Supreme Court of Florida

No. SC2026-1724

THOMAS M. OVERTON,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

No. SC2026-1725

THOMAS M. OVERTON,
Petitioner,

vs.

SECRETARY, DEPARTMENT OF CORRECTIONS,
Respondent.

November 13, 2026

TANENBAUM, J.

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

sentences for November 19, 2026. Having then filed his third (and presumably final) successive motion for postconviction relief, which the circuit court summarily denied, Overton now appeals. He separately asks this Court for habeas relief and a stay of execution. We have jurisdiction. *See* Art. V, § 3(b)(1), (9), Fla. Const.; *see also State v. Fourth Dist. Ct. of Appeal*, 697 So. 2d 70, 71 (Fla. 1997) (holding "that in addition to our appellate jurisdiction over sentences of death, we have exclusive jurisdiction to review all types of collateral proceedings in death penalty cases"). For the reasons below, we affirm the summary denial and deny all other requested relief.

I.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A death-qualified jury found Overton guilty as charged.

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

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

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

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

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

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

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

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

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

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

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

II.

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

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

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

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

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

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

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

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

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

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

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

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

III.

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

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

A.

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

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

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

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

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

B.

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

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

IV.

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

V.

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

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

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

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

It is so ordered.

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

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

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