In the
Supreme Court of Florida

JAMES AREN DUCKETT,

Appellant,

v.

CASE NO.: SC2026-0449
SC2026-0450
CAPITAL CASE

STATE OF FLORIDA,

Appellee.

_____/

MOTION TO VACATE THE STAY OF EXECUTION

The State moves this Court to vacate the stay of execution. This Court entered a stay of the execution until the Single Nucleotide Polymorphism (SNP) DNA testing was completed and continued the stay to allow the lower court to rule on the pending motions for discovery related to the SNP DNA testing. The DNA testing is complete. The circuit court denied all pending motions related to the DNA testing on April 1, 2026. No successive postconviction motion based on the SNP DNA results has been filed in the lower court as of this date. Therefore, there is no reason to continue the stay. Duckett

should not be rewarded for his delay in seeking DNA testing by having his execution stayed. Additionally, this Court should issue its opinion in both the appeal case and habeas petition case as soon as possible to prevent Duckett's delay in seeking DNA testing result in a de facto stay of the execution.

Procedural background of current stay

On March 26, 2026, this Court entered a stay of the execution until further notice of the Court. § 922.06(1), Fla. Stat. This Court entered a stay because the DNA testing of the biological material on slide Q6(3) had not been completed. The 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, 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 State filed a report with this Court noting the SNP DNA results were "inconclusive." The State then filed a motion to lift the stay because the SNP DNA testing did not exonerate Duckett.

On March 30, 2026, this Court denied the State's motion to lift the stay. This Court found that the circuit court had concurrent jurisdiction to rule on all motions related to the order granting DNA testing and any possible successive claims that Duckett filed. This Court ordered the circuit court to file a status report by Thursday, April 2, 2026, at 5:00 p.m.

Justice Tanenbaum dissented from the denial of the motion to lift the stay, noting that the SNP DNA results were "inconclusive, meaning there ***still*** is no exonerating evidence that demonstrates the defendant's actual innocence." (emphasis in original). He noted that without new exonerating DNA evidence, the "successive claim asserting innocence remains timebarred, as the trial court originally ruled." *Id.* at 3.

Earlier, on March 25, 2026, nearly 20 days after the lower court had granted the motion for DNA testing, Capital Collateral Regional Counsel—Southern Region (CCRC—S) filed a motion for discovery of the underlying data and for DNA Labs International's protocols for SNP DNA testing. (Doc. #1331). On March 26, 2026, the State filed a response to the belated motion for postconviction discovery.

After the order from this Court, on March 31, 2026, the circuit court held a hearing on the motion for discovery of the underlying data and DLI's protocols. After the hearing, CCRC—S filed a motion to conduct a statistical analysis of the SNP DNA results. (Doc. # 1357). CCRC-S also filed three public records demands on: (1) the Florida Department of Law Enforcement (FDLE); (2) the Office of the Attorney General (AGO); and (3) the Office of the State Attorney for the Fifth Judicial Circuit (SAO).

On April 1, 2026, the lower court held a hearing on the outstanding discovery motions and public record requests. On April 1, 2026, the postconviction court entered an order denying the two DNA-related motions and the public records demands. Regarding the motion to conduct a statistical analysis of the DNA results, the lower court ruled:

> The results of the testing have now been reported, and no further testing remains to be done, nor is further testing possible. Moreover, no testimony or reasoning was presented as to how the information sought by Defense could lead to Defendant's exoneration. Even if the test results could be brought into doubt, this would not generate new evidence on which Defendant's actual innocence claim could rest.

(Doc. #1360). Duckett's two motions related to the SNP DNA testing have been denied by the circuit court and he has not filed a fifth successive Rule 3.851 postconviction motion raising a claim of newly discovered evidence of innocence based on the SNP DNA results, as of April 2, 2026. There is nothing currently pending before the circuit court.

This Court's Standard for Granting a Stay

The current stay of the execution should be vacated. A stay is not justified based on the issues being raised in the appeal of the summary denial of the fourth successive postconviction motion or in the state habeas petition. As the State has repeatedly explained in its prior response to the motions for stay, there are no "substantial grounds" being raised in either the appeal or in the petition. *Dillbeck v. State*, 357 So. 3d 94, 103 (Fla. 2023) (quoting *Davis v. State*, 142 So. 3d 867, 873-74 (Fla. 2014); *Chavez v. State*, 132 So. 3d 826, 832 (Fla. 2014) (quoting *Buenoano v. State*, 708 So. 2d 941, 951 (Fla. 1998)). The issues being raised before this Court are either not cognizable, untimely, meritless as a matter of law under controlling precedent or a combination. Duckett does not explain how any of the issues being raised meets this Court's standard of being a

"substantial" ground. 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).

SNP DNA Test Results

The DNA analyst employed by DNA Labs International (DLI), who performed the actual SNP DNA testing on the biological material from the slide, Dr. Oefelein, appeared at the March 31, 2026 hearing before the state postconviction court. Dr. Oefelein verified that the SNP DNA testing had consumed the entire sample as expected. She explained that the SNP DNA results were "inconclusive" under DLI's policy. She explained that DLI has a policy that they will not report that a suspect's DNA profile is included within the population without the corresponding statistical calculations. The lab requires the statistical calculations be performed before they will label the results as anything other than inconclusive.

While the State must have statistical calculations for the DNA results at trial,[1] this postconviction DNA proceeding is not a trial. There is an immense difference between the trial context and postconviction context regarding the role that statistical probabilities related to the DNA results play. At trial, the State has the burden of proof and at the beyond a reasonable doubt standard for all elements, including the element of the identity of the perpetrator. *In re Winship*, 397 U.S. 358 (1970). A DNA expert's testimony at a jury trial that there was a "match" with the defendant's DNA without explaining the "match" using statistical numbers could lead a juror to think that the biological evidence was a definitive match or a 100% match that excluded everyone else but the defendant. A juror could be mislead as to the meaning of the word "match" without the exact figures.

But in the postconviction context, that logic does not apply. A postconviction judge, who has over the years repeatedly heard

---

[1] *Brim v. State*, 695 So. 2d 268, 271 (Fla. 1997) (explaining that the fact that a "match" is found in the DNA testing process may be meaningless without qualitative or quantitative estimates demonstrating the significance of that match); *Darling v. State*, 808 So. 2d 145, 158 (Fla. 2002) (holding a DNA lab analyst, who was not a statistician, may testify as to necessary statistical analysis of the DNA results provided the expert has knowledge of the methodology and database citing *Murray v. State*, 692 So. 2d 157, 164 (Fla. 1997)).

various DNA expert's testimony, knows that the word "match" can have a wide meaning in terms of the numbers. Moreover, in this case no expert or attorney told the lower court judge that there was a "match" between the DNA on the slide and Duckett's DNA. The only argument made to the judge regarding these DNA results was that the results did not exclude Duckett and therefore, did not exonerate him.

Moreover, after a defendant has been convicted, the burden shifts from the State at trial to the defendant in postconviction proceedings. *Dist. Att'y Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009) (noting a defendant who has been found guilty at a fair trial, has only a limited interest in postconviction relief). The Court has repeatedly stated that the burden in postconviction proceedings is the defendant's burden because the conviction is presumed valid. *Wainwright v. State*, 411 So. 3d 392, 398 (Fla.) (observing that in postconviction proceedings the defendant bears the burden to establish a prima facie case based on a legally valid claim citing *Franqui v. State*, 59 So. 3d 82, 96 (Fla. 2011)), *cert. denied*, *Wainwright v. Florida*, 145 S. Ct. 2789 (2025); *Cole v. State*, 392 So. 3d 1054, 1061 (Fla.) (same), *cert. denied*, *Cole v. Florida*, 145 S. Ct.

109 (2024). But Duckett cannot meet his postconviction burden for raising a legally valid claim of newly discovered evidence based on the SNP DNA results regardless of what the statistical calculations show.

The exact numbers do not matter to any future claim of newly discovered evidence of innocence based on the SNP DNA results. Suppose two different statistical calculations — one calculation yields a statistic of 1 in 10 that Duckett was the perpetrator and the second calculation yields a statistic of 1 in 10,000,000,000 that Duckett was the perpetrator. The first figure is weak additional evidence of his guilt; whereas, the second figure is extremely strong additional evidence of his guilt but both are additional evidence of his guilt. Even a statistic of 1 in 10, which is quite a low statistical figure for any modern DNA results, does not help Duckett in any manner because it remains evidence of his guilt of the rape of the eleven-year-old victim. For purposes of raising a claim of innocence based on postconviction DNA testing, guilt or innocence is a toggle. The exact degree does not matter. So, the statistical calculations are not legally relevant to a postconviction claim of newly discovered evidence of innocence.

Regardless of the exact figure, there is no new evidence of innocence based on these DNA results. There is only new evidence of his guilt. The statistical calculations would merely establish the strength of that new evidence of his guilt. The current SNP DNA results are "definitive" in the sense that matters legally to a claim of innocence. The results do not exonerate him.

And the fault for not having "more" definitive results in the sense of having the statistical calculations is Duckett's fault. If Duckett had requested SNP DNA testing four years ago, there would have been sufficient time for Parabon Nanolabs to perform the mathematical calculations. The State's objection to performing the mathematical calculations is that the execution will be delayed to do those calculations. While the State would certainly feel vindicated about the validity of its conviction, it is not worth delaying an execution for a murder of a young girl that occurred nearly 40 years ago. Duckett is not entitled to a stay of execution to obtain statistical calculations that do not, and cannot, exonerate him.

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's delay in seeking DNA testing alone is sufficient reason to vacate the stay. 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.[2]

---

[2] Neither the postconviction DNA statute nor Rule 3.853 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"). Indeed, the legislature has twice considered amending the DNA statute to include a time limitation on postconviction DNA motions and rejected any time limitation. But regardless of timeliness in relation to the DNA testing itself, the State may rely on Duckett's delay in requesting DNA testing as the basis for an argument to vacate to stay. A stay is an equitable remedy that considers the belated nature of the motion 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 Duckett's intentional delay in seeking DNA testing as evidence of his consciousness of guilt. *South Dakota v. Neville*, 459

Duckett could have sought SNP DNA testing years ago. The ForenSeq® Kintelligence Kit that DNA Labs International is currently used 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 DNA testing kit and concluding, that while both were accurate, the *Kintelligence* kit was more sensitive).[3]

U.S. 553, 561 (1983). There is nothing inconsistent in the State not making a timeliness argument regarding the testing itself based on the statute but making a delay argument regarding vacating the stay based on United States Supreme Court precedent.

[3] The State may rely on scientific articles published in law reviews, such as the International Journal of Legal Medicine, to establish basic facts, such as the date that a particular DNA testing method became available under the reasoning of this Court's caselaw. *Cf. Hadden v. State*, 690 So. 2d 573, 579 (Fla. 1997) (stating an appellate court should consider the issue of general acceptance at the time of appeal rather than at the time of trial citing *Hayes v. State*, 660 So. 2d 257 (Fla. 1995)); *Brim v. State*, 695 So. 2d 268, 274 (Fla. 1997); *State v. Sercey*, 825 So. 2d 959, 979 (Fla. 1st DCA 2002) (noting a court "may examine "scientific and legal writings, and judicial opinions in making its determination" regarding reliability and admissibility of scientific testing).

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 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 v. Perkins*, 569 U.S. 383, 399 (2013) (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. Duckett's delay is alone a sufficient reason to vacate the stay.

This Court should vacate the stay because the results of the SNP DNA testing do <u>not</u> exonerate Duckett. This Court should issue its opinion in both the appeal and habeas petition as soon as possible to prevent Duckett's delay in seeking DNA testing result in a stay of the execution. Duckett should not benefit from his delay in seeking DNA testing.

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

Respectfully submitted,

JAMES UTHMEIER
Attorney General of Florida

/s/ *Charmaine Millsaps*
Charmaine M. Millsaps,
Senior Counsel
Assistant Attorney General
Florida Bar No. 989134
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
Telephone: (850) 414-3300
Charmaine.Millsaps@myfloridalegal.com
capapp@myfloridalegal.com

/s/ *Nicole Rochelle Smith*
Nicole Rochelle Smith,
Senior Assistant Attorney General
Florida Bar No. 1048650
Office of the Attorney General
3507 E. Frontage Rd., Suite 200
Tampa, FL 33607-7013
Telephone: (813) 33607-37013
Nicole.Smith@myfloridalegal.com
capapp@myfloridalegal.com

/s/ *Naomi Nichols*
Naomi Nichols,
Senior Assistant Attorney General
Florida Bar No. 78346
Office of the Attorney General
444 Seabreeze Blvd, Suite 500
Daytona Beach, FL 321180-3951
Telephone: (850) 414-3300
Naomi.Nichols@myfloridalegal.com
capapp@myfloridalegal.com

Counsel for Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing **MOTION TO VACATE THE STAY OF EXECUTION** via the e-portal to: Mary Elizabeth Wells, Law Office of M.E. Wells, LLC, 623 Grant St. SE, Atlanta, GA, 30312-3146, phone: (404) 408-2180; email: mewells27@comcast.net; Brittany N. Lacy, CCRC-South, 110 SE 6th St., Suite 701, Ft. Lauderdale, FL, 33303-5001; phone: (954) 713-1284; email: lacyb@ccsr.state.fl.us; Courtney M. Hammer, CCRC-South, 110 SE 6th St., Suite 701, Ft. Lauderdale, FL, 33303-5001; phone: (954) 713-1284; email: hammerc@ccsr.state.fl.us; and the Florida Supreme Court, 500 South Duval Street, Tallahassee, FL, 32399; email: warrant@flcourts.org this 2nd day of April, 2026.

/s/ *Charmaine Millsaps*
Charmaine M. Millsaps,
Counsel for the Appellee