

IN THE SUPREME COURT OF FLORIDA

JAMES AREN DUCKETT,

Appellant,

v.

Case Nos. SC2026-0449

SC2026-0450

ACTIVE DEATH WARRANT

STATE OF FLORIDA,

Appellee.

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MOTION TO LIFT THE STAY OF EXECUTION

On March 26, 2026, this Court entered a stay of the execution until further notice from the Court. § 922.06(1), Fla. Stat. This Court entered a stay because the circuit court-ordered DNA testing of the biological material on slide Q6(3) had not been completed. This Court ordered the State to provide the Court “a report addressing the status of the DNA testing no later than Friday, March 27, 2026, at 5:00 p.m.”

The next day, however, on March 27, 2026, DNA Labs International (DLI) reported the results of the Single Nucleotide Polymorphism (SNP) DNA testing to the Florida Department of Law Enforcement (FDLE). The SNP DNA results were inconclusive. Because the SNP DNA testing is complete and the results do not exonerate Duckett, the stay of the execution should be lifted.

Additionally, this Court should issue its opinion in both the appeal and habeas petition cases as soon as possible to prevent Duckett's delay in seeking DNA testing resulting in a de facto stay of execution.

This Court's Standard for Granting a Stay

A stay is not justified based on the issues being raised in the appeal of the summary denial of Duckett's fourth successive postconviction motion.

A "stay of execution on a successive motion for postconviction relief is warranted only where there are substantial grounds upon which relief might be granted." *Dillbeck v. State*, 357 So. 3d 94, 103 (Fla. 2023) (quoting *Davis v. State*, 142 So. 3d 867, 873-74 (Fla. 2014), and affirming the denial of a stay of execution). This Court requires that the issues be "substantial" for a stay to be appropriate. *Chavez v. State*, 132 So. 3d 826, 832 (Fla. 2014) (quoting *Buenoano v. State*, 708 So. 2d 941, 951 (Fla. 1998)). But neither of the two issues raised in this appeal are substantial.

The first issue raised in this appeal is a claim that the compressed warrant schedule violates due process. Duckett and his postconviction attorneys list a multitude of examples of the difficulties that working under such short timeframes present. IB at

53. But this Court is well aware of the “arduous” nature of the compressed warrant schedules to both parties and the courts. *Barwick v. State*, 361 So. 3d 785, 789-90 (Fla. 2023). Indeed, this Court has rejected such due process claims to compressed warrant schedules in cases with more challenging situations than Duckett’s presents. In *Barwick*, co-counsel was ill during the warrant period, putting additional pressure on lead counsel; there was a religious holiday during the warrant period; and another inmate’s execution was also pending. *Id.* at 789. This Court still rejected the due process challenge to that compressed warrant schedule.

The issue regarding the compressed warrant schedule is meritless under this Court’s extensive precedent.¹ The reasoning of

¹ *Jennings v. State*, 422 So. 3d 107, 117-18 (Fla.), *cert. denied*, 146 S. Ct. 402 (2025) (due process and right to effective postconviction counsel); *Jones v. State*, 419 So. 3d 619, 625-26 (Fla.), *cert. denied*, 146 S. Ct. 79 (2025); *Bell v. State*, 415 So. 3d 85, 106-07 (Fla.) (due process), *cert. denied*, 145 S. Ct. 2872 (2025); *Zakrzewski v. State*, 415 So. 3d 203, 211 (Fla.) (due process), *cert. denied*, 146 S. Ct. 66 (2025); *Hutchinson v. State*, 416 So. 3d 273, 279-80 (Fla.) (due process), *cert. denied*, 145 S. Ct. 1980 (2025); *Bates v. State*, 416 So. 3d 312, 321 (Fla.) (due process and right to effective postconviction counsel), *cert. denied*, 146 S. Ct. 66 (2025); *Tanzi v. State*, 407 So. 3d 385, 390-91 (Fla.) (due process), *cert. denied*, 145 S. Ct. 1914 (2025); *Barwick v. State*, 361 So. 3d 785, 789-91 (Fla.), *cert. denied*, 145 S. Ct. 2452 (2023) (due process and right to effective postconviction counsel).

this Court in its extensive case law on the topic is that the process a capital defendant is due during a warrant is notice of the warrant schedule and an opportunity to raise any remaining postconviction claims. *Windom v. State*, 416 So. 3d 1140, 1150 (Fla.) (rejecting a due process challenge to a condensed warrant schedule because the defendant was given notice of the warrant schedule and an opportunity to be heard), *cert. denied*, 146 S. Ct. 665 (2025).

One of the complaints pointed to in the initial brief is that the compressed warrant schedule renders postconviction counsel ineffective. IB at 82-84. But, at the *Huff*² hearing, opposing counsel disclaimed that the due process challenge included any subclaim regarding the effectiveness of warrant counsel. (4th Succ. PCR at 1019, 1025). So, the complaint regarding the warrant schedule affecting the ineffectiveness of warrant counsel was waived. *Cf. Cook v. State*, 792 So. 2d 1197, 1204 (Fla. 2001) (explaining that postconviction counsel must pursue an “issue before the trial judge or that issue will be waived” citing *Lopez v. Singletary*, 634 So. 2d 1054, 1057 (Fla. 1993)).

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

Alternatively, on the merits, this Court has repeatedly rejected arguments that compressed warrant schedules render warrant counsel ineffective. There is no constitutional right to effective assistance of postconviction counsel. *Zack v. State*, 911 So. 2d 1190, 1203 (Fla. 2005) (“under Florida and federal law, a defendant has no constitutional right to effective collateral counsel”). And the state statutory right to postconviction counsel in a capital case does not provide for the effective assistance of postconviction counsel either. § 27.711(10), Fla. Stat. (2026); *Bates v. State*, 416 So. 3d 312, 321 (Fla. 2025) (stating that the state statutory right to postconviction counsel “only” requires that the defendant have meaningful access to counsel and the courts after a death warrant is signed quoting *Zakrzewski*, 415 So. 3d at 211; *Jennings v. State*, 422 So. 3d 107, 118 (Fla. 2025) (explaining that the statutory provision providing for the appointment of state postconviction counsel “does not create a right to effective assistance of postconviction counsel” citing *Barwick*, 361 So. 3d at 790). So, the claim that the compressed warrant schedules rendered warrant counsel ineffective is meritless under this Court extensive precedent.

This Court has repeatedly and uniformly rejected due process challenges to compressed warrant schedules, so the issue is meritless as a matter of law under this Court's precedent and the postconviction court properly denied the claim on that basis. *Randolph v. State*, 422 So. 3d 166, 173 (Fla.) (affirming the summary denial of a postconviction claim as legally insufficient because it lacked "merit as a matter of law"), *cert. denied*, 146 S. Ct. 819 (Nov. 20, 2025); *Owen v. State*, 986 So. 2d 534, 544 (Fla. 2008) (finding a claim was legally insufficient because it failed as "a matter of law").

The second issue raised in this appeal is a claim that the postconviction court's summary denial of the other two claims raised under the banner of actual innocence in the fourth successive postconviction motion was error. But the circuit court properly denied the actual innocence claim.

In the actual innocence claim, Duckett attacked the State's evidence against him rather than presenting new affirmative evidence of his innocence. The recently reported DNA results were inconclusive and therefore did not exonerate him in any manner. The results do not constitute any new evidence of his innocence.

The freestanding actual innocence claim, which was not supported by any new evidence, including the recent inconclusive SNP DNA results, and is not cognizable under this Court's precedent. *Sweet v. State*, 293 So. 3d 448, 453 (Fla. 2020) ("Florida does not recognize an independent claim of actual innocence in postconviction proceedings" citing *Elledge v. State*, 911 So. 2d 57, 78 (Fla. 2005)). *Dailey v. State*, 283 So. 3d 782, 787 (Fla. 2019) (noting the Court has "repeatedly held that freestanding actual innocence claims are not cognizable under Florida law" citing *Tompkins v. State*, 994 So. 2d 1072, 1089 (Fla. 2008)); *Dailey v. State*, 279 So. 3d 1208, 1218 (Fla. 2019) (affirming the summary denial of an actual innocence claim because "freestanding claims of actual innocence are not cognizable under Florida law" citing *Tompkins*, 994 So. 2d at 1089). The claim remains not cognizable in the wake of the final SNP DNA test results

Claims that are not cognizable are properly summarily denied. *Doty v. State*, 403 So. 3d 209, 218 (Fla. 2025) (affirming the summary denial of a claim because it was not cognizable). Thus, the postconviction court properly denied the actual innocence claim without conducting an evidentiary hearing because it is not

cognizable. *Doty*, 403 So. 3d at 218 (affirming the summary denial of a non-cognizable claim).

The postconviction court also properly summarily denied the subclaim regarding the prosecution's nondisclosure of communications with the U.S. Department of Justice (DOJ) regarding FBI hair analyst Malone's work and trial testimony during the first successive postconviction litigation and the second successive postconviction litigation. The claim was raised below as a claim of newly discovered evidence of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

Duckett relied on a December 4, 2012, letter from DOJ addressed to elected State Attorney Brad King of the Fifth Judicial Circuit as the basis for the nondisclosure claim. (4th Succ. PCR at 922-924). The letter was signed by Section Chief Sherry E. Sabol of the Science and Technology Law Office. *Id.* at 924. The stated purpose of the DOJ letter was "to ensure FBI laboratory reports and examiner's testimony regarding microscopic hair comparison analysis met accepted scientific standards and to identify any cases in which they did not." *Id.* at 922. The letter requested the State Attorney's Office fill out, and return, within 30 days, a questionnaire

asking eight questions, and also requested a transcript of the FBI hair examiner Malone's testimony in this case. The letter stated that the DOJ was working with both the Innocence Project and the National Association for Criminal Defense Lawyers (NACDL) and that they may share their assessment of the testimony with both the Innocence Project and NACDL and possibly with defense counsel.

But the disclosure requirements of *Brady* do not extend to postconviction proceedings. *Cunningham v. Dist. Att'y Off. for Escambia Cnty.*, 592 F.3d 1237, 1260 (11th Cir. 2010) (holding *Brady* "has no application in the postconviction context" citing *Dist. Att'y Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52 (2009)). The United States Supreme Court has explained that *Brady* "is the wrong framework" for postconviction proceedings. *Osborne*, 557 U.S. at 69. Rather, the correct framework for postconviction proceedings is *Medina v. California*, 505 U.S. 437, 448 (1992), which only requires fundamental fairness in postconviction proceedings. *Osborne*, 557 U.S. at 69.

This Court has previously followed the reasoning of *Osborne* regarding a claim of a violation of *Giglio v. United States*, 405 U.S. 150 (1972), involving testimony given during a postconviction

evidentiary hearing. *Dailey*, 279 So. 3d at 1217 (citing *Osborne*, 557 U.S. at 68-69). This Court should explicitly embrace *Osborne* and *Medina*.

The prosecution was not required to disclose its communications with DOJ which occurred during postconviction proceedings under *Brady* and the nondisclosure did not violate the very limited disclosure required by *Medina*. The nondisclosure had no effect on the appeal of either the first or second successive postconviction motions involving Malone. *Duckett v. State*, 148 So. 3d 1163, 1168 (Fla. 2014) (noting the State did not dispute that “the 2011 Report and evidence of other FBI reports critiquing Malone’s work and testimony meet the first prong” of *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998)); *Duckett v. State*, 231 So. 3d 393, 399 (Fla. 2017) (assuming that the claim of newly discovered evidence regarding the 2014 DOJ report was timely). Nondisclosures that have no effect on the ultimate outcome of the postconviction proceedings cannot violate *Medina*.

The postconviction court properly denied the nondisclosure claim without conducting an evidentiary hearing because it is meritless as a matter of law. *Randolph*, 422 So. 3d at 173 (affirming

the summary denial of a postconviction claim as legally insufficient because it lacked “merit as a matter of law”).

Duckett does not explain how either of the issues raised in the appeal of the fourth successive postconviction motion meets this Court’s standard of being a “substantial” ground. He merely asserts that the issues are constitutional in nature. But being constitutional in nature does not mean that the issue is one of substantial merit. He does not explain how a claim of the compressed warrant schedule violating due process that is meritless under this Court’s extensive precedent can be said to be a “substantial” ground warranting a stay. Nor does he explain how the summary denial of his actual innocence claim and the nondisclosure claim is a “substantial” ground warranting a stay either.

Neither of the two issues raised in this appeal is substantial. Therefore, a stay is not warranted based on the issues themselves. *Bell v. State*, 415 So. 3d 85, 107 (Fla.) (denying a stay because the defendant failed to establish substantial grounds citing *Gaskin v. State*, 361 So. 3d 300, 309 (Fla. 2023)), *cert. denied*, 145 S. Ct. 2872 (2025).

Delay in Seeking DNA Testing

This Court should consider any delay on the part of the defendant as part of any stay analysis, as the United States Supreme Court does. *Gomez v. United States Dist. Court for Northern Dist. of Cal.*, 503 U.S. 653, 654 (1992) (noting that the “last-minute nature” of an application for a stay or an “attempt at manipulation” of the judicial process are grounds for denial of a stay). Before granting a stay, a court should consider whether the inmate “delayed unnecessarily” in bringing the claim. *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004). And given the State’s significant interest in enforcing its criminal judgments, there is “a strong equitable presumption against the grant of a stay” where a claim or motion “could have been brought at such a time as to allow consideration of the merits without requiring a stay.” *Nelson*, 541 U.S. at 650. A stay is an equitable remedy and equity should take into consideration the State’s strong interest in the finality of a sentence, which in a capital case is the execution. “Last-minute stays should be the extreme exception, not the norm.” *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019) (noting the Court had recently vacated a stay as an abuse of discretion where the inmate waited to bring an available claim until

just 10 days before his scheduled execution for a murder he had committed 24 years earlier citing *Dunn v. Ray*, 586 U.S. 1138 (2019)). Duckett waited until after a warrant was signed to seek DNA testing for a murder he committed over 38 years ago where he knew about the slide at least since the relinquishment in 2003, in which his current counsel wrote a letter to the postconviction court, dated January 14, 2004, stating that they would seek DNA testing as soon as the science of DNA advanced further. (IPCR. 1172). But he did not seek DNA testing as soon as the science was sufficiently advanced.³

³ The State did not raise a timeliness objection to the Rule 3.853 motion for DNA testing because the statute governing postconviction DNA testing does not contain any time limitation on requesting DNA testing. § 925.11(1)(b) Fla. Stat. (2026) (providing a “petition for postsentencing DNA testing under paragraph (a) may be filed or considered at any time following the date that the judgment and sentence in the case becomes final”). Indeed, the legislature has twice considered amending the statute to include a time limitation on postconviction DNA motions and rejected any time limitation. Rule 3.853 also does not contain any time limitation on postconviction DNA motions.

The State agreed to DNA testing to resolve the DNA issue that has been present in this case since the 2003 relinquishment. The State thought that the DNA testing would be STR DNA testing, which would only take four or five days, and therefore, would not cause any delay in the successive postconviction litigation in the lower court or the litigation in this Court.

But not asserting a timeliness objection to the DNA motion does not mean that the State may not rely on Duckett’s delay in requesting DNA testing and only requesting such testing after the warrant was

Duckett could have sought SNP DNA testing years ago. The ForenSeq® Kintelligence Kit that DNA Labs International is currently using to perform the SNP DNA testing on the small amount of DNA taken from the slide has been available since 2021. *Evaluation of the ForenSeq® Kintelligence Kit and the FOREnsic Capture Enrichment Panel for Unidentified and Missing Persons Casework*, 139 INT. J. LEGAL MED. 2047-2062 (April 7, 2025) (comparing the *Kintelligence* Kit with another type of testing kit and concluding, that while both were accurate, the *Kintelligence* kit was more sensitive), available at <https://link.springer.com/article/10.1007/s00414-025-03492-4> (last visited March 26, 2026).

And SNP DNA testing has been held to be admissible by courts. *People v. Heuermann*, 242 N.Y.S.3d 512 (N.Y. Sup. Ct. 2025) This

signed as an argument for a denial of a motion to stay. A stay is an equitable remedy that considers belated motions used as delay tactics as a reason to deny the stay. *Gomez*, 503 U.S. at 654. The State may also use his delay in requesting DNA testing to attack the validity of his actual innocence claim, just as the United States Supreme Court does *McQuiggin v. Perkins*, 569 U.S. 383, 399 (2013) (rejecting a diligence requirement but allowing unexplained delay to be considered in assessing the validity of the merits of the gateway innocence claim). And the State may additionally use his intentional delay as evidence of his consciousness of guilt. *South Dakota v. Neville*, 459 U.S. 553, 561 (1983).

Court amended the rules of court to reflect the legislature adopting the admissibility test of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), to the Evidence Code years ago. *In re Amends. to Fla. Evidence Code*, 278 So. 3d 551 (Fla. 2019). So, the results of any SNP DNA testing would have been admissible in Florida years ago as well.

A truly innocent man would have sought SNP DNA testing as soon as it was available rather than waiting over four years and until a warrant for his execution was signed to file a Rule 3.853 motion for SNP DNA testing. *McQuiggin*, 569 U.S. at 399 (stating that an “unexplained delay” in presenting new evidence bears on the determination whether the petitioner has made the requisite showing for a gateway claim of actual innocence). Indeed, his delay in seeking DNA testing is more evidence of his guilt. *South Dakota v. Neville*, 459 U.S. 553, 561 (1983) (observing that refusal to take a potentially incriminating test is similar to other circumstantial evidence of consciousness of guilt citing Justice Traynor’s opinion in *People v. Ellis*, 65 Cal.2d 529, 55 Cal. Rptr. 385, 421 P.2d 393 (1966)).

A capital defendant who waits over four years to seek DNA testing that would acquit him if he were innocent and only requests

DNA testing as a tactic to stall his execution should not be granted a stay. The people of Florida and the victim’s family “deserve better” than the “excessive” delays that are typical in capital cases. *Bucklew*, 587 U.S. at 150. The “last-minute nature” of a motion for DNA testing that could have been filed “earlier” and involves an “attempt at manipulation” of the judicial system is itself grounds for denial of a stay. *Id.* Both the State and the victim’s family deserve better than to have Duckett’s belated request for DNA testing result in a stay of the execution.

This Court should immediately lift the stay of execution because the SNP DNA testing is completed and the results do not exonerate Duckett. This Court should issue its opinion in both the appeal and habeas petition as soon as possible to prevent his delay in seeking DNA testing resulting in a de facto stay of the execution.⁴

⁴ The State did not respond to the motion to stay in the case appealing the summary denial of the fourth successive postconviction motion, SC2026-0449, until Sunday, March 22, 2026, because the initial brief had not been filed at the time the stay response was due. The State cannot apply this Court’s “substantial grounds” test of whether the issues being raised on appeal are substantial enough to justify a stay until the State knows what issues are being raised in the appeal. The State could, and did, fully respond to the motion to stay filed in the habeas case on March 20, 2026, because the habeas petition had been filed before the State’s response was due. That response

Accordingly, this Court should lift the stay of the execution.

Respectfully submitted,

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explained the State's position that the order from the postconviction court was a final order.

If, in the future, undersigned counsel receives an order from the Court to respond to a motion to stay before the relevant pleading has been filed, undersigned counsel will file a partial response but then file an amended response once the initial brief is filed. Counsel regrets not taking the option of filing a response explaining the problem in a footnote and then filing an amended response in the appeals case after the initial brief.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 27, 2026 I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Mary Elizabeth Wells, Federal Defender Program Inc., 101 Marietta Street NW, Atlanta, Georgia 30303, **beth_wells@fd.org**, **mewells27@comcast.net**; Brittany Nicole Lacy and Courtney Hammer, Capital Collateral Regional Counsel, CCRC–South, 110 SE 6th Street Suite 701, Fort Lauderdale, Florida 33301, **lacyB@ccsr.state.fl.us**; **hammerC@ccsr.state.fl.us**, **support@ccsr.state.fl.us**; and the Florida Supreme Court, 500 South Duval Street, Tallahassee, Florida 32399, **warrant@flcourts.org**, **canovak@flcourts.org**.

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