# Supreme Court of Florida

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No. SC2026-1465

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**WILLIAM LEE THOMPSON,**
Appellant,

vs.

**STATE OF FLORIDA,**
Appellee.

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No. SC2026-1466

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**WILLIAM LEE THOMPSON,**
Petitioner,

vs.

**SECRETARY, DEPARTMENT OF CORRECTIONS,**
Respondent.

October 8, 2026

PER CURIAM.

William Lee Thompson, a prisoner under sentence of death for whom a death warrant has been signed and an execution scheduled

for October 13, 2026,[1] appeals the circuit court's order summarily denying his successive motion for postconviction relief filed under Florida Rule of Criminal Procedure 3.851. Thompson also moves for a stay of execution and petitions this Court for a writ of habeas corpus. We have jurisdiction. *See* art. V, §§ 3(b)(1), (9), Fla. Const. For the reasons that follow, we affirm the denial of postconviction relief and deny the petition for a writ of habeas corpus and motion for a stay of execution.

## I. BACKGROUND

Thompson was sentenced to death for the first-degree murder of Sally Ivester in 1976. This Court has recounted the facts of the case as follows:

> Thompson, Rocco Surace, Barbara Savage, and the victim Sally Ivester were staying in a motel room. The

1. On September 17, 2026, Governor DeSantis issued an executive order in which he appointed a commission under section 922.07, Florida Statutes (2026), of three psychiatrists to "examine [Thompson] to determine whether he understands the nature and effect of the death penalty and why it is to be imposed upon him" and ordered the execution "scheduled for October 13, 2026 at 6:00 p.m. . . . temporarily stayed pending receipt of the Commission's report." Fla. Exec. Order No. 26-192, at §§ B, E (Sep. 17, 2026). The executive order has "temporarily stayed" Thompson's execution pending the completion of the process contemplated by section 922.07. *Id.* at § E.

> girls were instructed to contact their homes to obtain money. The victim received only $25 after telling the others that she thought she could get $200 or $300. Both men became furious. Surace ordered the victim into the bedroom, where he took off his chain belt and began hitting her in the face. Surace then forced her to undress, after which . . . Thompson began to strike her with the chain. Both men continued to beat and torture the victim. They rammed a chair leg into the victim's vagina, tearing the inner wall and causing internal bleeding. They repeated the process with a night stick. The victim was tortured with lit cigarettes and lighters, and was forced to eat her sanitary napkin and lick spilt beer off the floor. This was followed by further severe beatings with the chain, club, and chair leg. The beatings were interrupted only when the victim was taken to a phone booth, where she was instructed to call her mother and request additional funds. After the call, the men resumed battering the victim in the motel room. The victim died as a result of internal bleeding and multiple injuries.

*Thompson v. State*, 389 So. 2d 197, 198 (Fla. 1980).

Thompson pleaded guilty to first-degree murder, kidnapping, and involuntary sexual battery, and the trial court imposed the death sentence. *Thompson v. State*, 351 So. 2d 701, 701 (Fla. 1977). This Court reversed and remanded to allow Thompson to withdraw his guilty plea. *Id.* On remand in 1978, Thompson again pleaded guilty and was again sentenced to death for the murder. *Thompson*, 389 So. 2d at 199. We affirmed Thompson's convictions and sentences in 1980. *Id.* at 198.

In 1987, during litigation under Thompson's second death warrant, we reversed a denial of postconviction relief and remanded for resentencing after concluding that Thompson's penalty phase jury was instructed to consider only statutory mitigating circumstances, in violation of *Lockett v. Ohio*, 438 U.S. 586 (1978), and *Hitchcock v. Dugger*, 481 U.S. 393 (1987). *Thompson v. Dugger*, 515 So. 2d 173, 175-76 (Fla. 1987). On remand, the trial court again sentenced Thompson to death in 1989,[2] and we affirmed. *Thompson v. State*, 619 So. 2d 261, 264, 267 (Fla. 1993). His death sentence became final in 1993 when the U.S. Supreme Court denied certiorari review. *Thompson v. Florida*, 510 U.S. 966 (1993); *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

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2. The trial court found four aggravating factors proven beyond a reasonable doubt: (1) the crime was committed while Thompson was engaged in the commission of the crime of sexual battery; (2) the crime was committed for financial gain; (3) the crime was especially heinous, atrocious, or cruel; and (4) the crime was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. *Thompson v. State*, 619 So. 2d 261, 264 (Fla. 1993). Each of the proposed mitigating circumstances was rejected. *Id.* On appeal, we struck the cold, calculated, and premeditated aggravator but found the error harmless. *Id.* at 266.

certiorari by the United States Supreme Court, if filed.").

In the decades since, Thompson has unsuccessfully challenged his convictions and sentences in state and federal courts. *See, e.g.*, *Thompson v. State*, 759 So. 2d 650 (Fla. 2000) (affirming denial of initial motion for postconviction relief after the 1989 resentencing and denying habeas relief); *Thompson v. Sec'y for the Dep't of Corrs.*, 517 F.3d 1279 (11th Cir. 2008) (affirming denial of federal habeas petition); *Thompson v. State*, 3 So. 3d 1237 (Fla. 2009) (reversing denial of Thompson's intellectual disability claim and remanding to the trial court for an evidentiary hearing); *Thompson v. State*, 41 So. 3d 219 (Fla. 2010) (affirming denial of Thompson's intellectual disability claim); *Thompson v. State*, 94 So. 3d 499 (Fla. 2012) (affirming denial of Thompson's successive motion for postconviction relief); *Thompson v. State*, 261 So. 3d 1255 (Fla. 2019) (affirming denial of claim that Thompson's death sentence violated *Hurst v. Florida*, 577 U.S. 92 (2016)); *Thompson v. State*, 341 So. 3d 303 (Fla. 2022) (affirming denial of Thompson's successive intellectual disability claim, holding *Hall v. Florida*, 572 U.S. 701 (2014), does not apply retroactively after *Phillips v. State*,

299 So. 3d 1013 (Fla. 2020)). We discuss the history of his intellectual disability claim below.

After Governor Ron DeSantis signed Thompson's death warrant on September 11, 2026, Thompson filed a successive motion for postconviction relief under rule 3.851, raising two claims: (1) he was unconstitutionally denied access to the clemency process; and (2) his execution by lethal injection will constitute cruel and unusual punishment in violation of the Eighth Amendment. The circuit court summarily denied both claims. This appeal followed.

## II. ANALYSIS

### A. Postconviction Appeal

We review the summary denial of a rule 3.851 motion de novo. *Kocaker v. State*, 311 So. 3d 814, 821 (Fla. 2020).

#### 1. Claim That Thompson Was Denied Access to the Clemency Process

Thompson first argues that the circuit court erred in summarily denying his claim that he was arbitrarily and unconstitutionally denied any access to Florida's clemency process. Thompson received a clemency proceeding in 1982, but the death

sentence then in effect was vacated in 1987, and a new death sentence was imposed on resentencing in 1989. Thompson contends that he was not afforded the minimal due process required in clemency proceedings because he received no new clemency proceeding related to the 1989 sentence the State now seeks to carry out. His argument thus rests on the premise that due process entitles him to a clemency proceeding tied to the particular sentence the State seeks to carry out. Because our precedent does not support that premise, we affirm the circuit court's denial of relief.

Clemency in Florida rests in the unfettered discretion of the Governor. Art. IV, § 8(a), Fla. Const.; *Gore v. State*, 91 So. 3d 769, 779-80 (Fla. 2012); Fla. R. Exec. Clem. 4 ("The Governor has the unfettered discretion to deny clemency at any time, for any reason."). No specific procedures are mandated in clemency proceedings, *Zakrzewski v. State*, 415 So. 3d 203, 211 (Fla.), *cert. denied*, 146 S. Ct. 57 (2025), and the Due Process Clause imposes only minimal procedural safeguards on executive clemency proceedings, *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) (O'Connor, J., concurring in part and concurring in the

judgment); *see Barwick v. Governor of Fla.*, 66 F.4th 896, 902 (11th Cir. 2023) (explaining that Justice O'Connor's concurrence "provides the holding in *Woodard*"). "Judicial intervention might, for example, be warranted in the face of a scheme whereby a state official flipped a coin to determine whether to grant clemency, or in a case where the State arbitrarily denied a prisoner any access to its clemency process." *Woodard*, 523 U.S. at 289 (O'Connor, J., concurring in part and concurring in the judgment). Thompson invokes the latter example in asserting his due process claim.

Although the record does not establish that a new or updated clemency proceeding occurred after Thompson's 1989 resentencing, it reflects that Governor DeSantis considered clemency before denying it in 2026. On September 11, 2026, the Office of Executive Clemency issued a letter informing Thompson's counsel that "[a]fter a review of the clemency investigation material provided by the Florida Commission on Offender Review in accordance with the Rules of Executive Clemency, the Governor . . . denied clemency for . . . Thompson." And the death warrant reflects that "executive clemency for [Thompson], as authorized by Article IV, Section 8(a), of the Florida Constitution, was considered pursuant to the Rules of

Executive Clemency, and it has been determined that executive clemency is not appropriate." That Thompson was unaware of any clemency consideration before the Governor's decision does not establish that none occurred. And it is not this Court's prerogative to "second-guess the application of this exclusive executive function." *Bundy v. State*, 497 So. 2d 1209, 1211 (Fla. 1986).

But even accepting Thompson's contention that he received no clemency proceeding after 1982, his claim fails. *Bundy* is instructive. In that case, while under a death warrant for the murder of Kimberly Leach, who disappeared from Lake City and whose body was found in Suwannee County,[3] Bundy argued that he must be allowed time to prepare and present an application for executive clemency before his execution for Leach's murder. *Bundy*, 497 So. 2d at 1211. This Court disagreed. *Id.*

First, the Court relied on the Governor's attestation in the death warrant that "it has been determined that Executive Clemency, as authorized by Article IV, Section 8(a), Florida Constitution, is not appropriate." *Id.* Recognizing that the

3. *Bundy v. State*, 471 So. 2d 9, 11 (Fla. 1985).

separation of powers requires the judiciary to exercise extreme caution when analyzing questions involving executive clemency, the Court declined to "second-guess the application of this exclusive executive function." *Id.*

Second, because the Governor and Cabinet held an earlier clemency hearing in relation to Bundy's separate convictions and death sentences for the murders of two women in Tallahassee and found no basis on which to grant relief, this Court said it would not require the executive branch "to go through the motions of holding a second proceeding when it could well have properly determined in the first that appellant was not and never would be a likely candidate for executive clemency." *Id.* Thus, although Bundy had received no clemency proceeding concerning the Leach conviction and death sentence for which he was then under warrant, this Court declined to require another clemency proceeding specifically concerning the Leach case.

*Bundy* therefore defeats the premise on which Thompson's claim depends—that a prior clemency proceeding cannot suffice unless it is tied to the particular sentence that is to be carried out. Indeed, the clemency proceeding this Court treated as sufficient in

*Bundy* concerned different convictions and death sentences imposed in a separate case in another county. Accordingly, even if no clemency proceeding was held specifically in connection with Thompson's 1989 death sentence, that circumstance would not establish that he was "arbitrarily denied . . . any access" to Florida's clemency process within the meaning of *Woodard*. We therefore affirm the denial of this claim.

### 2. Claim That Thompson's Execution Will Violate the Eighth Amendment

Thompson next challenges the denial of his claim that Florida's lethal injection protocol as applied to him will constitute cruel and unusual punishment in violation of the Eighth Amendment. To prevail on a method of execution claim, a defendant must satisfy the two-prong *Baze-Glossip*[4] test: "(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

4. *Baze v. Rees*, 553 U.S. 35 (2008).

pain." *Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017) (citing *Glossip v. Gross*, 576 U.S. 863, 877 (2015)).

In support of the first prong, Thompson alleged that his physical condition[5] will cause him to experience excruciating pain while being transferred to and restrained on the execution gurney; that difficulties obtaining venous access and the measures taken to overcome them will cause severe pain beyond that necessary to carry out his execution; and that Florida's three-drug protocol will cause him to experience severe air hunger until his death. He contended that these circumstances present a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering. The circuit court rejected Thompson's arguments concerning the first prong as untimely, procedurally barred, and meritless.

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5. Thompson alleged that he suffers from many medical conditions, including congestive heart failure, chronic kidney disease, severe fatty liver disease, pulmonary emboli, pneumonia, anemia, generalized edema, and severe malnutrition. He also described two broken ribs, a stage-four pressure ulcer near his tailbone, recent colostomy and ileostomy surgery with seventeen staples remaining in his abdomen, and a head laceration closed with three staples. He also alleged that he cannot ambulate and requires complete assistance to stand and transfer into or out of bed.

In support of the second prong of the *Baze-Glossip* test, Thompson proposed a firing squad as an alternative method of execution. A proposed alternative method of execution must be "feasible, readily implemented, and in fact significantly reduce[] a substantial risk of severe pain." *Tanzi v. State*, 407 So. 3d 385, 393 (Fla.) (alteration in original) (quoting *Glossip*, 576 U.S. at 877), *cert. denied*, 145 S. Ct. 1914 (2025). The circuit court determined that Thompson had not shown that a firing squad would significantly reduce the substantial risk of severe pain as applied to him.

On appeal, Thompson argues that the circuit court erred in concluding that he failed to satisfy the first prong of the *Baze-Glossip* test. But he did not challenge the circuit court's independent determination that he failed to satisfy the second prong until his reply brief. Because "[a]n issue may not be raised for the first time in a reply brief," that argument is barred. *Johnson v. State*, 135 So. 3d 1002, 1029 n.11 (Fla. 2014) ("[T]his argument was not raised in the initial brief filed here. Accordingly, the claim is barred." (citing *Hoskins v. State*, 75 So. 3d 250, 257 (Fla. 2011))). Because the circuit court's determination that Thompson failed to satisfy the alternative-method prong independently supports its

denial of this claim, we affirm without addressing his remaining arguments.

### B. Habeas Petition

In his habeas petition, Thompson contends that his execution will violate the Eighth Amendment because he is intellectually disabled. Although Thompson has alleged for decades that he has intellectual limitations, he argues that he has never had a fair opportunity to show that he is exempt from execution due to intellectual disability because he never received the benefit of *Hall*.

Thompson first raised his alleged intellectual disability as a bar to his execution in the wake of the enactment of section 921.137, Florida Statutes (2001)—prohibiting the imposition of a death sentence upon intellectually disabled persons—and *Atkins v. Virginia*, 536 U.S. 304 (2002)—holding that the Eighth Amendment prohibits execution of the intellectually disabled. To establish intellectual disability as a bar to execution, a defendant must demonstrate (1) significantly subaverage general intellectual functioning; (2) concurrent deficits in adaptive behavior; and (3) manifestation of the condition before age eighteen. § 921.137(1), Fla. Stat. (2001).

In 2009, an evidentiary hearing was held on Thompson's intellectual disability claim. The circuit court denied the claim, finding that "[h]is IQ not only exceeds 70, but evidence suggests strongly his actual IQ could be in the 80's. He does not have deficits in adaptive functioning and has failed to prove onset before the age of 18." *Thompson*, 41 So. 3d at 219 (quoting *State v. Thompson*, No. F76-3350B, Order Denying Motion for Postconviction Relief at 14 (Fla. 11th Cir. Ct. May 21, 2009)). This Court affirmed, concluding that competent, substantial evidence supported the circuit court's factual findings that Thompson was not intellectually disabled under the standard then set forth in *Cherry v. State*, 959 So. 2d 702, 713 (Fla. 2007) (requiring an IQ score of 70 or below to establish intellectual disability), *abrogated by Hall*, 572 U.S. 701. *Thompson*, 41 So. 3d 219. This Court observed that

> Thompson's full-scale IQ scores on standardized tests administered from 1987 through 2009 were generally over 80: in 1987, Dr. Carbonnel administered the Wechsler Adult Intelligence Scale (WAIS)-Revised Edition, where Thompson's full-scale IQ was scored as 85 (Verbal Performance IQ: 87; Performance IQ: 84); in 1988, Dr. Marina administered the WAIS-Revised Edition, where Thompson's full-scale IQ was scored as 82 (Verbal IQ: 85; Performance IQ: 80); in 2009, Dr. Sultan administered

> the WAIS-Fourth Edition, where Thompson's full-scale IQ was scored as 71 (Verbal Comprehension: 83; Perceptual Reasoning: 81; Working Memory: 77; Processing Speed: 56); and also in 2009, Dr. Prichard administered the Stanford-Binet-Fifth Edition, where Thompson's full-scale IQ was scored as 88 (Verbal IQ: 91; Non-Verbal IQ: 86).

*Id.*

In 2014, the U.S. Supreme Court held in *Hall* that Florida's "rigid rule" interpreting section 921.137(1) as imposing a strict IQ score cutoff of 70 or less "creates an unacceptable risk that persons with intellectual disability will be executed, and thus is unconstitutional." 572 U.S. at 704. Following *Hall*, Thompson filed another successive motion for postconviction relief, arguing that his 2009 evidentiary hearing was not a full and fair hearing because the circuit court relied on *Cherry*'s unconstitutional IQ score cutoff. *Thompson v. State*, 208 So. 3d 49, 57 (Fla. 2016). On appeal of the denial of that motion, despite having affirmed the circuit court's 2009 order concluding that he failed to meet all three prongs of the intellectual disability standard, *Thompson*, 41 So. 3d 219, and acknowledging that Thompson did present evidence relating to all three prongs at the 2009 evidentiary hearing, the Court concluded that "he did not receive the type of conjunctive and interrelated

assessment that *Hall* requires," *Thompson*, 208 So. 3d at 59. In deciding to remand for a new evidentiary hearing under *Hall*, the Court said that not only had it determined in *Walls v. State*, 213 So. 3d 340 (Fla. 2016), that *Hall* applied retroactively, "but to fail to give Thompson the benefit of *Hall*, which disapproved of *Cherry*, would result in a manifest injustice, which is an exception to the law of the case doctrine." *Thompson*, 208 So. 3d at 50.

Over the next five years, Thompson and the State litigated issues concerning the hearing ordered under *Hall*. During that litigation, we receded from *Walls* in *Phillips* and held that *Hall* did not apply retroactively. The State then filed a motion in the circuit court, arguing that *Phillips* constituted an intervening change in law that eliminated the need for the hearing ordered under *Hall*. The circuit court agreed with the State and denied Thompson's intellectual disability claim without conducting that hearing.

In affirming that decision on appeal in 2022, we held that a different exception to the law-of-the-case doctrine applied—an intervening change of controlling law, namely *Phillips*. *Thompson*, 341 So. 3d at 306. We concluded that because Thompson's death sentence was final in 1993, *Phillips* precluded application of *Hall* to

his case, and Thompson thus could not succeed on his *Hall*-based intellectual disability claim. *Id.*

Thompson now urges this Court to reconsider its 2022 decision affirming the summary denial of his intellectual disability claim. He argues that the law of the case, collateral estoppel, and res judicata do not preclude relief in this case because "this Court *just* reaffirmed that there is a 'manifest injustice' exception to a habeas petition's being otherwise procedurally barred." Thompson is referring to our recent decision in *Conahan v. State*, No. SC2026-1234, 2026 WL 2603686, at *6 (Fla. Sep. 3, 2026), *cert. denied*, No. 26-5476, 2026 WL 2660684 (U.S. Sep. 10, 2026), but *Conahan* does not support Thompson's manifest injustice argument here.

In *Conahan*, we stated that "we have acknowledged a 'manifest injustice' exception to a habeas petition's being otherwise procedurally barred." *Id.* There, the "manifest injustice" that Conahan claimed would result from our not lifting the procedural bar was "the execution of a defendant professing his innocence." *Id.* We wrote:

> [Conahan] fails to recognize that such an exception could justify ignoring all procedural bars and allowing never-ending litigation in virtually every capital case. Rather

> than point to some recent, exceptional development that might excuse the procedural bar, Conahan simply disagrees with the trial court's and this [C]ourt's decisions on his various post-conviction motions and appeals. This cannot be the sort of "manifest injustice" over which we will consider a habeas petition as a second appeal, lest the exception swallow the rule.

*Id.* We thus rejected Conahan's manifest injustice claim and found his habeas petition procedurally barred. *Id.*

Here, the asserted manifest injustice is the execution of an allegedly intellectually disabled defendant. But Thompson identifies no recent, exceptional development bearing on whether he meets the criteria for intellectual disability.[6] As in *Conahan*, "[t]his cannot be the sort of 'manifest injustice' over which we will consider a habeas petition as a second appeal." *Id.* Treating disagreement with a prior intellectual disability determination as sufficient to overcome the procedural bar would open the door to the endless litigation that *Conahan* warned against.

Thompson also argues that *Phillips* should have no bearing on

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6. In his reply brief, Thompson characterizes his dementia as a recent, exceptional development regarding his intellectual functioning, but that condition bears on his present sanity to be executed—an issue distinct from his intellectual disability claim and not before this Court.

his case because our 2016 decision granting him a new evidentiary hearing rested on manifest injustice independently of our determination in *Walls* that *Hall* applied retroactively. But the manifest injustice identified in our 2016 decision was the failure to give Thompson "the benefit of *Hall*." *Thompson*, 208 So. 3d at 50. That reasoning rested on the premise that *Hall* applied to his case—a premise *Phillips* removed. Accordingly, our 2022 decision held that *Phillips* constituted an intervening change of controlling law permitting departure from the earlier mandate and that, because Thompson's death sentence became final in 1993, he could not succeed on his *Hall*-based claim. *Thompson*, 341 So. 3d at 306. Because *Hall* does not apply retroactively to Thompson's case, declining to give him its benefit is not a manifest injustice.

Thompson's petition seeks to relitigate his intellectual disability claim, the denial of which we affirmed in 2022. His manifest injustice argument does not overcome the procedural bar, and habeas corpus cannot serve as a second appeal. We therefore deny the petition for a writ of habeas corpus.

## III. CONCLUSION

For the reasons stated above, we affirm the circuit court's

order summarily denying Thompson's successive motion for postconviction relief and deny his petition for a writ of habeas corpus. The motion for a stay of execution filed in case number SC2026-1466 based on the grounds raised in the habeas petition is therefore moot.

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

It is so ordered.

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

TANENBAUM, J., concurring.

Let us take as true, for the sake of argument, Justice O'Connor's statement that "[j]udicial intervention might . . . be warranted . . . in a case where the State arbitrarily denied a prisoner any access to its clemency process." *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) (O'Connor, J., concurring in part and concurring in the judgment). The defendant fails to identify, as a condition precedent, a state-created right related to the clemency process that "trigger[ed the] due process

protection" he now claims. *Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 463 (1981); *see also id.* at 465 ("The ground for a constitutional claim, if any, must be found in statutes or other rules defining the obligations of the authority charged with exercising clemency."); *cf. Meachum v. Fano*, 427 U.S. 215, 226 (1976) (noting that "minimum procedures" would be "required by the Due Process Clause 'to [e]nsure that the state-created right is not arbitrarily abrogated'" (quoting *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974))).

Justice O'Connor's concurring opinion in *Woodard* did not overrule the U.S. Supreme Court's previous holding that "the mere existence of a power to commute a lawfully imposed sentence, and the granting of commutations to many petitioners, create no right or 'entitlement.'" *Dumschat*, 452 U.S. at 467; *cf. Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979) ("Decisions of the Executive Branch, however serious their impact, do not automatically invoke due process protection; there simply is no constitutional guarantee that all executive decisionmaking must comply with standards that assure error-free determinations," especially regarding "sensitive choices presented by the administrative decision to grant parole release."). The legal

principle remains that the State's simply holding out the possibility of clemency "provides no more than a mere hope that the benefit will be obtained . . . a hope which is not protected by due process." *Greenholtz*, 442 U.S. at 11.

The defendant is simply mistaken when he relies on section 922.052, Florida Statutes, and this court's decision in *Abdool v. Bondi*, 141 So. 3d 529 (Fla. 2014), to establish some right to a clemency proceeding absent a request for one. Florida law contemplates that the defendant first apply for clemency. *See* § 940.03, Fla. Stat.; *see also Abdool*, 141 So. 3d at 545 ("Further, section 940.03 provides that the executive clemency process in a capital case is initiated by the defendant . . . .").

If a defendant does apply for clemency, the statute states that the Governor must issue a warrant "if the executive clemency process has concluded," and we read this provision to mean that "no capital defendant will be executed" if those proceedings have *not* concluded. § 922.052(2)(b), Fla. Stat.; *Abdool*, 141 So. 3d at 543, 545. We also said, however, that because this condition "is exclusively within the control and discretion of the executive branch and contains no mandated time frame for completion . . . the

Governor's discretion in issuing warrants is not curtailed by the" statute. *Id.* at 543.

As we earlier had noted, "[t]he clemency process in Florida derives solely from the Florida Constitution and we have recognized that the people of the State of Florida have vested 'sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace.'" *Carroll v. State*, 114 So. 3d 883, 888 (Fla. 2013) (quoting *Sullivan v. Askew*, 348 So. 2d 312, 315 (Fla. 1977)).

There, in turn, could be no right to be considered for clemency inherent in this power, so no right to which due process could attach. That leaves the defendant with the statute that allows defendants to initiate clemency consideration by application. But there is no indication in his post-conviction motion that the defendant made such an application. Thus, he cannot now be heard to make a due-process complaint that his right to access a clemency proceeding was arbitrarily denied. I also agree with the post-conviction court that his claim is both untimely and procedurally barred.

At all events, both this claim and the defendant's second claim—that he should be executed by firing squad because the lethal injection protocol will inflict unconstitutionally cruel and unusual punishment—are not cognizable under Florida Rule of Criminal Procedure 3.851, as vacatur of the defendant's death sentence would not be a remedy for either one. That rule provides a vehicle by which to vacate the death sentence, not one by which to alter how the sentence is to be carried out. *Cf. Conahan v. State*, 51 Fla. L. Weekly S269, S272 (Fla. Sep. 3, 2026) (noting that a motion to vacate sentence under rule 3.851 "is not the proper vehicle for bringing" a claim that raises "procedural defects in carrying out a sentence," because those defects "give no reason to vacate the sentence (or the underlying judgment)"), *cert. denied*, No. 26-5476, 2026 WL 2660684 (U.S. Sep. 10, 2026).

Subject to these points, I otherwise concur in the majority opinion's stated rationale for affirming.

LABARGA, J., concurring in part and dissenting in part.

I concur with the majority's decision to affirm the denial of Thompson's postconviction claims. However, I adhere to my dissent in *Phillips v. State*, 299 So. 3d 1013 (Fla. 2020) (receding from *Walls*

*v. State*, 213 So. 3d 340 (Fla. 2016), and holding that *Hall v. Florida*, 572 U.S. 701 (2014), does not apply retroactively).

Thus, I dissent to the denial of Thompson's habeas claim, consistent with my dissent in *Thompson v. State*, 341 So. 3d 303 (Fla. 2022) (affirming denial of postconviction relief based on *Phillips*).

An Appeal from the Circuit Court in and for Miami-Dade County,
Zachary James, Judge
Case No. 131976CF003350B000XX
And an Original Proceeding – Habeas Corpus

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