No. SC2026-0168

In the Supreme Court of Florida

MELVIN TROTTER,
Petitioner,

v.

STATE OF FLORIDA, ET AL.,
Respondents.

RESPONSE TO PETITION FOR REVIEW

On Petition for Review of a Non-Final Order of the Twelfth Judicial Circuit in and for Manatee County, Florida
L.T. No. A-1986-CF-1225

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STATEMENT OF THE CASE AND FACTS

On June 16, 1986, Melvin Trotter entered Virgie Langford's grocery store and obtained a sixteen-inch butcher knife that Langford used to cut meat. Trotter put the seventy-year-old woman in a strangle hold and proceeded to stab her seven times. The stab wounds cut into her pancreas, liver and stomach. The large abdominal wound resulted in her disembowelment. *Trotter v. State*, 576 So. 2d 691, 692 (Fla. 1990). Trotter took cash and food stamps from the store. A truck driver subsequently discovered Ms. Langford following the attack and she was still conscious. Ms. Langford informed him that she had been stabbed and robbed. Ms. Langford survived for several hours but died of cardiac arrest following emergency surgery. *Id.*

At trial, the State presented testimony that Trotter was seen on the porch of the victim's grocery store immediately before the murder. (R.1338-47, 1354-57).[1] After the murder, Trotter ran back to Elnora Oates' rooming house and told her to tell anyone who asked that he

[1] Record citations are to the direct appeal record in Trotter's appeal before this Court. *Trotter v. State*, 576 So. 2d 691 (Fla. 1990) (Case No. 70714).

had been there all day. Oates testified that Trotter bought crack cocaine and they smoked it together that afternoon. She further noted that Trotter had a red bandana containing approximately $17-20 in change and about $35 worth of food stamps. (R.1433-42).

The next day, after his arrest, Trotter gave taped statements to law enforcement officers and confessed to stabbing the victim after entering the grocery store and stealing money and food stamps. Trotter claimed he could not recall the specifics of how the victim's wounds were inflicted, but he recalled the victim bleeding and seeing her intestines coming out. (R.3140-47). Other evidence presented by the State included Trotter's palm print found on the meat cooler in the grocery store and blood stains on the butcher knife and Trotter's T-shirt which were consistent with the victim's blood. (R.1656-59; 1614).

The jury convicted Trotter of armed robbery with a deadly weapon and first-degree murder and recommended the death penalty by a 9-3 vote. *Trotter*, 576 So. 2d at 692. The trial court followed the jury's recommendation and sentenced Trotter to death.

Direct Appeal

Following his convictions and sentence of death, Trotter filed his direct appeal to this Court, and raised eight claims: (1) the trial court erred in requiring Trotter to exhaust his peremptory strikes on prospective jurors who should have been excused for cause; (2) the trial judge erred in failing to conduct a sufficient investigation into extraneous influences in the jury deliberations and denying Trotter's motion for new trial; (3) the trial judge erred by denying Trotter's motion to disqualify the prosecutor because the Assistant State Attorney assigned to the case had previously represented Trotter; (4) the trial judge erred by excusing prospective juror Burse for cause; (5) evidence that Trotter was on community control at the time of the offense should not have been presented during the penalty phase and should not have been considered by the sentencing judge as an aggravating circumstance; (6) the trial judge erred by ruling Trotter's artwork inadmissible as penalty phase evidence; (7) the trial court's instructions on the especially heinous, atrocious or cruel aggravating circumstance was unconstitutionally vague; and (8) the sentencing judge erred by finding the section 921.141(5)(h) aggravating factor because the fact that the victim was killed in the store she operated

is irrelevant and the crime was not set apart from the norm of capital felonies. *See* Initial Brief of Appellant at i-ii, *Trotter v. State*, 576 So. 2d 691 (Fla. 1990) (Case No. 70714).

On December 20, 1990, this Court issued its opinion affirming Trotter's convictions but vacating his death sentence. *See Trotter*, 576 So. 2d at 694-95 (remanding for a new penalty phase because Trotter's status of being on community control could not be used as an aggravating circumstance that the capital felony was committed by a person "under sentence of imprisonment").

Resentencing and Appeal

On remand, a jury again recommended the death penalty by a vote of 11-1 and the trial court followed the recommendation and sentenced Trotter to death. The court found four aggravating circumstances,[2] two statutory mitigating circumstances,[3] and

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[2] Trotter was on community control at the time of the murders; Trotter had been convicted of a prior violent felony; the crime took place while Trotter was engaged in a robbery and was for pecuniary gain (merged); and the murder was especially wicked, evil, atrocious and cruel.

[3] Trotter was under the influence of extreme mental and emotional disturbance; and the capacity of the defendant was substantially impaired.

several nonstatutory mitigators.[4] *Trotter v. State*, 690 So. 2d 1234, 1236 (Fla. 1996). This Court affirmed Trotter's death sentence, *id.*, and on October 6, 1997, the United States Supreme Court denied certiorari review. *Trotter v. Florida*, 522 U.S. 876 (1997).

Initial Postconviction Proceedings

On June 8, 1998, Trotter filed in circuit court a Motion to Vacate Judgment of Conviction and Sentence pursuant to Florida Rule of Criminal Procedure 3.850. Trotter subsequently amended the motion and ultimately raised numerous claims.[5]

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[4] Trotter has a below average I.Q., has both family and developmental problems, and has a disadvantaged background; Trotter may have suffered from a frontal lobe brain disorder; the defendant is remorseful; and other nonstatutory factors.

[5] Trotter alleged that counsel was ineffective for: (1) failing to timely challenge the validity of his prior violent felony conviction and failing to present evidence regarding the circumstances of that prior crime; (2) not having the assistance of a competent mental health expert; (3) failing to provide mental health experts with available information necessary to their diagnoses of Trotter; and (4) conceding guilt during the guilt phase closing argument. Trotter raised additional claims that (5) execution by lethal injection or electrocution is unconstitutional; (6) Florida's death penalty sentencing statute is unconstitutional on its face and as applied; (7) the penalty phase jury instructions unconstitutionally shifted the burden to Trotter; and (8) cumulative errors were not harmless. *Trotter v. State*, 932 So. 2d 1045, 1048 n.4 (Fla. 2006).

After conducting an evidentiary hearing on four claims and issuing a final order denying all postconviction relief, Trotter filed an appeal to this Court and filed a petition for writ of habeas corpus. Following this Court's promulgation of Florida Rule of Criminal Procedure 3.203, providing a procedure for the determination of intellectual disability in death penalty cases, Trotter sought a relinquishment of jurisdiction. Trotter thereafter filed his first successive postconviction motion seeking a determination of intellectual disability and waived an evidentiary hearing. The attorneys filed written reports and closing arguments in lieu of live proceedings and stipulated to the court taking judicial notice of the testimony Trotter presented at the 2002 postconviction evidentiary hearing. *Trotter v. State*, 932 So. 2d 1045, 1048 (Fla. 2006). The trial court found that Trotter was not intellectually disabled. *Id.*

On May 25, 2006, this Court issued an opinion affirming the denial of postconviction relief, affirming the trial court's finding that Trotter was not intellectually disabled, and denying his petition for writ of habeas corpus. *Id.* at 1050-54.

Federal Habeas Proceedings

Following the denial of all relief in the state courts, Trotter filed a petition for writ of habeas corpus on October 11, 2006, in the United States District Court, Middle District of Florida. On November 6, 2007, the district court issued an order denying the petition, *Trotter v. Sec'y, Dep't of Corr.*, No. 8:06-cv-1872, 2007 WL 3326672 (M.D. Fla. Nov. 6, 2007). The Eleventh Circuit Court of Appeals affirmed the district court's denial of federal habeas relief, *Trotter v. Sec'y, Dep't of Corr.*, 535 F.3d 1286 (11th Cir. 2008), and denied Trotter's motion for rehearing en banc. *Trotter v. Sec'y, Dep't of Corr.*, 307 Fed. Appx. 438 (11th Cir. 2008). Trotter filed a petition for writ of certiorari with the United States Supreme Court, which was denied on December 15, 2008. *Trotter v. McNeil*, 555 U.S. 1087 (2008).

Successive Postconviction Proceedings

On October 15, 2007, Trotter filed his second successive motion for postconviction relief in the circuit court raising two claims: (1) whether Florida's lethal injection procedures violate the constitutional prohibitions against cruel and unusual punishment; and (2) a constitutional challenge to Florida Statutes, section 945.10 which exempts from disclosure the identity of the members of the

execution team and the executioners. The postconviction court summarily denied relief, and this Court affirmed. *Trotter v. State*, 10 So. 3d 633 (Fla. 2009) (Table).

On January 5, 2017, Trotter filed a third successive postconviction motion pursuant to Florida Rule of Criminal Procedure 3.851 raising claims related to *Hurst v. Florida*, 577 U.S. 92 (2016), and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). The postconviction court summarily denied Trotter's motion, and this Court affirmed. *Trotter v. State*, 235 So. 3d 284 (Fla. 2018).

Death Warrant Proceedings

On January 23, 2026, Governor Ron DeSantis signed a death warrant for the execution of Trotter, and his execution is scheduled to occur on February 24, 2026, at 6:00 p.m. As a result, this Court issued a scheduling order requiring that all proceedings in the circuit court be concluded by Friday, February 6, 2026, at 11:00 a.m.

On January 27, 2026, pursuant to the circuit court's separate scheduling order, Trotter filed a demand for additional public records directed to the Florida Department of Corrections (FDOC) and the Florida Department of Law Enforcement (FDLE). He sought a broad set of records from FDOC relating to the training, preparation,

administration, and documentation of lethal injections from January 1, 2025, to the present. These records included execution team training materials, checklists and logs, drug acquisition, storage, and maintenance records, execution day documentation, monitoring and medical assessment records, post-execution materials, and protocols and directives. Collectively, Trotter sought detailed operational, medical, and logistical information concerning the implementation of the lethal injection protocol across multiple executions, rather than information unique to his scheduled execution. (Petitioner's Appendix B).

From FDLE, Trotter sought a narrower but related set of records tied to FDLE's monitoring role during executions. These requests focused on FDLE's contemporaneous observations and documentation of executions. (Petitioner's Appendix A).

Trotter contended that the FDOC and FDLE records were necessary to support an as-applied Eighth Amendment claim alleging that FDOC's purported failure to comply with its lethal injection protocol during other executions creates a substantial risk that his own execution will be carried out in a cruel and unconstitutional manner. He justified his public records demands by relying on

allegations and inventory records referenced in separate federal litigation and by drawing inferences from partial or redacted execution documentation, which he contended suggested deviations from protocol during other executions. (Petitioner's Appendices A & B).

Both FDLE and FDOC filed written objections, arguing that the requests were premised on speculative allegations, failed to relate to a colorable postconviction claim under rule 3.852, were foreclosed by this Court's precedent, and sought records that are confidential and exempt under section 945.10. (Petitioner's Appendices E & F).

The circuit court sustained FDOC's and FDLE's objections after considering the demands, the written objections, the legal arguments presented at the hearing, and the record. The court's order did not make factual findings or articulate specific reasoning. Instead, it summarily denied relief, which is permissible where the defendant fails to satisfy the threshold requirements of rule 3.852. (Petitioner's Appendices C & D).

On January 30, 2026, Trotter filed the instant Petition Seeking Review of Non-Final Order ("Petition") in this Court seeking review of the postconviction court's ruling on his public records requests. The

State respectfully requests that the Petition be dismissed for lack of jurisdiction or, alternatively, denied as meritless.

JURISDICTION

This Court has jurisdiction to review non-final postconviction orders in capital cases under Florida Rule of Appellate Procedure 9.142(c). In order to obtain relief, Trotter must establish that the non-final order at issue (1) "departs from the essential requirements of law," and (2) causes "material injury for which there is no adequate remedy on appeal." Fla. R. App. P. 9.142(c)(4)(F).

The requirements for relief under rule 9.142(c) "mirror the requirements for certiorari relief." *Thompson v. State*, No. SC2018-1395, 2018 WL 6204120, at *1 (Fla. Nov. 28, 2018). In the certiorari context, the second prong—"a material injury that cannot be corrected on appeal, otherwise termed as irreparable harm"—is jurisdictional. *State v. Garcia*, 350 So. 3d 322, 325 (Fla. 2022) (quoting *Citizens Prop. Ins. Corp. v. San Perdido Ass'n*, 104 So. 3d 344, 351 (Fla. 2012)). Thus, that prong must be addressed "prior to determining whether the contested order departed from the essential requirements of the law." *Id.* In the absence of such injury, the petition must be dismissed for lack of jurisdiction. *Id.*; *see also Bevel*

v. State, No. SC2025-1141, 2025 WL 2682812, at *1 (Fla. Sept. 19, 2025) (dismissing rule 9.142(c) petition where the defendant failed to establish "that the nonfinal order may cause material injury for which there is no adequate remedy on appeal").

The first prong, a departure from the essential requirements of law, occurs "only when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice." *Garcia*, 350 So. 3d at 326 (quoting *Combs v. State*, 436 So. 2d 93, 96 (Fla. 1983)). "'[C]learly established law' can derive from a variety of legal sources, including recent controlling case law, rules of court, statutes, and constitutional law." *Allstate Ins. Co. v. Kaklamanos*, 843 So. 2d 885, 890 (Fla. 2003). Such a departure, however, requires "something more than a simple legal error." *Id.* at 889. If prior case law relied upon by the petitioner is distinguishable, or the petition presents questions that have not been conclusively answered, then the lower court has not departed from the essential requirements of law, and the petition must be denied. *See Garcia*, 350 So. 3d at 326-27; *Dodgen v. Grijalva*, 331 So. 3d 679, 684 (Fla. 2021); *see also Thompson*, 2018 WL 6204120, at *1 (denying rule 9.142(c) petition

where the defendant "failed to show that the circuit court's order depart[ed] from the essential requirements of law").

ARGUMENT

Relief under rule 9.142(c) is extraordinary and narrow. It is not a vehicle for routine appellate review or for reconsideration of arguments rejected by the circuit court but is limited to correcting a clear departure from the essential requirements of law resulting in irreparable harm. Here, Trotter seeks review of the circuit court's denial of post-warrant public records demands directed to FDLE and FDOC. He argues that the lower court imposed a heightened burden not required by rule 3.852 and improperly treated the requested execution related records as confidential, thereby preventing him from developing an as-applied method-of-execution claim based on alleged deviations from protocol during other executions.

But the circuit court's ruling reflects no misapplication of law and no result inconsistent with controlling precedent. At most, Trotter disagrees with the outcome. That disagreement does not satisfy the demanding standard for relief under rule 9.142(c), warranting denial of the Petition. In addition, the Petition should be

dismissed as Trotter has failed to allege, let alone establish, any material injury for which there is no adequate remedy on appeal.

I. Trotter Fails to Establish Any Material Injury for Which There Is No Adequate Remedy on Appeal.

This Court should dismiss the Petition for lack of jurisdiction because, even if the circuit court erred by denying Trotter's request for additional public records, Trotter has failed to establish any material injury from the non-final order that cannot be remedied in a postjudgment appeal.

Below, Trotter, like numerous other death warrant inmates, sought public records from FDLE and FDOC regarding Florida's lethal injection protocols. The postconviction court properly denied Trotter's requests and he now seeks relief from this Court of the lower court's non-final order. However, Trotter can raise this issue on appeal from any final order denying postconviction relief. *See, e.g.*, *Heath v. State*, No. SC2026-0113, at 13-15 (Fla. Feb. 3, 2026) (affirming denial of public records request under the deferential abuse-of-discretion standard); *Bates v. State*, 416 So. 3d 312, 321-22 (Fla. 2025) (finding record requests were overbroad, unduly burdensome, and would not lead to a colorable claim for relief); *Long*

v. State, 271 So. 3d 938, 947-48 (Fla. 2019) (noting that Long's requests related to his challenges to Florida's lethal injection protocol . . . were overbroad and would not lead to a colorable claim); *see also Muhammad v. State*, 132 So. 3d 176, 203 (Fla. 2013) ("Requests related to actions of lethal injection personnel in past executions do not relate to a colorable claim concerning future executions because there is a presumption that members of the executive branch will perform their duties properly."); *Valle v. State*, 70 So. 3d 530, 549 (Fla. 2011) (denying requests for lethal injection protocol records because the items sought were not related to a colorable Eighth Amendment claim).

If this Court concludes on appeal from a final order that the postconviction court erred by denying Trotter's public records demands, then this Court can simply remand the case back to the lower court for further proceedings. *See, e.g.*, *Muhammad*, 132 So. 3d at 201 (reversing circuit court's order denying public records of Muhammad's inmate and medical records and ordering the immediate transmission of those records to counsel). Alternatively, if the circuit court were to grant Trotter's successive postconviction motion, then Trotter's current Petition to this Court will have been

unnecessary. In either event, there will be no harm to Trotter that cannot be corrected on appeal. Accordingly, the Petition should be dismissed for lack of jurisdiction.

II. The Circuit Court's Non-Final Order Comports with This Court's Controlling Precedent and Does Not Depart from the Essential Requirements of Law.

Even if irreparable harm were shown, relief would still be unwarranted because the circuit court did not depart from the essential requirements of law. Post-warrant public records requests are not a freestanding investigative tool. *Sims v. State*, 753 So. 2d 66, 70 (Fla. 2000) ("[Rule 3.852] is not intended to be a procedure authorizing a fishing expedition for records . . . "). Rather, a capital defendant "bears the burden of demonstrating that the records sought relate to a colorable claim for postconviction relief." *Chavez v. State*, 132 So. 3d 826, 829 (Fla. 2014). Where a defendant cannot demonstrate that he or she is entitled to relief on a claim or that records are relevant or may reasonably lead to the discovery of admissible evidence, the trial court may properly deny a records request. *See Asay v. State*, 224 So. 3d 695, 700 (Fla. 2017); *Jones v. State*, 419 So. 3d 619, 628 (Fla. 2022) (affirming circuit court's denial of post-warrant public records request rooted in speculation).

This Court's recent decision in *Heath v. State*, No. SC2026-0112 (Fla. Feb. 3, 2026), directly governs Trotter's Petition and confirms that the circuit court acted well within its discretion. In *Heath*, this Court rejected a materially indistinguishable attempt to obtain post-warrant public records based on alleged maladministration of Florida's lethal injection protocol. This Court first held that Heath had failed to plead a legally sufficient method-of-execution claim under the Eighth Amendment. *Id.* at 6. The proper inquiry, the Court explained, is not whether deviations from protocol may have occurred, but whether the allegations demonstrate a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering. *Id.* at 8-9.

Applying that standard, this Court concluded that Heath's allegations based on inventory logs and post-execution records suggesting delayed documentation, possible dosing discrepancies, the use of additional or expired drugs, and movement during an execution were speculative and insufficient as a matter of law. *Id.* at 8-10 (citing *Cole v. State*, 392 So. 3d 1054, 1065 n.18 (Fla.), *cert. denied*, 145 S. Ct. 109 (2024)). This Court further held that Heath's claim independently failed because he did not identify a feasible,

readily implemented alternative method of execution that would significantly reduce the alleged risk of pain, a required element of any method-of-execution claim. *Id.* at 10-12 (citing *Tanzi v. State*, 407 So. 3d 385, 393 (Fla.), *cert. denied*, 145 S. Ct. 1914 (2025)). His proposed alternatives, including pausing executions for investigation or execution by firing squad, were inadequately pleaded and did not satisfy constitutional requirements as set forth in *Glossip v. Gross*, 576 U.S. 863, 877 (2015). *Id.* at 10-11.

Having rejected Heath's underlying method-of-execution claim, this Court also affirmed the denial of his post-warrant public records demands seeking extensive materials relating to more than ten prior executions. *Id.* at 13-14. Because the requests were not bound to a colorable postconviction claim, they were unauthorized under rule 3.852. *Id.* The decision reiterates that the rule does not permit public records demands to determine whether a claim might exist. It authorizes public records requests only in support of a claim that could entitle the defendant to relief. *Id.* at 13-14. The Court further agreed that the requests directed to FDOC and the medical examiner were overly broad and unduly burdensome, providing an independent basis for denial. *Id.* at 14-15.

Heath therefore reaffirms three controlling principles that Trotter cannot satisfy: (1) post-warrant public records requests must be denied absent a colorable postconviction claim; (2) speculative allegations of protocol deviations do not establish such a claim; and (3) where no colorable postconviction claim exists, denial of overly broad and burdensome requests is a proper exercise of discretion.

Trotter's requests fail for the same reasons. Like Heath, Trotter sought expansive records from FDOC and FDLE based on an asserted interest in examining whether Florida properly followed its lethal injection protocol in prior executions. Under *Heath*, his attempt to explore whether a claim might be developed through further discovery via public records requests is expressly impermissible. Because Trotter did not establish a colorable postconviction claim, the circuit court correctly denied the requests.

Nor do Trotter's allegations cure that deficiency. As *Heath* makes clear, alleged documentation issues, drug log discrepancies, dosing questions, or deviations from protocol, even if assumed to be true, do not themselves establish an Eighth Amendment violation. The relevant inquiry remains whether the allegations demonstrate a substantial and imminent risk of severe pain. Trotter's reliance on

asserted irregularities in prior executions does not transform speculation into a cognizable postconviction claim. And, like Heath, Trotter failed to plead a viable alternative method of execution, which independently forecloses relief.

Finally, *Heath* confirms that trial courts may deny post-warrant records requests that are overly broad and unduly burdensome, particularly where the requests seek wide ranging materials relating to multiple executions and are not linked to a viable claim. Trotter's requests were nearly identical to those rejected in *Heath*. Given the absence of a colorable postconviction claim, the circuit court did not depart from the essential elements of law.

In sum, *Heath* confirms the rule that no colorable postconviction claim means no post-warrant public records. Because Trotter, like Heath, relied on speculative allegations, failed to plead a viable method-of-execution claim, and made broad demands designed to investigate whether a claim might exist, the circuit court's denial of his public records requests was not only permissible but required under this Court's controlling precedent.

CONCLUSION

Because Trotter has failed to establish irreparable harm, this Court lacks jurisdiction and should dismiss the Petition. Alternatively, the Petition should be denied because under *Heath*, there was no departure from the essential requirements of the law.

February 5, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on February 5, 2026, I electronically filed the foregoing with the Clerk of the Court using the e-portal filing system, which will send a notice of electronic filing to the following: Ann Marie Mirialakis, Mahham Syed and Melody Jacquay, Assistants CCRC-M, Capital Collateral Regional Counsel-Middle Region, 12973 North Telecom Parkway, Temple Terrace, Florida 33637, **mirialakis@ccmr.state.fl.us**, **syed@ccmr.state.fl.us**, **jacquay@ccmr.state.fl.us**, **support@ccmr.state.fl.us**; and the Florida Supreme Court, **warrant@flcourts.org, canovak@flcourts.org**.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this response is 14-point Bookman Old Style, in compliance with Florida Rule of Appellate Procedure 9.045(b).

/s/ Stephen D. Ake
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