

**IN THE SUPREME COURT OF FLORIDA
CASE NO: SC2026-1042
EXECUTION SCHEDULED FOR JULY 28, 2026 at 6:00 PM**

DOMINICK OCCHICONE,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

**ON APPEAL FROM THE CIRCUIT COURT OF THE SIXTH
JUDICIAL CIRCUIT IN AND FOR PASCO COUNTY, FLORIDA
Lower Tribunal No. 1986-CF-1355**

INITIAL BRIEF OF THE APPELLANT

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REQUEST FOR ORAL ARGUMENT

Undersigned counsels for the Appellant respectfully requests the opportunity to present oral argument pursuant to Fla. R. App. P. 9.320. This is a capital case, which presents novel issues of constitutional significance and the resolution of the issues presented will determine whether Dominick Occhicone (“Occhicone”) will live or die, and a complete understanding of the complex factual, legal and procedural history and the arguments presented are critical to the proper disposition of this appeal.

JURISDICTIONAL STATEMENT

This is a timely appeal from the trial court’s final order denying a successive motion for postconviction relief from a sentence of death. This Court has plenary jurisdiction over death penalty cases. Fla. Const. art. V, § 3(b)(1); *Orange County v. Williams*, 702 So.2d 1245 (Fla. 1997).

PRELIMINARY STATEMENT ABOUT THE RECORD

The postconviction record on appeal for the current successive 3.851 motion consists of one volume and is referenced to as “PCROA” followed by the page number. The Appellant will be referred to as “Occhicone” or “Appellant,” interchangeably.

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Arizona Exec. Order No. 5 (January 30, 2023).....	14
Curt Anderson, <i>74-year-old man becomes oldest inmate executed in modern Florida history</i> , NBC News, https://www.nbcnews.com/news/us-news/74-year-old-man-becomes-oldest-inmate-executed-modern-florida-history-rcna351870 (last accessed July 2, 2026)	28
Death Penalty Information Center, <i>Execution Database</i> , https://deathpenaltyinfo.org/facts-and-research/data/executions (Last Accessed July 10, 2026)	36, 54

Death Penalty Information Center, <i>Time on Death Row</i> , https://deathpenaltyinfo.org/death-row/death-row-time-on-death-row , (Last Accessed July 10, 2026).....	37
<i>Dictionary by Merriam-Webster: America's most-trusted online dictionary</i> , (Feb. 22, 2023), https://www.merriam-webster.com/dictionary	13
Equal Justice Initiative: <u>The Death Penalty and Regret</u> , May 30, 2023	61
Execution of 74-year-old inmate reignites debate over death penalty, Fox 35 Orlando, https://www.fox35orlando.com/video/fmc-vcczjfgwxlokp3om (last accessed July 2, 2026)	28
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http:// Drug Shortage and Ethical Issues: Integrating Multidisciplinary Perspectives with a Shared Ethical Framework – PMC (last accessed July 3, 2026)	9
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https://synapse.patsnap.com/article/what-is-etomidate-used-for (last accessed July 4, 2026).....	8
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LSD Law Legal Dictionary (March 2026) <i>What is manifest injustice? simple definition & meaning</i> · LSD Law. Available at: https://definitions.lsd.law/manifest-injustice (Last Accessed July 2, 2026).....	7, 52

National Conference of State Legislatures’ State Medical and Geriatric Parole Laws Database (2024) https://www.ncsl.org/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws (Last Accessed July 1, 2026)	38
<i>Nicholas Jacobus, Top Drugs at Risk of Supply Shortages: Report; Supply Chain Chokepoints Are Converging to Expose Deep Structural Vulnerabilities in the U.S. Drug Supply, With New Data Showing That Even Medicines Not Currently in Shortage May Be One Disruption Away From Crisis., Pharmaceutical Executive (2026).</i>	8
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Pope Leo XIV Calls Support for the Death Penalty ‘Not Really Pro-Life,’ Death Penalty Information Center, https://deathpenaltyinfo.org/pope-leo-xiv-calls-support-for-the-death-penalty-not-really-pro-life	66
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<i>Resentencing Status of Florida Prisoners Sentenced to Die by Non-Unanimous Juries</i> , DEATH PENALTY INFORMATION CENTER, https://deathpenaltyinfo.org/stories/florida-prisoners-sentenced-to-death-after-non-unanimous-jury-recommendations-whose-convictions-became-final-after-ring (last visited July 24, 2025)69-70	
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JUDGEMENT AND SENTENCE UNDER APPEAL

See App. A - Judgment and Sentence. See App. B – State’s Statement of Case History.

WARRANT PROCEEDINGS

Occhicone timely filed a demand for additional public records pursuant Rule 3.852(i) to the Florida Department of Corrections (“FDOC”). PCROA 51-61. FDOC filed an objection. PCROA 82-99. The lower court conducted a public records hearing on July 2, 2026, at 2:00 p.m., PCROA 208-231 and shortly afterward issued an order denying Occhicone’s demand. PCROA 111-121. Occhicone filed his Successive Motion to Vacate Judgment and Sentence, PCROA 123-149, raising three claims and simultaneously filed a Motion for Stay of Execution on July 6, 2026. PCROA 202-207. The State filed its responses to Occhicone’s motions, PCROA 232-263, on July 8, 2026. The State asserted the claims raised should be summarily denied as untimely, procedurally barred, and/or meritless.

The circuit court conducted a case management conference (“CMC”) on July 8, 2026, and heard argument on Occhicone’s Successive Motion to Vacate Judgment and Sentence and his Motion for a Stay of Execution. PCROA 279-310. At the conclusion of the

hearing the circuit court indicated it was denying an evidentiary hearing and summarily denying all claims raised by Occhicone. The circuit court entered its Final Order Denying Defendant's Motion to Vacate Judgment of Conviction and Sentence of Death after Death Warrant Signed and Denying Defendant's Motion for Stay: Directions to Clerk on July 10, 2026. PCROA 311-330. Occhicone timely filed a Notice of Appeal on July 10, 2026. PCROA 331-333.

STANDARD OF REVIEW

This is an appeal from a Successive Motion under Fla. R. Crim. P. 3.851. The Court reviews the summary denial of a successive Rule 3.851 motion *de novo*. See *Davis v. State*, 417 So. 3d 242, 247 (Fla. 2025). A summary denial will be upheld only "if the motion is legally insufficient or procedurally barred, or if its allegations are conclusively refuted by the record." *Sparre v. State*, 391 So. 3d 404, 405 (Fla. 2024). If a court determines a claim is conclusively refuted by the record, it must attach the portion(s) of the record, or at least reference those parts of the record, which justify summary disposition. See Fla. R. Crim. P. 3.851(f)(5)(F).

Because the circuit court denied postconviction relief without an evidentiary hearing, this Court must accept the factual allegations

presented in Occhicone's motion and in this appeal as true to the extent they are not conclusively refuted by the record. *Ventura v. State*, 2 So. 3d 194, 197-98 (Fla. 2009). Further, this Court "review[s] the trial court's application of the law to the facts *de novo*." *Green v. State*, 975 So. 2d 1090, 1100 (Fla. 2008). A postconviction court's decision whether to grant an evidentiary hearing is likewise subject to de novo review. *Rose v. State*, 985 So. 2d 500, 505 (Fla. 2008).

The evidence upon which Occhicone is relying to raise the arguments in these proceedings were unknown to the trial court, counsel, or Appellant at the time of his trial and the facts could not have been discovered through due diligence. See Fla. R. Crim. P. 3.851(d)(2)(A); *Robinson v. State*, 707 So. 2d 688, 691 n.4 (Fla. 1998); *Jones v. State*, 591 So. 2d 911, 914-15 (Fla. 1991); *Hallman v. State*, 371 So. 2d 482, 485 (Fla. 1979). Secondly, the newly discovered evidence would probably yield a less severe sentence. *Long v. State*, 271 So. 3d 938, 942 (Fla. 2019); *Walton v. State*, 246 So. 3d 246, 249 (Fla. 2018) (quoting *Swafford v. State*, 125 So. 3d 760, 767 (Fla. 2013)). The evidence upon which Appellant relies is based on information obtained within the past calendar year.

SUMMARY OF THE ARGUMENT

The circuit court erred when it summarily denied Occhicone's Rule 3.851 motion. First, the circuit court abused its discretion and erred in denying Occhicone's claim the recently revealed shortages of etomidate, combined with FDOC's failure to follow their published protocols, creates a violation of Occhicone's Fourteenth Amendment rights under the United States Constitution and the corresponding provisions of the Florida Constitution. Additionally, the circuit court erred in denying Occhicone's extremely narrow public records demands pursuant to Florida Rule of Criminal Procedure 3.852, thereby creating a manifest injustice should the execution of Occhicone proceed.

The circuit further erred by denying Occhicone's claim his execution would violate his Eighth Amendment rights, based on the evolving standards of decency that mark a maturing society, due to being almost 81 years of age; the oldest in modern times. Occhicone has a right to individualized sentencing and is not arguing for the creation of a new class. Executing the elderly and infirmed Occhicone serves no retributive or deterrent value and would therefore be a manifest injustice which shocks the conscience and is beneath the

dignity of this State.

Finally, the lower court erred in denying Appellant's claim that his execution is a manifest injustice, due to the rate and pace of executions in Florida negatively affecting the psychological and emotional health of correction staff. Occhicone prays for a six-month pause. Occhicone is a devout Catholic and executing him shocks the conscience. Appellant's seven to five jury never would have recommended death, had they known he would be executed 40 years later, under a standard which is no longer legal.

ARGUMENT ONE

THE TRIAL COURT ABUSED ITS DISCRETION¹ AND VIOLATED OCCHICONE'S RIGHTS TO EQUAL PROTECTION AND DUE PROCESS IN VIOLATION OF THE FOURTEENTH AMENMENT TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION WHEN IT DENIED HIS DEMAND FOR PUBLIC RECORDS PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.852 AND HIS SUCCESSIVE MOTION TO VACATE JUDGMENT AND SENTENCE

Occhicone raised violations of his equal protection and due process rights in violation of the Fourteenth Amendment to the United States Constitution and corresponding provisions of the

¹ *Hannon v. State*, 228 So. 3d 505, 511 (Fla. 2017).

Florida Constitution in his Successive Motion to Vacate Judgment and Sentence filed on July 6, 2026. PCROA 123-149. The State, and to some extent the circuit court, attempts to reframe this claim as a method of execution claim required to be pled under the Eighth Amendment which is an incorrect reading of Occhicone's claims. So far in 2026, the State of Florida has executed 10 men by lethal injection, with Dennis Sochor scheduled to be executed on July 14 – two weeks before Occhicone, and after carrying out 19 executions in 2025.² All but one of these executions has been conducted using the Execution by Lethal Injection Procedures³ dated February 18, 2025 created by FDOC without oversight by any other agency. Although other defendants have previously raised claims based on records filed in previous death warrant litigation showing clear evidence FDOC has engaged in the reckless maladministration of these protocols, Occhicone raises a new and critical distinction for himself and society as a whole. The distinction is based on the widely reported shortage

² Executions & Deaths on Florida's Death Row
<https://fladeathpenalty.substack.com/p/executions> (last accessed July 2, 2026)

³ Hereinafter referred to as the procedure(s) or protocol(s) interchangeably. App. C

of etomidate, the first drug required to be used pursuant to the FDOC protocols. This distinction means his claim was not ripe until Governor DeSantis signed his execution warrant on June 26, 2026, because until Occhicone's execution using these protocols was scheduled there was no way to know the etomidate shortage would still be a concern.

The circuit court's decision to prohibit Occhicone from a full investigation into the drugs to be used for *his* lethal injection further violates the Fourteenth Amendment, as all prisoners being executed by the State of Florida are entitled to be treated the same, as well as guaranteed FDOC is following its self-imposed protocols, rather than being differentiated between in arbitrary and capricious manners by being given different drugs, whether those differences are the drugs injected, the amounts of the drugs injected, or expired drugs being injected. This prohibition results in a manifest injustice which "shocks the conscience," and demands correction.⁴

⁴LSD Law Legal Dictionary (March 2026) *What is manifest injustice? simple definition & meaning · LSD Law*. Available at: <https://definitions.lsd.law/manifest-injustice> (Last Accessed July 2, 2026)

A. Etomidate Shortage

Etomidate is a short-acting intravenous anesthetic agent used to induce general anesthesia and for sedation in critically ill patients. It has particular value in emergency medicine and intensive care units due to its hemodynamic stability and is specifically used for patients at risk of hypotension, it is preferred for use in rapid sequence intubation procedures,⁵ and is a valuable tool for anesthesiologists and critical care physicians.⁶ As of April 7, 2026, less than 13 weeks before Governor DeSantis signed the execution warrant for Occhicone, the American Society of Health-System Pharmacists reported an ongoing shortage of etomidate.⁷ Pharmaceutical Executive also reported this shortage in its April 2026 issue,⁸ The results of pharmaceutical shortages have wide-

⁵<https://synapse.patsnap.com/article/what-is-etomidate-used-for> (last accessed July 4, 2026)

⁶<https://www.longdom.org/open-access/etomidate-mechanism-of-action-clinical-uses-and-side-effects-101923.html> (last accessed July 3, 2026)

⁷<https://www.ashp.org/drug-shortages/current-shortages/drug-shortage-detail.aspx?id=873&loginreturnUrl=SSOCheckOnly> (last accessed July 3, 2026)

⁸ *Nicholas Jacobus, Top Drugs at Risk of Supply Shortages: Report; Supply Chain Chokepoints Are Converging to Expose Deep Structural Vulnerabilities in the U.S. Drug Supply, With New Data Showing That*

reaching impacts across society, not just for Occhicone. This shortage of a critical and beneficial drug creates ethical issues based on overall human rights forcing physicians to allocate resources to the individuals who will benefit most of the use of the available drugs.⁹ “Doctors and pharmaceutical experts have raised growing concerns about the shortages in recent months. The American Medical Association has reiterated its concern that drug shortages are an "urgent public health crisis" and a threat to national security.”¹⁰ As recently as July 1, 2026, the Utah Bureau of Emergency Medical Services also reported on the shortage of this critical medication.¹¹

The standard therapeutic dose for etomidate in adult patients is a range of 0.2 to 0.6 milligrams per kilogram of body weight and should be calculated and administered by trained professionals who

Even Medicines Not Currently in Shortage May Be One Disruption Away From Crisis., Pharmaceutical Executive (2026)

⁹<http://Drug Shortage and Ethical Issues: Integrating Multidisciplinary Perspectives with a Shared Ethical Framework – PMC> (last accessed July 3, 2026)

¹⁰<http://'An urgent public health crisis': Why so many people are struggling to get medicine BBC.com> (last accessed July 3, 2026)

¹¹*Utah EMS Medication Shortage Information*, Bureau of Emergency Medical Services (July 1, 2026), <https://ems.utah.gov/utah-ems-education-shortage-information/>

can properly evaluate adjustments based on specific patient considerations, such as the elderly or individuals with certain medical conditions.¹² The protocols require the administration of a 200mg dose of etomidate without regard to the weight of the individual involved, which has been referred to as a “massive dose” by this Court in *Long v. State*, 271 So.3d 938, 944 (Fla. 2019). Considering the ongoing shortage, it is unconscionable for FDOC to proceed considering the quantity of the etomidate used for executions and the pace of death warrants in Florida.

B. Due Process

Occhicone has a due process right as established by the Fourteenth Amendment to the United States Constitution and the corresponding provision of Florida’s Constitution. Florida’s interest in the timely enforcement of judgments handed down by its courts must be weighed against Occhicone’s continued interest in his life. *See Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) (“[I]t is incorrect . . . to say that a prisoner has been deprived of all

¹²Science Insights Team, *What Is the Standard Etomidate Dose for Intubation?*, ScienceInsights (Nov. 26, 2025), <https://scienceinsights.org/what-is-the-standard-etomidate-dose-for-intubation/>

interest in his life before his execution.”) (O’Connor, J., plurality opinion). “Due process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided.” *Barwick v. State*, 361 So. 3d 785, 790 (Fla. 2023) (quoting *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016)). “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)(quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

Evidence has been introduced as part of the federal litigation related to the execution of Frank Walls which raises serious and concerning questions regarding FDOC’s compliance with its self-imposed procedures. *Walls v. Dixon*, No. 4:25-cv-0488, ECF 1 (N.D. Fla. Nov. 26, 2025). Based on a plain reading of the heavily redacted FDOC logs provided in the *Walls* case, FDOC has routinely maladministered the critical phases of the execution process, specifically related to the maintenance and use of etomidate.¹³

In the months since the records were introduced in the *Walls* case, FDOC has continued to hide behind claims of confidentiality

¹³See App. D, FDOC Logs

and a rebuttable presumption of correctness to refuse to provide Occhicone, and every other petitioner, any additional information showing compliance with their procedures. The opportunity to be heard is a fundamental requirement of due process. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (internal quotation omitted). This is an opportunity which must be granted at a meaningful time and in a meaningful manner. *Armstrong*, 380 U.S. at 552. At a minimum, due process requires the deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case. *Id.* at 550. It has long been recognized “execution is the most irremediable and unfathomable of penalties; that death is different.” *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (citing *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976)). This distinction is nowhere more critical than on the verge of executing an almost 81-year-old man using etomidate, when there are known shortages of this drug combined with the evidence of ongoing maladministration by FDOC of their protocols involving the exact same drug. During the hearing on the demand for these records, PCROA 223, as well as in the filed demand, PCROA 58, Occhicone offered to work with FDOC to further narrow the items

demanding, specifically to include only the vials of etomidate set aside for his execution. However, FDOC continues to object, thereby further withholding critical information about the validity of the etomidate to be used to execute Occhicone. FDOC continues to argue this demand is vague, overbroad, or confidential, however those arguments are disingenuous, considering this concession to an extremely limited request for information. Meriam-Websters Dictionary defines overbroad as “too widely applicable or applied” and defines broad as “wide in range or amount.” The records demanded by Occhicone were limited to only those involving etomidate, and as stated above Occhicone offered to further limit them to only those involved in *his* execution. Additionally, these records could easily be provided in a way so as to not disclose any of the limited information deemed protected by Section 945.10(1)(j)1, Florida Statutes; by redaction of the names of those involved in the execution as well as the manufacturer’s information, thereby permitting Occhicone to fully investigate and litigate his due process rights.

When other states have experienced similar documented errors in their administration of lethal injection protocols with a substantial difference – they paused further lethal injection executions until the

errors were investigated and resolved.¹⁴ But not Florida, which continues to recklessly administer its protocol despite documented errors including: preparing lower dosages of drugs than required, administering expired drugs, and preparing unauthorized drugs altogether.

C. Equal Protection

As previously stated, Occhicone has a liberty interest in his life. *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. at 289. Distinctions in state criminal laws which impinge upon fundamental rights must be strictly scrutinized. *See Eisenstadt v. Baird*, 405 U.S. 438, 447 (1972). Occhicone does not need to be a member of a “protected class” to raise this issue, although arguably based on the added protections provided to the elderly under Florida law he could be considered part

¹⁴In 2022 Tennessee Governor Bill Lee and in 2023 Arizona Governor Katheen Hobbs each suspended executions pending independent review after concerns were raised about compliance with lethal injection protocols. Governor Bill Lee, *Statement on Oscar Smith Temporary Reprieve*, Governor of Tennessee (April 21, 2022), *Statement on Oscar Smith Temporary Reprieve*; Arizona Exec. Order No. 5 (January 30, 2023). In Missouri and California courts stepped in either suspending executions or encouraging the governor to take action over similar concerns. *Taylor v. Crawford*, No. 05-4173-CV-C-FJG, 2006 WL 1779035, at *4 (W.D. Mo. June 26, 2006); *Morales v. Tilton*, 465 F. Supp. 2d 972, 973 (N.D. Cal. 2006)

of the protected class of the elderly. Regarding the status of a class of one, the United States Supreme Court has recognized the standard for litigation. See *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) and *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

Regarding the status of a class of one, it has been held:

The Equal Protection Clause of the Fourteenth Amendment commands that no State shall “deny to any person within its jurisdiction the equal protection of the laws,” which is essentially a direction that all persons similarly situated should be treated alike. *Plyler v. Doe*, 457 U.S. 202, 216, 102 S. Ct. 2382, 2394, 72 L.Ed.2d 786 (1982).”

City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). And also:

Our cases have recognized successful equal protection claims brought by a “class of one,” where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. See *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 340 (1923); *Allegheny Pittsburgh Coal Co. v. Commission of Webster Cty.*, 488 U.S. 336, 109 S. Ct. 633, 102 L.Ed.2d 688 (1989). In so doing, we have explained that “[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted

agents.” *Sioux City Bridge Co.*, supra, at 445, 43 S. Ct. 190 (quoting *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 352, 38 S. Ct. 495, 62 L. Ed. 1154 (1918)).

Vill. of Willowbrook v. Olech, 528 U.S. 562, 564 (2000). See also *Clubside, Inc. v. Valentin*, 468 F.3d 144, 159 (2d Cir. 2006) (requiring an “extremely high degree of similarity” between the plaintiff and those similarly situated).

Occhicone has a right to substantive and procedural due process related to the death penalty being administered in a fair, consistent, and reliable manner. *Arbelaez v. Butterworth*, 738 So. 2d 326 (Fla. 1999). Occhicone’s constitutional rights are being violated by virtue of being treated differently from similarly situated capital litigants subject to Florida’s lethal injection protocol.

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DRUG NAME: Etomidate 40mg/20mL Package Size: 20 x 20mL (10 Vials) Page: 7
 PREVIOUS BALANCE: 330

BALANCE	DATE	VENDOR NAME	INVOICE NUMBER	LOT#	EXP. DATE (MM/DD/YYYY)	RECEIVED/USED (+/-)
320	4/8/25				5/31/2025	-10
310	5/1/25				5/31/2025	-10
300	5/15/25				5/31/25	-10
400	5/23/25				1/31/2027	+100
390	5/29/25				5/31/2025	-10
-10	380	6/12/25			6/30/2025	
-50	330	6/25/25			6/30/2025	
-10	320	7/28/25			7/31/2025	
2025 -20	300	8/1/25			7/31/25	
025 -10	290	8/19/25			1/31/2	
225 -10	280	8/29/25			1/31/25	
1/31/2025 -10	270	9/17/25				
1/31/2025 -10	260	9/30/25				

App. D

FDOC recorded the preparation of etomidate with an expiration date of January 31, 2025, during the executions of Kayle Bates on August 19, 2025; Curtis Windom on August 28, 2025; David Pittman on September 17, 2025; and Victor Jones on September 30, 2025.¹⁵ Although there are reports of emergency use authorization¹⁶ being given for use of etomidate after its expiration date, it has only been extended by six months,^{17,18} which was

¹⁵See App. D, FDOC Logs

¹⁶Utah EMS Medication Shortage Information, *supra* at 11

¹⁷<https://www.fda.gov/media/164122/download>

¹⁸Utah EMS Medication Shortage Information, *supra* at 11

exceeded by FDOC in these executions. The Federal Drug Administration requires manufacturers to provide data regarding the shelf-life of their medications, as well as expiration dates so the public is guaranteed the medications being administered have not degraded to the point of not providing the intended benefit or causing unintended side effects.¹⁹ Without being able to further investigate the drugs to be used in his execution, Occhicone has reason to assert his equal protection rights will be violated by the use of extremely expired etomidate during his execution.

Considering the volume of errors documented in the FDOC records surrounding Florida's unprecedented pace of carrying out executions, Occhicone has legitimate concerns he is not going to receive the same constitutionally protected protocols he is guaranteed under the Fourteenth Amendment if the state is permitted to execute him on the schedule set forth by Governor DeSantis; especially if he is not given access to the additional records he demanded. The unequal treatment Occhicone would receive if he were executed would further violate his rights to equal protection and

¹⁹<https://www.fda.gov/drugs/pharmaceutical-quality-resources/expiration-dates-questions-and-answers>

fundamental fairness, specifically since he was denied the right to a full and fair evidentiary hearing on these claims. This Court has held when there is “any question” whether a claim is sufficient for an evidentiary hearing, “the Court will presume” one is required. *Jackson v. State*, 147 So.3d 469, 485 (2014)(Quoting *Walker v. State*, 88 So.3d 128, 135 (Fla. 2012).

In *Arthur v. Thomas*, 674 F.3d 1257 (11th Cir. 2012), the Eleventh Circuit Court addressed an equal protection claim by an Alabama death row inmate, and found the petitioner only had to show enough facts to constitute a plausible equal protection claim and had done so by alleging “Alabama has substantially deviated from its execution protocol.” *Id.* at 1263. *Arthur* alleged significant deviations from the established execution protocol and that court found as follows:

In light of Arthur’s other allegations regarding the veil of secrecy that surrounds Alabama’s execution protocol, it is certainly not speculative and indeed plausible that Alabama will disparately treat Arthur because the protocol is not certain and could be unexpectedly changed for his execution. (Footnote omitted.)

Id. The Court then remanded the case for further factual development. That is what needs to happen in this case, which is on

point with *Arthur*. Summarily denying Occhicone's claims violates his right to due process and access to the courts under the Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

The *Walls* records indicate FDOC is practicing its lethal injection protocol in an ad hoc manner, devoid of uniformity in treatment and specifically indicating the use of expired etomidate, Occhicone has a constitutional right pursuant to the Equal Protection Clause of the 14th Amendment as selectively incorporated into state application. Occhicone's claim applies to the actions of a state agency and legitimately effects the way he will be put to death. Occhicone respectfully requests this Court reverse the lower court's ruling and remand with instructions to grant the additional records request.

Although the judicial and executive branches have been made aware of these concerns, no one in either branch has attempted to explain the irregularities showing maladministration of their protocols to any of the petitioners who have sought additional information. Instead of pausing executions to investigate, FDOC has continued executions at an unprecedented rate and without

any judicial review of the issue. The routine maladministration exposed by the FDOC logs impacts critical and delicate phases of the execution process and raises grave concerns regarding the preparation and implementation of the written execution protocol.

D. Record Demand

Similar to his due process right, Occhicone also has an explicit right under the Florida Constitution to access the courts because “[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.” Art. 1 § 21, Fla. Const. By not allowing Occhicone access to crucial records, even as Occhicone has offered to further negotiate and streamline the request to satisfy any specific FDOC concerns, this court is denying Occhicone access to the courts to prove his due process rights will be violated if his execution proceeds without intervention.

Florida has a long history of public access to government records guaranteed in the Florida constitution:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically

made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Fla. Const. Art. I, §24(a). Stressing how important this right is, the Florida legislature codified it in Section 119.01(a), Florida Statutes, “General state policy on public records,” which provides “[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person.” It goes on to say: “Providing access to public records is a duty of each agency.” *Id.* The records Occhicone sought are clearly public records under Section 119.011(12), Florida Statutes, which defines a public record as all documents and records, regardless of form, “made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency” including “any material prepared in connection with official business which is intended to perpetuate, communicate, or formalize knowledge of some type.” *Shevin v. Byron, Harless, Schaffer, Reid, and Associates, Inc.*, 379 So. 2d 633, 640 (1980).

“If there is any doubt as to whether a matter is a public record

subject to disclosure, the doubt is to be resolved in favor of disclosure.” *Everglades Law Center v. South Florida Water Management District*, 290 So. 3d 123, 129 (Fla. 4th DCA 2019) (citing, *Morris Publ’g Grp., LLC v. Fla. Dep’t of Educ.*, 133 So. 3d 957, 960 (Fla. 1st DCA 2013)). Public records laws are “to be construed liberally in favor of the state’s policy of open government.” *Id.*

The lower court prevented Occhicone from accessing critical public records in violation of his Florida Constitutional rights under Article I, Section 24 and in violation of Florida Statutes, when it denied his Rule 3.852 demand for additional public records in contravention of Chapter 119, “Public Record Laws;” Section 27.7081, Florida Statutes; and Fla. R. Crim. P. 3.852. FDOC failed to assert any legitimate claim the records sought are excluded by a statutorily recognized exemption and/or confidentiality provision, which precludes the agencies from fulfilling their duties to make the records available for public copying or inspection as there is an extremely limited exemption to the public records laws:

Information or records that identify or could reasonably lead to the identification of any person or entity that participates in, has participated in, or will participate in an execution, including persons or entities administering, compounding, dispensing, distributing, maintaining,

manufacturing, ordering, preparing, prescribing, providing, purchasing, or supplying drugs, chemicals, supplies, or equipment necessary to conduct an execution in compliance with chapter 922.

Section 945.10(1)(j)1, Florida Statutes. The plain meaning of this statute makes it clear the Florida legislature did not intend to prevent all access to records related to lethal injection, but rather any information leading to the identity of individuals involved in the lethal injection process. Occhicone does not seek any identifying information and has agreed such information can be redacted according to the statute.

Denying access to these records is problematic because there is no way for anyone to ever challenge FDOC's actions based on this "Catch-22" lethal injection protocol loop. *See Trotter v. Florida*, 146 S. Ct. 755, 756 (2026) (Justice Sotomayor's Statement regarding the denial of the application for a stay of execution). Accordingly, Florida's public records litigation process for capital postconviction inmates amounts to no process at all.

It is a procedural due process concern whenever a state agency tasked with carrying out executions withholds information and "has constrained the ability of death-row inmates to challenge

the constitutionality of [their states'] execution process." *First Amendment Coalition of Arizona, Inc. v. Ryan*, 938 F.3d 1069, 1072 (9th Cir. 2019). Occhicone's request was too narrowly tailored to be considered a "fishing expedition." *Sims v State*, 753 So. 2d 66, 70 (Fla. 2000).

Although this Court has long recognized FDOC is entitled to a presumption it will comply with the lethal injection protocol, Occhicone argues FDOC has lost that presumption based on the multitude of errors apparent in the records discussed above. *Long v. State*, 271 So. 3d 938 (Fla. 2019). In Section 922.105(7), Florida Statutes, the Florida Legislature delegated the creation of procedures for the execution of inmates sentenced to death by lethal injection to FDOC, rather than creating procedures within the Administrative Procedures Act in Chapter 120, Florida Statutes. This procedure forces Occhicone to raise any concerns about his equal protection rights in court pursuant to Fla. R. Crim. Proc. 3.852, where he has been denied access to the additional records he has requested, despite neither the state nor FDOC refuting Occhicone's allegations. Based on these errors, Occhicone has clearly established his entitlement to the records demanded from FDOC regarding violations

of his constitutionally protected equal protection rights. The requirements for a demand for additional public records are set forth in Rule 3.852(i)(1), Fla. R. Crim. P., which requires capital postconviction counsel to file an affidavit which:

- (A) attests that collateral counsel has made a timely and diligent search of the records repository; and
- (B) identifies with specificity those public records not at the records repository; and
- (C) establishes 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; and
- (D) shall be served in accord with subdivision (c)(1) of this rule.

No where does the rule require Occhicone to establish a “colorable claim” as argued by FDOC in its objection to production of the records or the trial court in its denial of his demand. The plain language of the rule only requires Occhicone to establish the records are “relevant to the subject matter” of a proceeding or “reasonably calculated to lead to the discovery of admissible evidence,” not the higher burden imposed by the trial court of a colorable claim.

E. Conclusion

Considering the ongoing shortage of etomidate, combined with FDOC’s history of administering expired doses of etomidate

in prior executions, the most obvious and viable alternative would be for Florida to pause executions, allow this extremely important medication to be used by those suffering acute and immediate medical concerns who can gain the most benefit from its intended use, conduct an independent review of FDOC's lethal injection practices, document and explain the errors which have plagued recent applications of the lethal injection protocol, and provide additional training and reform as necessary before resuming executions using lethal injection. As noted, other states faced with similar errors in the implementation of a lethal injection protocol have similarly halted executions, which is what Florida should do, while pharmacists are alerting the world to shortages of this medication, rather than using some of the limited amount of etomidate available to end the life of an almost 81-year old man when it could be used for a life-saving procedure, thereby perpetrating a manifest injustice upon not just Occhicone, but society as a whole. Relief is proper.

ARGUMENT TWO

THE EXECUTION OF DOMINICK OCCHICONE IS CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND

THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION DUE TO OCCHICONE'S STATUS AS AN ELDERLY PERSON

On June 25, 2026, a plethora of news stories throughout Florida ran with some version on the headline "74-year-old man becomes oldest inmate executed in modern times".²⁰ "How old is too old for the death penalty? That is the debate taking place over Florida today," reported newscasts across the state regarding the execution of Dusty Spencer.²¹ Many calling it "historic," as Spencer was reportedly the oldest prisoner put to death in our state's history. A day later, on June 26th, Governor DeSantis chose to immediately surpass that record by signing an execution warrant for Occhicone who is almost 81-years old.

Occhicone is not claiming his sentence is prohibited by the Eighth Amendment based on being in a "class" of elderly people,

²⁰Curt Anderson, *74-year-old man becomes oldest inmate executed in modern Florida history*, NBC News, <https://www.nbcnews.com/news/us-news/74-year-old-man-becomes-oldest-inmate-executed-modern-florida-history-rcna351870> (last accessed July 2, 2026)

²¹Execution of 74-year-old inmate reignites debate over death penalty, Fox 35 Orlando, <https://www.fox35orlando.com/video/fmc-vcczjfgwxlokp3om> (last accessed July 2, 2026)

rather the issue is because the execution of the death sentence upon Occhicone, after nearly four decades on death row, would constitute cruel and unusual punishment based on his individual age and condition, now that he is nearing 81 years old.

A. Execution of the Elderly Defies the Evolving Standards of Decency of the Eighth Amendment and the Corresponding Provisions of the Florida Constitution

The evolving standards of decency mark the progress of a maturing society. *Trop v. Dulles*, 356 U.S. 86, 101 (1958). Evolving standards of decency dictate when a punishment has become “cruel and unusual.” It is through this framework the Eighth Amendment is interpreted; not only by its text, history, and original purpose, but by the current standards of society. *Roper v. Simmons*, 543 U.S. 551 (2005). The analysis is not restricted to the method in which a death sentence is ultimately carried out but rather the contemporary values of the society carrying it out. *Ford v. Wainwright*, 477 U.S. 399, 406 (1986). Contemporary values determine whether a particular punishment comports with the fundamental human dignity the Eighth Amendment protects. *Id.* While the rights guaranteed by the Eighth Amendment are rooted in history, the manner in which we

protect those values is a matter of contemporary law. *Id.* “Once a substantive right or restriction is recognized in the Constitution, therefore, its enforcement is in no way confined to the rudimentary process deemed adequate in ages past.” *Id.*

In applying the evolving standards of decency analysis to the question of whether it was acceptable to execute mentally retarded individuals, the *Atkins* court drew objective indicia of society’s standards not only from pertinent legislative enactments but also state practices. *Atkins v. Virginia*, 536 U.S. 304, 305 (2002). Although not controlling, the *Roper* court expanded those criteria to include legislative enactments, state practices, and “our own judgement,” also relying on international law as constructive. *Roper v. Simmons*, 543 U.S. 551 (2005). The question of exempting elderly inmates can be decided similarly, even though Occhicone is not arguing a class exception to *all* elderly inmates.

I. Legislative Enactments of the United States Offer Additional Protections and Services to Elderly Persons

Many protections for the elderly can be found in federal law. The United State has a long history of enacting legislation specifically for

its elderly citizens, dating as far back as 1920.²² In 1965, Congress passed the Older Americans Act, which has been routinely reauthorized and expanded, most recently in 2020. 42 U.S.C.A. § 3001. Congress declared it is “in keeping with the traditional American concept of the inherent dignity of the individual in our democratic society,” that “the older people of our Nation are entitled to,” certain objectives and it is the “duty and responsibility of the governments of the United States, of the several States and their political subdivisions...” to secure those opportunities for older Americans. *Id.* They have continued to uphold this duty by passing further protections specifically geared towards older Americans. In 2010, Congress passed the Elder Justice Act. Which created the Elder Justice Coordinating Council. 42 U.S.C.A. § 1397j. Part of the objective of this legislation is to encourage States to protect children and adults who are unable to protect their own interests. In 2017 Congress passed the Elder Abuse Prevention and Prosecution Act (“EAPPA”), 34 U.S.C.A. § 21701. The EAPPA mandated an Elder Justice Coordinator within the office of the Attorney General, the

²²See App. F - Chronological list of legislation enacted for older Americans.

Department of Justice, and the Federal Trade Commission. *Id.* This led to the Elder Justice Initiative within the U.S. Department of Justice, the purpose of which is to combat elder abuse and promote justice for older Americans.²³

The legislation cited above is a clear indicia the standard of decency in American society at large, is one which venerates the inherent dignity of its citizens to such a degree society has made it the duty and responsibility of the government to protect the dignity of elder Americans who cannot protect it themselves as well as to protect their physical and financial interests – all in an effort to promote justice. Furthermore, the federal legislation urges the States to make additional protections for elderly people.

II. Legislative Enactments of the State of Florida Consider Elderly People to be Vulnerable and Afford Them Additional Protections

The State of Florida has enacted many legislative protections for elderly people. Florida has sentencing enhancements reclassifying criminal offenses based on the victim's age. Section 784.08(1), Florida Statutes, imposes a minimum term of prison for anyone

²³U.S. Department of Justice, *Elder Justice Initiative*, <https://www.justice.gov/elderjustice> (Last Accessed July 10, 2026).

convicted of the offense of aggravated assault or aggravated battery upon a person 65 years of age or older and misdemeanor offenses of the same nature can be enhanced to a felony, regardless of knowledge of the victim's age. These protections are not limited to just violent offenses: Section 812.0145, Florida Statutes, enhances criminal penalties for theft offenses committed against people 65 years or older and Section 817.5695(2), Florida Statutes, protects individuals 65 years or older from exploitation. "Obviously, the statute was enacted to protect the elderly, not the criminals, the theory behind the statute being that he or she who assaults elderly people does so at his or her peril." *State v. Nelson*, 577 So. 2d 971, 972 (Fla. 4th DCA 1991).

Florida already recognizes elderly people require specialized care. Chapter 430, Florida Statutes, establishes the Department of Elderly Affairs, the stated purpose of which is to advise, assist, and protect the state's elderly citizens to the fullest extent.²⁴ Florida

²⁴Fla. Stat. 430.602(2) defines "Elderly person" as meaning any person 60 years of age or over who is currently a resident of this state and has an intent to remain in this state.

Statutes Chapter 825, Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults, defines “elderly person” as one:

60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

Abuse of an elderly person is defined as the intentional infliction of physical or psychological injury upon an elderly person or disabled adult. Section 825.102(1)(a), Florida Statutes. Fragility and cognitive decline are recognized as significant factors in the vulnerability of older adults by “Florida’s Elder Abuse Benchbook,” (2025).²⁵

How Aging Affects the Brain

The aging brain experiences a gradual decline in neurotransmitter activity, which slows communication between nerve cells. [Footnote Omitted]. This can result in slower processing speeds, difficulty retrieving words, and minor forgetfulness. Additionally, the hippocampus, responsible for memory formation, and the prefrontal cortex, which governs decision-making and reasoning, tend to shrink over time. [Footnote Omitted]. These changes can make it harder to process new information and react quickly to complex situations, which can be

²⁵Protecting the Vulnerable; Florida’s Elder Abuse Benchbook,”(2025)

[https://www.flcourts.gov/content/download/2456475/file/FINAL%20Elder%20Abuse%20Benchbook%20\(with%20cover\)%20\(0826\).pdf](https://www.flcourts.gov/content/download/2456475/file/FINAL%20Elder%20Abuse%20Benchbook%20(with%20cover)%20(0826).pdf) (Last Accessed June 30, 2026)

particularly concerning when making legal or financial decisions.

Florida's Elder Abuse Benchbook, (2025). The *Benchbook* section above acknowledges the general deterioration of aging as a factor towards the increased vulnerability of the elderly, regardless of the physical and mental diseases related to those of advanced age. *Id.* In fact, the elderly are considered so vulnerable that injunctions are available against the possibility of their exploitation. Section 825.1035, Florida Statutes. This injunction is unique as it allows intervention even when the adult cannot or does not initiate legal action, allowing surrogates to act in their interest. *Id.* This injunction offers a low-barrier protective option without the need to prove incapacity of the elderly person. *Id.*

The examples above clearly show the State of Florida has provided vast protections beyond those afforded to the rest of the population for those they deem elderly. The repeated stated purpose in doing so is the increased vulnerability which comes from the advancement of age. Occhicone who is soon to be 81, is deserving of the same principles and protections.

III. The Practices of Other States Signal the Standard of Decency of American Society Does Not Comport with

Executing the Elderly

It is not the practice of other states to execute elderly people. Only 23 states currently execute anyone. Out of the minority of states who do, only ten have executed a person over the age of 65 in the last ten years.²⁶ The Death Penalty Information Center Database shows 248 people have been executed since 2016, of which only 31 were 65 or older. Only 26% of the executed were elderly despite it being widely known the death row population is aging.²⁷ The numbers get even smaller when accounting for inmates 70 and above. In the past 10 years there have only been 12 executions of those 70 and above, spread across merely seven states. Only six have executed someone 75 or older and only one state, Alabama has executed a person over 80, in 2018.

Florida is an outlier when it comes to executing the elderly. Since 2016 Florida has executed eight people age 65 or older, twice

²⁶Death Penalty Information Center, *Execution Database*, <https://deathpenaltyinfo.org/facts-and-research/data/executions> (Last Accessed July 10, 2026).

²⁷Elizabeth Rapaport, A Modest Proposal: The Aged of Death Row Should Be Deemed Too Old to Execute, 77 Brook. L. Rev. (2012). Available at: <https://brooklynworks.brooklaw.edu/blr/vol77/iss3/5>

as many as the next state. Texas executed four people 65 and older in the same time frame. Florida accounted for a quarter of those 70 and above executed in the last 10 years - more than any other state. While it is true the population of death row is aging, the average age of those executed in 2025 was 52.3; however, the average age of those executed in Florida in 2025 was 60.68.²⁸ Similarly, the average age of those executed in Florida so far in 2026 is 59.78. This does not even take into account Sochor who is 74, and Occhicone who is 80. With the average age of the defendant executed in Florida being nearly eight years older than in the rest of the country, it is startlingly obvious Florida is outside of the norm of not executing elderly inmates. In fact, if the State of Florida executes Occhicone on July 28th, it will be in the shameful minority of only two states who have ever executed an octogenarian.

The legislative enactments of the United States, the State of Florida, along with the practices of other States, indicate the standard of decency in America has evolved beyond executing the

²⁸Death Penalty Information Center, *Time on Death Row*, <https://deathpenaltyinfo.org/death-row/death-row-time-on-death-row>, (Last Accessed July 10, 2026).

elderly. The only thing left to be determined is this Court's own judgement that executing an elderly vulnerable person is beyond keeping with the Eighth Amendment values of the American people. *Roper v. Simmons*, 543 U.S. 551 (2005).

B. The Reduction of Sentences Based on Age is Already Contemplated by Both the United States Code and State Law

Absolving elderly inmates from their sentence is not a novel concept. There are already compassionate release programs in place for the reduction of sentences of elderly inmates. Twenty-four states and the District of Columbia offer some form of age-related compassionate release.²⁹ Even Florida offers compassionate release under conditional medical circumstances. Section 947.149, Florida Statutes. Federal law allows the reduction of an imposed term of imprisonment when the defendant “(i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which the defendant is imprisoned” and “[t]he defendant is not a danger to the

²⁹National Conference of State Legislatures' State Medical and Geriatric Parole Laws Database (2024) <https://www.ncsl.org/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws> (Last Accessed July 1, 2026)

safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g)[.]” 18 U.S.C.A. § 3582. It is important to note this does not require an extraordinary and compelling reason for the reduction. Instead, the law considers the age of the defendant itself to be an extraordinary and compelling reason:

(2) Age of the Defendant.-- The defendant (A) is at least 65 years old; (B) is experiencing a serious deterioration in physical or mental health because of the aging process; and (C) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

18 U.S.C.A. § 3582, U.S.S.G. 1B1.13.

In *United States v. Lynn*, the Government argued the defendant is “required to show the Court not only that he is “experiencing a serious deterioration in physical or mental health because of the aging process” but also that “his condition substantially diminishes his ability to function in a correctional facility.” *United States v. Lynn*, No. CR 89-0072-WS, 2020 WL 3229302, at *3 (S.D. Ala. June 15, 2020). In doing so, the Government argued the inability to function in a correctional facility would be an extraordinary or compelling reason for sentence reduction. *Id.* The court in *Lynn* rejected the Government’s additional requirement as erroneous. The court

granted compassionate release to the defendant who was 65, suffering a number of age-related health problems, and had served 30 years of his sentence, finding that in light of his age and condition, he no longer posed a danger to the safety of any person or to the community at large. *Id.* It is undisputed Occhicone is 80 years old, has served 39 years under a sentence of death and, similar to the defendant in *Lynn*, suffers from heart and kidney disease as well as the general deterioration of old age including difficulty seeing, hearing, and getting around. A person in Occhicone's position would qualify for compassionate release under the United States Code.

C. Occhicone Seeks Exemption from Execution Because He is Elderly Based on a Totality of the Circumstances, not a Categorical Bar to the Execution of Those 65 and Older

I. Occhicone's Claim is Distinct from the Age Claims Raised by Smithers, Trotter, and Spencer

Similar age-based claims have recently been litigated in the post warrant litigation of Samuel Smithers, Melvin Trotter, and Dusty Ray Spencer. In *Smithers* it was argued those over the age of 65 should be exempt from execution. *Smithers v. State*, 420 So. 3d 460, 465 (Fla.), cert. denied sub nom. *Smithers v. Florida*, 146 S. Ct. 323, 223 L. Ed. 2d 143 (2025). In *Smithers*, this Court did not consider the

issues of whether executing the elderly is inconsistent with our evolving standards of decency or whether executing the elderly violates federal and state constitutional prohibitions against cruel and unusual punishment where the executions do not have a deterrent or a retributive purpose because they found Smithers' claim to be untimely and procedurally barred and foreclosed by the conformity clause. *Id.* This Court affirmed the circuit court's ruling Smithers, who was 72 at the time of his execution, could and should have raised his claim when he was 65. *Id.*

Melvin Trotter, who turned 65 mere weeks before his execution warrant was signed, sought to revive the claim. Trotter argued imposition of his death sentence at 65 years of age offends the evolving standards of decency and constitutes cruel and unusual punishment. This Court denied the claim, relying on its holding in *Smithers v. State*, 420 So. 3d 460 (Fla.), cert. denied, — U.S. —, 146 S. Ct. 323, 223 L.Ed.2d 143 (2025) and declined to expand the prohibition against cruel and unusual punishment to include individuals 65 years of age and older. *Trotter v. State*, 428 So. 3d 68, 71 (Fla. 2026), cert. denied sub nom. *Trotter v. Florida*, 146 S. Ct. 755 (2026).

Dusty Ray Spencer, who was 74, also asked the court to recognize a categorical exemption from execution based on advanced age. *Spencer v. State*, No. SC2026-0880, 2026 WL 1757938, at *6 (Fla. June 18, 2026), *cert. denied sub nom. Spencer v. Fla.*, No. 25-7648, 2026 WL 1827690 (U.S. June 25, 2026). This Court denied his claim as untimely because he did not raise the claim until nearly a decade after reaching the age at which he contends a categorical exemption from execution should apply. *Id.* This Court also denied the claim on the basis categorical exemptions are ruled by the conformity clause:

“We have explained that the Supreme Court's interpretation of the Eighth Amendment is both the floor and the ceiling for protection from cruel and unusual punishment in Florida... No decision from the Supreme Court has read the Eighth Amendment as categorically exempting defendants of advanced age from execution, and we are not about to create one now. Spencer is thus foreclosed from relief on this basis.”

Id.

Occhicone raises a subtle but important distinction: Occhicone seeks Eighth Amendment relief from execution based on his age and condition, he does not seek a categorical bar to the execution of those 65 and older. Because he does not argue a categorical bar based on age, this Court’s precedent in *Smithers*, *Trotter*, and *Spencer* does not

apply. The claim is timely because Occhicone had no way of knowing at what age and in what condition he would be at the time his execution warrant was signed. Nor can the claim be precluded by the conformity clause because no categorical exemption is being sought.

II. The Determination of Age is Not Based on Class, but is a Fact Specific Analysis of The Vulnerability of the Individual at the Time of Injury

Occhicone further proposes the protections afforded to elderly persons are not based only on a specific age, such as 60 or 65, but based on a culmination of factors, foremost being their vulnerability, manifest at the time the warrant is signed. Age alone is not a constitutionally protected class. *Gregory v. Ashcroft*, 501 U.S. 452, 470, 111 S. Ct. 2395, 2406, 115 L. Ed. 2d 410 (1991)(“This Court has said repeatedly that age is not a suspect classification under the Equal Protection Clause”). Instead, the focus is on the vulnerability of the individual. Chapter 415, Florida Statutes, dealing with adult protective services categorizes a vulnerable adult as any person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or

developmental disability or dysfunction, or brain damage, OR the infirmities of aging (emphasis added).

The court in *Watson v. State*, 95 So.3d 977, 981 (Fla. 1st DCA 2012) opined a person's chronological age is not a reliable indicator of his or her ability to function independently in the world, as individual effects of aging vary greatly.³⁰ In *Watson*, the court reversed a conviction of abuse of an elderly person even though the victim was unquestionably over 60 years old as was statutorily required.³¹ The *Watson* court held:

³⁰In the past aging was thought to be invariably accompanied by diminution in mental and other capacities. A persons [sic] abilities [sic] were thought to deteriorate in direct proportion to their [sic] age. Almost every investigation that has been undertaken on the topic has shown definitively that chronological age and functional ability are not related. Aging as a process of wearing out is related to the concept of biological age, but biological age and chronological age are not correlative The concept that a person at age sixty-five, or for that matter seventy or seventy-two inexorably has suffered a loss of ability and functional capacity is completely at variance with known facts There is no rational basis for taking age sixty-five as a milestone as [sic] either physical or mental capacity. O'Neil V. Baine: Application of Middle-Level Scrutiny to Old-Age Classifications, 127 U. Pa. L. Rev. 798, 812 (1979)

³¹Section 825.101(5) defines the term "elderly person" as follows: "Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

“The purpose of section 825.102 is to provide additional protection for individuals sixty years of age or older when the infirmities of aging result in a dysfunction that impairs their ability to provide adequately for their own care and protection. Even if a person is sixty years of age or older, a person does not qualify as an “elderly person” within the meaning of the statute if he or she does not have an age-related impairment of his or her “ability ... to provide adequately for the person's own care or protection.”

Id. The *Watson* court found the victim, who was 79 years old, was not an “elderly person” within the meaning of the statute because he remained active, exercised regularly to stay in shape, lived alone, and functioned successfully without assistance and because the State failed to present any evidence the infirmity of aging had impaired the victim’s ability to care for himself.

This is further supported by *Grasso v. Grasso*, 131 F. Supp. 3d 1303, 1305 (M.D. Fla. 2015), where the court’s analysis hinged not on whether Grasso was an “elderly person” at all but whether Grasso was a “vulnerable adult.” Grasso, who was 86 years old, spent most of the day home alone and unassisted, took care of the cats, did housework including the dishes and cooked routinely. Grasso did not need help showering, getting dressed, brushing her teeth, eating, or

changing her own sheets, nor did she have any noted cognitive issues for which she would need to see a mental health professional. However, the court noted Grasso was an octogenarian, had limited ambulatory abilities, needed a cane to walk, was unable to go up and downstairs, had severe eye problems, was unable to drive, and could not pick up her medication on her own. Furthermore, the court noted Grasso was in a state of grief due to mourning and financially unsophisticated. Based on these facts, the court in *Grasso* found there was a genuine issue of material fact as to whether Grasso was a “vulnerable adult.”

It is clear from the analysis in *Watson* and *Grasso* that “elderly person” is not a class, because if it were a class, simply to be over the age of 60 would be enough. Instead, a fact-specific analysis was necessary as to the “elderly person” in question based on their individual level of vulnerability, considering their physical, mental, and emotional state at the time of the incident. Similarly, a case-by-case analysis must be conducted to determine when an individual is so elderly and vulnerable, their execution would be violative of the Eighth Amendment, considering the physical, mental, and emotional state of the person when the execution warrant is issued.

Considering the above, old age comes early to prisoners. Prisoners are more likely to suffer age related impairments than their non-prison counterparts of the same age. Prison health experts treat the onset of old age in prison as commencing as early as fifty.³² A history of drug and alcohol abuse and impoverished backgrounds combined with the health damaging effects of prison life have led to a consensus that age 50 or 55 is considered elderly for prisoners.³³ Furthermore, the more rigorous conditions of confinement on death row takes an even greater toll on the minds and bodies of the confined, exacerbating their decline.³⁴ It is understood the rigors of prison life cause inmates to have a psychological age of ten to fifteen years older than their non-incarcerated counterparts.³⁵

Occhicone is set to be executed just one month shy of his 81st birthday. He has a history of substance abuse, drinking alcohol since the age of 16 and smoking marijuana daily from the age of 24 until the time of his arrest around the age of 40. Occhicone has now been

³²Rapaport, *supra* at 27

³³Timothy Curtin, *The Continuing Problem of America's Aging Prison Population and the Search for a Cost-Effective and Socially Acceptable Means of Addressing It*, 15 ELDER L.J. 473 (2007)

³⁴Rapaport, *supra* at 27

³⁵Curtin, *supra* at 33

incarcerated for 40 years, with 39 of those spent on death row. He stated he never slept more than three consecutive hours a night since arriving on death row. He stated he slept a solid 6 hours for the first time on death row only after arriving on death watch. Occhicone has poor hearing and requires the use of a hearing aid. Occhicone's vision is so poor he is no longer able to read, even with the aid of eyeglasses, despite having had two cataract surgeries. Occhicone has limited function of his kidneys - varying between 40-60% function - and his most recent MRI shows multiple cysts on his right kidney. Occhicone has heart issues including hypertension, an irregular heartbeat, sometimes skipping a beat, and sometimes speeding up, as well as a blockage of the aorta. An electrocardiogram showed Occhicone has a left anterior fascicular block, indicating cardiac issues. Like many men of his age, Occhicone suffers from an enlarged prostate causing leakage and constipation requiring medication. Occhicone's urinalysis shows cloudy urine which can be indicative of prostate cancer or kidney disease. Occhicone's blood panel also shows elevation of a thyroid stimulating hormone which indicates hypothyroidism. Occhicone suffer from arthritis as well as degeneration of his left hip, left knee, lumbar spine, and spondylitic

changes to the lumbar spine, also known as spinal osteoarthritis or degenerative disc disease. This leads Occhicone to have a hunched appearance and get easily winded walking, despite the assistance of prison guards. In fact, Occhicone requires assistance with the basic tasks of daily life, including needing the aid of a prison guard to get in and out of the shower, as well as the aid of two guards, while Appellant struggled to breathe, to go up and downstairs. After considering Occhicone's physical condition and adjusting for the increased psychological age of inmates, Occhicone has the mental age of someone 90-95 years old. By any metric, Occhicone would be considered elderly and vulnerable.

D. Executing Occhicone Serves No Retributive or Deterrent Value and Would be a Manifest Injustice Against Eighth Amendment Values

It is well established in this nation the death penalty serves only two purposes: retribution and deterrence. *Lackey v. Texas*, 514 U.S. 1045, 1421 (1995). A punishment is considered excessive and unconstitutional if it "(1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime. A punishment

might fail the test on either ground.” *Coker v. Georgia*, 433 U.S. 584, 592 (1977); See also, *Atkins v. Virginia*, 536 U.S. 304 (2002) (“Unless the imposition of the death penalty on a mentally retarded person ‘measurably contributes to one or both of these goals, it ‘is nothing more than the purposeless and needless imposition of pain and suffering,’ and hence an unconstitutional punishment”). Capital punishment is excessive when “it is grossly out of proportion to the crime, or it does not fulfill the two distinct social purposes served by the death penalty: retribution and deterrence of capital crimes.” *Kennedy v. Louisiana*, 554 U.S. 407, 441 (2008).

An execution without retributive value is tantamount to vengeance. See, *Ford*, 477 U.S. at 410 (“this Court is compelled to conclude that the Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane. Whether its aim be to protect the condemned from fear ... or to protect the dignity of society itself from the barbarity of exacting mindless vengeance, the restriction finds enforcement in the Eighth Amendment”). The point of retribution is for the criminal sentence to be directly related to the culpability of the perpetrator. *Tison v. Arizona*, 481 U.S. 137 (1987). There is no greater culpability in death than there is in a

sentence of life. The execution of Occhicone no longer serves any retributive value based on his advanced age and would serve only the purpose of vengeance, offending the dignity of our society.

Dusty Ray Spencer's execution set a record in Florida as the oldest man to be executed at 74 years of age. If Dennis Sochor is executed on July 14, 2026, he will surpass that record by being two weeks older. Occhicone is almost 81. The current spate of executions in Florida seems targeted at one of the most vulnerable segments of the population and even more so of the prison population. The interests of the accused must be weighed against the interests of the victims, only then is justice served. In Florida it has been determined the interest of justice requires mandatory appeals for the accused and appeals take time. A death sentence executed 40 years after a crime serves no deterrent value. Governor DeSantis' comments reflect the fact the decades between conviction and execution dilute the deterrent effect of the death penalty. Without discarding the entire modern day criminal justice schema of appeals, there is no deterrent effect of the death penalty.

Manifest injustice refers to an error in a legal proceeding which is so fundamentally unfair or wrong that it shocks the conscience.³⁶ In this post-conviction context, the inquiry focuses on whether a manifest injustice will occur if the error is not corrected. *State v. Gordon*, No. F08-9192, 2014 WL 8396818, at *3 (Fla .Cir .Ct. Aug. 12, 2014). When manifest injustice has occurred, this Court has the responsibility to correct the injustice if it can. *Id.* (See also, *State v. Owen*, 696 So. 2d 715, 720 (Fla. 1997) “this Court has “the power to reconsider and correct erroneous rulings”). The execution of an octogenarian is a manifestly unjust use of the State’s power, and this Court can and should correct it.

The execution of Occhicone at the frail and vulnerable age of almost 81, after spending 39 years awaiting death, serves no retributive or deterrent value, violative of the Eighth amendment of the American Constitution, and is therefore manifestly unjust. “A sanction is... beyond the State’s authority to inflict if it makes ‘no measurable contribution’ to acceptable penal goals.” *Roper*, 543 U.S. at 589. As such, the execution of Occhicone is so fundamentally

³⁶LSD Law Legal Dictionary (March 2026), *supra* at 4

unfair, so wrong, it shocks the conscience of the people of Florida and of this Court and demands correction. Under Section 775.082, Florida Statutes, when a death sentence is found to be unconstitutional, it must be commuted to a life sentence. This Court has both the duty and the ability to thwart the manifest injustice of Occhicone's impending execution by converting it to a life sentence. Granting Occhicone relief from execution does not categorically exempt any other offender from the possibility of death as a sanction for their offense, nor does it exempt Occhicone from punishment. Furthermore, the penal goals of the State have been and will continue to be satisfied by the continued confinement of Occhicone for the rest of his natural life. Relief is proper.

ARGUMENT THREE

PUTTING OCCHICONE TO DEATH AFTER THE UNPRECEDENTED AMOUNT AND PACE OF EXECUTIONS THE PAST TWO YEARS, PARTICULARLY DURING THIS CALENDAR YEAR, WOULD VIOLATE OCCHICONE'S EIGHTH AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF FLORIDA'S CONSTITUTION. ALSO, EXECUTING OCCHICONE WOULD RESULT IN A MANIFEST INJUSTICE THAT "SHOCKS THE CONSCIENCE," DUE TO THE UNIQUE CIRCUMSTANCES OF HIS CASE

Florida is causing psychological trauma on their staff at the Florida State Prison (“FSP”), with impacts which reverberate to their homelife and beyond into the broader community - like a “butterfly” effect. The rate and pace of executions is wrecking the mental health of staff at FSP. Executions have taken place in Florida at a rate unprecedented in modern times. This State executed nineteen souls in 2025 and Occhicone is the twelfth death warrant signed by Governor DeSantis this year.³⁷ These executions have taken a toll on the psyche of correctional staff and are causing a moral injury to the State. Occhicone’s case presents the occasion for a pause to assess the damage which has been done and survey the mental health of the correctional staff. Moreover, Occhicone has unique qualities as an elderly devout Catholic of Italian descent. His impending execution has caused quite an uproar among religious leaders in the community. Lastly, when also factoring in Occhicone’s seven to five jury recommendation, which would not be legal under current Florida law, looking at the totality of the circumstances surrounding Occhicone, executing the soon to be 81-year-old defendant would

³⁷<https://deathpenaltyinfo.org>, *supra* at 26

truly be a shock to the conscience and a *manifest injustice*. (See citations on pages 7 and 52 *supra*, incorporated by reference).

The appellant understands the circuit court is bound by precedent from this Court and the USSC, when it comes to granting Occhicone a life sentence. That said, the circuit court erred in denying an evidentiary hearing for Occhicone to establish evidentiary support for this claim. Occhicone simply requests an evidentiary hearing at this juncture. See *Booker v. State*, 969 So. 2d 186, 195 (Fla. 2007).

A. This Court Should Order a Six-Month Pause on Executions, to Allow for Experts to Study and Assess the Psychological and Emotional Damage Done to the Execution Team, Based on the Amount and Pace of Executions From 2025 and Continuing in 2026. It Would Violate Occhicone's Eighth Amendment Rights to be Subjected to Execution by Staff He Has Bonded With, and Allowing Further Executions at This Pace Will Result in a Manifest Injustice

Toward the conclusion of the CMC, PCROA 308, the circuit judge invoked the name of one of the victims, Martha Artzner, saying she indeed “deserves to be mentioned.” Occhicone remembers both victims from his crime and is forever sorry for his actions as a mentally ill alcoholic forty years ago. Forty years is a long time.

Article 1 § 16(b)(10), Fla. Const., speaks to the rights of crime victims, but after forty years it is well past any concept of a prompt conclusion to Occhicone's postconviction proceedings. At this point, there is a new, overriding, need for Florida to protect its citizens. In this claim, other victims deserve to be mentioned as well; those being the victims Florida is creating by executing individuals at an unfathomably unhealthy rate. What is happening in Florida is psychologically unhealthy, and truly abnormal, "the effects of which reverberate through Florida Society and create new victims - like a "butterfly effect." The men and women on death-watch are internalizing their trauma and taking it home, which if not effectively managed, can create generational trauma.³⁸

³⁸<https://desertwaters.com/correctional-families-collateral-damage/> : "Negative consequences of correctional work can be thought of as falling in two broad categories:

- the ways families are affected by lifestyle changes and external demands imposed on them when their loved one becomes a correctional employee; and
- the ways families are negatively affected by their loved one's Corrections Fatigue – negative changes in their loved one's personality, health, and functioning – work-related changes that keep adding up over time."

The lower court was mistaken about Occhicone lacking “standing” to raise this claim. PCROA 326. It is cruel and unusual under the Eighth Amendment to execute Occhicone, considering how he has developed an emotional bond with his death-watch staff, who are in charge of caring for his needs every day, leading up to the moment they strap him to a gurney and push chemicals in his body until he’s dead. Executions carry a heavy emotional burden for all involved, and for Occhicone to have daily interaction with weary staff, young enough to be his children or grandchildren, it is psychologically damaging for Occhicone to witness their suffering. It indeed *superadds* to his final death sentence considering the unprecedented and unnatural pace of executions in Florida. Occhicone pleads this claim on behalf of himself and for the members of death-watch, including Warden Polk, with whom he has bonded. The pace of executions in Florida is causing psychological damage and moral injury. The lower court erred in opining Occhicone lacked “standing” on this subclaim:

In the decades since *Batson*, this Court’s cases have vigorously enforced and reinforced the decision, and guarded against any backsliding. See *Foster*, 578 U. S. —, 136 S.Ct. 1737, 195 L.Ed.2d 1; *Snyder v. Louisiana*,

552 U.S. 472, 128 S.Ct. 1203, 170 L.Ed.2d 175 (2008); *Miller-El v. Dretke*, 545 U.S. 231, 125 S.Ct. 2317, 162 L.Ed.2d 196 (2005) (*Miller-El II*). Moreover, the Court has extended *Batson* in certain ways. A defendant of any race may raise a *Batson* claim, and a defendant may raise a *Batson* claim even if the defendant and the excluded juror are of different races. See *Hernandez*, 347 U.S. at 477–478, 74 S.Ct. 667; *Powers*, 499 U.S. at 406, 111 S.Ct. 1364. Moreover, *Batson* now applies to gender discrimination, to a criminal defendant’s peremptory strikes, and to civil cases. See *J. E. B. v. Alabama ex rel. T. B.*, 511 U.S. 127, 129, 114 S.Ct. 1419, 128 L.Ed.2d 89 (1994); *Georgia v. McCollum*, 505 U.S. 42, 59, 112 S.Ct. 2348, 120 L.Ed.2d 33 (1992); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 616, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991).

Flowers v. Mississippi, 588 U.S. 284, 301 (2019). “Death is different,” and similar to a defendant whose race or gender does not match the challenged juror, a defendant who is challenging his execution under the Eighth Amendment has standing alongside those with whom he is sharing his harrowing final days and hours, during his impending death. The suffering is a communal shared experience, only Occhicone’s executioners would carry the trauma long after Occhicone’s death at the hands of the State.

On June 16, 2026, Ohio's Governor Mike DeWine made the monumental statement that Ohio should abolish the death penalty.³⁹ Directly relevant to this claim, Governor DeWine addressed the mental health of the execution team:

“During a news conference, he said data indicates the death penalty is not working as intended to deter crime, even as it brings years of pain to victims’ loved ones and **takes a toll on the mental health of state employees who serve on execution teams.**”

Id (emphasis added). Governor DeWine is a devout Catholic.⁴⁰ The seasoned Republican Governor in Ohio is demonstrating compassion and leadership by addressing the psychological needs of his employees. “Death is different,” and executions take a psychological toll on the men and women who are tasked with caring for and preparing inmates for execution. Former Florida State Prison Warden, Ron McAndrew, following the most recent execution, has advised Florida staff to stop taking part in executions, based on the trauma it causes, which can lead to deep mental health issues and

³⁹Republican Gov. Mike DeWine says Ohio should abolish the death penalty | AP News

⁴⁰<https://catholicismobilizing.org/a-statement-from-krisanne-vaillancourt-murphy-on-gov-mike-dewines-press-conference-on-the-death-penalty/>

substance abuse.⁴¹ Mr. McAndrew is still haunted from the three executions he oversaw decades ago, so to imagine the pace of what Warden Polk and his staff are going through in 2025-26 is particularly devastating. What has occurred in Florida in the past two years at FSP is not normal and no correctional officer could be psychologically prepared for what they have been put through, over and over again. Many share Mr. McAndrew's opinion based on their own experiences. One revealing NPR article provides the powerful testimony of former wardens: *"It does no more than increase the number of victims while producing no positive outcomes,"* says Frank Thompson, former superintendent, Oregon State Penitentiary. Catarino Escobar, a former correctional officer on the execution team at the Nevada State Prison, asks, "But what happens to your spirit? What happens when your spirit connects with him that you just executed?"⁴² A telling quote to the Equal Justice Initiative states: *After serving as the warden of Parchman Farm, where he oversaw six executions, Don Cabana became an outspoken critic of the death*

⁴¹Florida | Former prison warden who oversaw executions urges corrections workers to not participate in them

⁴² NPR: How working on prison executions harms people and changes their views : NPR, November 16, 2022, 4:01PM ET by Chiara Eisner

penalty. “There is a part of the warden that dies with his prisoner,” he said. Mr. Cabana spent the rest of his life campaigning for abolition.⁴³

Warden Polk’s behavior in regard to several men who were slowly transitioning out of this world—a truly sacred event—are described as follows (emphasis added):

James Ernest Hitchcock (April 30, 2026): about three minutes into the execution, the **team warden briefly flicked Hitchcock’s face and yelled his name two times as he shook his shoulders, with no response** WUSF — reported by both WUSF.⁴⁴

Chadwick Scott Willacy (April 22, 2026): shortly after the lethal injection began, **a warden shook Willacy and shouted his name, with no response** PBS — PBS News.⁴⁵

Melvin Trotter (Feb. 24, 2026): the **prison warden checked Trotter’s face and shouted his name**, but there was no reaction PBS — PBS News/NBC News⁴⁶

⁴³Equal Justice Initiative: The Death Penalty and Regret, May 30, 2023

⁴⁴<https://www.wusf.org/courts-law/2026-04-30/man-who-killed-teen-relative-slated-to-be-floridas-sixth-inmate-executed-this-year>

⁴⁵<https://www.pbs.org/newshour/nation/man-convicted-of-setting-neighbor-on-fire-during-1990-burglary-is-executed-in-florida>

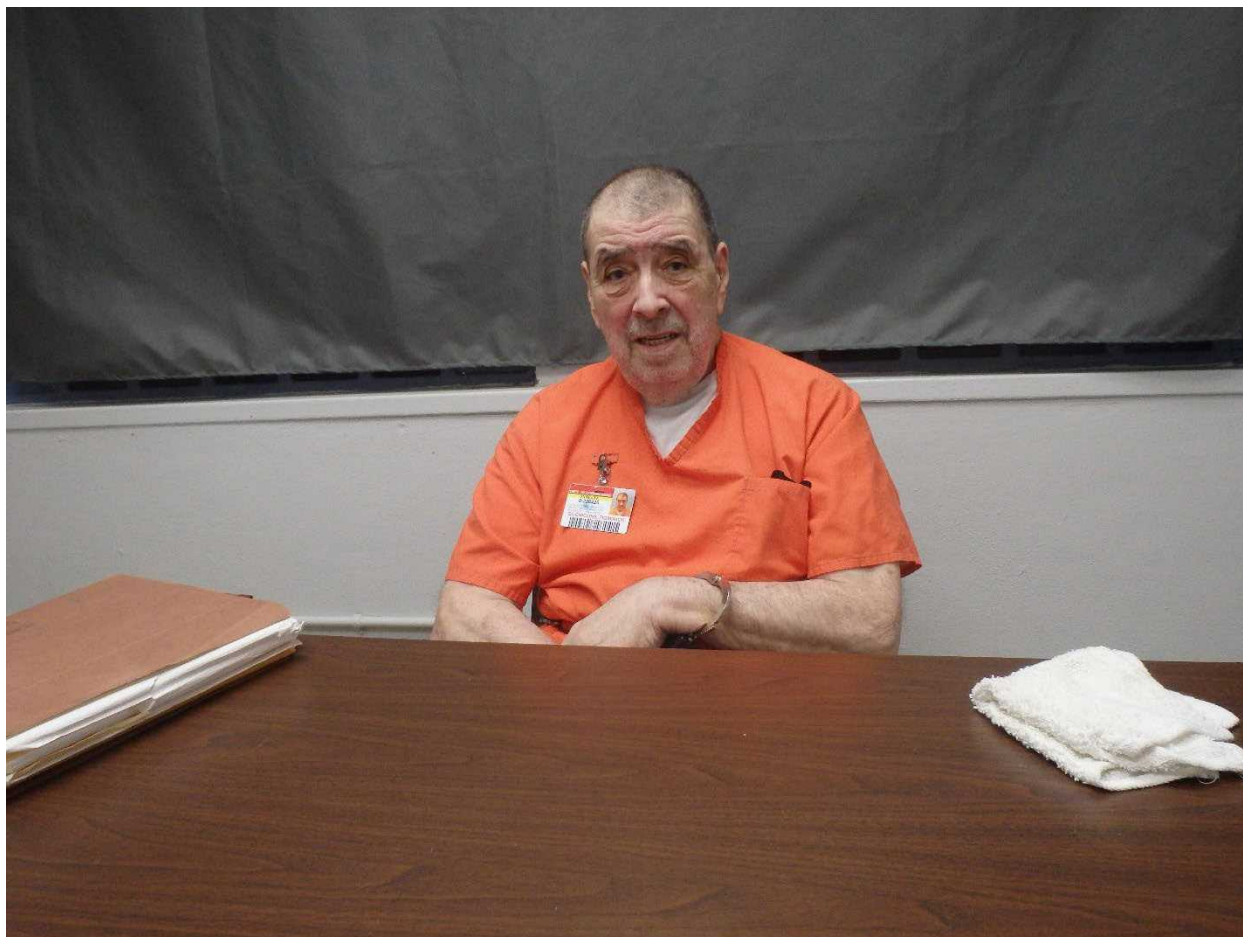
⁴⁶<https://www.pbs.org/newshour/nation/man-put-to-death-for-1986-killing-of-grocery-store-owner-in-floridas-2nd-execution-this-year>

Dusty Ray Spencer (~June 2026): the warden then shook Spencer and shouted his name several times without a response Fox News — Fox News.⁴⁷

Warden Polk should not be placed in such a psychologically damaging position, shouting at, touching, and shaking souls as they finally leave this world. There is no peace involved. Such a process is crude, not natural, and nor is it emotionally healthy for the execution team. To imagine what Warden Polk has to carry inside and take home with him, sometimes with a “spiritual advisor” bearing witness to the crude actions, truly shocks the conscience. Warden Polk is not a medical professional. What he is experiencing is not psychologically, nor emotionally healthy.

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⁴⁷<https://www.foxnews.com/us/florida-executes-74-year-old-wifes-murder-becoming-oldest-inmate-put-death-states-modern-history>



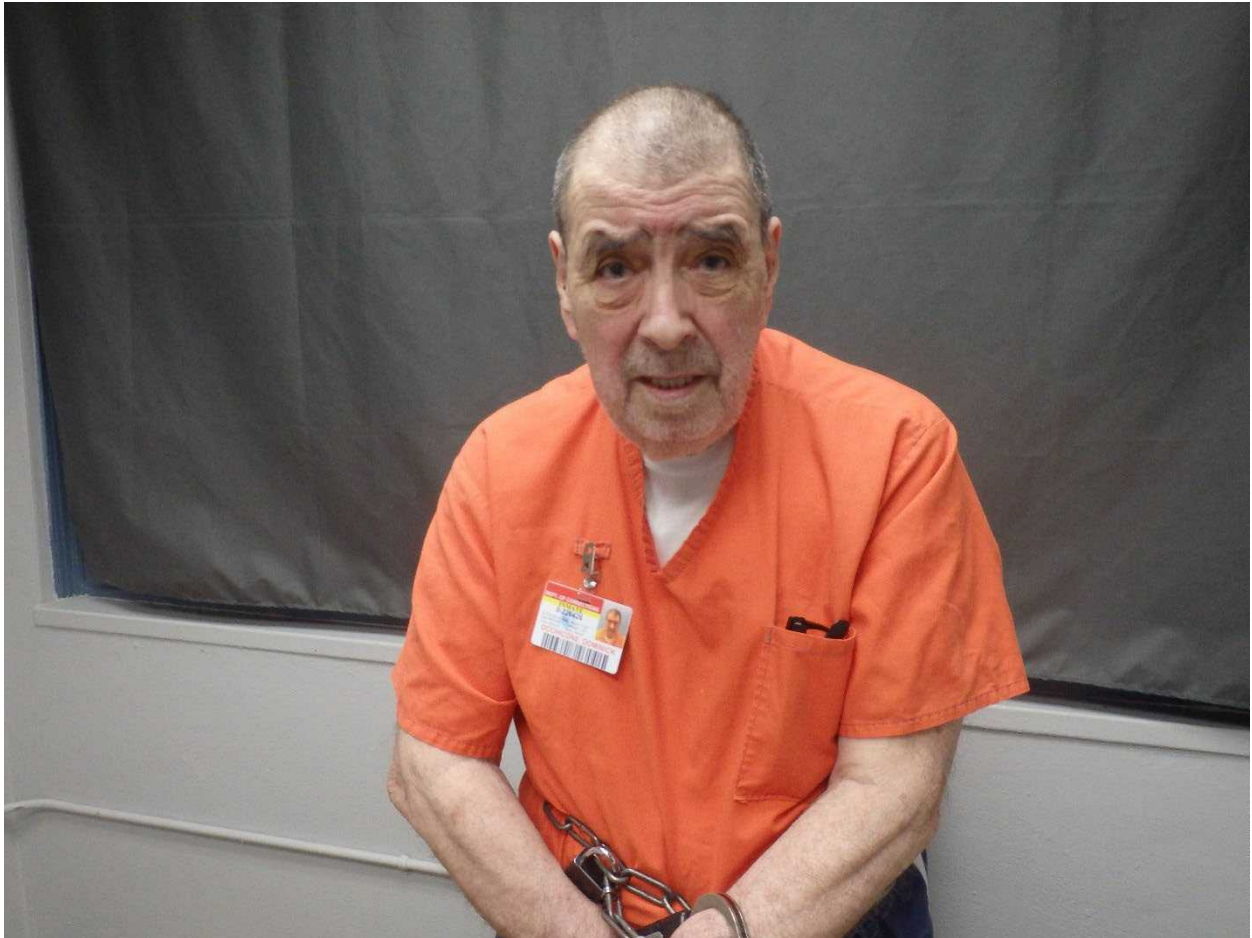
Particularly, during this stretch of death warrants directed toward elderly inmates, the unnatural death-watch scene is causing staff to deal with the trauma of caring for and preparing senior citizens to die. The staff already has to understand death and suffering are part of their own personal lives, as they may have been caregivers and/or witnesses to their own family members who are aging to the point of infirmity. Now, beyond what they may be experiencing in their private lives with their parents, grandparents, aunts, uncles, and close friends who are physically and mentally

deteriorating, Florida is forcing them to care for the soon to be 81-year-old defendant. The staff is understanding Occhicone's humanity and humor and may be reminded of their own elderly loved ones. As argued in Argument Two, correctional staff is helping Occhicone stand, walk, and care for himself, with the knowledge he is set to be executed in an unnatural death.

Occhicone suffers for the victims his execution may leave behind at the Florida State Prison. His prayers and humanity go out to the entire staff that is caring for him on death-watch, and those who may take part in his execution. He raises this important issue as a component of his Eighth Amendment rights, because he has standing as a fellow citizen, sharing in the human condition with people taking part in his tragic execution. There are collateral effects beyond Occhicone. Executing Occhicone would be a conscience shocking manifest injustice.

In this claim, Occhicone is merely requesting a 6-month pause for experts to go into FSP to evaluate the death-watch staff, including Warden Polk, to assess the emotional and psychological damage which has been done. The rate and pace of death warrants in Florida is causing extreme damage and psychological trauma. Former FSP

Warden Ron McAndrew knows such a trauma very well. Now, during this rash of death warrants from 2025-26, it is time to assess the psychological and emotional damage which has been done.



B. Occhicone, as a Devout Catholic of Italian Descent, With the Support of Religious Leaders Who Do Not Want His Execution to Proceed Forward. Executing Occhicone Would Be a Manifest Injustice and Shock the Conscience

Occhicone is a proud Italian-American citizen. His father immigrated from Italy and was naturalized as an American citizen. Italy does not allow for capital punishment. Like Governor DeWine,

Occhicone is a devout Catholic. Considering Occhicone's devout Catholic faith, the words of Pope Leo IV, who on September 30, 2025 stated: "Someone who says, 'I'm against abortion' but says, 'I'm in favor of the death penalty,' is not really pro-life," should carry great weight.⁴⁸ Preserving Occhicone from execution promotes the sanctity of all human life. Occhicone is a deeply spiritual man, whose faith teaches him Christ died for his sins so he could be redeemed. Occhicone's religious convictions are valid mitigation for this Court to consider. *See, generally, Farina v. Secretary, Florida Department of Corrections*, 536 Fed. Appx. 966, 982 (11th Cir. 2013); and *Franklin v. Lynaugh*, 487 U.S. 164, 186 (1988).

Faith leaders in Florida are concerned about the rate of executions in this state over the past year. *See A Joint Letter from Florida Faith Leaders on the Expansion of Florida's Death Penalty and Pace of Executions*, addressed to Governor DeSantis dated July 8, 2025, and correspondence titled RE: Request to Pause Signing of

⁴⁸Pope Leo XIV Calls Support for the Death Penalty 'Not Really Pro-Life,' Death Penalty Information Center, <https://deathpenaltyinfo.org/pope-leo-xiv-calls-support-for-the-death-penalty-not-really-pro-life>

Death Warrants and Engage in Further Dialogue, from the Florida Conference of Catholic Bishops, also dated July 8, 2025. The letter from the Bishops concludes with a reference to “*the teachings of our Church on the sanctity of human life and the common good.*” Mere weeks ago, Catholic leaders were urging Governor DeSantis to halt executions, according to the Miami Herald⁴⁹ Occhicone has a strong relationship with his faith, and it would be a manifest injustice to execute this extremely elderly man in the twilight of his life.

C. It Would be a Violation of the Eighth Amendment and a Manifest Injustice to Execute Occhicone, Considering the Seven to Five Death Recommendation from His 1987 Jury, Which Would be Illegal Under Current Florida Law

The jury returned a guilty verdict on both counts on September 18, 1987. The penalty phase trial began on September 21, 1987. The jury returned a recommendation for the death penalty by a seven to five vote on both counts on September 22, 1987, which would not be a legal sentence under current Florida law. Currently, pursuant to Section 921.141, Florida Statutes, for a defendant to be sentenced to death, eight jurors must vote for death for there to be a valid death

⁴⁹<https://www.miamiherald.com/news/politics-government/state-politics/article316238604.html> (Last accessed July 12, 2026)

recommendation. If Occhicone's jury had known it would take forty years for his death sentence to manifest, and he would be a feeble 81-year-old by that time, as well as knowing their death recommendation would prove to be illegal by the time the execution occurred, they never would have recommended a death sentence.

It is a violation of Occhicone's Eighth Amendment rights to execute him based on a currently illegal seven to five jury recommendation. Moreover, it would be a manifest injustice and a shock to the conscience, to execute an 81-year-old man for a forty-year-old case, based on a standard which is no longer legal. At the CMC, the state argued the jury was "aware," and it is a large "political issue," regarding the length of time between sentence and execution. However, forty years is far beyond what any jury in 1987 could reasonably contemplate. His jury did not expect him to look like he does now, App. E. by the time he would finally be executed and based on a recommendation that would longer be legal. Rather, this is a manifest injustice and shock to the conscience.

The "qualitative difference between death and other penalties calls for a greater degree of reliability when the death sentence is imposed." *Lockett v. Ohio*, 438 U.S. 586, 604 (1978). Occhicone's

death sentences are unconstitutional in every state that still retains the death penalty in this nation. In all but two states which still impose the death penalty, the jury vote must be unanimous to impose a sentence of death. Of the two states not requiring a unanimous verdict, Florida has the lowest threshold, requiring only eight votes to impose a death sentence. See Section 921.141(2)(c), Florida Statutes (2023), (“If at least eight jurors determine that the defendant should be sentenced to death, the jury’s recommendation to the court must be a sentence of death. If fewer than eight jurors determine that the defendant should be sentenced to death, the jury’s recommendation to the court must be a sentence of life imprisonment without the possibility of parole”). Occhicone’s death sentences were imposed with fewer than eight jurors voting for death.

Due to Florida’s arbitrary decision to deny *Hurst*⁵⁰ relief to defendants whose death sentences were finalized prior to June 24, 2002, Occhicone’s unconstitutional death sentences were never vacated nor was he afforded the benefit of a resentencing hearing unlike approximately 145 other individuals with nonunanimous jury

⁵⁰*Hurst v. Florida*, 577 U.S. 92 (2016)

recommendations.⁵¹ An arbitrary denial of Mr. Occhicone’s serious constitutional claims is inconsistent and erroneous. Moreover, finality does not require the State of Florida to execute Occhicone. *See Sanders v. United States*, 373 U.S. 1, 8 (1963) (holding “[c]onventional notions of finality of litigation have no place where life or liberty is at stake and infringement of constitutional rights is alleged”). The interests of finality and justice would still be achieved if this Court found his death sentences unconstitutional and remanded for the circuit court to impose life sentences without the possibility of parole.

For the sake of preventing an unconstitutional and manifestly unjust execution, this Court’s intervention is necessary. Relief is proper.

CONCLUSION AND RELIEF SOUGHT

In light of the facts and legal arguments presented above, Occhicone contends his constitutional rights for equal protection and

⁵¹*Resentencing Status of Florida Prisoners Sentenced to Die by Non-Unanimous Juries*, DEATH PENALTY INFORMATION CENTER, <https://deathpenaltyinfo.org/stories/florida-prisoners-sentenced-to-death-after-non-unanimous-jury-recommendations-whose-convictions-became-final-after-ring> (last visited July 24, 2025)

due process under the Fourteenth Amendment of the Constitution of the United States, as well as his right not to be subject to cruel and unusual punishment under the Eighth Amendment and corresponding provisions of the Florida Constitution, has been violated. Occhicone respectfully requests his death sentence be vacated, alternatively for this case to be remanded to the circuit court to conduct an evidentiary hearing, as well as for the entry of a stay of his execution, and all future executions, for at least six months and until such time as a study can be done to determine the psychological impacts of the current volume of executions on the members of the execution teams involved and so all of these issues can be fully litigated.

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.045, we hereby certify that the Initial Brief of the Appellant has been produced in Bookman Old Style 14-point font. This brief complies with the requirements of Fla. R. App. P. 9.210(a)(2)(D), as it has less than 75 pages and 13,996 words.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that, on July 13, 2026, we electronically filed the foregoing with the Clerk of the Circuit Court by using the

Florida Courts e-portal filing system which will send a notice of electronic filing to the following: the Honorable Pat Siracusa, West Pasco Judicial Center, 7530 Little Road, New Port Richey, Florida 34654, CPizzuto@jud6.org; Sara Macks, Assistant State Attorney, Pasco County State Attorney's Office, West Pasco Judicial Center, 7530 Little Road, New Port Richey, Florida 34654, saramacks@flsa6.gov, appealeservice@flsa6.gov; Rick A. Buchwalter, Michael W. Mervine, and Suzanne Glickman, Assistant Attorneys General, 3507 E. Frontage Road, Suite 200, Tampa, Florida 33607, rick.buchwalter@myfloridalegal.com, michael.mervine@myfloridalegal.com, suzanne.glickman@myfloridalegal.com, paula.montlary@myfloridalegal.com, elizabeth.bueter@myfloridalegal.com, stephanie.tesoro@myfloridalegal.com, arianna.balda@myfloridalegal.com, marilyn.muir@myfloridalegal.com, scott.browne@myfloridalegal.com, stephen.ake@myfloridalegal.com, and capapp@myfloridalegal.com.; Debra Rescigno, William Gwaltney, and Kristen Lonergan, Counsel for the Florida Department

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WE HEREBY FURTHER CERTIFY a copy of the foregoing will be provided in person to, Dominick Occhicone, DC# 226426, Florida State Prison, P.O. Box 800, Raiford, Florida 32083, on July 17, 2026.

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