Case No. SC2025-0371
Lower Court No. 2000-CF-573

In the Supreme Court of Florida

MICHAEL ANTHONY TANZI,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

DEATH WARRANT SIGNED
Execution Scheduled for April 8, 2025, at 6:00 p.m.

ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

Citations in this brief to Tanzi's initial postconviction record on appeal will be cited as "PC followed by the volume and page number. Tanzi's second postconviction record will be referred to as "2PCR." The instant record on appeal in Tanzi's third postconviction case will be cited as "3PCR" followed by the page number.

STATEMENT REGARDING ORAL ARGUMENT

The State respectfully submits that oral argument is not necessary on the appeal from the denial of Tanzi's successive motion to vacate. The claims raised in this successive motion for postconviction relief were denied because they were untimely, procedurally barred, or meritless as a matter of established Florida law. Accordingly, argument will not materially aid the decisional process.

STATEMENT OF THE CASE AND FACTS

Facts of the Crime

On April 25, 2000, around lunchtime at the Japanese Gardens in Miami, Tanzi approached the rolled-down window of Janet Acosta's vehicle. *Tanzi v. State*, 964 So. 2d 106, 110 (Fla. 2007). Tanzi requested Acosta provide him the time and a cigarette. *Id.* When Acosta was distracted, Tanzi began repeatedly punching her in the face until he gained control of the vehicle. *Id.* He then threatened Acosta with a razor blade and drove off holding Acosta hostage. *Id.*

Tanzi then drove to Homestead, Florida where he stopped at a gas station to bind and gag Acosta. *Id.* While he was restraining her, Tanzi threatened that he would "cut her from ear to ear" if she resisted. *Id.* Tanzi also stole fifty-three dollars in cash from Acosta and used it to purchase cigarettes and soda. *Id.* Tanzi then forced Acosta to perform oral sex on him, again threatening to kill her if she injured him. *Id.* He stopped, however, because Acosta's teeth had been knocked loose due to his previous battering of her jaw. *Id.*

At approximately 5:15 p.m., Tanzi stopped in Tavernier in the Florida Keys to withdraw money from Acosta's bank account. *Id.* at 111. Tanzi then used the ill-gotten gains to purchase duct tape and

more razors. *Id.* At approximately 6:30 p.m., Tanzi drove to an isolated area of Cudjoe Key. *Id.* Tanzi informed Acosta he intended to kill her. *Id.* He believed he needed to kill her because she was slowing his progress, and he knew he would get caught if he let her go. *Id.* Tanzi began to strangle Acosta with a rope, but stopped to cover her mouth, nose, and eyes with duct tape to muffle her agonized screams. *Id.* Tanzi continued asphyxiating Acosta until he was certain she was dead. *Id.* He then dumped her corpse in a secluded area where he was certain that no one would discover her. *Id.*

After he strangled Acosta to death, Tanzi stopped in Key West where he used Acosta's ATM card to shop and eat. *Id.* He also visited with friends and smoked some marijuana. *Id.* By April 27, 2000, law enforcement had located Acosta's at-the-time-unoccupied van after her friends and co-workers reported her missing. *Id.* Law enforcement saw Tanzi get into Acosta's van and intercepted him. *Id.* When they approached Tanzi, he stated he "knew what this was about" and he was willing to talk about "some bad things he had done." *Id.* Post-*Miranda*[1], Tanzi confessed to the crime multiple times

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

(these confessions were recorded in various formats) and even showed law enforcement where he disposed of Acosta's corpse. *Id.* Any additional facts necessary for resolution of the claims raised on appeal will be addressed in the argument, *infra.*

Guilty Plea

Tanzi was initially indicted for first-degree murder and charged by amended information with carjacking with a weapon, kidnapping to facilitate a felony with a weapon, armed robbery with a deadly weapon, and two[2] counts of sexual battery with a deadly weapon. *Tanzi v. State,* 964 So. 2d 106 (Fla. 2007). On January 31, 2003, shortly before the guilt-phase trial was scheduled to commence, Tanzi pled guilty to the armed carjacking, armed kidnapping, and armed robbery charges while the two sexual battery charges were severed to consider a change of venue motion to be decided at a later date. *Id.*

[2] In addition to evidence presented regarding the sexual battery by oral penetration, the State presented evidence that Acosta suffered injuries to her labia shortly before her death and Tanzi's blood was found inside the pocket of the victim, consistent with Tanzi forcibly penetrating the victim's vagina. *Tanzi v. State*, 94 So. 3d 482, 497 (Fla. 2012).

Penalty Phase

The penalty phase jury trial commenced on February 3, 2003, wherein Tanzi presented evidence related to twenty-three mitigators. *Id.* at 118. After hearing the evidence of aggravation and mitigation, the jury returned a unanimous recommendation for death on February 19, 2003. *Id.* at 111-12. On March 14, 2003, the court held a *Spencer*[3] hearing and, on April 11, 2003, the trial court imposed a sentence of death.

Direct Appeal and Collateral Attacks

Following Tanzi's conviction and sentence of death, Tanzi appealed to this Court, and this Court denied each of Tanzi's claims and affirmed Tanzi's conviction and sentence. *Id.* at 121.

On February 19, 2008, the United States Supreme Court denied Tanzi's petition for a writ of certiorari. *Tanzi v. Florida*, 552 U.S. 1195 (2008).

Tanzi filed his initial motion for postconviction relief on February 12, 2009, alleging various ineffective assistance of counsel claims. The trial court granted an evidentiary hearing, which was

[3] *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

held on January 25-28, 2010, as to some of the ineffectiveness claims, but summarily denied the remainder of his claims as procedurally barred, insufficiently pled, or wholly lacking in merit. *Id.* at 488. The trial court denied the remaining claims on March 24, 2010. *Id.*

On appeal, Tanzi argued that he was being denied meaningful appellate review and his counsel was deficient. *Id.* at 489-490. This Court denied all his postconviction claims in an opinion issued on April 19, 2012. *Id.* at 497. Tanzi also filed a state habeas petition, which this Court denied with its postconviction opinion. *Id.* at 496.

On July 27, 2012, Tanzi filed a Habeas Petition in the United States Southern District of Florida raising six claims. After carefully considering each claim, the district court rejected them in an opinion issued on February 27, 2013. *Id.* 22, 24-26. The district court granted a certificate of appealability as to the ineffective assistance of counsel and alleged *Brady* violation claims. *Tanzi v. Sec'y., Fla. Dept. of Corrections*, 772 F.3d 644, 650 (11th Cir. 2014).

The Eleventh Circuit affirmed the denial of habeas relief on November 19, 2014. *Id.* at 662.

On October 5, 2015, the United States Supreme Court denied

Tanzi's petition for a writ of certiorari. *Tanzi v. Jones*, 577 U.S. 865 (2015). Following the Supreme Court's denial of certiorari, the State filed a notice of finality in this Court on October 6, 2015. Tanzi was served a copy of this notice.

On January 12, 2017, Tanzi filed his Successive Motion to Vacate Judgment of Conviction and Sentence arguing that he was entitled to a new sentencing pursuant to *Hurst v. Florida*, 577 U.S. 92 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). The postconviction court denied Tanzi's motion on April 24, 2017. This Court affirmed the denial of relief on April 5, 2018, finding that any *Hurst*-related error was harmless because the jury had made a unanimous recommendation of death. *Tanzi v. State*, 251 So. 3d 805, 806 (Fla. 2018).

On November 13, 2018, the United States Supreme Court denied Tanzi's petition for a writ of certiorari. *Tanzi v. Florida.*, 586 U.S. 1004 (2018).

On March 10, 2025, Florida Governor Ron DeSantis signed Tanzi's death warrant and his execution is scheduled for April 8, 2025, at 6:00 p.m.

Second Successive Proceedings: Under Warrant

Following the signing of the death warrant, this Court issued a scheduling order directing that any successive postconviction proceedings be completed in the trial court by Wednesday, March 20, 2025. The Honorable Timothy Koenig, Monroe County Circuit Judge, issued a scheduling order to proceed in accordance with this Court's order.

Tanzi filed a motion for a transport order for an MRI on March 15, 2025. In support, he submitted a report from Dr. Charles Howard, who desired the MRI to reveal the source and origin of Tanzi's spinal pain. (3PCR:707). The State filed an objection to the motion for transport the following day. (3PCR:836-841). On March 17, the postconviction court denied the motion to transport for an MRI. (3PCR:898-902). The court found that the motion to transport was untimely and not related to a cognizable Eighth Amendment claim.

Following public records requests and a hearing on those requested records, the court issued an order on public records objections on March 13, 2025. Tanzi also filed a motion for stay of his execution (3PCR:691-95), which the lower court denied on March

15, 2025. (3PCR:903-04).

Tanzi filed his Second Successive Motion to Vacate Judgment of Conviction and Sentence with Request for Leave to Amend on March 15, 2025. Following the State's response and a *Huff*[4] hearing, the court summarily denied Tanzi's successive motion on March 19, 2025. (3PCR:957-70). Tanzi submitted an affidavit from Dr. Joel Zivot and moved for rehearing that same day. On March 20, 2025, the court denied the (corrected) motion for rehearing. (3PCR:1020-24).

This appeal follows.

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

SUMMARY OF THE ARGUMENT

Claim I: Due process rights are not a license to delay litigating meritorious claims until the eleventh hour then complain when the court requires the defendant to comply with reasonable deadlines. Both of Tanzi's claims are premised on faulty circular reasoning. Moreover, Tanzi has had more than twenty-one years to make public records requests and litigate his postconviction claims.

Claim II: Tanzi's public records argument is meritless because he entirely failed to demonstrate how the trial court abused its discretion when it refused to grant his untimely, overbroad, and irrelevant public records demands. Tanzi even admits that binding precedent establishes he is not entitled to some of the records he requested.

Claim III: Tanzi's challenge to the lethal injection protocol is untimely and legally insufficient to warrant a hearing. Tanzi's speculative assertions regarding his obesity and spinal pain making the process more painful to him and venous access more difficult fail as a matter of law.

Claim IV: Florida law bestows the Governor with sole authority to issue a death warrant, and the Governor is required to set the

execution date within the rendered warrant. § 922.052(3), Fla. Stat.; *see also* Art. IV § 8, Fla. Const. (listing clemency under the Governor's functions). Tanzi, however, argues the Governor's sole authority to issue death warrants and to set execution dates violates the Eighth Amendment. This Court has consistently rejected similar claims raised by other death row inmates facing execution.

STANDARD OF REVIEW

"Summary denial of a successive postconviction motion is appropriate '[i]f the motion, files, and records in the case conclusively show that the movant is entitled to no relief.'" *Cole v. State*, 392 So. 3d 1054, 1060 (Fla. 2024) (original alteration) (quoting *Bogle v. State*, 322 So. 3d 44, 46 (Fla. 2021)) (quoting Fla. R. Crim. P. 3.851(f)(5)(B)). A postconviction court may properly deny claims that are untimely, not retroactive, procedurally barred, not cognizable, or meritless as a matter of law under controlling precedent. *See, e.g.*, *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020) (affirming summary denial of claims raised in successive postconviction motion as untimely); *Bogle v. State*, 288 So. 3d 1065, 1069 (Fla. 2019) (affirming summary denial of successive postconviction claim on non-retroactivity grounds); *Morris v. State*, 317 So. 3d 1054, 1071 (Fla. 2021) (stating that a court may summarily deny a postconviction claim that is procedurally barred); *Mann v. State*, 112 So. 3d 1158, 1162 (Fla. 2013) (holding that because defendant's postconviction claims were "purely legal claims that have been previously rejected by this Court, the circuit court properly summarily denied relief").

With respect to timeliness, "postconviction claims in capital

cases must generally be filed within one year after the judgment and sentence become final." *Cole*, 392 So. 3d at 1061 (citing Fla. R. Crim. P. 3.851(e)(2)). A claim filed outside the one-year period is untimely unless one of the following circumstances exists:

> (A) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or
>
> (B) the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively, or
>
> (C) postconviction counsel, through neglect, failed to file the motion.

Fla. R. Crim. P. 3.851(d)(2). "It is incumbent upon the defendant to establish the timeliness of a successive postconviction claim." *Mungin*, 320 So. 3d at 624. When a claim relies on purported newly discovered evidence, the defendant bears the burden to establish "that the newly discovered evidence was unknown by the trial court, by the party, or by counsel at the time of trial and it could not have been discovered through due diligence." *Cole*, 392 So. 3d at 1061 (quoting *Dillbeck v. State*, 357 So. 3d 94, 100 (Fla. 2023)).

"In reviewing a trial court's summary denial, 'this Court must accept the defendant's allegations as true to the extent that they are

not conclusively refuted by the record.'" *Id.* (quoting *Tompkins v. State*, 994 So. 2d 1072, 1081 (Fla. 2008)). "However, mere conclusory allegations do not warrant an evidentiary hearing." *Id.* (citing *Anderson v. State*, 220 So. 3d 1133, 1142 (Fla. 2017); *LeCroy v. Dugger*, 727 So. 2d 236, 238 (Fla. 1998)). On appeal from the summary denial of a successive postconviction motion, this Court "review[s] the postconviction court's decision de novo." *Id.* (citing *Marek v. State*, 8 So. 3d 1123, 1127 (Fla. 2009)).

This Court reviews rulings on public records requests for an abuse of discretion. *Bowles v. State*, 276 So. 3d 791, 795 (Fla. 2019).

ARGUMENT

CLAIM I

DUE PROCESS CLAIM

Neither the Constitution of the United States nor of the State of Florida provide Tanzi the right to protest a procedural inconvenience he has brought upon himself. Rather, "[d]ue process requires that a defendant be given notice and an opportunity to be heard on a matter before it is decided." *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016); *see also Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Despite having decades to prepare for a death warrant, Tanzi now complains of a series of procedural calamities because he was unable to obtain overbroad, irrelevant public records and the trial court did not oblige his attempts to delay the proceedings. (Appellant's Brief at 21-35). Tanzi's arguments about public records misapprehend Florida Rule of Criminal Procedure 3.852 and contradict a quarter-century of case law. His generalized due process claim fares no better because it is premised on an untimely challenge to Florida's lethal injection protocol using decades old medical conditions as a pretext to delay his execution. Tanzi does not get to delay dealing with his claims for decades only to spring into action once the wheels of justice began to

turn again then cry foul when the courts no longer tolerate his tired attempts to forestall his well-deserved execution.[5]

A. Tanzi Has Had Ample Opportunity Throughout His Postconviction Proceedings to Prepare for And Raise the Substantive Challenges He Now Raises.

Tanzi has had more than twenty-one years to make public records requests and litigate his postconviction claims. During every step of his postconviction proceedings, he has been afforded full and fair opportunity to be heard. *Tanzi v. State,* 251 So. 3d 805, 806 (Fla. 2018) (summarizing the history of Tanzi's postconviction claims). By October 5, 2015, Tanzi was notified he had become death eligible. Tanzi has been on notice that his sentence could be carried out upon the Governor's action for almost ten years now. He can hardly claim

[5] There is an irony to Tanzi's complaining about his lack of time given that he is under the sentence of death because he battered, abducted, robbed, raped, then murdered the victim some twenty-five years ago. The victim's family has a Constitutional right for Tanzi's proceedings to be free from unreasonable delay, and they also have a right to a prompt and final conclusion of these post-judgment proceedings. Art. 1 § 16(b)(10), Fla. Const. These rights are to be "protected by law in a manner no less vigorous than protections afforded to criminal defendants." Art. 1 § 16(b), Fla. Const. Whereas Tanzi has had decades to prepare for this moment, his victims have had to endure decades of delay. This Court should honor the Constitutional right of the victims to a prompt and final conclusion of these proceedings.

he has had no meaningful time to prepare for a death warrant when he has been death eligible for a longer time than the Florida Constitution currently envisions for the completion of *all* postconviction proceedings. *See* Art. I, § 16(b)(10)b., Fla. Const. ("All state-level appeals and collateral attacks on any judgment must be complete . . . within five years from the date of appeal in capital cases.").

Despite having ample time to litigate all his potential claims during his postconviction proceedings, Tanzi complains of due process violations because the warrant period has placed some restrictions on his ability to generate some unspecified evidence he wishes to leverage in his lethal injection challenge. (Appellant's Brief at 27). In a rather stark instance of confession through projection, Tanzi accuses both this Court and the trial court of engaging a "sham" process for setting and enforcing an "unreasonably expedited warrant period and scheduling orders." (Appellant's Brief at 30, 32). To evade admitting that his own stalling was what made the lower court's proceedings seem unreasonable, Tanzi argues that his as applied challenge to Florida's lethal injection protocol was not ripe until the Governor denied his clemency and signed his death warrant

on March 10, 2025. (Appellant's Brief at 29). Other defendants have recently raised a similar argument and failed.

In *Ford v. State,* the defendant made an Eighth and Fourteenth Amendment challenge alleging he was ineligible to be executed because he had a mental and development age below that of an eighteen-year-old. No. SC2025-0110, 2025 WL 428394, at *3 (Fla. Feb. 7, 2025). Like Tanzi, Ford argued that his claim was not ripe until the signing of the death warrant. *Id.* This Court found that argument unconvincing because the information necessary to raise this claim had been "known to Ford for over twenty-five years." *Id.* at *3 n.5. In this case, the records Tanzi provided in support of his claims indicate that the medical issues he now raises have been ongoing since at least 2009. (3PCR: 723). Thus, Tanzi's claim should fare no differently than Ford's.

Resisting the straightforward application of *Ford*, Tanzi advances the specious argument that, because his clemency proceeding had not been completed, he could not have known he was death eligible. (Appellant's Brief at 29). Tanzi specifically points to section 922.052 of Florida Statutes, suggesting the clemency process somehow limits the Governor's authority to issue a death warrant.

Id. Tanzi's argument misconstrues the nature of clemency proceedings and does not alter the notice calculus.

Clemency in Florida derives "solely from the Florida Constitution." *Davis v. State*, 142 So. 3d 867, 877 (Fla. 2014). The Florida Constitution vests "sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace." *Sullivan v. Askew*, 348 So. 2d 312, 315 (Fla. 1977). Clemency cannot be granted without the Governor's assent. Art. IV § 8(a), Fla. Const. Clemency can also be reviewed and rejected "*at any time,* for any reason." *See* Fla. R. Exec. Clem. 4 (emphasis added). There is nothing about the clemency process that limits or otherwise restricts the timing of a death warrant. Upon completing the final federal habeas proceedings, the Governor can complete the executive clemency process and issue a death warrant. *See* § 922.052(2)(a)-(c), Fla. Stat.. Tanzi knew that, beginning on October 5, 2015, the Governor could complete the clemency process and sign a death warrant at any time. Tanzi has not advanced any persuasive argument for why he gets to delay investigating nearly sixteen-year-old medical issues then accuse the postconviction court of engaging in a "sham" proceeding because it was unmoved by his dilatory conduct.

B. Tanzi Was Afforded Adequate Due Process to Make and Litigate His Public Records Demands.

Tanzi does not identify a single motion, argument, or fact that he was prevented from raising in the trial court. Instead, the gist of Tanzi's complaint is that (1) the agencies had a short time to comply with the public records demands which also meant he had limited time to review their objections, and (2) his due process rights were denied because the trial court did not agree with him. (Appellant's Brief at 24-26).[6] Tanzi's convoluted public-records-demand-as-a-due-process-violation claim is premised on flawed circular reasoning. Before he can complain of any due process violation related to public records, he must first demonstrate he is entitled to those records. *See Wyatt v. State*, 71 So. 3d 86, 111 (Fla. 2011). Florida Rule of Criminal Procedure 3.852 is the sole mechanism for capital defendants to obtain public records from agencies while investigating postconviction claims. *Braddy v. State*, 219 So. 3d 803, 819 (Fla.

[6]In his Statement of the Case and Facts, Tanzi did mischaracterize the trial court's suggestion that it could rule on all the non-rule 3.851 motions based on the papers, 3PCR:913-914, as a refusal "to hear argument," (Appellant's Brief at 12). He did not, however, advance this mischaracterization as a basis for his due process claim.

2017).[7] For over twenty-five years, this Court has consistently held that trial courts have not abused their discretion in denying untimely, overbroad, and irrelevant public records requests because rule 3.852 is not "a procedure authorizing a fishing expedition for records." *Sims v. State*, 753 So. 2d 66, 70 (Fla. 2000); *see also Cole v. State*, 392 So. 3d 1054, 1066 (Fla. 2024); *Sweet v. State*, 293 So. 3d 448, 454 (Fla. 2020); *Bowles v. State*, 276 So. 3d 791, 795 (Fla. 2019); *Jimenez v. State*, 265 So. 3d 462, 473 (Fla. 2018); *Asay v. State*, 224 So. 3d 695, 700 (Fla. 2017)*; Banks v. State*, 150 So. 3d 797, 802 (Fla. 2014); *Muhammad v. State*, 132 So. 3d 176, 200 (Fla. 2013); *Dennis v. State*, 109 So. 3d 680, 699 (Fla. 2012); *Valle v. State*, 70 So. 3d 530, 549 (Fla. 2011)*; Rimmer v. State*, 59 So. 3d 763, 775 (Fla. 2010); *Overton v. State*, 976 So. 2d 536, 564 (Fla. 2007); *Rutherford v. State*, 926 So. 2d 1100, 1116 (Fla. 2006); *Tompkins v. State*, 872 So. 2d 230, 243 (Fla. 2003)*; Moore v. State*, 820 So. 2d

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[7] Tanzi vaguely suggests-by exclusively referencing Justice Anstead's commentary-he might be entitled to public records as a "citizen," yet he does not supply any alternative statutes or rules. (Appellant's Brief at 24; 36-38). In the trial court, he relied on Florida Rule of Criminal Procedure 3.852 to obtain public records. To the extent he now relies on any other constitutional provision, statutory right, or procedural rule, such an argument was not preserved for appellate review. *See Steinhorst v. State*, 412 So. 2d 332, 338 (Fla. 1982).

199, 204 (Fla. 2002); and *Glock v. Moore*, 776 So. 2d 243, 253 (Fla. 2001). Rather than engage with this robust body of law, Tanzi makes a series of conclusory complaints about the timing of the trial court's hearings and the substance of its rulings. (Appellant's Brief at 24-26). All of his complaints fail.

First, Tanzi has not even bothered to justify why he waited until the ink dried upon his death warrant to deluge twelve agencies with public records demands. *See Buenoano v. State*, 708 So. 2d 941, 947 (Fla. 1998) (holding that it was proper for a trial court to deny public records demands because the defendant "long ago could have obtained these records through the exercise of due diligence"). Tanzi skips right past this failure to complain that the trial court "conflate[d]" the requirements of sub-section (h)(3) and (i). (Appellant's Brief at 25). While Tanzi is correct to point out that sub-section (h)(3) applies after a death warrant is signed, other sub-sections are not so limited. *Sims*, 753 So. 2d at 70. (noting that "rule 3.852(i) is not contingent upon the signing of a death warrant"). Tanzi could have requested the records he seeks under subsection (g) or (i) at any time prior to the signing of the warrant. Consequently, the time restrictions in sub-section (h)(3) must be read in conjunction

with the other sub-sections. When public records demands are made after a death warrant has been signed, this Court requires defendants show good cause for delay regardless of whether the demand was made under sub-section (h)(3) or (i). *Tompkins*, 872 So. 2d at 244 (requiring that, for any rule 3.852 public records request, a defendant show "good cause as to why the public records request was not made until after the death warrant was signed");[8] *Glock*, 776 So. 2d at 254 (holding that the defendant's requests, made under both sub-section (h)(3) and (i) failed because, among other reasons, he did not show "good cause as to why he did not make these public records requests until after the death warrant was signed"); *Bryan v. State*, 748 So. 2d 1003, 1006 (Fla. 1999) (holding a trial court properly denied relief under sub-section (h)(3) because the defendant had not "shown good cause why these new public records requests were not made until after the death warrant was signed"). Tanzi cannot delay making requests only to barrage agencies with untimely public records demands at the eleventh hour then complain about

[8] Tanzi attempts to distinguish *Tompkins* by suggesting, without any citation to this Court's reasoning, that it doesn't apply to him because he previously made public records requests. (Appellant's Brief at 26). This is another distinction without a difference.

the limited time available to review those requests because he failed to act with due diligence.

Second, Tanzi has failed to demonstrate what colorable claim relates to any of his overbroad public records demands. Tanzi again ignores this requirement, adopting an unbounded, limitless reading of sub-section (h)(3). (Appellant's Brief at 25-26). His reading is simply wrong. *See Cole*, 392 So. 3d at 1066 (noting that requests made under sub-section (h)(3) must "relate to a colorable claim for postconviction relief."); *Rutherford*, 926 So. 2d at 1117 (affirming a denial of a public records request under sub-section (h)(3) because the records sought were "not related to a colorable claim for postconviction relief"); *see also* Fla. R. Crim. P. 3.852(k) (limiting the scope of production of public records under any sub-section of rule 3.852 to those that are "either relevant to the subject matter of the proceedings under rule 3.851 or are reasonably calculated to lead to the discovery of admissible evidence"). Tanzi has utterly failed to articulate how any of these records relate to a colorable claim. Despite Tanzi's bald assertion to the contrary, (Appellant's Brief at 39), his public records demands are, at best, a fishing expedition for possible postconviction claims.

C. Tanzi Was Afforded Adequate Due Process on the Untimely and Meritless Lethal Injection Challenge He Raised in the Trial Court.

Tanzi next complains that the warrant period "precluded" him from "investigating and collecting the evidence" he wanted to use in an evidentiary hearing related to his lethal injection challenge. (Appellant's Brief at 27). This is, in effect, the same as claiming he has been denied an evidentiary hearing. But before Tanzi can assert that due process violation, he must first demonstrate that he was entitled to the hearing. *See generally Abdool v. Bondi*, 141 So. 3d 529, 544 (Fla. 2014) ("To assess whether a violation of due process has occurred, we must first decide whether the complaining party has been deprived of a constitutionally protected liberty or property interest"). Due process does not automatically entitle a defendant to an evidentiary hearing simply because he raises factual issues or invokes an as applied challenge in his postconviction motion. *See, e.g., Huff v. State*, 622 So. 2d 982, 983 (Fla. 1993) (noting that the due process right to be noticed and heard "does not mean that the judge must conduct an evidentiary hearing in all death penalty postconviction cases").

The State would initially note that, despite their relentless

complaining about the warrant period, Tanzi's counsel still managed to procure the service of not one, but two doctors. (3PCR:715-725) (Dr. Howard); (3PCR:975-1007) (Dr. Zivot). Both doctors were able to review Tanzi's medical records, formulate a diagnosis, and document their opinions. More importantly, Tanzi's counsel was able to present the opinions to the trial court and the trial court considered them in turn. (3PCR:898-902; 1020-1024).[9] Aside from Tanzi's request to have an MRI completed to determine the cause of his neck and back pain[10], he identifies no opinions, testing, or other factual inquiries that he was unable to present to the court about his current condition. That both doctors were unable to conjure any medical

[9] The State also notes that Tanzi waited until the eleventh hour to disclose he had retained the services of Dr. Zivot. (3PCR:971). Tanzi then filed a "corrected" motion at 9:10 a.m. on March 20, 2025-a mere two hours before his notice of appeal was due-which included an extra sentence claiming Dr. Zivot could not have visited Tanzi earlier than March 19, 2025. (3PCR:1014). For nine days, Tanzi's counsel conveniently failed to mention anything about their efforts to retain Dr. Zivot (or any other doctor, save Dr. Howard). Instead, Tanzi simply complained about the logistics of traveling to the evidentiary hearing. (3PCR:498-501). That the trial court even reviewed Dr. Zivot's affidavits, rather than simply rejecting them as a belated abuse of process, speaks to the great lengths the trial court went to provide Tanzi the process he was due.

[10] Which would have been entirely irrelevant to establishing any Eighth Amendment challenge. *See infra.* at 42.

opinions sufficient for the trial court to grant an evidentiary hearing is not evidence Tanzi was denied due process, but it does demonstrate the dilatory, meritless nature of Tanzi's present claims.

Tanzi is not the first defendant to advance an unsuccessful claim that his "compressed warrant litigation" amounted to a due process violation. In *Barwick v. State,* the defendant complained that a thirty-day warrant period-during Holy Week, Passover, and Ramadan, while his counsel was ill, and when there was another defendant on Death Watch-was so arbitrary and restrictive that it violated his due process rights. *Barwick v. State*, 361 So. 3d 785, 789 (Fla. 2023). The trial court was unpersuaded and summarily denied the claim. *Id.* This Court affirmed the summary denial, noting that, while "post-warrant litigation is arduous," the compressed timeline does not amount to "a denial of due process." *Id.* at 789-90 (Fla. 2023). Because Barwick had not identified when he was denied notice or an opportunity to be heard, this Court determined that his due process claim failed. *Id.* at 790.[11] *Barwick* presents a foundational

[11] Curiously, Tanzi also asserts that the trial court's approval of the 29-day warrant schedule is "foreclosed by precedent," Appellant's Brief at 33, yet fails to reference a single case to support his proposition. Tanzi does make a perfunctory quotation of *Huff*, 622

question for Tanzi: What due process was he denied because of the "truncated" warrant period? He has identified none. *Barwick* is on point and Tanzi cannot answer the threshold question.

Tanzi cannot escape the simple reality that his lethal injection challenge fails as a matter of law. *See infra.* at 42. The trial court was correct to conclude his lethal injection challenge was untimely and meritless. Affording Tanzi more time to gather evidence to make an untimely and meritless claim would not change the law. Therefore, Tanzi was not denied any due process. *See Cole*, 392 So. 3d at 1065 n.18 (finding no due process violation where a trial court summarily denied his as applied lethal injection claim).

So. 2d at 984, at the end of his unsuccessful attempt to distinguish *Barwick*, but he does not explain why *Huff* applies to, let alone "forecloses," the trial court's holding. (Appellant's Brief at 35).

CLAIM II

PUBLIC RECORDS CLAIM

The trial court did not abuse its discretion by refusing to grant Tanzi's untimely, overbroad, and irrelevant public records demands. Rather than identify what specific records he was seeking and why the trial court abused its discretion, Tanzi presents this Court with a series of conclusory grievances. (Appellant's Brief at 38-51). Despite dedicating more than 5,100 words to relitigating the trial court's rulings, Tanzi did not demonstrate why any of the records he sought were related to a colorable claim, and he failed to address substantial portions of the trial court's reasoning. Tanzi cannot even demonstrate the trial court erred, let alone that it abused its discretion.

A. The Trial Court Did Not Abuse its Discretion in Denying His Untimely, Overbroad, and Irrelevant Demands to Four Investigating Agencies.

Tanzi must first establish he has a colorable postconviction claim before he is entitled to obtain any public records. Tanzi makes no effort to demonstrate how any of the records he demanded from the Miami-Dade Sheriff's Office, Office of the State Attorney, District 16 Medical Examiner's Office (MEO-16), and Florida Department of Law Enforcement (FDLE) were related to any colorable postconviction

claim. Nevertheless, the four agencies *did* conduct a search to locate whatever updated materials were in their possession. (3PCR:398-399; 427; 567; 790-91). These four agencies were all involved, in some capacity, with the initial murder investigation. Tanzi cannot explain how any of these records would be relevant to a colorable postconviction claim a quarter of a century later, particularly when: (1) Tanzi confessed to the murder, multiple times, in various recorded media, *Tanzi*, 964 So. 2d at 111; (2) he even led the law enforcement to the body of the victim, *Id.*; (3) he pled guilty to the charges, *Id.*; and (4) he has already exhausted his initial and successive postconviction remedies, *Tanzi*, 251 So. 3d at 806.

Tanzi does speculate that, for records retained by the State Attorney's Office and FDLE, there *may* be records that could lead to a colorable claim because other defendants have found relevant records in the past. (Appellant's Brief at 45; 51). Tanzi also asserts that denying access to the retention, storage, and collection policies for the Miami-Dade Sheriff's Office was an "error" because he has "no way of knowing whether any records" were destroyed. (Appellant's

Brief at 43).[12] Tanzi's arguments embody the very definition of an improper, speculative fishing expedition, and this Court can comfortably reject them on this fact alone.

Tanzi also did not address the trial court's finding that his requests were overbroad and unduly burdensome. (3PCR:552-554), *see also Muhammad v. State*, 132 So. 3d 176, 201 (Fla. 2013) (noting the Florida Supreme Court will readily affirm a denial of public records requests "if they are overbroad, of questionable relevance, and unlikely to lead to discoverable evidence"); *Mills v. State*, 786 So. 2d 547, 552 (Fla. 2001) (same). Because the quibbles that Tanzi now raises on appeal do not address this finding, let alone explain why the trial court abused its discretion in reaching its conclusion, his argument should be rejected.

Finally, Tanzi has failed to adequately address what good cause he had for delay. Tanzi originally sought records from FDLE and MEO-16 in 2009. (3PCR:398-99; 435-36). With respect to the trial

[12] The Miami-Dade Police Department (now integrated with the Miami-Dade Sheriff's Office) was only involved in this case because the initial abduction and one (possibly both) of the sexual batteries occurred in its jurisdiction; it was not the arresting agency and was minimally involved with the initial investigation. (3PCR:783).

court's finding that the belated request for FDLE's records were untimely, Tanzi only musters a naked assertion that the agency "cannot now flip the script" using his delay as a "scapegoat." (Appellant's Brief at 49). Tanzi's only response to the postconviction court's ruling related to MEO-16 is another naked assertion that the trial court was "blatantly wrong" about rule 3.852(i) and that finding Tanzi's request untimely "was not a ruling sustaining any object lodged by MEO-16." (Appellant's Brief at 47). This Court's precedent belies Tanzi's poorly reasoned objections. Because his criticism of the trial court fails, Tanzi cannot show how the trial court abused its discretion, and his claim should be rejected.

B. The Trial Court Did Not Abuse its Discretion in Denying His Irrelevant Public Records Demands Related to Lethal Injection.

This Court has repeatedly declined to find any abuse of discretion where trial courts have denied public records demands aimed at fishing for information related to lethal injection challenges. *Cole*, 392 So. 3d at 1066 (affirming the denial of a public records requests to the Medical Examiner premised on the claim that Cole's medical history could make lethal injection cruel and unusual punishment); *Long v. State*, 271 So. 3d 938, 948 (Fla. 2019) (affirming

the postconviction court's ruling that Long's public records demands related to his challenges to Florida's lethal injection protocol were overbroad and would not lead to a colorable claim); *Branch v. State*, 236 So. 3d 981, 985 (Fla. 2018) (explaining that autopsy records are not likely to lead to a colorable claim because they "would not establish when the inmates became unconscious or whether they experienced pain during their executions"); and *Hannon v. State*, 228 So. 3d 505, 512 (Fla. 2017) (finding that the court properly denied Hannon's demand for records of the last eight executions).

Tanzi, to his credit, acknowledges that his lethal injection challenge is foreclosed by binding precedent. (Appellant's Brief at 54). He provides no sound reason to depart from this precedent, so this Court should add Tanzi's case to the long list of rejected attempts to forestall execution. *See Hannon,* 228 So. 3d at 512 ("In the past, we have not condoned eleventh hour attempts to delay the execution with records requests, and we will not begin now.") (internal citation and quotations omitted).

CLAIM III

LETHAL INJECTION CLAIM

Tanzi raises an Eighth Amendment challenge to Florida's lethal injection procedure. Tanzi specifically argues that Florida's lethal injection procedure is unconstitutional as applied to him due to his various medical conditions stemming from his obesity. Tanzi was dilatory in waiting until now to raise this claim, and therefore, the postconviction court properly denied it as untimely.

Even if the claim had been timely raised, Tanzi's constitutional claim, nevertheless, fails. Tanzi has not demonstrated that Florida's lethal injection protocol-as applied to him-violates the Eighth Amendment of the United States Constitution. Moreover, his general challenge to the protocol is meritless based on well-established precedent. This claim is facially insufficient and was properly denied without a hearing below.

A. Summary Denial Standard

On appeal from the summary denial of a successive postconviction motion, this Court "review[s] the postconviction court's decision de novo." (citing *Marek v. State*, 8 So. 3d 1123, 1127 (Fla. 2009)). A postconviction court may summarily deny a

postconviction claim that is conclusively rebutted by the existing record. Fla. R. Crim. P. 3.851(f)(5)(B). It is also proper for a postconviction court to summarily deny postconviction claims that are untimely, not retroactive, procedurally barred, not cognizable, or meritless as a matter of law under controlling precedent. *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020); *Rodgers v. State*, 288 So. 3d 1038, 1039 (Fla. 2019) (affirming a summary denial of a successive postconviction claim as untimely), *cert. denied*, *Rodgers v. Florida*, 141 S. Ct. 398 (2020).

The burden is on the defendant to establish a prima facie case, based upon a legally valid claim. *See Franqui v. State*, 59 So. 3d 82, 96 (Fla. 2011); *Nixon v. State*, 932 So. 2d 1009, 1018 (Fla. 2006). Mere conclusory allegations are not sufficient to meet this burden. *Foster v. State*, 132 So. 3d 40, 62 (Fla. 2013). A facially sufficient 3.851 motion requires alleging specific legal and factual grounds that demonstrate a cognizable claim for relief. If a defendant's conclusory allegations are not supported by a properly pled factual basis, the claim is facially insufficient and should be summarily denied. *See Davis v. State*, 875 So. 2d 359, 368 (Fla. 2003).

Successive motions for postconviction relief based on newly

discovered evidence must allege the facts upon which the claim was based "were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence," and that there is good cause for failing to raise the claim in a prior motion. Fla. R. Crim. P. 3.851(d)(2)(A), (e)(2). If a court finds the evidence undergirding a newly discovered evidence claim was previously discoverable, or there is no good cause for failing to assert the claim earlier, it must dismiss the claim under Florida law. *Id.* Tanzi has the burden of showing his claims are timely. *Mungin*, 320 So. 3d at 626 ("It is incumbent upon the defendant to establish the timeliness of a successive postconviction claim.").

B. Tanzi's Claim Is Untimely.

Tanzi did not allege any facts to show that this claim was timely. Certainly, Tanzi has long known of his general medical condition, heavy weight, and asserted back issues.[13] There is no reason in law

[13]In his motion to transport for an MRI, Tanzi acknowledges that he "complained of back and leg pain since at least November 2009." (3PCR:708). Notably, a medical record submitted with Tanzi's successive motion reflects an exam relating to his back issue with a date of August 18, 2023. (3PCR:687). Obviously, with diligence, this claim, although meritless, could clearly have been raised within one year of that date as required by Florida's rules of criminal procedure.

or fact for Tanzi to wait years to raise this claim now under an active death warrant. This claim is untimely and dilatory.

The court below applied well established postconviction rules in finding Tanzi's claim untimely. The court stated:

> First, the Court finds that Claim 2 is untimely. Postconviction claims in capital cases must generally be filed within one year after the judgment and sentence become final. Fla. R. Crim. P. 3.851(d)(1). "Rule 3.851 prohibits, with certain exceptions, both untimely and repetitive claims." *Cole*, 392 So. 3d at 1061. The Defendant has not alleged any facts to show that this claim is timely. The Defendant has long known of his medical conditions, heavy weight and asserted back issues. In his Motion to Transport for MRI, the Defendant acknowledged that he "complained of back and leg pain since at least November 2009." (Mtn. to Transport at 2). With diligence, the Defendant's claim could have been made within one year of that date as required by Florida's Rules of Criminal Procedure. *See* Fla. R. Crim. P. 3.851(d)(2).

(3PCR:964). There is no underlying factual dispute as to the timeliness of Tanzi's motion. The court below correctly found Tanzi's motion untimely under rule 3.851.

Under similar circumstances, this Court recently affirmed the denial of an as applied challenge to Florida's lethal injection protocol under an active death warrant. In *Cole*, 392 So. 3d at 1064, this

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Tanzi's own disclosed medical records and motion establish that this claim is untimely under rule 3.851.

Court rejected a claim that an as applied challenge only became ripe when a warrant was signed. This Court stated:

> We reject Cole's argument. First, the postconviction court properly determined that Cole's argument is untimely. Cole alleged in his motion that he has suffered from Parkinson's disease since at least 2017. Even so, Cole failed to raise any argument related to the method of execution until after the Governor signed a death warrant. Identifying this potentially dispositive issue at the *Huff* hearing, the postconviction court questioned defense counsel as to the reason for the delay in Cole's claim. In response, counsel argued only that lethal injection protocols have changed, but counsel could not cite a specific change that would justify the delay. Cole's arguments are therefore insufficient to overcome the time bar. *See Ferguson v. State*, 101 So. 3d 362, 365 (Fla. 2012) (rejecting an argument that a method-of-execution claim is not ripe until a death warrant is signed).[14]

Similarly, in *Dillbeck v. State*, 304 So. 3d 286, 288 (Fla. 2020), this Court affirmed the dismissal of Dillbeck's untimely claim under an active warrant, reasoning that Dillbeck and his counsel knew that Dillbeck had brain damage related to fetal alcohol exposure even before he was sentenced, and because the new diagnosis of ND-PAE

[14] Tanzi attempts to distinguish his situation from the other defendants who have made untimely as applied lethal injection challenges by speculating that his medical issues are "mutable." (Appellant's Brief at 67). This is a distinction without a difference. Tanzi was long aware of the conditions he now asserts would make Florida's lethal injection procedures more painful and unconstitutional as applied to him.

was first recognized in 2013, it could have been discovered by the exercise of due diligence as early as 2013. Thus, the trial court did not err in dismissing Dillbeck's motion as untimely. *Id.*; *see also Zack v. State*, 371 So. 3d 335, 345 (Fla. 2023) (finding the defendant's claim about fetal alcohol syndrome and low IQ being a barrier to the execution was time barred because defendant had long known of these conditions prior to filing his successive motion under an active death warrant).

The situation is no different here. Tanzi has known of the health symptoms related to his obesity. Obesity does not just happen overnight. The Florida Rules of Criminal Procedure have strict time limitations for when a motion and successive motion for postconviction relief can be filed. Fla. R. Crim. P. 3.851(d). Those limitations should be strictly enforced, particularly when a defendant deliberately waits until after a warrant is signed to make his challenge. *See Ford v. State*, 2025 WL 428394 (Fla. Feb. 7, 2025) (finding Ford's position that the procedural bars related to rule 3.851 should be inapplicable to defendants under an active death warrant was "without any legal support"). The clear intent of this claim is to delay Tanzi's execution in a case that has already been final on

federal review and therefore ripe for a warrant for almost ten years. *See Woods v. Comm'r, Ala. Dep't of Corr.*, 951 F.3d 1288, 1293 (11th Cir. 2020) ("The Supreme Court has unanimously instructed the lower federal courts on multiple occasions that we must apply a strong equitable presumption against the grant of a stay where a claim could have been brought at such time as to allow consideration of the merits without requiring entry of a stay.") (internal quotations omitted).

As outlined above, an allegation associated with Tanzi's obesity and back pain as related to Florida's three-drug protocol is based on facts that have been known to Tanzi and his attorneys for years. Thus, the contention that his obesity or related health issues could potentially interfere with the lethal injection process should have been researched and raised well prior to Tanzi's death warrant.[15]

Similarly, Dr. Zivot's general challenge to etomidate, and his allegation of its bleach-like "PH," at very high concentrations,

[15]Federal courts have long recognized that lethal injection challenges are subject to time limitations. *See, e.g.*, *McNair v. Allen*, 515 F.3d 1168, 1178 (11th Cir. 2008) (applying applicable state statute of limitations to lethal injection challenge in federal court under Section 1983).

although speculative (Appellant's Brief at 64-65), is a facial challenge to the etomidate protocol. Such a facial challenge is clearly untimely as etomidate has been used (successfully) by FDOC since 2017. *See Asay v. State*, 224 So. 3d 695, 701 (Fla. 2017).

There is no provision in Florida law that supports waiting until a death warrant is signed to litigate an Eighth Amendment lethal injection claim. Tanzi fails to credibly or adequately explain how the facts on which his claim is based were unknown to him or his attorneys and could not have been ascertained by the exercise of due diligence. Florida's current lethal injection protocol has been in effect since 2017. Obviously, Tanzi's general complaints about training of lethal injection personnel, placement of venous access and potential cut down procedures–while meritless under precedent–could have been raised years earlier. *See generally Lightbourne v. McCollum*, 969 So. 2d 326 (Fla. 2007) (rejecting broad-based challenges to Florida's protocol); *Valle v. State*, 70 So. 3d 530, 545 (Fla. 2011) (same).

Tanzi was clearly dilatory in waiting until now to raise this claim. *Ferguson v. State*, 101 So. 3d 362, 365 (Fla. 2012) (agreeing with the lower court that a lethal injection challenge was time barred because "Ferguson has not based his claim on facts that occurred

during a recent execution . . .") (citing and contrasting *Schwab v. State*, 969 So. 2d 318, 321 (Fla. 2007)). Pursuant to Florida Rule of Criminal Procedure 3.851(e)(2), a claim that fails to meet the time limitations exceptions "shall be dismissed" by the trial court. This claim was properly denied below as untimely.

C. Tanzi's Motion Does Not Set Forth A Valid Eighth Amendment Claim.

Even if Tanzi's claim had been timely raised, he would not be entitled to relief because this claim is meritless. Tanzi cannot successfully challenge his method of execution unless: (1) he establishes that it presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering, and (2) he also identifies a known and available alternative method of execution that entails a significantly less severe risk of pain. *Asay VI*, 224 So. 3d at 701 (citing *Glossip v. Gross*, 576 U.S. 863, 877 (2015)); *Baze v. Rees*, 553 U.S. 35 (2008). Tanzi's motion failed to establish these required elements.

In finding Tanzi's Eighth Amendment claim legally insufficient, the postconviction court stated:

> The Defendant argues that due to sciatica and cervical disease, he is unable to lay flat without

> experiencing intense pain. However, as the United States Supreme Court has recognized, the Eighth Amendment does not require "the avoidance of all risk of pain" in any method of execution. *Bucklew v. Precythe*, 587 U.S. 119, 134 (2019). The Defendant has not shown that his alleged obesity and related health effects would cause him needless suffering in violation of the Eighth Amendment. The Defendant's claims are speculative and cannot satisfy the "sure or very likely" standard that is required to show entitlement to relief. There are protocols in place that have been challenged and upheld that address the Defendant's concerns.

(3PCR:966). Summary denial was appropriate based upon the allegations before the court.

Tanzi speculates that his weight will render the first drug insufficient but provides no support for that assertion. And, indeed, such a challenge fails as a matter of law. Challenges to the constitutionality of Florida's lethal injection protocol as currently administered have been fully considered and repeatedly rejected. *Asay VI*, 224 So. 3d at 700-02 (holding that use of etomidate as the first drug in Florida's lethal injection protocol did not violate the Eighth Amendment because it did not create a substantial risk of serious harm); *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019) (observing "[b]ecause we have upheld the constitutionality of the current lethal injection protocol, such records 'are unlikely to lead to

a colorable claim for relief."'); *Long*, 271 So. 3d at 943-46 (stating, "[s]ince approving the current lethal injection protocol in *Asay VI*, we have repeatedly affirmed the summary denial of challenges to the protocol, including challenges to the use of etomidate as the first drug in the protocol.").

Tanzi has not demonstrated any substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering.[16] This standard imposes a "heavy burden" upon the inmate to show that lethal injection procedures violate the Eighth Amendment. *Baze*, 553 U.S. at 53. Notably, Tanzi does not assert that he is taking any drugs that will interfere with the drugs employed in Florida's protocol. The use of etomidate was thoroughly litigated in state court in *Asay VI,* 224 So. 3d at 705. Four expert witnesses testified in detail during an evidentiary hearing about the known

[16] As the United States Supreme Court has recognized, the Eighth Amendment does not require "the avoidance of all risk of pain" in any method of execution. *Bucklew v. Precythe*, 587 U.S. 119, 134 (2019). How the Eighth Amendment applies to methods of execution "tells us that [it] does not guarantee a prisoner a painless death--something that, of course, isn't guaranteed to many people, including most victims of capital crimes." *Id.* (citing *Glossip*, 576 U.S. at 868-69). That is most certainly true here–Tanzi's victim suffered a torturous and prolonged death.

effects of etomidate, how it was used in the protocol, and how it has been used in medical practice. *Asay VI*, 224 So. 3d at 701. In affirming the circuit court's denial of the claim, this Court found that the use of etomidate as the primary drug in the execution protocol was constitutional. *Id.* at 701-02.

Even Tanzi recognizes that Florida's lethal injection protocol calls for "massive doses" of drugs to be injected. (3PCR:589); *see also Long*, 271 So. 3d at 944 (crediting the testimony of the State's expert detailing the effects of the "massive dose of 200 milligrams of etomidate" producing "such a deep state of burst suppression and unconsciousness[.]"). Tanzi fails to offer any support for his groundless assertion that the massive dose of etomidate, that has been repeatedly and successfully used in Florida's lethal injection protocol, will not work for him.

Tanzi alleges that his weight will make venous access more difficult or more painful. Tanzi's citation to problems in other states' administration of lethal injection (Appellant's Brief at 77-79), under different protocols with different drugs, does nothing to overcome this well-established precedent. Moreover, speculation that a similar mishap will occur in this State is legally insufficient and counter to

the FDOC's demonstrated competence in administering the etomidate protocol. *See Long,* 271 So. 3d at 944-45 (rejecting Long's argument related to other executions as "speculative and conclusory allegations" that "are insufficient to warrant an evidentiary hearing, let alone relief."); *see also Ferguson v. Warden, Florida State Prison*, 493 Fed. App'x 22, 25 (11th Cir. 2012) (unpublished) (rejecting allegations of "insufficient safeguards" and that execution team members lack sufficient "medical training," noting that "Ferguson's barrage of 'if-then' hypotheticals do not amount to concrete evidence of an 'objectively intolerable risk of harm' necessary to establish an Eighth Amendment violation.") (citing *Baze*).

Florida addressed contingencies relating to venous access following the execution of Angel Diaz on December 13, 2006. This execution prompted substantial changes to Florida's lethal injection protocol. *See generally Lightbourne*, 969 So. 2d 326. In *Lightbourne*, this Court upheld the then-existing lethal injection protocols against a number of challenges following a thirteen-day postconviction evidentiary hearing. As this Court noted, following the Diaz execution, "the executive branch under the direction of the Governor and the FDOC instituted an extensive and comprehensive review of

the problem and proposed solutions," *id.* at 344, and ultimately revised the protocols to address concerns with the qualifications and training of the execution team members, assessing venous access and ensuring the inmate's unconsciousness, and challenges to the lethal injection drugs. Since the *Lightbourne* decision, Florida has executed some forty-four murderers by lethal injection without any similar complications. *See* Florida Dept. of Corrections' Execution List at https://www.fdc.myflorida.com/institutions/death-row/execution-list-1976-present (last accessed March 26, 2025).

Difficulty in achieving venous access does not set forth a valid Eighth Amendment claim. In *Cole v. State*, 392 So. 3d 1054, 1065 (Fla. 2024), this Court recently rejected an inmate's as applied challenge that his condition would make venous access more difficult or more painful. Indeed, "Being pricked numerous times in the course of having an IV inserted is not cruel and unusual punishment, however uncomfortable it may be." *Schwab v. State*, 995 So. 2d 922, 926-27 (Fla. 2008).

Not only has this Court rejected Eighth Amendment challenges similar to the ones Tanzi makes here, but federal courts have consistently rejected venous access claims. In *Baze v. Rees*, 553 U.S.

35, 55 (2008), the Court held that problems related to IV lines did not establish a sufficiently substantial risk of harm to meet the requirements of an Eighth Amendment claim. Likewise, the Eleventh Circuit has squarely rejected Eighth Amendment claims that repeated IV access attempts can constitute superadded pain and present a "substantial risk of harm." *See Barber v. Governor of Alabama*, 73 F.4th 1306, 1318 (11th Cir. 2023) (finding death row inmate's arguments "fatal[ly] flaw[ed]" because they were "premised on the assumption that protracted efforts to obtain IV access" would cause an unconstitutional level of pain); *Nance v. Comm'r, Georgia Dep't of Corr.*, 59 F.4th 1149, 1157 (11th Cir. 2023) (rejecting claim that state technicians would subject death row inmate to an unconstitutional level of pain by repeatedly pricking him with a needle due to his weak veins).

The affidavit of Dr. Zivot is speculative and facially insufficient to warrant an evidentiary hearing. To the extent the affidavit generally addresses the effect of a large bolus dose of etomidate, this constitutes a facial challenge to the protocol and is untimely. It is also without merit. Dr. Zivot's affidavit fails to address the well-known and established effect of etomidate, an FDA approved

hypnotic/anesthetic. Tanzi will be rendered unconscious almost immediately by etomidate–within one minute. *See Asay*, 224 So. 3d 701 ("Intravenous injection of etomidate produces hypnosis characterized by a rapid onset of action, usually within one minute.") (quoting package insert). Dr. Zivot's vague and speculative allegation that in the high amount of etomidate administered it could be compared to "bleach," while hyperbolic, does not counter the fact that Tanzi will almost immediately be rendered unconscious from the first bolus dose. Precedent from this Court has fully explored the effect of the large dose of etomidate used in Florida's protocol. Notably, that protocol has been successfully used in sixteen executions, and this Court has repeatedly affirmed summary denial of challenges to this protocol. *See, e.g.*, *Jimenez v. State*, 265 So. 3d 462, 474 (Fla. 2018); *Long*, 271 So. 3d at 945.

Similarly, the possibility of Tanzi having a seizure does not present a valid Eighth Amendment claim. Dr. Zivot presents nothing in his affidavit to suggest how likely a seizure would be and does not at all address at all the hypnotic effect of etomidate. A seizure occurring in the one minute it takes for etomidate to take effect is not

a facially sufficient Eighth Amendment challenge. [17]

None of the speculative assertions offered in Dr. Zivot's affidavit overcome the well litigated protocol from the FDOC. *See Long*, 271 So. 3d at 944 (noting that the State's expert testified that "the massive dose of 200 milligrams of etomidate would produce such a deep state of…unconsciousness that it would eliminate any possible

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[17]In *Johnson v. Lombardi*, 809 F.3d 388, 391 (8th Cir. 2015), the Eighth Circuit rejected a similar speculative claim made by Dr. Joel Zivot, stating:

> Johnson alleges that his condition raises a "significant *potential*" that pentobarbitol will "*promot [e]"* a seizure and that such a seizure "*can* result in significant muscle pain." Such averments do not satisfy the demanding requirement that Johnson show that unnecessary suffering is *sure* or *very likely* to occur. *See id.* The attached affidavit of Dr. Joel Zivot fails to show a likelihood of success under the Eighth Amendment standard. Dr. Zivot notes that seizures "*may* be induced" as a result of the pentobarbitol injection. And he notes that pentobarbitol has the potential to promote a seizure. These equivocal statements do not sufficiently show a "*substantial* risk of serious harm." *Id.* at 2737 (emphasis added). Conspicuously absent from Dr. Zivot's affidavit is any clear statement that significant pain is "sure or very likely" to occur if the state executes Johnson using pentobarbitol. Although Dr. Zivot later uses stronger language in a concluding paragraph, the conclusion is based expressly on earlier findings that are insufficient. (emphasis in original)

seizure activity[.]"). Tanzi is attempting to delay or preclude his execution by relying on the possibility of his weight posing challenges to the execution team in achieving venous access. However, as noted above, precedent forecloses such a claim. Also fatal to Tanzi's claim about his body mass and potential back pain is the fact that FDOC will assess those conditions. The FDOC does provide an individualized assessment of the inmate prior to the execution. *See Grossman v. State*, 5 So. 3d 668 (Fla. 2009) (Table) (noting that Florida's execution protocol does "take into consideration the individual physical attributes of each inmate and provide for individualized procedures").

"The cruelty against which the Constitution protects a convicted man is cruelty inherent in the method of punishment, not the necessary suffering involved in any method employed to extinguish life humanely." *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947). Tanzi has failed to show that the implementation of Florida's current protocol will violate his Eighth Amendment rights. And while Tanzi speculates that FDOC staff may not be sufficiently trained to gain venous access in the manners outlined in the protocol, it is not this Court's role to micromanage the executive branch in fulfilling its

own duties relating to executions. *See Lightbourne,* 969 So. 2d 326 at 351-52 (Fla. 2007) ("Determining the specific methodology and the chemicals to be used are matters left to the FDOC and the executive branch, and this Court cannot interfere with the FDOC's decisions in these matters unless the petitioner shows that there are inherent deficiencies that rise to an Eighth Amendment violation.").

Tanzi's brief states that "sciatica and cervical pain Mr. Tanzi will endure is not merely pain incident to the lethal injection procedure." (Appellant's Brief at 70). That concession makes the State's point– pain and discomfort not attendant to the specific execution procedures utilized by Florida does not state an Eighth Amendment claim.[18] Obviously, in adhering to its long-standing protocol the State is not attempting to "super add" pain or terror to the execution. *See City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520, 543 (2024) ("None of the city's sanctions qualifies as cruel because none is designed to "superad[d]" "terror, pain, or disgrace." (citing *Bucklew*,

[18] Tanzi implies that he will be strapped to the gurney for a lengthy period of time. However, the protocol specifies that the inmate will be secured thirty minutes prior to the execution. (3PCR:3676), FDOC Protocol, paragraph 10 (f)). He will also be offered an anti-anxiety drug in an appropriate dose for the inmate's weight. *Id*. at 675 (para. 9 (i)).

587 U.S. at 130). Tanzi has not come close to meeting his burden of showing Florida's protocol is "sure or very" likely to cause serious harm and needless suffering. Accordingly, the lower court's summary denial of this claim should be affirmed.

D. Alternatives

The lower court also found that Tanzi failed to sufficiently articulate an alternative method of execution. (3PCR:966). The court found that Tanzi failed to establish that his mentioned alternatives, lethal gas or firing squad could be implemented in a reasonable time as required by *Glossip v. Gross*, 576 U.S. 863, 877 (2015). This ruling simply acknowledges the sparse facts set forth in Tanzi's motion do nothing to show these methods are either available or can be implemented by Florida in a reasonable timeframe. In addition, Tanzi fails to articulate just how lethal gas or firing squad will minimize the alleged risk of severe pain.[19] Notably, Tanzi has not challenged the other statutorily approved method of execution in Florida–the electric chair. *See* § 922.105, Fla. Stat. (2024).

[19] Obviously, either method will require the use of restraints and therefore cause Tanzi similar pain or discomfort. Indeed, Tanzi's successive motion provides: "Restraints will render him unable to assume any comfortable position." (3PCR:595).

Florida law allows a death-sentenced defendant to affirmatively elect to be executed by electrocution, §§ 922.105(1), (2), Fla. Stat. (2024), and it permits execution by electrocution if the lethal injection protocol is deemed unconstitutional. § 922.105(3), Fla. Stat. (2024). Electrocution is a viable option, and there is a current protocol in place for its use.[20] The FDOC has the necessary procedures, equipment, facilities, and personnel in place to administer it successfully, and the "foremost objective" of its process "is a humane and dignified death." (Electrocution Protocol at 1). Execution by electrocution has never been deemed unconstitutional by the United States Supreme Court. *See In re Kemmler*, 136 U.S. 436 (1890) (holding that electrocution did not constitute cruel and unusual punishment); *see also Resweber,* 329 U.S. 459 (finding that the second attempt to execute a defendant by use of the electric chair did not constitute cruel and unusual punishment after the first attempt failed). And this Court has expressly held that execution by

[20] Electrocution Protocol, Florida Department of Corrections, https://fdc-media.ccplatform.net/content/download/1560/file/FDC-Execution-by-Electrocution-Procedures.pdf (last visited March 20, 2025).

electrocution does not violate the Eighth Amendment. *Jones v. State*, 701 So. 2d 76, 80 (Fla. 1997); *Provenzano v. Moore*, 744 So. 2d 413 (Fla. 1999). Therefore, in the unlikely event a court were to find FDOC's lethal injection protocol unconstitutional as applied to him, then Tanzi will be executed by the electric chair.

Tanzi has not provided any reasons to show how his proposed methods result in a "clear and considerable" difference in reducing pain compared to the use of etomidate within a three-drug protocol. *Bucklew*, 587 U.S. at 141. Tanzi has failed to meet his burden under *Glossip*, *Baze,* and *Bucklew*. For all these reasons, summary denial of this claim should be affirmed.

CLAIM IV

GOVERNOR'S WARRANT POWERS

In his final claim, Tanzi challenges the power of the Governor to sign death warrants and to determine execution dates. The lower court properly determined that this claim was procedurally barred because it could have been raised previously. (3PCR:967). Florida has long provided the Governor with the sole authority to issue death warrants and to set the date of executions.[21] Thus, Tanzi's challenge to the Governor's authority, although meritless, could have been made on direct appeal or his initial motion for postconviction relief. Because Tanzi waited until his death warrant was signed to raise this claim, it was properly denied.

Even if this claim were not untimely and procedurally barred, Tanzi would not be entitled to relief. This Court has "repeatedly" and consistently denied claims similar to the one Tanzi raises here.

[21] The Florida Rules of Executive Clemency expressly provide that the "Governor has the unfettered discretion to deny clemency at any time, for any reason." Fla. R. Exec. Clem. 4. Additionally, under section 922.052(3), of Florida Statutes, a death sentence shall not be carried out "until the Governor issues a warrant, attaches it to the copy of the record, and transmits it to the warden, directing the warden to execute the sentence at a time designated in the warrant."

Hannon v. State, 228 So. 3d 505, 509 (Fla. 2017); *Bolin v. State*, 184 So. 3d 492, 503 (Fla. 2015); *Mann v. State*, 112 So. 3d 1158, 1162-63 (Fla. 2013); *see also Ferguson v. State*, 101 So. 3d 362, 366 (Fla. 2012) (rejecting as meritless several claims related to the warrant selection process).

As this Court has acknowledged, "[c]lemency is solely the prerogative of the Governor." *Muhammad v. State*, 132 So. 3d 176, 199 (Fla. 2013) "The clemency process in Florida derives solely from the Florida Constitution and…the people of the State of Florida have vested 'sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace.'" *Id. at* 198 (quoting *Sullivan v. Askew*, 348 So. 2d 312, 315 (Fla. 1977)). This Court has unequivocally rejected a claim that the Governor's discretion to select an inmate for execution is unconstitutional. *Bolin*, 184 So. 3d at 503; *see also Dailey v. State*, 283 So. 3d 782, 787 (Fla. 2019) ("We have consistently rejected the assertion that the warrant selection process is arbitrary because there are no standards that constrain the Governor's discretion in determining which warrant to sign."). And Florida Statutes has always provided the Governor with exclusive discretion in setting execution dates. *See Goode v. Wainwright*, 448

So. 2d 999, 1001 (Fla. 1984) (citing § 922.06, Fla. Stat. (1983)); *see also* § 922.052(3), Fla. Stat.

Tanzi does not dispute that he is eligible for a death warrant, he merely asks this Court to second-guess the Governor's[22] executive decision in determining when to sign a warrant and set the execution date. But this claim is foreclosed under binding precedent. *See Dailey*, 283 So. 3d at 787; *Hannon*, 228 So. 3d at 509*; Bolin*, 184 So. 3d at 503; and *Valle v. State*, 70 So. 3d 530, 551-52 (Fla. 2011). Tanzi has offered no legitimate reason for this Court to depart from its longstanding precedent. Indeed, "this Court has always proceeded very carefully in addressing such a claim since it triggers separation of powers concerns." *Valle*, 70 So. 3d at 551-52. And this Court has "repeatedly declined to interject itself into what is, under the Florida Constitution, an executive function." *Gore v. State*, 91 So. 3d 769, 779 (Fla. 2012). Tanzi has failed to show that the Governor's warrant powers violate the Eighth Amendment. The summary denial of this claim should be affirmed.

[22] The State rejects Tanzi's unfounded assertion that the Attorney General's Office selects the defendant for a warrant.

CONCLUSION

The State of Florida respectfully requests that this Honorable Court affirm the lower court's order denying Tanzi's successive motion for postconviction relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of March 2025, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Portal Filing System which will send a notice of electronic filing to the following: Suzanne Keffer, Acting Capital Collateral Representative-South, Paul Kalil, Assistant CCRC-S, Michael Cookson, Staff Attorney, and Todd G. Scher, Special Assistant CCRC-S, Capital Collateral Regional Counsel-South Region, 101 SE 6th Street, Fort Lauderdale, Florida 33301, **keffers@ccsr.state.fl.us**, **kalilp@ccsr.state.fl.us**, **cooksonm@ccsr.state.fl.us**, **schert@ccsr.state.fl.us**, **tscher@msn.com**, **lacyb@ccsr.state.fl.us**, **hammerc@ccsr.state.fl.us**, and **ccrcpleadings@ccsr.state.fl.us**; and the Florida Supreme Court, Kendall Canova, Capital Appeals Clerk, 500 South Duval Street, Tallahassee, Florida 32399, **warrant@flcourts.org**.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this

brief is 14-point Bookman Old Style in compliance with Fla. R. App. P. 9.045(b), and that the word count is 11,581 words in compliance with Fla. R. App. P. 9.100(j).

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