Supreme Court of Florida

No. SC2024-0251

DANIEL JACOB CRAVEN, JR.,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

No. SC2024-1181

DANIEL JACOB CRAVEN, JR.,
Petitioner,

vs.

SECRETARY, DEPARTMENT OF CORRECTIONS,
Respondent.

October 22, 2026

PER CURIAM.

Daniel Jacob Craven, Jr., a prisoner under sentence of death, appeals the circuit court's orders denying his initial and first successive motions for postconviction relief, which were filed under

Florida Rule of Criminal Procedure 3.851; denying his request for additional public records from the Florida Department of Corrections (FDC) under rule 3.852(i); and denying his motion to transport for imaging/testing. Craven also petitions this Court for a writ of habeas corpus. We have jurisdiction. *See* art. V, § 3(b)(1), (9), Fla. Const. For the reasons expressed below, we affirm each of the orders on appeal and deny Craven's habeas petition.

I. BACKGROUND

In 2018, Craven was convicted of the first-degree murder of his cellmate, John Anderson, and sentenced to death. On direct appeal, this Court set forth the facts as follows:

> While serving a sentence of life without the possibility of parole for a conviction of first-degree murder with a weapon, Craven stabbed his cellmate, John H. Anderson, to death with a homemade knife that Craven had fashioned from a piece of their cell door. Craven confessed, multiple times, to killing Anderson and was charged with first-degree premeditated murder. During the guilt-phase opening statements at Craven's trial, defense counsel admitted that Craven had murdered Anderson but argued that Craven was guilty of second-degree murder.
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> The evidence presented at trial established that upon Craven's arrival at Graceville Correctional Facility in early April 2015, Craven, a white supremacist with a swastika tattoo, was assigned to share a cell with the victim, who was African American. Craven almost immediately requested to be reassigned to a different cell,

claiming that he and the victim were not getting along, but ultimately withdrew the request and indicated that he and the victim would work it out.

On June 25, 2015, three days before the victim's murder, Craven called his mother and demanded that she come to visit him. When Craven's mother stated that she might not be able to make the trip, Craven told her, "Then don't plan on it for about five years." During their phone call, Craven's mother advised him to wait to give himself some time "for whatever is on [his] mind," to which Craven responded, "I made up my mind a long time ago." On June 27, 2015, the day before the victim's murder, Craven's mother visited with him for several hours. After Craven's mother left the facility, Craven called her and told her "not to worry" and that "he loves her."

At 10:07 p.m. on June 27, after watching the movie *Selma*, the victim entered the two-person cell that he shared with Craven. Craven entered the cell just after 1 a.m. on the morning of June 28, 2015. A corrections officer conducted a visual inspection of the cell door at 1:31 a.m. and did not note anything unusual. At 4:44 a.m., Craven left the cell for breakfast and placed a sign on the window, purportedly from the victim, that stated "[s]tomach bug, sleeping, please do not knock or disturb my rest." Craven entered and exited the cell several times throughout the morning of June 28. At 12:25 p.m., Craven told a corrections officer that he had killed his roommate around 2 a.m. that morning.

Corrections officers found Anderson's body in the cell, and he was pronounced dead. Craven subsequently confessed multiple times to stabbing Anderson to death, to cleaning up the cell, and to hiding the murder weapon in a sock and placing it in a shower grate, where law enforcement later recovered it.

The medical examiner testified that Anderson suffered approximately thirty wounds to his head, throat, neck, and upper torso, twelve of which were stab wounds that punctured Anderson's skin and the remainder of

which were incision wounds that cut Anderson's skin. Stab wounds to Anderson's windpipe and jugular vein were critical, and the cause of death was a combination of significant blood loss and the inhalation of blood as a result of the stab wounds. The medical examiner further testified that there were no injuries that would have likely rendered Anderson unconscious, that there were defensive wounds on Anderson's palms and wrists, and that Anderson's death was not immediate and may have taken from minutes to half an hour, during which time Anderson received painful stab and incision wounds while he essentially drowned in his own blood.

During law enforcement's investigation, bloodstains on Craven's socks and boxer shorts and blood recovered from Craven's ear matched Anderson's DNA. Additionally, a partial DNA match to Anderson was found on the murder weapon, and blood recovered from a wall in Craven and Anderson's cell matched Anderson's DNA.

Craven's jury also heard testimony from an inmate who was housed a few cells away from Craven and Anderson's cell. On the morning of Anderson's murder, the inmate testified that, between 1:30 and 2 a.m., he heard "stumbling" and someone saying "get off of me" and "help me" from the vicinity of Craven and Anderson's cell.

In addition, the jury heard statements that Craven had made to law enforcement, in which he admitted stabbing Anderson to death and that the killing was "planned out," plus letters that Craven had written to government officials, in which he confessed to killing Anderson and threatened his "personal brand of justice" unless he was sentenced to death. One of Craven's letters was titled "Full Confession to a Capital Murder from the Killer," and in it Craven described how he carried out his plan to kill Anderson, who Craven said was asleep in his bunk for an hour to an hour and a half before he began his attack:

> I, Daniel Craven, stood up and moved my cards as not to get blood on them, and put up

my radio for the same reason, started setting up for the plan I had for about two days. As I started to carry out the assassination on J. Anderson, . . . the thought of another walk-through at 2:00 AM made me hold off. As the officers did their walk, I did my normal and watched them. They left the dorm, and I turned my attention to John. Mindful of how far a scream can flow in an open quiet gym style living condition, I aimed for [his] throat. I walked over to John, put my hand over his mouth, and before he opened his eyes, I stabbed him in the thr[o]at once. He instantly started screaming and kicking and clawing, but I am 300 pounds with wrestling and cage experience, and also have been some form of bouncer my whole life, he wasn't going anywhere. All of my stabs were intentional aims and placed with purpose. I took my time, none were accidental or in self[-]defense or wild. I did not count, but I'm sure it was more than ten but less than 20, 13 to 16 best guess, with one exception: I tried to see if I could bury the knife through the skull on the left side top, but he moved and it didn't catch right.

. . . When John finally stopped spitting blood everywhere, I grabbed his face and told him to go to sleep. His eyes faded. I shoved him down back on his bed and stripped. I grabbed all his clothes and my clothes and started cleaning up the blood, not to get away with anything, just to buy time until I could do a proper farewell to my brothers. With all the bloody clothes, most of them were slung under his bunk, the rest stuffed in his drawer, I took a bath in the sink with his soap. I then rolled about three and a half grams into two sticks (joints) and smoked and listened [to music], and played [cards] until the doors were open

> for chow. Assuming people or officers were coming to see what the noise was earlier, I made my rounds. No one came. I grabbed my food and gave it away, locked my door so I could open it, and went back to hanging out. . . . Then came lunch. I ate, smoked again, and then tried to go to rec. I couldn't get on the yard, and so as I was tired and bored, I went and had to tell the officer hey I killed my bunkie. This was around 2:00 PM same day.

On June 28, 2018, Craven's jury found him guilty of first-degree [premeditated] murder. The penalty-phase proceeding was held the following day. After hearing witness testimony from the prosecutor in Craven's prior murder case, Craven's half[-]brother, and mental health experts for both Craven and the State, and arguments from the State and Craven, the jury unanimously found that the State had proven the following aggravating factors beyond a reasonable doubt: (1) Craven was previously convicted of a felony and under sentence of imprisonment; (2) Craven was previously convicted of another capital felony or of a felony involving the use of violence to another person; (3) the first-degree murder was especially heinous, atrocious, or cruel (HAC); and (4) the first-degree murder was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification (CCP). The jury unanimously concluded that the aggravating factors were sufficient to warrant a possible sentence of death and that the aggravating factors outweighed the mitigating circumstances. Ultimately, the jury unanimously concluded that Craven should be sentenced to death.

After holding a *Spencer* [*v. State*, 615 So. 2d 688 (Fla. 1993)] hearing, at which Craven presented additional mitigation, including his medical, school, and Department of Corrections records, the trial court sentenced Craven to death. In so doing, the trial court made its own findings with respect to the aggravation

and mitigation. Specifically, the trial court found and assigned the noted weight to the following statutory aggravating factors: (1) the capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment (some weight); (2) prior violent felony based on Craven's prior conviction for first-degree murder with a weapon, a capital felony (very great weight); (3) the first-degree murder of Anderson was especially heinous, atrocious, or cruel (very great weight); and (4) the first-degree murder of Anderson was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification (very great weight). The trial court found these four aggravating factors "sufficient to warrant the death penalty."

Under the catchall statutory mitigating circumstance of any factors in the defendant's background that would mitigate against the imposition of the death penalty, *see* § 921.141(7)(h), Fla. Stat. (2017), the trial court found that the following mitigating circumstances had been established by the greater weight of the evidence and assigned them the noted weight: (1) chaotic and dysfunctional upbringing (significant weight); (2) no evidence of biological father present in Craven's life (some weight); (3) Craven is able to maintain meaningful relationships (slight weight); (4) Craven has mental health issues (significant weight); and (5) Craven maintained appropriate courtroom behavior (little weight). The trial court rejected Craven's proposed mitigating circumstance that he had maintained employment prior to his incarceration, finding that Craven failed to establish this mitigating circumstance by the greater weight of the evidence.

The trial court sentenced Craven to death, finding that "the aggravating factors far outweigh the mitigating circumstances." The trial court also compared Craven's case to "other factually similar cases" and concluded that "the death penalty is not disproportionately applied to [Craven]."

Craven v. State, 310 So. 3d 891, 895-98 (Fla. 2020) (omissions and some alterations in original) (footnotes omitted). We affirmed Craven's conviction and sentence on direct appeal. *Id.* at 895.

II. INITIAL POSTCONVICTION APPEAL

In 2022, Craven filed his initial motion for postconviction relief under Florida Rule of Criminal Procedure 3.851. After holding an evidentiary hearing on a number of claims, the circuit court denied relief. Craven now appeals that denial, raising the following issues.

A. Ineffective Assistance of Counsel During Jury Selection

Craven first argues that the circuit court erred in summarily denying his claim that counsel was ineffective for failing to request the court reporter read back prior statements made by Juror Willie Ford during jury selection. "A court may summarily deny a postconviction claim when the claim is legally insufficient, procedurally barred, or refuted by the record." *Morris v. State*, 317 So. 3d 1054, 1071 (Fla. 2021) (quoting *Matthews v. State*, 288 So. 3d 1050, 1060 (Fla. 2019)). This Court's review of summarily denied claims is de novo. *Henyard v. State*, 992 So. 2d 120, 125 (Fla. 2008).

During jury selection, Craven sought to exercise a peremptory

strike on Ford, who is black. When the State objected, Craven relied on Ford's earlier statement that premeditation would warrant the death penalty, although Ford also indicated that his decision would depend on the circumstances. The State believed that Craven was confusing Ford with another prospective juror and suggested that the court review "the court reporter's notes"—i.e., request a readback. Without review of the record, the trial court denied the strike, concluding that Craven had not established a genuine race-neutral basis because the court's own notes did not reflect that Ford could not be fair, would automatically vote for a death sentence, or was strongly in favor of the death penalty.

The circuit court correctly concluded that this claim is procedurally barred. Postconviction proceedings are not to be used as a second appeal, and it is inappropriate to use a different argument to relitigate the same issue. *Medina v. State*, 573 So. 2d 293, 295 (Fla. 1990). On direct appeal, Craven argued that a readback of Ford's voir dire responses would have shown that his proffered reason for the strike was genuine. In this proceeding, Craven argues that counsel was ineffective for failing to request such a readback. The substance of the claim is the same. Thus, it

is procedurally barred.

The circuit court also correctly concluded that this claim fails on the merits. On direct appeal, this Court acknowledged that Ford initially said that the death penalty was appropriate for premeditated murder but concluded that the trial court's denial of the strike rested on its determination that Craven's proffered reason for the strike was not genuine because he did not treat Ford the same way he treated similarly situated non-black prospective jurors. *Craven*, 310 So. 3d at 901-02. A readback of Ford's voir dire responses would not have altered that analysis, because, as we concluded on direct appeal, "the record indisputably shows that Craven did, in fact, treat juror Ford differently." *Id.* at 902.

Moreover, during jury selection the State suggested that the trial court ask for a readback. Counsel cannot be deemed deficient for failing to make a suggestion already before the court. And because there is no reasonable probability that a request from counsel for a readback would have changed the trial court's ruling, Craven cannot establish prejudice.

B. *Giglio/Napue* Violation

Craven next asserts that the circuit court erred in summarily

denying his claim that the State violated *Giglio v. United States*, 405 U.S. 150 (1972), and *Napue v. Illinois*, 360 U.S. 264 (1959), by knowingly presenting false testimony that Craven was eleven months old—rather than one year and ten months old—when he was first removed from the home of his biological mother, Donna Tucker, and placed into foster care in November 1987.

The circuit court correctly concluded that this claim was procedurally barred because it could have been raised on direct appeal. Craven contends that this claim could not have been raised on direct appeal because the falsity of the challenged testimony was not apparent from the direct appeal record due to the redaction of his birthdate. The record refutes that assertion. Craven's date of birth, January 20, 1986, is documented multiple times in the direct appeal record. The record also reflects that Craven was placed in "a licensed foster home" in November 1987. Thus, the documents in the record clearly show that Craven was approximately one year and ten months old when he was removed from Tucker's home in November 1987. A postconviction claim of a violation of *Giglio* is procedurally barred if the facts supporting the claim were available at the time of the direct appeal. *Allen v. State*, 261 So. 3d 1255,

1286 (Fla. 2019). Because the facts supporting this claim are contained in the direct appeal record, it could have been raised on direct appeal and is now procedurally barred.

Even if the claim were not procedurally barred, the circuit court correctly concluded that it lacks merit. To establish a violation of *Giglio* or *Napue*, a defendant must demonstrate (1) false testimony was presented at trial; (2) the prosecutor knew that testimony was false; and (3) the testimony was material. *Glossip v. Oklahoma*, 604 U.S. 226, 246 (2025) (explaining that to establish a *Napue* violation a defendant must show that the prosecution knowingly solicited false testimony or knowingly allowed it to go uncorrected when it appeared and that a new trial is warranted so long as the false testimony may have had an effect on the outcome of the trial—i.e., if there is any reasonable likelihood that it could have affected the judgment of the jury); *Truehill v. State*, 358 So. 3d 1167, 1183 (Fla. 2022) ("To establish a *Giglio* violation, a defendant must demonstrate: '(1) the testimony given was false; (2) the prosecutor knew the testimony was false; and (3) the statement was material.' " (quoting *Guzman v. State*, 868 So. 2d 498, 505 (Fla. 2003))). Even assuming that the challenged testimony was false

and that the State knew it was false, Craven cannot establish materiality. False testimony is material "if there is any reasonable possibility that it could have affected the jury's verdict." *Green v. State*, 975 So. 2d 1090, 1106 (Fla. 2008).

Craven has not established that testimony placing his first removal from Tucker's home at eleven months old rather than one year and ten months old was material. The trial court gave significant weight to the mitigating circumstance that Craven had a chaotic and dysfunctional upbringing and expressly relied on testimony that he was repeatedly removed from Tucker's home. The difference between being removed at eleven months old and being removed at one year and ten months old does not undermine the mitigation presented at trial or the sentencing court's consideration of that mitigation. Moreover, in light of the four strong aggravating factors found by the jury and the trial court, there is no reasonable possibility that the challenged testimony affected either the jury's death recommendation or the sentence imposed. Accordingly, Craven is not entitled to relief on this claim.

C. Ineffective Assistance of Counsel During the Penalty Phase

Craven next argues that the circuit court erred in denying a

number of claims of ineffective assistance of trial counsel during the penalty phase. Each will be discussed in turn.

Under *Strickland v. Washington*, 466 U.S. 668, 686-88 (1984), a defendant alleging that he or she received ineffective assistance of counsel has the burden to demonstrate that counsel's performance fell below an objective standard of reasonableness. To prevail on a claim of ineffective assistance of counsel, a defendant must show both that trial counsel's performance was deficient, and that the deficient performance prejudiced the defendant. *Id.* at 687. As to the first prong, the defendant must establish "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.*

> However, *Strickland* cautions that "[a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." 466 U.S. at 689. We must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.' " *Id.* (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)).

Hayward v. State, 183 So. 3d 286, 297 (Fla. 2015) (alteration in

original).

Generally, a court reviewing the second prong must determine whether "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "Where the defendant claims counsel rendered ineffective assistance in the penalty phase, 'the question is whether there is a reasonable probability that, absent the errors, the sentencer . . . would have concluded that the balance of aggravating and mitigating circumstances did not warrant death.' " *Hayward*, 183 So. 3d at 297 (omission in original) (quoting *Strickland*, 466 U.S. at 695). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

Finally, "there is no reason for a court deciding an ineffective assistance claim . . . to address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 697.

1. Mitigation Investigation/Failure to Obtain the Complete Dependency File

Craven contends that the circuit court erred in denying his claim that counsel was ineffective for failing to conduct a thorough

mitigation investigation that would have revealed his "true life history." Specifically, Craven argues that counsel should have obtained his complete dependency file,[1] which he contends contained additional information regarding his removal from Tucker's home, repeated returns to her custody, childhood abuse and neglect, and other mitigating aspects of his upbringing. We find no error in the circuit court's denial of this claim because Craven has failed to establish prejudice.[2]

Before trial, counsel obtained a ten-page "Predisposition Study for Dependency"—which was a part of the complete dependency file—on which she and the defense expert, Julie Harper, Psy.D, relied in presenting mitigation at trial. The jury heard extensive evidence about Craven's chaotic and dysfunctional upbringing,

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1. Records related to Craven's dependency are variably or alternately referred to in the records and pleadings as HRS/DCF/dependency/foster care records/court files. For simplicity's sake, our reference to the "complete dependency file" is intended to include any such records or files related to Craven's dependency proceedings or placements.

2. Craven argues in a separate issue that the trial court erred in denying his claim that counsel was ineffective for failing to obtain his dependency court file from the Volusia County Clerk. We consider that claim to be subsumed within this issue.

childhood abuse and neglect, repeated removals from caregivers, attachment disruptions, mental health difficulties, and PTSD-related symptoms. The sentencing court found and assigned significant weight to the mitigating circumstance that Craven had a chaotic and dysfunctional upbringing and significant weight to the mitigating circumstance that Craven had mental health issues.

Although the evidence presented at the evidentiary hearing demonstrated that the complete dependency file would have allowed the defense experts to provide more examples and greater context regarding Craven's childhood experiences, the postconviction evidence was largely cumulative of the mitigation presented to the jury and sentencing court. "[T]rial counsel is not ineffective for failing to present cumulative evidence." *Covington v. State*, 348 So. 3d 456, 471 (Fla. 2022) (quoting *Wheeler v. State*, 124 So. 3d 865, 881 (Fla. 2013)); *see Dufour v. State*, 905 So. 2d 42, 61 (Fla. 2005) (holding that defendant failed to establish prejudice where additional mitigating evidence did not substantially differ from that presented during the penalty phase).

Moreover, any additional detail regarding mitigation that could have been presented if trial counsel had the complete dependency

file must be considered in light of the aggravation present in this case. The jury and trial court found four aggravating factors. Three of those—HAC, CCP, and prior violent felony (based on a prior first-degree murder conviction)—were afforded very great weight and are among the weightiest aggravators in Florida's capital sentencing scheme. *Hodges v. State*, 55 So. 3d 515, 542 (Fla. 2010) (prior violent felony and HAC); *Wade v. State*, 41 So. 3d 857, 879 (Fla. 2010) (HAC and CCP). The trial court found no statutory mitigating circumstances and five nonstatutory mitigating circumstances, ultimately concluding that the aggravating factors far outweighed the mitigating circumstances.

Given the substantial aggravation present in this case and the largely cumulative nature of the additional mitigation presented during the postconviction proceedings, Craven has not established that there is a reasonable probability that he would have received a life sentence had counsel obtained the complete dependency file. Accordingly, he is not entitled to relief on this claim.

2. Prenatal Exposure to Toxins

Craven next argues that counsel was ineffective for failing to elicit testimony that Craven was prenatally exposed to toxins that

cause developmental delays and cognitive impairments. No evidence was produced at trial that Craven was prenatally exposed to toxins—specifically, drugs or alcohol—that cause developmental delays or cognitive impairments. And the only evidence presented at the evidentiary hearing that Tucker used drugs or alcohol during her pregnancy with Craven was a one-page summary of an interview of Craven's alleged biological father, Tommy Avirett, which was conducted by a social worker for the Ninth Judicial Circuit Office of the Public Defender during Craven's prior murder case, for which he was serving his sentence when he murdered Anderson. That summary indicated that Avirett reported that Tucker "drank heavily during her pregnancy and likely used crack cocaine" and "after the pregnancy she became a complete 'crackhead.' " Robert Larr, the assistant public defender who represented Craven in his prior murder case, signed an affidavit stating that he provided the notes of Avirett's interview to trial counsel in 2017. But counsel testified at the evidentiary hearing that her office did not receive the notes from the interview of Avirett. Counsel also testified that although she was aware from the predisposition study that there was alcohol and drug use in Tucker's home, she had no concrete

evidence that Craven had developmental delays or cognitive impairments.

Arthur Becker-Weidman, Ph.D., an expert in child development and the effects of maltreatment on child development, testified at the evidentiary hearing that Craven suffered from Alcohol-Related Neurodevelopmental Disorder (ARND). The basis for his conclusion was that the records he reviewed "indicated that [Craven's] birth mother used, abused alcohol and abused drugs. And so we have *probable* prenatal exposure, we have developmental issues, and we have cognitive impairments, those are the main criteria for that assessment." (Emphasis added.) But the only concrete example given by Dr. Becker-Weidman that suggested a developmental delay was an indication in the records that Craven required speech therapy.

Gregory Prichard, Psy.D, a clinical psychologist and the State's expert at Craven's trial, testified at the evidentiary hearing that "ARND is very hard to identify unless you have really good data saying that the mother was consistently using significant alcohol in utero . . . ." The only clear reference Dr. Prichard saw to Tucker's substance use while pregnant with Craven was Avirett's allegation—

documented in the social worker's notes—that Tucker drank when she was pregnant with Craven. Dr. Prichard also stated that Craven's adoptive mother, Sharon Craven, remembered hearing that Tucker might have been using drugs while she was pregnant with Craven. Dr. Prichard did not observe that Craven had any physical abnormalities or intellectual disabilities. To the contrary, when Craven's intelligence was tested as a juvenile, it was found to be in the average intellectual range, and when it was tested in prison, his IQ was determined to be 115, which indicates high-average intelligence. Thus, Dr. Prichard found no support for a diagnosis of ARND or any other issue related to prenatal toxin exposure.

Significantly, nothing in the complete dependency file obtained by postconviction counsel indicated that Tucker used drugs or alcohol while she was pregnant with Craven. Thus, Dr. Becker-Weidman's ARND diagnosis appears to be based solely on speculation that because Craven's mother was known to be a drug and alcohol abuser, it is "probable" that she was using drugs and alcohol while she was pregnant with Craven.

Moreover, the predisposition study that trial counsel had at

the time of the trial contained information that cuts against the suggestion that Tucker was using alcohol or hard drugs during her pregnancy. The predisposition study indicates that Craven's older, biological half-siblings, Jason and Jennifer, reported that Tucker was using drugs and drinking heavily in late 1987, when Craven was one year and ten months old. Jason and Jennifer reported that Tucker and Avirett had been using crack cocaine for the preceding year—i.e., beginning in late 1986, when Craven was approaching one year of age—and before that, Tucker occasionally used marijuana. Thus, the evidence trial counsel had suggests that Tucker was not using drugs, except possible occasional marijuana use, when she was pregnant with Craven.

We agree with the circuit court that counsel's performance was not deficient for failing to elicit testimony regarding prenatal exposure to drugs or alcohol. Counsel had no competent evidence that Tucker used alcohol or drugs while pregnant with Craven.[3] Nor was there evidence that Craven suffered developmental delays

3. It was not established at the evidentiary hearing if trial counsel's failure to receive the notes of the Avirett interview was due to a technical glitch or the negligence of one of the parties involved in the alleged transfer of this document.

or cognitive impairments attributable to prenatal exposure to drugs or alcohol. On the contrary, counsel had Craven evaluated for brain damage, which produced negative results, and multiple tests reflected that Craven possessed average or high-average intellectual functioning. Moreover, any testimony at trial that Tucker used drugs or alcohol during her pregnancy with Craven would have been based on inadmissible double hearsay or speculation, and "[p]ostconviction relief cannot be based on speculation or possibility," *Maharaj v. State*, 778 So. 2d 944, 951 (Fla. 2000), including assumed facts that have not been proven. Under these circumstances, we cannot conclude that counsel's performance fell below an objective standard of reasonableness in not presenting a mitigation theory that lacked evidentiary support.

Further, Craven was not prejudiced by counsel's failure to elicit testimony that Craven was prenatally exposed to toxins that cause developmental delays and cognitive impairments. Even assuming that counsel could have obtained and presented some admissible evidence that Craven was prenatally exposed to drugs and alcohol, the postconviction evidence failed to establish that any possible prenatal exposure to drugs or alcohol adversely affected

Craven's cognitive or developmental functioning. Considering that the jury was aware of the substance abuse in Tucker's home and Craven's chaotic and dysfunctional upbringing, there is no reasonable probability that evidence of prenatal exposure to drugs or alcohol would have resulted in a life sentence. Craven has therefore failed to establish prejudice.

3. Age when First Removed from Tucker's Home

Craven next argues that the circuit court erred in denying his claim that counsel was ineffective for failing to establish that Craven was one year and ten months old, rather than eleven months old, when he was first removed from Tucker's home and placed in foster care.

On the copy of the dependency predisposition study that was used for trial, trial counsel made a notation indicating that Craven was eleven months old when he was removed from Tucker's home in November 1987. This notation was based on a miscalculation of Craven's age at that time by trial counsel. Neither the trial experts nor the State calculated Craven's age independently or caught the error.

During the postconviction evidentiary hearing, Dr. Harper and Dr. Prichard admitted their errors in testifying at trial that Craven was eleven months old when he was removed from Tucker's home in November 1987. Dr. Harper testified that a child's removal from a home and caregiver at one year and ten months old differs from removal at eleven months old because the child has had greater exposure to the home environment and more opportunity to develop attachments to caregivers. Dr. Harper also explained that because of the mistake about Craven's age in November 1987, she believed at the time of trial that Craven was only briefly with Tucker and briefly in foster care with the Smith family before being placed with the Cravens, when in fact he spent more time with Tucker and the Smiths than she previously thought.

James Garbarino, Ph.D., an expert in developmental psychology, testified at the evidentiary hearing that an investigation done in the early 1990s by ABC News of Romanian orphanages revealed that one of the biggest factors in the failure of the adoptions was the length of time the orphans spent in the orphanages. Based on the outcomes of these Romanian orphans in the 1990s, Dr. Garbarino concluded that the twenty-two months

that Craven spent in his biological mother's home before the first removal "becomes highly relevant."

We agree with the circuit court that counsel's miscalculation of Craven's age at the time of the November 1987 removal from Tucker's home does not establish deficient performance under *Strickland*. We cannot conclude that the small error in counsel's calculation of Craven's age at that time is the type of error that is so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment.

Craven has also failed to demonstrate that he was prejudiced by the error. Although Dr. Harper and Dr. Garbarino testified at the evidentiary hearing that Craven's removal at one year and ten months would have been different than removal at eleven months because of the additional exposure to a dysfunctional environment, neither expert testified specifically how those eleven additional months of exposure to Tucker's home resulted in a worse outcome for Craven. Rather, their testimony established only the general proposition that longer exposure to a negative environment may result in greater harm. Moreover, the jury and trial court were already presented with extensive evidence about Craven's chaotic

and dysfunctional upbringing, including repeated removals from Tucker's care, instability in placement, abuse, neglect, and attachment disruptions. The trial court gave significant weight to the mitigating circumstance that Craven had a chaotic and dysfunctional upbringing. We cannot conclude that, had the jury been aware that Craven remained in Tucker's care until he was one year and ten months old rather than eleven months old, there is a reasonable probability that the balance of aggravating and mitigating circumstances would have changed. Thus, Craven is not entitled to relief on this claim.

4. Return to Tucker's Home and Open Adoption

Next, Craven argues that the circuit court erred in denying his claim that trial counsel was ineffective for failing to elicit testimony that after being adopted by the Cravens, Craven briefly lived with Tucker during his teenage years and was significantly influenced by the open nature of his adoption. Craven contends that this testimony would have contradicted Dr. Prichard's trial testimony that Craven did not have substantial contact with his biological family after his adoption and would have undermined his portrayal of Craven's post-adoption upbringing as loving and supportive. But

Craven made no attempt to explain why this amounted to deficient performance or why there is a reasonable probability that had the jury been informed that Craven lived with Tucker after his adoption and was somehow "significantly influenced by the open adoption," he would have received a life sentence.

Even if eliciting testimony that Craven briefly lived with Tucker as a teenager would have undermined Dr. Prichard's testimony that Craven had little contact with his biological family after the adoption and his portrayal of Craven's post-adoption life as loving and supportive, Craven has failed to show that counsel's failure to do so rendered her performance deficient such that she was not acting as the counsel guaranteed by the Sixth Amendment. Nor has Craven established that had Dr. Prichard been impeached on this aspect of his testimony, there is a reasonable probability that he would have received a life sentence. Craven is therefore not entitled to relief.

5. Removal from Homes/Families

Craven next argues that the circuit court erred in denying his claim that trial counsel was ineffective for failing to elicit testimony that he suffered trauma from being repeatedly removed from his

homes and caregivers before his adoption.

After Craven was removed from Tucker's home at one year and ten months old, he was placed with the Smith family for approximately eighteen months. He was then, at the request of Mrs. Smith, removed from the Smith home and placed with the Cravens. The Cravens initally fostered him for three and a half years before Tucker's parental rights, which had been terminated, were reinstated on appeal. After another year with Tucker, Craven was removed again and placed back with the Cravens before his ultimate adoption.

At trial, Dr. Harper testified that Craven's multiple placements resulted in trauma and "disruption of attachment" during a developmentally critical period. Dr. Harper explained that disruption of attachment affects an individual's ability to regulate emotions and form healthy relationships throughout life.

Additional testimony regarding the trauma caused by Craven's multiple placements was presented at the evidentiary hearing. There was testimony that Sharon Craven had written a letter to the dependency court stating that Craven was "distraught" by his removal from Mrs. Smith. Dr. Becker-Weidman testified that

moving Craven from the Smiths to the Cravens would have been traumatic simply because the Craven home was his third home. When asked why the letter that Sharon wrote to the dependency court was not addressed by Dr. Harper at trial, trial counsel testified that she provides the relevant records to her experts and allows them to determine which aspects of the records to emphasize in their testimony.

Although Dr. Harper thoroughly discussed the caregiver disruption in her trial testimony, she testified at the evidentiary hearing that the complete dependency file provided greater detail than she had at trial regarding Craven's placement with the Smith family and would have allowed her to testify more specifically about the trauma associated with that separation. Dr. Garbarino described Craven's return to Tucker at age six and a half as "devastating." In denying relief on this claim, the circuit court concluded that evidence was introduced at trial that Craven was traumatized by the multiple removals, and trial counsel was not ineffective for failing to present more evidence of the trauma suffered after each removal.

We agree that trial counsel did not render deficient

performance because she did elicit testimony that Craven's repeated removals caused trauma and disruption of his ability to form secure attachments during a critical developmental period. *See Banks v. State*, 219 So. 3d 19, 29 (Fla. 2017) ("Counsel cannot be considered deficient for failing to do what he actually did."). Although the complete dependency file would have permitted Dr. Harper to testify more specifically about Craven's attachment to the Smiths and the effects of his removal from that placement, the postconviction evidence merely provided additional details and examples supporting mitigation already presented at trial. "As this Court has held, . . . 'trial counsel is not ineffective for failing to present cumulative evidence.' " *Covington*, 348 So. 3d at 471 (quoting *Wheeler*, 124 So. 3d at 881).

Craven also was not prejudiced by any failure to present cumulative evidence. *See Dufour*, 905 So. 2d at 61 (holding that defendant failed to demonstrate prejudice where additional mitigating evidence did not substantially differ from that presented during the penalty phase). The trial court gave significant weight to the mitigating circumstance that Craven had a "chaotic and dysfunctional upbringing" and significant weight to his "mental

health issues." Craven has not established that the additional details of his separation trauma would have affected the weighing of the aggravation and mitigation. Thus, we cannot conclude that there is a reasonable probability that additional details or examples of the effects of Craven's separation trauma would have resulted in a life sentence. *See Hilton v. State*, 326 So. 3d 640, 649 (Fla. 2021) ("Where the additional mitigation is minor or cumulative and the aggravating circumstances substantial, . . . confidence in the outcome of the penalty phase is not undermined.").

6. Complex Trauma

Craven next argues that the circuit court erred in denying his claim that trial counsel was ineffective for failing to elicit testimony that Craven did not receive consistent, long-term treatment to address his complex trauma condition.

At trial, Dr. Harper testified that Craven suffered from depression, a mood disorder, borderline personality disorder mixed with major depressive disorder, narcissism, and PTSD. She disagreed with previous diagnoses of bipolar disorder, anxiety disorder not otherwise specified, and antisocial personality disorder. Dr. Harper explained that there were concerns about the effects of

Craven's childhood abuse and neglect dating back to the earliest dependency proceedings in November 1987, that Craven experienced mental health issues beginning in childhood, that he was prescribed psychoactive medication at an early age, and that he was hospitalized as an inpatient numerous times during his childhood and adolescence and had three additional inpatient stays in crisis units as an adult. Dr. Harper also testified that Craven suffered cumulative trauma as a result of the childhood abuse and neglect.

At the evidentiary hearing, Dr. Harper testified that, after reviewing the additional dependency records she was provided for the postconviction proceedings, she would concur with the postconviction experts that Craven suffers from complex trauma. Dr. Harper explained that although she used the term " 'cumulative' trauma" at Craven's trial, that term "alludes to complex trauma." She further explained that her trial testimony essentially conveyed that Craven had complex trauma, even though she used the term "cumulative trauma." Dr. Becker-Weidman also testified at the evidentiary hearing that he diagnosed Craven with complex trauma. Dr. Prichard disagreed with that diagnosis.

Craven has failed to establish deficiency or prejudice here. Trial counsel presented extensive testimony regarding Craven's mental health, his repeated childhood trauma, and the cumulative effects of that trauma. Although Dr. Harper later testified at the evidentiary hearing that she would concur in a diagnosis of complex trauma, she explained that her trial testimony had already essentially conveyed that Craven had complex trauma, even though she did not identify it by that name. We cannot conclude that trial counsel rendered deficient performance by failing to present the same mitigation under a different diagnostic label.

Nor can we conclude that Craven has established prejudice. Trial counsel presented evidence that Craven experienced mental health problems beginning in childhood and received mental health treatment throughout his life, including medication, inpatient hospitalizations, and crisis-unit admissions. Although Craven contends that counsel should have elicited testimony that he did not receive consistent, long-term treatment to specifically treat his complex trauma, he has not established a reasonable probability that such testimony would have resulted in a life sentence. Accordingly, he is not entitled to relief on this claim.

7. Failure to Retain a Child Development Expert

Craven next argues that the circuit court erred in denying his claim that trial counsel was ineffective for failing to retain a childhood development expert to explain Craven's childhood trauma.

At the evidentiary hearing, Dr. Becker-Weidman testified that Craven suffers from ARND and complex trauma, and that he has an Adverse Childhood Experiences (ACE) score of eight out of ten.

Trial counsel testified at the evidentiary hearing that she selected Dr. Harper to present the evidence of Craven's childhood trauma because Dr. Harper was already familiar with Craven, Craven does not respond well to males, and counsel had previously worked with Dr. Harper in a similar case and found her to be well received by the jury. Trial counsel testified that although childhood trauma was a part of the defense theory, the main focus was Craven's moral code.

In rejecting this claim, the circuit court concluded that the fact that a postconviction expert provided more favorable testimony than a trial expert is not reason enough to deem trial counsel deficient. The circuit court also concluded that Craven failed to show that had

trial counsel presented Dr. Becker-Weidman at the penalty phase, Craven would have received a life sentence. We find no error in these conclusions.

Trial counsel's decision to present Craven's childhood trauma through Dr. Harper rather than a child development expert was a reasonable, strategic choice. As the United States Supreme Court has recognized, "[t]he selection of an expert witness is a paradigmatic example of the type of 'strategic choic[e]' that, when made 'after thorough investigation of [the] law and facts,' is 'virtually unchallengeable.' " *Hinton v. Alabama*, 571 U.S. 263, 275 (2014) (second and third alterations in original) (quoting *Strickland*, 466 U.S. at 690). Craven has not established prejudice because he does not explain what testimony a child development expert would have provided that Dr. Harper could not have presented. Rather, he argues that Dr. Harper herself could have testified differently had she been provided the complete dependency file. Thus, this claim largely collapses into Craven's previous rejected claim that trial counsel was ineffective for failing to obtain the complete dependency file. Moreover, this Court has repeatedly stated that "[t]rial counsel is not deficient because the defendant is able to find

postconviction mental health experts that reach different and more favorable conclusions than the mental health experts consulted by trial counsel." *Covington*, 348 So. 3d at 468 (alteration in original) (quoting *Diaz v. State*, 132 So. 3d 93, 113 (Fla. 2013)). Craven is not entitled to relief.

8. Failure to Retain Dr. Garbarino

Craven next argues that the circuit court erred in denying his claim that trial counsel was ineffective for failing to retain Dr. James Garbarino to assist in preparing to cross-examine Dr. Prichard.[4] During the penalty phase, trial counsel asked Dr. Prichard whether he agreed that the majority of participants in Dr. Garbarino's research who were facing murder charges had childhoods similar to Craven's. Dr. Prichard disagreed, testifying that the majority of those participants had a history that was "a lot worse" than Craven's.

4. Although Craven argued in his motion for postconviction relief that trial counsel was ineffective for failing to present Dr. Garbarino as a witness, on appeal he limits his argument to trial counsel's failure to consult with Dr. Garbarino in preparing to cross-examine Dr. Prichard. We therefore address only that claim.

At the evidentiary hearing, Dr. Garbarino testified that the average participant in his research had an ACE score of seven and disagreed with Dr. Prichard's testimony that the majority of those participants had histories that were much worse than Craven's. Craven therefore contends that trial counsel should have confronted Dr. Prichard with this information during cross-examination.

Craven has not established that counsel performed deficiently or that he was prejudiced by her decision not to retain Dr. Garbarino. Craven does not explain why trial counsel would have needed to consult with Dr. Garbarino in order to prepare to cross-examine Dr. Prichard on this point. Trial counsel testified at the evidentiary hearing that she could have obtained the average ACE score of Dr. Garbarino's research participants from his publications. Thus, declining to retain Dr. Garbarino to assist in preparing to cross-examine Dr. Prichard did not render counsel's performance deficient. Nor has Craven established a reasonable probability that he would have received a life sentence had counsel retained Dr. Garbarino. Accordingly, he is not entitled to relief on this claim.

9. Cross-Examination of Dr. Prichard

Craven next argues that the circuit court erred in denying his claim that trial counsel was ineffective for failing to effectively cross-examine Dr. Prichard. In his postconviction motion, however, Craven alleged that trial counsel could have established all ten ACE factors through the predisposition study and the other records she possessed at trial, even without consulting Dr. Garbarino or obtaining the complete dependency file.

On appeal, Craven contends that the postconviction court erred in concluding that this allegation undermined his other ineffective-assistance theories that were premised on trial counsel's failure to obtain the complete dependency file because the additional dependency records contained information beyond the ACE factors. But Craven continues to argue that trial counsel should have used the predisposition study to establish Craven's ACE factors and impeach Dr. Prichard's testimony concerning Dr. Garbarino's research participants.

Craven has not established entitlement to relief. Trial counsel testified at the evidentiary hearing that she could have confronted Dr. Prichard with the information regarding the average ACE score

of Dr. Garbarino's research participants, but chose not to do so. Counsel explained that the primary defense theory was that the trigger for the murder was Craven's moral code rather than his traumatic childhood. Counsel further testified that she wanted the jury to hear Dr. Prichard characterize Craven's childhood as not particularly traumatic in order to undermine his credibility in light of the testimony regarding the severe trauma that Craven endured. Craven has not overcome the strong presumption that counsel's strategic decision was reasonable. Nor has he demonstrated a reasonable probability that the additional cross-examination would have resulted in a life sentence. Accordingly, Craven is not entitled to relief on this claim.

10. Cumulative Error

As the final claim in his appeal from the denial of his initial motion for postconviction relief, Craven argues that the cumulative effect of the circuit court's errors has resulted in a denial of his fundamental rights under the United States and Florida Constitutions. Because Craven has not demonstrated error, deficiency, or prejudice as to any of his claims, the claim of cumulative error fails. *See, e.g.*, *Whitton v. State*, 161 So. 3d 314,

333 (Fla. 2014) ("As discussed above, Whitton is not entitled to relief on any of his claims and is therefore not entitled to relief based on cumulative error.").

III. SUCCESSIVE POSTCONVICTION APPEAL

During the pendency of the appeal of the denial of his initial motion for postconviction relief in this Court, Craven filed a successive motion for postconviction relief in the circuit court, which centered on alleged newly discovered evidence of a "bona fide" seizure disorder and brain damage. We temporarily relinquished jurisdiction for resolution of the successive motion by the circuit court. Related to his successive motion, Craven also filed in the circuit court a request for additional public records from FDC and a motion to transport for imaging/testing. After hearing arguments from the parties, the circuit court entered orders denying Craven's successive motion for postconviction relief, public records request, and motion to transport. Craven appealed, and we ordered supplemental briefing, in which Craven raised the following issues.

A. Newly Discovered Evidence of a Seizure Disorder and CTE

Craven first argues that the circuit court erred in summarily

denying his claim that he did not receive an individualized sentencing proceeding in violation of the Eighth and Fourteenth Amendments because the jury did not hear the alleged newly discovered evidence that he suffers from a seizure disorder and organic brain damage in the form of chronic traumatic encephalopathy (CTE).

In his successive motion, Craven alleged that although he has a long history of seizures, an evaluation conducted by neurologist Thomas Hyde, M.D., Ph.D., on February 28, 2025, constituted newly discovered evidence that he has been suffering from a bona fide seizure disorder since childhood, that his seizure disorder is related to his traumatic childhood and repeated head injuries in childhood and adolescence, and that his seizure disorder is contributing to organic brain damage, namely CTE. The circuit court rejected this claim as untimely, legally insufficient for failure to meet the requirements for newly discovered evidence, procedurally barred, and meritless.

Craven argues that the circuit court erred in summarily denying his newly discovered evidence claim. He contends that Dr. Hyde's evaluation constituted newly discovered evidence

establishing that he suffers from a bona fide seizure disorder and CTE resulting from his traumatic childhood and repeated head injuries and that, had the jury heard this evidence, there is a reasonable probability he would have received a life sentence.[5]

A motion for postconviction relief must be filed within one year of the date the defendant's conviction and sentence become final. Fla. R. Crim. P. 3.851(d)(1). Craven's convictions and sentences became final when the United States Supreme Court denied certiorari review of the direct appeal proceedings in 2021. *Craven v. Florida*, 142 S. Ct. 199 (2021); *see* Fla. R. Crim. P. 3.851(d)(1)(B) ("For the purposes of this rule, a judgment is final . . . on the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed."). The one-year time limit therefore expired in 2022. But there is an exception to the one-year time limit for motions alleging "the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not

5. Although Craven's successive motion characterized Dr. Hyde's evaluation as confirming a bona fide seizure disorder and providing a tentative diagnosis of CTE, his supplemental initial brief at times characterizes the evaluation more broadly as establishing that Craven has CTE.

have been ascertained by the exercise of due diligence." Fla. R. Crim. P. 3.851(d)(2)(A). According to Craven, the facts on which this claim is based are the "new" diagnoses of a bona fide seizure disorder and organic brain damage, specifically CTE, and the "notion" that his traumatic childhood contributed to his seizure disorder.

1. Seizure Disorder

Craven told Dr. Hyde that he has experienced approximately two seizures per month for the past thirty years. However, he alleged that he was not "diagnosed with a bona fide seizure disorder" until Dr. Hyde evaluated him. According to Craven, the "notion" that his "traumatic childhood history contributed to a developing and worsening seizure disorder" constituted newly discovered evidence—unknown at the time of his trial and not discoverable through due diligence.

Craven's seizure disorder is not newly discovered. Dr. Hyde wrote in his evaluation report that the records he reviewed documented that Craven had been diagnosed with a seizure disorder more than two decades earlier. Craven also told Dr. Hyde that on May 1, 2024, "he was diagnosed with non-epileptic

seizures." The record clearly refutes Craven's claim that his seizure disorder is newly discovered. Dr. Hyde's report does not indicate that he diagnosed Craven with a previously unknown seizure disorder. Dr. Hyde simply concluded that "within a reasonable degree of medical certainty, Mr. Craven has suffered recurrent witnessed episodes consistent with generalized motor tonic-clonic seizures." Because Craven has been aware of his seizure disorder for decades, it is not newly discovered, and the claim is untimely. Even if Craven had not been diagnosed until May 1, 2024, the claim would still be untimely because it was not filed within one year of that date. The claim is also procedurally barred because its factual basis was known, and Craven's history of seizures was presented to the jury at his trial.

To the extent that Craven argues that the alleged newly discovered evidence was the "notion" that his "traumatic childhood history contributed to a developing and worsening seizure disorder," he is still not entitled to relief. Dr. Hyde opined that Craven was at risk for a recurrent seizure disorder due to his history of multiple closed head injuries and alcohol and illicit substance use. He also noted a family history of seizures in Craven's father and sister.

Nothing in Dr. Hyde's report indicated that Craven's traumatic childhood contributed to his seizure disorder.

Further, it appears that a possible correlation between Craven's childhood trauma and seizure disorder was considered at trial by Dr. Harper. Dr. Harper testified at trial:

> [S]omeone has been concerned about the effect of abuse and neglect on [Craven] from the earliest allegations, November of 1987. The next kind of point in contact of concern was when he had the EEG done at age 9. It's an evaluation in case he may be having a seizure disorder, and the doctor's interpretation of that EEG included there is unusual wave activity, that if it were part of epilepsy is unusual, it's a rare kind of epilepsy; and if it is in a person that doesn't really have epilepsy, then it would be indicative of psychic problems such as a personality disorder with hysterical reactions and an anxiety state. So that's at age 9. So there's already a biological and psychological connection that's being observed medically.

Thus, this aspect of Craven's claim was also properly denied as procedurally barred because it was or could have been raised at trial.

This "notion" that Craven's "traumatic childhood history contributed to a developing and worsening seizure disorder" is also not of such a nature that Craven would probably receive a life sentence on retrial if the jury learns of the possibility that his

traumatic childhood could have contributed to his seizure disorder. The jury was aware of Craven's traumatic childhood and his history of seizures. The possibility that his traumatic childhood contributed to his seizure disorder is not the type of evidence that would convert a death recommendation to a life recommendation, especially in the presence of such weighty aggravating factors. Thus, this "notion" does not constitute newly discovered evidence and any part of the claim relying on it was properly denied as untimely, procedurally barred, and meritless.

2. CTE

Craven also claims that Dr. Hyde made a tentative CTE diagnosis, which constitutes newly discovered evidence so as to render his claim timely. But Dr. Hyde's report does not indicate that he made a tentative CTE diagnosis. The only statement made by Dr. Hyde in his report regarding CTE is that Craven's history of closed head injuries in childhood and adolescence "will produce lasting brain damage, and place [him] at high risk for the development of Chronic Traumatic Encephalopathy as he ages." Being at risk for developing a condition is not tantamount to being tentatively diagnosed with that condition pending confirmatory

testing. The record therefore refutes the existence of a tentative CTE diagnosis. Despite repeated references to his "CTE" or "tentative CTE diagnosis," Craven also acknowledges in his initial supplemental brief that Dr. Hyde did not render a tentative diagnosis but only stated that Craven is at high risk of developing CTE. *See* Suppl. Initial Br. of Appellant at 19-20 ("As Dr. Hyde explained in his report, Mr. Craven has had innumerable mild head injuries as an adolescent and young adult which cumulatively produce lasting brain damage and place Mr. Craven at a high risk for developing CTE." (footnote omitted)).

Even if there were a tentative or confirmed CTE diagnosis, Craven has not established the timeliness of this claim because he has not established the date on which CTE became capable of being diagnosed in living humans. It is the defendant's burden to establish the timeliness of a successive postconviction claim, but without credibly establishing the date on which his CTE claim became discoverable, Craven cannot establish that it was timely raised. Thus, the circuit court did not err in denying this claim as untimely. *See Damren v. State*, 397 So. 3d 607, 613 (Fla. 2023) (" 'It is incumbent upon the defendant to establish the timeliness of

a successive postconviction claim,' *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020), but without credibly offering the date on which his claims became discoverable, Damren has failed to establish that they were timely raised. Thus, the postconviction court did not err in denying Damren's motion as untimely.").

For these reasons, the circuit court properly denied Craven's claim that newly discovered evidence entitles him to postconviction relief.

B. As-Applied Method-of-Execution Challenge

Craven argues that the circuit court erred in summarily denying his claim that due to his seizure disorder and organic brain damage in the form of CTE, both lethal injection and electrocution pose an objectively intolerable risk of harm in violation of the Eighth Amendment. In his successive motion, he specifically challenged sections 922.10 and 922.105(3), Florida Statutes (2025). Section 922.10 states that "[a] death sentence shall be executed by electrocution, lethal injection, or a method not deemed unconstitutional in accordance with s. 922.105." And section 922.105(3) states that if electrocution or lethal injection is held to be unconstitutional or if the acquisition of chemicals necessary for

lethal injection becomes impossible or impractical, executions shall be carried out by a method not deemed unconstitutional.

In the circuit court, Craven alleged that Florida's lethal injection protocol would likely cause and then mask an epileptic seizure, thereby creating an objectively intolerable risk of harm in violation of the Eighth Amendment. He also argued that electrocution—which he characterizes as "the recommended alternative"—"is highly likely to exacerbate an underlying seizure disorder," which would also create an objectively intolerable risk of harm. The circuit court summarily denied the claim as untimely, procedurally barred, legally insufficient, and meritless.

On appeal, Craven does not explain how the circuit court erred in denying this claim. Instead, he repeats the request he made in his successive motion for "an evidentiary hearing to explore which method of execution is most appropriate and least likely to create 'an objectively intolerable risk of harm.' " Suppl. Initial Br. at 24-25 (quoting *Baze v. Rees*, 553 U.S. 35, 50 (2008)). But 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)). Craven did not identify such an alternative method of execution below and has not identified one on appeal. This failure to plead a known and available alternative method of execution renders his method-of-execution claim insufficiently pleaded. *See, e.g.*, *Valle v. State*, 70 So. 3d 530, 549-50 (Fla. 2011) (affirming denial of relief where claim was speculative and insufficiently pleaded). Craven is not entitled to an evidentiary hearing on an insufficiently pleaded claim, nor is he entitled to relief.

C. Public Records Request

Craven argues that the circuit court abused its discretion in denying his demand for additional public records in the form of videos of a January 14, 2025, altercation between inmates in the dayroom at Union Correctional Institution used by death row inmates, and the March 28, 2025, body camera footage of Lt. Covey and Craven discussing the January fight. FDC objected to the release of these records based on two statutory exemptions:

(1) under section 119.071(3), Florida Statutes (2025),[6] because the requested recordings were made inside a secure facility and their release could compromise security; and (2) under section 945.10(1), Florida Statutes (2025), because the records requested captured personal health information of other inmates and their release would violate the Health Insurance Portability and Accountability Act of 1996 (HIPAA). FDC also objected on the ground that Craven failed to demonstrate that the videos were relevant to a colorable claim for postconviction relief or that they would reasonably lead to the discovery of admissible evidence. FDC asserted that a possible seizure on January 14, 2025, could not provide a basis to attack Craven's 2018 conviction and sentence for Anderson's 2015 murder. The circuit court sustained the State's objections and denied Craven's request.

On appeal, Craven challenges the circuit court's ruling that the records are exempt under section 945.10 and its conclusion

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6. "Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security or firesafety of the facility or revealing security or firesafety systems . . . held by an agency is confidential and exempt from [section 119.07(1)]." § 119.071(3)(a), Fla. Stat.

that the records do not relate to a colorable claim for postconviction relief. Craven does not challenge the circuit court's determination that the records are exempt under section 119.071(3). Accordingly, he has abandoned any challenge to that independent ground for the denial of his request. Because that unchallenged ground independently supports the circuit court's denial of his request, we affirm without addressing his remaining arguments.

D. Motion to Transport for Imaging/Testing

Craven argues that the circuit court abused its discretion in denying his motion to transport Craven in order to undergo a blood flow PET scan, a non-contrast MRI DTI, a sleep-deprived EEG, and a prolonged EEG. Craven asserts, without elaboration, that he has shown both a particularized need for the testing and prejudice as a result of the denial of his motion. He claims that "the tests are 'necessary for experts to make a more definitive determination as to whether the defendant's brain is functioning properly and to provide their opinions about the extent of the defendant's brain damage.' " Suppl. Initial Br. at 28 (quoting *Rogers v. State*, 783 So. 2d 980, 999 (Fla. 2001)). Craven's argument is vague and entirely conclusory. He does not explain why he has a particularized need

for the testing or how the lack of testing has prejudiced him. Such "[v]ague and conclusory allegations on appeal are insufficient to warrant relief." *Heath v. State*, 3 So. 3d 1017, 1029 n.8 (Fla. 2009).

Dr. Hyde recommended a sleep-deprived EEG, a prolonged EEG, and a non-contrast MRI of the brain to look for "post-traumatic abnormalities" in Craven's brain. He stated that the prolonged EEG could capture subclinical epileptiform activity and that a blood flow PET scan would be useful to identify a focus of epileptic activity in Craven's brain.[7] But Dr. Hyde's "recommendation" of these tests "to evaluate" Craven's seizure disorder does not establish a particularized need, and Craven does not offer any further evidence of or explanation to support a particularized need for the testing.

Further, we reject Craven's assertion that he was prejudiced by the circuit court's denial of his motion. Even if the requested testing identified "post-traumatic abnormalities," "a focus of

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7. In his successive motion, Craven also claimed that a PET scan would measure dark matter deposits in his brain, "which would confirm a CTE diagnosis," but Dr. Hyde did not indicate that a PET scan could confirm a CTE diagnosis, nor does anything in the record indicate that CTE can be confirmed in a living human using a PET scan.

epileptic activity," or "subclinical epileptiform activity," the fact would remain that Craven's seizure-disorder claim is untimely, procedurally barred, and not based on newly discovered evidence. Accordingly, the denial of his request for additional testing to evaluate his seizure disorder did not prejudice him, and the circuit court did not err in denying this claim.

IV. PETITION FOR A WRIT OF HABEAS CORPUS

In his petition for a writ of habeas corpus, Craven raises two claims of ineffective assistance of appellate counsel.

A. Submission of Aggravators to Grand Jury

Craven first argues that appellate counsel was ineffective for failing to argue that the State failed to submit the proposed aggravating factors to the grand jury and have them included in the indictment in violation of Craven's rights under the Due Process Clause of the United States Constitution and article I, section 15 of the Florida Constitution. Craven acknowledges that this Court addressed the same argument in *Sanchez-Torres v. State*, 322 So. 3d 15, 23-24 (Fla. 2020), but asserts that *Sanchez-Torres* does not control because (1) the claim in that case had been raised as manifest injustice even though this Court treated it as an ineffective

assistance of appellate counsel claim; (2) the claim was not preserved in that case; and (3) the claim was too novel in that case, but here the argument was raised as ineffective assistance of appellate counsel, was preserved, and is no longer novel.

Craven's attempt to distinguish *Sanchez-Torres* is unpersuasive because we treated the claim in that case as one of ineffective assistance of appellate counsel, just as Craven presents his claim here. Craven is correct that the issue of whether aggravating factors must be presented to a grand jury is no longer novel. This Court has repeatedly rejected claims arguing that a charging instrument must allege the aggravating factors that render a defendant eligible for a sentence of death. *E.g.*, *Cruz v. State*, 320 So. 3d 695, 730 (Fla. 2021); *Sanchez-Torres*, 322 So. 3d at 23; *Hall v. State*, 246 So. 3d 210, 217 (Fla. 2018); *Pham v. State*, 70 So. 3d 485, 496 (Fla. 2011); *Miller v. State*, 42 So. 3d 204, 215 (Fla. 2010); *Rogers v. State*, 957 So. 2d 538, 554 (Fla. 2007). That the issue was preserved in this case does not support the claim that appellate counsel was ineffective for failing to raise it in Craven's direct appeal because appellate counsel cannot be deemed ineffective for failing to raise a meritless issue on appeal, *Armstrong v. State*, 862

So. 2d 705, 718 (Fla. 2003), whether it is preserved or not. Craven is thus not entitled to relief on this claim.

B. Victim Impact Evidence During the Guilt Phase

Craven also asserts that appellate counsel was ineffective for failing to raise on appeal that victim impact evidence was introduced during the guilt phase of the trial. The alleged victim impact evidence consisted of testimony that the victim, Anderson, was referred to as "Rev"—because he was always preaching the Bible, led a Bible study group, and had been ordained during his time in prison—and that he was a pleasant and easygoing guy.[8] Although no objection was made to this testimony at trial, Craven claims that appellate counsel should have argued on appeal that its admission constituted fundamental error. Craven is not entitled to relief for several reasons.

Any claim that victim impact evidence was improperly introduced during the guilt phase would have been meritless, and appellate counsel cannot be deemed ineffective for failing to raise a meritless issue on appeal, *Armstrong*, 862 So. 2d at 718. "Victim

8. The trial transcript contains no reference to Anderson being an easygoing guy, as Craven asserts.

impact evidence" is "designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death." § 921.141(8), Fla. Stat. (2017). None of the testimony identified by Craven was offered to demonstrate Anderson's uniqueness or the resultant loss to the community's members by his death. Rather, it was used to identify the victim, explain the circumstances of his murder, and establish part of Craven's motive for his murder.

Additionally, because Craven did not object to any of this testimony at trial, it was not preserved for appellate review. *See Chamberlain v. State*, 881 So. 2d 1087, 1100 (Fla. 2004) (stating that to be preserved for appeal, the specific legal ground upon which a claim is based must be raised at trial). Appellate counsel cannot be deemed ineffective for failing to raise an unpreserved issue on direct appeal, unless the issue resulted in fundamental error. *Damas v. State*, 423 So. 3d 811, 824 (Fla. 2025). Fundamental error is error that reaches down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error. *Calhoun v. State*, 312 So. 3d 826, 855 (Fla. 2019). It cannot be said that the

verdict here could not have been obtained but for testimony that Anderson's nickname was "Rev," that he preached the Bible, that he was "pleasant," or that he had been ordained.

Because the testimony at issue was not victim impact evidence, the issue was unpreserved, and its admission did not constitute fundamental error, Craven is not entitled to relief.

V. CONCLUSION

For the above reasons, we affirm the denial of Craven's initial and successive motions for postconviction relief, his request for additional public records from FDC, and his motion to transport for imaging/testing. We also deny his petition for a writ of habeas corpus.

It is so ordered.

COURIEL, C.J., and LABARGA, MUÑIZ, GROSSHANS, FRANCIS, and BARRIOS, JJ., concur.
TANENBAUM, J., did not participate.

An Appeal from the Circuit Court in and for Jackson County,
Christopher N. Patterson, Judge
Case No. 322016CF000451CFAXMX
And an Original Proceeding – Habeas Corpus

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