the Court held a *Spencer*[3] hearing, and on March 18, 1999, the Court issued its Sentencing Order. At the penalty phase, the Defendant declined to present any evidence in mitigation of the death penalty. For the First Degree Murder of Michael MacIvor, and for the First Degree Murder of S.M., the Court imposed a sentence of death upon Defendant. For the crime of Killing an Unborn Child, Defendant was sentenced to fifteen years imprisonment. For the crime of Burglary of a Dwelling with an Assault or Battery upon a Person, and for the crime of Sexual Battery Involving Physical Force Likely to Cause Serious Personal Injury, Defendant was sentenced to life imprisonment.

The Florida Supreme Court affirmed Defendant's convictions and death sentences on direct appeal. *Overton v. State*, 801 So. 2d 877 (Fla. 2001). The Florida Supreme Court denied rehearing on December 3, 2001,

[2] The initials of the victim are used to protect their identity due to the sexual nature of the crime.
[3] *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

and the Mandate issued the same day. The United States Supreme Court denied certiorari review on May 13, 2002. *Overton v. Florida*, 535 U.S. 1062 (2002).

On April 30, 2003, Defendant filed a Motion to Vacate Judgments of Conviction and Sentence followed by amendments on which an evidentiary hearing was granted. On April 4, 2004, Defendant filed a Motion for DNA Testing which the Court granted in part and denied in part. On November 15-17, 2004, an evidentiary hearing was held, and all relief was subsequently denied on February 14, 2005. Defendant appealed the denials of his motions and later filed a state habeas petition with the Florida Supreme Court. After consolidating Defendant's three cases, the Florida Supreme Court affirmed the trial court's orders denying postconviction relief and DNA testing, and denied habeas relief. *Overton v. State*, 976 So. 2d 536 (Fla. 2007).

On June 20, 2006, Defendant filed a Successive Motion to Vacate Judgments of Conviction and Sentence. An evidentiary hearing was held on January 24, 2012, and the Court issued an order denying relief on April 11, 2012, which was subsequently affirmed by the Florida Supreme Court. *Overton v. State*, 129 So. 3d 1069 (Fla. 2013).

On November 8, 2013, Defendant filed a federal petition for writ of habeas corpus. After relief was denied and Defendant appealed, the Eleventh Circuit Court of Appeals ordered a limited remand which resulted in relief again being denied *Overton v. Jones*, 155 F. Supp. 3d 1253 (S.D.

Fla. 2016). The Eleventh Circuit ultimately found that Defendant was not entitled to habeas relief. *Overton v. Sec'y, Florida Dep't of Corr.*, No. 16-10654, 2025 WL 1766048 (11th Cir. June 26, 2025), *cert. denied*, 146 S. Ct. 1626 (2026).

On January 11, 2017, Defendant filed a third Successive Motion to Vacate Death Sentence, which was also denied by the trial court and later affirmed by the Florida Supreme Court. *Overton v. State*, 236 So. 3d 238 (Fla.), *cert. denied*, 586 U.S. 883 (2018).

On February 23, 2026, certiorari was denied and the Attorney General filed its Notification to the Clerk of the Florida Supreme Court that Defendant had completed his direct appeal, initial postconviction proceedings in state court, and his habeas corpus proceedings and appeal in federal court.

On October 21, 2026, Governor Ron DeSantis signed a death warrant to carry out Defendant's death sentence. As a result, the Florida Supreme Court issued a scheduling order requiring all proceedings in this Court to be concluded by Wednesday, November 4, 2026, at 11:00 a.m.

On October 28, 2026, Defendant filed a Successive Motion to Vacate Judgment of Conviction and Sentences of Death After Death Warrant Signed. On October 30, 2026, the State filed a Response to Defendant's Successive Motion to Vacate Judgment of Conviction and Sentence of Death After Death Warrant Signed. On October 30, 2026, the Court held a Case Management Conference under Rule 3.851(h)(6), commonly referred to as a

Huff hearing, and heard arguments of counsel regarding whether an evidentiary hearing would be required on any of the claims raised in the successive postconviction motion. On October 31, 2026, the Court entered an order finding that an evidentiary hearing is not necessary because the claims can be resolved based on a review of the record and as a matter of law.

Standard of Review

This is a successive motion as "a state court has previously ruled on a postconviction motion challenging the same judgment and sentence." Fla. R. Crim. P. 3.851 (e)(2). *See Overton*, 976 So. 2d 536 (Fla. 2007). A motion to vacate a judgment and death sentence must be filed within one year after the judgement and sentence became final. Fla. R. Crim. P. 3.851(d)(1). A motion filed beyond that period may not be considered unless it alleges one of the three exceptions in Rule 3.851(d)(2): 1) that the facts on which the claim is predicated were unknown and could not have been ascertained through due diligence; 2) that a newly established fundamental constitutional right applies retroactively; or 3) that postconviction counsel neglected to file the motion. Fla. R. Crim. P. 3.851(d)(2). 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. Crim. P. 3.851(f)(5)(B).

Analysis of Claims Presented

Claim One

In Claim One, Defendant claims that he is actually innocent and executing him would violate his right to Due Process and would be a manifest injustice. Within this claim he alleges: 1) crime scene inconsistencies and evidence mishandling; 2) untested and inconclusive physical evidence; and 3) third-party guilt. Claim One is legally insufficient, untimely and procedurally barred.

Claim One must be denied as legally insufficient and meritless because Florida does not recognize an independent claim of actual innocence in postconviction proceedings. *Hitchcock v. State*, 431 So. 3d 514, 527 (Fla. 2026). The Defendant must come forward with some new reliable evidence of innocence to set out a cognizable claim under federal law. *House v. Bell*, 547 U.S. 518 (2006). The Defendant fails to offer any new evidence to support a colorable claim supported by legally sufficient factual evidence. At the *Huff* hearing, defense counsel acknowledged that all of the issues raised in Claim One have been litigated and ruled on to some extent but argued that when viewed as a complete picture, they establish a manifest injustice. However, as in *Hitchcock*, declining to consider the merits of the Defendant's actual innocence claim does not result in manifest injustice or a violation of due process rights because the Defendant had the opportunity to pursue claims of newly discovered evidence and he "has received the process due to him, has been adjudicated guilty, and has been sentenced to death." *Hitchcock,* 431 So. 3d at 527.

Claim One is also untimely and procedurally barred. A Defendant must file a postconviction motion within one year after the judgement and sentence become final, absent certain exceptions. *See* Fla. R. Crim. P. 3.851(d)(1)-(2). Here, the Defendant's case became final on May 13, 2002. *See Overton*, 535 U.S. at 1062 (denial of certiorari). This successive postconviction claim was filed well beyond the one-year time limit set out in Rule 3.851(d)(1). The factual basis for the arguments raised in Claim One were available long before the death warrant was signed, and the Defendant does not allege or show that any exception under Rule 3.851(d)(2) applies. *Guardado v. State,* No. SC2026-1605, slip. op. at 1 (Fla. Oct. 29, 2026).

Further, the claims were previously raised or could have been raised during trial and postconviction litigation and are therefore procedurally barred. *Gudinas v. State,* 412 So. 3d 701, 714 (Fla. 2025). On direct appeal the Florida Supreme Court found sufficient evidence supporting the conviction and rejected the postconviction challenges to the evidence and the federal court likewise denied relief. The Defendant cannot overcome a procedural bar by simply alleging new support for old claims. *Whitton v. State*, 436 So. 3d 459, 465 (Fla. 2026)

For the foregoing reasons, **no relief is warranted on Claim One.**

Claim Two

In Claim Two, the Defendant raises a challenge to the method of execution, claiming there is evidence Florida Department of Corrections

("FDOC") maladministered its execution protocol resulting in a violation of Defendant's Eighth and Fourteenth Amendment rights under the Constitution. Defendant claims that records indicate that FDOC is practicing its lethal injection protocol in an ad hoc manner and possibly using expired etomidate. Additionally, the Defendant alleges the Court's denial of his request for records to investigate the drugs which will be involved in his lethal injection results in a denial of due process and a manifest injustice. Claim Two is legally insufficient, untimely and procedurally barred.

To successfully challenge a method of execution, a defendant must "(1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known and available alternative method of execution that entails a significantly less severe risk of pain." *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017) (*citing Glossip v. Gross,* 576 U.S. 863, 877 (2015)). The Defendant has not met this burden.

None of the Defendant's allegations regarding the administration of etomidate or the speculative claim that it is expired or in short supply, establish that the method of execution presents a "substantial and imminent risk that is sure or very likely—in other words, a virtual certainty—to cause serious illness and needless suffering." *Heath v. State*, 426 So. 3d 1253, 1262 (Fla. 2026). Challenges to the constitutionality of Florida's lethal injection protocol as currently administered, including the etomidate

protocol, have been fully considered and repeatedly rejected. *See Tanzi v. State*, 407 So. 3d. 385, 393 (Fla. 2025). The Florida Supreme Court has repeatedly recognized that the Department of Corrections is entitled to the presumption that it will comply with the lethal injection protocol. *Cole v. State*, 392 So. 3d 1054, 1065 (Fla. 2024). "That protocol includes safeguards to ensure the condemned is unconscious throughout the execution." *Id*. (citing *Long v. State*, 271 So. 3d 938, 945 (Fla. 2019)). The Defendant's conclusory and speculative allegations are legally insufficient to demonstrate a "substantial and imminent risk" that the method of execution "is sure or very likely to cause serious illness and needless suffering." *Asay,* 224 So. 3d at 701. Further, the Defendant does not identify a known and available alternative method of execution that entails a significantly less severe risk of pain and thus the claim fails as a matter of law. *Id*.

Claim Two is also untimely. The Defendant could have raised his present lethal injection challenge prior to the signing of his death warrant but did not do so, and now the claim is procedurally barred. *Gudinas*, 412 So. 3d at 714.

The Defendant's claim that the Court's denial of his demand for additional records pertaining to lethal injection protocols violates due process lacks merit. The records requested were sought to conduct further investigation into the drugs that are to be used for his execution and lethal injection protocols generally. The Florida Supreme Court has consistently

found these requests are not relevant to a colorable claim for postconviction relief, and a denial does not violate either due process or equal protection. *Occhicone v. State*, 436 So. 3d 465, 472-73 (Fla. 2026); *Heath*, 426 So. 3d at 1263-64.

For the foregoing reasons, **no relief is warranted on Claim Two.**

Claim Three

In Claim Three, the Defendant argues that the combination of the secrecy of the clemency process and the truncated warrant schedule denies him the required minimal due process in violation of the Eighth and Fourteenth Amendments. Claim Three is legally insufficient, and procedurally barred

The Defendant argues that clemency is a nullity since it is so rarely granted in Florida and because the current Governor has expressly stated that he will not grant clemency to murderers or felony sex offenders. This same clemency argument was recently raised by another death-row inmate, Jesse Guardado, and the Florida Supreme Court affirmed the circuit court's denial of the claim. *Guardado v. State,* No. SC2026-1605, slip. op. at 1 (Fla. Oct. 29, 2026). The Florida Supreme Court stated that there are no procedural safeguards specifically applicable to the clemency process and instead has repeatedly held that the Governor has unfettered discretion in Florida's clemency process. *Id*. at 10. The Florida Supreme Court noted that Guardado failed to cite any legal authority that prevents the Governor from considering the nature of the underlying offense during the clemency

process. *Id*. at 11. Because Guardado had access to the clemency process and was unable to show that the Governor violated any procedures or failed to consider any required criteria, the Court found that he was unable to establish a due process violation. *Id.* at 11-12.

Finally, the Defendant argues that the short time between warrant eligibility, clemency, and warrant is unconstitutional. Florida Supreme Court precedent has repeatedly rejected similar challenges. The Florida Supreme Court has repeatedly held that expedited warrant proceedings do not violate due process. *Id.* at 16. The Florida Supreme Court has previously rejected the argument that a compressed warrant schedule denies a capital defendant his rights to due process where the Defendant has not shown how the warrant schedule denied him notice or an opportunity to be heard. *Tanzi*, 407 So. 3d at 391. Here, the Defendant was provided due process. He had notice that a warrant could be issued, he had his opportunity to petition for clemency, and he had an opportunity to be heard during the clemency review process.

For the foregoing reasons, **no relief is warranted on Claim Three.**

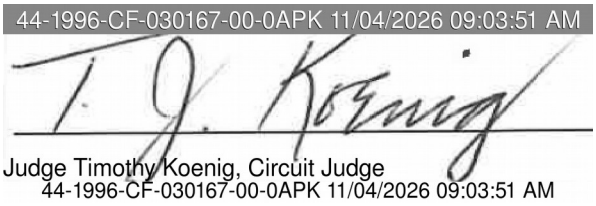
Conclusion

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** that Defendant's Successive Motion to Vacate Judgment of Conviction and Sentences of Death After Death Warrant Signed is summarily **DENIED**.

Pursuant to the Florida Supreme Court's order dated October 21, 2026, the notice of appeal shall be filed by 1:00 p.m., Wednesday, November 4, 2026.

The clerk of court is directed to electronically transmit this Order to the Clerk of the Florida Supreme Court and immediately transport the record of these proceedings to the Supreme Court of Florida.

DONE AND ORDERED at Key West, Monroe County, Florida on Wednesday, November 4, 2026.



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IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff
v.

THOMAS M. OVERTON,
Defendant.
_____/

CASE No.:1996-CF-30167-A-P
FSC No. SC1960-95404

DEATH WARRANT SIGNED
EXECUTION SCHEDULED FOR NOVEMBER 19, 2026, 6:00 P.M.

ORDER ON DEFENDANT'S 3.852 DEMANDS FOR ADDITIONAL PUBLIC RECORDS AND OBJECTIONS THERETO

THIS CAUSE comes before the Court on Defendant's Demands for Public Records filed on October 23, 2026. The Court ordered the agencies to either produce the requested records directly to postconviction counsel or file an objection to the production of such records by October 26, 2026, at 10:00 a.m. A hearing on the objections to Defendant's demands for public records made pursuant to Florida Rule of Criminal Procedure 3.852(h)(3) and (i) was held on October 26, 2026, at 1:00 p.m. After considering the demands, the objections, and arguments of counsel, it is **ORDERED AND ADJUDGED** as follows:

1. The objections made by **The Executive Office of the Governor** are **SUSTAINED** and the Defendant's demands are **DENIED.** Records relating to the clemency process are exempt from disclosure. *Heath v. State*, 426 So. 3d 1253, 1264 (Fla. 2026). The requested records relate to executive clemency which the Florida Supreme Court has repeatedly held is not a

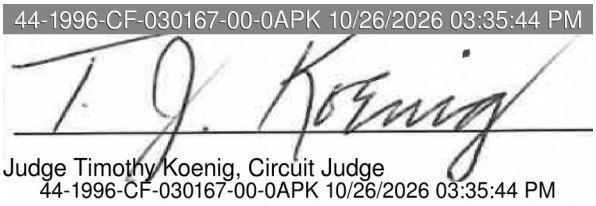
cognizable or colorable claim for postconviction relief. *See Muhammad v. State,* 132 So. 3d 176, 203 (Fla. 2013).

2. The objections made by the **Florida Commission on Offender Review** are **SUSTAINED** and the Defendant's demands are **DENIED**. Records relating to the clemency process are exempt from disclosure. *Heath,* 426 So. 3d at 1264. The requested records relate to executive clemency which the Florida Supreme Court has repeatedly held is not a cognizable or colorable claim for postconviction relief. *See Muhammad*, 132 So. 3d at 203.
3. The objections made by **Florida Department of Corrections** are **SUSTAINED** and the Defendant's demands are **DENIED**. The requested records relate to lethal injection protocols which the Florida Supreme Court has consistently found not to be relevant to a colorable claim for postconviction relief. *See Tanzi v. State*, 407 So. 3d 385, 392 (Fla. 2025). Because lethal injection protocols are not a colorable claim for postconviction relief, lethal injection records are not relevant to the subject matter of a postconviction proceeding or reasonably calculated to lead to the discovery of admissible evidence. *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019).
4. The Objections made by the **Office of the State Attorney, 16th Circuit** are **SUSTAINED** and the Defendant's demands are **DENIED**. The records requested in the Defendant's demand are

overly broad and are not related to a colorable claim. *See Zakrzewski v. State*, 415 So. 3d 203, 212 (Fla. 2025). The records requested are protected under existing case law protecting the family of crime victims. Finally, Defense Counsel does not attest that it conducted a timely and diligent search of the records repository as required by Florida Rule of Criminal Procedure 3.852(i).

5. The Objections made by **Monroe County Sheriff's Office** are **SUSTAINED** and the Defendant's demands are **DENIED**. Rule 3.852 requests must "show how the requested records relate to a colorable claim for postconviction relief and good cause as to why the public records request was not made until after the death warrant was signed." *See Tanzi,* 407 So. 3d at 392 (quoting *Dailey*, 283 So. 3d at 792). The Defendant has not identified a colorable claim or specifically identified the records being requested. The request is too general and does not indicate how the requested records relate to a colorable claim for postconviction relief.
6. The objections made by **the Office of the Attorney General** are **SUSTAINED** and the Defendant's demands are **DENIED**. The requests are impermissibly general in nature and do not show how the requested records relate to a colorable claim for postconviction relief. *See Id.*

DONE AND ORDERED at Key West, Monroe County, Florida this Monday, October 26, 2026



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No. _____

IN THE

SUPREME COURT of the UNITED STATES

THOMAS M. OVERTON

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
DEATH WARRANT SIGNED
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, NOVEMBER 19TH, AT 6:00 P.M.

APPENDIX B

Appeal opinion of the Florida Supreme Court, affirming the denial of the Successive Motion to Vacate Judgment and Sentence and denying State Habeas Petition; Overton v. State, Case Numbers SC2026-1724 & SC2026-1725.

Supreme Court of Florida

No. SC2026-1724

THOMAS M. OVERTON,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

No. SC2026-1725

THOMAS M. OVERTON,
Petitioner,

vs.

SECRETARY, DEPARTMENT OF CORRECTIONS,
Respondent.

November 13, 2026

TANENBAUM, J.

Thomas Overton received death sentences for murdering Susan MacIvor and her husband, Michael MacIvor. Governor DeSantis recently signed a warrant setting the execution of those

sentences for November 19, 2026. Having then filed his third (and presumably final) successive motion for postconviction relief, which the circuit court summarily denied, Overton now appeals. He separately asks this Court for habeas relief and a stay of execution. We have jurisdiction. *See* Art. V, § 3(b)(1), (9), 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 below, we affirm the summary denial and deny all other requested relief.

I.

We unfortunately must once again summarize the atrocious facts of the MacIvors' murders.[1] Late in the evening on August 21, 1991, Susan and Michael MacIvor left a childbirth class and returned home. They were never seen alive again. At the time,

1. This Court first set out the details in *Overton v. State* (*Overton I*), 801 So. 2d 877 (Fla. 2001), in which we considered the appeal of Overton's convictions and death sentences.

Susan was eight months pregnant. The couple was expecting their first child, a baby boy.

The next day, August 22, Susan and Michael were found dead in their home. Investigators discovered Michael in the living room wearing only his T-shirt and underwear. His head was wrapped with layers of masking tape, except for his nose; underneath, a sock had been placed over his eyes. His neck and larynx had visible bruising and ligature marks. The couch and coffee table had been moved, and personal papers littered the floor near a desk, indicating a struggle had taken place.

Investigators made their way to the master bedroom and observed the sliding glass door was ajar. Susan was found on top of a white comforter. She was naked, bound at the ankles and wrists, and the makeshift garrote knot used to strangle her was still wrapped around her neck and tangled hair. Her eyes were covered shut with masking tape. The nightshirt she wore to bed was ripped from her pregnant torso, and her underwear was cut directly from her hips. Investigators found semen in her pubic area, on her buttocks, and on the inside of her thighs. The medical examiner

concluded that Susan had been sexually battered. Investigators took cuttings from the bedding for DNA testing.

An autopsy revealed that Michael had died from asphyxiation by ligature strangulation. The examination of Michael's neck showed that his larynx, hyoid bone, and epiglottis fractured and that his neck dislocated at the fifth cervical vertebrae. The medical examiner discovered several other injuries; Michael suffered severe blows to the back of his head and shoulder and a kick to his abdomen.

As for Susan, she had visible ligature marks on her neck and wrists. Discoloration in her face indicated an incomplete application of the ligature, which caused her to suffer for longer before being rendered unconscious and dying. Ligature marks on her neck showed friction, meaning she moved against the ligature. Clenched hands, as well as abrasions on her vulva and legs, suggested a struggle. The examination confirmed Susan was eight months pregnant. It further revealed that the baby boy had survived for about thirty minutes after Susan died.

In 1993, DNA testing on the cuttings from the bedding showed no matches. In 1996, under law enforcement surveillance, Overton

was arrested during an attempted burglary. While Overton was in custody, law enforcement obtained his DNA and compared it to the profile extracted from the bedding. It was a match.[2] In 1998, another lab confirmed the results using a different DNA test.[3]

A grand jury indicted Overton, charging him with two counts of first-degree murder. His charges also included killing an unborn child, burglary, and sexual battery. Overton pleaded not guilty.

At trial, the State presented DNA evidence and relied on testimony from two witnesses who were formerly incarcerated with Overton. One of the witnesses, James Zientek, testified that Overton described, in detail, the night of August 21, 1991, his plan having been to rape Susan. Overton snuck into the MacIvors' home in the dead of the night and severed the phone lines. Overton then

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2. The Florida Department of Law Enforcement lab in Jacksonville constructed a DNA profile from the bedding cuttings by using restriction fragment length polymorphism and tracing the loci within the chromosomes. *Overton I*, 801 So. 2d at 884. Investigators compared the DNA profile with Overton's and found an exact match at each locus. *Id.*

3. The cuttings from the bedding were sent to a second lab, Bode Technology Group, where the DNA sample underwent short tandem repeat testing. *Id.* at 884–85.

ambushed Michael in the kitchen with a pipe, knocked him out, and chased Susan back into the bedroom where he bound her with scarves and belts from her dresser. She screamed, "I know who you are. Why are you doing this to me?" and pleaded for Michael's life and the life of their baby.

Overton placed a sock over Michael's eyes and wrapped his head with masking tape. Overton then raped and strangled Susan. After Susan was dead, he saw motion across her stomach; he placed a hand on her stomach and felt her baby move. As Michael regained consciousness, Overton returned and strangled him. Overton admitted to the witness that he had attempted to obfuscate the crime scene.[4] He also mocked the MacIvors' deaths.[5]

A death-qualified jury found Overton guilty as charged.

At the penalty phase of Overton's trial, the State presented victim-impact evidence and relied on the testimony from the guilt

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4. Investigators found a .22 caliber shell casing in the master bedroom and a bullet hole in the curtain. *Id.* at 882. "Overton further stated that he 'confuse[d] the crime scene' and ripped pages from the address book in the bedroom" and "took things 'nobody would realize were gone.'" *Id.* at 886 (alteration in original).

5. "Overton also showed Zientek a picture of a small chalkboard in the kitchen where [Susan or Michael] had written

phase proceedings. Overton refused to present evidence of mitigation and repeatedly stated that he did not want his attorneys to present mitigating evidence or argue mitigation on his behalf.

The jury recommended death by a vote of nine-to-three for the murder of Susan and a vote of eight-to-four for the murder of Michael. The trial court agreed with the recommendation and sentenced Overton accordingly.

On direct appeal, we affirmed Overton's convictions and sentences, including the death sentences. *Overton I*, 801 So. 2d at 881. For postconviction timeliness purposes under Florida Rule of Criminal Procedure 3.851, finality occurred when the United States Supreme Court denied certiorari review on May 13, 2002. *See Overton v. Florida*, 535 U.S. 1062 (2002).

Since then, Overton has launched multiple unsuccessful collateral attacks on both the judgment and death sentences, in both state and federal courts. *See Overton v. State* (*Overton II*), 976 So. 2d 536, 575 (Fla. 2007) (affirming denial of Overton's initial

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'renew life insurance.'" *Id.* at 887. Zientek testified that "Overton laughed and said something to the effect that, 'You don't think they knew what time it was?'" *Id.*

motion for postconviction relief, denying habeas relief, and denying Overton's second motion for postconviction DNA testing under Florida Rule of Criminal Procedure 3.853); *Overton v. State*, 129 So. 3d 1069, at *4 (Fla. 2013) (unpublished table decision) (affirming denial of Overton's first successive motion for postconviction relief); *Overton v. Jones*, 155 F. Supp. 3d 1253, 1260 (S.D. Fla. 2016) (denying habeas relief); *Overton v. State*, 236 So. 3d 238, 239 (Fla. 2018) (affirming denial of Overton's second successive motion for postconviction relief and finding that *Hurst v. Florida*, 577 U.S. 92 (2016), does not apply retroactively to Overton's death sentences); *Overton v. Sec'y, Fla. Dep't of Corr.*, No. 16-10654, 2025 WL 339895 (11th Cir. Jan 30, 2025) (affirming the district court's denial of Overton's petition for writ of habeas corpus); *Overton v. Sec'y, Fla. Dep't of Corr.*, No. 16-10654, 2025 WL 1766048 (11th Cir. June 26, 2025) (vacating and superseding its prior opinion on rehearing but affirming the district court's denial of Overton's petition for writ of habeas corpus); *Overton v. Dixon*, 146 S. Ct. 1626 (2026) (denying Overton's petition for writ of certiorari).

Following the current death warrant, Overton made several demands for public records under Florida Rule of Criminal

Procedure 3.852, each of which drew an objection from the State. The circuit court sustained each objection. Overton then filed his third successive motion under Florida Rule of Criminal Procedure 3.851. Following a hearing on whether an evidentiary hearing was necessary, the circuit court summarily denied the motion. Overton now appeals[6] and simultaneously asks this Court directly to grant habeas relief and stay his execution.

II.

To begin, Overton claims that the circuit court erred by sustaining objections to his demands under rule 3.852 for public records from the Executive Office of the Governor ("EOG"), the Florida Commission on Offender Review ("FCOR"), and the Department of Legal Affairs ("DLA").[7] Rule 3.852, in part,

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6. As part of Overton's appeal from the summary denial, he asserts that the objections to several of his demands for public records should have been overruled.

7. In particular, Overton sought: (1) clemency records from EOG, (2) clemency records from FCOR, and (3) any records relating to Overton's case and correspondence with FCOR and EOG from DLA. Overton had sought records from other agencies as well, including the Department of Corrections, but he fails to address the circuit court's sustaining the objections to those requests, thereby forfeiting any appellate claim regarding them. *Cf. City of Miami v. Steckloff*, 111 So. 2d 446, 447 (Fla. 1959) ("It is an established rule

implements the provisions of section 27.7081, Florida Statutes, which created the capital-records repository and enacted a process by which those sentenced to death could seek public records that had not previously been turned over to the repository. *See* § 27.7081, Fla. Stat. (2012).[8] When a circuit court sustains an agency's objections to a demand for public records, in effect denying the demand, we review the denial for abuse of discretion. *Hill v. State*, 921 So. 2d 579, 584 (Fla. 2006). No such abuse occurred here.

We have repeatedly warned that rule 3.852 demands are not tools by which to conduct a fishing expedition. *Sims v. State*, 753 So. 2d 66, 70 (Fla. 2000). These demands are supposed to be

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that points covered by a decree of the trial court will not be considered by an appellate court unless they are properly raised and discussed in the briefs.").

8. Section 27.7081 was overhauled in 2013, after Overton's judgment and sentence became final. Ch. 2013-216, § 8, Laws of Fla. We apply the statute as it applied prior to the 2013 overhaul. *See* § 27.7081(2), Fla. Stat. (2026) ("Public records requests made in postconviction proceedings in capital cases in which the conviction and sentence of death have been affirmed on direct appeal before July 1, 2013, shall be governed by the rules and laws in effect immediately before July 1, 2013.").

targeted requests seeking specific *additional* public records—which have not already been turned over to the capital-records repository—that are *relevant* to colorable claims for postconviction relief. *See id.*; § 27.7081(8)(b), Fla. Stat. (2012).[9] These demands cannot be "overbroad or unduly burdensome." § 27.7081(8)(c)(4), Fla. Stat. (2012); *see also Moore v. State*, 820 So. 2d 199, 204 (Fla. 2002) ("[T]he trial court did not abuse its discretion in denying a request for further production of public records where . . . the demands are overly broad, of questionable relevance, and unlikely to lead to discoverable evidence.").

Overton's demands to EOG and FCOR each sought records that were not relevant to a cognizable claim. As we will explain in a

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9. The requirement that these demands be relevant to a colorable claim is a requirement that has existed for some time. *See, e.g.*, § 119.19(9)(c)(3), Fla. Stat. (Supp. 1998) ("The additional public records sought are relevant to the subject matter of a proceeding under Rule 3.850 or Rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence."); *Amends. to Fla. Rules of App. Proc., Fla. Rules of Civ. Proc., Fla. Rules of Crim. Proc., Fla. Fam. L. Rules of Proc., Fla. Rules of Juv. Proc., & Fla. Prob. Rules*, 887 So. 2d 1090, 1133 (Fla. 2004) (requiring that "the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence").

moment (*infra*, in part III.B.), this Court has routinely rejected clemency process-based claims indistinguishable from Overton's. Meanwhile, the demand to DLA fails both because it is overly broad *and* because it seeks records relating to the clemency and warrant process that are not relevant to a cognizable claim under rule 3.851.

As there was not a legal basis for any of Overton's demands for public records, the trial court did not abuse its discretion when it sustained each agency's objections to them.

III.

Overton raises two issues regarding the summary denial of his rule 3.851 motion.[10] Our review is de novo. *See State v. Coney*, 845 So. 2d 120, 137 (Fla. 2003). "We must examine each claim to determine if it is legally sufficient and, if so, determine whether or not the claim is refuted by the record." *Parker v. State*, 904 So. 2d 370, 376 (Fla. 2005).

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10. The motion also claimed that the execution protocol violates due process. Overton, however, forfeited this claim when he failed to raise it in his initial brief. *Cf. Steckloff*, 111 So. 2d at 447.

A.

In his first claim, Overton asserted that—despite the findings of a jury and multiple unsuccessful attempts to collaterally attack his trial—he is actually innocent. The circuit court did not err when it summarily denied this claim.

There is no such thing under Florida law as an "actual innocence" claim independent of newly discovered evidence. *Sweet v. State*, 293 So. 3d 448, 453–54 (Fla. 2020); *see also id.* at 454 ("Florida's refusal to recognize postconviction actual innocence claims does not violate the Eighth Amendment."). To the extent that Overton seeks postconviction relief on this basis, we deny relief.

But even if we were to read his claim more generously and find an implicit claim that there is newly discovered evidence undermining his murder convictions, the claim still fails on its face. *See* Fla. R. Crim. P. 3.851(d)(1), (d)(2)(A) (barring consideration of a motion to vacate under the rule filed more than one year after the judgment and sentence became final, unless it alleges, among other things, that "the facts on which [it] is predicated were unknown . . . and could not have been ascertained by the exercise of due

diligence"); *see also id.* (e)(2) (barring successive motions that fail to raise "new or different grounds for relief" following a prior determination on the merits); *cf. Herrera v. Collins*, 506 U.S. 390, 404 (1993) (noting that under federal habeas jurisprudence, "a claim of 'actual innocence' is not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits").

To overcome the time-bar, Overton would need to show that the evidence was not known by the trial court, himself, or his counsel at the time of trial, and that neither he nor his counsel could have known of it by the exercise of due diligence; and that the evidence is of such nature that it would probably produce an acquittal on retrial. *See Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998). On this front, Overton failed to identify *new* evidence. Instead, Overton simply repackaged old attacks on the strength of the State's evidence at trial. Absent anything new, this claim could be summarily denied, which the circuit court properly did.

B.

Overton next claimed that Florida's clemency and death warrant process lacks minimal standards of due process.[11] We have rejected this claim numerous times. *See Guardado v. State*, No. SC2026-1605, 2026 WL 3267707, at *3–4, *5 (Fla. Oct. 29), *cert. denied*, No. 26-6013, 2026 WL 3342321 (U.S. Nov. 5, 2026); *Reaves v. State*, No. SC2026-1512, 2026 WL 3071534, at *2–3 (Fla. Oct. 14), *cert. denied*, No. 26-5865, 2026 WL 3132759 (U.S. Oct. 20, 2026); *Jennings v. State*, 422 So. 3d 107, 114–16, 120 (Fla.), *cert. denied*, 146 S. Ct. 402 (2025); *Jones v. State*, 419 So. 3d 619, 625–26 (Fla.), *cert. denied*, 146 S. Ct. 79 (2025); *Marek v. State*, 14 So. 3d 985, 998 (Fla. 2009); *Johnston v. State*, 27 So. 3d 11, 26 (Fla. 2010). We once again reject it here. The circuit court did not err in summarily denying this legally non-cognizable claim.

11. Overton repeatedly claimed that the Governor's announced policy of opposition to clemency to those convicted of murder and felony sexual offenses constitutes a bill of attainder. The Governor, though, cannot pass a bill of attainder; only the Legislature can enact laws.

IV.

Finally, Overton separately has petitioned this Court for a writ of habeas corpus. His petition raises only one ground in support of issuing the writ—that Florida's capital sentencing scheme has become constitutionally invalid due to a supposed lack of safeguards.[12] This argument has been raised with concerning frequency, despite this Court's repeated reminders that Florida's capital punishment process is wholly constitutional. *See, e.g.*, *Hunt v. State*, 428 So. 3d 43, 54–55 (Fla. 2025) ("Together, Florida's death penalty provisions establish the constitutionally required safeguards to ensure that there are no 'arbitrary, capricious, or freakish' death sentences." (footnote omitted)), *petition for cert. filed*, No. 26-78 (U.S. July 16, 2026). We continue to hold as such. There is no merit to Overton's request for habeas relief.

V.

We reject each claim for relief raised by Overton on the eve of his execution, so we affirm the circuit court's summary denial of his

12. Overton also seeks to further litigate issues raised in his appeal, including the clemency and warrant process, which we have already discussed and rejected. *See*, *supra*, part III.B.

motion to vacate. We also deny Overton's separate request for habeas relief. There, in turn, is no need to stay Overton's execution.

No motion for rehearing will be entertained by this Court. The mandate shall issue immediately.

It is so ordered.

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

An Appeal from the Circuit Court in and for Monroe County,
Timothy J. Koenig, Judge
Case No. 441996CF030167000APK
And an Original Proceeding – Habeas Corpus

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for Appellee/Respondent

No. _____

IN THE

SUPREME COURT of the UNITED STATES

THOMAS M. OVERTON

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
DEATH WARRANT SIGNED
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, NOVEMBER 19TH, AT 6:00 P.M.

APPENDIX C

Press release dated March 10, 2021, from Florida Commission on Offender Review.

FLORIDA COMMISSION ON OFFENDER REVIEW

4070 Esplanade Way, Tallahassee, Florida 32399-2450

MELINDA N. COONROD
Commissioner/Chair

RICHARD D. DAVISON
Commissioner/Vice-Chair

DAVID A. WYANT
Commissioner/Secretary

FOR IMMEDIATE RELEASE
March 10, 2021

Contact: Angela Meredith
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Board of Executive Clemency Adopts Governor's Proposal to Categorically Remit All Fines Related to COVID-19 Restrictions and to Revise the Rules of Executive Clemency Adopted by the Clemency Board

Tallahassee, Fla. – Today, the Board of Executive Clemency adopted the Governor's proposal to categorically remit all fines related to COVID-19 restrictions.

The Board also adopted the Governor's proposed revisions to the Rules of Executive Clemency. The revised Rules may be viewed at the following link: https://www.fcor.state.fl.us/clemency.shtml.

The revisions to the rules are designed to: (1) provide an avenue for felons who have completed all terms of sentence under Amendment 4 to apply for automatic restoration of their full civil rights without a hearing; (2) continue to provide an avenue for felons who have not completed all terms of sentence under Amendment 4 to apply for restoration of full civil rights with a hearing; (3) streamline the Rules; (4) expedite the processing of clemency applications; and (5) reduce the backlog of clemency cases.

Felons who have not completed all terms of sentence—or who have not received a judicial modification or conversion of sentence sufficient to satisfy Amendment 4—may not receive the automatic restoration of civil rights without a hearing but may continue to apply for restoration of civil rights with a hearing under the current clemency process.

Finally, following today's meeting of the Board, the Governor unilaterally exercised his clemency powers to deny the pending clemency applications of all murderers and felony sex offenders.

The Governor's mass denial of clemency to murderers and felony sex offenders will result in the immediate denial of approximately 300 pending clemency applications. The Florida Commission on Offender Review estimates that up to 1,000 pending clemency applications will be denied pursuant to the Governor's action.

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The Florida Commission on Offender Review (FCOR), is a constitutionally authorized, quasi-judicial, decision-making body which has been serving the citizens of this state since 1941. The Commission holds offenders accountable for their behaviors and ensures public safety through its careful selection of offenders for re-entry into society by administering parole, conditional medical release, control release, conditional release, and addiction recovery release supervision. The Commission also acts as the investigative arm of the Governor and Cabinet, sitting as the Board of Executive Clemency in clemency matters. The Commission's mission is to ensure public safety and provide victim assistance through the post prison release process.