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# SUPREME COURT OF FLORIDA

EDWARD J. ZAKRZEWSKI, II
APPELLANT

VS

STATE OF FLORIDA,
APPELLEE

FROM THE CIRCUIT COURT FOR
THE FIRST JUDICIAL CIRCUIT IN AND
FOR OKALOOSA COUNTY, FLORIDA

L.T. CASE NO: 1994 CF 001283 A
H.T. CASE NO: SC2025-1009

# RECORD ON APPEAL 3.851

## DEATH WARRANT SIGNED – EXECUTION SCHEDULED FOR JULY 31, 2025 AT 6:00 PM

ATTORNEY(S) FOR APPELLANT(S)

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ALICIA HAMPTON, ESQUIRE
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EDWARD J. ZAKRZEWSKI, II,
APPELLANT

VS

STATE OF FLORIDA,
APPELLEE

IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT IN AND FOR OKALOOSA COUNTY, FLORIDA

LT. CASE NO: 1994 CF 001283 A

DCA CASE NO: SC2025-1009

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| JANUARY 02, 2018 | EMAIL SENT- APPEALS <APPEALS@OKALOOSACLERK.COM><br>RECIPIENTS: APPEALS CLERK<br>SUBJECT: SERVICE OF COURT DOCUMENT – 1994 CF 001283 A, STATE OF FLORIDA VS. ZAKRZEWSKI, EDWARD J<br>ATTACHMENT COUNT: 1<br>EMAILDOCKETDESCRIPTIONS: MLAW-1/1/2018 |
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| NOVEMBER 03, 2017 | COURT RESULT: HEARING HELD |
| OCTOBER 25, 2017 | CLERKS MINUTE SHEET FILED |
| OCTOBER 25, 2017 | STATE'S MOTION TO LIMIT ORAL PRESENTATION AND ENFORCE PAGE LIMITATION |
| OCTOBER 19, 2017 | CASE MANAGEMENT CONFERENCE SET FOR 10/25/2017 AT 8:30 AM IN FWB/ , JDG: BROWN, JOHN T |
| OCTOBER 19, 2017 | EMAIL SENT-<br>RECIPIENTS: MORRIS, ROBERT JAMES III; MILLSAPS, CHARMAINE M; MCCLAIN, MARTIN J; REHR, DAVID S<br>SUBJECT: SERVICE OF COURT DOCUMENT – 1994 CF 001283 A, STATE OF FLORIDA VS. ZAKRZEWSKI, EDWARD J<br>ATTACHMENT COUNT: 1<br>EMAILDOCKETDESCRIPTIONS: O-10/18/2017 |
| OCTOBER 19, 2017 | CERTIFICATE OF SERVICE FILED |
| OCTOBER 18, 2017 | ORDER SCHEDULING CASE MANAGEMENT CONFERENCE - 10/25/17 AT 8:30AM |
| OCTOBER 12, 2017 | STATE'S ANSWER TO THE SUCCESSIVE POSTCONVICTION MOTION |
| OCTOBER 11, 2017 | ORDER DIRECTING THE STATE TO FILE AN ANSWER WITHIN 20 DAYS |
| JULY 18, 2017 | SUPREME COURT ORDER DENYING PETITIONER'S MOTION FOR REHEARING |
| JUNE 06, 2017 | EMAIL SENT-<br>RECIPIENTS: COURT TEAM<br>SUBJECT: SERVICE OF COURT DOCUMENT – 1994 CF 001283 A, STATE OF FLORIDA VS. ZAKRZEWSKI, EDWARD J<br>ATTACHMENT COUNT: 1<br>EMAILDOCKETDESCRIPTIONS: ORD-6/6/2017 |
| JUNE 06, 2017 | SUPREME COURT ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS (SC16-729) |
| APRIL 24, 2017 | EMAIL SENT-<br>RECIPIENTS: MARTIN MCCLAIN |

| Date | Docket Description/Text |
|---|---|
| | SUBJECT: SERVICE OF COURT DOCUMENT – 1994 CF 001283 A, STATE OF FLORIDA VS. ZAKRZEWSKI, EDWARD J<br>ATTACHMENT COUNT: 1<br>EMAILDOCKETDESCRIPTIONS: ORDDEN-4/21/2017 |
| APRIL 24, 2017 | EMAIL SENT-<br>RECIPIENTS: MORRIS, ROBERT JAMES III; MILLSAPS, CHARMAINE M; PATEL, JAY<br>SUBJECT: SERVICE OF COURT DOCUMENT – 1994 CF 001283 A, STATE OF FLORIDA VS. ZAKRZEWSKI, EDWARD J<br>ATTACHMENT COUNT: 1<br>EMAILDOCKETDESCRIPTIONS: ORDDEN-4/21/2017 |
| APRIL 24, 2017 | CERTIFICATE OF SERVICE FILED |
| APRIL 21, 2017 | ORDER DENYING STATE'S MOTION TO DISMISS AND HOLDING IN ABEYANCE DEFENDANT'S "SUCCESSIVE MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCES, AND ALTERNATIVELY MOTION TO CORRECT ILLEGAL SENTENCES", "MOTION TO EXCEED PAGE LIMITATION," AND "MOTION FOR LEAVE TO AMEND SUCCESSIVE MOTION TO VACATE" |
| APRIL 07, 2017 | STATE'S RESPONSE TO MOTION TO AMEND PENDING SUCCESSIVE POSTCONVICTION MOTION |
| APRIL 06, 2017 | MOTION FOR LEAVE TO AMEND SUCCESSIVE MOTION TO VACATE |
| APRIL 06, 2017 | RESPONSE TO STATE'S MOTION TO DISMISS |
| MARCH 29, 2017 | EMAIL SENT-<br>RECIPIENTS: THE COURTS<br>SUBJECT: SERVICE OF COURT DOCUMENT – 1994 CF 001283 A, STATE OF FLORIDA VS. ZAKRZEWSKI, EDWARD J<br>ATTACHMENT COUNT: 1<br>EMAILDOCKETDESCRIPTIONS: MDISS-3/22/2017 |
| MARCH 22, 2017 | MOTION TO DISMISS FOR LACK OF JURISDICTION FILED |
| MARCH 21, 2017 | EMAIL SENT-<br>RECIPIENTS: MORRIS, ROBERT JAMES III; MCCLAIN, MARTIN J; OFFICE OF THE STATE ATTORNEY<br>SUBJECT: SERVICE OF COURT DOCUMENT – 1994 CF 001283 A, STATE OF FLORIDA VS. ZAKRZEWSKI, EDWARD J<br>ATTACHMENT COUNT: 1<br>EMAILDOCKETDESCRIPTIONS: OGRANT-3/16/2017 |
| MARCH 21, 2017 | CERTIFICATE OF SERVICE FILED |
| MARCH 16, 2017 | ORDER GRANTING STATE'S SECOND MOTION FOR EXTENSION OF TIME |
| MARCH 14, 2017 | EMAIL SENT- THE COURTS<br>RECIPIENTS: THE COURTS<br>SUBJECT: SERVICE OF COURT DOCUMENT – 1994 CF 001283 A, STATE OF FLORIDA VS. ZAKRZEWSKI, EDWARD J<br>ATTACHMENT COUNT: 2<br>EMAILDOCKETDESCRIPTIONS: MET-3/10/2017,SEX-3/10/2017 |
| MARCH 10, 2017 | SUPREME COURT ORDER DENYING MOTION TO HOLD PROCEEDINGS IN ABEYANCE |
| MARCH 10, 2017 | STATE'S SECOND MOTION FOR EXTENSION OF TIME TO FILE ITS ANSWER TO DEFENDANT'S SUCCESSIVE MOTION FOR POST CONVICTION RELIEF |
| FEBRUARY 06, 2017 | ORDER GRANTING THE STATE'S MOTION FOR EXTENSION OF TIME |
| FEBRUARY 01, 2017 | STATES FIRST MOTION FOR EXTENSION OF TIME TO FILE ITS ANSWER TO DEFENDANT'S SUCCESSIVE MOTION FOR POST CONVICTION RELIEF |
| JANUARY 13, 2017 | EMAIL SENT- |

| Date | Docket Description/Text |
|---|---|
| | RECIPIENTS: THE COURTS<br>SUBJECT: SERVICE OF COURT DOCUMENT – 1994 CF 001283 A, STATE OF FLORIDA VS. ZAKRZEWSKI, EDWARD J<br>ATTACHMENT COUNT: 1<br>EMAILDOCKETDESCRIPTIONS: MPCR-1/12/2017 |
| JANUARY 12, 2017 | CASE REOPENED FOR MOTION FOR POST CONVICTION RELIEF |
| JANUARY 12, 2017 | MOTION TO EXCEED PAGE LIMITATION |
| JANUARY 12, 2017 | SUCCESSIVE MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCES AND ALTERNATIVELY MOTION TO CORRECT ILLEGAL SENTENCES |
| SEPTEMBER 21, 2016 | ORDER GRANTING REIMBURSEMENT OF REGISTRY COUNSEL |
| JULY 17, 2015 | ORDER GRANTING MOTION FOR EXCESS ATTORNEY'S FEES |
| JULY 17, 2015 | MOTION: FOR REIMBURSEMENT OF COUNSEL |
| JULY 21, 2014 | SUPREME COURT ORDER AFFIRMING POST CONVICTION ORDER DENYING 3RD SUCCESSIVE MOTION FOR POST CONVICTION RELIEF SC13-1825 (DUPLICATE OF ORDER DOCKETED ON 6/23/14) |
| JUNE 23, 2014 | SUPREME COURT ORDER AFFIRMING POST CONVICTION ORDER DENYING 3RD SUCCESSIVE MOTION FOR POST CONVICTION RELIEF SC13-1825 |
| DECEMBER 05, 2013 | CLERK'S APPEAL WORKSHEET & PROCESSING CHECKLIST |
| NOVEMBER 04, 2013 | REPORT ON STATUS CONFERENCE FOR PREPARING RECORD ON APPEAL |
| NOVEMBER 04, 2013 | REPORTER'S TRANSCRIPT OF HEARING HEARD BEFORE THE HONORABLE JOHN T BROWN ON OCTOBER 30, 2013 |
| NOVEMBER 01, 2013 | ORDER GRANTING REIMBURSEMENT OF REGISTRY COUNSEL |
| NOVEMBER 01, 2013 | ORDER GRANTING REIMBURSEMENT OF REGISTRY COUNSEL |
| NOVEMBER 01, 2013 | MOTION FOR REIMBURSMENT OF COUNSEL (COPY) |
| OCTOBER 30, 2013 | CLERKS MINUTE SHEET FILED |
| OCTOBER 30, 2013 | COURT RESULT: HEARING HELD |
| OCTOBER 28, 2013 | INDEX TO RECORD ON APPEAL |
| OCTOBER 25, 2013 | REPORTER'S TRANSCRIPT OF HEARING HEARD BEFORE THE HONORABLE JOHN T BROWN ON JULY 25, 2012 |
| OCTOBER 25, 2013 | REPORTER'S TRANSCRIPT OF HEARING HEARD BEFORE THE HONORABLE JOHN T BROWN ON OCTOBER 24, 2011 |
| OCTOBER 18, 2013 | REPORTER'S TRANSCRIPT OF HEARING HEARD BEFORE THE HONORABLE JOHN T BROWN ON AUGUST 13, 2013 |
| OCTOBER 18, 2013 | REPORTER'S TRANSCRIPT OF HEARING HEARD BEFORE THE HONORABLE JOHN T BROWN ON JUNE 17, 2013 |
| OCTOBER 16, 2013 | STATUS CALL DATE SET FOR 10/30/2013 AT 8:30 AM IN FWB/ , JDG: BROWN, JOHN T |
| OCTOBER 16, 2013 | ORDER SETTING STATUS CONFERENCE 10/30/13 @ 8:45 AM |
| OCTOBER 15, 2013 | SUPREME COURT ORDER RE PREPARATION OF 3.851 APPEAL RECORD |
| OCTOBER 15, 2013 | SUPREME COURT ACKNOWLEDGMENT OF NEW CASE SC13-1825 |
| OCTOBER 07, 2013 | NOTICE OF FILING: DOCUMENTS REGARDING THE ELECTRONIC FILING OF MR. ZAKRZEWSKI'S NOTICE OF APPEAL |
| OCTOBER 07, 2013 | DESIGNATION OF COURT REPORTER |
| OCTOBER 07, 2013 | DIRECTIONS TO CLERK |
| SEPTEMBER 20, 2013 | NOTICE OF APPEAL |
| SEPTEMBER 09, 2013 | JUSTICE ADMINISTRATIVE COMMISSION'S NOTICE TO COURT AS REQUIRED BY SECTION 27.710(4), FLORIDA STATUTES |
| AUGUST 19, 2013 | REOPENED CASE CLOSED |
| AUGUST 19, 2013 | ORDER DENYING SUCCESSIVE MOT POST CONVICTION RELIEF FILED |
| AUGUST 13, 2013 | COURT WILL TAKE UNDER ADVISEMENT OTHER PORTION OF MOTIONS |

Progress Docket for Case:1994 CF 001283 A
STATE OF FLORIDA vs. EDWARD JAMES ZAKRZEWSKI

| Date | Docket Description/Text |
|---|---|
| AUGUST 13, 2013 | MOTION TO AMEND 3.851 MOTION DENIED |
| AUGUST 13, 2013 | CLERKS MINUTE SHEET FILED |
| AUGUST 13, 2013 | COURT RESULT: HEARING HELD |
| JULY 08, 2013 | RESPONSE OPPOSING DEFENDANT'S MOTION FOR CONTINUANCE AND MOTION FOR LEAVE TO AMEND PENDING RULE 3.851 MOTION |
| JUNE 18, 2013 | MOTION FOR CONTINUANCE AND MOTION FOR LEAVE TO AMEND PENDING RULE 3.851 MOTION |
| JUNE 17, 2013 | CLERKS MINUTE SHEET FILED |
| JUNE 17, 2013 | MOTION HEARING SET FOR 08/13/2013 AT 1:30 PM IN FWB/ , JDG: BROWN, JOHN T |
| JUNE 17, 2013 | COURT RESULT: CONTINUED |
| JUNE 05, 2013 | CASE MANAGEMENT CONFERENCE SET FOR 06/17/2013 AT 1:30 PM IN FWB/ , JDG: BROWN, JOHN T |
| JUNE 05, 2013 | ORDER SETTING CASE MANAGEMENT CONFERENCE |
| APRIL 16, 2013 | RESPONSE OPPOSING 2013 COMPOUND-SUCCESSIVE POSTCONVICTION MOTION (WITH ATTACHMENTS) |
| APRIL 08, 2013 | SUPREME COURT ORDER DENYING APPELLANT'S MOTION FOR REHEARING SC11-1896 |
| APRIL 08, 2013 | SUPREME COURT ORDER AFFIRMING CIRCUIT COURT'S ORDERS DENYING SUCCESSIVE MOTION FOR POST CONVICTION RELIEF AND MOTION TO AMEND SC11-1896 |
| MARCH 19, 2013 | SUCCESSIVE MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCE |
| MARCH 19, 2013 | CASE REOPENED FOR ANY OTHER REASON |
| JULY 27, 2012 | ORDER GRANTING REIMBURSEMENT OF REGISTRY COUNSEL |
| JULY 25, 2012 | MOTION FOR REIMBURSMENT OF COUNSEL FOR HIS REPRESENTATION OF DEFENDANT GRANTED-COURT FINDS EXSPENSES ARE VALID |
| JULY 25, 2012 | CLERKS MINUTE SHEET FILED |
| JULY 25, 2012 | COURT RESULT: HEARING HELD |
| JULY 18, 2012 | MOTION HEARING SET FOR 07/25/2012 AT 1:30 PM IN FWB/ , JDG: BROWN, JOHN T |
| JULY 18, 2012 | NOTICE OF HEARING ON A MOTION FOR FEES AND EXPENSES: 7/25/12 @ 1:30 PM(COPY) |
| APRIL 27, 2012 | MOTION FOR REIMBURSMENT OF COUNSEL FOR HIS REPRESENTATION OF THE DEFENDANTS(HEARING DATE TBA AND WILL BE HELD TELEPHONICALLY) |
| APRIL 24, 2012 | ORDER GRANTING REIMBURSEMENT OF REGISTRY COUNSEL |
| APRIL 24, 2012 | UNOPPOSED MOTION FOR REIMBURSEMENT OF COUNSEL FOR HIS REPRESENTATION OF THE DEFENDANT |
| DECEMBER 09, 2011 | CLERK'S APPEAL WORKSHEET & PROCESSING CHECKLIST |
| OCTOBER 24, 2011 | REPORT ON STATUS CONFERENCE OF APPELLATE RECORD |
| OCTOBER 24, 2011 | COURT FINDS THAT THE RECORD IS CORRECT |
| OCTOBER 24, 2011 | CLERKS MINUTE SHEET FILED |
| OCTOBER 24, 2011 | COURT RESULT: CANCELLED |
| OCTOBER 24, 2011 | COURT RESULT: HEARING HELD |
| OCTOBER 12, 2011 | STATUS CONFERENCE SET FOR 10/24/2011 AT 1:30 PM IN D/ , JDG: BROWN, JOHN T |
| OCTOBER 12, 2011 | HEARING SET FOR 10/24/2011 AT 1:30 PM IN D/ , JDG: BROWN, JOHN T |
| OCTOBER 11, 2011 | ORDER SETTING STATUS CONFERENCE HEARING |
| OCTOBER 06, 2011 | RECEIPT SUPREME COURT - NOTICE OF APPEAL SC11-1896 |
| OCTOBER 06, 2011 | SUPREME COURT ORDER RE PREPARING RECORD ON APPEAL |
| OCTOBER 04, 2011 | INDEX TO RECORD ON APPEAL |
| SEPTEMBER 29, 2011 | DESIGNATION TO COURT REPORTER |

| Date | Docket Description/Text |
|---|---|
| SEPTEMBER 29, 2011 | DIRECTIONS TO THE CLERK |
| AUGUST 30, 2011 | REPORTER'S TRANSCRIPT: OF HEARING HEARD BEFORE THE HONORABLE JOHN T BROWN ON MAY 23, 2011 |
| AUGUST 30, 2011 | REPORTER'S TRANSCRIPT: OF HEARING HEARD BEFORE THE HONORABLE JOHN T BROWN ON MARCH 2, 2011 |
| AUGUST 18, 2011 | NOTICE OF APPEAL |
| JULY 19, 2011 | REOPENED CASE CLOSED |
| JULY 19, 2011 | ORDER DENYING MOTION FOR REHEARING AND DISMISSING MOTION TO AMEND AS MOOT |
| JULY 15, 2011 | RESPONSE OPPOSING MOTION FOR LEAVE TO AMEND AMENDED SUCCESSIVE RULE 3.851 MOTION |
| JULY 15, 2011 | RESPONSE OPPOSING MOTION FOR REHEARING |
| JULY 05, 2011 | MOTION FOR LEAVE TO AMEND PENDING RULE 3.851 MOTION |
| JULY 05, 2011 | MOTION FOR REHEARING |
| JUNE 15, 2011 | NOTICE OF FILING |
| JUNE 10, 2011 | AMENDED ORDER DENYING SUCCESSIVE MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCE |
| JUNE 02, 2011 | SECOND NOTICE OF SUPPLEMENTAL AUTHORITY |
| MAY 23, 2011 | COURT WILL TAKE UNDER ADVISEMENT AND SET FOR EVIDENTIARY HEARING IF NEEDED |
| MAY 23, 2011 | CLERKS MINUTE SHEET FILED |
| MAY 23, 2011 | COURT RESULT: HEARING HELD |
| MAY 23, 2011 | SUPPLEMENTAL AUTHORITY |
| MAY 16, 2011 | MOTION TO SUPPLEMENT LETHAL INJECTION CLAIM |
| APRIL 29, 2011 | AMENDED MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCE |
| APRIL 29, 2011 | HEARING SET FOR 05/23/2011 AT 1:30 PM IN D/ , JDG: BROWN, JOHN T |
| APRIL 29, 2011 | ORDER SCHEDULING CASE MANAGEMENT CONFERENCE |
| APRIL 27, 2011 | RESPONSE OPPOSING AMENDED SUCCESSIVE POSTCONVICTION MOTION |
| APRIL 07, 2011 | AMENDED MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCE |
| MARCH 07, 2011 | ORDER GRANTING MOTION TO ADMEND |
| MARCH 02, 2011 | COURT WILL TAKE UNDER ADVISEMENT |
| MARCH 02, 2011 | CLERKS MINUTE SHEET FILED |
| MARCH 02, 2011 | COURT RESULT: HEARING HELD |
| FEBRUARY 28, 2011 | MOTION FOR LEAVE TO AMEND PENDING RULE 3.851 MOTION |
| FEBRUARY 14, 2011 | HEARING SET FOR 03/02/2011 AT 1:30 PM IN D/ , JDG: BROWN, JOHN T |
| FEBRUARY 11, 2011 | RESPONSE TO MOTION FOR REHEARING |
| FEBRUARY 09, 2011 | CASE REOPENED FOR ANY OTHER REASON |
| FEBRUARY 09, 2011 | ORDER GRANTING MOTION FOR REHEARING AND SCHEDULING CASE MANAGEMENT CONFERENCE: 3-2-11 @ 1:30 PM |
| JANUARY 31, 2011 | MOTION FOR REHEARING FILED |
| JANUARY 12, 2011 | REOPENED CASE CLOSED |
| JANUARY 12, 2011 | ORDER DENYING SUCCESSIVE MOTION TO VACATE JUDGEMENTS OF CONVICTION AND SENTENCE |
| DECEMBER 22, 2010 | RESPONSE OPPOSING SUCCESSIVE POSTCONVICTION MOTION |
| DECEMBER 20, 2010 | NOTICE OF FILING |
| NOVEMBER 29, 2010 | SUCCESSIVE MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCE |
| NOVEMBER 29, 2010 | MOTION TO EXCEED PAGE LIMIT |
| JULY 02, 2009 | SUPREME COURT ORDER DENYING MOT FOR REHEARING |
| MARCH 16, 2009 | SUPREME COURT OPINION AFFIRMING TRIAL COURT'S DENIAL OF |

| Date | Docket Description/Text |
|---|---|
| | POSTCONVICTION RELIEF |
| MARCH 06, 2009 | ORDER GRANTING REIMBURSEMENT OF REGISTRY COUNSEL |
| MARCH 05, 2009 | MOTION FOR REIMBURSEMENT OF COUNSEL FOR HIS REPRESENTATION OF THE DEFENDANT |
| FEBRUARY 09, 2009 | ORDER GRANTING MOTION TO VACATE ORDER FOR PAYMENT OF ATTORNEY FEES AND COST |
| FEBRUARY 09, 2009 | CORRESPONDENCE TO THE COURT FROM PROBATION RE: MOTION TO VACATE ORDER FOR PAYMENT OF ATTORNEY'S FEES AND COST |
| JANUARY 29, 2009 | DEPARTMENT OF CORRECTION'S MOTION TO VACATE ORDER FOR PAYMENT OF ATTORNEY FEES AND COSTS AND MEMORANDUM OF LAW (DUPLICATE WITH NOTES) |
| JANUARY 21, 2009 | CORRESPONDENCE TO THE COURT |
| JANUARY 21, 2009 | DEPARTMENT OF CORRECTIONS MOTION TO VACATE ORDER FOR PAYMENT OF ATTORNEY FEES AND COSTS AND MEMORANDUM OF LAW |
| JANUARY 20, 2009 | DEPARTMENT OF CORRECTION'S MOTION TO VACATE ORDER FOR PAYMENT OF ATTORNEY FEES AND COSTS AND MEMORANDUM OF LAW |
| OCTOBER 24, 2008 | MOTION FOR REIMBURSEMENT OF COUNSEL FOR HIS REPRESENTATION OF THE DEFENDANT |
| OCTOBER 23, 2008 | ORDER GRANTING REIMBURSEMENT OF REGISTRY COUNSEL |
| OCTOBER 21, 2008 | MOTION FOR REIMBURSMENT OF COUNSEL FOR HIS REPRESENTATION OF THE DEFENDANT |
| OCTOBER 08, 2008 | ORDER FOR PAYMENT OF ATTORNEY FEES AND COSTS |
| SEPTEMBER 26, 2008 | MOTION FOR PAYMENT OF ATTORNEY FEES |
| FEBRUARY 06, 2008 | SUPREME COURT ORDER DIRECTING COURT REPORTER TO TRANSMIT TRANSCRIPTS ELECTRONICALLY |
| FEBRUARY 06, 2008 | SUPREME COURT OF FLORIDA ACKNOWLEDGMENT OF NEW CASE SC 08-59 |
| JANUARY 07, 2008 | INDEX TO RECORD ON APPEAL |
| NOVEMBER 02, 2007 | TRANSCRIPT OF HRG 07-10-07 |
| OCTOBER 10, 2007 | DIRECTIONS TO THE CLERK |
| OCTOBER 10, 2007 | DIRECTIONS TO COURT REPORTER |
| SEPTEMBER 28, 2007 | NOTICE OF 3.850 APPEAL FILED |
| AUGUST 31, 2007 | NOTICE OF FILING |
| AUGUST 30, 2007 | ORDER DENYING DEFENDANTS MOTION FOR REHEARING |
| AUGUST 14, 2007 | MOTION FOR REHEARING (COPY) FILED |
| AUGUST 10, 2007 | MOTION FOR REHEARING |
| JULY 23, 2007 | ORDER DENYING DEF'S SUCCESSIVE MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCES |
| JULY 10, 2007 | CLERKS MINUTE SHEET FILED |
| JULY 10, 2007 | COURT EVENT RESULTED-CASE MANAGEMENT CONF HELD TO DETERMINE WHETHER AN EVIDENTIARY HEARING SET ON THE 3.851; COURT DETERMINED NO HEARING WAS NECESSARY AND WILL MAKE A RULING THE MOTION AND ISSUE A WRITTEN ORDER W/I 10 DAYS The following event: HEARING scheduled for 07/10/2007 at 1:30 pm has been resulted as follows: Result: HEARING HELD Judge: BARRON, G ROBERT Location: COURTROOM "D" |
| JULY 06, 2007 | ORDER GRANTING REIMBURSEMENT OF REGISTRY COUNSEL |
| JULY 02, 2007 | COURT EVENT SET Event: HEARING Date: 07/10/2007 Time: 1:30 pm Judge: BARRON, G ROBERT Location: COURTROOM "D" Result: HEARING HELD |
| JULY 02, 2007 | ORDER SETTING CASE MANAGMENT CONFERENCE:07/10/07@1:30PM |
| JULY 02, 2007 | MOTION: FOR REIMBURSEMENT OF COUNSEL FOR HIS REPRESENTATION OF THE DEFENDANT |

| Date | Docket Description/Text |
|---|---|
| JUNE 25, 2007 | STATE'S RESPONSE TO ZAKREWSKI'S SUCCESSIVE MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCES; AND STATE'S RESPONSE TO MOTION TO EXCEED PAGE LIMITATION |
| MAY 14, 2007 | CORRESPONDENCE TO THE COURT |
| MAY 14, 2007 | MOTION TO VACATE JUDGMENTS OF CONVICTION AND SENTENCES |
| MAY 14, 2007 | MOTION TO EXCEED PAGE LIMITATION |
| DECEMBER 06, 2006 | ORDER OF APPOINTMENT M FLOWERS |
| DECEMBER 06, 2006 | NOTICE OF APPEARANCE FILED BY MICHAEL FLOWERS |
| MAY 22, 2006 | MOTION TO COMPEL DEPARTMENT OF FINANCIAL SERVICES TO ISSUE CONTRACT TO COURT-APPOINTED REGISTRY COUNSEL |
| MAY 18, 2005 | DEFENSE ATTORNEY:  MCCLAIN, MARTIN J. ASSIGNED |
| MAY 18, 2005 | ORDER APPOINTING MARTIN J. MCCLAIN |
| MAY 10, 2005 | ORDER APPOINTING M. MCCLAIN |
| MAY 10, 2005 | MOTION FOR APPOINTMENT OF COUNSEL FILED BY MARTIN J MCCLAIN, ESQUIRE |
| SEPTEMBER 02, 2004 | ORDER ALLOWING MR. HARRISON TO W/D AS APPOINTED REGISTRY COUNSEL |
| SEPTEMBER 02, 2004 | NOTICE OF DISMISSAL OF COURT APPOINTED POST-CONVICTIOIN DEFENSE COUNSEL |
| SEPTEMBER 02, 2004 | MOTION TO W/D BASED UPON THE NOTICE OF DISMISSAL OF COURT APPOINTED POST-CONVICTION REGISTRY COUNSEL |
| SEPTEMBER 02, 2004 | CORRESPONDENCE TO THE COURT FROM BAJA HARRISON III |
| JULY 26, 2004 | CORRESPONDENCE TO THE COURT FROM DEF |
| MARCH 24, 2004 | ORDER ON DEPARTMENT OF FINANCIAL SERVICES APPROVED MOTION FOR PAYMENT OF ATTORNEY'S FEES UPON THE DECISION OF THE FLORIDA SUPREME COURT DENYING THE DEF'S MOTION FOR POST-CONVICTION RELIEF BECOMING FINAL ($4000.00) |
| MARCH 24, 2004 | MOTION FOR PAYMENT OF ATTORNEY FEES UPON THE DECISION OF THE FLORIDA SUPREME COURT DENYING ZAKRZEWSKI'S POST-CONVICTION RELIEF BECOMING FINAL AND STATEMENT FOR SERVICES RENDERED |
| MARCH 10, 2004 | STATE'S EXHIBIT #1 & 2 FROM 05-23-02 HRG RETURNED TO FILE |
| MARCH 10, 2004 | SUPREME COURT ORDER DENYING APPELLANTS MOTION FOR REHEARING |
| MARCH 10, 2004 | SUPREME COURT MANDATE AFFIRMING TRIAL COURT'S ORDER DENYING MOTION FOR POST CONVICTION RELIEF |
| MARCH 02, 2004 | CORRESPONDENCE TO THE COURT |
| FEBRUARY 13, 2004 | SUPREME COURT ORDER DENYING MOTION FOR REHEARING |
| NOVEMBER 20, 2003 | ORDER GRANTING PAYMENT OF MISC EXPENSES TO BAYA HARRISON III ($3760.00) |
| NOVEMBER 14, 2003 | DEFENDANT'S MOTION FOR PAYMENT OF MISCELLANEOUS EXPENSES |
| MARCH 10, 2003 | ORDER GRANTING PAYMENT OF FINANCIAL SERVICES APPROVED MOTION FOR PAYMENT OF COSTS UPON FILING OF DEF'S INITIAL BRIEF IN FLORIDA SUPREME COURT TO BAYA HARRISON ($5223.00) |
| MARCH 10, 2003 | DEPARTMENT OF FINANCIAL SERVICES APPROVED MOTION FOR PAYMENT OF COSTS UPON FILING OF DEF'S BRIEF IN FLORIDA SUPREME COURT |
| JANUARY 02, 2003 | DEFENSE COUNSEL BAYA HARRISON ($20,000.00) |
| JANUARY 02, 2003 | OF ATTORNEY'S FEES TO COURT APPOINTED POST-CONVICTION |
| JANUARY 02, 2003 | ORDER ON COMPTROLLER APPROVED MOTION FOR PAYMENT |
| AUGUST 12, 2002 | SUPREME COURT RECEIPT SC02-1734 |
| AUGUST 08, 2002 | PAYMENT OF COSTS TO BAYA HARRISON ($2958.00) |
| AUGUST 08, 2002 | ORDER GRANTING COMPTROLLER APPROVED MOTION FOR |

| Date | Docket Description/Text |
|---|---|
| AUGUST 08, 2002 | COMPTROLLER APPROVED MOTION FOR PAYMENT OF COSTS |
| JULY 24, 2002 | TRANSCRIPT HRG 3-14-02 FILED |
| JULY 18, 2002 | DIRECTIONS TO CLERK AND DESIGNATIONS TO COURT REPORTER |
| JULY 09, 2002 | ORDER FOR PAYMENT TO BAYA HARRISON ($20,000.00) |
| JULY 09, 2002 | IN CAPITAL CASE |
| JULY 09, 2002 | ENTRY OF ORDER DENYING M/POST CONVICTION RELIEF |
| JULY 09, 2002 | STATEMENT FOR PAYMENT OF ATTORNEY'S FEES UPON |
| JULY 09, 2002 | M/IN POST CONVICTION CAPITAL CASE |
| JULY 09, 2002 | ATTORNEY'S FEES UPON ENTRY OF ORDER DENYING |
| JULY 09, 2002 | COMPTROLLER APPROVED MOTION FOR PAYMENT OF |
| JULY 08, 2002 | AMENDED STATEMENT OF JUDICIAL ACTS TO BE REVIEWED |
| JULY 08, 2002 | AMENDED NOTICE OF 3.850 APPEAL TO THE SUPREME COURT |
| JULY 01, 2002 | NOTICE OF 3.850 APPEAL TO THE SUPREME COURT FILED |
| JUNE 28, 2002 | ORDER FOR PAYMENT ($279.85 R. BACZEK) |
| JUNE 24, 2002 | NOTICE OF SUPPLEMENTAL AUTHORITY FILED |
| JUNE 17, 2002 | JUDGMENTS AND DEATH SENTENCES |
| JUNE 17, 2002 | TO VACATE AND SET ASIDE THE DEF'S GUILTY PLEAS, |
| JUNE 17, 2002 | ORDER DENYING DEF'S COMPLETE, AMENDED MOTION |
| JUNE 14, 2002 | ORDER FOR PAYMENT $160.00 (COMFORT INN) |
| JUNE 14, 2002 | ORDER FOR PAYMENT $1,851.50 (FILLETTE GREEN TRAVEL) |
| JUNE 12, 2002 | DEF EXH #2 - DEPOSITION OF DEPUTY BACEK |
| JUNE 11, 2002 | SENTENCES |
| JUNE 11, 2002 | THE DEF'S GUILTY PLEAS, JUDGEMENTS AND DEATH |
| JUNE 11, 2002 | POST CONVICTION MOTION TO VACATE AND SET ASIDE |
| JUNE 11, 2002 | WRITTEN FINAL ARGUMENT IN SUPPORT OF THE AMENDED |
| JUNE 07, 2002 | POST 3.851 EVIDENTIARY HEARING MEMORANDUM |
| MAY 31, 2002 | (EVIDENTIARY HEARING) |
| MAY 31, 2002 | TRANSCRIPT OF HEARING HELD 5-23-02 FILED |
| MAY 23, 2002 | BOTH MEMOS |
| MAY 23, 2002 | COURT TO ENTER AN ORDER 7 DAYS AFTER RECEIVING |
| MAY 23, 2002 | TO PREPARE |
| MAY 23, 2002 | COURT GRANTED STATE 7 DAYS AFTER RECEIVING DEF MEMO |
| MAY 23, 2002 | TODAY TO PREPARE A MEMO |
| MAY 23, 2002 | COURT GRANTED DEFENSE A 7 DAY EXTENSION FROM |
| MAY 23, 2002 | ST EXH #2 - DEPOSITION OF DEPUTY BACEK |
| MAY 23, 2002 | ST EXH #1 - DOCUMENTS OF HOUSE FORECLOSURE (COMP) |
| MAY 23, 2002 | CLERK'S INVENTORY LIST FILED |
| MAY 23, 2002 | CLERK'S WITNESS LIST FILED |
| MAY 23, 2002 | EVIDENCE PRESENTED TO THE COURT |
| MAY 23, 2002 | NOT SUBJECT TO ANY EVIDENTIARY ISSUES |
| MAY 23, 2002 | APPRENDI ISSUES FILED AFTER THE HUFF HEARING ARE |
| MAY 23, 2002 | AND DEATH SENTENCES |
| MAY 23, 2002 | AND SET ASIDE DEF'S GUILTY PLEAS AND JUDGMENTS |
| MAY 23, 2002 | OF THE AMENDED POSTCONVICTION MOTION TO VACATE |
| MAY 23, 2002 | EVIDENTIARY HEARING HELD ON POINTS #1, 2 & 4 |
| MAY 10, 2002 | TECUM - 6 SUBPOENAS ISSUED |
| MAY 10, 2002 | PRECIPE AND REQUEST FOR ISSUANCE OF SUBPOENAS DUCES |
| MAY 09, 2002 | TRANSPORT ORDER FOR EVIDENTIARY HEARING FILED |
| MAY 09, 2002 | ORDER SCHEDULING EVIDENTIARY HEARING FILED |
| MAY 07, 2002 | AMENDED DISCOVERY EXHIBIT |
| MAY 06, 2002 | SENTENCES |
| MAY 06, 2002 | DEFENDANT'S GUILTY PLEAS, JUDGMENTS AND DEATH |
| MAY 06, 2002 | CONVICTION MOTION TO VACATE AND SET ASIDE THE |

| Date | Docket Description/Text |
|---|---|
| MAY 06, 2002 | RESPONSE TO DEFENDANT'S AMENDMENT TO AMEND POST |
| APRIL 29, 2002 | AMENDED CERTIFICATE OF SERVICE FILED |
| APRIL 22, 2002 | JUDGMENTS AND DEATH SENTENCES |
| APRIL 22, 2002 | TO VACATE AND SET ASIDE THE DEFENDANT'S GUILTY PLEAS, |
| APRIL 22, 2002 | DEFENDANT'S AMENDMENT TO AMENDED POST CONVICTION MOTION |
| MARCH 25, 2002 | PROCEDURE 3.850 EVIDENTIARY HEARING |
| MARCH 25, 2002 | DEF'S WITNESS LIST FOR FLORIDA RULE OF CRIMINAL |
| MARCH 14, 2002 | ROBERT BARRON |
| MARCH 14, 2002 | HEARING SET FOR 05/23/2002 AT 01:30 IN SH/D, JDG: G |
| MARCH 14, 2002 | STATE WILL HAVE 20 DYS TO RESPOND TO SUPPLEMENTAL CLAIM |
| MARCH 14, 2002 | MOTION |
| MARCH 14, 2002 | COURT ALLOWS DEFENSE TO FILE AN APPRENDI TO 3.850 |
| MARCH 14, 2002 | FURNISH SAME |
| MARCH 14, 2002 | STATE WILL HAVE 20 DYS THERE AFTER TO COMPLETE AND |
| MARCH 14, 2002 | DEFENSE TO FURNISH WITNESS LIST TO THE STATE BY 03/25/02 |
| MARCH 14, 2002 | COURT GRANTS EVIDENTIARY HEARING ON CLAIMS 1, 2 & 4 |
| MARCH 14, 2002 | HUFF HEARING HELD |
| FEBRUARY 26, 2002 | SENTENCES |
| FEBRUARY 26, 2002 | DEFENDANT'S GUILTY PLEASE, JUDGMENTS AND DEATH |
| FEBRUARY 26, 2002 | POSTCONVICTION MOTION TO VACATE AND SET ASIDE THE |
| FEBRUARY 26, 2002 | IN THE ALTERNATIVE, MOTION TO AMEND COMPLETE, AMENDED |
| FEBRUARY 26, 2002 | JUDICIAL NOTICE OF THE ISSUE REFERENCED HEREIN, OR, |
| FEBRUARY 26, 2002 | RESPONSE TO DEFENDANT'S MOTION FOR THE COURT TO TAKE |
| FEBRUARY 25, 2002 | OF THE DEFENDANT TO SAME |
| FEBRUARY 25, 2002 | ORDER REGARDING HUFF HEARING AND TRANSPORTATION |
| FEBRUARY 14, 2002 | GUILTY PLEAS, JUDGMENTS AND DEATH SENTENCES |
| FEBRUARY 14, 2002 | MOTION TO VACATE AND SET ASIDE THE DEFENDANT'S |
| FEBRUARY 14, 2002 | ALTERNATIVE, MOTION TO AMEND AMENDED POST CONVICTION |
| FEBRUARY 14, 2002 | NOTICE OF THE ISSUE REFERENCED HEREIN, OR, IN THE |
| FEBRUARY 14, 2002 | DEFENDANT'S MOTION FOR THE COURT TO TAKE JUDICIAL |
| JANUARY 29, 2002 | ROBERT BARRON |
| JANUARY 29, 2002 | HEARING SET FOR 03/14/2002 AT 01:30 IN SH/D, JDG: G |
| JANUARY 29, 2002 | DEF AT HEARING |
| JANUARY 29, 2002 | MR HARRISON TO PREPARE ORDER TO TRANSPORT TO HAVE |
| JANUARY 29, 2002 | COURT SET HUFF HEARING ON 031402 1:30 PM |
| JANUARY 29, 2002 | STATUS CONFERENCE HELD |
| DECEMBER 11, 2001 | ROBERT BARRON |
| DECEMBER 11, 2001 | HEARING SET FOR 01/29/2002 AT 08:45 IN SH/D, JDG: G |
| DECEMBER 11, 2001 | ORDER SETTING STATUS CONFERENCE FILED |
| NOVEMBER 27, 2001 | PLEASE, JUDGMENTS AND DEATH SENTENCES" |
| NOVEMBER 27, 2001 | MOTION TO VACATE AND SET ASIDE THE DEFENDANT'S GUILTY |
| NOVEMBER 27, 2001 | RESPONSE OPPOSING "COMPLETE, AMENDED POSTCONVICTION |
| AUGUST 08, 2001 | LTR TO COURT FROM B. HARRISON |
| JULY 30, 2001 | ORDER TO SHOW CAUSE |
| JULY 20, 2001 | INVESTIGATOR FEES($8,144 B. HARRISON) |
| JULY 20, 2001 | ORDER ON MOTION FOR THE PAYMENT OF COURT APPOINTED |
| JULY 17, 2001 | FEES |
| JULY 17, 2001 | MOTION FOR THE PAYMENT OF COURT APPOINTED INVESTIGATOR |
| JULY 10, 2001 | GRANTED($22,5000.00 B. HARRISON) |
| JULY 10, 2001 | ORDER ON MOTION FOR PAYMENT OF ATTORNEY'S FEES |
| JULY 05, 2001 | SENTENCES |
| JULY 05, 2001 | SET ASIDE THE DEF'S GUILTY PLEAS, JUDGMENTS AND DEATH |
| JULY 05, 2001 | COMPLETE AMENDED POSTCONVICTION MOTION TO VACATE AND |

| Date | Docket Description/Text |
|---|---|
| JULY 05, 2001 | STATEMENT OF SERVICES RENDERED |
| JULY 05, 2001 | APPOINTED POSTCONVICTION DEFENSE COUNSEL WITH |
| JULY 05, 2001 | MOTION FOR PAYMENT OF ATTORNEY'S FEES FOR COURT |
| JUNE 28, 2001 | DEATH SENTENCES |
| JUNE 28, 2001 | SET ASIDE THE DEFENDANT'S GUILTY PLEAS, JUDGMENTS & |
| JUNE 28, 2001 | COMPLETE AMENDED POSTCONVICTION MOTION TO VACATE & |
| JUNE 28, 2001 | REOPENED FOR POST CONV RELIEF |
| JUNE 25, 2001 | LTR TO COURT FROM DEF ATTY (FAXED) |
| MAY 04, 2001 | LTR TO COURT FROM DEF ATTORNEY FILED |
| MARCH 08, 2001 | DEFENSE ATTY: HARRISON BAYA ASSIGNED |
| MARCH 08, 2001 | POSTCONVICTION DEFENSE COUNSEL |
| MARCH 08, 2001 | NOTICE OF APPEARANCE BAYA HARRISON III COURT APPOINTED |
| MARCH 05, 2001 | LTR TO COURT FROM B. HARRISON FILED |
| MARCH 01, 2001 | SUBSTITUTION OF CAPTIAL POST-CONVICTION COUNSEL |
| MARCH 01, 2001 | ORDER GRANTING MOTION TO W/D & STIPULATION OF |
| MARCH 01, 2001 | POST-CONVICTION COUNSEL FILED |
| MARCH 01, 2001 | MOTION TO W/D & STIPULATION OF SUBSTITUTION OF CAPITAL |
| FEBRUARY 26, 2001 | LTR TO COURT FILED BY D. REED AMMON |
| FEBRUARY 26, 2001 | CAPITAL POST CONVICTION COUNSEL |
| FEBRUARY 26, 2001 | MOTION TO WITHDRAW AND STIPULATION OF SUBSTITUTION OF |
| FEBRUARY 15, 2001 | LTR TO COURT FROM B. HARRISON FILED |
| FEBRUARY 02, 2001 | LTR TO COURT FROM R. AMMON FILED |
| FEBRUARY 02, 2001 | ORDER FOR PYMT TO R. AMMON ($907.02) GRANTED |
| FEBRUARY 02, 2001 | MOTION FOR PYMT OF MISC EXPENSES FILED |
| JANUARY 19, 2001 | LEGAL EDUCATION IN THE AMOUNT OF ($500.00) GRANTED |
| JANUARY 19, 2001 | ORDER FOR PYMT OF TUITION & EXPENSE FOR CONTINUING |
| JANUARY 19, 2001 | LEGAL EDUCATION FILED |
| JANUARY 19, 2001 | MOTION FOR PYMT OF TUITION & EXPENSES FOR CONTINUING |
| JANUARY 12, 2001 | ORDER GRANTING MOTION FOR INVESTIGATIVE FEES |
| JANUARY 12, 2001 | AFFIDAVIT FILED |
| JANUARY 12, 2001 | MOTION FOR PYMT OF DEFENSE COUNSEL'S INVESTIGATOR |
| MAY 16, 2000 | ORDER VACATING ORDER TO SHOW CAUSE |
| APRIL 19, 2000 | CERTIFICATE OF SERVICE FILED |
| APRIL 17, 2000 | ORDER TO SHOW CAUSE FILED |
| APRIL 10, 2000 | BEHALF OF THE ATTORNEY GENERAL FILED |
| APRIL 10, 2000 | NOTICE OF APPEARANCE FILED BY STEPHEN R. WHITE ON |
| MARCH 27, 2000 | ORDER ON DEF MOTION FOR APPT OF INVESTIGATOR GRANTED |
| MARCH 21, 2000 | DEF M/APPT INVESTIGATOR GRANTED WITH A CAP OF $7500.00 |
| FEBRUARY 23, 2000 | AMENDED ORDER FOR PYMT TO F. AMMON ($2958.26) GRANTED |
| FEBRUARY 23, 2000 | AMENDED MOTION FOR PYMT OF ATTORNEY FEES & EXPENSES |
| FEBRUARY 21, 2000 | POST CONVICTION RELIEF |
| FEBRUARY 21, 2000 | LTR TO COURT FROM D. REED AMMON RE: EXTENSION ON |
| FEBRUARY 17, 2000 | LEGAL EDUCATION ($500.00) GRANTED |
| FEBRUARY 17, 2000 | ORDER FOR PYMT OF TUITION & EXPENSES FOR CONTINUING |
| FEBRUARY 17, 2000 | ORDER FOR PYMT OF FEES AND EXPENSES ($2,986.10) GRANTED |
| FEBRUARY 17, 2000 | AFFIDAVIT IN SUPPORT OF PYMT OF ATTORNEY FEES & COSTS |
| FEBRUARY 17, 2000 | MOTION FOR PYMT OF ATTORNEY FEES & EXPENSES FILED |
| FEBRUARY 09, 2000 | ROBERT BARRON |
| FEBRUARY 09, 2000 | HEARING SET FOR 03/21/2000 AT 09:00 IN SH/D, JDG: G |
| FEBRUARY 09, 2000 | DECTECTIVE FOR DEFENSE COUNSEL |
| FEBRUARY 09, 2000 | AMENDED NOTICE OF HEARING @9:00AM 3-21-00 M/APPT OF |
| FEBRUARY 09, 2000 | ROBERT BARRON |
| FEBRUARY 09, 2000 | HEARING SET FOR 03/21/2000 AT 09:00 IN SH/D, JDG: G |

| Date | Docket Description/Text |
|---|---|
| FEBRUARY 09, 2000 | NOTICE OF HEARING @9:00AM 3-21-00 M/APPT OF INVESTIGATOR |
| FEBRUARY 04, 2000 | AFFIDAVIT FILED |
| FEBRUARY 02, 2000 | LTR TO COURT FROM R. AMMON RE: DEF FILED |
| FEBRUARY 02, 2000 | COUNSEL FILED |
| FEBRUARY 02, 2000 | MOTION FOR THE APPOINTMENT OF INVESTIGATOR FOR DEFENSE |
| JANUARY 24, 2000 | CONVICTION RELIEF |
| JANUARY 24, 2000 | DEF APPENDIX TO SWORN MOTION FOR POST |
| JANUARY 24, 2000 | MOTION FOR POST CONVICTION RELIEF |
| JANUARY 24, 2000 | DEF MEMORANDUM OF LAW IN SUPPORT OF SWORN |
| JANUARY 24, 2000 | MOTION FOR POST CONVICTION RELIEF |
| JANUARY 24, 2000 | DEF MOTION TO AMEND OR TO SUPPLEMENT SWORN |
| JANUARY 24, 2000 | DEF SWORN MOTION FOR POST CONVICTION RELIEF |
| NOVEMBER 29, 1999 | AMENDED NOTICE OF APPEARANCE FILED BY D REED AMMON |
| SEPTEMBER 23, 1999 | DEFENSE ATTY: AMMON REED ASSIGNED |
| SEPTEMBER 23, 1999 | COLLATERAL PROCEEDINGS |
| SEPTEMBER 23, 1999 | NOTICE OF APPEARANCE FOR POST-CONVICTION CAPITAL |
| JULY 22, 1999 | POST-CONVICTION RELIEF |
| JULY 22, 1999 | ORDER APPOINTING COLLATERAL COUNSEL FOR CAPITAL |
| MAY 03, 1999 | NOTICE OF COMPLIANCE BY LAW ENFORCEMENT AGENCY |
| APRIL 14, 1999 | NOTICE OF COMPLIANCE BY LAW ENFORCEMENT AGENCY |
| FEBRUARY 11, 1999 | ORDER FOR PAYMENT (258.52) |
| JANUARY 05, 1999 | REPOSITORY |
| JANUARY 05, 1999 | NOTICE OF DELIVERY OF EXEMPT PUBLIC RECORDS TO RECORDS |
| JANUARY 05, 1999 | OF CORRECTIONS |
| JANUARY 05, 1999 | NOTICE OF COMPLIANCE BY THE SECRETARY OF THE DEPARTMENT |
| OCTOBER 27, 1998 | AFFIRMANCE OF DEATH PENALTY |
| OCTOBER 27, 1998 | NOTICE TO SECRETARY OF DEPARTMENT OF CORRECTIONS OF |
| OCTOBER 27, 1998 | NOTICE TO STATE ATTORNEY OF AFFIRMANCE OF DEATH PENALTY |
| OCTOBER 22, 1998 | AND RETURNED TO EXHIBIT VAULT IN CV |
| OCTOBER 22, 1998 | ORIGINAL EXHIBITS RETURNED FROM SUPREME COURT |
| OCTOBER 15, 1998 | SUPREME COURT ORDER DENYING MOTION FOR REHEARING |
| OCTOBER 15, 1998 | SUPREME COURT MANDATE AFFIRMING LOWER COURTS DECISION |
| OCTOBER 15, 1998 | AFFIRMANCE OF DEATH PENALTY |
| OCTOBER 15, 1998 | NOTICE TO SECRETARY OF DEPARTMENT OF CORRECTIONS OF |
| OCTOBER 15, 1998 | NOTICE TO STATE ATTORNEY OF AFFIRMANCE OF DEATH PENALTY |
| SEPTEMBER 17, 1998 | SUPREME COURT ORDER DENYING MOTION FOR REHEARING |
| OCTOBER 21, 1996 | DESIGNATION OF PD 2ND JUDICIAL CIRCUIT |
| OCTOBER 08, 1996 | BOOK: 2028 PAGE: 0208 |
| OCTOBER 08, 1996 | THIRD AMENDED JUDGMENT FILED |
| OCTOBER 02, 1996 | TRIAL TRANSCRIPTS (6 VOLUMES) 3-25-96 |
| OCTOBER 02, 1996 | TRANSCRIPT HEARING MARCH 19,1996 |
| SEPTEMBER 17, 1996 | BOOK: 2024 PAGE: 1096 |
| SEPTEMBER 17, 1996 | SECOND AMENDED JUDGMENT FILED |
| JULY 29, 1996 | SUPREME COURT RECEIPT CASE #88,367 |
| JULY 29, 1996 | DIRECTIONS FROM SUPREME COURT OF FLORIDA CLERK |
| JULY 05, 1996 | BOOK: 2009 PAGE: 183 |
| JULY 05, 1996 | AMENDED JUDGMENT AND SENTENCE FILED |
| JULY 03, 1996 | ORDER FOR PAYMENT FOR EXPERT WITNESS |
| JUNE 26, 1996 | DESIGNATION TO REPORTER |
| JUNE 26, 1996 | DIRECTIONS TO CLERK FOR APPEAL PURPOSES |
| JUNE 26, 1996 | STATEMENT OF JUDICIAL ACTS TO BE REVIEWED |
| JUNE 26, 1996 | NOTICE OF APPEAL |
| JUNE 26, 1996 | TRANCSCRIPT OF HEARING FILED |

| Date | Docket Description/Text |
|---|---|
| JUNE 26, 1996 | TRANSCRIPT OF HEARING FILED |
| JUNE 19, 1996 | ORDER FOR PYMT TO SHONEY'S INN (1,144.00) |
| JUNE 03, 1996 | DEF GIVEN CREDIT FOR TIME SRVD days ON CNT: 003 |
| JUNE 03, 1996 | DEF GIVEN CREDIT FOR TIME SRVD days ON CNT: 002 |
| MAY 13, 1996 | ORDER FOR PYMT TO J. LARSON PH.D. (8,815.00) |
| APRIL 23, 1996 | ORDER FOR PYMT OF EXPENSES |
| APRIL 23, 1996 | ORDER FOR PYMT OF EXPERT WITNESS FEE (300.00) |
| APRIL 23, 1996 | ORDER FOR PYMT OF EXPERT WITNESS FEE (503.50) |
| APRIL 23, 1996 | PUBLIC DEFENDER'S OFFICE |
| APRIL 23, 1996 | RECEIPT & RELEASE OF DEF EXH A & J TO |
| APRIL 19, 1996 | DEF GIVEN CREDIT FOR TIME SRVD 0543 days ON CNT: 003 |
| APRIL 19, 1996 | DEF SENT TO DEATH AS TO CNT: 003 |
| APRIL 19, 1996 | DEFENDANT SENTENCED AS TO CNT: 003 |
| APRIL 19, 1996 | DEF GIVEN CREDIT FOR TIME SRVD 0543 days ON CNT: 002 |
| APRIL 19, 1996 | DEF SENT TO DEATH AS TO CNT: 002 |
| APRIL 19, 1996 | DEFENDANT SENTENCED AS TO CNT: 002 |
| APRIL 19, 1996 | DEF GIVEN CREDIT FOR TIME SRVD 0543 days ON CNT: 001 |
| APRIL 19, 1996 | DEF SENT TO DEATH AS TO CNT: 001 |
| APRIL 19, 1996 | DEFENDANT SENTENCED AS TO CNT: 001 |
| APRIL 19, 1996 | RESTITUTION ORDER FILED |
| APRIL 19, 1996 | EXH 4-DEPO OF DR CROWN & EXH 5-DEPO OF DR LARSON |
| APRIL 19, 1996 | COUNSEL MAY SUBSTITUTE BY ORIGINAL OR COPY |
| APRIL 19, 1996 | COURT'S SENTENCING ORDER |
| APRIL 19, 1996 | EVID NUM 005 COPY OF DEPO OF DR JAMES LARSO DID |
| APRIL 19, 1996 | EVID NUM 004 COPY OF DEPO OF DR BARRY CROWN DID |
| APRIL 19, 1996 | EVID NUM 003 LETTER FROM DEFENDANT DID |
| APRIL 19, 1996 | EVID NUM 002 LETTER FROM DEFENDANT DID |
| APRIL 19, 1996 | EVID NUM 001 LETTER FROM DEFENDANT DID |
| APRIL 19, 1996 | RESTITUTION ORDER FILED |
| APRIL 19, 1996 | UNIFORM COMMITMENT TO CUSTODY FILED |
| APRIL 19, 1996 | BOOK: 1994 PAGE: 1356 |
| APRIL 19, 1996 | JUDGMENT AND SENTENCE FILED |
| APRIL 19, 1996 | SENTENCE HEARING SET FOR 041996 |
| APRIL 18, 1996 | ORDER TO PAY EXPENSE (241.50) |
| APRIL 18, 1996 | ORDER TO PAY EXPENSE (58.00) TRAVEL ADVENTURES, INC. |
| APRIL 18, 1996 | ORDER FOR PYMT OF EXPERT WITNESS FEE (1,500) |
| APRIL 18, 1996 | ORDER TO PAY EXPENSE TO SNAPPY PHOTO (15.00) |
| APRIL 18, 1996 | CLERK'S EXHIBIT INVENTORY LIST FILED |
| APRIL 18, 1996 | CLERK'S WITNESS LIST (SENTENCING HRG) |
| APRIL 18, 1996 | AS TO SENTENCING |
| APRIL 18, 1996 | COURT ALLOWS CLOSING ARGUMENTS OF COUNSEL |
| APRIL 18, 1996 | COURT CONTINUES SENTENCING UNTIL 041996 |
| APRIL 18, 1996 | CONSIDERATION BEFORE SENTENCING |
| APRIL 18, 1996 | DEF COUNSEL ENTERS EVIDENCE FOR THE COURT'S |
| APRIL 16, 1996 | STATE RECOMMENDATION LETTER TO COURT (COPY) |
| APRIL 16, 1996 | STATE RECOMMENDATION LETTER TO THE COURT |
| APRIL 15, 1996 | MOTION TO CONTINUE SENTENCING FILED |
| APRIL 11, 1996 | ORDER FOR PYMT OF EXPERT WITNESS FEE |
| APRIL 11, 1996 | MOTION FOR PAYMENT OF EXPERT WITNESS FEE |
| APRIL 11, 1996 | ORDER FOR PYMT (26.50) UNITED PARCEL SERVICE |
| APRIL 11, 1996 | ORDER FOR PYMT OF TRANSCRIPTS (5.00) |
| APRIL 10, 1996 | SENTENCING MEMORANDUM |
| APRIL 08, 1996 | ORDER TO RETURN PHOTOGRAPHS FILED |

| Date | Docket Description/Text |
|---|---|
| APRIL 08, 1996 | ORDER FOR PYMT OF TRANS TO CERT REPT SERV. (80.00) |
| APRIL 08, 1996 | AMENDED ORDER FOR PYMT - AAA TRAVEL (5,822.46) |
| APRIL 08, 1996 | ORDER TO PAY EXPENSES TO CROWN PH.D. (7,795.15) |
| APRIL 08, 1996 | ORDER FOR PYMT - HITCHCOCK & ASSOC (328.00) |
| APRIL 05, 1996 | EVID NUM ST7D PHOTO STA |
| APRIL 04, 1996 | SENTENCE HEARING SET FOR 041596 |
| APRIL 04, 1996 | ERRATA SHEET FILED E.S. HARVARD, M.D. |
| APRIL 03, 1996 | MOTION TO RETURN PHOTOGRAPHS |
| APRIL 02, 1996 | ORDER FOR PYMT OF TRANS - HITCHCOCK & ASS (5.00) |
| APRIL 02, 1996 | ORDER FOR PYMT OF TRANS - SNAITH (155.00) |
| MARCH 30, 1996 | STATE'S SPECIAL REQUESTED JURY INSTRUCTION NO 1 |
| MARCH 30, 1996 | COURT SETS SENTENCING 041596 10:00AM |
| MARCH 30, 1996 | BOOK: 1993 PAGE: 335 |
| MARCH 30, 1996 | VERDICT FORM FILED (ADVISORY SENTENCE) |
| MARCH 30, 1996 | COURT PUBLISHES AND ACCEPTS VERDICT |
| MARCH 30, 1996 | CLERK'S EXHIBIT INVENTORY LIST FILED |
| MARCH 30, 1996 | CLERK'S WITNESS LIST FILED |
| MARCH 30, 1996 | DEFENDANT'S LIST OF NONSTATUTORY MITIGATORS |
| MARCH 30, 1996 | EVID NUM DEFK LETTER TO CAPPY & JUDGE FROM EZ DEF |
| MARCH 30, 1996 | EVID NUM DEFJ COMPOSITE OF PHOTOS (MOUNTED) DEF |
| MARCH 30, 1996 | EVID NUM DEFI FOLDER WITH PAPERWORK DEF |
| MARCH 30, 1996 | EVID NUM DEFH FOLDER WITH PAPERWORK DEF |
| MARCH 30, 1996 | EVID NUM DEFG FOLDER WITH PAPERWORK DEF |
| MARCH 30, 1996 | EVID NUM DEFF FOLDER WITH PAPERWORK DEF |
| MARCH 30, 1996 | EVID NUM DEFE FOLDER WITH PAPERWORK DEF |
| MARCH 30, 1996 | EVID NUM DEFD MILITARY SERVICE RECORDS DEF |
| MARCH 30, 1996 | EVID NUM DEFC COLLEGE TRANSCRIPTS DEF |
| MARCH 30, 1996 | EVID NUM DEFB LETTER FROM COLLEGE (COPY) DEF |
| MARCH 30, 1996 | EVID NUM DEFA PHOTO ALBUM DEF |
| MARCH 30, 1996 | EVID NUM ST15 NOTE PAD FROM DEFENDANT STA |
| MARCH 30, 1996 | EVID NUM ST14 PHILOSPHY FROM COMPUTER STA |
| MARCH 30, 1996 | EVID NUM ST13 BEDSPREAD STA |
| MARCH 30, 1996 | EVID NUM ST12 ROPE STA |
| MARCH 30, 1996 | EVID NUM ST11 DIAGRAM PHOTOS BB-OO STA |
| MARCH 30, 1996 | EVID NUM ST10 DIAGRAM PHOTOS N-AA STA |
| MARCH 30, 1996 | EVID NUM ST09 DIAGRAM PHOTOS A-M STA |
| MARCH 30, 1996 | EVID NUM ST08 SKETCH OF RESIDENCE STA |
| MARCH 30, 1996 | EVID NUM ST7E PHOTO STA |
| MARCH 30, 1996 | EVID NUM ST7A PHOTO STA |
| MARCH 30, 1996 | EVID NUM ST6B PHOTO STA |
| MARCH 30, 1996 | EVID NUM ST5E PHOTO STA |
| MARCH 30, 1996 | EVID NUM ST5C PHOTO STA |
| MARCH 30, 1996 | EVID NUM ST03 CROWBAR STA |
| MARCH 30, 1996 | EVID NUM ST02 MACHETTE STA |
| MARCH 30, 1996 | EVID NUM ST1H PHOTO STA |
| MARCH 30, 1996 | EVID NUM ST1G PHOTO STA |
| MARCH 30, 1996 | EVID NUM ST1F PHOTO STA |
| MARCH 30, 1996 | EVID NUM ST1E PHOTO STA |
| MARCH 30, 1996 | EVID NUM ST1D PHOTO STA |
| MARCH 30, 1996 | EVID NUM ST1C PHOTO STA |
| MARCH 30, 1996 | EVID NUM ST1B PHOTO STA |
| MARCH 30, 1996 | EVID NUM ST1A PHOTOS STA |
| MARCH 28, 1996 | ORDER FOR PYMT - ACTION FILM (93.75) |

| Date | Docket Description/Text |
|---|---|
| MARCH 28, 1996 | ORDER FOR PYMT OF TRANSCRIPTS (SNAITH 16.50) |
| MARCH 28, 1996 | DEPOSITION FILED ON DR. H.M. |
| MARCH 26, 1996 | CLERK SWEARS IN JURY |
| MARCH 26, 1996 | JURY SELECTED THIS DAY (PENALTY PHASE) |
| MARCH 26, 1996 | DEPOSITION FILED ON K.O. |
| MARCH 26, 1996 | DEPOSITION FILED B.C. |
| MARCH 26, 1996 | DEPOSITION FILED ON A.B. |
| MARCH 26, 1996 | DEPOSITION FILED ON R.H. |
| MARCH 26, 1996 | DEPOSITION FILED J.D.L. |
| MARCH 22, 1996 | WITNESS LIST FOR TRIAL-PENALTY PHASE-PD |
| MARCH 22, 1996 | ADVENTURES FOR LANSING, CAPARIDA, SCHACKENBERG |
| MARCH 22, 1996 | ORDER FOR PAYMENT TO 5068.46 TO TRAVEL |
| MARCH 22, 1996 | GATHERED FROM COMPELLED MENTAL HEALTH EVAL |
| MARCH 22, 1996 | MOTION TO LIMIT THE USE OF ANY INFORMATION |
| MARCH 21, 1996 | ORDER APPOINTING EXPERT WITNESS-DR MCCLAREN |
| MARCH 20, 1996 | MOTION FOR APPOINTMENT OF EXPERT WITNESS |
| MARCH 20, 1996 | MOTION TO LIMIT SCOPE OF COMPELLED MENTL EVAL |
| MARCH 19, 1996 | ADJUDICATED GUILTY AS TO CNT: 003 |
| MARCH 19, 1996 | DEF PLED GUILTY AS TO CNT: 003 |
| MARCH 19, 1996 | ADJUDICATED GUILTY AS TO CNT: 002 |
| MARCH 19, 1996 | DEF PLED GUILTY AS TO CNT: 002 |
| MARCH 19, 1996 | ADJUDICATED GUILTY AS TO CNT: 001 |
| MARCH 19, 1996 | DEF PLED GUILTY AS TO CNT: 001 |
| MARCH 19, 1996 | DEFENDANT REMANDED TO CUSTODY |
| MARCH 19, 1996 | PRESENT WITH ATTORNEY |
| MARCH 19, 1996 | DEFENDANT REMANDED TO CUSTODY |
| MARCH 19, 1996 | PRESENT WITH ATTORNEY |
| MARCH 19, 1996 | DEFENDANT REMANDED TO CUSTODY |
| MARCH 19, 1996 | PRESENT WITH ATTORNEY |
| MARCH 19, 1996 | DEPOSITION OF E S HAVARD, MD |
| MARCH 19, 1996 | MOTION FOR CHANGE OF VENUE |
| MARCH 19, 1996 | FLORIDA STATUTE 921.141(5) (1) |
| MARCH 19, 1996 | AMENDED MOTION TO PROHIBIT APPLICATION OF |
| MARCH 19, 1996 | NOTICE OF INTENT TO SEEK THE DEATH PENALTY |
| MARCH 19, 1996 | WRITTEN PLEA AGREEMENT FILED |
| MARCH 19, 1996 | PENALTY PHASE TO BE HELD 3-25-96 |
| MARCH 19, 1996 | DEGREE MURDER; STATE TO SEEK DEATH PENALTY; |
| MARCH 19, 1996 | DEF ENTERS PLEA OF GUILTY TO 3 COUNTS OF FIRST |
| MARCH 19, 1996 | MOTIONS BY DEFENSE; ALL MOTIONS DENIED |
| MARCH 19, 1996 | PENALTY PHASE DENIED; COURT HAS REVIEWED ALL |
| MARCH 19, 1996 | MOTION TO LIMIT STATE'S DOCTORS DURING EVAL FOR |
| MARCH 19, 1996 | RESERVES RULING UNTIL TRIAL |
| MARCH 19, 1996 | OBJECTIONS OF PHOTOGRAPHS & VIDEOS; COURT |
| MARCH 19, 1996 | GRANTED; NO OBJECTION BY STATE; MOTION FOR |
| MARCH 19, 1996 | SELECTION; MOTION FOR AGG CIRCUMSTANCES |
| MARCH 19, 1996 | DENIED; DEFENSE MAY RENEW MOTION DURING JURY |
| MARCH 19, 1996 | ARGUMENT EXCEPT FOR MOTION FOR CHANGE OF VENUE |
| MARCH 19, 1996 | PRE TRIAL MOTIONS HRG THIS DATE; DEF WAIVES ORAL |
| MARCH 15, 1996 | ADVISORY ROLE OF THE JURY AT SENTENCING |
| MARCH 15, 1996 | MOTION TO PROHIBIT ANY REFERENCE TO THE |
| MARCH 15, 1996 | ADVISORY ROLE OF THE JURY AT SENTENCING |
| MARCH 15, 1996 | MOTION TO PROHIBIT ANY REFERENCE TO THE |
| MARCH 15, 1996 | CASES" RE" CALDWELL V. MISSISSIPPI |

| Date | Docket Description/Text |
|---|---|
| MARCH 15, 1996 | "FLORIDA STANDARD JURY INSTRUCTIONS IN CRIMINAL |
| MARCH 15, 1996 | MOTION IN LIMINE AND TO STRIKE PORTIONS OF |
| MARCH 15, 1996 | MOTION FOR DISCLOSURE OF PENALTY PHASE EVIDENCE |
| MARCH 15, 1996 | PHASE WITNESS LIST |
| MARCH 15, 1996 | MOTION TO COMPEL THE STATE TO FURNISH PENALTY |
| MARCH 15, 1996 | MOTION TO COMPEL DISCLOSURE OF MITIGATING CIRCUM |
| MARCH 15, 1996 | UNDERLYING MURDER IN THE FIRST DEGREE |
| MARCH 15, 1996 | PENALTY IS SOUGHT & THE THEORY OF PROSECUTION |
| MARCH 15, 1996 | AGGRAVATING CIRCUMSTANCES, THE REASONS THE DEATH |
| MARCH 15, 1996 | MOTION FOR STATEMENT OF PARTICULARS RE: |
| MARCH 15, 1996 | MOTION IN LIMINE IN REGARD TO PHOTOGRAPH & VIDEOS |
| MARCH 15, 1996 | BURDENS OF PROOF OF PERSUASION |
| MARCH 15, 1996 | CONSIDERATION OF MITIGATION BY IMPOSING IMPROPER |
| MARCH 15, 1996 | STATUTES UNCONSTITUTIONAL BECAUSE IT PRECLUDES |
| MARCH 15, 1996 | MOTION TO DECLARE SECTION 921.141, FLORIDA |
| MARCH 15, 1996 | APPELLATE REVIEW FILED |
| MARCH 15, 1996 | STATUTES UNCONSTITUTIONAL FOR LACK OF ADEQUATE |
| MARCH 15, 1996 | MOTION TO DECLARE SECTION 921.141, FLORIDA |
| MARCH 15, 1996 | MOTION TO ELECT & JSTFY AGGRVTING CIRCUMSTANCES |
| MARCH 15, 1996 | ON FIRST DEGREE MURDER FROM PREMEDITATED DESIGN |
| MARCH 15, 1996 | ATED MURDER" AND MOTION FOR CORRECTED INSTRUCITON |
| MARCH 15, 1996 | OBJECTION TO STANDARD INSTRUCTION ON "PREMEDITATED" |
| MARCH 15, 1996 | DEATH SENTENCE |
| MARCH 15, 1996 | MAJORITY OF JURORS IS SUFFICIENT TO RECOMMEND A |
| MARCH 15, 1996 | STATUTES UNCONSTITUTIONAL BECAUSE ONLY A BARE |
| MARCH 15, 1996 | MOTION TO DECLARE SECTION 921.141, FLORIDA |
| MARCH 14, 1996 | ORDER TO VENIRE PROHIBITING PRETRIAL MEDIA |
| MARCH 14, 1996 | LETTER SENT TO VENIRE ON PUBLICITY |
| MARCH 14, 1996 | MOTION FOR CHANGE OF VENUE |
| MARCH 13, 1996 | ORDER TO PAY FOR TRAVEL (795.46) |
| MARCH 13, 1996 | AMENDED DISCOVERY FILED |
| MARCH 13, 1996 | HEARING SET FOR 031996 |
| MARCH 12, 1996 | SUPPLEMENTAL WITNESS LIST - PENALTY PHASE |
| MARCH 12, 1996 | NOTICE OF HEARING |
| MARCH 08, 1996 | NOTICE OF HEARING FILED |
| MARCH 08, 1996 | STATUTE 921.141 (5)(1) |
| MARCH 08, 1996 | MOTION TO PROHIBIT APPLICATION OF FLORIFS |
| MARCH 08, 1996 | OF MENTAL MITIGATION FILED |
| MARCH 08, 1996 | NOTICE OF INTENT TO PRESENT EXPERT TESTIMONY |
| MARCH 08, 1996 | MOTION TO LIMIT SCOPE OF COMPELLED MENTAL EVALUATION |
| MARCH 08, 1996 | STATUTE 921.141 (5)(1) |
| MARCH 08, 1996 | AMENDED MOTION TO PROHIBIT APPLICATION OF FLORIDA |
| MARCH 07, 1996 | ORDER FOR PAYMENT FOR WITNESS |
| MARCH 07, 1996 | ORDER FOR PAYMENT FOR WITNESS |
| MARCH 07, 1996 | ORDER FOR PAYMENT FOR WITNESS |
| MARCH 07, 1996 | ORDER FOR PAYMENT OF WITNESS |
| MARCH 07, 1996 | ORDER FOR PYMT FOR WITNESS AIR FARE (5,657.46) |
| MARCH 07, 1996 | ORDER FOR PYMT OF AIR FARE FOR WITNESS (2,152.82) |
| MARCH 07, 1996 | AMENDED DISCOVERY FILED |
| MARCH 06, 1996 | ORDER FOR PYMT OF TRANS AND DEPO (204.75) |
| MARCH 06, 1996 | FLORIDA STATUTE 921.141 (5)(1) |
| MARCH 06, 1996 | AMENDED MOTION TO PROHIBIT APPLICATION OF |
| MARCH 06, 1996 | OF MENTAL MITIGATION |

| Date | Docket Description/Text |
|---|---|
| MARCH 06, 1996 | NOTICE OF INTENT TO PRESENT EXPERT TESTIMONY |
| MARCH 06, 1996 | MOTION TO LIMIT SCOPE OF COMPELLED MENTAL EVAL |
| MARCH 06, 1996 | DEPOSITION FILED ON J.N. |
| MARCH 06, 1996 | DEPOSITION FILED J.J. |
| MARCH 06, 1996 | DEPOSITION FILED ON T.C. |
| MARCH 06, 1996 | DEPOSITION FILED ON S.M. |
| MARCH 06, 1996 | DEPOSITION FILED ON D.B. |
| MARCH 06, 1996 | DEPOSITION FILED ON R.B. |
| MARCH 06, 1996 | DEPOSITION FILED ON B.L. |
| MARCH 06, 1996 | DEPOSITION FILED ON L.R. |
| MARCH 06, 1996 | DEPOSITION FILED ON J.R. |
| MARCH 06, 1996 | DEPOSITION FILED ON K.H. |
| MARCH 06, 1996 | DEPOSITION FILED ON J.L. |
| MARCH 04, 1996 | MOTION TO PROHIBIT APPLICATION OF FL STAT 921.141 |
| FEBRUARY 26, 1996 | AMENDED DISCOVERY FILED |
| FEBRUARY 20, 1996 | AND ORDER SIGNED BY THE COURT |
| FEBRUARY 20, 1996 | MOTION FOR SAMPLES STIPULATED TO BY COUNSEL |
| FEBRUARY 19, 1996 | ORDER THAT DEFENDANT SHALL SUBMIT TO FINGERPRINT |
| FEBRUARY 19, 1996 | HEARING SET FOR 022096 |
| FEBRUARY 16, 1996 | MOTION FOR SAMPLES FILED |
| FEBRUARY 16, 1996 | AMENDED DISCOVERY FILED |
| FEBRUARY 16, 1996 | AMENDED DISCOVERY FILED |
| FEBRUARY 16, 1996 | NOTICE OF HEARING FILED |
| FEBRUARY 07, 1996 | MOTION FOR SUB OF CONFIDENTIAL DEFENSE CONSULTANT |
| FEBRUARY 07, 1996 | ORDER TO ASSIST COUNSEL BARRY M. CROWN |
| NOVEMBER 03, 1995 | JURY TRIAL SET FOR 032596 |
| NOVEMBER 03, 1995 | DOCKET DAY SET FOR 032196 |
| NOVEMBER 01, 1995 | JOINT M/CONTINUANCE GRANTED AT PRETRIAL |
| OCTOBER 13, 1995 | ORDER FOR PAYMENT TO SNAPPY PHOTO |
| OCTOBER 12, 1995 | ORDER APPOINTING CONFIDENTIAL EXPERT |
| SEPTEMBER 28, 1995 | CONSULTANT |
| SEPTEMBER 28, 1995 | MOTION FOR APPOINTMENT OF CONFIDENTIAL DEFENSE |
| AUGUST 17, 1995 | DEPO OF JUDY CAPARIDA |
| AUGUST 17, 1995 | DEPO OF STAFFORD LANI CAPARIDA |
| AUGUST 17, 1995 | DEPO OF EUSTAGULA CAPARIDA |
| AUGUST 17, 1995 | DEPO OF GEORGE SCHNACKENBERG |
| AUGUST 17, 1995 | DEPO OF CORA SCHNACKENBERG |
| AUGUST 17, 1995 | DEPO OF ROBERT RIBAO |
| AUGUST 07, 1995 | ORDER FOR PAYMENT OF TRANSCRIPT |
| JULY 25, 1995 | ORDER TO TRANSPORT |
| JULY 25, 1995 | ORDER FOR PAYMENT |
| JULY 25, 1995 | ORDER FOR PAYMENT |
| JULY 25, 1995 | JURY TRIAL SET FOR 111395 |
| JULY 25, 1995 | DOCKET DAY SET FOR 110995 |
| JULY 19, 1995 | DEF MOTION TO CONTINUE GRANTED AT PRETRIAL |
| JULY 10, 1995 | ORDER FOR PAYMENT OF TRANSCRIPT |
| JULY 10, 1995 | ORDER FOR PAYMENT |
| JULY 07, 1995 | ORDER FOR PAYMENT OF TRAVEL EXPENSES |
| JULY 07, 1995 | ORDER FOR PAYMENT TO SNAPPY PHOTO |
| JULY 07, 1995 | ORDER TO TRANSPORT |
| JULY 05, 1995 | DEPO OF ISAAC B KORAN ESQUIRE |
| JULY 05, 1995 | DEPO OF ISAAC B KORAN ESQUIRE |
| JULY 05, 1995 | DEPO OF ISAAC B KORAN ESQUIRE |

| Date | Docket Description/Text |
|---|---|
| MAY 10, 1995 | ORDER FOR PAYMENT OF COURT REPORTER |
| APRIL 12, 1995 | ORDER FOR PAYMENT TO TRAVEL ADVENTURES |
| MARCH 06, 1995 | ANSWER TO DEMAND FOR DISCOVERY FILED |
| JANUARY 17, 1995 | ORDER GRANTING MOTION TO CONTINUE 080795 |
| JANUARY 17, 1995 | MOTION FOR CONTINUANCE FILED |
| JANUARY 17, 1995 | ORDER FOR PAYMENT |
| JANUARY 13, 1995 | ORDER FOR PAYMENT |
| JANUARY 06, 1995 | ORDER TO TRANSPORT |
| DECEMBER 30, 1994 | ORDER FOR SAMPLES TO BE TAKEN |
| DECEMBER 22, 1994 | JURY TRIAL SET FOR 080795 |
| DECEMBER 22, 1994 | DOCKET DAY SET FOR 080395 |
| DECEMBER 22, 1994 | DEF MOTION TO CONTINUE GRANTED AT PRETRIAL |
| DECEMBER 21, 1994 | STATE MOTION FOR SAMPLES GRANTED |
| DECEMBER 09, 1994 | HEARING SET FOR 122194 |
| DECEMBER 09, 1994 | NTC HEARING 122194 MOTION FOR SAMPLES |
| DECEMBER 09, 1994 | MOTION FOR SAMPLES |
| DECEMBER 07, 1994 | ORDER FOR APPOINTMENT OF CONFIDENTIAL EXPERT |
| DECEMBER 07, 1994 | MOTION FOR APPOINTMENT OF CONFIDENTIAL EXPERT |
| NOVEMBER 21, 1994 | JURY TRIAL SET FOR 010995 |
| NOVEMBER 21, 1994 | DOCKET DAY SET FOR 010595 |
| NOVEMBER 21, 1994 | DEF PRES BY ATNY, NG PLEA, SET PTC/DD/TRIAL |
| NOVEMBER 21, 1994 | DEMAND FOR DISCOVERY |
| NOVEMBER 21, 1994 | WRITTEN PLEA OF NOT GUILTY |
| NOVEMBER 15, 1994 | ORD GRANT MOT W/D & APPOINT PUBLIC DEFENDER |
| NOVEMBER 15, 1994 | LETTER TO THE COURT FROM DREW PINKERTON |
| NOVEMBER 10, 1994 | INFORMATION FILED ON CNT: 003 |
| NOVEMBER 10, 1994 | INFORMATION FILED ON CNT: 002 |
| NOVEMBER 10, 1994 | INFORMATION FILED ON CNT: 001 |
| NOVEMBER 10, 1994 | TO BE ISSUED PER STATE ATTORNEY'S OFFICE |
| NOVEMBER 10, 1994 | GRAND JURY INDICTMENT FILED - NO CAPIAS IS |
| NOVEMBER 08, 1994 | PLEA DAY SET FOR 112194 |
| NOVEMBER 07, 1994 | DEF NOT PRES/CUSTODY/RESET 11-21-94 |
| OCTOBER 28, 1994 | PLEA DAY SET FOR 110794 |
| OCTOBER 26, 1994 | JUDGES RECORD 1ST APPEARANCE NON ADVER PROB CAUSE |
| OCTOBER 26, 1994 | CASE OPENED - ON VIEW ARREST |
| OCTOBER 25, 1994 | NOTIFICATION OF EXERCISE OF RIGHTS |
| OCTOBER 25, 1994 | BOND SET AT NO BOND |
| OCTOBER 25, 1994 | CLERK'S RECORD OF FIRST APPEARANCE |
| OCTOBER 21, 1994 | COMMUNICATION TO CLERGY |
| OCTOBER 21, 1994 | NOTICE TO INVOKE PRIVILEDGE WITH RESPECT TO |
| OCTOBER 21, 1994 | NOTIFICATION OF EXERCISE OF RIGHTS (FAX) |

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**
_____/

**Case No. 1994-CF-1283**
**Emergency Capital Case**
**Death Warrant Signed**
**Execution Scheduled for**
**July 31, 2025 at 6:00 p.m.**

**NOTICE OF APPEARANCE AND SUBSTITUTION OF COUNSEL**

Please take notice that the undersigned attorneys, Lisa M. Fusaro and Alicia Hampton, of the Office of the Capital Collateral Regional Counsel - Northern Region hereby enter their appearance in the above-captioned action. Lisa M. Fusaro is substituted for Dawn B. Macready as lead counsel for Mr. Zakrzewski.

The official status of counsel in the instant case should reflect the following:

LISA M. FUSARO
Assistant CCRC

ALICIA HAMPTON
Assistant CCRC

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by e-filing portal to all counsel of record and the Florida Supreme Court at warrant@flcourts.org on this 1st day of July, 2025.

Respectfully submitted,

/s/ Lisa M. Fusaro
**LISA M. FUSARO**
Assistant Capital Collateral Regional Counsel - North
Florida Bar No. 119074
1004 DeSoto Park Drive
Tallahassee, FL 32301
(850) 487-0922
Lisa.Fusaro@ccrc-north.org

IN THE FIRST JUDICIAL CIRCUIT COURT
IN AND FOR OKALOOSA COUNTY, FLORIDA

**EXECUTION SCHEDULED FOR THURSDAY, JULY 31, 2025, AT 6:00 P.M. EST**

STATE OF FLORIDA,

*Plaintiff,*

v. CASE NO. 1994-CF-01283
CAPITAL CASE

EDWARD J. ZAKRZEWSKI II,

*Defendant.*

_____/

**NOTICE OF APPEARANCE**

Assistant Attorney General Janine D. Robinson and Senior Assistant Attorney General Charmaine Millsaps entered this notice of appearance as counsel of record in this capital case with an active warrant.

Accordingly, all orders and pleadings should be served on undersigned counsel.

Respectfully submitted,

JAMES UTHMEIER
ATTORNEY GENERAL OF FLORIDA

/s/ Charmaine Millsaps
Charmaine M. Millsaps
SR. ASSISTANT ATTORNEY GENERAL
FLA. BAR NO. 989134
OFFICE OF THE ATTORNEY GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
capapp@myfloridalegal.com
charmaine.millsaps@myfloridalegal.com

/s/ Janine D. Robinson
Janine D. Robinson
ASSISTANT ATTORNEY GENERAL
FLA. BAR NO. 865966
OFFICE OF THE ATTORNEY GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
capapp@myfloridalegal.com
Janine.Robinson@myfloridalegal.com

CO-COUNSEL FOR STATE OF FLORIDA

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I electronically filed the foregoing **NOTICE OF APPEARANCE** via the E-Portal to: **LISA M. FUSARO,** Assistant CCRC-N counsel, 1004 DeSoto Park Drive, Tallahassee, FL 32301; phone: (850) 3487-0922; email: Lisa.Fusaro@ccrc-north.org and **ALICIA A. HAMPTON,** Assistant CCRC-N counsel, 1004 DeSoto Park Drive, Tallahassee, FL 32301; phone: (850) 3487-0922; email: Alicia.Hampton@ccrc-north.org this 1st day of July, 2025.

*/s/ Charmaine Millsaps*
Charmaine M. Millsaps
CO-COUNSEL FOR STATE

# Supreme Court of Florida

RCVD BRAD E EMBRY CV2
JUL 2 2025 AM8:12

TUESDAY, JULY 1, 2025

Edward J. Zakrzewski, II,
Appellant(s)
v.

State of Florida,
Appellee(s)

**SC1960-88367**
Lower Tribunal No(s).:
461994CF001283XXXAXX

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Because the Governor has signed a death warrant for the execution of Edward J. Zakrzewski, II, at 6:00 p.m., July 31, 2025, we direct that all further proceedings in this case be expedited.

The proceedings pending in the trial court, if any, shall be completed and orders entered as expeditiously as possible, but by no later than 11:00 a.m., Monday, July 14, 2025.

We hereby set the following schedule for any proceeding that may come before this Court. The notice of appeal shall be filed by 1:00 p.m., Monday, July 14, 2025. Any writ petition that is to be filed is due by 1:00 p.m., Monday, July 14, 2025. The record on appeal shall be filed by 4:30 p.m., Monday, July 14, 2025. The initial brief on the merits shall be filed by 5:00 p.m., Wednesday, July 16, 2025. The answer brief on the merits shall be filed by 5:00 p.m., Thursday, July 17, 2025. The reply brief on the merits shall be filed by 2:00 p.m., Friday, July 18, 2025. Oral argument, if necessary, will be scheduled at a later date.

Copies of any pleadings filed by counsel in the trial court and the federal courts shall be served simultaneously with the filing in the other courts to the following address: warrant@flcourts.org.

A True Copy
Test:

SC1960-88367 7/1/2025
John A. Tomasino
Clerk, Supreme Court
SC1960-88367 7/1/2025

KC

Served:

OKALOOSA CLERK
LISA FUSARO
ALICIA ABRONA HAMPTON
HON. JOHN L. MILLER, JR.
CHARMAINE MILLSAPS
JOHN A MOLCHAN
JANINE D. ROBINSON
JASON W. RODRIGUEZ

Filing # 226445628 E-Filed 07/01/2025 06:39:17 PM

**IN THE SUPREME COURT OF FLORIDA**
**CASE NUMBER: SC1960-88367**
**Lower Tribunal Case: 1994-CF-1283**

**EXECUTION SCHEDULED FOR JULY 31, 2025, at 6:00 P.M.**

**EDWARD J. ZAKRZEWSKI, II,**
APPELLANT,
v.

RCVD BRAD E EMBRY CV2
JUL 2 2025 AM8:57

**STATE OF FLORIDA,**
APPELLEE.
_____/

## NOTICE OF APPEARANCE

The undersigned attorneys, Lisa M. Fusaro and Alicia Hampton, of the Capital Collateral Regional Counsel – Northern Region, hereby give notice of appearance as counsel for Edward J. Zakrzewski, II.

Please furnish the undersigned with copies of all orders, notices, pleadings, motions, and correspondence regarding this case.

## CERTIFICATE OF SERVICE

**WE HEREBY CERTIFY** that a true and correct copy of the foregoing pleading has been electronically served to all counsel of record and warrant@flcourts.org on this 1st day of July, 2025.

Respectfully submitted,

/s/ Lisa M. Fusaro
Lisa M. Fusaro
Assistant CCRC
Florida Bar Number 119074
Lisa.Fusaro@ccrc-north.org

/s/ Alicia Hampton
Alicia Hampton
Assistant CCRC
Florida Bar Number 1026214
Alicia.Hampton@ccrc-north.org

Capital Collateral Regional
Counsel – Northern Region
1004 DeSoto Park Drive
Tallahassee, FL 32301
(850) 487-0922

# RON DESANTIS
GOVERNOR

July 1, 2025

RCVD BRAD E ENBRY CV2
JUL 2 2025 AM8:57

Warden David Allen
Florida State Prison
7819 N.W. 228th Street
Raiford, Florida 32036-1000

Re: Execution Date for Edward J. Zakrzewski, II, DC# 554000

Dear Warden Allen:

Enclosed is the death warrant that I signed to carry out the sentence for Edward J. Zakrzewski, II as well as certified copies of his judgment and sentence. I have designated the week beginning at 12:00 noon on Thursday, July 31, 2025, through 12:00 noon on Thursday, August 7, 2025, for the execution. I have been advised that you have set the date and time of execution for Thursday, July 31 at 6:00 p.m.

This letter is incorporated into and made a part of the death warrant identified above.

Sincerely,

Ron DeSantis
Governor

Enclosures

FILED
2025 JUL -1 PM 4:15
DEPARTMENT OF STATE
TALLAHASSEE, FL

THE CAPITOL
TALLAHASSEE, FLORIDA 32399 • (850) 717-9249

cc:

Honorable Carlos G. Muñiz
Chief Justice
Supreme Court of Florida
500 S. Duval Street
Tallahassee, Florida 32399

Honorable John Miller
M.C. Blanchard Judicial Building 190
Governmental Center, 5th Floor
Pensacola, Florida 32502

Secretary Ricky Dixon
Department of Corrections
501 S. Calhoun Street
Tallahassee, Florida 32399-2500

C. Suzanne Bechard
Associate Deputy Attorney General
Office of the Attorney General
The Capitol, FL-01
Tallahassee, Florida 32300-0001

Eric Pinkard
Capital Collateral Regional Counsel
12973 N. Telecom Parkway
Temple Terrace, Florida 33637

Dawn Macready
CCRC-North
1004 DeSoto Park Dr
Tallahassee, Florida 32301-4555

Office of Executive Clemency
4070 Esplanade Way
Building C, Rm. 229
Tallahassee, Florida 32399-2450

Edward J. Zakrzewski, II, DC# 554000
Union Correctional Institution
7819 N.W. 228th Street
Raiford, Florida 32026-4000

# STATE OF FLORIDA

**JAMES UTHMEIER**
**ATTORNEY GENERAL**

July 1, 2025

The Honorable Ron DeSantis
Governor
The Capitol
Tallahassee, Florida 32399—0001

RE: Edward J. Zakrzewski, Jr.

Dear Governor DeSantis:

On June 9, 1994, Edward J. Zakrzewski, Jr., murdered his wife [redacted], who wanted a divorce, by hitting her on the head multiple times with a crowbar; strangling her with a rope; and finally striking her with a machete that he had purchased earlier that day. He also murdered his [redacted] son [redacted] and his [redacted] daughter [redacted] with the machete. Both children had defensive wounds. He pled guilty to three counts of first-degree murder. Following a penalty phase, Zakrzewski received three death sentences.

The Florida Supreme Court affirmed his convictions and sentences. *Zakrzewski v. State*, 717 So. 2d 488 (Fla. 1998), and the United States Supreme Court denied his petition for writ of certiorari. *Zakrzewski v. Florida*, 525 U.S. 1126 (1999).

Zakrzewski then engaged in extensive postconviction litigation in both state and federal courts over the next three decades. *Zakrzewski v. State*, 866 So. 2d 688 (Fla. 2003) (affirming denial of initial postconviction motion); *Zakrzewski v. State*, 13 So. 3d 1057 (Fla. 2009) (affirming denial of first successive postconviction motion); *Zakrzewski v. State*, 115 So. 3d 1004 (Fla. 2012) (affirming denial of second successive postconviction motion); *Zakrzewski v. State*, 147 So. 3d 531 (Fla. 2014) (affirming denial of third successive postconviction motion); *cert. denied, Zakrzewski v. Florida*, 575 U.S. 918 (2015); *Zakrzewski v. McDonough*, 455 F.3d 1254 (11th Cir. 2006) (affirming denial of initial federal habeas petition), *cert. denied*, 549 U.S. 1349 (2007); *Zakrzewski v. McDonough*, 490 F.3d 1264 (11th Cir. 2007) (vacating and

remanding denial of motion filed under Fed. R. Civ. P. 60(b)); *Zakrzewski v. McDonough*, 2007 WL 2827735 (N.D. Fla. Sept. 26, 2007) (denying Rule 60(b) motion again); *Zakrzewski v. McNeil*, 573 F.3d 1210 (11th Cir. 2009) (affirming denial of Rule 60(b) motion), *cert. denied*, 560 U.S. 956 (2010); *Zakrzewski v. Jones*, 221 So. 3d 1159 (Fla. 2017); *Zakrzewski v. Jones*, 2017 WL 3027224 (Fla. July 18, 2017); *Zakrzewski v. State*, 254 So. 3d 324 (Fla. 2018), *cert. denied, Zakrzewski v. Florida*, 587 U.S. 988 (2019).

The record has been reviewed and there are no stays of execution issued by any court of competent jurisdiction in this cause. Based upon the above-referenced summary of litigation affirming the judgments and sentences of death imposed for the first-degree murders of [redacted] the record is legally sufficient to support the issuance of a death warrant.

Sincerely,

James Uthmeier
Attorney General

32

|_| PROBATION VIOLATION

|_| COMMUNITY CONTROL VIOLATOR

|_| RETRIAL

|_| RESENTENCE
(Check if Applicable)

IN THE CIRCUIT COURT,
FIRST JUDICIAL CIRCUIT,
IN AND FOR
OKALOOSA COUNTY, FLORIDA

DIVISION _____

CASE NUMBER: 94-01283-CFA

STATE OF FLORIDA

- vs -

ZAKRZEWSKI, EDWARD J II
Defendant

** OFFICIAL RECORDS **
BK 2028 PG 208

THIRD
AMENDED
JUDGMENT

The Defendant ZAKRZEWSKI, EDWARD J II, being personally before this Court represented by PUBLIC DEFENDER, his attorney of record, and the state represented by ATTORNEY STATE, and having:

|_| been tried and found guilty by jury/by court of the following crime(s).

|X| entered a plea of guilty to the following crime(s).

|_| entered a plea of nolo contendre to the following crime(s).

| COUNT | CRIME | OFF STATUTE NUMBER(S) | | DEGREE OF CRIME | CASE NUMBER |
|---|---|---|---|---|---|
| 001 | 1ST DEGREE MURDER W/WEAPON | 78204 | 1A | C | 94-01283-CFA |
| 002 | 1ST DEGREE MURDER W/WEAPON | 78204 | 1A | C | 94-01283-CFA |
| 003 | 1ST DEGREE MURDER W/WEAPON | 78204 | 1A | C | 94-01283-CFA |

|X| and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

|_| and pursuant to section 943.325, Florida Statutes, having been convicted of attempts or offenses relating to sexual battery (ch.794) or lewd and lascivious conduct (ch. 800) the defendant shall be required to submit blood specimens.

|_| and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

STATE OF FLORIDA

- vs -

ZAKRZEWSKI, EDWARD J II
Defendant

IN THE CIRCUIT COURT,
FIRST JUDICIAL CIRCUIT,
IN AND FOR
OKALOOSA COUNTY, FLORIDA

DIVISION _____

CASE NUMBER: 94-01283-CFA

** OFFICIAL RECORDS **
BK 2028 PG 209

CHARGES/COSTS/FEES

The Defendant is hereby ordered to pay the following sums if checked:

|X| $50.00 pursuant to section 960.20, Florida Statutes (Crimes Compensation Trust Fund).

|X| $3.00 as a court cost pursuant to section 943.25(3), Florida Statutes (Criminal Justice Trust Fund).

|_| $2.00 as a court cost pursuant to section 943.25(13), Florida Statutes (Criminal Justice Education by Municipalities and Counties).

|_| A fine in the sum of $_____ pursuant to section 775.0835, Florida Statutes. (This provision refers to the optional fine for the Crimes Compensation Trust Fund and is not applicable unless checked and completed Fines imposed as a part of a sentence to section 775.083, Florida Statutes are to be recorded on the sentence page(s).)

|_| $20.00 pursuant to section 939.015, Florida Statutes (Handicapped and Elderly Security Assistance Trust Fund).

|_| A 10% surcharge in the sum of $_____ pursuant to section 775.0836, Florida Statutes (Handicapped and Elderly Security Assistance Trust Fund).

|_| A sum of $_____ pursuant to section 27.3455, Florida Statutes (Local Government Criminal Justice Trust Fund).

|_| A sum of $_____ pursuant to section 939.01, Florida Statutes (Prosecution/Investigative Costs).

|_| A sum of $_____ pursuant to section 27.56, Florida Statutes (Public Defender Fees).

|_| Restitution in accordance with attached order.

|_| Other_____

DONE AND ORDERED in open court in Okaloosa County, Florida, this 7th day of October, 19 96.

NUNC PRO TUNC (April 19, 1996)

_____
Circuit Judge, G. Robert Barron

DEFENDANT: Edward T. Zakrzewski II 3
CASE NO: 94-1283 CFA

Imposition of Sentence Stayed and Withheld (Check if Applicable) [ ] The Court hereby stays and withholds the imposition of sentence as to count(s) _____ and places Defendant on probation for a period of _____ under the supervision of the Department of corrections (Conditions of probation set forth in separate order).

Sentence Deferred Until Later Date (Check if Applicable) [ ] The Court hereby defers imposition of sentence until _____ (date)

The Defendant in Open Court was advised of his right to appeal from this judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

DONE AND ORDERED in Open Court at OKALOOSA County, FLORIDA this 25th day of March, A.D., 1996

** OFFICIAL RECORDS **
BK 2028 PG 210

CIRCUIT JUDGE
G. ROBERT BARRON

FINGERPRINTS OF DEFENDANT

[redacted]

Fingerprints taken by:

NAME AND TITLE

** OFFICIAL RECORDS **
BK 1994 PG 1358

DONE AND ORDERED in Open Court at OKALOOSA County, FLORIDA this 25th day of March, A.D. 1996.

I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant, Edward T. Zakrzewski and that they were placed thereon by said defendant in my presence in Open Court this date.

CIRCUIT JUDGE
G. ROBERT BARRON

PAGE 3 of 13

Defendant ZAKRZEWSKI, EDWARD J II
Case Number: 94-01283-CFA
OBTS Number: 0006162187

S E N T E N C E
(As to Count 001)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, PUBLIC DEFENDER, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown

(Check one if applicable.)

|_| and the Court having on _____ deferred imposition of sentence until this date

|_| and the Court having previously entered a judgment in this case on _____ now resentences the defendant

|_| and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

** OFFICIAL RECORDS **
BK 2028 PG 211

IT IS THE SENTENCE OF THE COURT that:

|_| The defendant pay a fine of $_____, pursuant to section 775.083, Florida Statutes, plus $_____ as the 5% surcharge required by section 960.25, Florida Statutes.

|X| The defendant is hereby committed to custody of the Department of Corrections.

|_| The defendant is hereby committed to the custody of the Sheriff of OKALOOSA County, FLORIDA.

|_| The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED (Check one; unmarked sections are inapplicable.):

|_| For a term of Natural Life without the possibility of parole.

|X| For a term of Death.

|_| Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

Case Number: 94-01283-CFA
OBTS Number: 0006162187

S E N T E N C E
(As to Count 001)

If "split" sentence, complete the appropriate paragraph.

|_| Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a seperate order entered herein.

|_| However, after serving a period of _____ imprisonment in State Prison, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a seperate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS
(As to Count 001)

By appropriate notation, the following provisions apply to the sentence imposed:

** OFFICIAL RECORDS **
BK 2028 PG 212

Mandatory/Minimum Provisions:

| | | |
|---|---|---|
| Firearm | \|_\| | It is further ordered that the 3-year minimum imprisonment provisions of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count. |
| Drug Trafficking | \|_\| | It is further ordered that the _____ mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count. |
| Controlled Substance Within 1,000 Feet of School | \|_\| | It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count. |
| Habitual Felony Offender | \|_\| | The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a seperate order or stated on the record in open court. |

Case Number: 94-01283-CFA

SPECIAL PROVISIONS
(As to Count 001)

| | | |
|---|---|---|
| Habitual Violent Felony Offender | [ ] | The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a seperate order or stated on the record in open court. |
| Law Enforcement Protection Act | [ ] | It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes. |
| Capital Offense | [ ] | It is further ordered that the defendant shall serve a life term without the possibility of parole provisions of section 775.082(1), Florida Statutes. |
| Short-Barreled Rifle Shotgun, Machine Gun | [ ] | It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count. |
| Continuing Criminal Enterprise | [ ] | It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count. |
| Taking a Law Enforcement Officer's Firearm | [ ] | It is further ordered that the three-year mandatory minimum imprisonment provision of section 773.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this count. |

Other Provisions:

** OFFICIAL RECORDS **
BK 2028 PG 213

| | | |
|---|---|---|
| Retention of Jurisdiction | [ ] | The Court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983). |
| Jail Credit | [X] | It is further ordered that the defendant shall be allowed a total of 0543 days as credit for time incarcerated before imposition of this sentenc |
| Prison Credit | [ ] | It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing. |
| Consecutive/ Concurrent As To Other Counts | [ ] | It is further ordered that the sentence imposed for this count shall run (check one) ___ consecutive to ___ concurrent with the sentence set forth in count _____ of this case. |



1033

Defendant ZAKRZEWSKI, EDWARD J II
Case Number: 94-01283-CFA
OBTS Number: 0006162187

S E N T E N C E
(As to Count 002)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, PUBLIC DEFENDER, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown

(Check one if applicable.)

|_| and the Court having on _____ deferred imposition of sentence until this date

|_| and the Court having previously entered a judgment in this case on _____ now resentences the defendant

|_| and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

** OFFICIAL RECORDS **
BK 2028 PG 214

IT IS THE SENTENCE OF THE COURT that:

|_| The defendant pay a fine of $_____, pursuant to section 775.083, Florida Statutes, plus $_____ as the 5% surcharge required by section 960.25, Florida Statutes.

|X| The defendant is hereby committed to custody of the Department of Corrections.

|_| The defendant is hereby committed to the custody of the Sheriff of OKALOOSA County, FLORIDA.

|_| The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED (Check one; unmarked sections are inapplicable.):

|_| For a term of Natural Life without the possibility of parole.

|X| For a term of Death.

|_| Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

Case Number: 94-01283-CFA
OBTS Number: 0006162187

S E N T E N C E
(As to Count 002)

If "split" sentence, complete the appropriate paragraph.

|_| Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a seperate order entered herein.

|_| However, after serving a period of _____ imprisonment in State Prison, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a seperate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS
(As to Count 002)

By appropriate notation, the following provisions apply to the sentence imposed:

** OFFICIAL RECORDS **
BK 2028 PG 215

Mandatory/Minimum Provisions:

| | | |
|---|---|---|
| Firearm | \|_\| | It is further ordered that the 3-year minimum imprisonment provisions of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count. |
| Drug Trafficking | \|_\| | It is further ordered that the _____ mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count. |
| Controlled Substance Within 1,000 Feet of School | \|_\| | It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count. |
| Habitual Felony Offender | \|_\| | The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a seperate order or stated on the record in open court. |

Case Number: 94-01283-CFA

SPECIAL PROVISIONS
(As to Count 002)

| | | |
|---|---|---|
| Habitual Violent Felony Offender | [ ] | The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a seperate order or stated on the record in open court. |
| Law Enforcement Protection Act | [ ] | It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes. |
| Capital Offense | [ ] | It is further ordered that the defendant shall serve a life term without the possibility of parole provisions of section 775.082(1), Florida Statutes. |
| Short-Barreled Rifle Shotgun, Machine Gun | [ ] | It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count. |
| Continuing Criminal Enterprise | [ ] | It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count. |
| Taking a Law Enforcement Officer's Firearm | [ ] | It is further ordered that the three-year mandatory minimum imprisonment provision of section 773.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this count. |

Other Provisions:
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** OFFICIAL RECORDS **
BK 2028 PG 216

| | | |
|---|---|---|
| Retention of Jurisdiction | [ ] | The Court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983). |
| Jail Credit | [ ] | It is further ordered that the defendant shall be allowed a total of _____ days as credit for time incarcerated before imposition of this sentenc |
| Prison Credit | [ ] | It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing. |
| Consecutive/ Concurrent As To Other Counts | [X] | It is further ordered that the sentence imposed for this count shall run (check one) XXX consecutive to ___ concurrent with the sentence set forth in count I of this case. |



1033

Defendant ZAKRZEWSKI, EDWARD J II
Case Number: 94-01283-CFA
OBTS Number: 0006162187

S E N T E N C E
(As to Count 003)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, PUBLIC DEFENDER, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown

(Check one if applicable.)

|_| and the Court having on _____ deferred imposition of sentence until this date

|_| and the Court having previously entered a judgment in this case on _____ now resentences the defendant

|_| and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

** OFFICIAL RECORDS **
BK 2028 PG 217

IT IS THE SENTENCE OF THE COURT that:

|_| The defendant pay a fine of $_____, pursuant to section 775.083, Florida Statutes, plus $_____ as the 5% surcharge required by section 960.25, Florida Statutes.

|X| The defendant is hereby committed to custody of the Department of Corrections.

|_| The defendant is hereby committed to the custody of the Sheriff of OKALOOSA County, FLORIDA.

|_| The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED (Check one; unmarked sections are inapplicable.):

|_| For a term of Natural Life without the possibility of parole.

|X| For a term of Death.

|_| Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

Case Number: 94-01283-CFA
OBTS Number: 0006162187

S E N T E N C E
(As to Count 003)

If "split" sentence, complete the appropriate paragraph.

|_| Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a seperate order entered herein.

|_| However, after serving a period of _____ imprisonment in State Prison, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a seperate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS
(As to Count 003)

By appropriate notation, the following provisions apply to the sentence imposed:

** OFFICIAL RECORDS **
BK 2028 PG 218

Mandatory/Minimum Provisions:

Firearm |_| It is further ordered that the 3-year minimum imprisonment provisions of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.

Drug Trafficking |_| It is further ordered that the _____ mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

Controlled Substance Within 1,000 Feet of School |_| It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.

Habitual Felony Offender |_| The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a seperate order or stated on the record in open court.

Case Number: 94-01283-CFA

SPECIAL PROVISIONS
(As to Count 003)

| | | |
|---|---|---|
| Habitual Violent Felony Offender | [ ] | The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a seperate order or stated on the record in open court. |
| Law Enforcement Protection Act | [ ] | It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes. |
| Capital Offense | [ ] | It is further ordered that the defendant shall serve a life term without the possibility of parole provisions of section 775.082(1), Florida Statutes. |
| Short-Barreled Rifle Shotgun, Machine Gun | [ ] | It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count. |
| Continuing Criminal Enterprise | [ ] | It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count. |
| Taking a Law Enforcement Officer's Firearm | [ ] | It is further ordered that the three-year mandatory minimum imprisonment provision of section 773.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this count. |

Other Provisions:
---

** OFFICIAL RECORDS **
BK 2028 PG 219

| | | |
|---|---|---|
| Retention of Jurisdiction | [ ] | The Court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983). |
| Jail Credit | [ ] | It is further ordered that the defendant shall be allowed a total of _____ days as credit for time incarcerated before imposition of this sentenc |
| Prison Credit | [ ] | It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing. |
| Consecutive/ Concurrent As To Other Counts | [X] | It is further ordered that the sentence imposed for this count shall run (check one) XXX consecutive to ___ concurrent with the sentence set forth in count II of this case. |



1033

Defendant ZAKRZEWSKI, EDWARD J II
Case No: 94-01283-CFA

Consecutive/Concurrent As To Other Convictions

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one) ___ consecutive to ___ concurrent with the following: (check one)

[ ] any active sentence being served.

[ ] specific sentences: _____

_____

_____

_____

In the event the above sentence is to the Department of Corrections, the Sheriff of OKALOOSA County, FLORIDA, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigenc

In imposing the above sentence, the court further recommends _____

_____

_____

_____

_____

** OFFICIAL RECORDS **
BK 2028 PG 220

NUNC PRO TUNC (April 19, 1996)

DONE AND ORDERED in Open Court at , OKALOOSA County, FLORIDA, this 7th day of October A.D., 1996.

CERTIFIED A TRUE AND CORRECT COPY
BRAD E. EMBRY
CLERK OF CIRCUIT COURT

BY: _____ DEPUTY CLERK

DATE: 4-10-2025

G. ROBERT BARRON
Circuit Judge

IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO. 94-1283-CFA

STATE OF FLORIDA

VS

EDWARD J. ZAKRZEWSKI, II

FILED
96 OCT 10 PM 2
OKALOOSA COUNTY, FLORIDA

SENTENCING ORDER

The Defendant entered a plea of guilty, as charged, to three counts of First Degree Premeditated Murder on March 19, 1996. The Court, upon having determined that the Defendant's plea was entered freely and voluntarily, scheduled the matter for a penalty phase proceeding before a jury. Following jury selection, the penalty phase jury began receiving evidence on March 25, 1996, and evidence in support of aggravating factors and mitigating factors was heard. On March 30, 1996, the jury returned a seven to five recommendation that the Defendant be sentenced to death in the electric chair on Counts I and II, the murder of [redacted] and the murder of [redacted] That same jury returned a recommendation of life in prison without the possibility of parole on Count III, the murder of [redacted] At that time, the Court requested memoranda from both counsel for the State and counsel for the Defendant. The defense memorandum was received on April 10, 1996, and the memorandum from the State was received on April 16, 1996. Both memoranda were reviewed in detail by the Court.

On April 18, 1996, the Court held a further sentencing hearing wherein the defense presented additional evidence consisting of the depositions of Dr. James Larson and Dr. Barry Crown, along with three letters written by the Defendant while incarcerated. Following legal argument from both sides, the Court recessed in order to allow final reflections upon final sentencing by the Court.

Upon consideration by the Court, the Court having heard the evidence presented before the jury in the penalty phase, having had the benefit of legal memoranda from counsel, additional evidence and further argument both in favor and in opposition of the death penalty, finds as follows as to each count:

Count I - First Degree Murder of [redacted]:

A. AGGRAVATING FACTORS

1. The Defendant was previously convicted of two other capital offenses, to-wit: the first degree murder of [redacted] and the first degree murder of [redacted] This aggravating factor is obviously uncontroverted and proved beyond a reasonable doubt.

** OFFICIAL RECORDS **
BK 2028 PG 221

** OFFICIAL RECORDS **
BK 2028 PG 222

2. The murder of [redacted] was committed in a cold, calculated, and premeditated manner without pretense of legal or moral justification.

Unrebutted evidence was offered through the testimony of a neighbor, a friend of the Defendant's, that on two prior occasions several weeks and months before the murders, the Defendant had stated that before he allowed his wife to divorce him, he would kill her and the children. On the morning of June 9, 1994, the Defendant's son, [redacted] called the Defendant at work and told him that his mother, [redacted] was going to file divorce papers that day. During his lunch break that same day, the Defendant went to an Army Surplus Store and purchased a machete, took it home, sharpened it, and positioned it behind the bathroom door in the house. He also placed a crowbar in the bedroom, cut a piece of rope and also placed the rope in the bedroom. He then returned to work, completed his normal work day, and attended his college course that afternoon. Upon returning home that evening, the Defendant sent the children to watch television in the TV room, then called [redacted] to the bedroom where he had hidden the crowbar and the rope for the purpose of killing her. When she failed to respond, the Defendant walked to where she was sitting on the couch in the living room, and struck her at least twice in the head and face with the crowbar without any conversation or provocation. The Defendant then carried [redacted] to the bedroom where he placed her on the bed and struck additional blows with the crowbar. The Defendant then moved [redacted] to the floor because "she was bleeding too much" and placed her head on a plastic bag in an obvious attempt, at that point, to conceal the existence of as much blood as possible. He then proceeded to choke [redacted] with the rope. The Defendant then went to the bathroom, called his son, [redacted] to the bathroom to "brush his teeth" and when [redacted] entered the bathroom , the Defendant struck him several times with the machete. The Defendant then called [redacted] into the bathroom, also to "brush her teeth" and proceeded to murder [redacted] with the machete. The Defendant then returned to the bedroom and moved [redacted] to the bathroom where he placed her in a kneeling position with her head over the edge of the tub next to [redacted], and then struck her several times across the head and neck with the machete. The bodies of all three victims, [redacted] lying in the bottom of the tub, and [redacted] draped over the tub would indicate an obvious pre-planned attempt to drain the blood of the victims into the tub in order to facilitate cleanup and body removal.

** OFFICIAL RECORDS **
BK 2028 PG 223

The evidence in this case, along with the testimony of the Defendant, indicates that the murder of [redacted] was the product of probably months and undeniably hours of cool, calm reflection, and careful planning without any pretense of legal or moral justification. [redacted] murder is clearly set apart from most domestic homicides in that it did not arise during the course of any domestic dispute or heated argument and was certainly not the result of any sudden provocation or heat of anger. This aggravating circumstance was proved beyond a reasonable doubt.

3. The murder was committed in an especially heinous, atrocious, or cruel manner.

The testimony of the medical examiner, along with the Defendant's own testimony, indicates that [redacted] was first beaten with a crowbar, then strangled with a rope while still alive, and then literally butchered with a machete. The Defendant's own testimony indicates that he dragged [redacted] to the bathroom after he had murdered his two children and left them in the bathroom. Medical testimony was inconclusive as to whether [redacted] was dead when she was dragged into the bathroom and struck with the machete. We will never know. There is no possible way for us to know whether [redacted] was still conscious and able to perceive her two dead children in the bathroom prior to the final blows being struck to her head and neck with the machete. The brutal and atrocious nature of the Defendant's murder of his wife [redacted] was indeed a conscienceless, pitiless crime which was unnecessarily torturous to the victim. This aggravating circumstance was proved beyond a reasonable doubt.

None of the other aggravating factors enumerated by statute are applicable to this Count and none other was considered by this Court.

Nothing except as previously indicated in paragraphs 1 through 3 above was considered in aggravation.

B. MITIGATING FACTORS

Statutory Mitigating Factors:

In its sentencing memorandum, the Defendant requested the Court to consider the following statutory mitigating circumstances:

1. No significant prior criminal history.

This mitigating circumstance was established by the evidence and the Court has given significant

weight to the consideration of the Defendant's lack of any prior criminal history. However, this statutory mitigator is over-shadowed by the fact that the Defendant committed three premeditated murders during the course of the evening in question.

2. The capital felony was committed while the Defendant was under the influence of extreme mental or emotional disturbance.

Three doctors testified during this penalty phase proceeding. Two were called by the Defendant, and one was called by the State. While the ultimate findings and conclusions of these three doctors differ to some extent, the Court finds that the evidence presented is sufficient to establish the existence of this mitigating factor, and the Court has given significant weight to the existence of this statutory mitigator. However, testimony of two of the psychologists, Dr. Larson for the defense and Dr. McClaren for the State were in agreement that while the Defendant was, at the time of the murders, "under the influence of extreme mental or emotional disturbance", the Defendant's mental or emotional distress did not prevent him from appreciating the criminality of his conduct or substantially impair his ability to conform his conduct to the requirements of law. Accordingly, while this mitigating circumstance does exist, the Court finds that it is entitled to "significant" rather than "great" weight.

** OFFICIAL RECORDS **
BK 2028 PG 224

Nonstatutory Mitigating Factors:

The Defendant has asked the Court to consider the following nonstatutory mitigating factors:

1. The Defendant turned himself in.

2. The Defendant pled guilty.

3. The Defendant is an exceptionally hard worker.

4. The Defendant was on the Dean's List in his third year of college.

5. The Defendant served in an exemplary manner in the United States Air Force.

6. The Defendant showed sincere grief and remorse.

** OFFICIAL RECORDS **
BK 2028 PG 225

7. The Defendant was a loving husband and father until the offense.

8. The Defendant was under great stress due to work, college, child care, housework and lack of sleep.

9. The Defendant is a patient and humble man.

10. The Defendant was raised without his natural father in his home.

11. The Defendant had a lack of prior domestic relationships.

12. The Defendant's role in his marriage was passive in a union dominated by his wife.

13. The Defendant received little religious upbringing.

14. The Defendant has embraced the Christian Faith since the offense.

15. The Defendant was a hyperactive child and was medicated with ritalin.

16. The Defendant has a long term adjustment disorder.

17. The Defendant was suffering from a major depressive episode.

18. The Defendant has a potential for rehabilitation.

19. The Defendant exhibited good behavior while hiding for an extended period of time under an assumed name.

20. The Defendant was a loving and good son.

21. The Defendant is intelligent.

22. The Defendant is well thought of by friends, neighbors and co-workers.

23. The Defendant was impaired by alcohol at the time of the offense.

24. The Defendant is not a psychopath.

(1 and 2)- The Defendant turned himself in and thereafter pled guilty. The fact that the Defendant turned himself in after being identified by friends on the TV show "Unsolved Mysteries" has been established by the evidence but is given little

** OFFICIAL RECORDS **
BK 2028 PG 226

weight by the Court since the Defendant realized he had been identified at that point and had little option. The fact that the Defendant pled guilty has also been given little weight by the Court since the State had a varietal "mountain of evidence" including bloody fingerprints and footprints, obvious flight by the Defendant after evidence was undeniable that he would have known of the murder of his family, and an otherwise very strong, convincing case. After his arrest the Defendant waited a year and four months before pleading guilty, and the guilty plea was entered only approximately one week prior to the date set for trial. The plea of guilty in the face of overwhelming evidence would indicate a strategic attempt to gain sympathy from the jury rather than an overwhelming sense of grief and remorse.

(3, 4 and 5)- The fact that the Defendant was an exceptionally hard worker, a good student, and an exemplary member of the United States Air Force was established by the evidence and those mitigators have been given significant weight by the Court.

(6 and 7)- The evidence has established that the Defendant was a loving husband and father until the offense and his testimony indicates that he does appear to be truly remorseful for what he has done. Both of these mitigating circumstances are found to exist by the Court and have been given substantial weight by the Court.

(8)- The fact that the Defendant was under great stress due to work, college, child care, housework, and lack of sleep was established by the evidence but given little weight by the Court.

(9,10 and 11)- The Court finds that these mitigating factors have been established by the evidence but are entitled to little weight.

(12)- The Court finds that this mitigating factor was not established by the evidence.

(13 and 14)- The fact that the Defendant received little religious upbringing but has embraced the Christian Faith since the commission of the offenses has been established by the evidence but has been given little weight by the Court.

(15)- The fact that the Defendant was medicated for one month on ritalin as a child is not a mitigating circumstance.

(16 and 17)- The Defendant's "long term adjustment disorder" and "major depressive disorder" were established to some degree by the evidence but were

considered by the Court in discussing the statutory mitigator of extreme mental disturbance and are not considered separately as nonstatutory mitigators.

(18) - Potential for rehabilitation was not established by the evidence, it is speculative at best, and has been given no weight by the Court.

(19) - The fact that the Defendant exhibited good behavior while hiding for an extended period of time following the commission of the offenses has been established by the evidence and given slight weight by the Court.

(20, 21 and 22) - These nonstatutory mitigators have been established by the evidence but are entitled to no weight in consideration of the Defendant's sentence.

(23) - The Defendant's use of alcohol immediately prior to the murders was slight and did not significantly impair him or his recollection of the events. This circumstance is entitled to no weight.

(24) - The fact that the Defendant is not a psychopath is not a nonstatutory mitigator.

** OFFICIAL RECORDS **
BK 2028 PG 227

The Court has very carefully considered and weighed the aggravating and mitigating circumstances found to exist in the murder of [redacted] being ever mindful that human life is at stake and in the balance. The Court finds, as did the jury, that the aggravating circumstances present in this Count outweigh the mitigating circumstances present.

Accordingly, it is

ORDERED AND ADJUDGED that the Defendant, Edward J. Zakrzewski, II, is hereby sentenced to death for the murder of the victim, [redacted] The Defendant is hereby committed to the custody of the Department of Corrections of the State of Florida for execution of this sentence as provided by law.

Count II - First Degree Murder of [redacted]:

A. AGGRAVATING FACTORS

1. The Defendant was previously convicted of two other capital offenses, to-wit: the first degree murder of [redacted] and the first degree murder of [redacted] This aggravating factor has been proved beyond a reasonable doubt.

** OFFICIAL RECORDS **
BK 2028 PG 228

2. The murder of [redacted] was committed in a cold, calculated, and premeditated manner without pretense of legal or moral justification. The Court's previous discussion of the plans and preparations leading to [redacted] murder are reiterated herein. [redacted] murder was the second in a carefully planned deliberate act after having bludgeoned [redacted] but prior to killing [redacted] After bludgeoning [redacted] with a crowbar, the Defendant called [redacted] into the bathroom and as [redacted] entered the bathroom struck him with a machete. [redacted] murder was obviously planned in the same cold, calculated, and premeditated manner without pretense of legal or moral justification as described in the murder of [redacted] This aggravating factor has been proven beyond a reasonable doubt.

3. The murder of [redacted] was committed in an especially heinous, atrocious, or cruel manner. After beating [redacted] with a crowbar, the Defendant called his [redacted] son into the bathroom and brutally hacked him to death with a machete. By the Defendant's own admission, [redacted] saw what his father was about to do to him and raised his hand in meager defense of his young life, at which time his hand was nearly severed at the wrist. [redacted] was undoubtedly aware for a period of time that he was about to be murdered by his own father. We will never know for what period of time [redacted] experienced this horror. We do know that the Defendant struck [redacted] over and over with the machete nearly decapitating him, shearing his right ear from his head, severing his spinal cord, and splashing [redacted] blood on the floor, walls, sink, toilet, tub and ceiling of the bathroom. This agravating circumstance has been proven beyond a reasonable doubt.

None of the other aggravating factors enumerated by statute are applicable to this Count and none other was considered by this Court.

Nothing except as previously indicated in paragraphs 1 through 3 above was considered in aggravation.

B. MITGATING FACTORS

The Court has considered and weighed each of the statutory and nonstatutory mitigating factors as discussed under Count I and the Court finds the same mitigating factors and the weight to be given thereto are applicable to Count II.

The Court has very carefully considered and weighed the aggravating and mitigating circumstances found to exist in the murder of [redacted], being ever mindful that human life is at stake and in the balance. The Court finds, as did the jury, that the aggravating circumstances present in Count Ii outweigh the mitigating circumstances present.

Accordingly, it is

ORDERED AND ADJUDGED that the Defendant, Edward J.Zakrzewski,II, is hereby sentenced to death for the murder of the victim, [redacted] The Defendant is hereby committed to the custody of the Department of Corrections of the State of Florida for execution of this sentence as provided by law.

Count III - First Degree Murder of [redacted]:

A. AGGRAVATING FACTORS

1. The Defendant was previously convicted of two other capital offenses, to-wit: the first degree murder of [redacted] the first degree murder of [redacted]. This aggravating circumstance has been proven beyond a reasonable doubt.

2. The murder was committed in a cold, calculated and premeditated manner without pretense of legal or moral justification.

   The Court's findings as to the facts tending to establish this aggravating factor were previously discussed under Count I. By the Defendant's own admission, [redacted] was the third of the three execution-style murders committed by the Defendant. The heightened premeditation with which the Defendant carried out the murders of [redacted] clearly applies to [redacted] murder, as she was the last to be killed. In fact, the Defendant had more time to consider and reflect on the murder of [redacted] than either of the other two. This aggravating circumstance has been proved beyond a reasonable doubt.

3. The murder was committed in an especially heinous, atrocious, or cruel manner. The Defendant testified that after bludgeoning [redacted] and hacking [redacted] to death with the machete, he called [redacted] into the bathroom to "brush her teeth." He then testified that he struck [redacted] as she entered the doorway to the bathroom. The physical evidence in the case established by blood-stain pattern

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analyst Jan Johnson is in direct contradiction of the Defendant's testimony as to where the murder of [redacted] actually occurred. All of the physical evidence in the case establishes beyond a reasonable doubt that [redacted] was first struck with the machete and was murdered while she was in a kneeling position with her head bent over the edge of the tub just as her body was found. The physical evidence establishes beyond any reasonable doubt that [redacted] was still living when the Defendant knelt her down over the tub where her brother's mutilated, bloody, lifeless body had been placed by the Defendant and was thereupon murdered in execution-style fashion with the machete. The photos of [redacted] body at autopsy, as well as the Medical Examiner's testimony, indicate that [redacted] suffered cuts to her right hand and elbow, demonstrating that at some point she made a futile attempt to ward off blows. Based upon the physical evidence and expert testimony relating thereto, the Court is convinced beyond any reasonable doubt that prior to [redacted] death she not only experienced the horror of knowing that she was about to be murdered by her own father, but she also experienced the absolute horror of knowing that her brother had been murdered and that she was next. This Court could not imagine a more heinous and atrocious way to die. This aggravating circumstance has been proved beyond a reasonable doubt.

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None of the other aggravating factors enumerated by statute are applicable to this Count and none other was considered by this Court.

Nothing except as previously indicated in paragraphs 1 through 3 above was considered in aggravation.

B. MITIGATING FACTORS

The Court has considered and weighed each of the statutory and nonstatutory mitigating factors as discussed under Count I and the Court finds the same mitigting factors and the weight to be given thereto are applicable to Count III.

The Court has very carefully considered and weighed the aggravating and mitigating circumstances found to exist in the murder of [redacted] being ever mindful that human life is at stake and in the balance. The Court finds that the aggravating circumstances present in the murder of [redacted] outweigh the mitigating circumstances present and the Court further finds that the facts suggesting a sentence of death are so clear and convincing that no reasonable person could differ. [redacted] murder was the product of an

even more heightened, cold, calculated premeditation and was beyond all reasonable doubt, even more heinous, atrocious, and cruel than the murder of [redacted] and [redacted] The Court can find no sound reason for recommending a life sentence for [redacted] murder after having found sufficient reason to recommend a death sentence in the murders of [redacted] and [redacted] Even if the jury reached a conclusion in total contradiction of the physical and expert opinion evidence that the murder of [redacted] was not heinous, atrocious, or cruel, the Court finds that the two remaining aggravating circumstances established beyond a reasonable doubt would outweigh all mitigating circumstances. Accordingly, the Court will override the recommendation of the jury for a life sentence in the murder of [redacted] and,

Accordingly, it is

ORDERED AND ADJUDGED that the Defendant, Edward J. Zakrzewski, II, is hereby sentenced to death for the murder of the victim, [redacted] The Defendant is hereby committed to the custody of the Department of Corrections of the State of Florida for execution of this sentence as provided by law.

DONE AND ORDERED in Shalimar, Okaloosa County, Florida, this 19th day of April, 1996.

G. ROBERT BARRON
CIRCUIT JUDGE

Copies to:
State Attorney
Attorney of Record
Defendant

** OFFICIAL RECORDS **
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Newman C. Brackin
Clerk of Court

BY _____
Deputy Clerk

CERTIFIED A TRUE AND CORRECT COPY
BRAD E. EMBRY
CLERK OF CIRCUIT COURT

BY: _____
DEPUTY CLERK

DATE: 4-10-2025

# DEATH WARRANT
## STATE OF FLORIDA

WHEREAS, EDWARD J. ZAKRZEWSKI, II, on or about the 9th day of June, 1994, murdered [redacted] and

WHEREAS, EDWARD J. ZAKRZEWSKI, II, on the 19th day of March, 1996, was convicted of three counts of first degree murder and, on the 19th day of April, 1996, was sentenced to death for the murders of [redacted] and

WHEREAS, on the 11th day of June, 1998, the Supreme Court of Florida affirmed the convictions and death sentences of EDWARD J. ZAKRZEWSKI, II; and

WHEREAS, on the 13th day of November, 2003, the Supreme Court of Florida affirmed the trial court order denying EDWARD J. ZAKRZEWSKI, II's initial Motion for Postconviction Relief and on the 25th day of May, 2017, denied his Petition for Writ of Habeas Corpus; and

WHEREAS, on the 30th day of September, 2004, the United States District Court for the Northern District of Florida denied EDWARD J. ZAKRZEWSKI, II's federal Petition for Writ of Habeas Corpus; and

WHEREAS, on the 13th day of July, 2006, the United States Court of Appeals for the Eleventh Circuit affirmed the denial of EDWARD J. ZAKRZEWSKI, II's federal Petition for Writ of Habeas Corpus; and

WHEREAS, further postconviction motions and petitions filed by EDWARD J. ZAKRZEWSKI, II have been denied and the denials affirmed on appeal; and

WHEREAS, executive clemency for EDWARD J. ZAKRZEWSKI, II, as authorized by Article IV, Section 8(a), of the Florida Constitution, was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate; and

WHEREAS, attached hereto is a certified copy of the record of the conviction and sentence pursuant to section 922.052, Florida Statutes.

NOW, THEREFORE, I, RON DESANTIS, as Governor of the State of Florida and pursuant to the authority and responsibility vested in me by the Constitution and Laws of Florida, do hereby issue this warrant, directing the Warden of the Florida State Prison to cause the sentence of death to be executed upon EDWARD J. ZAKRZEWSKI, II, in accordance with the provisions of the Laws of the State of Florida.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Tallahassee, this 1st day of July, 2025.

GOVERNOR

ATTEST:

SECRETARY OF STATE

FILED
2025 JUL -1 PM 4:15
DEPARTMENT OF STATE
TALLAHASSEE, FL

**IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT**
**IN AND FOR OKALOOSA COUNTY, FLORIDA**

**EXECUTION SCHEDULED FOR JULY 31, 2025**
**AT 6:00 P.M. ET (5:00 P.M. CT)**

**TRIAL COURT PROCEEDINGS MUST BE COMPLETED BY**
**Monday, July 14, 2025, at 11:00 a.m. ET (10:00 a.m. CT)**

STATE OF FLORIDA,

*Plaintiff*,

v.

EDWARD J. ZAKRZEWSKI,

*Defendant.*
_____/

Case No.: 1994-CF-01283
CAPITAL CASE

**STATE'S MOTION FOR SCHEDULING ORDER**

On Tuesday, July 1, 2025, the Florida Supreme Court issued a scheduling order in this active death warrant case. *Zakrzewski v. State*, 1960-88367. The Florida Supreme Court directed that all proceedings in the state trial court be completed by Monday, July 14, 2025, at 11:00 a.m. ET (10:00 a.m. CT). This is a proposed scheduling order to comply with the Florida Supreme Court's timelines. While the State's proposed schedule is merely a suggestion, this Court should adopt a similarly detailed scheduling order to ensure no required step

is overlooked to be able to timely complete the warrant litigation in compliance with the Florida Supreme Court's order.

Rules of Court Governing Death Warrant Cases

Florida's rule of criminal procedure contains rules for successive motions in active warrant capital cases as well as a rule for additional public records requests. Fla. R. Crim. P. 3.851(h); Fla. R. Crim. P. 3.852(h)(3). Rule 3.851 governs capital cases after a death warrant is signed and provides:

> (1) Judicial Assignment. The chief judge of the circuit shall assign the case to a judge qualified under the Rules of Judicial Administration to conduct capital cases as soon as notification of the death warrant is received.
>
> (2) Calendar Advancement. Proceedings after a death warrant has been issued shall take precedence over all other cases. The assigned judge shall make every effort to resolve scheduling conflicts with other cases including cancellation or rescheduling of hearings or trials and requesting senior judge assistance.
>
> (3) Schedule of Proceedings. The time limitations in this rule shall not apply after a death warrant has been signed. All motions shall be heard expeditiously considering the time limitations set by the date of execution and the time required for appellate review.
>
> (4) Location of Hearings. The location of hearings after a death warrant is signed shall be determined by the trial judge considering the availability of witnesses or evidence, the security problems involved in the case, and any other factor determined by the trial court.

(5) Postconviction Motions. All motions filed after a death warrant is issued shall be considered successive motions and subject to the content requirement of subdivision (e)(2) of this rule.

(6) Case Management Conference. The assigned judge shall schedule a case management conference as soon as reasonably possible after receiving notification that a death warrant has been signed. During the case management conference the court shall set a time for filing a postconviction motion and shall schedule a hearing to determine whether an evidentiary hearing should be held and hear argument on any purely legal claims not based on disputed facts. If the motion, files, and records in the case conclusively show that the movant is entitled to no relief, the motion may be denied without an evidentiary hearing. If the trial court determines that an evidentiary hearing should be held, the court shall schedule the hearing to be held as soon as reasonably possible considering the time limitations set by the date of execution and the time required for appellate review.

(7) Reporting. The assigned judge shall require the proceedings conducted under death warrant to be reported using the most advanced and accurate technology available in general use at the location of the hearing. The proceedings shall be transcribed expeditiously considering the time limitations set by the execution date.

(8) Procedures After Hearing. The court shall obtain a transcript of all proceedings and shall render its order as soon as possible after the hearing is concluded. A copy of the final order shall be electronically transmitted to the Supreme Court of Florida and to the attorneys of record.

(9) Transmittal of Record. The record shall be immediately delivered to the clerk of the Supreme Court of Florida by the clerk of the trial court or as ordered by the assigned judge. The record shall also be electronically

transmitted if the technology is available. A notice of appeal shall not be required to transmit the record.

## **Proposed Order Regarding Critical Events**

(1) First case management conference:

Under Rule 3.851(h)(6), this Court should schedule a case management conference, as soon as possible after the warrant is signed, to discuss a schedule for the proceedings in the trial court including the date for filing the successive postconviction motion and State's answer. The first case management conference is scheduled for Wednesday, July 2, 2025, at 3:00 p.m. ET (2:00 p.m. CT). Counsel may appear virtually.

All hearings during warrant litigation are required to be transcribed in real time. Fla. R. Crim. P. 3.851(h)(7). This Court should inform the clerk of court of the necessity of completing the entire record on appeal by having the appellate clerk attend the first case management conference. The record on appeal is due in the Florida Supreme Court on Monday, July 14, 2025, at 4:30 p.m. ET (3:30 pm CT).

(2) Florida Department of Corrections updated inmate records:

The Florida Department of Corrections will provide updated inmate classification and medical records, including mental health records, upon a signed medical release for the past five years. *Muhammad v. State*, 132 So.2d 176, 201-03 (Fla. 2013). This Court should order FDOC to provide these updated records to state postconviction counsel by Monday, July 7, 2025, at 10:00 a.m. ET (9:00 a.m. CT).

(3) Demands for additional public records on all agencies:

Fla. R. Crim. P. 3.852(i) governs demands for additional public records in warrant cases.[1] The rule governing additional public records requests envisions only updates of prior requests, not entirely new requests. Public records were available to Zakrzewski from the Capital Collateral Records Repository circa 1998. *Amendments to Florida Rules of Criminal Procedure-Rule 3.852 (Capital Postconviction*

[1] Rule 3.852(h) does not apply to Zakrzewski because the Florida Supreme Court's Mandate in the direct appeal was issued on October 13, 1998. *Tanzi v. State*, 407 So. 3d 385, 391 (Fla. 2025); *Hutchinson v. State*, No. SC2025-0517, 2025 WL 1198037, at *3 (Fla. Apr. 25, 2025), *cert. denied Hutchinson v. Florida*, 145 S. Ct. 1980 (2025).

*Pub. Records Prod.) & Rule3.993 (Related Forms)*, 723 So. 2d 163 (Fla. 1998); *Allen v. Butterworth*, 756 So. 2d 52, 58 (Fla. 2000) (noting in 1998, the Legislature established a procedure for the production of public records in postconviction cases and organized a central repository for capital public records).

A problem that often arises regarding agencies that are not typically involved in warrant litigation is that the person fulfilling capital collateral postconviction requests for additional public records are used to the normal time frames for public records fulfillment, instead of the short time frame under Rule 3.852 and warrant litigation. To lessen that problem, opposing counsel should be required to provide to the Court the name of attorney for the agency who was contacted. This Court should order state postconviction counsel to file any and all additional public records demands on any agency by Monday, July 7, 2025, at 4:00 p.m. ET (3:00 p.m. CT).

(4) Agency response and objection to public records demand:

Any agency response or objection to a records demand should be filed by Tuesday, July 8, 2025, at 10:00 a.m. ET (9:00 a.m. CT).

(5) Hearing on public records demands:

This Court should schedule a public records hearing on agency objections to the additional public records demands on Tuesday, July 8, 2025, at 1:00 p.m. ET (12:00 noon CT). Counsel for the parties and counsel for the agencies may appear virtually.

(6) Order on public record objections:

The Court should rule on the public records demands and objections at the hearing. The Court should enter a written order on the public records as well by Tuesday, July 8, 2025, at 4:00 p.m. ET (3:00 p.m. CT).

(7) Compliance with public records demands:

Should this Court grant a records demand and overrule an agency's objection, it should order compliance by the agency by Wednesday, July 9, 2025, at 1:00 p.m. ET (12 noon CT).

(8) Successive Rule 3.851 postconviction motion:

The successive Rule 3.851(h)(5) motion should be filed by Wednesday, July 9, 2025, at 5:00 p.m. ET (4:00 p.m. CT). The

Defendant's successive motion shall not exceed 25 pages. Fla. R. Crim. P. 3.851(e)(2) (providing: "A successive motion shall not exceed 25 pages, exclusive of attachments, . . .). The rule regarding page limitations is sometimes ignored by the capital defense bar. This Court should order counsel to comply with the rule's page limitations.

(9) State's Answer to successive postconviction motion:

This Court should order the State's answer to the successive postconviction motion to be filed by Thursday, July 10, 2025, at 4:00 p.m. ET (3:00 p.m. CT). The State's answer to the successive motion shall also not exceed 25 pages. Fla. R. Crim. P. 3.851(f)(3)(B) (providing: "The answer shall not exceed 25 pages, exclusive of attachments and exhibits").

(10) Second case management hearing:

Under rule 3.851(h)(6), the trial court should hold a second case management conference, commonly referred to as a *Huff* hearing, at which the Court will hear the arguments of counsel regarding whether an evidentiary hearing is required on any of the claims raised

in the successive postconviction motion. *Huff v. State*, 622 So. 2d 982, 983 (Fla. 1993). This Court should schedule the *Huff* hearing for Thursday, July 10, 2025, at 5:00 p.m. ET (4:00 p.m. CT). The defendant's presence is not required at the *Huff* hearing. Fla. R. Crim. P. 3.851(c)(3) (providing: "The defendant's presence shall not be required at any hearing or conference held under this rule, except at the evidentiary hearing on the merits of any claim and at any hearing involving conflict with or removal of collateral counsel"). Counsel for the parties may appear virtually.

(11) Order on *Huff* hearing:

This Court should enter a written order on the *Huff* hearing determining which, if any, claims will be explored at the evidentiary hearing by Thursday, July 10, 2025, at 6:00 p.m. ET (5:00 p.m. CT).

(12) Evidentiary hearing:

This Court should provisionally schedule an evidentiary hearing for Friday, July 11, 2025, at 10:00 a.m. ET (9:00 a.m. CT), if an evidentiary hearing is required. The defendant's presence is required at any evidentiary hearing. Fla. R. Crim. P.3.851(c)(3) (providing: "The

defendant's presence shall not be required at any hearing or conference held under this rule, except at the evidentiary hearing on the merits of any claim and at any hearing involving conflict with or removal of collateral counsel."). This Court should order the Department of Corrections to transport Zakrzewski to the Okaloosa County Courthouse at that date and time, if an evidentiary hearing is held.

(13) Closing arguments:

Due to the time constraints no written post-evidentiary hearing memorandums of law will be permitted. Any closing arguments must be presented orally at the end of the evidentiary hearing.

(14) Final ruling:

This Court should issue its final written order on the successive motion by Monday, July 14, 2025, at 11:00 a.m. ET (10:00 a.m. CT), as directed by the Florida Supreme Court in its scheduling order.

(15) Clerk of court:

The clerk of court should file the record on appeal, including all warrant filings and complete transcripts of all the hearings, in the Florida Supreme Court by Monday, July 14, 2025, at 4:30 p.m. ET (3:30 p.m. CT), as directed by the Florida Supreme Court. *See also* Fla. R. Crim. P. 3.851(h)(9).

Accordingly, this Court should issue a scheduling order for the warrant litigation.

Respectfully submitted,

JAMES UTHMEIER
FLORIDA ATTORNEY GENERAL

/s/ *Janine D. Robinson*
JANINE D. ROBINSON
Assistant Attorney General
Florida Bar No. 865966
Janine.Robinson@myfloridalegal.com
E-Service: capapp@myfloridalegal.com

/s/ *Charmaine M. Millsaps*
CHARMAINE M. MILLSAPS
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Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050

CO-COUNSEL FOR THE STATE OF FLORIDA

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of July, 2025, the foregoing **STATE'S MOTION FOR SCHEDULING ORDER** was electronically filed with the Clerk of the Court via the Florida Courts E-Portal Filing System for service to the following: **The Honorable Lacey Powell Clark**, Circuit Court Judge, judge.clark@Flcourts1.gov, Amanda.Bailey@Flcourts1.gov; **Lisa M. Fusaro**, Assistant Capital Collateral Regional Counsel – North, Lisa.Fusaro@ccrc-north.org; **Alicia A. Hampton**, Assistant Capital Collateral Regional Counsel – North, Alicia.Hampton@ccrc-north.org; **Bridgette Jensen**, Chief Assistant State Attorney, bjensen@osa1.org.; **Matthew Casey**, Assistant State Attorney, mcasey@osa1.org; **Christina Porrello**, Senior Attorney, Florida Department of Corrections, Christina.Porrello@fdc.myflorida.com; and the **Florida Supreme Court Clerk**, warrant@flcourt.org.

*/s/ Janine D. Robinson*
Janine D. Robinson
Assistant Attorney General

CO-COUNSEL FOR THE STATE OF FLORIDA

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA**,

**Plaintiff,**

**v.** **CASE NO: 1994-CF-01283**
**CAPITAL CASE**

**EDWARD J. ZAKRZEWSKI,**

**Defendant.**

_____/

**NOTICES OF APPEARANCE OF COUNSEL**

**KRISTEN LONERGAN, WILLIAM GWALTNEY, and CHRISTINA PORRELLO** hereby file this notice of appearance as counsel of record on behalf of the Florida Department of Corrections and designate the following email addresses for service of all documents required to be electronically filed in this proceeding:

Kristen Lonergan
Primary: Kristen.Lonergan@fdc.myflorida.com
Secondary: courtfilings@fdc.myflorida.com

William Gwaltney
Primary: William.Gwaltney@fdc.myflorida.com
Secondary: courtfilings@fdc.myflorida.com

Christina Porrello:
Primary: Christina.Porrello@fdc.myflorida.com
Secondary: courtfilings@fdc.myflorida.com

The undersigned requests that all future pleadings and correspondence in this matter are sent to the contact information provided in this notice.

Respectfully submitted,

/s/ *Kristen J. Lonergan*
**Kristen J. Lonergan**
**Executive Senior Attorney**
Florida Bar No: 125556
Florida Department of Corrections
501 South Calhoun Street
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/s/ *Christina Porrello*
**Christina Porrello**
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/s/*William W. Gwaltney*
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of July, 2025, I electronically filed the foregoing via the Florida Courts e-portal filing system sending a notice of electronic filing to all registered parties and/or counsel of record.

Respectfully submitted,

/s/ *William W. Gwaltney*
William W. Gwaltney, Esq.

**IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT**
**IN AND FOR OKALOOSA COUNTY, FLORIDA**

**EXECUTION SCHEDULED FOR JULY 31, 2025**
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**STATE OF FLORIDA,**

***Plaintiff*,**

**v.**

**EDWARD J. ZAKRZEWSKI,**

***Defendant.***
_____/

**Case No.: 1994-CF-01283**
**CAPITAL CASE**

## FACTS OF THE CRIME AND PROCEDURAL HISTORY

This is an overview of the case for the benefit of the court.

Facts of the Crime

Edward J. Zakrzewski was married to [redacted] and they had two young children, [redacted] More than a year prior to the murders, he and [redacted] experienced marital problems and discussed divorce. Twice, Zakrzewski told his neighbor that rather than divorcing, he would kill his wife and the two children. On June 9, 1994, the morning of the murders,

Zakrzewski's' son, [redacted], called him at work and told him that [redacted] intended to file divorce papers that day. Testifying on his own behalf in the penalty phase, Zakrzewski described his plan to kill his family.

During his lunch break, Zakrzewski purchased a machete and sharpened it, returned to work, and completed his daily routine. That evening, Zakrzewski arrived home before his wife and children and hid the machete in the bathroom. After his family arrived home, Zakrzewski approached [redacted], who was sitting alone in the living room. He hit her at least twice in the head with the crowbar. The trial testimony established that [redacted] may have been rendered unconscious as a result of being struck with the crowbar, but did it not kill her. Zakrzewski dragged [redacted] into the bedroom, where he hit her again and strangled her with rope.

Zakrzewski his son into the bathroom to brush his teeth. As [redacted] was brushing his teeth, Zakrzewski retrieved the machete hidden behind the door. [redacted] saw his father with the machete in the mirror and realizing what his father was doing, [redacted] put his hand up and tried to block the blow with his arm, causing injury to his wrist. Zakrzewski struck [redacted] hard, causing severe head,

neck, and back injuries, and resulted in [redacted] death. Zakrzewski then put his son's body in the bathtub.

Still holding the machete, Zakrzewski called [redacted] into the bathroom. As [redacted] was entering the bathroom, Zakrzewski struck his daughter in the neck with the machete, draped her body over the bathtub, and continued to strike the child with the machete until she was dead. The State's blood spatter expert testified that the patterns showed [redacted] was kneeling over the bathtub when she was struck by the machete. Cuts were found on [redacted] right hand and elbow, consistent with defensive wounds.

Finally, Zakrzewski dragged his wife from the bedroom to the bathroom. Still not sure if [redacted] was dead, Zakrzewski hit her with the machete and she died from blunt force and sharp force injuries.

Zakrzewski went to work the next day, but left early. He drove to Orlando and flew to Hawaii, where he changed his name to Michael Green. He made his way to the island of Molokai, where he lived with a family who ran a religious commune on the island. After living in Hawaii for four months, the family happened to watch the television show "Unsolved Mysteries," which aired Zakrzewski's picture. He

then turned himself in to the local police the next day, October 15, 1994.

State Court Procedural History[1]

Zakrzewski was charged by indictment on November 10, 1994 with first-degree murder of his wife and two young children. DAR Vol. I at 15-16A. He withdrew the prior not guilty plea and pleaded guilty after a comprehensive colloquy on March 19, 1996.[2] DAR Vol. II at 241-45; DAR Vol. III. at 441-51.

The penalty phase was held on March 25-29, 1996. *See* DAR Vols. IV-X. Zakrzewski presented 15 mitigation witnesses, including

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[1] Citations to the penalty phase transcript direct appeal record (Case No. 88,367) are referred to as DAR, followed by Volume and page number(s). NOTE: The record contains ten volumes (Volumes I-X). However, certain cover pages refer to two different sets of Volume numbers: (1) Transcript of Record (Volumes I- III) comprised of the documentary record; and (2) Court Reporter's Transcript of Record (Volumes I-VII) which are the trial transcripts. The trial transcript volumes include a second Volume number listed on the cover page, e.g., Volume IV of X, Volume V of X, etc. The citations to trial transcripts refer to the second volume number and not the court reporter's transcript volume number.

[2] Two years prior to Zakrzewski's guilty plea, the defense moved for and the trial court granted appointment of Dr. James Larson to evaluate him for competency to stand trial in December 1994. DAR Vol. I at 20-25; DAR Vol. VIII at 816-19.

two mental health experts to support two statutory mitigating circumstances that (1) he had no significant prior criminal history; and (2) the murders were committed while the defendant was under the influence of extreme mental or emotional disturbance. The witnesses were also presented to support 24 non-statutory mitigators.

Zakrzewski presented testimony of forensic/neuro-psychologist Dr. Barry Crown (DAR Vol. VII at 674-702) and forensic psychologist Dr. James Larson (DAR Vol. VIII at 809-75) to support the statutory mitigation. DAR Vol. I at 88-89. Drs. Crown and Larson's testimony is summarized:

Dr. Crown testified that his examination and testing revealed Zakrzewski suffered from an organic brain syndrome/neuro-cognitive disorder. DAR Vol. I at 95; and Vol. VII at 673-702. Zakrzewski fell within the broad category and general range of depressive disorders. He also had deficiencies in brain function, such as taking in new information and applying it to problem solving and auditory selective attention. Dr. Crown opined that Zakrzewski was under the influence of extreme mental and emotional disturbance when the crimes occurred.

Dr. Larson conducted a court ordered examination in 1994 to determine Zakrzewski's competency to stand trial. During the penalty phase almost two years later, Dr. Larson testified that Zakrzewski suffered from a major depressive disorder. DAR Vol. I at 95; DAR Vol. VIII at 809-75. Zakrzewski was very high functioning, but suffered from a number of disorders and problems such as ongoing personality disorder, attention deficit disorder, alcohol abuse, and depression. Dr. Larson opined that Zakrzewski was under extreme emotional distress or disturbance at the time of the murder, resulting from a combination of mild organic brain impairment, neuropsychological impairment, stress, and depression.

The State presented evidence and witnesses to support three aggravating factors: (1) the defendant was previously convicted of other capital offenses (the contemporaneous murders); (2) the murders were committed in a cold, calculated, and premeditated manner without pretense of legal or moral justification (CCP); and (3) the murders were committed in an especially heinous, atrocious, or cruel manner (HAC). *State v. Zakrzewski*, 717 So. 2d 488, 491 (Fla. 1998).

The State also presented forensic psychologist Dr. Henry McClaren to rebut the defense psychologists' testimony. DAR Vol. VIII at 879-80; DAR Vol. IX at 1134-69. Dr. McClaren's testimony is summarized: He conducted psychological testing with Zakrzewski, who appeared to have an adjustment disorder, evidenced by disturbed emotions and conduct, and affected by intoxication at the time he killed his family. Zakrzewski had a personality disorder with borderline features, but did not meet the full criteria of borderline personality disorder. However, Dr. McClaren could not rule out a degree of brain dysfunction. Dr. McClaren opined that Zakrzewski was under extreme emotional disturbance at the time of the murders, but appreciated the criminality of his conduct and was able to conform his conduct to the requirements of law, rather than murder his family, and was not psychotic.

The jury recommended Zakrzewski be sentenced to death for the murders of [redacted] by a vote of seven to five. The jury recommended life imprisonment for [redacted] murder. *Zakrzewski*, 717 So. 2d at 491. Thereafter, the parties filed respective sentencing

memoranda and additional argument was made to the trial court.[3] DAR Vol. II at 269-79, 281-93.

The trial court entered its sentencing order on April 19, 1996. DAR Vol II at 310-20; *State v. Zakrzewski*, 1996 WL 34578426 (Fla. Cir. Ct. 1996). It found that the State proved all three aggravating circumstances beyond a reasonable doubt for each of the three murders and gave significant weight to both of Zakrzewski's statutory mitigators. *Id.* The trial court also considered the 24 non-statutory mitigators, giving them weight as follows: that Zakrzewski: (1) turned himself in (little weight); (2) pleaded guilty (little weight); (3) was an exceptionally hard worker (significant weight); (4) was on the Dean's List in his third year of college (significant weight); (5) served in an exemplary manner in the United States Air Force (significant weight); (6) showed severe grief and remorse (substantial weight); (7) was a

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[3] During the sentencing hearing, defense counsel informed the trial court that he made a tactical decision not to elicit testimony from Drs. Crown or Larson that Zakrzewski could not appreciate the criminality of his conduct. Counsel avoided eliciting that testimony in anticipation of the State's rebuttal witness Dr. McClaren. The defense requested that the court consider Drs. Crown and Larson's prior depositions which addressed this mitigator. DAR Vol. II at 342-43.

loving husband and father until the offense (substantial weight); (8) was under great stress due to work, college, child care, housework, and lack of sleep (little weight); (9) was a patient and humble man (little weight); (10) was raised without his natural father in his home (little weight); (11) lacked prior domestic relationships (little weight); (12) had a passive role in his marriage, in a union dominated by his wife (no weight); (13) received little religious upbringing (little weight); (14) embraced the Christian faith (little weight); (15) was a hyperactive child and prescribed Ritalin (no weight); (16) had a long term adjustment disorder (no weight); (17) suffered a major depressive episode (no weight); (18) had potential for rehabilitation (no weight); (19) exhibited good behavior while hiding for an extended period of time under an assumed name (slight weight); (20) was a loving and good son (no weight); (21) was intelligent (no weight); (22) was well thought of by friends, neighbors, and co-workers (no weight); (23) was impaired by alcohol at the time of the offense (no weight); and (24) was not a psychopath (no weight). *Zakrzewski*, 717 So. 2d at 491, n. 1.

The trial court concluded that the aggravating circumstances outweighed the mitigating factors for all three of the murders. The

trial court followed the jury's recommendation of death for the murders of [redacted], but overrode the jury's life recommendation for [redacted] murder and imposed death sentences for all three murders. *Id.* at 491.

Zakrzewski raised nine issues on direct appeal.[4] The Florida Supreme Court found:

1. The HAC aggravator was appropriate to [redacted] murders because murdering one's children execution style with a machete caused them to "suffer unthinkable horror." *Zakrzewski*, 717 So. 2d at 492. However, finding HAC in [redacted] murder was trial court error because she may have been unaware of her impending

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[4] (1) The trial court erred by finding HAC; (2) the trial court erred by finding CCP because he was under extreme emotional distress at the time of the murders; (3) the death sentence is not proportionate in this case; (4) the trial court erred in overriding the jury's recommendation of life for [redacted]; (5) the trial court allowed prejudicial photographs of the victims to be admitted into evidence; (6) the trial court permitted State's mental health expert to testify about Nietzsche and his views on Christianity; (7) the trial court permitted the State's mental health expert to testify, when the testimony did not rebut the testimony of Zakrzewski's mental health expert; (8) the trial court failed to instruct the jury that Zakrzewski's ability to understand his conduct was substantially impaired; and (9) the trial court failed to instruct the jury on each of Zakrzewski's non-statutory mitigating factors. *Id.* at 492.

death. But the error was harmless beyond a reasonable doubt. *Id.* at 492-93;

2. The CCP aggravator was appropriate and killing one's family to save them from divorce does not constitute a pretense of moral or legal justification. *Id.* at 492;

3. Zakrzewski's death sentence was not disproportionate, the trial court did not err determining the mitigation did not outweigh aggravation as to [redacted]; and the weight CCP and contemporaneous murders supported the death sentence for [redacted] murder. *Id.* at 493-94;

4. No trial court error overriding the jury's life recommendation for [redacted] murder. *Id.* at 494;

5. No error admitting victim photographs. *Id.* at 494-95.

6. No error allowing the State's mental health expert witness Dr. McClaren testimony regarding Friedrich Nietzsche and Christianity, which were relevant to the statutory mitigator that Zakrzewski was under the influence of extreme emotional disturbance at the time of the murders. *Id.* at 495-96;

7. No error allowing Dr. McClaren's testimony which was relevant to non-statutory mitigator that Zakrzewski embraced the

Christian faith, yet was preoccupied with Nietzsche before and after the muders. *Id.* at 495;

8. No error failing to instruct the jury that Zakrzewski's ability to understand the criminality of his conduct was substantially impaired. *Id.*; and

9. No error not instructing the jury on each of the 24 non-statutory mitigating factors. *Id.*

Zakrzewski's conviction and death sentences became final in 1999 when the United States Supreme Court denied his petition for writ of certiorari on January 25, 1999. *Zakrzewski v. Florida*, 525 U.S. 1126 (1999).

In January 2000, Zakrzewski, represented by registry counsel D. Reed Ammon, filed his initial postconviction motion to vacate judgment and sentence under Fla. R. Crim P. 3.851. However, Baya Harrison was later appointed as registry counsel and filed an amended postconviction motion on June 28, 2001. The amended motion raised five claims: (1) trial counsel were ineffective for failing to move to suppress evidence seized from his home; (2) Zakrzewski's guilty pleas were involuntary; (3) Zakrzewski was denied a fair penalty phase before a panel of impartial, indifferent jurors; (4) trial

counsel were ineffective for failing to object to the State's improper and prejudicial closing argument; and (5) Florida's death penalty statute is unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). *Zakrzewski v. State*, 866 So. 2d 688, 691-92 (Fla. 2003). Following an evidentiary hearing, the trial court denied the motion, which was affirmed on appeal. *Id.* Zakrzewski did not seek certiorari review by the United States Supreme Court.

In 2009, represented by registry counsel Martin McClain, Zakrzewski filed a first successive postconviction motion, raising two claims that: (1) Florida's lethal injection protocol violated the Eighth Amendment to the United States Constitution; and (2) newly discovered evidence consisting of a 2006 American Bar Association Report demonstrates that his conviction and sentence constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. The trial court summarily denied the motion and the Florida Supreme Court affirmed the denial on appeal. *Zakrzewski v. State*, 13 So. 3d 1057 (Fla. 2009) (unpublished). Zakrzewski did not seek certiorari review by the United States Supreme Court.

In November 2010, registry counsel McClain filed a second successive postconviction motion raising two claims: (1) Zakrzewski's conviction and death sentence violated the First, Sixth, and Eighth Amendments under *Porter v. McCollum,* 558 U.S. 30 (2009), *Porter* applies retroactively, and reconsideration of his previously denied ineffective assistance of counsel claim is required; and (2) the circuit court erred in denying his motion to amend the postconviction motion in light of adoption of new lethal injection protocols and denying an evidentiary hearing. The Florida Supreme Court affirmed the summary denial of the successive motion. *Zakrzewski v. State*, 115 So. 3d 1004 (Fla. 2012) (unpublished). Zakrzewski did not seek certiorari review by the United States Supreme Court.

Registry counsel McClain filed Zakrzewski's third successive postconviction motion in March 2013. The motion claimed the State's penalty phase expert Dr. McClaren gave false and misleading testimony regarding Zakrzewski's beliefs in principles espoused by Nietzsche, violating *Brady* and *Giglio.*[5] The claim alleged the State

[5] *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972).

falsely portrayed that Zakrzewski was preoccupied with Nietzsche's writings regarding narcissistic superman-type philosophy. The trial court summarily denied the claim as untimely and procedurally barred since the issue was addressed in the direct appeal. The Florida Supreme Court affirmed the motion's summary denial. *Zakrzewski v. State*, 147 So. 3d 531 (Fla. 2014) (unpublished), *cert. denied Zakrzewski v. Florida*. 575 U.S. 2015.

On May 2, 2016, Zakrzewski filed a state petition for writ of habeas corpus seeking relief under *Hurst v. Florida*, 577 U.S. 92 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). The petition was denied. *Zakrzewski v. Jones, etc.*, 221 So. 3d 1159 (Fla. 2017).

In January 2017, Zakrzewski, represented by registry counsel McClain, filed a fourth successive postconviction motion based on *Hurst v. Florida* and *Hurst v. State*, which was summarily denied. On appeal, the Florida Supreme Court affirmed summary denial of the motion, concluding that the Court's prior denial of his habeas petition raising similar claims served as a procedural bar. The Court also cautioned Zakrzewski that a rehearing motion would be

stricken. *Zakrzewski v. State*, 254 So. 3d 324 (Fla. 2018), *cert. denied*, *Zakrzewski v. Florida*, 587 U.S. 988 (2019).[6]

Federal Proceedings:

On February 23, 2004, John W. Nall, assisted by Baya Harrison, Esquire, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 in the Northern District of Florida on Zakrzewski's behalf raising six grounds for relief.[7] *Zakrzewski v. Crosby, et. al.*, 3:04-cv-00066 (N.D. Fla. Feb. 23, 2004). The District Court denied the habeas petition on September 30, 2004 and granted a certificate

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[6] Mr. McClain died on March 7, 2022 and Dawn Macready, Capital Collateral Regional Counsel–Northern Region substituted and appeared as state postconviction counsel on June 30, 2022.

[7] (1) Fifth, Sixth, and Fourteenth Amendment claims for denial of due process of law and a fair trial because the state was permitted to present expert testimony about his allegedly anti-Christian beliefs; (2) a Sixth Amendment claim for ineffective assistance of counsel due to trial counsel's failure to object to penalty phase closing arguments made by the prosecutor; (3) a Sixth Amendment challenge to Florida's death penalty statute based on *Apprendi v. New Jersey* and *Ring v. Arizona*, *supra*; (4) an Eighth Amendment claim that the death penalty is disproportionate as applied to him, violating his rights to equal protection under the law and subjecting him to cruel and unusual punishment; (5) a Sixth Amendment claim for ineffective assistance of counsel due to trial counsel's failure to file a motion to suppress; and (6) Fifth and Sixth Amendment claims of denial of a fair trial due to the admission of graphic crime scene photographs into evidence in the sentencing phase.

of appealability on two issues: (1) whether trial counsel was ineffective for failure to object to statements made by the prosecutor in closing argument regarding Nietzsche, and (2) whether trial counsel was ineffective for failure to file a motion to suppress evidence contained in the house which constituted the murder scene. Doc #30-2 and 38. Mr. Nall moved to withdraw as counsel a second time on November 10, 2004, which the district court granted (Docs. #41, 42, and 49).

Registry counsel McClain was appointed to represent Zakrzewski in the Eleventh Circuit appeal. The Eleventh Circuit found that trial counsel's failure to object to the prosecutor's closing arguments was not deficient performance and the warrantless search of Zakrzewski's house was justified by exigent circumstances. *Zakrzewski v. McDonough*, 455 F.3d 1254 (11th Cir. 2006).

Zakrzewski filed a Federal Rule of Civil Procedure 60(b) motion to reopen the federal habeas proceedings and alleged that state registry counsel Harrison and appointed federal habeas counsel Nall perpetrated fraud on him and the federal court. The motion was dismissed as a successive habeas petition, but reversed by the

Eleventh Circuit and remanded for reconsideration on the merits. *Zakrzewski v. McDonough*, 490 F.3d 1264 (11th Cir. 2007).

On remand, the district court denied Zakrzewski's Rule 60(b) motion. *Zakrzewski v. McDonough*, 2007 WL 2827735 (N.D. Fla. Sept. 26, 2007). The district court granted a certificate of appealability on the question of whether Petitioner's Rule 60(b) motion alleged facts sufficient to constitute fraud upon the court. *Zakrzewski v. McDonough*, 2008 WL 150050 (N.D. Fla. Sept. 26, 2007 (N.D. Fla. Jan. 14, 2008). On appeal, the Eleventh Circuit found the district court did not abuse its discretion denying Zakrzewski's Rule 60(b) motion. *Zakrzewski v. McNeil*, 573 F.3d 1210 (11th Cir. 2009), *cert. denied*, *Zakrzewski v. McNeil*, 560 U.S. 956 (2010).

On Tuesday, July 1, 2025, Governor Ron DeSantis signed a death warrant scheduling Edward Zakrzewski's execution for July 31, 2025 at 6:00 p.m. ET (5:00 p.m. CT). On the same day, the Florida Supreme Court issued an order directing that all trial court proceedings be completed and the final order be entered by the circuit court no later than Monday, July 14, 2025 at 11:00 a.m. ET (10:00 a.m. CT). *Zakrzewski v. State*, 1960-88367.

Respectfully submitted,

JAMES UTHMEIER
FLORIDA ATTORNEY GENERAL

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PL-01, The Capitol
Tallahassee, FL 32399-1050

CO-COUNSEL FOR THE STATE OF FLORIDA

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of July, 2025, the foregoing **FACTS OF THE CRIME AND PROCEDURAL HISTORY** was electronically filed with the Clerk of the Court via the Florida Courts E-Portal Filing System for service to the following: **The Honorable Lacey Powell Clark**, Circuit Court Judge, judge.clark@Flcourts1.gov, Amanda.Bailey@Flcourts1.gov; **Lisa M. Fusaro**, Assistant Capital Collateral Regional Counsel – North, Lisa.Fusaro@ccrc-north.org; **Alicia A. Hampton**, Assistant Capital Collateral Regional Counsel – North, Alicia.Hampton@ccrc-north.org; **Bridgette Jensen**, Chief Assistant State Attorney, bjensen@osa1.org.; **Matthew Casey**, Assistant State Attorney, mcasey@osa1.org; **Christina Porrello**, Senior Attorney, Florida Department of Corrections, Christina.Porrello@fdc.myflorida.com; and the **Florida Supreme Court Clerk**, warrant@flcourt.org.

*/s/ Janine D. Robinson*
Janine D. Robinson
Assistant Attorney General

CO-COUNSEL FOR THE STATE OF FLORIDA

**IN THE CIRCUIT COURTOF THE FIRST JUDICIAL CIRCUIT**
**IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**vs.**

**EDWARD J. ZAKRZEWSKI, II,**

**Defendant.**

**CASE NO.: 1994-CF-001283A**
**DIV.: 001**
**DEATH WARRANT SIGNED FOR EXECUTION – JULY 1, 2025**

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**NOTICE OF CAPITAL POSTCONVICTION CASE MANAGEMENT CONFERENCE ON TUESDAY, JULY 2, 2025, AT 2:00 P.M. (CENTRAL TIME)**
**and**
**DIRECTIONS TO COURT REPORTER**

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**NOTICE IS HEREBY GIVEN,** pursuant to Florida Rule of Criminal Procedure 3.851(h)(6), that a case management conference is scheduled for the following date and time, at the Okaloosa County Courthouse Annex Extension, 1940 Lewis Turner Blvd, Fort Walton Beach, FL 32547.

**Tuesday, July 2, 2025, at 2:00 p.m. Central Time**

Unless otherwise indicated, **it is anticipated that out-of-town counsel will attend via Zoom/teleconference,** and Defendant's presence is not required. Counsel for Defendant and the State are requested to appear at the scheduled time.

To join the conference from your **computer**, go to: https://zoom.us/j/6562095036.
Then, type in the meeting ID number: 656 209 5036.

To join the conference from your **telephone**, dial: 1 312 626 6799 US (Primary), 1 929 205 6099 US (Secondary).
Then, type in the meeting ID number: 656 209 5036.

Be advised that this is a court event and may be digitally recorded. All participants could be recorded from the time they login until they exit.

This case management conference shall be reported by the Official Court Reporter for Okaloosa County, Florida. Pursuant to Florida Rule of Criminal Procedure 3.851(h)(7), **the Court Reporter is DIRECTED** to report the proceedings using the most advanced and accurate technology available in general use at the Okaloosa County Courthouse Annex Extension. The

court reporter shall also prepare the transcript expeditiously.

**PLEASE GOVERN YOURSELVES ACCORDINGLY.**

**DONE AND ORDERED** in Chambers in Fort Walton Beach, Okaloosa County, Florida

07/02/2025 11:44:52

signed by CIRCUIT COURT JUDGE LACEY POWELL CLARK 07/02/2025 11:44:52 l1y4j1ib

**LACEY POWELL CLARK**
**CIRCUIT COURT JUDGE**

LPC/may

**Clerk of Court to Serve a Copy of this Order on the Following:**

**EDWARD J. ZAKRZEWSKI, II**, DC No. 554000, Florida State Prison, Post Office Box 800, Raiford, Florida 32083

**ALICIA HAMPTON**, Assistant Capital Collateral Counsel- Northern Region, Alicia.Hampton@ccrc-north.org

**LISA FUSARO**, Assistant Capital Collateral Counsel- Northern Region, Lisa.Fusaro@ccrc-north.org

**CHARMAINE MILLSAPS**, Senior Assistant Attorney General, charmaine.millsaps@myfloridalegal.com, capapp@myfloridalegal.com

**JASON W. RODRIGUEZ**, Senior Assistant Attorney General, capapp@myfloridalegal.com, jason.rodriguez@myfloridalegal.com

**JANINE D. ROBINSON**, Assistant Attorney General, Janine.Robinson@myfloridalegal.com

**CHRISTINA PORRELLO**, Florida Department of Corrections, christina.porrello@fdc.myflorida.com

**MATTHEW CASEY**, Assistant State Attorney, mcasey@osa1.org

**BRIDGETT JENSEN**, Chief Assistant State Attorney, bjensen@osa1.org

**OKALOOSA COUNTY COURT REPORTERS**, Okaloosa.Reporters@FLCOURTS1.GOV

**FLORIDA SUPREME COURT**, warrant@flcourts.org

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT**
**IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**vs.**

**EDWARD J. ZAKRZEWSKI, II,**

**Defendant.**

**CASE NO.: 1994-CF-1283**
**DIV.: 001**
**DEATH WARRANT SIGNED FOR EXECUTION - JULY 1, 2025**

---

**ORDER ON FIRST CASE MANAGEMENT CONFERENCE**
**AND**
**NOTICE OF FILING DEADLINES AND HEARINGS**

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**THIS MATTER** is before the Court for proceedings relating to a death warrant, signed by the Honorable Ron DeSantis, Governor of Florida, on July 1, 2025. The Supreme Court of Florida entered an order on July 1, 2025, setting time constraints regarding the proceedings. Pursuant to that order, the proceedings in the trial court must be concluded no later than **10:00 a.m. Central, 11:00 a.m. Eastern, on Monday, July 14, 2025.**

This Court held a case management conference on July 2, 2025, via Zoom. The following persons were present: Alicia Hampton and Lisa Fusaro of the Office of Capital Collateral Regional Counsel – North; Charmaine Millsaps and Janine Robinson of the Office of the Attorney General; Bridgette Jensen and Matthew Casey of the Office of the State Attorney; Christina Porrello, William Gwaltney, and Kristen Lonergan of the Florida Department of Corrections; and Lindsey Brigham of the Florida Department of Law Enforcement.

Therefore, the following filing deadlines and hearing dates are hereby scheduled:

- The Florida Department of Corrections shall provide the past 10 years of inmate

records to defense counsel no later than **Thursday, July 3, 2025, at 5:00 p.m. Central, 6:00 p.m. Eastern.**

- Any additional public records requests must be filed no later than **Thursday, July 3, 2025, at 2:00 p.m. Central, 3:00 p.m. Eastern**. For any request made, defense counsel is directed to provide to the Court the name of the contact person at the agency from which records are requested.
- Any objections from agencies affected by public records requests are due no later than **Monday, July 7, 2025, at 1:00 p.m. Central, 2:00 p.m. Eastern**.
- A hearing on any objections to public records requests shall be held on **Tuesday, July 8, 2025, at 8:00 a.m. Central, 9:00 a.m. Eastern.** This hearing shall be conducted by Zoom/teleconference. Zoom instructions are included herein.
- This Court's order on public records objections will be filed by **Tuesday, July 8, 2025, at 12:00 p.m. Central, 1:00 p.m. Eastern.**
- Compliance with all public records requests (if applicable) is due **by Tuesday, July 8, 2025, at 4:00 p.m. Central, 5:00 p.m. Eastern.**
- The successive postconviction motion must be filed no later than **Wednesday, July 9, 2025, at 1:00 p.m. Central, 2:00 p.m. Eastern,** and the motion shall comply with the requirements of Florida Rule of Criminal Procedure 3.851.
- The State's answer to the successive postconviction motion must be filed by **Thursday, July 10, 2025, at 8:00 a.m. Central, 9:00 a.m. Eastern,** and shall comply with the requirements of Rule 3.851.
- A second case management conference shall be convened on **Thursday, July 10, 2025, at 1:00 p.m. Central, 2:00 p.m. Eastern.** The purpose of this hearing shall

be to determine whether an evidentiary hearing should be held and to hear argument on any purely legal claims not based on disputed facts. This hearing shall be conducted by Zoom/teleconference. Zoom instructions are included herein.

- This Court's order on the second case management conference will be filed by **Thursday, July 10, 2025, at 3:00 p.m. Central, 4:00 p.m. Eastern.**
- An evidentiary hearing, if granted, will be convened on **Friday, July 11, 2025, at 8:00 a.m. Central, 9:00 a.m. Eastern,** at the **Okaloosa County Annex Extension** located at **1940 Lewis Turner Boulevard, Fort Walton Beach, Florida 32547.** This hearing shall be held in person.
- The final order on the successive motion for postconviction relief shall be filed by **Monday, July 14, 2025, at 10:00 a.m. Central, 11:00 a.m. Eastern.**
- The Clerk of Court shall have the record on appeal filed in the Supreme Court of Florida by **Monday, July 14, 2025, at 3:30 p.m. Central, 4:30 p.m. Eastern.**

Defendant's presence is not required at the hearings scheduled for **July 8** and **July 10**, and the parties may attend those hearings via Zoom/teleconference.

Zoom instructions: To join a hearing from your **computer**, go to: **https://zoom.us/j/6562095036.** Then, type in the meeting ID number: **656 209 5036**. To join a hearing from your **telephone**, dial: **1 312 626 6799 US** (Primary), **1 929 205 6099** US (Secondary). Then, type in the meeting ID number: **656 209 5036**.

Be advised that this is a court event and may be digitally recorded. All participants could be recorded from the time they log in until they exit.

Pursuant to Florida Rule of Criminal Procedure 3.851(h)(7), **THE COURT REPORTER**

**IS DIRECTED** to report the proceedings using the most advanced and accurate technology available in general use at the Okaloosa County Courthouse Annex Extension. The court reporter shall also prepare transcripts expeditiously.

The parties are directed to send a courtesy copy of all filings to the Court's judicial assistant via email at amanda.bailey@flcourts1.gov.

Accordingly, it is **ORDERED** and **ADJUDGED** that the attorneys shall comply with the filing deadlines and attend the hearings as set forth in this Order.

**DONE AND ORDERED** in Chambers in Fort Walton Beach, Okaloosa County, Florida.

07/02/2025 17:12:48

signed by CIRCUIT COURT JUDGE LACEY POWELL CLARK 07/02/2025 05:12:48 OfmC3Srn

**LACEY POWELL CLARK**
**CIRCUIT COURT JUDGE**

LPC/may

## NOTICE TO PERSONS WITH DISABILITIES

**If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact:**

**Court Administration, ADA Liaison**
**Okaloosa County**
**1940 Lewis Turner Boulevard**
**Fort Walton Beach, Florida 32547**
**Phone (850) 609-4700 Fax (850) 651-7725**
**ADA.Okaloosa@flcourts1.gov**

**at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.**

**Clerk of Court to Serve a Copy of this Order on the Following:**

**EDWARD J. ZAKRZEWSKI, II**, DC No. 554000, Florida State Prison, Post Office Box 800, Raiford, Florida 32083

**ALICIA HAMPTON**, Assistant Capital Collateral Counsel-Northern Region, Alicia.Hampton@ccrc-north.org

**LISA FUSARO**, Assistant Capital Collateral Counsel-Northern Region, Lisa.Fusaro@ccrc-north.org

**CHARMAINE MILLSAPS**, Senior Assistant Attorney General, charmaine.millsaps@myfloridalegal.com, capapp@myfloridalegal.com

**JANINE D. ROBINSON**, Assistant Attorney General, Janine.Robinson@myfloridalegal.com

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**WILLIAM GWALTNEY**, Florida Department of Corrections, Bill.Gwaltney@fdc.myflorida.com

**KRISTEN LONERGAN**, Florida Department of Corrections, kristen.lonergan@fdc.myflorida.com

**LINDSEY BRIGHAM**, Florida Department of Law Enforcement, LindseyBrigham@fdle.state.fl.us

**MATTHEW CASEY**, Assistant State Attorney, mcasey@osa1.org

**BRIDGETTE JENSEN**, Chief Assistant State Attorney, bjensen@osa1.org

**OKALOOSA COUNTY COURT REPORTERS**, Okaloosa.Reporters@FLCOURTS1.GOV

**FLORIDA SUPREME COURT**, warrant@flcourts.org

Filing # 226594094 E-Filed 07/03/2025 01:28:00 PM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**
_____/

**Case No. 1994-CF-1283
Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
July 31, 2025 at 6:00 p.m.**

To: Governor Ron DeSantis
The Capital
400 South Monroe Street
Tallahassee, FL 32399
Meredith.Pardo@eog.myflorida.com
Zachary.Loyed@eog.myflorida.com
Gov.Legal@eog.mynorida.com

**DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS
[EXECUTIVE OFFICE OF THE GOVERNOR]**

The Defendant, **EDWARD JAMES ZAKRZEWSKI, II**, by and through his undersigned counsel, hereby makes demand of the **EXECUTIVE OFFICE OF THE GOVERNOR**, under Florida Rule of Criminal Procedure 3.852(i) for public records pertinent to this case under a truncated timeline. In support, Mr. Zakrzewski states as follows:

1. Mr. Zakrzewski is an indigent Florida inmate under a sentence of death and subject to execution by lethal injection pursuant to Section 922.105, Florida Statutes. A Death Warrant was signed by Governor Ron DeSantis on Tuesday, July 1, 2025. This warrant was accompanied by a letter dated July 1, 2025 to the Governor from the Attorney General James Uthmeier. Mr. Zakrzewski's execution has been scheduled for Thursday, July 31, 2025 at 6:00 p.m.

2. Undersigned counsel attests that:

a. counsel has made a timely and diligent search of the records repository;

b. counsel has identified with specificity the public records that are not at the records repository; and

c. the records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

3. The records requested are as follows:

a. All communications and correspondence regardless of form, including, but not limited to, emails, faxes, letters, minutes or notes of meetings, and/or telephone call records or notes, between Governor Ron DeSantis, and/or any current or former employee of the Executive Office of the Governor, and any of the victims' family or friends, regarding EDWARD ZAKRZEWSKI (DOB: 1/31/1965; DC# 554000);

b. All communications and correspondence regardless of form, including, but not limited to, emails, faxes, letters, minutes or notes of meetings, and/or telephone call records or notes, between Governor Ron DeSantis and/or any current or former employee of the Executive Office of the Governor, and the Florida Commission on Offender Review and/or Office of Executive Clemency related to EDWARD ZAKRZEWSKI (DOB: 1/31/1965; DC# 554000);

c. All communications and correspondence regardless of form, including, but not limited to, emails, faxes, letters, minutes or notes of meetings, and/or telephone call records or notes, between Governor Ron DeSantis and/or any current or former employee of the Executive Office of the Governor, and the Office of the Attorney General related to EDWARD ZAKRZEWSKI (DOB: 1/31/1965; DC# 554000);

d. All communications and correspondence regardless of form, including, but not limited to, emails, faxes, letters, minutes or notes of meetings, and/or telephone call records or notes, between Governor Ron DeSantis and/or any current or former employee of the Executive Office of the Governor, and the State Attorney's Office for the First Judicial Circuit related to EDWARD ZAKRZEWSKI (DOB: 1/31/1965; DC# 554000);

e. All communications and correspondence regardless of form, including, but not limited to, emails, faxes, letters, minutes or notes of meetings, and/or telephone call records or notes, between Governor Ron DeSantis and/or any current or former employee of the Executive Office of the Governor, and any current or former employee of the Okaloosa County Clerk of Court related to EDWARD ZAKRZEWSKI (DOB: 1/31/1965; DC# 554000);

f. All policies, procedures, internal memoranda, or other documents (or a statement indicating lack of same) outlining the criteria and selection process for inmates to receive executive clemency, including but not limited to how an inmate is selected for consideration of clemency, when an inmate is eligible for consideration, and any other pertinent information regarding the selection process and criteria;

g. All policies, procedures, internal memoranda, or other documents (or a statement indicating lack of same) outlining the criteria for determining how to grant executive clemency, including but not limited to, what factors are considered in determining whether to grant clemency, how much weight should be given to each factor, and any other pertinent information regarding the process;

h. The number of individuals presently on death row who have been selected for clemency review, as well as the number of individuals whose clemency review has been completed;

i. All policies, procedures, internal memoranda, or other documents outlining the criteria and selection process for inmates to receive a death warrant, including but not limited to how an inmate is selected for a warrant, when an inmate is eligible for a warrant, what factors are considered in determining whether to issue a warrant, and any other pertinent information regarding the process;

j. Any document, record, list or other memoranda naming individuals currently on Florida's Death Row who have had complete or partial clemency investigations or whose cases have resulted in a clemency, pursuant to the authority prescribed in Article IV, Section 8(a) of the Florida Constitution and Rule 15 of the Rules for Executive Clemency. This request does not seek documents generated in any particular individual's clemency investigation, but only records indicating the existence of such an investigation and/or clemency determination;

k. Any document, record, list or other memoranda indicating, for those individuals to whom clemency was denied, the date of the denial of clemency by the Governor and Clemency Board. This request does not seek documents generated in any particular individual's clemency investigation, but only records indicating that a clemency determination has been made; and

l. Any letters, emails, notices, or other written correspondence, regardless of form, received by the Executive Office of the Governor from the Florida Supreme

Court notifying the Governor of the names of individuals sentenced to death who are eligible for a death warrant, between January 1, 2015 and the present.

**Any responsive email communications related to public business contained in private email accounts are also public records and must be produced.**

4. The requested records are relevant to the subject matter of the postconviction proceeding and are reasonably calculated to lead to the discovery of admissible evidence in that such records may contain, or, through further investigation, may lead to the discovery of, evidence that Mr. Zakrzewski's convictions and sentences were obtained in violation of his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments, as well as his evidence that Florida's clemency process, and the manner in which the Governor determined that Mr. Zakrzewski should receive a death warrant on July 1, 2025, was arbitrary and capricious in violation of the Eighth and Fourteenth Amendments to the United States Constitution. *Furman v. Georgia*, 408 U.S. 238, 310 (1972).

5. Mr. Zakrzewski demands that the records requested be copied, indexed and delivered to the records repository by your agency pursuant to this Court's scheduling order with a courtesy copy delivered via e-mail to undersigned counsel.

WHEREFORE, Mr. Zakrzewski respectfully requests this Court to order the above-named agency to produce the records described above.

**AFFIDAVIT OF COLLATERAL COUNSEL**

I, Lisa M. Fusaro, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.

Lisa M. Fusaro
Assistant Capital Collateral Regional Counsel
*Counsel for Mr. Zakrzewski*

STATE OF FLORIDA

COUNTY OF Bradford

Sworn to or affirmed and subscribed before me by means of ☑ physical presence or ☐ online notarization, this 2nd day of July, 2025, by LISA M. FUSARO who is personally known to me or has shown the following identification:

NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires: May 3, 2026

ASA MONROE
Commission # HH 260843
Expires May 3, 2026

## CERTIFICATE OF SERVICE

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, Assistant Attorney General Janine D. Robinson (Janine.Robinson@myfloridalegal.com and capapp@myfloridalegal.com), Senior Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com), Chief Assistant State Attorney Bridgette Jensen, (Bjensen@osa1.com), Assistant State Attorney Matt Casey (mcasey@osa1.org), the Honorable Lacey Powell Clark (Judge.Clark@flcourts1.gov and Amanda.Bailey@flcourts1.gov); and the Florida Supreme Court (warrant@flcourts.org) on this 3rd day of July 2025.

Respectfully submitted,

/s/ **Lisa M. Fusaro**
LISA M. FUSARO
Florida Bar No. 119074
Assistant Capital Collateral Counsel
Lisa.Fusaro@ccrc-north.org

/s/ **Alicia Hampton**
ALICIA HAMPTON
Florida Bar No. 1026214
Assistant Capital Collateral Counsel
Alicia.Hampton@ccrc-north.org

Capital Collateral Counsel
Regional Counsel – Northern Region
1004 DeSoto Park Drive
Tallahassee, FL 32301
Telephone: (850) 487-0922
Facsimile: (850) 487-1422

*Counsel for Mr. Zakrzewski*

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**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**
_____/

**Case No. 1994-CF-1283
Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
July 31, 2025 at 6:00 p.m.**

To: Florida Commission on Offender Review
Office of Executive Clemency
4070 Esplanade Way
Tallahassee, FL 32399-2450
ATTN: Rana Wallace, General Counsel
Ranawallace@fcor.state.fl.us

**DEFENDANT'S DEMAND FOR PUBLIC RECORDS
[FLORIDA COMMISSION ON OFFENDER REVIEW]**

The Defendant, **EDWARD JAMES ZAKRZEWSKI, II**, by and through his undersigned counsel, hereby makes demand of the **FLORIDA COMMISSION ON OFFENDER REVIEW**, under Florida Rule of Criminal Procedure, 3.852(i) for public records pertinent to this case under a truncated schedule. In support, Mr. Zakrzewski states as follows:

1. Mr. Zakrzewski is an indigent Florida inmate under a sentence of death and subject to execution by lethal injection pursuant to Section 922.105, Florida Statutes. A Death Warrant was signed by Governor Ron DeSantis on Tuesday, July 1, 2025. This warrant was accompanied by a letter dated July 1, 2025, to the Governor from the Attorney General James Uthmeier. Mr. Zakrzewski's execution has been scheduled for Thursday, July 31, 2025, at 6:00 p.m.

2. Under Section 922.052, Florida Statutes, the executive clemency process must be concluded prior to the Death Warrant being issued.

3. Under Rule 15 of the Rules of Executive Clemency the Florida Commission on

Offender Review "may conduct a thorough and detailed investigation into all factors relevant to the issue of clemency and provide a final report to the Clemency Board." This investigation includes, but is not limited to, an interview with the defendant, the trial attorneys on the case, the presiding judge, and the defendant's family.

4. The request is not overly broad or unduly burdensome. A mere inconvenience to the agency cannot outweigh Mr. Zakrzewski's due process rights to gather additional evidence to avoid the ultimate sanction of execution.

5. Undersigned counsel attests that:

   a. counsel has made a timely and diligent search of the records repository;

   b. counsel has identified with specificity the public records that are not at the records repository; and

   c. the records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

6. The records requested are as follows:

   a. Any records concerning communications, including emails, faxes, letters, minutes or notes of meetings, telephone call records or notes (written or audio), between the Office of the State Attorney for the First Judicial Circuit and the Florida Commission on Offender Review, concerning Edward Zakrzewski (DOB 1/31/1965; DC# 554000);

   b. Any records concerning communications, including emails, faxes, letters, minutes or notes of meetings, telephone call records or notes (written or audio), between the Office of the Attorney General and the Florida Commission on

Offender Review, concerning Edward Zakrzewski (DOB 1/31/1965; DC# 554000);

c. Any records concerning communications, including emails, faxes, letters, minutes or notes of meetings, telephone call records or notes (written or audio), between the Florida Commission on Offender Review and the Executive Office of the Governor, concerning Edward Zakrzewski (DOB 1/31/1965; DC# 554000);

d. Any records concerning communications, including emails, faxes, letters, minutes or notes of meetings, telephone call records or notes (written or audio), between the Florida Commission on Offender Review and any current or former employee of the Okaloosa County Clerk of Court, concerning Edward Zakrzewski (DOB 1/31/1965; DC# 554000);

e. All notes, memoranda, letters, electronic mail and/or files, drafts, charts, reports and/or other files created by others provided to the Florida Commission on Offender Review and/or the Office of Executive Clemency which relate to Edward Zakrzewski (DOB 1/31/1965; DC# 554000);

f. All information (regardless of form) received from any law enforcement or other agency related to Edward Zakrzewski (DOB 1/31/1965; DC# 554000);

g. Copies of all emails, correspondence, or notes from any communications or phone calls between any member or employee of the Office of Executive Clemency and/or Florida Commission on Offender Review, and the victims' friends and/or family, regarding Edward Zakrzewski (DOB 1/31/1965; DC# 554000);

h. Copies of all emails, correspondence, or notes from any communications or phone call(s) between any member or employee of the Office of Executive Clemency and/or Florida Commission on Offender Review, and Mr. Zakrzewski's

clemency counsel, Michael Flowers (Florida Bar # 510416);

i. Copies of any contract for legal services for the clemency proceedings of Mr. Zakrzewski. Copies of any document, record, report, or other memoranda generated by Mr. Zakrzewski's clemency attorney, Michael Flowers (Florida Bar # 510416), that lists the hours billed for services rendered and/or describes services rendered;

j. All policies, procedures, internal memoranda, or other documents outlining the criteria and selection process for inmates to receive executive clemency, including but not limited to how an inmate is selected for consideration of clemency, when an inmate is eligible for consideration, and any other pertinent information regarding the selection process and criteria;

k. All policies, procedures, internal memoranda, or other documents outlining the criteria for decision making regarding the granting of clemency by the Commission on Offender Review and/or the Office of Executive Clemency, including but not limited to, what factors are considered in determining whether to grant clemency, how much weight should be given to each factor, and any other pertinent information regarding the process;

l. The number of individuals presently serving on death row who have been selected for clemency review, as well as the number of individuals whose clemency review has been completed;

m. All policies, procedures, internal memoranda, or other documents outlining the criteria and selection process for inmates to receive a death warrant, including but not limited to how an inmate is selected for a warrant, when an inmate is eligible for a warrant, what factors are considered in determining whether to issue a warrant,

and any other pertinent information regarding the process;

n. Any document, record, list or other memoranda naming individuals currently on Florida's Death Row who have had a full or partial clemency investigations or upon whose cases a determination on the issue of clemency has been made, pursuant to the authority proscribed in Article IV, Section 8(a) of the Florida Constitution and Rule 15 of the Rules for Executive Clemency. This request does not seek documents generated in any particular individual's clemency investigation, but only any documents created indicating that such an investigation has ever existed, or a that clemency determination has ever been made; and

o. Any document, record, list or other memoranda indicating, for those individuals to whom clemency was denied, the date of the denial of clemency by the Governor and Clemency Board. This request does not seek documents generated in any particular individual's clemency investigation, but only any documents created indicating that a clemency determination has ever been made.

7. These records are relevant to the subject matter of the postconviction proceeding, or appear reasonably calculated to lead to newly discovered evidence, as well as evidence that Florida's clemency process, and the arbitrary and capricious manner in which the Governor determined that Mr. Zakrzewski should receive a death warrant on July 1, 2025, violates the Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding provisions of the Florida Constitution. U.S. CONST. amends. VIII; XIV; FLA. CONST. arts. I, § 9; 17; 24; *Furman v. Georgia*, 408 U.S. 238, 310 (1972).

8. Mr. Zakrzewski demands that the records requested be copied, indexed, and delivered to the records repository by your agency pursuant to this Court's scheduling order with

a courtesy copy delivered via e-mail to undersigned counsel.

WHEREFORE, Mr. Zakrzewski respectfully requests this Court to order the above-named agency to produce the records described above.

**AFFIDAVIT OF COLLATERAL COUNSEL**

I, Lisa M. Fusaro, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.

LMFusaro

Lisa M. Fusaro
Assistant Capital Collateral Regional Counsel
*Counsel for Mr. Zakrzewski*

STATE OF FLORIDA

COUNTY OF Bradford

Sworn to or affirmed and subscribed before me by means of ☑ physical presence or ☐ online notarization, this 2nd day of July, 2025, by LISA M. FUSARO who is personally known to me or has shown the following identification:

NOTARY PUBLIC, STATE OF FLORIDA

ASA MONROE
Commission # HH 260843
Expires May 2026

My Commission Expires: May 3, 2026

## CERTIFICATE OF SERVICE

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, Assistant Attorney General Janine D. Robinson (Janine.Robinson@myfloridalegal.com and capapp@myfloridalegal.com), Senior Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com), Chief Assistant State Attorney Bridgette Jensen, (Bjensen@osa1.com), Assistant State Attorney Matt Casey (mcasey@osa1.org), Florida Commission on Offender Review General Counsel Rana Wallace (Ranawallace@fcor.state.fl.us), the Honorable Lacey Powell Clark (Judge.Clark@flcourts1.gov and Amanda.Bailey@flcourts1.gov); and the Florida Supreme Court (warrant@flcourts.org) on this 3rd day of July 2025.

Respectfully submitted,

/s/ **Lisa M. Fusaro**
LISA M. FUSARO
Florida Bar No. 119074
Assistant Capital Collateral Counsel
Lisa.Fusaro@ccrc-north.org

/s/ **Alicia Hampton**
ALICIA HAMPTON
Florida Bar No. 1026214
Assistant Capital Collateral Counsel
Alicia.Hampton@ccrc-north.org

Capital Collateral Counsel
Regional Counsel – Northern Region
1004 DeSoto Park Drive
Tallahassee, FL 32301
Telephone: (850) 487-0922
Facsimile: (850) 487-1422

*Counsel for Mr. Zakrzewski*

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**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**
_____/

**Case No. 1994-CF-1283
Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
July 31, 2025 at 6:00 p.m.**

To: James Uthmeier, Attorney General of Florida
Office of the Attorney General
State of Florida
P1-01 The Capital
Tallahassee, FL 32399-1050

**DEFENDANT'S DEMAND FOR PUBLIC RECORDS
[OFFICE OF THE ATTORNEY GENERAL]**

The Defendant, **EDWARD JAMES ZAKRZEWSKI, II**, by and through his undersigned counsel, hereby makes demand of the **OFFICE OF THE ATTORNEY GENERAL**, under Florida Rule of Criminal Procedure 3.852(i) for public records pertinent to this case under a truncated schedule. In support, Mr. Zakrzewski states as follows:

1. Mr. Zakrzewski is an indigent Florida inmate under a sentence of death and subject to execution by lethal injection pursuant to Section 922.105, Florida Statutes. A Death Warrant was signed by Governor Ron DeSantis on Tuesday, July 1, 2025. This warrant was accompanied by a letter dated July 1, 2025, to the Governor from the Attorney General James Uthmeier. Mr. Zakrzewski's execution has been scheduled for Thursday, July 31, 2025, at 6:00 p.m.

2. The request is not overly broad or unduly burdensome. A mere inconvenience to the agency cannot outweigh Mr. Zakrzewski's due process rights to gather additional evidence to avoid the ultimate sanction of execution.

3. Undersigned counsel attests that:

   a. counsel has made a timely and diligent search of the records repository;

   b. counsel has identified with specificity the public records that are not at the records repository; and

   c. the records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

4. The records requested are as follows:

   a. All records not previously produced relating to Edward James Zakrzewski, II (DOB 1/31/1965; DC# 554000) in the custody and/or control of the Attorney General's Office (regardless of division, unit, branch, task force and/or other section in which records may be housed), regardless of whether the documents were generated by or addressed to an employee of the Attorney General's Office. This includes notes, memoranda, letters, electronic mail and/or files, drafts, charts, reports and/or other files generated by attorneys, law enforcement officers, investigators, lab personnel, crime scene analysts, interviewers, and/or other persons, organizations, agencies, associations, corporations, hospitals;

   b. All communications and correspondence regardless of form, including, but not limited to, emails, faxes, letters, minutes or notes of meetings, and/or telephone call records or notes, between employees or former employees of the Office of the Attorney General and the Executive Office of the Governor; State Attorney's Office for the First Judicial Circuit; the Okaloosa County Clerk of Court; Florida Commission on Offender Review; and/or the Office of Executive Clemency,

concerning Edward James Zakrzewski, II (DOB 1/31/1965; DC# 554000), and/or the victims' and/or their family. This includes records concerning Mr. Zakrzewski's clemency proceedings, and the signing of his warrant on July 1, 2025; and

c. Any *Brady* or *Giglio* material in the possession or control of your agency.

**Responsive email communications related to public business contained in private email accounts are also public records and must be produced.**

5. The requested records are relevant to the subject matter of the postconviction proceeding and are reasonably calculated to lead to the discovery of admissible evidence in that such records may contain, or, through further investigation, may lead to the discovery of, evidence that Mr. Zakrzewski's convictions and sentences were obtained in violation of his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments, including but not limited to, his rights to a trial free of deliberate deception of the court and the jurors by the presentation of evidence known to be false, or of evidence later learned to be false and allowed to go uncorrected, and his right to the disclosure of exculpatory evidence, including impeachment evidence (*see Strickler v. Green*, 527 U.S. 263 (1999); *Kyles v. Whitley*, 514 U.S. 419 (1995); *United States v. Bagley*, 473 U.S. 667 (1985); *Giglio v. United States*, 405 U.S. 150 (1972); *Brady v. Maryland*, 373 U.S. 83 (1963)).

6. Additionally, correspondence and records shared between the Office of the Attorney General or the Office of the State Attorney, the Executive Office of the Governor, and the Florida Commission on Offender Review are relevant to the subject matter of the postconviction proceeding, or appear reasonably calculated to lead to evidence that Florida's clemency process, and arbitrary and capricious manner in which the Governor determined that Mr. Zakrzewski should receive a death warrant on July 1, 2025, violates the Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding provisions of the Florida Constitution.

U.S. CONST. amends. VIII; XIV; FLA. CONST. arts. I, § 9; 17; 24; *Furman v. Georgia*, 408 U.S. 238, 310 (1972).

7. Mr. Zakrzewski demands that the records requested be copied, indexed, and delivered to the records repository by your agency pursuant to this Court's scheduling order with a courtesy copy delivered via e-mail to undersigned counsel.

WHEREFORE, Mr. Zakrzewski respectfully requests this Court to order the above-named agency to produce the records described above.

**AFFIDAVIT OF COLLATERAL COUNSEL**

I, Lisa M. Fusaro, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.

Lisa M. Fusaro
Assistant Capital Collateral Regional Counsel
*Counsel for Mr. Zakrzewski*

STATE OF FLORIDA

COUNTY OF Bradford

Sworn to or affirmed and subscribed before me by means of ☑ physical presence or ☐ online notarization, this 2nd day of July, 2025, by LISA M. FUSARO who is personally known to me or has shown the following identification:

NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires: May 3, 2026

ASA MONROE
Commission # HH 260843
Expires May 2026

## CERTIFICATE OF SERVICE

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, Assistant Attorney General Janine D. Robinson (Janine.Robinson@myfloridalegal.com and capapp@myfloridalegal.com), Senior Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com), Chief Assistant State Attorney Bridgette Jensen, (Bjensen@osa1.com), Assistant State Attorney Matt Casey (mcasey@osa1.org), the Honorable Lacey Powell Clark (Judge.Clark@flcourts1.gov and Amanda.Bailey@flcourts1.gov); and the Florida Supreme Court (warrant@flcourts.org) on this 3rd day of July 2025.

Respectfully submitted,

/s/ **Lisa M. Fusaro**
LISA M. FUSARO
Florida Bar No. 119074
Assistant Capital Collateral Counsel
Lisa.Fusaro@ccrc-north.org

/s/ **Alicia Hampton**
ALICIA HAMPTON
Florida Bar No. 1026214
Assistant Capital Collateral Counsel
Alicia.Hampton@ccrc-north.org

Capital Collateral Counsel
Regional Counsel – Northern Region
1004 DeSoto Park Drive
Tallahassee, FL 32301
Telephone: (850) 487-0922
Facsimile: (850) 487-1422

*Counsel for Mr. Zakrzewski*

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**
_____/

**Case No. 1994-CF-1283
Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
July 31, 2025 at 6:00 p.m.**

To: Brad E. Embry, Okaloosa County Clerk of Court
Attn: Susan Crawford
1940 Lewis Turner Blvd
Fort Walton Beach, FL 32547
scrawford@okaloosaclerk.com; kbryan@okaloosaclerk.com; and
appeals@okaloosaclerk.com

**DEFENDANT'S DEMAND FOR PUBLIC RECORDS
[OKALOOSA COUNTY CLERK OF COURT]**

The Defendant, **EDWARD JAMES ZAKRZESWKI, II**, by and through his undersigned counsel, hereby makes demand of the **OKALOOSA COUNTY CLERK OF COURT**, under Florida Rule of Criminal Procedure 3.852(i) for public records pertinent to this case under a truncated schedule. In support, Mr. Zakrzewski states as follows:

1. Mr. Hutchinson is an indigent Florida inmate under a sentence of death and subject to execution by lethal injection pursuant to Section 922.105, Florida Statutes. A Death Warrant was signed by Governor Ron DeSantis on Tuesday, July 1, 2025. This warrant was accompanied by a letter dated July 1, 2025, to the Governor from the Attorney General James Uthmeier. Mr. Zakrzewski's execution has been scheduled for Thursday, July 31, 2025, at 6:00 p.m.

2. The request is not overly broad or unduly burdensome. A mere inconvenience to the agency cannot outweigh Mr. Zakrzewski's due process rights to gather additional evidence to

avoid the ultimate sanction of execution.

3. Undersigned counsel attests that:

a. counsel has made a timely and diligent search of the records repository;

b. counsel has identified with specificity the public records that are not at the records repository; and

c. the records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

4. The records requested are as follows:

a. All communications and correspondence regardless of form, including, but not limited to, emails, faxes, letters, minutes or notes of meetings, and/or telephone call records or notes, between the Clerk and any current or former employee of the Okaloosa County Clerk of Court and Governor Ron DeSantis and/or any current or former employee of: the Office of the Attorney General; the Executive Office of the Governor; the State Attorney's Office for the First Judicial Circuit; the Florida Commission on Offender Review; and/or the Office of Executive Clemency, related to **Edward Zakrzewski (DOB 1/31/1965)**.

**Note: Any responsive email communications related to public business contained in private email accounts are also public records and must be produced.**

5. The records requested are relevant to the subject matter of this postconviction proceeding and existing records would lead to evidence that Florida's clemency and warrant process violates the Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding provisions of the Florida Constitution; and/or related to his right to the disclosure

of exculpatory evidence, including impeachment evidence. *See* U.S. CONST. amends. VIII; XIV; FLA. CONST. arts. I, § 9; 17; 24; *Furman v. Georgia*, 408 U.S. 238, 310 (1972); *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1970).

6. Mr. Zakrzewski demands that the records requested be copied, indexed and delivered to the records repository by your agency pursuant to this Court's scheduling order with a courtesy copy delivered via e-mail to undersigned counsel.

WHEREFORE, Mr. Zakrzewski respectfully requests this Court to order the above-named agency to produce the records described above.

**AFFIDAVIT OF COLLATERAL COUNSEL**

I, Lisa M. Fusaro, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.

L M Fusaro

Lisa M. Fusaro
Assistant Capital Collateral Regional Counsel
*Counsel for Mr. Zakrzewski*

STATE OF FLORIDA

COUNTY OF Bradford

Sworn to or affirmed and subscribed before me by means of ☑ physical presence or ☐ online notarization, this 2nd day of July, 2025, by LISA M. FUSARO who is personally known to me or has shown the following identification:

NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires: May 3, 2026

ASA MONROE
Commission # HH 260843
Expires May 3 2026

## CERTIFICATE OF SERVICE

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, Assistant Attorney General Janine D. Robinson (Janine.Robinson@myfloridalegal.com and capapp@myfloridalegal.com), Senior Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com), Chief Assistant State Attorney Bridgette Jensen, (Bjensen@osa1.com), Assistant State Attorney Matt Casey (mcasey@osa1.org), the Honorable Lacey Powell Clark (Judge.Clark@flcourts1.gov and Amanda.Bailey@flcourts1.gov); and the Florida Supreme Court (warrant@flcourts.org) on this 3rd day of July 2025.

Respectfully submitted,

/s/ **Lisa M. Fusaro**
LISA M. FUSARO
Florida Bar No. 119074
Assistant Capital Collateral Counsel
Lisa.Fusaro@ccrc-north.org

/s/ **Alicia Hampton**
ALICIA HAMPTON
Florida Bar No. 1026214
Assistant Capital Collateral Counsel
Alicia.Hampton@ccrc-north.org

Capital Collateral Counsel
Regional Counsel – Northern Region
1004 DeSoto Park Drive
Tallahassee, FL 32301
Telephone: (850) 487-0922
Facsimile: (850) 487-1422

Counsel for Mr. Zakrzewski

Filing # 226594094 E-Filed 07/03/2025 01:28:00 PM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**
_____/

**Case No. 1994-CF-1283
Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
July 31, 2025 at 6:00 p.m.**

To: Okaloosa County Sheriff's Office
Attn: Marsha Weaver
50 2nd Street
Shalimar, Florida 32579
mweaver@sheriff-okaloosa.org and kblackmon@sheriff-okaloosa.org

**DEFENDANT'S DEMAND FOR PUBLIC RECORDS
[OKALOOSA COUNTY SHERIFF'S OFFICE]**

The Defendant, **EDWARD JAMES ZAKRZESWKI, II**, by and through his undersigned counsel, hereby makes demand of the **OKALOOSA COUNTY SHERIFF'S OFFICE**, under Florida Rule of Criminal Procedure 3.852(i) for public records pertinent to this case under a truncated schedule. In support, Mr. Zakrzewski states as follows:

1. Mr. Zakrzewski is an indigent Florida inmate under a sentence of death and subject to execution by lethal injection pursuant to Section 922.105, Florida Statutes. A Death Warrant was signed by Governor Ron DeSantis on Tuesday, July 1, 2025. This warrant was accompanied by a letter dated July 1, 2025, to the Governor from the Attorney General James Uthmeier. Mr. Zakrzewski's execution has been scheduled for Thursday, July 31, 2025, at 6:00 p.m.

2. The request is not overly broad or unduly burdensome. A mere inconvenience to the agency cannot outweigh Mr. Zakrzewski's due process rights to gather additional evidence to

avoid the ultimate sanction of execution.

3. Undersigned counsel attests that:

a. counsel has made a timely and diligent search of the records repository;

b. counsel has identified with specificity the public records that are not at the records repository; and

c. the records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

4. The records requested are as follows:

a. Any files, records, reports, letters, memoranda, notes, drafts, and/or emails in the possession or control of your agency not previously produced, relating to the investigation and/or prosecution of **Edward Zakrzewski (DOB 1/31/1965)** and/or the investigation of the deaths of [redacted];

b. Any *Brady* or *Giglio* material in the possession or control of your agency; and

c. All communications and correspondence regardless of form, including, but not limited to, emails, faxes, letters, minutes or notes of meetings, and/or telephone call records or notes, between Okaloosa County Sheriff's Office and Governor Ron DeSantis and/or any current or former employee of the Executive Office of the Governor, related to **Edward Zakrzewski (DOB 1/31/1965)**.

**Note: Any responsive email communications related to public business contained in private email accounts are also public records and must be produced.**

5. The records requested are relevant to the subject matter of this postconviction proceeding and existing records would lead to evidence that Florida's clemency and warrant

process violates the Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding provisions of the Florida Constitution; and/or related to his right to the disclosure of exculpatory evidence, including impeachment evidence. *See* U.S. CONST. amends. VIII; XIV; FLA. CONST. arts. I, § 9; 17; 24; *Furman v. Georgia*, 408 U.S. 238, 310 (1972); *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1970).

6. Mr. Zakrzewski demands that the records requested be copied, indexed and delivered to the records repository by your agency pursuant to this Court's scheduling order with a courtesy copy delivered via e-mail to undersigned counsel.

WHEREFORE, Mr. Zakrzewski respectfully requests this Court to order the above-named agency to produce the records described above.

## AFFIDAVIT OF COLLATERAL COUNSEL

I, Lisa M. Fusaro, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.

L M Fusaro

Lisa M. Fusaro
Assistant Capital Collateral Regional Counsel
*Counsel for Mr. Zakrzewski*

STATE OF FLORIDA

COUNTY OF Bradford

Sworn to or affirmed and subscribed before me by means of ☑ physical presence or ☐ online notarization, this 2nd day of July, 2025, by LISA M. FUSARO who is personally known to me or has shown the following identification:

NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires: May 3, 2026

ASA MONROE
Commission # HH 260843
Expires M.., ?026

## CERTIFICATE OF SERVICE

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, Assistant Attorney General Janine D. Robinson (Janine.Robinson@myfloridalegal.com and capapp@myfloridalegal.com), Senior Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com), Chief Assistant State Attorney Bridgette Jensen, (Bjensen@osa1.com), Assistant State Attorney Matt Casey (mcasey@osa1.org), the Honorable Lacey Powell Clark (Judge.Clark@flcourts1.gov and Amanda.Bailey@flcourts1.gov); and the Florida Supreme Court (warrant@flcourts.org) on this 3rd day of July 2025.

Respectfully submitted,

/s/ **Lisa M. Fusaro**
LISA M. FUSARO
Florida Bar No. 119074
Assistant Capital Collateral Counsel
Lisa.Fusaro@ccrc-north.org

/s/ **Alicia Hampton**
ALICIA HAMPTON
Florida Bar No. 1026214
Assistant Capital Collateral Counsel
Alicia.Hampton@ccrc-north.org

Capital Collateral Counsel
Regional Counsel – Northern Region
1004 DeSoto Park Drive
Tallahassee, FL 32301
Telephone: (850) 487-0922
Facsimile: (850) 487-1422

Counsel for Mr. Zakrzewski

Filing # 226594094 E-Filed 07/03/2025 01:28:00 PM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**
_____/

**Case No. 1994-CF-1283
Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
July 31, 2025 at 6:00 p.m.**

To: State Attorney's Office
ATTN: Records Division
190 West Government Street
Pensacola, FL 32502

**DEFENDANT'S DEMAND FOR PUBLIC RECORDS
[STATE ATTORNEY'S OFFICE]**

The Defendant, **EDWARD JAMES ZAKRZEWSKI, II**, by and through his undersigned counsel, hereby makes demand of the **STATE ATTORNEY'S OFFICE FOR THE FIRST JUDICIAL CIRCUIT** under Florida Rule of Criminal Procedure, 3.852(i) for public records pertinent to this case under a truncated schedule. In support, Mr. Zakrzewski states as follows:

1. Mr. Zakrzewski is an indigent Florida inmate under a sentence of death and subject to execution by lethal injection pursuant to Section 922.105, Florida Statutes. A Death Warrant was signed by Governor Ron DeSantis on Tuesday, July 1, 2025. This warrant was accompanied by a letter dated July 1, 2025, to the Governor from the Attorney General James Uthmeier. Mr. Zakrzewski's execution has been scheduled for Thursday, July 31, 2025, at 6:00 p.m.

2. Undersigned counsel represents that due diligence has been exercised in reviewing the public records received in the past and, to the extent possible, undersigned has identified public records which are not in the possession of defendant's undersigned counsel.

3. Undersigned counsel attests that:

a. counsel has made a timely and diligent search of the records repository;

b. the specific records requested below are not at the records repository; and

c. the records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

4. The request is not overly broad or unduly burdensome. A mere inconvenience to the agency cannot outweigh Mr. Zakrzewski's due process rights to gather additional evidence to avoid the ultimate sanction of execution.

5. The records requested are relevant to the subject matter of this postconviction proceeding and existing records would lead to evidence that Florida's clemency and warrant process violates the Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding provisions of the Florida Constitution; and/or related to his right to the disclosure of exculpatory evidence, including impeachment evidence. *See* U.S. CONST. amends. VIII; XIV; FLA. CONST. arts. I, § 9; 17; 24; *Furman v. Georgia*, 408 U.S. 238, 310 (1972); *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1970).

6. The records requested are as follows:

a. Any files, records, reports, letters, memoranda, notes, drafts, and/or emails in the possession or control of your agency relating to the investigation and/or prosecution of **Edward Zakrzewski (DOB 1/31/1965)** and/or the investigation of the death of [redacted] since the date of last production; and/or any documents that were, for any reason, not produced previously;

b. All emails, text messages, faxes, letters, and other forms of correspondence,

as well as any memos or notes documenting communications or phone calls, between any Office of the State Attorney employee or former employee (including, but not limited to, victim advocates) and the family/acquaintances of the victims, regarding **Edward Zakrzewski (DOB 1/31/1965)**;

c. Any *Brady* or *Giglio* material in the possession or control of your agency; and

d. All emails, text messages, faxes, letters, and other forms of correspondence, as well as any memos or notes documenting communications or phone calls, between any Office of the State Attorney employee or former employee (including, but not limited to, victim advocates) and the Office of the Attorney General; the Executive Office of the Governor; Florida Commission on Offender Review and/or the Office of Executive Clemency, regarding **Edward Zakrzewski (DOB 1/31/1965),** on or after July 1, 2024.

**Note: Any responsive email communications related to public business contained in private email accounts are also public records and must be produced.**

7. Mr. Zakrzewski demands that the records requested be copied, indexed, and delivered to the records repository by your agency pursuant to this Court's scheduling order with a courtesy copy delivered via e-mail to undersigned counsel.

WHEREFORE, Mr. Zakrzewski respectfully requests this Court to order the above-named agency to produce the records described above.

**AFFIDAVIT OF COLLATERAL COUNSEL**

I, Lisa M. Fusaro, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.

Lisa M. Fusaro
Assistant Capital Collateral Regional Counsel
*Counsel for Mr. Zakrzewski*

STATE OF FLORIDA

COUNTY OF Bradford

Sworn to or affirmed and subscribed before me by means of ☑ physical presence or ☐ online notarization, this 2nd day of July, 2025, by LISA M. FUSARO who is personally known to me or has shown the following identification:

NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires: May 3, 2026

ASA MONROE
Commission # HH 260843
Expires [illegible] 2026

## CERTIFICATE OF SERVICE

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, Assistant Attorney General Janine D. Robinson (Janine.Robinson@myfloridalegal.com and capapp@myfloridalegal.com), Senior Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com), Chief Assistant State Attorney Bridgette Jensen, (Bjensen@osa1.com), Assistant State Attorney Matt Casey (mcasey@osa1.org), the Honorable Lacey Powell Clark (Judge.Clark@flcourts1.gov and Amanda.Bailey@flcourts1.gov); and the Florida Supreme Court (warrant@flcourts.org) on this 3rd day of July 2025.

Respectfully submitted,

/s/ **Lisa M. Fusaro**
LISA M. FUSARO
Florida Bar No. 119074
Assistant Capital Collateral Counsel
Lisa.Fusaro@ccrc-north.org

/s/ **Alicia Hampton**
ALICIA HAMPTON
Florida Bar No. 1026214
Assistant Capital Collateral Counsel
Alicia.Hampton@ccrc-north.org

Capital Collateral Counsel
Regional Counsel – Northern Region
1004 DeSoto Park Drive
Tallahassee, FL 32301
Telephone: (850) 487-0922
Facsimile: (850) 487-1422

*Counsel for Mr. Zakrzewski*

Filing # 226594094 E-Filed 07/03/2025 01:28:00 PM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**
_____/

**Case No. 1994-CF-1283
Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
July 31, 2025 at 6:00 p.m.**

**DEFENDANT'S DEMAND FOR PRODUCTION OF PUBLIC RECORDS RELATED TO LETHAL INJECTION PROTOCOL [FLORIDA DEPARTMENT OF LAW ENFORCEMENT]**

To: **Mark Glass, Commissioner**
**Florida Department of Law Enforcement**
Attn: Office of the General Counsel
P.O. Box 1489
Tallahassee, FL 32302
Email: lindseyBrigham@fdle.state.fl.us

The Defendant, **EDWARD JAMES ZAKRZEWSKI, II**, by and through undersigned counsel, hereby makes the following demands of Commissioner Mark Glass of the **FLORIDA DEPARTMENT OF LAW ENFORCEMENT** ("FDLE"), pursuant to Florida Rule of Criminal Procedure 3.852(i) for public records pertinent to this capital case under a truncated schedule. In support, Mr. Zakrzewski states as follows:

1. Mr. Zakrzewski an indigent Florida inmate under a sentence of death and subject to execution by lethal injection pursuant to Section 922.105, Florida Statutes. This warrant was accompanied by a letter dated July 1, 2025, to the Governor from the Attorney General James Uthmeier. Mr. Zakrzewski's execution has been scheduled for Thursday, July 31, 2025, at 6:00 p.m.

2. The requested records are relevant to the subject matter of the postconviction proceeding and are reasonably calculated to lead to the discovery of admissible evidence in that such records may contain, or, through further investigation, may lead to the discovery of, evidence that execution by Florida's lethal injection procedures would constitute the cruel and unusual punishment of Mr. Zakrzewski in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding provisions of the Florida Constitution. U.S. CONST. amends. VIII; XIV; FLA. CONST. arts. I, § 9; 17; 24.

3. Undersigned counsel attests that:

A. counsel has made a timely and diligent search of the records repository;

B. counsel has identified with specificity the public records that are not at the records repository; and

C. the records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

4. The public records requested are as follows:

A. All records concerning the review process which led to the promulgation of the lethal injection procedures, including but not limited to computer print-outs or copies of research or literature reviewed, emails, faxes, letters, minutes or notes of meetings, telephone call records or notes, including any communications with FDOC, Office of the Attorney General, the Office of the Governor, any other outside agencies, experts (medical or other), other states or state departments of corrections, and/or the federal government;

B. All records relating to any correspondence, from September 9, 2013, to the present, with any federal agency including the Drug Enforcement Administration (DEA), the Food and Drug Administration (FDA), the Federal Bureau of Prisons (BOP), or the Department of Justice (DOJ) relating to Florida's execution procedures or the drugs used for lethal injection, including, but not limited to, any application or registration for permits and/or licenses, or permits and/or licenses required by any federal agency in connection with the purchase, storage, use, research, and disposal of rocuronium bromide, potassium acetate and etomidate, and/or any

communications including discussions of same.

C. Batch numbers of the etomidate the State intends to use to carry out the execution of Mr. Zakrzewski, to ensure they were not part of the recall of etomidate in 2014, or in the alternative, a certification from FDLE that the etomidate was not part of the recall and that the drug they intend to use is unexpired;

D. All records relating to execution training exercises, including logs, checklists, sign-in sheets, photographs, and videos related to the two designated FDLE monitors required by FDOC lethal injection procedures to be present during the execution of Mr. Zakrzewski;

E. Any records relating to any correspondence with any Florida state agency including the Florida Department of Health, from January 4, 2017, through the present, relating to the acquisition of rocuronium bromide, potassium acetate and etomidate;

F. All records, including logs or record books regarding the purchase, storage, maintenance, use, distribution, disposal, and expiration dates of pentobarbital and/or etomidate hydrochloride that show compliance (or non-compliance) with the Federal Controlled Substances Act and Florida Statutes, Chapters 828, 893, and 465 from September 9, 2013, to the present;

G. Any records consisting of photographs or videos of the execution chamber, including close-up photographs of all connections and tubing;

H. All records relating to the executions by lethal injection of (including the required logs, notes, memoranda, letters, electronic mail, and facsimiles) Louis Gaskin (DC#75116), Darryl Barwick (DC#092501), Duane Owen (DC#101660), James Barnes (DC#071551), Michael Zack III (DC#124439), Loran Cole (DC#335421), James Ford (DC#763722), Edward James (DC# 969121); Michael Tanzi (DC#K04389), Jeffrey Hutchinson (DC#124849), Glen Rogers (DC#124400), Anthony Wainwright (DC#123847), and Thomas Gudinas (DC#379799);

I. Any records consisting of photographs and videos of the actual executions by lethal injection of Louis Gaskin (DC#75116), Darryl Barwick (DC#092501), Duane Owen (DC#101660), James Barnes (DC#071551), Michael Zack III (DC#124439), Loran Cole (DC#335421), James Ford (DC#763722), Edward James (DC# 969121); Michael Tanzi (DC#K04389), Jeffrey Hutchinson (DC#124849), Glen Rogers (DC#124400), Anthony Wainwright (DC#123847), and Thomas Gudinas (DC#379799);

J. Any records related to the training and experience of all individuals directly involved with the executions of Louis Gaskin (DC#75116), Darryl Barwick (DC#092501), Duane Owen (DC#101660), James Barnes (DC#071551), Michael

Zack III (DC#124439), Loran Cole (DC#335421), James Ford (DC#763722), Edward James (DC# 969121); Michael Tanzi (DC#K04389), Jeffrey Hutchinson (DC#124849), Glen Rogers (DC#124400), Anthony Wainwright (DC#123847), and Thomas Gudinas (DC#379799);

K. All records related to the investigation and/or review of the executions of Louis Gaskin (DC#75116), Darryl Barwick (DC#092501), Duane Owen (DC#101660), James Barnes (DC#071551), Michael Zack III (DC#124439), Loran Cole (DC#335421), James Ford (DC#763722), Edward James (DC# 969121); Michael Tanzi (DC#K04389), Jeffrey Hutchinson (DC#124849), Glen Rogers (DC#124400), Anthony Wainwright (DC#123847), and Thomas Gudinas (DC#379799).

***** Any responsive email communications related to public business contained in private email accounts are also public records and must be produced.**

5. The request is not overly broad or unduly burdensome. A mere inconvenience to the agency cannot outweigh Mr. Zakrzewski's due process rights to gather evidence to avoid the ultimate sanction of execution.

6. The requested records relate to claims that Florida's method for lethal injection is unconstitutional and are necessary for undersigned counsel to investigate and raise a claim challenging the constitutionality of Florida's current method of lethal injection. The requested records specifically relate to FDOC's current February 18, 2025, procedures for lethal injection, as well as FDOC's nearly identical March 10, 2023, procedures for lethal injection.[1] Both use the current three-drug "etomidate protocol," which includes etomidate, rocuronium bromide, and potassium acetate. The requested records are necessary for Mr. Zakrzewski to investigate and raise a claim that Florida's lethal injection procedures are facially unconstitutional because the

[1] On February 18, 2025, Secretary Dixon promulgated new lethal injection procedures to supersede the *Florida Department of Corrections Execution by Lethal Injection Procedures* dated March 10, 2023. *See* Attachment A. However, upon comparison of the 2025 protocols with the 2023 protocols, there are no material differences regarding the core execution procedures, including the drug protocol, methods of venous access, and steps for administering the lethal injection. Therefore, for purposes of these requests, Mr. Zakrzewski is utilizing March 10, 2023, as the operative date.

procedures violate the Eighth Amendment's prohibition against cruel and unusual punishment. *See Bucklew v. Precythe*, 139 S. Ct. 1112 (2019); *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008).

7. Undersigned counsel acknowledges the Florida Supreme Court's ("FSC") current precedent finding that lethal injection records requests do not relate to a colorable claim for postconviction relief because the FSC has upheld the constitutionality of Florida's "etomidate protocol" in *Asay v. State*, 224 So. 3d 695 (Fla. 2017) and subsequent opinions. However, undersigned counsel respectfully submits that the FSC has not had a full and fair opportunity to judge the constitutionality of Florida's lethal injection procedures, because previous capital defendants, including defendants under an active death warrant, have never been given access to records related to Florida's lethal injection procedures or the executions of individuals under these procedures. Capital defendants in Florida have never been able to thoroughly investigate and present claims challenging the constitutionality of lethal injection because Florida courts have consistently and pervasively denied them access to agency records related to lethal injection. However, undersigned counsel submits that this Court has the authority to grant the requested lethal injection records under Fla. R. Crim. P. 3.852, and requests that this Court grant the records.

8. The requested records are necessary to prove that the current procedures are "very likely to cause serious illness and needless suffering," and there is a "substantial risk of serious harm" to Mr. Zakrzewski if the State of Florida executes him under the current method. *Glossip*, 576 U.S. at 877 (internal citations omitted). The lethal injection records requests are not overly broad or unduly burdensome. The requests have been narrowly tailored to records related to FDOC's current February 18, 2025, procedures for lethal injection, as well as FDOC's nearly identical March 10, 2023, procedures for lethal injection, and the executions of inmates under those current

procedures. Denying Mr. Zakrzewski the opportunity to access records that directly relate to how the state of Florida intends to carry out his execution on July 31, 2025 violates his right to due process and access to the courts under the Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

9. Mr. Zakrzewski demands that the records requested be copied, indexed, and delivered to the records repository by your agency pursuant to this Court's scheduling order with a courtesy copy delivered via e-mail to undersigned counsel.

WHEREFORE, Mr. Zakrzewski respectfully requests this Court to order the above-named agency to produce the records described above.

**AFFIDAVIT OF COLLATERAL COUNSEL**

I, Lisa M. Fusaro, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.

LM Fusaro

Lisa M. Fusaro
Assistant Capital Collateral Regional Counsel
*Counsel for Mr. Zakrzewski*

STATE OF FLORIDA

COUNTY OF Broadcord

Sworn to or affirmed and subscribed before me by means of ☑ physical presence or ☐ online notarization, this 2nd day of July, 2025, by LISA M. FUSARO who is personally known to me or has shown the following identification:

NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires: May 3, 2026

ASA MONROE
Commission # HH 260843
Expires May 3, 2026

## CERTIFICATE OF SERVICE

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, Assistant Attorney General Janine D. Robinson (Janine.Robinson@myfloridalegal.com and capapp@myfloridalegal.com), Senior Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com); Chief Assistant State Attorney Bridgette Jensen, (Bjensen@osa1.com), Assistant State Attorney Matt Casey (mcasey@osa1.org); Lindsey Brigham (lindseyBrigham@fdle.state.fl.us); the Honorable Lacey Powell Clark (Judge.Clark@flcourts1.gov and Amanda.Bailey@flcourts1.gov); and the Florida Supreme Court (warrant@flcourts.org) on this 3rd day of July 2025.

Respectfully submitted,

/s/ **Lisa M. Fusaro**
LISA M. FUSARO
Florida Bar No. 119074
Assistant Capital Collateral Counsel
Lisa.Fusaro@ccrc-north.org

/s/ **Alicia Hampton**
ALICIA HAMPTON
Florida Bar No. 1026214
Assistant Capital Collateral Counsel
Alicia.Hampton@ccrc-north.org

Capital Collateral Counsel
Regional Counsel – Northern Region
1004 DeSoto Park Drive
Tallahassee, FL 32301
Telephone: (850) 487-0922
Facsimile: (850) 487-1422

*Counsel for Mr. Zakrzewski*

# Attachment A

February 18, 2025

The Honorable Ron DeSantis
Executive Office of Governor Ron DeSantis
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Dear Governor DeSantis:

I have carefully reviewed the Execution by Lethal Injection Procedures issued by my Department. Pursuant to these procedures, I represent the following:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Sincerely,

Ricky D. Dixon
Secretary

# EXECUTION BY LETHAL INJECTION PROCEDURES

**PURPOSE:** To establish the procedures for the execution by lethal injection of inmates sentenced to death, pursuant to the dictates of Chapter 922, Florida Statutes and adhering to the requirements imposed under the Constitution of the State of Florida and the United States Constitution. The foremost objective of the lethal injection process is a humane and dignified death.

**APPLICATION:** This procedure applies to any execution by lethal injection conducted pursuant to Chapter 922, Florida Statutes. This procedure supersedes the Florida Department of Corrections *Execution by Lethal Injection Procedures* dated March 10, 2023.

**DEFINITIONS:**

(1) **Execution team**, where used herein, refers to correctional staff and other persons who are selected by the team warden designated by the Secretary to assist in the administration of an execution by lethal injection, and who have the training and qualifications, including the necessary licensure or certification, required to perform the responsibilities or duties specified. Individuals on the execution team will be referred to as "execution team member" or "team member" in these procedures.

(2) **Executioner**, where used herein, refers to an individual selected by the team warden to initiate the flow of lethal chemicals into the inmate. The executioner's sole function is to inject the chemicals into the IV access port by physically pushing the chemicals from the syringe. The executioner is only authorized to carry out this specific function under the direction of the team warden. An executioner shall be an adult, undergo a criminal background check and be sufficiently trained to administer the flow of lethal chemicals. The executioner must demonstrate to the satisfaction of the team warden that s/he is competent, trained, and of sufficient character to carry out the required function under the team warden's direction.

(3) **Institutional warden**, where used herein, refers to the warden of Florida State Prison, who shall be responsible for handling support functions necessary to carry out the lethal injection process.

(4) **Minister of religion**, where used herein, refers to a spiritual advisor requested by an inmate to attend an execution as permitted by section 922.11, Florida Statutes. The name of the requested minister of religion must be provided by the inmate to the institutional warden in writing on FDC Form DC6-236 within five days of the issuance of the Governor's Warrant of Execution. A minister of religion shall be an adult and shall undergo a criminal background check. The institutional warden shall also conduct a review process of the individual as described in Florida Department of Corrections rules and policies applicable to visitor approvals and to spiritual advisor visits. Such a



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review will be performed even if the requested minister of religion has been previously approved for regular visitation purposes. Prior to final approval, the institutional warden may also conduct interviews of the requested minister of religion or their associates. The institutional warden may undertake any investigation necessary to verify that the minister of religion is recognized by their organized religious body as qualified to perform religious functions as a representative of the religious organization or group. The institutional warden may waive any component of the review process if the requested minister of religion is a chaplain currently employed by the Florida Department of Corrections. Candidates not employed by the Florida Department of Corrections must also execute a Spiritual Advisor Execution Agreement. The agreement is attached hereto as Appendix A.

(5) **Team warden**, where used herein, refers to the warden designated by the Secretary. The team warden shall be a person who has demonstrated through experience, training, and good moral character the ability to perform an execution by lethal injection. The team warden has the final and ultimate decision making authority in every aspect of the lethal injection process. No deviation from any part of this procedure is authorized unless approved and directed by the team warden.

**SPECIFIC PROCEDURES:**

(1) **Receipt of Warrant:** These execution procedures will commence upon receipt of the Governor's Warrant of Execution. The institutional warden will schedule the execution for a date and time certain that is within the period of time designated in the warrant. The institutional warden will provide a copy of the Warrant of Execution to the Department's Secretary and General Counsel, deliver a copy to the named inmate and the team warden, and notify the Florida Department of Law Enforcement (FDLE), any state correctional institutions, and any local agencies that may be affected by the issuance of the warrant and of the date and time selected for the execution.

(2) **Selection of the Executioners:**

(a) The team warden will select two (2) executioners who are fully capable of performing the designated functions to carry out the execution. The team warden will provide each executioner with a copy of this procedure and will explain fully their respective duties and responsibilities and assure that each executioner is trained for the function assigned. The identities of the executioners will be kept strictly confidential as provided by statute.

(b) The team warden will designate one (1) of the selected executioners as the primary executioner and the other as the secondary executioner. The primary executioner will be solely responsible for administering the flow of lethal chemicals into the inmate during the execution. The secondary executioner will be present and available during the execution to assume the role of the primary executioner if the primary executioner becomes unable for any reason, as determined by the team warden, to carry out his/her functions.

(3) **Selection of the Execution Team:** The team warden will designate the execution team members and verify that each team member has the training and qualifications, and possesses current, necessary licensure or certification, required to perform the responsibilities or duties specified. The team warden will ensure that all execution team members and other involved



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staff have been adequately trained to perform their requisite functions in the execution process. The team warden shall select personnel with sufficient training and experience to perform the technical procedures needed to carry out an execution by lethal injection, including the mixing of the chemicals and placement of the venous access lines. The identities of any team members with medical qualifications shall be strictly confidential.

(a) The team warden shall select the team member(s) responsible for achieving and monitoring peripheral venous access from the following classes of trained professionals: a phlebotomist currently certified by the American Society for Clinical Pathology (ASCP), American Society of Phlebotomy Technicians (ASPT) or American Medical Technologists (AMT); a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(b) The team warden shall select the team member(s) responsible for achieving and monitoring central venous access, if necessary, from the following classes of trained professionals: an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(c) The team warden shall select the team member(s) responsible for examining the inmate prior to execution to determine health issues from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(d) The team warden shall select the team member(s) responsible for attaching the leads to the heart monitors and observing the monitors during the administration of execution from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(e) The team warden shall select the team member(s) responsible for purchasing, maintaining and mixing the lethal chemicals from the following classes of trained professionals: a physician, licensed under Chapter 458 or Chapter 459, Florida Statutes; or, a pharmacist licensed under Chapter 465, Florida Statutes.

(f) The team warden shall select other execution team members to carry out the following tasks:

1. Showering and preparation of the inmate.
2. Ensuring that the equipment necessary for an execution is in proper working order.
3. Escorting the inmate from his/her cell to the execution chamber.
4. Applying restraints to the inmate prior to applying the heart monitor leads and acquiring venous access.



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5. Maintaining the open telephone line with the Office of the Governor.
6. Reporting the actions inside the executioner's room to the team warden.
7. Maintaining the checklists that detail the events surrounding the execution.
8. Escorting the minster of religion.
9. Opening and closing the window covering to the witness gallery and turning on and off the public address (PA) system.

This list is not intended to be exhaustive. There may be other necessary tasks to carry out an execution and such tasks will be assigned by the team warden.

Each execution team member is responsible and authorized to raise concerns that become apparent during the execution and bring them to the attention of the team warden.

(4) **Training of the Execution Team and Executioners:** There shall be sufficient training to ensure that all personnel involved in the execution process are prepared to carry out their distinct roles for an execution. All team members shall be instructed on the effects of each lethal chemical. All simulations or reviews of the process shall be considered training exercises. The team warden, or his/her designee, will conduct simulations of the execution process on a quarterly basis at a minimum or more often as needed as determined by the team warden. Additionally, a simulation shall be conducted prior to the scheduled execution. All persons involved with the execution should participate in the simulations. If a person cannot attend the simulation, the team warden shall provide for an additional training opportunity or otherwise ensure that the person is adequately trained to complete his or her assigned task. There shall be a written record of any training activities. The simulations should anticipate various contingencies. Examples of possible contingencies shall include:

(a) Issues related to problems with equipment needed to carry out an execution.

(b) Problems related to venous access of the inmate, including the necessity to obtain an alternate venous access site during the execution process.

(c) The inmate is not rendered unconscious after the administration of the etomidate injection.

(d) Combative inmate.

(e) Incapacity of any execution team member or executioner.

(f) Unanticipated medical emergency concerning the inmate, an execution team member or executioner.

(g) Problems related to the order and security at the Florida State Prison, including but not limited to disturbances, unrest or resistance.

(h) Power failure or other facility problems.

This list is not meant to be exhaustive and only provides examples of the types of contingencies that could arise during the course of an execution. The team warden is responsible for ensuring that training addresses, at a minimum, the above situations.



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(5) **Use of Checklists:** Compliance with this procedure will be documented on appropriate checklists. Upon completion of each step in the process, an execution team member will indicate when the step has been completed. Prior to the administration of the lethal chemicals, the team warden will consult with the designated team member and verify that all steps in the process have been performed properly. At the conclusion of the process, the team warden will again consult with the designated team member and verify that the remaining steps in the process were performed properly. The team warden will then sign the forms, attesting that all steps were performed properly.

(6) **Purchase and Maintenance of Lethal Chemicals:** A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

(7) **FDLE Monitors:**

(a) Two (2) FDLE agents shall serve as monitors and shall be responsible for observing the actions of the execution team and the condition of the condemned inmate at all times during the execution process.

(b) The first FDLE agent shall be located in the executioner's room and is responsible for observing the preparation of the lethal chemicals and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two (2) minute intervals. A copy of the log shall be provided to the team warden and shall be available at the post execution debriefings.

(c) The second FDLE agent shall be located in the execution chamber and will be responsible for keeping a detailed log of what is occurring in the execution chamber at a minimum of two (2) minute intervals. A copy of the log shall be provided the team warden and shall be available for the post execution debriefings.

(8) **Approximately One (1) Week Prior to Execution:**

(a) The team warden will designate one or more execution team members to review the inmate's medical file and to make a limited physical examination of the inmate to determine whether there are any medical issues that could potentially interfere with the proper administration of the lethal injection process. The team member(s) will verbally report his/her findings to the team warden as soon as is practicable following the file review and physical examination. The results of this examination shall be documented in the inmate's file. After reviewing the results of the examination which should include a determination of the best access site and conferring with the team member(s) that performed the examination, the team warden shall conclude what is the more suitable method of venous access (peripheral or femoral) for the lethal injection process given the individual circumstances of the condemned inmate based on all information provided.



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(b) If a team member reports any issue that could potentially interfere with the proper administration of the lethal injection process, the team warden will consult with any or all of the members of the execution team and resolve the issue.

(9) **On the Day of Execution:**

(a) A food service director, or his/her designee, will personally prepare and serve the inmate's last meal. The inmate will be allowed to request specific food and non-alcoholic drink to the extent such food and drink costs forty dollars ($40) or less, is available at the institution, and is approved by the food service director.

(b) The inmate will be escorted by one (1) or more team members to the shower area where a team member of the same sex will supervise the showering of the inmate. Immediately thereafter, the inmate will be returned to his/her assigned cell and issued appropriate clothing. A designated member of the execution team will obtain and deliver the clothing to the inmate.

(c) A designated execution team member will ensure that the telephone in the execution chamber is fully functional and that there is a fully-charged, fully-functional cellular telephone in the execution chamber. Telephone calls will be placed from the telephone to ensure proper operation. Additionally, a member of the team shall ensure that the two-way audio communication system and the visual monitoring equipment are fully functional.

(d) A designated execution team member will ensure that the PA system is fully functional.

(e) The only staff authorized to be in the execution chamber area are members of the execution team and others as approved by the team warden, including two monitors from FDLE.

(f) A designated execution team member, in the presence of one or more additional team members and an independent observer from FDLE, will prepare the lethal injection chemicals as follows, ensuring that each syringe used in the lethal injection process is appropriately labeled, including the name of the chemical contained therein:

(1) Etomidate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe and needle will be used to draw fifty milliliters (50mls) of etomidate injection 2mg/ml from one or more vials containing same, for a total of one hundred milligrams (100mg) of etomidate injection. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube), clearly labeled with the number one (1), and placed in the first slot on a stand designed to hold eight (8) such syringes in separate slots. The stand will be clearly labeled with the letter "A." This process will be repeated with a second syringe, which will be clearly labeled with a number two (2) and placed in the second slot on stand "A." Two additional syringes will be drawn in the same manner, fitted with the blunt cannula, and clearly labeled with the numbers one (1) and two (2), respectively. These two syringes will be placed in the first two slots on a second stand that has been clearly labeled with the letter "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.



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(2) Rocuronium bromide injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw five hundred milligrams (500mg) of rocuronium bromide injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing five hundred milligrams (500mg) of rocuronium bromide injection, for a total of two thousand milligrams (2000mg). Two syringes will be clearly labeled with the numbers four (4) and five (5), respectively, and placed into slots four (4) and five (5) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately and placed in slots four (4) and five (5), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(3) Potassium acetate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw one hundred twenty milliequivalents (120mEq) of potassium acetate injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing one hundred twenty milliequivalents (120mEq) of potassium acetate injection, for a total of four hundred eighty (480) milliequivalents. Two syringes will be clearly labeled with the numbers seven (7) and eight (8), respectively, and placed into slots seven (7) and eight (8) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately, and placed in slots seven (7) and eight (8), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(4) Saline solution: A sterile, disposable twenty cubic centimeter (20cc) syringe will be used to draw twenty milliliters (20ml) of sterile saline solution from one or more vials containing same. This procedure will be repeated until there are four (4) syringes, each containing twenty milliliters (20ml) of sterile saline solution, for a total of eighty (80) milliliters. Each syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). Two syringes will be clearly labeled with the numbers three (3) and six (6), respectively, and placed into slots three (3) and six (6) on stand "A." This procedure will be repeated with the other two syringes, each of which will be placed in slots three (3) and six (6), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(g) The execution team member who has prepared the lethal chemicals will transport them personally, in the presence of one or more additional members of the execution team, to the executioner's room. Stand "A" will be placed on the worktop for use by the primary executioner, to be used during the execution by lethal injection. Stand "B" will be placed on a shelf underneath the worktop within easy reach of the executioners should they be needed during the execution. Stand "B" will not be used unless expressly ordered to be used by the team warden. The lethal chemicals will remain secure until the executioners arrive. No one other than the executioners will have access to the lethal chemicals, unless a stay is granted, in which case the execution team member who



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prepared the lethal chemicals will retrieve them from the locked room and dispose of them according to state and federal law.

(h) A designated execution team member will prepare, using an aseptic technique, two (2) standard intravenous (IV) infusion sets, each consisting of a pre-filled, sterile plastic bag of normal saline for IV use (a solution of sodium chloride at 0.9% concentration) with an attached drip chamber, a long sterile tube fitted with a back check valve and a clamp to regulate the flow, a connector to attach to the access device, and an extension set fitted with a luer lock tip for a blood cannula to allow for the infusion of the lethal chemicals into the line. The extension set that will be used to infuse the lethal chemicals into the primary injection line will be clearly marked with a "1," and the additional extension set that will be attached to the secondary injection line will be clearly marked with a "2."

(i) The team warden will explain the lethal injection preparation procedure to the inmate and ensure the provision of any medical assistance or care deemed appropriate. The inmate will be offered and, if accepted, will be administered intramuscular injections of hydroxyzine, in appropriate dosages relative to weight, to ease anxiety.

(j) Authorized media witnesses will be picked up at the designated media on-looker area located at New River Correctional Institution by two (2) designated Department of Corrections escort staff, transported to the main entrance of Florida State Prison as a group, cleared by security, and escorted to the population visiting park, where they will remain until being escorted to the witness room of the execution chamber by the designated escort staff.

(k) The team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each execution team member. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. Upon the arrival of the executioners to perform their duties, the team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each executioner. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. If one or both of the executioners is disqualified, the team warden will continue to select and test as many additional executioners as is necessary to ensure the presence of two qualified executioners at the execution.

(10) **Approximately Thirty (30) Minutes Prior to Execution:**

(a) A designated execution team member will establish telephone communication with the Office of the Governor on behalf of the team warden. The team warden will communicate with the Office of the Governor to determine whether any cause for delay exists. The phone line will remain open to the Office of the Governor during the entire execution procedure. The team member will use this open line to report the ongoing activities of the execution team and other personnel to the Office of the Governor.

(b) When the team warden determines that no cause for delay remains, a designated member of the execution team will escort the two (2) executioners into the executioner's room, where they will remain until the execution process is complete.



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(c) The team warden will read the Warrant of Execution to the inmate. The inmate may waive the reading of the warrant.

(d) Designated members of the execution team will apply wrist restraints to the inmate and escort him/her from his cell to the execution chamber.

(e) Designated members of the execution team will assist the inmate, if necessary, in positioning himself/herself onto the execution gurney in the execution chamber.

(f) Designated members of the execution team will secure the restraining straps.

(g) One or more designated members of the execution team will attach the leads to two (2) heart monitors to the inmate's chest, ensuring that the monitors are operational both before and after the chest restraints are secured.

(h) Unless the team warden has previously determined to gain venous access through a central line, a designated team member will insert one intravenous (IV) line into each arm at the medial aspect of the antecubital fossa of the inmate and ensure that the saline drip is flowing freely. The team member will designate one IV line as the primary line and clearly identify it with the number "1." The team member will designate the other line as the secondary line and clearly identify it with the number "2." If venous access cannot be achieved in either or both of the arms, access will be secured at other appropriate sites until peripheral venous access is achieved at two separate locations, one identified as the primary injection site and the other identified as the secondary injection site.

(i) If peripheral venous access cannot be achieved, a designated team member will perform a central venous line placement, with or without a venous cut-down (wherein a vein is exposed surgically and a cannula is inserted), at one or more sites deemed appropriate by that team member. If two sites are accessed, each line will be identified with a "1" or a "2," depending on their identification as the primary and secondary lines.

(j) One or more designated members of the execution team will remove, one at a time, from the pole attached to the gurney, the two (2) saline bags and pass the bags, along with the extension sets attached to lines labeled "1" and "2," through a small opening into the executioner's room, where a team member will hang the bags on separate hooks inside the room. The designated team member(s) will ensure that the tubing from the IV insertion points to the bags has not been compromised and that the saline drip is flowing freely. The team member will be responsible for continuously monitoring the viability of the IV lines prior to and during the administration of the execution.

(11) **Approximately Fifteen (15) Minutes Prior to Execution:**

(a) Official witnesses will be secured in the witness room of the execution chamber by two designated Department of Corrections escort staff.

(b) Authorized media witnesses will be secured in the witness room of the execution chamber.



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(c) The only persons authorized in the witness room are: twelve (12) official witnesses, including family members of the victim, four (4) alternate official witnesses, one (1) nurse or medical technician, twelve (12) authorized media representatives, one (1) representative from the Department's public affairs office, one (1) designated staff escort, and one (1) designated team member. Counsel for the convicted person and a minister of religion requested by the convicted person may also be present. Any exception must be approved by the institutional warden.

(d) The institutional warden may deny access to the institution to any visitor, official witness or other person he or she deems a risk to the security of the institution. In the event there is reasonable suspicion that an individual may initiate or attempt to initiate a violent or disruptive act prior to, during, or following an execution, that person will not be permitted to witness the execution and will be escorted off the prison grounds immediately.

(e) The execution chamber will be secured. Only the team warden, one (1) additional execution team member and one (1) FDLE monitor shall be allowed in the chamber during the administration of the execution. Any exceptions or contingencies must be approved by the team warden.

(f) The executioner's room will be secured. Only the executioners, the team member reporting actions in the executioner's room to the warden, the team member reporting actions to the Office of the Governor, the team member observing the heart monitors, the team member maintaining the checklists, and the FDLE agent assigned to the executioner's room shall be allowed in the executioner's room. Any exception must be approved by the team warden.

(12) **Administration of Execution:**

(a) An execution team member will open the covering to the witness gallery window. The team warden will use the open telephone line to determine from the Governor whether there has been a stay of execution. If the team warden receives a negative response, s/he will then proceed with the execution.

(b) An execution team member will turn on the PA system. The team warden will permit the inmate to make an oral statement, which will be broadcast into the witness gallery over the PA system. At the conclusion of the inmate's statement, or if the inmate declines to make a statement, the team warden will announce that the execution process has begun. A designated member of the execution team will turn off the PA system.

(c) In the presence of the secondary executioner and within sight of one (1) or more execution team members and one (1) of the FDLE monitors, the primary executioner will administer the lethal chemicals in the following manner:

(1) The executioner will remove from the stand on the worktop the syringe labeled number one (1), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.



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(2) The executioner will remove from the stand on the worktop the syringe labeled number two (2), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(3) The executioner will remove from the stand on the worktop the syringe labeled number three (3), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(4) At this point, the team warden will assess whether the inmate is unconscious. The team warden must determine, after consultation, that the inmate is indeed unconscious. If the inmate is unconscious and the team warden orders the executioners to continue, the executioners shall proceed to step (12)(c)(6).

(5) In the event that the inmate is not unconscious, the team warden shall signal that the execution process is suspended and note the time and order the window covering to the witness gallery to be closed. The execution team shall assess the viability of the secondary access site. If the secondary access site is deemed viable, then the team member shall designate this site as the new primary access site. If the secondary access site is compromised, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the team has secured a viable access site, the team warden shall order the drapes to be opened and signal that the execution process will resume. The executioners will then be directed to initiate the administration of lethal chemicals from stand "B" into the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline. The executioners will continue to use the remaining chemicals from stand "B" throughout the execution at the direction of team warden. The team warden will then again proceed to step (12)(c)(4) and assess whether the inmate is unconscious.

(6) The executioner will remove from the stand on the worktop the syringe labeled number four (4), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(7) The executioner will remove from the stand on the worktop the syringe labeled number five (5), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension



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set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(8) The executioner will remove from the stand on the worktop the syringe labeled number six (6), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(9) The executioner will remove from the stand on the worktop the syringe labeled number seven (7), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(10) The executioner will remove from the stand on the worktop the syringe labeled number eight (8), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(11) The primary executioner shall at all times administer the lethal injection chemicals. Only if the primary executioner becomes incapacitated shall the secondary executioner administer the lethal chemicals. At no time shall more than one (1) executioner inject any lethal chemicals to complete the execution.

(d) If at any time during the administration of the lethal chemicals the primary venous access becomes compromised, the team warden shall order the execution process stopped and order the window covering to the witness gallery to be closed. The execution team shall assess the primary access site and assess the viability of the secondary access site and take appropriate remedial action at the access site, if necessary. If neither access site is viable, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the execution team has secured a viable access site, the warden shall order the drapes to be opened and direct that the execution process will resume using the newly established primary line. The executioners will be directed to initiate the administration of lethal chemicals from stand "B" into the IV set attached to the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline, labeled number three (3). The team warden will then proceed to step (12)(c)(4), as described above.



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(e) Throughout the execution process, one (1) or more designated execution team members will observe the heart monitors. If the heart monitors reflect a flat line reading during or following the complete administration of the lethal chemicals, a physician will examine the inmate to determine whether there is complete cessation of respiration and heartbeat.

(f) Once the inmate is pronounced dead by the physician, a designated member of the execution team will record the time of death on the appropriate lethal injection procedures checklist.

(g) The team warden will notify the Governor via the open phone line that the sentence has been carried out and the time of death.

(h) A designated execution team member will turn on the PA system. The team warden shall make the following announcement to the witnesses in the gallery: "The sentence of the State of Florida vs. [Inmate Name] has been carried out at [time of day]."

(i) The designated team member will close the window covering to the witness gallery.

(j) The designated Department of Corrections escort staff will escort all witnesses, all of the media pool and any other individuals who are not members of the execution team from the witness room and the execution chamber.

(13) **Immediate Post-Execution Procedures:**

(a) Designated execution team members will dispose of the equipment and any remaining chemicals as required by state and federal law.

(b) The institutional warden will coordinate the entry of hearse attendants for recovery of the inmate's body.

(c) The inmate's body will be removed from the execution table by hearse attendants under the supervision of the designated team member.

(d) The institutional warden, or his/her designee, will obtain a certification of death from the physician and will deliver the certification to the hearse attendants prior to their departure.

(e) The inmate's body will be transported by the hearse attendants to the medical examiner's office in Alachua County for an autopsy.

(f) The team warden shall conduct a brief debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution. Subsequent debriefings will take place, as appropriate.

(14) **Follow-Up Procedures:**

(a) The institutional warden will forward the Warrant of Execution and a signed statement of the execution to the Secretary of State.

(b) The institutional warden will file an attested copy of the Warrant of Execution and a signed statement of the execution with the clerk of the court that imposed the sentence.



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(c) The institutional warden, or his/her designee, will advise central office records by e-mail of the inmate's name and the date and time of death by execution.

(15) **Periodic Review and Certificate from Secretary:** There will be a review of the lethal injection procedure by the Secretary of the Florida Department of Corrections, at a minimum of once every two years, or more frequently as needed. The review will take into consideration the available medical literature, legal jurisprudence, and the protocols and experience from other jurisdictions. The Secretary of the Department of Corrections shall, upon completion of this review, certify to the Governor of the State of Florida confirming that the Department is adequately prepared to carry out executions by lethal injection. The Secretary will confirm with the team warden that the execution team satisfies current licensure and certification and all team members and executioners meet all training and qualifications requirements as detailed in these procedures. A copy of the certification shall be provided to the Attorney General and the institutional warden shall provide a copy to a condemned inmate and counsel for the inmate after a warrant is signed.

The certification shall read:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Richard D. Dixon

**RICKY D. DIXON**
**SECRETARY**

2/18/2025

**DATE**



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Filing # 226594094 E-Filed 07/03/2025 01:28:00 PM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**
_____/

**Case No. 1994-CF-1283
Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
July 31, 2025 at 6:00 p.m.**

**DEFENDANT'S DEMAND FOR PRODUCTION OF PUBLIC RECORDS RELATED TO LETHAL INJECTION PROTOCOL [FLORIDA DEPARTMENT OF CORRECTIONS]**

To: **Ricky D. Dixon, Secretary**
**Florida Department of Corrections**
Attn: Kristen J. Lonergan, Executive Senior Attorney
Christina Porrello, Assistant General Counsel
William W. Gwaltney, Assistant General Counsel
501 South Calhoun Street,
Tallahassee, FL 32399-2500
Kristen.lonergan@fdc.myflorida.com, christina.porrello@fdc.myflorida.com, and William.gwaltney@fdc.myflorida.com

The Defendant, **EDWARD JAMES ZAKRZEWSKI, II,** by and through undersigned counsel, hereby makes the following demands of Secretary Ricky D. Dixon of the **FLORIDA DEPARTMENT OF CORRECTIONS**, under Florida Rule of Criminal Procedure 3.852(i), for additional public records pertinent to this case.

1. Mr. Zakrzewski is under a sentence of death and subject to execution by lethal injection under Florida Statute § 922.105. A death warrant was signed by Governor Ron DeSantis on July 1, 2025. Mr. Zakrzewski's execution has been scheduled for July 31, 2025 at 6:00 p.m.

2. The requested records are relevant to the subject matter of the postconviction proceeding and are reasonably calculated to lead to the discovery of admissible evidence in that

such records may contain, or, through further investigation, may lead to the discovery of, evidence that execution by Florida's lethal injection procedures would constitute the cruel and unusual punishment of Mr. Zakrzewski in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding provisions of the Florida Constitution. U.S. CONST. amends. VIII; XIV; FLA. CONST. arts. I, § 9; 17; 24.

3. Undersigned counsel attests that:

   A. counsel has made a timely and diligent search of the records repository;

   B. counsel has identified with specificity the public records that are not at the records repository;

   C. the records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

4. The public records requested are as follows:

   A. All records concerning the review process which led to the promulgation of the current lethal injection procedures, including, for example, computer print-outs or copies of research or literature reviewed, emails, faxes, letters, minutes or notes of meetings, telephone call records or notes, including any communications with the Florida Department of Law Enforcement, Office of the Attorney General, the Office of the Governor, any other outside agencies, experts (medical or other), other states or state departments of corrections, and/or the federal government. *See* Attachment A.

   B. All records showing how FDOC, or any personnel associated with FDOC, obtained etomidate, rocuronium bromide, and potassium acetate, including purchase orders, prescriptions, contracts, invoices, bills, payments, emails, letters, or any other communication relating to the procurement of the lethal injection drugs from March 10, 2023 to the present. [1]

[1] On February 18, 2025, Secretary Dixon promulgated new lethal injection procedures to supersede the *Florida Department of Corrections Execution by Lethal Injection Procedures* dated March 10, 2023. *See* Attachment A. However, upon comparison of the 2025 protocols with the 2023 protocols, there are no material differences regarding the core execution procedures, including the drug protocol, methods of venous access, and steps for administering the lethal injection. Therefore, for purposes of these requests, Mr. Zakrzewski is utilizing March 10, 2023, as the operative date.

C. All records showing the name of the manufacturer and distributor of the etomidate, rocuronium bromide, and potassium acetate, including package insert information and/or manufacturer's instructions, the date of manufacture, and the shelf life of the three drugs, that FDOC has obtained from March 10, 2023 to present.

D. All records, including logs or record books, regarding the storage, maintenance, use, disposal, and expiration dates of the etomidate, rocuronium bromide, and potassium acetate that FDOC has obtained from March 10, 2023 to the present.

E. All records, including logs or record books, clearly showing the date of manufacture, the expiration date, the batch number, and the storage conditions of the etomidate, rocuronium bromide, and potassium acetate that FDOC currently possesses.

F. Any records detailing the training, education, professional and/or educational licensure, professional and/or educational certification, and professional experience of the two executioners designated by the team warden to carry out the execution of Edward Zakrzewski. *See* Attachment A at page 2.

G. Any records relating to execution training exercises, including logs, checklists, sign-in sheets, photographs, and videos from March 10, 2023 to present.

H. All records, including the required logs, notes, memoranda, letters, electronic mail, and facsimiles, and checklists relating to the executions by lethal injection of Louis Gaskin (DC#75116), Darryl Barwick (DC#092501), Duane Owen (DC#101660), James Barnes (DC#071551), Michael Zack III (DC#124439), Loran Cole (DC#335421), James Ford (DC#763722), Edward James (DC#969121), Michael Tanzi (DC#K04389), Jeffrey Hutchinson (DC#124849), Glen Rogers (DC#124400), Anthony Wainwright (DC#123847), and Thomas Gudinas (DC#379799).

I. Any records consisting of photographs and videos of the actual executions by lethal injection of Louis Gaskin (DC#75116), Darryl Barwick (DC#092501), Duane Owen (DC#101660), James Barnes (DC#071551), Michael Zack III (DC#124439), Loran Cole (DC#335421), James Ford (DC#763722), Edward James (DC#969121), Michael Tanzi (DC#K04389), Jeffrey Hutchinson (DC#124849), Glen Rogers (DC#124400), Anthony Wainwright (DC#123847), and Thomas Gudinas (DC#379799).

J. Any records related to the training and experience of all individuals directly involved with the executions of Louis Gaskin (DC#75116), Darryl Barwick (DC#092501), Duane Owen (DC#101660), James Barnes (DC#071551), Michael Zack III (DC#124439), Loran Cole (DC#335421), James Ford (DC#763722), Edward James (DC#969121), Michael Tanzi (DC#K04389), Jeffrey Hutchinson (DC#124849), Glen Rogers (DC#124400), Anthony Wainwright (DC#123847),

and Thomas Gudinas (DC#379799).

K. All records related to the investigation and/or review of the executions of Louis Gaskin (DC#75116), Darryl Barwick (DC#092501), Duane Owen (DC#101660), James Barnes (DC#071551), Michael Zack III (DC#124439), Loran Cole (DC#335421), James Ford (DC#763722), Edward James (DC# 969121); Michael Tanzi (DC#K04389), Jeffrey Hutchinson (DC#124849), Glen Rogers (DC#124400), Anthony Wainwright (DC#123847), and Thomas Gudinas (DC#379799).

5. A capital post-conviction defendant "bears the burden of demonstrating that the records sought [pursuant to Fla. R. Crim. P. 3.852] relate to a colorable claim for postconviction relief." *Branch v. State*, 236 So. 3d 981, 984 (Fla. 2018) (citing *Chavez v. State*, 132 So.3d 826, 829 (Fla. 2014) and *Mann v. State*, 112 So.3d 1158, 1163 (Fla. 2013)). This Court may order the production of records if "the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and ... the additional records request is not overly broad or unduly burdensome." Fla. R. Crim. P. 3.852(i).

6. The requested records relate to claims that Florida's method for the lethal injection of Mr. Zakrzewski is unconstitutional and are necessary for undersigned counsel to investigate and raise a claim challenging the constitutionality of Florida's current method of lethal injection. The requested records specifically relate to FDOC's current March 10, 2023 and February 18, 2025, procedures for lethal injection, which use the current three-drug "etomidate protocol," which includes etomidate, rocuronium bromide, and potassium acetate. The requested records are necessary for Mr. Zakrzewski to investigate and raise a claim that Florida's lethal injection procedures are facially unconstitutional because the procedures violate the Eighth Amendment's prohibition against cruel and unusual punishment. *See Bucklew v. Precythe*, 139 S. Ct. 1112 (2019); *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008).

7. Undersigned counsel acknowledges the Florida Supreme Court's ("FSC") current precedent finding that lethal injection records requests do not relate to a colorable claim for postconviction relief because the FSC has upheld the constitutionality of Florida's "etomidate protocol" in *Asay v. State,* 224 So. 3d 695 (Fla. 2017) and subsequent opinions. However, undersigned counsel respectfully submits that the FSC has not had a full and fair opportunity to judge the constitutionality of Florida's lethal injection procedures, because previous capital defendants, including defendants under an active death warrant, have never been given access to records related to Florida's lethal injection procedures or the executions of individuals under these procedures. Capital defendants in Florida have never been able to thoroughly investigate and present claims challenging the constitutionality of lethal injection because Florida courts have consistently and pervasively denied them access to agency records related to lethal injection. However, undersigned counsel submits that this Court has the authority to grant the requested lethal injection records under Fla. R. Crim. P. 3.852, and requests that this Court grant the records.

8. The requested records are necessary to prove that the current procedures are "very likely to cause serious illness and needless suffering," and there is a "substantial risk of serious harm" to Mr. Zakrzewski if the State of Florida executes him under the current method. *Glossip*, 576 U.S. at 877 (internal citations omitted). The lethal injection records requests are not overly broad or unduly burdensome. The requests have been narrowly tailored to records related to the current February 18, 2025, FDOC lethal injection procedures, the nearly identical March 10, 2023 FDOC lethal injection procedures, and the executions of inmates under those procedures. In addition, Mr. Zakrzewski is entitled to information about the reliability and effectiveness of the drugs being used to kill him. Denying him the opportunity to access records that directly relate to how the State of Florida intends to carry out his execution on July 31, 2025 violates his right to

due process and access to the courts under the Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

9. An affidavit pursuant to Fla. R. Crim. P. 3.852(i) is attached to this demand and hereby incorporated into this demand.

10. Mr. Zakrzewski demands that the records requested be copied, indexed, and delivered to the records repository by your agency pursuant to the trial court's scheduling order with a courtesy copy delivered via e-mail to undersigned counsel.

WHEREFORE, Mr. Zakrzewski respectfully requests this Court to order the Florida Department of Corrections to produce the records described above.

**AFFIDAVIT OF COLLATERAL COUNSEL**

I, Lisa M. Fusaro, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.

Lisa M. Fusaro
Assistant Capital Collateral Regional Counsel
*Counsel for Mr. Zakrzewski*

STATE OF FLORIDA

COUNTY OF Bradford

Sworn to or affirmed and subscribed before me by means of ☑ physical presence or ☐ online notarization, this 2nd day of July, 2025, by LISA M. FUSARO who is personally known to me or has shown the following identification:

NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires: May 3, 2026

ASA MONROE
Commission # HH 260843
Expires May 2026

## CERTIFICATE OF SERVICE

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, Assistant Attorney General Janine D. Robinson (Janine.Robinson@myfloridalegal.com and capapp@myfloridalegal.com), Senior Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com), Chief Assistant State Attorney Bridgette Jensen, (Bjensen@osa1.com), Assistant State Attorney Matt Casey (mcasey@osa1.org), Executive Senior Attorney Kristen J. Lonergan (Kristen.lonergan@fdc.myflorida.com and courtfilings@fdc.myflorida.com), Assistant General Counsel Christina Porrello (christina.porello@fdc.myflorida.com), Assistant General Counsel William.gwaltney@fdc.myflorida.com) the Honorable Lacey Powell Clark (Judge.Clark@flcourts1.gov and Amanda.Bailey@flcourts1.gov); and the Florida Supreme Court (warrant@flcourts.org) on this 3rd day of July 2025.

Respectfully submitted,

/s/ **Lisa M. Fusaro**
LISA M. FUSARO
Florida Bar No. 119074
Assistant Capital Collateral Counsel
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/s/ **Alicia Hampton**
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*Counsel for Mr. Zakrzewski*

# Attachment A

FLORIDA DEPARTMENT OF CORRECTIONS

GOVERNOR
RON DESANTIS

SECRETARY
RICKY DIXON

February 18, 2025

The Honorable Ron DeSantis
Executive Office of Governor Ron DeSantis
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Dear Governor DeSantis:

I have carefully reviewed the Execution by Lethal Injection Procedures issued by my Department. Pursuant to these procedures, I represent the following:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Sincerely,

Ricky D. Dixon
Secretary

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# EXECUTION BY LETHAL INJECTION PROCEDURES

**PURPOSE:** To establish the procedures for the execution by lethal injection of inmates sentenced to death, pursuant to the dictates of Chapter 922, Florida Statutes and adhering to the requirements imposed under the Constitution of the State of Florida and the United States Constitution. The foremost objective of the lethal injection process is a humane and dignified death.

**APPLICATION:** This procedure applies to any execution by lethal injection conducted pursuant to Chapter 922, Florida Statutes. This procedure supersedes the Florida Department of Corrections *Execution by Lethal Injection Procedures* dated March 10, 2023.

**DEFINITIONS:**

(1) **Execution team**, where used herein, refers to correctional staff and other persons who are selected by the team warden designated by the Secretary to assist in the administration of an execution by lethal injection, and who have the training and qualifications, including the necessary licensure or certification, required to perform the responsibilities or duties specified. Individuals on the execution team will be referred to as "execution team member" or "team member" in these procedures.

(2) **Executioner**, where used herein, refers to an individual selected by the team warden to initiate the flow of lethal chemicals into the inmate. The executioner's sole function is to inject the chemicals into the IV access port by physically pushing the chemicals from the syringe. The executioner is only authorized to carry out this specific function under the direction of the team warden. An executioner shall be an adult, undergo a criminal background check and be sufficiently trained to administer the flow of lethal chemicals. The executioner must demonstrate to the satisfaction of the team warden that s/he is competent, trained, and of sufficient character to carry out the required function under the team warden's direction.

(3) **Institutional warden**, where used herein, refers to the warden of Florida State Prison, who shall be responsible for handling support functions necessary to carry out the lethal injection process.

(4) **Minister of religion**, where used herein, refers to a spiritual advisor requested by an inmate to attend an execution as permitted by section 922.11, Florida Statutes. The name of the requested minister of religion must be provided by the inmate to the institutional warden in writing on FDC Form DC6-236 within five days of the issuance of the Governor's Warrant of Execution. A minister of religion shall be an adult and shall undergo a criminal background check. The institutional warden shall also conduct a review process of the individual as described in Florida Department of Corrections rules and policies applicable to visitor approvals and to spiritual advisor visits. Such a



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review will be performed even if the requested minister of religion has been previously approved for regular visitation purposes. Prior to final approval, the institutional warden may also conduct interviews of the requested minister of religion or their associates. The institutional warden may undertake any investigation necessary to verify that the minister of religion is recognized by their organized religious body as qualified to perform religious functions as a representative of the religious organization or group. The institutional warden may waive any component of the review process if the requested minister of religion is a chaplain currently employed by the Florida Department of Corrections. Candidates not employed by the Florida Department of Corrections must also execute a Spiritual Advisor Execution Agreement. The agreement is attached hereto as Appendix A.

(5) **Team warden**, where used herein, refers to the warden designated by the Secretary. The team warden shall be a person who has demonstrated through experience, training, and good moral character the ability to perform an execution by lethal injection. The team warden has the final and ultimate decision making authority in every aspect of the lethal injection process. No deviation from any part of this procedure is authorized unless approved and directed by the team warden.

**SPECIFIC PROCEDURES:**

(1) **Receipt of Warrant:** These execution procedures will commence upon receipt of the Governor's Warrant of Execution. The institutional warden will schedule the execution for a date and time certain that is within the period of time designated in the warrant. The institutional warden will provide a copy of the Warrant of Execution to the Department's Secretary and General Counsel, deliver a copy to the named inmate and the team warden, and notify the Florida Department of Law Enforcement (FDLE), any state correctional institutions, and any local agencies that may be affected by the issuance of the warrant and of the date and time selected for the execution.

(2) **Selection of the Executioners:**

(a) The team warden will select two (2) executioners who are fully capable of performing the designated functions to carry out the execution. The team warden will provide each executioner with a copy of this procedure and will explain fully their respective duties and responsibilities and assure that each executioner is trained for the function assigned. The identities of the executioners will be kept strictly confidential as provided by statute.

(b) The team warden will designate one (1) of the selected executioners as the primary executioner and the other as the secondary executioner. The primary executioner will be solely responsible for administering the flow of lethal chemicals into the inmate during the execution. The secondary executioner will be present and available during the execution to assume the role of the primary executioner if the primary executioner becomes unable for any reason, as determined by the team warden, to carry out his/her functions.

(3) **Selection of the Execution Team:** The team warden will designate the execution team members and verify that each team member has the training and qualifications, and possesses current, necessary licensure or certification, required to perform the responsibilities or duties specified. The team warden will ensure that all execution team members and other involved



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staff have been adequately trained to perform their requisite functions in the execution process. The team warden shall select personnel with sufficient training and experience to perform the technical procedures needed to carry out an execution by lethal injection, including the mixing of the chemicals and placement of the venous access lines. The identities of any team members with medical qualifications shall be strictly confidential.

(a) The team warden shall select the team member(s) responsible for achieving and monitoring peripheral venous access from the following classes of trained professionals: a phlebotomist currently certified by the American Society for Clinical Pathology (ASCP), American Society of Phlebotomy Technicians (ASPT) or American Medical Technologists (AMT); a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(b) The team warden shall select the team member(s) responsible for achieving and monitoring central venous access, if necessary, from the following classes of trained professionals: an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(c) The team warden shall select the team member(s) responsible for examining the inmate prior to execution to determine health issues from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(d) The team warden shall select the team member(s) responsible for attaching the leads to the heart monitors and observing the monitors during the administration of execution from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(e) The team warden shall select the team member(s) responsible for purchasing, maintaining and mixing the lethal chemicals from the following classes of trained professionals: a physician, licensed under Chapter 458 or Chapter 459, Florida Statutes; or, a pharmacist licensed under Chapter 465, Florida Statutes.

(f) The team warden shall select other execution team members to carry out the following tasks:

1. Showering and preparation of the inmate.
2. Ensuring that the equipment necessary for an execution is in proper working order.
3. Escorting the inmate from his/her cell to the execution chamber.
4. Applying restraints to the inmate prior to applying the heart monitor leads and acquiring venous access.



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5. Maintaining the open telephone line with the Office of the Governor.
6. Reporting the actions inside the executioner's room to the team warden.
7. Maintaining the checklists that detail the events surrounding the execution.
8. Escorting the minster of religion.
9. Opening and closing the window covering to the witness gallery and turning on and off the public address (PA) system.

This list is not intended to be exhaustive. There may be other necessary tasks to carry out an execution and such tasks will be assigned by the team warden.

Each execution team member is responsible and authorized to raise concerns that become apparent during the execution and bring them to the attention of the team warden.

(4) **Training of the Execution Team and Executioners:** There shall be sufficient training to ensure that all personnel involved in the execution process are prepared to carry out their distinct roles for an execution. All team members shall be instructed on the effects of each lethal chemical. All simulations or reviews of the process shall be considered training exercises. The team warden, or his/her designee, will conduct simulations of the execution process on a quarterly basis at a minimum or more often as needed as determined by the team warden. Additionally, a simulation shall be conducted prior to the scheduled execution. All persons involved with the execution should participate in the simulations. If a person cannot attend the simulation, the team warden shall provide for an additional training opportunity or otherwise ensure that the person is adequately trained to complete his or her assigned task. There shall be a written record of any training activities. The simulations should anticipate various contingencies. Examples of possible contingencies shall include:

(a) Issues related to problems with equipment needed to carry out an execution.

(b) Problems related to venous access of the inmate, including the necessity to obtain an alternate venous access site during the execution process.

(c) The inmate is not rendered unconscious after the administration of the etomidate injection.

(d) Combative inmate.

(e) Incapacity of any execution team member or executioner.

(f) Unanticipated medical emergency concerning the inmate, an execution team member or executioner.

(g) Problems related to the order and security at the Florida State Prison, including but not limited to disturbances, unrest or resistance.

(h) Power failure or other facility problems.

This list is not meant to be exhaustive and only provides examples of the types of contingencies that could arise during the course of an execution. The team warden is responsible for ensuring that training addresses, at a minimum, the above situations.



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(5) **Use of Checklists:** Compliance with this procedure will be documented on appropriate checklists. Upon completion of each step in the process, an execution team member will indicate when the step has been completed. Prior to the administration of the lethal chemicals, the team warden will consult with the designated team member and verify that all steps in the process have been performed properly. At the conclusion of the process, the team warden will again consult with the designated team member and verify that the remaining steps in the process were performed properly. The team warden will then sign the forms, attesting that all steps were performed properly.

(6) **Purchase and Maintenance of Lethal Chemicals:** A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

(7) **FDLE Monitors:**

(a) Two (2) FDLE agents shall serve as monitors and shall be responsible for observing the actions of the execution team and the condition of the condemned inmate at all times during the execution process.

(b) The first FDLE agent shall be located in the executioner's room and is responsible for observing the preparation of the lethal chemicals and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two (2) minute intervals. A copy of the log shall be provided to the team warden and shall be available at the post execution debriefings.

(c) The second FDLE agent shall be located in the execution chamber and will be responsible for keeping a detailed log of what is occurring in the execution chamber at a minimum of two (2) minute intervals. A copy of the log shall be provided the team warden and shall be available for the post execution debriefings.

(8) **Approximately One (1) Week Prior to Execution:**

(a) The team warden will designate one or more execution team members to review the inmate's medical file and to make a limited physical examination of the inmate to determine whether there are any medical issues that could potentially interfere with the proper administration of the lethal injection process. The team member(s) will verbally report his/her findings to the team warden as soon as is practicable following the file review and physical examination. The results of this examination shall be documented in the inmate's file. After reviewing the results of the examination which should include a determination of the best access site and conferring with the team member(s) that performed the examination, the team warden shall conclude what is the more suitable method of venous access (peripheral or femoral) for the lethal injection process given the individual circumstances of the condemned inmate based on all information provided.



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(b) If a team member reports any issue that could potentially interfere with the proper administration of the lethal injection process, the team warden will consult with any or all of the members of the execution team and resolve the issue.

(9) **On the Day of Execution:**

(a) A food service director, or his/her designee, will personally prepare and serve the inmate's last meal. The inmate will be allowed to request specific food and non-alcoholic drink to the extent such food and drink costs forty dollars ($40) or less, is available at the institution, and is approved by the food service director.

(b) The inmate will be escorted by one (1) or more team members to the shower area where a team member of the same sex will supervise the showering of the inmate. Immediately thereafter, the inmate will be returned to his/her assigned cell and issued appropriate clothing. A designated member of the execution team will obtain and deliver the clothing to the inmate.

(c) A designated execution team member will ensure that the telephone in the execution chamber is fully functional and that there is a fully-charged, fully-functional cellular telephone in the execution chamber. Telephone calls will be placed from the telephone to ensure proper operation. Additionally, a member of the team shall ensure that the two-way audio communication system and the visual monitoring equipment are fully functional.

(d) A designated execution team member will ensure that the PA system is fully functional.

(e) The only staff authorized to be in the execution chamber area are members of the execution team and others as approved by the team warden, including two monitors from FDLE.

(f) A designated execution team member, in the presence of one or more additional team members and an independent observer from FDLE, will prepare the lethal injection chemicals as follows, ensuring that each syringe used in the lethal injection process is appropriately labeled, including the name of the chemical contained therein:

(1) Etomidate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe and needle will be used to draw fifty milliliters (50mls) of etomidate injection 2mg/ml from one or more vials containing same, for a total of one hundred milligrams (100mg) of etomidate injection. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube), clearly labeled with the number one (1), and placed in the first slot on a stand designed to hold eight (8) such syringes in separate slots. The stand will be clearly labeled with the letter "A." This process will be repeated with a second syringe, which will be clearly labeled with a number two (2) and placed in the second slot on stand "A." Two additional syringes will be drawn in the same manner, fitted with the blunt cannula, and clearly labeled with the numbers one (1) and two (2), respectively. These two syringes will be placed in the first two slots on a second stand that has been clearly labeled with the letter "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.



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(2) Rocuronium bromide injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw five hundred milligrams (500mg) of rocuronium bromide injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing five hundred milligrams (500mg) of rocuronium bromide injection, for a total of two thousand milligrams (2000mg). Two syringes will be clearly labeled with the numbers four (4) and five (5), respectively, and placed into slots four (4) and five (5) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately and placed in slots four (4) and five (5), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(3) Potassium acetate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw one hundred twenty milliequivalents (120mEq) of potassium acetate injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing one hundred twenty milliequivalents (120mEq) of potassium acetate injection, for a total of four hundred eighty (480) milliequivalents. Two syringes will be clearly labeled with the numbers seven (7) and eight (8), respectively, and placed into slots seven (7) and eight (8) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately, and placed in slots seven (7) and eight (8), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(4) Saline solution: A sterile, disposable twenty cubic centimeter (20cc) syringe will be used to draw twenty milliliters (20ml) of sterile saline solution from one or more vials containing same. This procedure will be repeated until there are four (4) syringes, each containing twenty milliliters (20ml) of sterile saline solution, for a total of eighty (80) milliliters. Each syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). Two syringes will be clearly labeled with the numbers three (3) and six (6), respectively, and placed into slots three (3) and six (6) on stand "A." This procedure will be repeated with the other two syringes, each of which will be placed in slots three (3) and six (6), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(g) The execution team member who has prepared the lethal chemicals will transport them personally, in the presence of one or more additional members of the execution team, to the executioner's room. Stand "A" will be placed on the worktop for use by the primary executioner, to be used during the execution by lethal injection. Stand "B" will be placed on a shelf underneath the worktop within easy reach of the executioners should they be needed during the execution. Stand "B" will not be used unless expressly ordered to be used by the team warden. The lethal chemicals will remain secure until the executioners arrive. No one other than the executioners will have access to the lethal chemicals, unless a stay is granted, in which case the execution team member who



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prepared the lethal chemicals will retrieve them from the locked room and dispose of them according to state and federal law.

(h) A designated execution team member will prepare, using an aseptic technique, two (2) standard intravenous (IV) infusion sets, each consisting of a pre-filled, sterile plastic bag of normal saline for IV use (a solution of sodium chloride at 0.9% concentration) with an attached drip chamber, a long sterile tube fitted with a back check valve and a clamp to regulate the flow, a connector to attach to the access device, and an extension set fitted with a luer lock tip for a blood cannula to allow for the infusion of the lethal chemicals into the line. The extension set that will be used to infuse the lethal chemicals into the primary injection line will be clearly marked with a "1," and the additional extension set that will be attached to the secondary injection line will be clearly marked with a "2."

(i) The team warden will explain the lethal injection preparation procedure to the inmate and ensure the provision of any medical assistance or care deemed appropriate. The inmate will be offered and, if accepted, will be administered intramuscular injections of hydroxyzine, in appropriate dosages relative to weight, to ease anxiety.

(j) Authorized media witnesses will be picked up at the designated media on-looker area located at New River Correctional Institution by two (2) designated Department of Corrections escort staff, transported to the main entrance of Florida State Prison as a group, cleared by security, and escorted to the population visiting park, where they will remain until being escorted to the witness room of the execution chamber by the designated escort staff.

(k) The team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each execution team member. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. Upon the arrival of the executioners to perform their duties, the team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each executioner. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. If one or both of the executioners is disqualified, the team warden will continue to select and test as many additional executioners as is necessary to ensure the presence of two qualified executioners at the execution.

(10) **Approximately Thirty (30) Minutes Prior to Execution:**

(a) A designated execution team member will establish telephone communication with the Office of the Governor on behalf of the team warden. The team warden will communicate with the Office of the Governor to determine whether any cause for delay exists. The phone line will remain open to the Office of the Governor during the entire execution procedure. The team member will use this open line to report the ongoing activities of the execution team and other personnel to the Office of the Governor.

(b) When the team warden determines that no cause for delay remains, a designated member of the execution team will escort the two (2) executioners into the executioner's room, where they will remain until the execution process is complete.



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(c) The team warden will read the Warrant of Execution to the inmate. The inmate may waive the reading of the warrant.

(d) Designated members of the execution team will apply wrist restraints to the inmate and escort him/her from his cell to the execution chamber.

(e) Designated members of the execution team will assist the inmate, if necessary, in positioning himself/herself onto the execution gurney in the execution chamber.

(f) Designated members of the execution team will secure the restraining straps.

(g) One or more designated members of the execution team will attach the leads to two (2) heart monitors to the inmate's chest, ensuring that the monitors are operational both before and after the chest restraints are secured.

(h) Unless the team warden has previously determined to gain venous access through a central line, a designated team member will insert one intravenous (IV) line into each arm at the medial aspect of the antecubital fossa of the inmate and ensure that the saline drip is flowing freely. The team member will designate one IV line as the primary line and clearly identify it with the number "1." The team member will designate the other line as the secondary line and clearly identify it with the number "2." If venous access cannot be achieved in either or both of the arms, access will be secured at other appropriate sites until peripheral venous access is achieved at two separate locations, one identified as the primary injection site and the other identified as the secondary injection site.

(i) If peripheral venous access cannot be achieved, a designated team member will perform a central venous line placement, with or without a venous cut-down (wherein a vein is exposed surgically and a cannula is inserted), at one or more sites deemed appropriate by that team member. If two sites are accessed, each line will be identified with a "1" or a "2," depending on their identification as the primary and secondary lines.

(j) One or more designated members of the execution team will remove, one at a time, from the pole attached to the gurney, the two (2) saline bags and pass the bags, along with the extension sets attached to lines labeled "1" and "2," through a small opening into the executioner's room, where a team member will hang the bags on separate hooks inside the room. The designated team member(s) will ensure that the tubing from the IV insertion points to the bags has not been compromised and that the saline drip is flowing freely. The team member will be responsible for continuously monitoring the viability of the IV lines prior to and during the administration of the execution.

(11) **Approximately Fifteen (15) Minutes Prior to Execution:**

(a) Official witnesses will be secured in the witness room of the execution chamber by two designated Department of Corrections escort staff.

(b) Authorized media witnesses will be secured in the witness room of the execution chamber.



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(c) The only persons authorized in the witness room are: twelve (12) official witnesses, including family members of the victim, four (4) alternate official witnesses, one (1) nurse or medical technician, twelve (12) authorized media representatives, one (1) representative from the Department's public affairs office, one (1) designated staff escort, and one (1) designated team member. Counsel for the convicted person and a minister of religion requested by the convicted person may also be present. Any exception must be approved by the institutional warden.

(d) The institutional warden may deny access to the institution to any visitor, official witness or other person he or she deems a risk to the security of the institution. In the event there is reasonable suspicion that an individual may initiate or attempt to initiate a violent or disruptive act prior to, during, or following an execution, that person will not be permitted to witness the execution and will be escorted off the prison grounds immediately.

(e) The execution chamber will be secured. Only the team warden, one (1) additional execution team member and one (1) FDLE monitor shall be allowed in the chamber during the administration of the execution. Any exceptions or contingencies must be approved by the team warden.

(f) The executioner's room will be secured. Only the executioners, the team member reporting actions in the executioner's room to the warden, the team member reporting actions to the Office of the Governor, the team member observing the heart monitors, the team member maintaining the checklists, and the FDLE agent assigned to the executioner's room shall be allowed in the executioner's room. Any exception must be approved by the team warden.

(12) **Administration of Execution:**

(a) An execution team member will open the covering to the witness gallery window. The team warden will use the open telephone line to determine from the Governor whether there has been a stay of execution. If the team warden receives a negative response, s/he will then proceed with the execution.

(b) An execution team member will turn on the PA system. The team warden will permit the inmate to make an oral statement, which will be broadcast into the witness gallery over the PA system. At the conclusion of the inmate's statement, or if the inmate declines to make a statement, the team warden will announce that the execution process has begun. A designated member of the execution team will turn off the PA system.

(c) In the presence of the secondary executioner and within sight of one (1) or more execution team members and one (1) of the FDLE monitors, the primary executioner will administer the lethal chemicals in the following manner:

(1) The executioner will remove from the stand on the worktop the syringe labeled number one (1), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.



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(2) The executioner will remove from the stand on the worktop the syringe labeled number two (2), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(3) The executioner will remove from the stand on the worktop the syringe labeled number three (3), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(4) At this point, the team warden will assess whether the inmate is unconscious. The team warden must determine, after consultation, that the inmate is indeed unconscious. If the inmate is unconscious and the team warden orders the executioners to continue, the executioners shall proceed to step (12)(c)(6).

(5) In the event that the inmate is not unconscious, the team warden shall signal that the execution process is suspended and note the time and order the window covering to the witness gallery to be closed. The execution team shall assess the viability of the secondary access site. If the secondary access site is deemed viable, then the team member shall designate this site as the new primary access site. If the secondary access site is compromised, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the team has secured a viable access site, the team warden shall order the drapes to be opened and signal that the execution process will resume. The executioners will then be directed to initiate the administration of lethal chemicals from stand "B" into the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline. The executioners will continue to use the remaining chemicals from stand "B" throughout the execution at the direction of team warden. The team warden will then again proceed to step (12)(c)(4) and assess whether the inmate is unconscious.

(6) The executioner will remove from the stand on the worktop the syringe labeled number four (4), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(7) The executioner will remove from the stand on the worktop the syringe labeled number five (5), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension



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set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(8) The executioner will remove from the stand on the worktop the syringe labeled number six (6), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(9) The executioner will remove from the stand on the worktop the syringe labeled number seven (7), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(10) The executioner will remove from the stand on the worktop the syringe labeled number eight (8), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(11) The primary executioner shall at all times administer the lethal injection chemicals. Only if the primary executioner becomes incapacitated shall the secondary executioner administer the lethal chemicals. At no time shall more than one (1) executioner inject any lethal chemicals to complete the execution.

(d) If at any time during the administration of the lethal chemicals the primary venous access becomes compromised, the team warden shall order the execution process stopped and order the window covering to the witness gallery to be closed. The execution team shall assess the primary access site and assess the viability of the secondary access site and take appropriate remedial action at the access site, if necessary. If neither access site is viable, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the execution team has secured a viable access site, the warden shall order the drapes to be opened and direct that the execution process will resume using the newly established primary line. The executioners will be directed to initiate the administration of lethal chemicals from stand "B" into the IV set attached to the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline, labeled number three (3). The team warden will then proceed to step (12)(c)(4), as described above.



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(e) Throughout the execution process, one (1) or more designated execution team members will observe the heart monitors. If the heart monitors reflect a flat line reading during or following the complete administration of the lethal chemicals, a physician will examine the inmate to determine whether there is complete cessation of respiration and heartbeat.

(f) Once the inmate is pronounced dead by the physician, a designated member of the execution team will record the time of death on the appropriate lethal injection procedures checklist.

(g) The team warden will notify the Governor via the open phone line that the sentence has been carried out and the time of death.

(h) A designated execution team member will turn on the PA system. The team warden shall make the following announcement to the witnesses in the gallery: "The sentence of the State of Florida vs. [Inmate Name] has been carried out at [time of day]."

(i) The designated team member will close the window covering to the witness gallery.

(j) The designated Department of Corrections escort staff will escort all witnesses, all of the media pool and any other individuals who are not members of the execution team from the witness room and the execution chamber.

(13) **Immediate Post-Execution Procedures:**

(a) Designated execution team members will dispose of the equipment and any remaining chemicals as required by state and federal law.

(b) The institutional warden will coordinate the entry of hearse attendants for recovery of the inmate's body.

(c) The inmate's body will be removed from the execution table by hearse attendants under the supervision of the designated team member.

(d) The institutional warden, or his/her designee, will obtain a certification of death from the physician and will deliver the certification to the hearse attendants prior to their departure.

(e) The inmate's body will be transported by the hearse attendants to the medical examiner's office in Alachua County for an autopsy.

(f) The team warden shall conduct a brief debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution. Subsequent debriefings will take place, as appropriate.

(14) **Follow-Up Procedures:**

(a) The institutional warden will forward the Warrant of Execution and a signed statement of the execution to the Secretary of State.

(b) The institutional warden will file an attested copy of the Warrant of Execution and a signed statement of the execution with the clerk of the court that imposed the sentence.



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(c) The institutional warden, or his/her designee, will advise central office records by e-mail of the inmate's name and the date and time of death by execution.

(15) **Periodic Review and Certificate from Secretary:** There will be a review of the lethal injection procedure by the Secretary of the Florida Department of Corrections, at a minimum of once every two years, or more frequently as needed. The review will take into consideration the available medical literature, legal jurisprudence, and the protocols and experience from other jurisdictions. The Secretary of the Department of Corrections shall, upon completion of this review, certify to the Governor of the State of Florida confirming that the Department is adequately prepared to carry out executions by lethal injection. The Secretary will confirm with the team warden that the execution team satisfies current licensure and certification and all team members and executioners meet all training and qualifications requirements as detailed in these procedures. A copy of the certification shall be provided to the Attorney General and the institutional warden shall provide a copy to a condemned inmate and counsel for the inmate after a warrant is signed.

The certification shall read:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Richard D. Dixon

**RICKY D. DIXON**
**SECRETARY**

2/18/2025

**DATE**



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**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**
_____/

**Case No. 1994-CF-1283
Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
July 31, 2025 at 6:00 p.m.**

**DEFENDANT'S DEMAND FOR PRODUCTION OF PUBLIC RECORDS RELATED TO LETHAL INJECTION PROTOCOL
[OFFICE OF THE MEDICAL EXAMINER, DISTRICT EIGHT]**

To: **Office of the Medical Examiner, District Eight**
3217 SW 47th Ave.
Gainesville, FL 32608
Email: medistrict8@alachuacounty.us; ssalazar@alachuacounty.us

The Defendant, **EDWARD JAMES ZAKRZEWSKI, II,** hereby makes demand of **OFFICE OF THE MEDICAL EXAMINER, DISTRICT EIGHT** for certain records set forth below under Fla. R. of Crim. P. 3.852(i) for public records pertinent to this case. In support, Defendant states as follows:

1. Mr. Zakrzewski is under sentence of death and subject to execution by lethal injection pursuant to Section 922.105, Florida Statutes. A death warrant was signed by Governor Ron DeSantis on July 1, 2025. Mr. Zakrzewski's execution has been scheduled for July 31, 2025.

2. Undersigned counsel attests that:

(a) counsel has made a timely and diligent search of the records repository;

(b) counsel has identified with specificity the public records that are not at the records repository; and

(c) the records described are either relevant to the subject matter of a postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

3. This request is not overly broad or unduly burdensome. A mere inconvenience to the agency cannot outweigh Mr. Zakrzewski's due process rights to gather additional evidence to avoid the ultimate sanction of execution.

4. The public records requested are as follows:

(a) Records pertaining to Lethal Injection: [1]

(i) The complete files of the post mortem examinations performed by the Medical Examiner's Office, District Eight on **Louis Gaskin** (DC#75116), **Darryl Barwick** (DC#092501), **Duane Owen** (DC#101660), **James Barnes** (DC#071551), **Michael Zack III** (DC#124439), **Loran Cole** (DC#335421), **James Ford** (DC#763722), **Edward James** (DC# 969121), **Michael Tanzi** (DC#K04389), **Jeffrey Hutchinson** (DC#124849), **Glen Rogers** (DC#124400), **Anthony Wainwright** (DC#123847), and **Thomas Gudinas** (DC#379799) including all autopsy reports, autopsy photographs, toxicology reports, laboratory reports, radiological images, and notes taken during the post-mortem examination.

(ii) Any records relating to the autopsy protocols of the Medical Examiner's Office, District Eight that were in effect at the time of the autopsies of **Louis Gaskin** (DC#75116), **Darryl Barwick** (DC#092501), **Duane Owen** (DC#101660), **James Barnes** (DC#071551), **Michael Zack III** (DC#124439), **Loran Cole** (DC#335421), **James Ford** (DC#763722), **Edward James** (DC# 969121) **Michael Tanzi** (DC#K04389), **Jeffrey Hutchinson** (DC#124849), **Glen Rogers** (DC#124400), **Anthony Wainwright** (DC#123847), and **Thomas Gudinas** (DC#379799).

5. A capital post-conviction defendant "bears the burden of demonstrating that the records sought [pursuant to Fla. R. Crim. P. 3.852] relate to a colorable claim for postconviction relief." *Branch v. State*, 236 So. 3d 981, 984 (Fla. 2018) (citing *Chavez v. State*, 132 So. 3d 826,

[1] The provisions of Section 406.135, Florida Statute providing for the confidentiality of autopsy photographs and video and audio recordings does not apply to criminal proceedings. § 406.135(7), Fla. Stat.

829 (Fla. 2014) and *Mann v. State*, 112 So. 3d 1158, 1163 (Fla. 2013)). This Court may order the production of records if "the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and ... the additional records request is not overly broad or unduly burdensome." Fla. R. Crim. P. 3.852(i).

6. The requested records relate to claims that Florida's method for the lethal injection of Mr. Zakezewski is unconstitutional and are necessary for undersigned counsel to investigate and raise a claim challenging the constitutionality of Florida's current method of lethal injection.[2] The requested records specifically relate to FDOC's current February 18, 2025, procedures for lethal injection, as well as FDOC's nearly identical March 10, 2023, procedures for lethal injection. Both use the three-drug "etomidate protocol," which includes etomidate, rocuronium bromide, and potassium acetate. The requested records are necessary for Mr. Zakrzewski to investigate and raise a claim that Florida's lethal injection procedures are facially unconstitutional because the procedures violate the Eighth Amendment's prohibition against cruel and unusual punishment. *See Bucklew v. Precythe*, 139 S. Ct. 1112 (2019); *Glossip v. Gross*, 576 U.S. 863 (2015); *Baze v. Rees*, 553 U.S. 35 (2008).

7. Undersigned counsel acknowledges the Florida Supreme Court's ("FSC") current precedent finding that lethal injection records requests do not relate to a colorable claim for postconviction relief because the FSC has upheld the constitutionality of Florida's "etomidate

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[2] On February 18, 2025, Secretary Dixon promulgated new lethal injection procedures to supersede the *Florida Department of Corrections Execution by Lethal Injection Procedures* dated March 10, 2023. *See* Attachment A. However, upon comparison of the 2025 protocols with the 2023 protocols, there are no material differences regarding the core execution procedures, including the drug protocol, methods of venous access, and steps for administering the lethal injection. Therefore, for purposes of these requests, Mr. Zakrzewski is utilizing March 10, 2023, as the operative date.

protocol" in *Asay v. State,* 224 So. 3d 695 (Fla. 2017) and subsequent opinions. However, undersigned counsel respectfully submits that the FSC has not had a full and fair opportunity to judge the constitutionality of Florida's lethal injection procedures, because previous capital defendants, including defendants under an active death warrant, have never been given access to records related to Florida's lethal injection procedures or the executions of individuals under these procedures. Capital defendants in Florida have never been able to thoroughly investigate and present claims challenging the constitutionality of lethal injection because Florida courts have consistently and pervasively denied them access to agency records related to lethal injection. However, undersigned counsel submits that this Court has the authority to grant the requested lethal injection records under Fla. R. Crim. P. 3.852, and requests that this Court grant the records.

8. The requested records are necessary to prove that the current procedures are "very likely to cause serious illness and needless suffering," and there is a "substantial risk of serious harm" to Mr. Zakrzewski if the State of Florida executes him under the current method. *Glossip*, 576 U.S. at 877 (internal citations omitted). The lethal injection records requests are not overly broad or unduly burdensome. The requests have been narrowly tailored to records related to FDOC's current February 18, 2025, procedures for lethal injection, as well as FDOC's nearly identical March 10, 2023, procedures for lethal injection, and the executions of inmates under those current procedures. As an example, findings from the autopsies of previous inmates executed under the current procedures could indicate if the inmates experienced conditions associated with increased physical pain or suffering. Denying Mr. Zakrzewski the opportunity to access records that directly relate to how the State of Florida intends to carry out his execution on July 31, 2025, violates his right to due process and access to the courts under the Eighth and Fourteenth

Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

9. Mr. Zakrzewski demands that the records requested be copied, indexed, and delivered to the records repository by your agency pursuant to the trial court's scheduling order with a courtesy copy delivered via e-mail to undersigned counsel.

WHEREFORE, Mr. Zakrzewski respectfully requests this Court to order the Medical Examiner's Office, District Eight to produce the records described above.

**AFFIDAVIT OF COLLATERAL COUNSEL**

I, Lisa M. Fusaro, having been duly sworn or affirmed, do hereby depose and say that the above statements are true and correct.

LM Fusaro

Lisa M. Fusaro
Assistant Capital Collateral Regional Counsel
*Counsel for Mr. Zakrzewski*

STATE OF FLORIDA

COUNTY OF Broadcord

Sworn to or affirmed and subscribed before me by means of ☑ physical presence or ☐ online notarization, this 2nd day of July, 2025, by LISA M. FUSARO who is personally known to me or has shown the following identification:

NOTARY PUBLIC, STATE OF FLORIDA

ASA MONROE
Commission # HH 260843
Expires May 2026

My Commission Expires: May 3, 2026

## CERTIFICATE OF SERVICE

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, Assistant Attorney General Janine D. Robinson (Janine.Robinson@myfloridalegal.com and capapp@myfloridalegal.com), Senior Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com), Chief Assistant State Attorney Bridgette Jensen, (Bjensen@osa1.com), Assistant State Attorney Matt Casey (mcasey@osa1.org), the Honorable Lacey Powell Clark (Judge.Clark@flcourts1.gov and Amanda.Bailey@flcourts1.gov); and the Florida Supreme Court (warrant@flcourts.org) on this 3rd day of July 2025.

Respectfully submitted,

/s/ **Lisa M. Fusaro**
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*Counsel for Mr. Zakrzewski*

# Attachment A

FLORIDA DEPARTMENT OF CORRECTIONS

GOVERNOR
RON DESANTIS

SECRETARY
RICKY DIXON

February 18, 2025

The Honorable Ron DeSantis
Executive Office of Governor Ron DeSantis
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Dear Governor DeSantis:

I have carefully reviewed the Execution by Lethal Injection Procedures issued by my Department. Pursuant to these procedures, I represent the following:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Sincerely,

Ricky D. Dixon
Secretary

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# EXECUTION BY LETHAL INJECTION PROCEDURES

**PURPOSE:** To establish the procedures for the execution by lethal injection of inmates sentenced to death, pursuant to the dictates of Chapter 922, Florida Statutes and adhering to the requirements imposed under the Constitution of the State of Florida and the United States Constitution. The foremost objective of the lethal injection process is a humane and dignified death.

**APPLICATION:** This procedure applies to any execution by lethal injection conducted pursuant to Chapter 922, Florida Statutes. This procedure supersedes the Florida Department of Corrections *Execution by Lethal Injection Procedures* dated March 10, 2023.

**DEFINITIONS:**

(1) **Execution team**, where used herein, refers to correctional staff and other persons who are selected by the team warden designated by the Secretary to assist in the administration of an execution by lethal injection, and who have the training and qualifications, including the necessary licensure or certification, required to perform the responsibilities or duties specified. Individuals on the execution team will be referred to as "execution team member" or "team member" in these procedures.

(2) **Executioner**, where used herein, refers to an individual selected by the team warden to initiate the flow of lethal chemicals into the inmate. The executioner's sole function is to inject the chemicals into the IV access port by physically pushing the chemicals from the syringe. The executioner is only authorized to carry out this specific function under the direction of the team warden. An executioner shall be an adult, undergo a criminal background check and be sufficiently trained to administer the flow of lethal chemicals. The executioner must demonstrate to the satisfaction of the team warden that s/he is competent, trained, and of sufficient character to carry out the required function under the team warden's direction.

(3) **Institutional warden**, where used herein, refers to the warden of Florida State Prison, who shall be responsible for handling support functions necessary to carry out the lethal injection process.

(4) **Minister of religion**, where used herein, refers to a spiritual advisor requested by an inmate to attend an execution as permitted by section 922.11, Florida Statutes. The name of the requested minister of religion must be provided by the inmate to the institutional warden in writing on FDC Form DC6-236 within five days of the issuance of the Governor's Warrant of Execution. A minister of religion shall be an adult and shall undergo a criminal background check. The institutional warden shall also conduct a review process of the individual as described in Florida Department of Corrections rules and policies applicable to visitor approvals and to spiritual advisor visits. Such a



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review will be performed even if the requested minister of religion has been previously approved for regular visitation purposes. Prior to final approval, the institutional warden may also conduct interviews of the requested minister of religion or their associates. The institutional warden may undertake any investigation necessary to verify that the minister of religion is recognized by their organized religious body as qualified to perform religious functions as a representative of the religious organization or group. The institutional warden may waive any component of the review process if the requested minister of religion is a chaplain currently employed by the Florida Department of Corrections. Candidates not employed by the Florida Department of Corrections must also execute a Spiritual Advisor Execution Agreement. The agreement is attached hereto as Appendix A.

(5) **Team warden**, where used herein, refers to the warden designated by the Secretary. The team warden shall be a person who has demonstrated through experience, training, and good moral character the ability to perform an execution by lethal injection. The team warden has the final and ultimate decision making authority in every aspect of the lethal injection process. No deviation from any part of this procedure is authorized unless approved and directed by the team warden.

**SPECIFIC PROCEDURES:**

(1) **Receipt of Warrant:** These execution procedures will commence upon receipt of the Governor's Warrant of Execution. The institutional warden will schedule the execution for a date and time certain that is within the period of time designated in the warrant. The institutional warden will provide a copy of the Warrant of Execution to the Department's Secretary and General Counsel, deliver a copy to the named inmate and the team warden, and notify the Florida Department of Law Enforcement (FDLE), any state correctional institutions, and any local agencies that may be affected by the issuance of the warrant and of the date and time selected for the execution.

(2) **Selection of the Executioners:**

(a) The team warden will select two (2) executioners who are fully capable of performing the designated functions to carry out the execution. The team warden will provide each executioner with a copy of this procedure and will explain fully their respective duties and responsibilities and assure that each executioner is trained for the function assigned. The identities of the executioners will be kept strictly confidential as provided by statute.

(b) The team warden will designate one (1) of the selected executioners as the primary executioner and the other as the secondary executioner. The primary executioner will be solely responsible for administering the flow of lethal chemicals into the inmate during the execution. The secondary executioner will be present and available during the execution to assume the role of the primary executioner if the primary executioner becomes unable for any reason, as determined by the team warden, to carry out his/her functions.

(3) **Selection of the Execution Team:** The team warden will designate the execution team members and verify that each team member has the training and qualifications, and possesses current, necessary licensure or certification, required to perform the responsibilities or duties specified. The team warden will ensure that all execution team members and other involved



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staff have been adequately trained to perform their requisite functions in the execution process. The team warden shall select personnel with sufficient training and experience to perform the technical procedures needed to carry out an execution by lethal injection, including the mixing of the chemicals and placement of the venous access lines. The identities of any team members with medical qualifications shall be strictly confidential.

(a) The team warden shall select the team member(s) responsible for achieving and monitoring peripheral venous access from the following classes of trained professionals: a phlebotomist currently certified by the American Society for Clinical Pathology (ASCP), American Society of Phlebotomy Technicians (ASPT) or American Medical Technologists (AMT); a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(b) The team warden shall select the team member(s) responsible for achieving and monitoring central venous access, if necessary, from the following classes of trained professionals: an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(c) The team warden shall select the team member(s) responsible for examining the inmate prior to execution to determine health issues from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(d) The team warden shall select the team member(s) responsible for attaching the leads to the heart monitors and observing the monitors during the administration of execution from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced practice registered nurse licensed under Chapter 464, Florida Statutes; or, a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

(e) The team warden shall select the team member(s) responsible for purchasing, maintaining and mixing the lethal chemicals from the following classes of trained professionals: a physician, licensed under Chapter 458 or Chapter 459, Florida Statutes; or, a pharmacist licensed under Chapter 465, Florida Statutes.

(f) The team warden shall select other execution team members to carry out the following tasks:

1. Showering and preparation of the inmate.
2. Ensuring that the equipment necessary for an execution is in proper working order.
3. Escorting the inmate from his/her cell to the execution chamber.
4. Applying restraints to the inmate prior to applying the heart monitor leads and acquiring venous access.



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5. Maintaining the open telephone line with the Office of the Governor.
6. Reporting the actions inside the executioner's room to the team warden.
7. Maintaining the checklists that detail the events surrounding the execution.
8. Escorting the minster of religion.
9. Opening and closing the window covering to the witness gallery and turning on and off the public address (PA) system.

This list is not intended to be exhaustive. There may be other necessary tasks to carry out an execution and such tasks will be assigned by the team warden.

Each execution team member is responsible and authorized to raise concerns that become apparent during the execution and bring them to the attention of the team warden.

(4) **Training of the Execution Team and Executioners:** There shall be sufficient training to ensure that all personnel involved in the execution process are prepared to carry out their distinct roles for an execution. All team members shall be instructed on the effects of each lethal chemical. All simulations or reviews of the process shall be considered training exercises. The team warden, or his/her designee, will conduct simulations of the execution process on a quarterly basis at a minimum or more often as needed as determined by the team warden. Additionally, a simulation shall be conducted prior to the scheduled execution. All persons involved with the execution should participate in the simulations. If a person cannot attend the simulation, the team warden shall provide for an additional training opportunity or otherwise ensure that the person is adequately trained to complete his or her assigned task. There shall be a written record of any training activities. The simulations should anticipate various contingencies. Examples of possible contingencies shall include:

(a) Issues related to problems with equipment needed to carry out an execution.

(b) Problems related to venous access of the inmate, including the necessity to obtain an alternate venous access site during the execution process.

(c) The inmate is not rendered unconscious after the administration of the etomidate injection.

(d) Combative inmate.

(e) Incapacity of any execution team member or executioner.

(f) Unanticipated medical emergency concerning the inmate, an execution team member or executioner.

(g) Problems related to the order and security at the Florida State Prison, including but not limited to disturbances, unrest or resistance.

(h) Power failure or other facility problems.

This list is not meant to be exhaustive and only provides examples of the types of contingencies that could arise during the course of an execution. The team warden is responsible for ensuring that training addresses, at a minimum, the above situations.



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(5) **Use of Checklists:** Compliance with this procedure will be documented on appropriate checklists. Upon completion of each step in the process, an execution team member will indicate when the step has been completed. Prior to the administration of the lethal chemicals, the team warden will consult with the designated team member and verify that all steps in the process have been performed properly. At the conclusion of the process, the team warden will again consult with the designated team member and verify that the remaining steps in the process were performed properly. The team warden will then sign the forms, attesting that all steps were performed properly.

(6) **Purchase and Maintenance of Lethal Chemicals:** A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

(7) **FDLE Monitors:**

(a) Two (2) FDLE agents shall serve as monitors and shall be responsible for observing the actions of the execution team and the condition of the condemned inmate at all times during the execution process.

(b) The first FDLE agent shall be located in the executioner's room and is responsible for observing the preparation of the lethal chemicals and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two (2) minute intervals. A copy of the log shall be provided to the team warden and shall be available at the post execution debriefings.

(c) The second FDLE agent shall be located in the execution chamber and will be responsible for keeping a detailed log of what is occurring in the execution chamber at a minimum of two (2) minute intervals. A copy of the log shall be provided the team warden and shall be available for the post execution debriefings.

(8) **Approximately One (1) Week Prior to Execution:**

(a) The team warden will designate one or more execution team members to review the inmate's medical file and to make a limited physical examination of the inmate to determine whether there are any medical issues that could potentially interfere with the proper administration of the lethal injection process. The team member(s) will verbally report his/her findings to the team warden as soon as is practicable following the file review and physical examination. The results of this examination shall be documented in the inmate's file. After reviewing the results of the examination which should include a determination of the best access site and conferring with the team member(s) that performed the examination, the team warden shall conclude what is the more suitable method of venous access (peripheral or femoral) for the lethal injection process given the individual circumstances of the condemned inmate based on all information provided.



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(b) If a team member reports any issue that could potentially interfere with the proper administration of the lethal injection process, the team warden will consult with any or all of the members of the execution team and resolve the issue.

(9) **<u>On the Day of Execution</u>:**

(a) A food service director, or his/her designee, will personally prepare and serve the inmate's last meal. The inmate will be allowed to request specific food and non-alcoholic drink to the extent such food and drink costs forty dollars ($40) or less, is available at the institution, and is approved by the food service director.

(b) The inmate will be escorted by one (1) or more team members to the shower area where a team member of the same sex will supervise the showering of the inmate. Immediately thereafter, the inmate will be returned to his/her assigned cell and issued appropriate clothing. A designated member of the execution team will obtain and deliver the clothing to the inmate.

(c) A designated execution team member will ensure that the telephone in the execution chamber is fully functional and that there is a fully-charged, fully-functional cellular telephone in the execution chamber. Telephone calls will be placed from the telephone to ensure proper operation. Additionally, a member of the team shall ensure that the two-way audio communication system and the visual monitoring equipment are fully functional.

(d) A designated execution team member will ensure that the PA system is fully functional.

(e) The only staff authorized to be in the execution chamber area are members of the execution team and others as approved by the team warden, including two monitors from FDLE.

(f) A designated execution team member, in the presence of one or more additional team members and an independent observer from FDLE, will prepare the lethal injection chemicals as follows, ensuring that each syringe used in the lethal injection process is appropriately labeled, including the name of the chemical contained therein:

(1) <u>Etomidate injection</u>: A sterile, disposable sixty cubic centimeter (60cc) syringe and needle will be used to draw fifty milliliters (50mls) of etomidate injection 2mg/ml from one or more vials containing same, for a total of one hundred milligrams (100mg) of etomidate injection. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube), clearly labeled with the number one (1), and placed in the first slot on a stand designed to hold eight (8) such syringes in separate slots. The stand will be clearly labeled with the letter "A." This process will be repeated with a second syringe, which will be clearly labeled with a number two (2) and placed in the second slot on stand "A." Two additional syringes will be drawn in the same manner, fitted with the blunt cannula, and clearly labeled with the numbers one (1) and two (2), respectively. These two syringes will be placed in the first two slots on a second stand that has been clearly labeled with the letter "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.



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(2) Rocuronium bromide injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw five hundred milligrams (500mg) of rocuronium bromide injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing five hundred milligrams (500mg) of rocuronium bromide injection, for a total of two thousand milligrams (2000mg). Two syringes will be clearly labeled with the numbers four (4) and five (5), respectively, and placed into slots four (4) and five (5) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately and placed in slots four (4) and five (5), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(3) Potassium acetate injection: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw one hundred twenty milliequivalents (120mEq) of potassium acetate injection from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing one hundred twenty milliequivalents (120mEq) of potassium acetate injection, for a total of four hundred eighty (480) milliequivalents. Two syringes will be clearly labeled with the numbers seven (7) and eight (8), respectively, and placed into slots seven (7) and eight (8) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately, and placed in slots seven (7) and eight (8), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(4) Saline solution: A sterile, disposable twenty cubic centimeter (20cc) syringe will be used to draw twenty milliliters (20ml) of sterile saline solution from one or more vials containing same. This procedure will be repeated until there are four (4) syringes, each containing twenty milliliters (20ml) of sterile saline solution, for a total of eighty (80) milliliters. Each syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). Two syringes will be clearly labeled with the numbers three (3) and six (6), respectively, and placed into slots three (3) and six (6) on stand "A." This procedure will be repeated with the other two syringes, each of which will be placed in slots three (3) and six (6), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

(g) The execution team member who has prepared the lethal chemicals will transport them personally, in the presence of one or more additional members of the execution team, to the executioner's room. Stand "A" will be placed on the worktop for use by the primary executioner, to be used during the execution by lethal injection. Stand "B" will be placed on a shelf underneath the worktop within easy reach of the executioners should they be needed during the execution. Stand "B" will not be used unless expressly ordered to be used by the team warden. The lethal chemicals will remain secure until the executioners arrive. No one other than the executioners will have access to the lethal chemicals, unless a stay is granted, in which case the execution team member who



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prepared the lethal chemicals will retrieve them from the locked room and dispose of them according to state and federal law.

(h) A designated execution team member will prepare, using an aseptic technique, two (2) standard intravenous (IV) infusion sets, each consisting of a pre-filled, sterile plastic bag of normal saline for IV use (a solution of sodium chloride at 0.9% concentration) with an attached drip chamber, a long sterile tube fitted with a back check valve and a clamp to regulate the flow, a connector to attach to the access device, and an extension set fitted with a luer lock tip for a blood cannula to allow for the infusion of the lethal chemicals into the line. The extension set that will be used to infuse the lethal chemicals into the primary injection line will be clearly marked with a "1," and the additional extension set that will be attached to the secondary injection line will be clearly marked with a "2."

(i) The team warden will explain the lethal injection preparation procedure to the inmate and ensure the provision of any medical assistance or care deemed appropriate. The inmate will be offered and, if accepted, will be administered intramuscular injections of hydroxyzine, in appropriate dosages relative to weight, to ease anxiety.

(j) Authorized media witnesses will be picked up at the designated media on-looker area located at New River Correctional Institution by two (2) designated Department of Corrections escort staff, transported to the main entrance of Florida State Prison as a group, cleared by security, and escorted to the population visiting park, where they will remain until being escorted to the witness room of the execution chamber by the designated escort staff.

(k) The team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each execution team member. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. Upon the arrival of the executioners to perform their duties, the team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each executioner. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. If one or both of the executioners is disqualified, the team warden will continue to select and test as many additional executioners as is necessary to ensure the presence of two qualified executioners at the execution.

(10) **Approximately Thirty (30) Minutes Prior to Execution:**

(a) A designated execution team member will establish telephone communication with the Office of the Governor on behalf of the team warden. The team warden will communicate with the Office of the Governor to determine whether any cause for delay exists. The phone line will remain open to the Office of the Governor during the entire execution procedure. The team member will use this open line to report the ongoing activities of the execution team and other personnel to the Office of the Governor.

(b) When the team warden determines that no cause for delay remains, a designated member of the execution team will escort the two (2) executioners into the executioner's room, where they will remain until the execution process is complete.



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(c) The team warden will read the Warrant of Execution to the inmate. The inmate may waive the reading of the warrant.

(d) Designated members of the execution team will apply wrist restraints to the inmate and escort him/her from his cell to the execution chamber.

(e) Designated members of the execution team will assist the inmate, if necessary, in positioning himself/herself onto the execution gurney in the execution chamber.

(f) Designated members of the execution team will secure the restraining straps.

(g) One or more designated members of the execution team will attach the leads to two (2) heart monitors to the inmate's chest, ensuring that the monitors are operational both before and after the chest restraints are secured.

(h) Unless the team warden has previously determined to gain venous access through a central line, a designated team member will insert one intravenous (IV) line into each arm at the medial aspect of the antecubital fossa of the inmate and ensure that the saline drip is flowing freely. The team member will designate one IV line as the primary line and clearly identify it with the number "1." The team member will designate the other line as the secondary line and clearly identify it with the number "2." If venous access cannot be achieved in either or both of the arms, access will be secured at other appropriate sites until peripheral venous access is achieved at two separate locations, one identified as the primary injection site and the other identified as the secondary injection site.

(i) If peripheral venous access cannot be achieved, a designated team member will perform a central venous line placement, with or without a venous cut-down (wherein a vein is exposed surgically and a cannula is inserted), at one or more sites deemed appropriate by that team member. If two sites are accessed, each line will be identified with a "1" or a "2," depending on their identification as the primary and secondary lines.

(j) One or more designated members of the execution team will remove, one at a time, from the pole attached to the gurney, the two (2) saline bags and pass the bags, along with the extension sets attached to lines labeled "1" and "2," through a small opening into the executioner's room, where a team member will hang the bags on separate hooks inside the room. The designated team member(s) will ensure that the tubing from the IV insertion points to the bags has not been compromised and that the saline drip is flowing freely. The team member will be responsible for continuously monitoring the viability of the IV lines prior to and during the administration of the execution.

(11) **Approximately Fifteen (15) Minutes Prior to Execution:**

(a) Official witnesses will be secured in the witness room of the execution chamber by two designated Department of Corrections escort staff.

(b) Authorized media witnesses will be secured in the witness room of the execution chamber.



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(c) The only persons authorized in the witness room are: twelve (12) official witnesses, including family members of the victim, four (4) alternate official witnesses, one (1) nurse or medical technician, twelve (12) authorized media representatives, one (1) representative from the Department's public affairs office, one (1) designated staff escort, and one (1) designated team member. Counsel for the convicted person and a minister of religion requested by the convicted person may also be present. Any exception must be approved by the institutional warden.

(d) The institutional warden may deny access to the institution to any visitor, official witness or other person he or she deems a risk to the security of the institution. In the event there is reasonable suspicion that an individual may initiate or attempt to initiate a violent or disruptive act prior to, during, or following an execution, that person will not be permitted to witness the execution and will be escorted off the prison grounds immediately.

(e) The execution chamber will be secured. Only the team warden, one (1) additional execution team member and one (1) FDLE monitor shall be allowed in the chamber during the administration of the execution. Any exceptions or contingencies must be approved by the team warden.

(f) The executioner's room will be secured. Only the executioners, the team member reporting actions in the executioner's room to the warden, the team member reporting actions to the Office of the Governor, the team member observing the heart monitors, the team member maintaining the checklists, and the FDLE agent assigned to the executioner's room shall be allowed in the executioner's room. Any exception must be approved by the team warden.

(12) **Administration of Execution:**

(a) An execution team member will open the covering to the witness gallery window. The team warden will use the open telephone line to determine from the Governor whether there has been a stay of execution. If the team warden receives a negative response, s/he will then proceed with the execution.

(b) An execution team member will turn on the PA system. The team warden will permit the inmate to make an oral statement, which will be broadcast into the witness gallery over the PA system. At the conclusion of the inmate's statement, or if the inmate declines to make a statement, the team warden will announce that the execution process has begun. A designated member of the execution team will turn off the PA system.

(c) In the presence of the secondary executioner and within sight of one (1) or more execution team members and one (1) of the FDLE monitors, the primary executioner will administer the lethal chemicals in the following manner:

(1) The executioner will remove from the stand on the worktop the syringe labeled number one (1), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.



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(2) The executioner will remove from the stand on the worktop the syringe labeled number two (2), which contains one hundred milligrams (100mg) of etomidate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(3) The executioner will remove from the stand on the worktop the syringe labeled number three (3), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(4) At this point, the team warden will assess whether the inmate is unconscious. The team warden must determine, after consultation, that the inmate is indeed unconscious. If the inmate is unconscious and the team warden orders the executioners to continue, the executioners shall proceed to step (12)(c)(6).

(5) In the event that the inmate is not unconscious, the team warden shall signal that the execution process is suspended and note the time and order the window covering to the witness gallery to be closed. The execution team shall assess the viability of the secondary access site. If the secondary access site is deemed viable, then the team member shall designate this site as the new primary access site. If the secondary access site is compromised, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the team has secured a viable access site, the team warden shall order the drapes to be opened and signal that the execution process will resume. The executioners will then be directed to initiate the administration of lethal chemicals from stand "B" into the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline. The executioners will continue to use the remaining chemicals from stand "B" throughout the execution at the direction of team warden. The team warden will then again proceed to step (12)(c)(4) and assess whether the inmate is unconscious.

(6) The executioner will remove from the stand on the worktop the syringe labeled number four (4), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(7) The executioner will remove from the stand on the worktop the syringe labeled number five (5), which contains five hundred milligrams (500mg) of rocuronium bromide injection, place the blunt cannula into the open port of the IV extension



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set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(8) The executioner will remove from the stand on the worktop the syringe labeled number six (6), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(9) The executioner will remove from the stand on the worktop the syringe labeled number seven (7), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(10) The executioner will remove from the stand on the worktop the syringe labeled number eight (8), which contains one hundred twenty milliequivalents (120mEq) of potassium acetate injection, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

(11) The primary executioner shall at all times administer the lethal injection chemicals. Only if the primary executioner becomes incapacitated shall the secondary executioner administer the lethal chemicals. At no time shall more than one (1) executioner inject any lethal chemicals to complete the execution.

(d) If at any time during the administration of the lethal chemicals the primary venous access becomes compromised, the team warden shall order the execution process stopped and order the window covering to the witness gallery to be closed. The execution team shall assess the primary access site and assess the viability of the secondary access site and take appropriate remedial action at the access site, if necessary. If neither access site is viable, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the execution team has secured a viable access site, the warden shall order the drapes to be opened and direct that the execution process will resume using the newly established primary line. The executioners will be directed to initiate the administration of lethal chemicals from stand "B" into the IV set attached to the newly established primary line, starting with the syringes of etomidate injection, labeled one (1) and two (2) and the first syringe of saline, labeled number three (3). The team warden will then proceed to step (12)(c)(4), as described above.



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(e) Throughout the execution process, one (1) or more designated execution team members will observe the heart monitors. If the heart monitors reflect a flat line reading during or following the complete administration of the lethal chemicals, a physician will examine the inmate to determine whether there is complete cessation of respiration and heartbeat.

(f) Once the inmate is pronounced dead by the physician, a designated member of the execution team will record the time of death on the appropriate lethal injection procedures checklist.

(g) The team warden will notify the Governor via the open phone line that the sentence has been carried out and the time of death.

(h) A designated execution team member will turn on the PA system. The team warden shall make the following announcement to the witnesses in the gallery: "The sentence of the State of Florida vs. [Inmate Name] has been carried out at [time of day]."

(i) The designated team member will close the window covering to the witness gallery.

(j) The designated Department of Corrections escort staff will escort all witnesses, all of the media pool and any other individuals who are not members of the execution team from the witness room and the execution chamber.

(13) **Immediate Post-Execution Procedures:**

(a) Designated execution team members will dispose of the equipment and any remaining chemicals as required by state and federal law.

(b) The institutional warden will coordinate the entry of hearse attendants for recovery of the inmate's body.

(c) The inmate's body will be removed from the execution table by hearse attendants under the supervision of the designated team member.

(d) The institutional warden, or his/her designee, will obtain a certification of death from the physician and will deliver the certification to the hearse attendants prior to their departure.

(e) The inmate's body will be transported by the hearse attendants to the medical examiner's office in Alachua County for an autopsy.

(f) The team warden shall conduct a brief debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution. Subsequent debriefings will take place, as appropriate.

(14) **Follow-Up Procedures:**

(a) The institutional warden will forward the Warrant of Execution and a signed statement of the execution to the Secretary of State.

(b) The institutional warden will file an attested copy of the Warrant of Execution and a signed statement of the execution with the clerk of the court that imposed the sentence.



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(c) The institutional warden, or his/her designee, will advise central office records by e-mail of the inmate's name and the date and time of death by execution.

(15) **Periodic Review and Certificate from Secretary:** There will be a review of the lethal injection procedure by the Secretary of the Florida Department of Corrections, at a minimum of once every two years, or more frequently as needed. The review will take into consideration the available medical literature, legal jurisprudence, and the protocols and experience from other jurisdictions. The Secretary of the Department of Corrections shall, upon completion of this review, certify to the Governor of the State of Florida confirming that the Department is adequately prepared to carry out executions by lethal injection. The Secretary will confirm with the team warden that the execution team satisfies current licensure and certification and all team members and executioners meet all training and qualifications requirements as detailed in these procedures. A copy of the certification shall be provided to the Attorney General and the institutional warden shall provide a copy to a condemned inmate and counsel for the inmate after a warrant is signed.

The certification shall read:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process will not involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Richard D. Dixon

**RICKY D. DIXON**
**SECRETARY**

2/18/2025

**DATE**



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**IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT**
**IN AND FOR OKALOOSA COUNTY, FLORIDA**

**EXECUTION SCHEDULED FOR JULY 31, 2025**
**AT 6:00 P.M. ET (5:00 P.M. CT)**

**TRIAL COURT PROCEEDINGS MUST BE COMPLETED BY**
**Monday, July 14, 2025, at 11:00 a.m. ET (10:00 a.m. CT)**

STATE OF FLORIDA,

*Plaintiff*,

v.

EDWARD J. ZAKRZEWSKI,

*Defendant.*
_____/

Case No.: 1994-CF-01283
CAPITAL CASE

**OFFICE OF THE FLORIDA ATTORNEY GENERAL'S OBJECTIONS TO DEMAND FOR PUBLIC RECORDS**

On July 3, 2025, Defendant Edward J. Zakrzewski, represented by Capital Collateral Regional Counsel – North Region ("CCRC-N") in this active death warrant case, filed a demand for additional public records pursuant to Fla. R. Crim P. 3.852(i) ("Demand") on the Office of the Attorney General ("AGO"). The AGO objects to Zakrzewski's Demand as it: (1) is improper under the Rule 3.852(i) where no prior public records request has been made to the AGO; (2) requests confidential and exempt records to which he is not entitled; (3) failed to satisfy the burdens under the Rule including, demonstrating

specific public records relate to a colorable successive postconviction claim for relief; and (4) is broad and overly burdensome which constitutes a prohibited fishing expedition. The AGO asks this Court to sustain its objections and deny the Demand.

## NATURE OF THE RECORDS SOUGHT

Zakrzewski's voluminous and mostly vague *any and all* Demand seeks:

> a. All records not previously produced relating to Edward James Zakrzewski, II (DOB 1/31/1965; DC# 554000) in the custody and/or control of the Attorney General's Office (regardless of division, unit, branch, task force and/or other section in which records may be housed), regardless of whether the documents were generated by or addressed to an employee of the Attorney General's Office. This includes notes, memoranda, letters, electronic mail and/or files, drafts, charts, reports and/or other files generated by attorneys, law enforcement officers, investigators, lab personnel, crime scene analysts, interviewers, and/or other persons, organizations, agencies, associations, corporations, hospitals;
>
> b. All communications and correspondence regardless of form, including, but not limited to, emails, faxes, letters, minutes or notes of meetings, and/or telephone call records or notes, between employees or former employees of the Office of the Attorney General and the Executive Office of the Governor; State Attorney's Office for the First Judicial Circuit; the Okaloosa County Clerk of Court; Florida Commission on Offender Review; and/or the Office of Executive Clemency, concerning Edward James Zakrzewski, II (DOB 1/31/1965; DC# 554000), and/or the victims' and/or their family. This includes records

> concerning Mr. Zakrzewski's clemency proceedings, and the signing of his warrant on July 1, 2025; and
>
> c. Any *Brady* or *Giglio* material in the possession or control of your agency.

Demand at 2-3, ¶4. a.-c.

Zakrzewski *generically* asserts that the voluminous records are related to claims that (1) his Fifth, Sixth, Eighth, and Fourteenth Amendment rights were somehow violated in a litany of circumstances and nothing more. *See* Demand at 3, ¶5; and (2) Florida's clemency process is "arbitrary and capricious," violating the Eighth and Fourteenth Amendments and the Florida Constitution. *Id.* at ¶6.

**OBJECTION AND ARGUMENT**

The Florida Supreme Court promulgated Rule 3.852, Capital Postconviction Public Records Production, in 1996 as the sole mechanism through which capital defendants may obtain public records to support a Rule 3.851 postconviction motion to vacate judgement and sentence. *See generally, Braddy v. State*, 219 So. 3d 803, 819-20 (Fla. 2017); *In re Amendment to Florida Rules of Criminal Procedure – Capital Postconviction Public Records Production*, 673 So. 2d 483 (Fla. 1996). Initial access to law enforcement and criminal

justice agency records "produced during the prosecution of the case," is available once the agency has complied with Rule 3.852(e) and records are delivered to the to the Capital Postconviction Public Records Repository ("Repository") after the affirmance of conviction and death sentence on direct appeal.

Public records in addition to those obtained through the Repository, may be requested via written demands in accordance with Rules 3.852(g), 3.852(h), or 3.852(i). However, the Florida Supreme Court has held that Rule 3.852 is a discovery tool that is "not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for relief to a colorable claim for postconviction relief." *Tanzi v.* State, 407 So. 3d 385, 390 (Fla. 2025) (quoting *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016)).

Where a defendant under an active death warrant cannot demonstrate that he is entitled to relief on a claim or that the requested records may *reasonably* lead to the discovery of admissible evidence, the trial court may properly deny the demand. *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019)(quoting *Bowles v. State*, 276 So. 3d 791, 795 (Fla. 2019)). Moreover, the movant must show good cause why the request was not made until after the death warrant

was signed. *See Asay v. State*, 224 So. 3d 695, 700 (Fla. 2017); *Dailey*, 283 So. 3d at 792; *Bowles*, 276 So. 3d at 795; *Buenoano v. State*, 708 So. 2d 941, 947 (Fla. 1998).

**Identical Rule 3.852 Public Records Requests Have Been Denied.**

Zakrzewski's Rule 3.852(i) Demand to the AGO is *virtually identical* to that filed by CCRC-N in Jeffrey Hutchinson's very recent warrant litigation, which was also before this Court. *State v. Hutchinson*, Case No. 1998-CF-1382, Okaloosa County, Florida, Filing #2201462254. On April 4, 2025, this Court sustained the AGO's objection to Hutchinson's Rule 3.852 (h) and (i) demand, as well as those of agencies. *Id.* at Filing #220359840. As to the Rule (i) demand to the AGO, this Court found:

> Defendant fails to meet his burden under rule 3.852(i). Accordingly, the objection is sustained. See Fla. R. Crim. P. 3.851(i); *Asay v. State*, 224 So. 3d 695, 700 (Fla. 2017); *Tompkins v. State*, 872 So. 2d 230, 244 (Fla. 2003), as revised on denial of reh'g (Apr. 22, 2004) ("A defendant must show how the requested records relate to a colorable claim for postconviction relief and good cause as to why the public records request was not made until after the death warrant was signed."); *Diaz v. State*, 945 So. 2d 1136, 1149 (Fla. 2006); *Sims v. State*, 753 So. 2d 66, 70 (Fla. 2000) ("[T]his discovery tool is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief.").

*Id.* at 2.

The Florida Supreme Court affirmed this Court's order *Hutchinson v. State*, 2025 WL 1198037 (Fla. Apr. 25, 2025) *cert. denied, Hutchinson v. Florida*, 145 S.Ct. 1980 (2025) (Mem.), holding,

> . . . As for subdivision (i), the court found that the requests did not meet the standards established in the rule or in case law interpreting it. Indeed, the court determined that many of the requests did not relate to a colorable claim for relief and, thus, amounted to a prohibited fishing expedition.
>
> We have held that a circuit court has broad discretion in handling post-warrant records requests. *See Cole v. State*, 392 So. 3d 1054, 1065 (Fla.), *cert. denied*, ––– U.S. ––––, 145 S. Ct. 109, 219 L.Ed.2d 1355 (2024); *Tanzi v. State*, [407 So. 3d 385, 390 (Fla. 2025)], *cert denied*, [*Tanzi v. Dixon*, 145 S.Ct. 1914 (2025) (Mem]. In this case, *the rationale provided by the circuit court comports with our warrant-related precedent and was reasonable based on the facts and circumstances of this case*. Accordingly, we find no abuse in the court's discretionary ruling.

*Id.* at *3. (emphasis added). The Florida Supreme Court also noted that although "Hutchinson claims that his requests met the appropriate legal standards, his assertions are conclusory." *Id.* at n.5. The same is true in Zakrzewski's Demand.

**The Demand is Improper Under Rule 3.852(i)(1)**

Zakrzewski filed the Demand to the AGO under Rule 3.852(i), which provides in part:

> (1) In order to obtain public *records in addition to those provided* under subdivisions (e), (f), (g), and (h) of this rule, collateral counsel shall file an affidavit in the trial court which:
>
> (A) attests that collateral counsel has made a timely and diligent search of the records repository; and
>
> (B) identifies with specificity those public records not at the records repository; and
>
> (C) establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence; and
>
> (D) shall be served in accord with subdivision (c)(1) of this rule.

Rule 3.852(i)(1). (emphasis added). The first sentence includes limiting language that records sought are "in addition to those provided" under other subsections. In fact, Zakrzewski refers to "all records not previously produced . . ." in the states in the Demand at 4.a.

In *Sims v. State*, 753 So. 2d 66 (Fla. 2000), the Florida Supreme Court observed that to prevent fishing expeditions,

> . . . the statute and the rule provide for the production of public records from persons and agencies *who were the recipients of a public records request at the time the defendant began his or her postconviction odyssey*. The use of the past tense and such words and phrases as "requested," "previously," "received," "produced,"

> "previous request," and "produced previously" are not happenstance.
>
> This language *was intended to and does convey to the reader the fact that a public records request under this rule is intended as an update of information previously received or requested*. To hold otherwise would foster a procedure in which defendants make only a partial public records request during the initial postconviction proceedings *and hold in abeyance other requests until such time as a warrant is signed*. Such is neither the spirit nor intent of the public records law.

*Id.* at 70. (emphasis added). *See also Dailey*, 283 So. 3d at 792.

Although the demand in *Sims* was brought under Rule 3.852(h), the Court's textual analysis reasonably seems to recognize the definitive past tense language in the Rule, not just one sub-section, and conveys the intention that Rule 3.852 is not to be used as "an eleventh hour attempt to delay the execution rather than a focused investigation into some legitimate area of inquiry." *Dailey*, 283 So. 3d at 792. *See also* Sims, 753 So. 2d at 68*; Rutherford v. State*, 926 So. 2d 1100, 1116-17 (Fla. 2006); *Glock v. Moore*, 776 So. 2d 243, 253 (Fla. 2001).

When read together, Rule 3.852(i)(1)'s past tense language and (i)(2)'s reference to "additional" records renders Zakrzewski's Demand improper because this is the first time records have been requested

of the AGO and no records have ever been "provided." *See Conage v. United States*, 346 So. 3d 594, 599 (Fla. 2022) (stating, the plainness of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole," quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)). Therefore, this records request cannot be considered "additional."

**Zakrzewski Fails to Meet His Burdens Under Rule 3.852(i)(2).**

The AGO does not concede that the Demand is proper or authorized by Rule 3.852(i)(1). If this Court finds it is proper, alternatively, the Demand should be denied as Zakrzewski abjectly failed to comply with or meet his burdens under Rule 3.852(i)(2)(B) – (D) for each of the three requests.

Rule 3.852(i)(2) provides that this Court may order production of "additional public records *only upon finding each of the following*":

> (A) collateral counsel has made a timely and diligent search of the records repository;
>
> (B) collateral counsel's affidavit identifies, with specificity those additional public records that are not at the records repository;
>
> (C) the additional public records sought are either relevant to the subject matter of a proceeding under

rule 3.851, or appear reasonably calculated to lead to the discovery of admissible evidence; and

(D) the additional public records request is not overly broad or unduly burdensome.

Rule 3.852(i)(2)(A)-(D).

**Demand 4.a. All records "not previously produced"**

Rule 3.852(i)(2)(A) does not apply and the AGO would not have submitted records to the Repository upon the Florida Supreme Court's affirmance of death sentence under Rule 3.852(d) or (e). Nor would the AGO have been the recipient of a demand under Rule 3.852(g) at the commencement of postconviction proceedings. Zakrzewski has not requested records of the AGO until now, rendering section 3.852(i)(2)(A) moot. Nonetheless, Zakrzewski failed to meet his burdens under Rule 3.852(i)(2)(B)-(D).

First, Zakrzewski requests "all records" in any form or format, that relates to him and merely lists *numerous* categories of records, not any specific record. Because this section is so extremely generic, broad, and unclear what is specifically requested, it is insufficient *on its face* and fails to comply with Rule 3.852(i)(2)(B), as well as (D).

Rule 3.852(i)(2)(B) requires collateral counsel to identify state in an affidavit "with specificity those *additional public records* that are

not at the records repository." (emphasis added.) The request for "all" records in several generic categories is far from specific and fails to comply with not only (B), but (D), which prohibits demands which are overly broad and unduly burdensome.

The Florida Supreme Court has found "any and all" type of requests are improper and have been consistently rejected as inherently overly broad and unduly burdensome under Rule 3.852(i)(2)(D). *See Wyatt v. State*, 71 So. 3d 86, 111 (Fla. 2011) (requirement that a public records request not be overly broad or unduly burdensome is a "reasonable restriction on access to those records"); *Moore v. State*, 820 So. 2d 199, 204 (Fla. 2002) (holding the trial court properly denied demand for additional records which were it was "overly broad, of questionable relevance, and unlikely to lead to discoverable evidence"); *Diaz v. State*, 945 So. 2d 1136, 1149 (Fla. 2006) (Rule 3.852 request for "any and all documents" violates Rule 3.852(i)(2)(D) that the request is "not overly broad or unduly burdensome."); *Mills v. State*, 786 So. 2d 547, 551 (Fla. 2001) (affirming the trial court's finding that Rule 3.852 demand was overly broad, of questionable relevance, and unlikely to lead to discoverable evidence where he requested "all notes, memoranda, letters,

electronic mail, and/or files, drafts, charts, reports, and/or other files generated or received by any and all members" of the agency related to the defendant); and *Dennis v. State*, 109 So. 3d 680, 699 (Fla. 2012) (the trial court did not abuse its discretion denying an "any and all" request for criminalist's past case work) (quoting *Diaz*, 945 So. 2d at 1150).

As Rule 3.852(i)(2)(C), when analyzing this section in an active death warrant case, the Florida Supreme Court has consistently held that a "defendant bears the burden of demonstrating that the records sought relate to a colorable claim for postconviction relief." *Branch v. State*, 236 So. 3d 981, 984 (Fla. 2018) (quoting *Chavez v. State*, 132 So. 3d 826, 829 (Fla. 2014). Moreover, the capital defendant "*must 'show how'* the requested records relate to a colorable claim for postconviction relief *and* good cause as to why the public records request was made until after the death warrant was signed.'" *Tanzi*, 407 So. 3d at 391 (quoting *Dailey*, 283 So. 3d at 792). (emphasis added).

Zakrzewski failed to demonstrate that the request for any record relating to him would support a colorable fifth successive postconviction claim for relief under Rule 3.851. Rule 3.851 prohibits

claims that "could have been or should have been raised at trial and, if properly preserved, on direct appeal of the judgement and sentence," untimely claims, and procedurally barred claims. *See* Fla. R. Crim. P. 3.851(e)(1); *Dillbeck v. State*, 357 So. 3d 94, 98 (Fla. 2023). Instead of complying with Rule 3.852, Zakrzewski's Demand is unquestionably a prohibited fishing expedition and should be denied.

**Demand 4.b. Florida's clemency process**

Zakrzewski requests numerous categories of records related to Florida's clemency process, which have consistently rejected for more than a decade. First, such records are confidential and exempt from disclosure, in accordance with section 14.28, Florida Statutes, and the Rules of Executive Clemency, Rule 16.[1] See also *Chavez*, 132 So. 3d at 830-31 (stating Rule 16 protects "all records in the clemency process [as] confidential").

[1] Section 14.28, Florida Statutes clearly states, "all records developed or received by any state entity pursuant to a Board of Executive Clemency investigation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution." Such records may only "be released upon the approval of the Governor." *Id.* Similarly, Rule 16 of the Rules of Executive Clemency provides that "all records and documents generated and gathered in the clemency process . . . are confidential and shall not be made available for inspection."

A postconviction claim based on clemency records is not cognizable. *See Gudinas v. State*, 2025 WL 1692284, *9 (Fla. June 17, 2025) (holding trial court did not abuse its discretion denying Rule 3.852(i) demand for clemency records as confidential and exempt and not related to a colorable claim for relief); *Mann v. State*, 112 So. 3d 1158, 1163 (Fla. 2013) (holding records requested in active warrant litigation to support claim regarding Governor's selection for death warrants were not relevant to a colorable claim, and such a claim is not cognizable).

The Florida Supreme Court's most recent warrant decision in *Gudinas* reiterated that it has "consistently held that Florida's established clemency proceedings and the Governor's absolute discretion to issue death warrants do not violate the Florida or United States Constitutions." *See Gudinas*, 2025 WL 1692284 at *9-*10 (no abuse of trial court's discretion to determine demand was not related to a colorable claim for relief and was overly broad and unduly burdensome (citing *Bolin v. State*, 184 So. 3d 492, 503 (Fla. 2015) (rejecting claim that Governor's discretion to select an inmate for execution is unconstitutional)); *Muhammad v. State*, 132 So. 3d 176, 203-04 (Fla. 2013); *Wheeler v. State*, 124 So. 3d 865, 890 (Fla. 2013);

*Carroll v. State*, 114 So. 3d 883, 887 (Fla. 2013); *Mann*, 112 So. 3d at 1163; *Gore v. State*, 91 So. 3d 769, 780 (Fla. 2012); *Valle v. State*, 70 So. 3d 530, 551-52 (Fla. 2011).

Based on Florida Supreme Court precedent, statute, and rules, Zakrzewski is not entitled to clemency-related records and this request should be denied.

**Demand 4. c. *Brady* or *Giglio* material**

Zakrzewski's Demand differs from that in Hutchinson's case, denied by this Court, in one negligible way. Hutchinson combined the *Brady* and *Giglio* with the generic constitutional "claim" violations. *See* Hutchinson demand at 3, ¶5. Zakrzewski's Demand included a separate paragraph, 4.c., which is merely form over substance for purposes of this Court's consideration.

Just as Hutchinson did, Zakrzewski merely invokes *Brady* and *Giglio* by name and does not demonstrate that any specific records related to a colorable claim, which would be speculative at best. This is a quintessential fishing expedition.

The AGO had no role in any investigation or prosecution of Zakrzewski's case. Nor has he made such a claim. It bears noting, Zakrzewski's guilty plea and own detailed penalty phase testimony

about the murders would negate a claim regarding exculpatory material and *Brady*'s materiality prong. He has offered no circumstance where the AGO could possibly possess materials that would or could have affected his death sentence, in favor of a life sentence. *See e.g. Roberts v. Butterworth*, 668 So. 2d 580, 582 (Fla. 1996) (holding "*Brady* has no application to clemency proceedings," "complaint raised only a general request for exculpatory material," and clemency records are not subject to disclosure).

As to *Giglio* records, again, the AGO did not participate in Zakrzewski's case and the evidence and testimony in his case was limited to the penalty phase. The Demand makes no reference to any part of the trial court proceedings.[2] Because Zakrzewski fails to assert that a colorable *Giglio* claim could be raised in a successive Rule 3.851 motion for which the AGO would have relevant records, the request fails and should be denied.

[2] In his third successive postconviction motion, Zakrzewski claimed the State's penalty phase rebuttal witness, Dr. Henry McClaren gave false or misleading testimony, violating *Brady* and *Giglio*. *Zakrzewski v. State*, 147 So. 3d 531 (Fla. 2014). The Florida Supreme Court affirmed the trial court's summary denial of the claim.

**No Reason for Delay**

Zakrzewski not only failed to comply with Rule 3.852(i)(2)(B)-(D), he failed to demonstrate to this Court good cause why he waited until the death warrant was signed to make the records request to the AGO. *See Asay*, 224 So. 3d at 700 (quoting *Tompkins v. State*, 872 So.2d 230, 244 (Fla. 2003)); *Dailey*, 283 So. 3d at 792; *Bowles*, 276 So. 3d at 795; *Buenoano*, 708 So. 2d at 947 (holding the trial court properly denied public records demands because the defendant "long ago could have obtained these records through the exercise of due diligence"); *Bryan v. State*, 748 So.2d 1003, 1006 (Fla. 1999) (finding the public records requests to be "at best a 'fishing expedition' and at worst a dilatory tactic."). Simply, Zakrzewski failed to do so.

Zakrzewski was represented for many years by long-time registry counsel Martin McClain, who died in March 2022. Assistant CCRC-N Dawn Macready entered her notice of appearance as state postconviction counsel on June 30, 2022 and represented Zakrzewski for the past three years. Although Mr. McClain did not request records of any agency, neither did CCRC-N. Yet, postconviction counsel files an extremely broad public records

request on the eve of Zakrzewski's execution, with no explanation for the delay.

Finally, should Zakrzewski argue that Rule 3.852 prevents him from obtaining public records to which he would be entitled if he was a citizen on the street, that argument would be meritless. Any limitation on access by Rule 3.852 is "aimed at preventing capital postconviction defendants from engaging in an 'eleventh hour attempt to delay the execution rather than a focused investigation into some legitimate inquiry.'" *Dailey*, 283 So. 3d at 793 (quoting *Sims*, 753 So. 2d at 68).

WHEREFORE, the Attorney General's Office requests this Court to sustain its objections and deny the Demand.

Respectfully submitted,

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CO-COUNSEL FOR THE STATE OF FLORIDA

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July, 2025, the foregoing **OFFICE OF THE FLORIDA ATTORNEY GENERAL'S OBJECTIONS TO DEMAND FOR PUBLIC RECORDS** was electronically filed with the Clerk of the Court via the Florida Courts E-Portal Filing System for service to the following: The **Honorable Lacey Powell Clark**, Circuit Court Judge, judge.clark@Flcourts1.gov, Amanda.Bailey@Flcourts1.gov; **Lisa M. Fusaro**, Assistant Capital Collateral Regional Counsel – North, Lisa.Fusaro@ccrc-north.org; **Alicia A. Hampton**, Assistant Capital Collateral Regional Counsel – North, Alicia.Hampton@ccrc-north.org; **Bridgette Jensen**, Chief Assistant State Attorney, bjensen@osa1.org.; **Matthew Casey**, Assistant State Attorney, mcasey@osa1.org; **Christina Porrello**, Senior Attorney, Florida Department of Corrections, Christina.Porrello@fdc.myflorida.com; **Kristen Lonergan**, Executive Senior Attorney, Florida Department of Corrections, Kristen.Lonergan@fdc.myflorida.com; and the **Florida Supreme Court Clerk**, warrant@flcourt.org.

*/s/ Janine D. Robinson*
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CO-COUNSEL FOR THE STATE OF FLORIDA

**IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT**
**IN AND FOR OKALOOSA COUNTY, FLORIDA**

**EXECUTION SCHEDULED FOR JULY 31, 2025**
**AT 6:00 P.M. ET (5:00 P.M. CT)**

**TRIAL COURT PROCEEDINGS MUST BE COMPLETED BY**
**Monday, July 14, 2025, at 11:00 a.m. ET (10:00 a.m. CT)**

STATE OF FLORIDA,

*Plaintiff*,

v.

EDWARD J. ZAKRZEWSKI,

*Defendant.*
_____/

Case No.: 1994-CF-01283
CAPITAL CASE

**DISTRICT EIGHT MEDICAL EXAMINER'S OBJECTIONS TO DEMAND FOR ADDITIONAL PUBLIC RECORDS**

On July 3, 2025, Defendant Edward J. Zakrzewski, represented by Capital Collateral Regional Counsel – North Region ("CCRC-N") in this active death warrant case, filed a demand for additional public records pursuant to Fla. R. Crim P. 3.852(i) ("Demand") on the District Eight Medical Examiner's Office ("Eighth ME)"). The Eighth ME objects to Zakrzewski's Demand as it: (1) is improper under the Rule 3.852(i) where no prior records request has been made; and (2) failed to satisfy the burdens under the Rule, constitutes an overly broad and unduly burdensome prohibited fishing expedition for

records not related to a colorable claim for relief. The Eighth ME asks this Court to sustain its objections and deny the Demand.

## THE RECORDS SOUGHT

Zakrzewski requests voluminous autopsy records of the Eighth ME for the past 13 capital defendants executed in Florida between April 23, 2023 and June 24, 2025, along with the autopsy protocols:

(a) Records pertaining to Lethal Injection:

> (i) The complete files of the post mortem examinations performed by the Medical Examiner's Office, District Eight on Louis Gaskin (DC#75116), Darryl Barwick (DC#092501), Duane Owen (DC#101660), James Barnes (DC#071551), Michael Zack III (DC#124439), Loran Cole (DC#335421), James Ford (DC#763722), Edward James (DC# 969121), Michael Tanzi (DC#K04389), Jeffrey Hutchinson (DC#124849), Glen Rogers (DC#124400), Anthony Wainwright (DC#123847), and Thomas Gudinas (DC#379799) including all autopsy reports, autopsy photographs, toxicology reports, laboratory reports, radiological images, and notes taken during the post-mortem examination.
>
> (ii) Any records relating to the autopsy protocols of the Medical Examiner's Office, District Eight that were in effect at the time of the autopsies of Louis Gaskin (DC#75116), Darryl Barwick (DC#092501), Duane Owen (DC#101660), James Barnes (DC#071551), Michael Zack III (DC#124439), Loran Cole (DC#335421), James Ford (DC#763722), Edward James (DC# 969121) Michael Tanzi (DC#K04389), Jeffrey Hutchinson (DC#124849), Glen Rogers (DC#124400), Anthony Wainwright (DC#123847), and

Thomas Gudinas (DC#379799).

Demand at 2, ¶4.

Zakrzewski asserts the requested records are needed to challenge the constitutionality of Florida's lethal injection protocol. *Id.* at 3. The Demand fails to satisfy Rule 3.852's requirements or comport with the Florida Supreme Court's well-settled holdings on postconviction public records requests in active death warrant litigation.

**OBJECTION AND ARGUMENT**

The Florida Supreme Court has held that Rule 3.852 is a discovery tool that is "not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for relief to a colorable claim for postconviction relief." *Tanzi v.* State, 407 So. 3d 385, 390 (Fla. 2025) (quoting *Asay v. State*, 210 So. 3d 1, 27 (Fla. 2016)). Where a defendant under an active death warrant cannot demonstrate that he is entitled to relief on a claim or that the requested records may *reasonably* lead to the discovery of admissible evidence, the trial court may properly deny the demand. *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019) (quoting *Bowles v. State*, 276 So. 3d 791, 795 (Fla. 2019)).

Importantly, a movant under an active death warrant must show good cause why the request was not made until after the death warrant was signed. *See Asay v. State*, 224 So. 3d 695, 700 (Fla. 2017); *Dailey*, 283 So. 3d at 792; *Bowles*, 276 So. 3d at 795; *Buenoano v. State*, 708 So. 2d 941, 947 (Fla. 1998). Rule 3.852 is not intended to be used as "nothing more than an eleventh hour attempt to delay the execution rather than a focused investigation into some legitimate area of inquiry." *Tompkins v. State*, 872 So. 2d 230, 244 (Fla. 2003) (quoting *Sims v. State*, 753 So. 2d 66, 70 (Fla. 2000))

**Identical Rule 3.852 Public Records Requests Have Been Denied.**

Zakrzewski's Rule 3.852(i) Demand to the Eighth ME is *virtually identical* to that filed by CCRC-N in Jeffrey Hutchinson's very recent warrant litigation, which was also before this Court. *State v. Hutchinson*, Case No. 1998-CF-1382, Okaloosa County, Florida, Filing #220146254 (April 2, 2025). The only differences between the two demands are (1) Hutchinson's demand was filed under Rule 3.852(h); and (2) Zakrzewski's Demand has been expanded.

This Court sustained the Eighth ME's objections on April 4, 2025, as well as those of several agencies, and denied Hutchinson's

public records request for executed inmate autopsy records and protocols. This Court found (1) at the very least, that Hutchinson failed to show good cause for not requesting the record prior to the warrant being signed, citing *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019); and (2) CCRC-N acknowledged that current Florida Supreme Court precedent declares that lethal injection records do not relate to a colorable claim for relief.

The Florida Supreme Court affirmed this Court's order in *Hutchinson v. State*, 2025 WL 1198037 (Fla. Apr. 25, 2025) *cert. denied*, *Hutchinson v. Florida*, 145 S.Ct. 1980 (2025) (Mem.). In a footnote, the Florida Supreme Court noted that although "Hutchinson claims that his requests met the appropriate legal standards, his assertions are conclusory." *Id.* at n.5. The same is true in Zakrzewski's Demand to the Eighth ME as in Hutchinson, warranting denial of the Demand.

**The Demand is Improper Under Rule 3.852(i)(1)**

Zakrzewski's Demand to the Eighth ME is filed under Rule 3.852(i), which provides in part:

> (1) In order to obtain public *records in addition to those provided* under subdivisions (e), (f), (g), and (h) of this

> rule, collateral counsel shall file an affidavit in the trial court which:
>
> (A) attests that collateral counsel has made a timely and diligent search of the records repository; and
>
> (B) identifies with specificity those public records not at the records repository; and
>
> (C) establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence; and
>
> (D) shall be served in accord with subdivision (c)(1) of this rule.

Rule 3.852(i)(1). (emphasis added). The first sentence of this subsection includes limiting language that records sought are "in addition to those provided" under other subsections.

In *Sims v. State*, 753 So. 2d 66 (Fla. 2000), the Florida Supreme Court observed that to prevent fishing expeditions,

> . . . the statute and the rule provide for the production of public records from persons and agencies *who were the recipients of a public records request at the time the defendant began his or her postconviction odyssey*. The use of the past tense and such words and phrases as "requested," "previously," "received," "produced," "previous request," and "produced previously" are not happenstance.
>
> This language *was intended to and does convey to the reader the fact that a public records request under this rule is intended as an update of information previously received*

> *or requested*. To hold otherwise would foster a procedure in which defendants make only a partial public records request during the initial postconviction proceedings *and hold in abeyance other requests until such time as a warrant is signed*. Such is neither the spirit nor intent of the public records law.

*Id.* at 70. (emphasis added). *See also Dailey*, 283 So. 3d at 792.

Although the demand in *Sims* was brought under Rule 3.852(h), the Court's textual analysis reasonably seems to recognize the definitive past tense language in the Rule, not just one sub-section, and conveys the intention that Rule 3.852 is not to be used as "an eleventh hour attempt to delay the execution rather than a focused investigation into some legitimate area of inquiry." *Dailey*, 283 So. 3d at 792. *See also* Sims, 753 So. 2d at 68*; Rutherford v. State*, 926 So. 2d 1100, 1116-17 (Fla. 2006); *Glock v. Moore*, 776 So. 2d 243, 253 (Fla. 2001).

When read together, Rule 3.852(i)(1)'s past tense language and (i)(2)'s reference to "additional" records renders Zakrzewski's Demand improper because this is the first time records have been requested of the Eighth ME and no records have ever been "provided." *See Conage v. United States*, 346 So. 3d 594, 599 (Fla. 2022) (stating, the plainness of statutory language is determined by reference to the

language itself, the specific context in which that language is used, and the broader context of the statute as a whole," quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). Therefore, this records request cannot be considered "additional."

**Zakrzewski Fails to Meet His Burdens Under Rule 3.852(i)(2).**

The Eighth ME does not concede that the Demand is proper or authorized by Rule 3.852(i)(1). If this Court finds it is proper, alternatively, the Demand should be denied as Zakrzewski abjectly failed to comply with or meet his burdens under Rule 3.852(i)(2).

Rule 3.852(i)(2) provides that this Court may order production of "additional public records *only upon finding each of the following*":

> (A) collateral counsel has made a timely and diligent search of the records repository;
>
> (B) collateral counsel's affidavit identifies, with specificity those additional public records that are not at the records repository;
>
> (C) the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851, or appear reasonably calculated to lead to the discovery of admissible evidence; and
>
> (D) the additional public records request is not overly broad or unduly burdensome.

Rule 3.852(i)(2)(A)-(D). (emphasis added).[1]

**Records Do Not Related to a Colorable Postconviction Claim**

As to 3.852(i)(2)(C), when analyzing this section in an active death warrant case, the Florida Supreme Court has consistently held that a "defendant bears the burden of demonstrating that the records sought relate to a colorable claim for postconviction relief." *Branch v. State*, 236 So. 3d 981, 984 (Fla. 2018) (quoting *Chavez v. State*, 132 So. 3d 826, 829 (Fla. 2014). Moreover, the capital defendant "*must 'show how* the requested records relate to a colorable claim for postconviction relief *and* good cause as to why the public records request was made until after the death warrant was signed.'" *Tanzi*, 407 So. 3d at 391 (quoting *Dailey*, 283 So. 3d at 792). (emphasis added). Simply, Zakrzewski failed to comply with any part of the Rule.

Postconviction counsel concedes and acknowledges the Florida Supreme Court's well-settled precedent upholding constitutionality of Florida's lethal injection protocol. *See* Demand at 3, ¶7. Despite speculative assertions about its constitutionality, Zakrzewski's

[1] Rule 3.852(i)(2)(A) and (B) do not apply because the Eighth ME would not have submitted the specific autopsy and protocol records requested to the Capital Postconviction Public Records Repository.

Demand specifically acknowledges that the current etomidate protocol was thoroughly litigated in *Asay v. State*, 224 So. 3d 695 (Fla. 2017). Demand at 3-4.

In *Asay*, an active death warrant case, the trial court held an evidentiary hearing in which expert witnesses "detailed the known effects of etomidate, how it would be used in the protocol, and how it has been used in medical practice." *Asay*, 224 So. 3d at 705. In addition to holding the lethal injection etomidate protocol was constitutional, the Florida Supreme Court affirmed the trial court's denial of the related public records demand. *Id.* at 701-02.

In *Long v. State*, 271 So. 3d 938 (Fla. 2019), another active warrant case two years later, the state court held an evidentiary hearing on Long's postconviction claim that the lethal injection protocol was unconstitutional. *Id.* at 941. The trial court denied the claim and also denied public records requests regarding lethal injection. *Id.* at 947-48. On appeal, the *Long* Court rejected the constitutional challenge to etomidate and affirmed the postconviction court's denial of the Rule 3.852(i) public records requests. *Id.*

The Florida Supreme Court continues to reject constitutional challenges to Florida's lethal injection protocol, holding it does not

violate the Eighth Amendment. *See Rogers v. State*, 2025 WL 1341642 (Fla. May 8, 2025); *Dailey*, 283 So. 3d at 792 ("Because we have upheld the constitutionality of the current lethal injection protocol, such records are unlikely to lead to a colorable claim for relief"). Therefore, the requested records are not and cannot be related to a colorable claim for relief.

Given the comprehensive litigation on the current lethal injection protocol and rejection of claims challenging the constitutionality of the etomidate protocol, Zakrzewski's requested records will not relate to a colorable claim.[2] *See Tanzi*, 407 So. 3d at 391; *Hutchinson v. State*, 2025 WL 1198037 at *3; *Cole v. State*, 392 So. 3d 1054, 1065-66 (Fla. 2024) (affirming denial of records request to medical examiner); *Branch*, 236 So. 3d at 984-85 ("these types of requests are unlikely to lead to a colorable claim") (citing *Hannon v. State*, 228 So. 3d 505, 511 (Fla. 2017) and *Chavez v. State*, 132 So. 3d 826, 830 (Fla. 2014)).

[2] In some of the most recent death warrant cases in February - May 2025, the defendant did not appeal the trial court orders denying the records requests for autopsies and lethal injection materials. *See e.g. State v. Rogers*, Case No. 1995-CF-15314, Hillsborough County, FL; *State v. James*, Case No. 1993-CF-3237, Seminole County, FL; *State v. Ford*, Case No. 1997-CF-0351, Charlotte Count, FL.

**The Demand is Overly Broad, Unduly Burdensome, and is a Prohibited Fishing Expedition**

Zakrzewski's Demand is overly broad and unduly burdensome on its face, given the number of autopsy records requested. Florida Supreme Court precedent on Rule 3.852 is clear, Zakrzewski is prohibited from and cannot engage in a fishing expedition through the overly broad and unduly burdensome Demand. *Muhammad v. State*, 132 So. 3d 176, 202 (Fla. 2013); *See Wyatt v. State*, 71 So. 3d 86, 111 (Fla. 2011) (requirement that a public records request not be overly broad or unduly burdensome is a "reasonable restriction on access to those records"); *Moore v. State*, 820 So. 2d 199, 204 (Fla. 2002) (holding the trial court properly denied demand for additional records which were it was "overly broad, of questionable relevance, and unlikely to lead to discoverable evidence"). In order "to delve so deeply into collateral matters," such as a constitutional challenge to lethal injection protocols, he "must explain at a minimum, how that information would lead to evidence related" to a colorable postconviction claim. *Walton v. State*, 3 So. 3d 1000, 1010-11 (Fla. 2009). He failed to do so.

**No Reason for Delay**

Zakrzewski not only failed to comply with Rule 3.852(i)(2)(C) and (D), he failed to demonstrate to this Court good cause why he waited until the death warrant was signed to make the records request to the Eighth ME. *See Asay*, 224 So. 3d at 700 (quoting *Tompkins v. State*, 872 So. 2d 230, 244 (Fla. 2003)); *Dailey*, 283 So. 3d at 792; *Bowles*, 276 So. 3d at 795; *Buenoano*, 708 So. 2d at 947 (holding the trial court properly denied public records demands because the defendant "long ago could have obtained these records through the exercise of due diligence"); *Bryan v. State*, 748 So. 2d 1003, 1006 (Fla. 1999) (finding the public records requests to be "at best a 'fishing expedition' and at worst a dilatory tactic."). Simply, Zakrzewski failed to do so.

WHEREFORE the Eighth ME requests this Court to sustain its objections and deny the Demand.

Respectfully submitted,

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CO-COUNSEL FOR THE EIGHTH DISTRICT
MEDICAL EXAMINER'S OFFICE

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July, 2025, the foregoing **DISTRICT EIGHT MEDICAL EXAMINER'S OBJECTIONS TO DEMAND FOR ADDITIONAL PUBLIC RECORDS** was electronically filed with the Clerk of the Court via the Florida Courts E-Portal Filing System for service to the following: The **Honorable Lacey Powell Clark**, Circuit Court Judge, judge.clark@Flcourts1.gov, Amanda.Bailey@Flcourts1.gov; **Lisa M. Fusaro**, Assistant Capital Collateral Regional Counsel – North, Lisa.Fusaro@ccrc-north.org; **Alicia A. Hampton**, Assistant Capital Collateral Regional Counsel – North, Alicia.Hampton@ccrc-north.org; **Bridgette Jensen**, Chief Assistant State Attorney, bjensen@osa1.org.; **Matthew Casey**, Assistant State Attorney, mcasey@osa1.org; **Christina Porrello**, Senior Attorney, Florida Department of Corrections, Christina.Porrello@fdc.myflorida.com; **Kristen Lonergan**, Executive Senior Attorney, Florida Department of Corrections, Kristen.Lonergan@fdc.myflorida.com; and the **Florida Supreme Court Clerk**, warrant@flcourt.org.

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CO-COUNSEL FOR THE EIGHTH DISTRICT MEDICAL EXAMINER'S OFFICE

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v. Case No.: 1994-CF-1283

EDWARD J. ZAKREZEWSKI, II [DC 554000], *ACTIVE DEATH WARRANT*
*Execution Scheduled for July 31, 2025*

Defendant.
_____/

*LIMITED* NOTICE OF APPEARANCE

COMES NOW, RANA WALLACE, General Counsel, Florida Commission on Offender Review, and hereby enters this *Limited* Notice of Appearance as counsel of record in the instant postconviction capital case. The undersigned enters this *limited* appearance for the purpose of responding to Defendant's Demand for Public Records and to present argument as to the same at hearing, if necessary.

The undersigned respectfully requests, in her capacity as legal counsel for the Commission on Offender Review and on behalf of the Office of Executive Clemency, inclusion in service of all pleadings, demands, notices, memoranda, orders, or other correspondence in this matter.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of the Circuit Court, Okaloosa County, through the Florida Courts E-Portal Filing System, and that the following have been served electronically with the same: HONORABLE LACY POWELL CLARK, Circuit Judge, First Judicial Circuit, E: judge.clark@flcourts1.gov, E: amanda.bailey@flcourts1.gov; Zachary Loyed, Assistant General Counsel, Executive Office of the Governor, E: zachary.loyed@eog.myflorida.com; CHARMAINE MILLSAPS, Senior Assistant Attorney General, Office of the Attorney General, E: charmaine.millsaps@myfloridalegal.com, E: capapp@myfloridalegal.com, E: amajah.wallace@myfloridalegal.com, E: brianna.cook.@myfloridalegal.com; JANINE ROBINSON, Assistant Attorney General, Office of the Attorney General, E: Janine.robinson@myfloridalegal.com, E: capapp@myfloridalegal.com, E: ariana.balda@myfloridalegal.com; BRIDGETTE JENSON, Chief Assistant State Attorney, Office of the State Attorney, First Judicial Circuit, E: bjensen@osa1.com; MATTHEW CASEY, Assistant State Attorney, Office of the State Attorney, First Judicial Circuit, E: mcasey@osa1.org; CHRISTINA PORRRELLO, Assistant General Counsel, Department of Corrections, E: christina.porrello@fdc.myflorida.com; ALICIA HAMPTON, Assistant Capital Collateral Regional Counsel, Office of Capital Collateral Regional Counsel—North, E: alicia.hampton@ccrc-north.org; LISA M. FUSARO, Assistant Capital Collateral Regional Counsel, Office of Capital Collateral Regional Counsel—North, E: lisa.fusaro@ccrc-north.org; and THE FLORIDA SUPREME COURT, E: warrant@flcourts.org, on this, the 7th day of JULY, 2025.



RANA WALLACE

Filing # 226668844 E-Filed 07/07/2025 10:43:55 AM

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v. Case No.: 1994-CF-1283

EDWARD J. ZAKREZEWSKI, II [DC 554000], *ACTIVE DEATH WARRANT*
*Execution Scheduled for July 31, 2025*

Defendant.
_____/

FLORIDA COMMISSION ON OFFENDER REVIEW'S RESPONSE AND OBJECTIONS TO DEFENDANT'S DEMAND FOR PUBLIC RECORDS

COMES NOW, the Florida Commission on Offender Review,[1] by and through undersigned counsel, having received the July 3, 2025, Defendant's Demand for Public Records, and hereby files this, its Response and Objections to Defendant's Demand for Public Records. The Florida Commission on Offender Review objects to production of all records named in Defendant's demand and states as follows:

Preliminary statement.

1. Pursuant to s. 20.32, Fla. Stat., the Florida Commission on Offender Review ("the Commission") operates as the administrative and investigative arm of the Board of Executive Clemency ("the Board"). The Board is comprised of the Governor and Members of the Cabinet. The Office of Executive Clemency, whose Coordinator is appointed by the Board, is housed within the Commission. The Executive Clemency Coordinator is the custodian of executive clemency records. See s. 20.32, Fla. Stat. See also Rule 2, Rules of Executive Clemency. The Commission

[1] The Florida Commission on Offender Review was formally known as the Florida Parole Commission.

responds on behalf of itself and on behalf of the Office of Executive Clemency in post-warrant demands for executive clemency records.

2. On July 3, 2025, the Commission received Defendant's Demand for Public Records, made pursuant to Rule 3.852(i), Fla. R. Crim. P., for a myriad of executive clemency records. The requested records can be categorized generally into three types: (1) executive clemency records related to Defendant; (2) executive clemency records related to inmates other than Defendant, including inmates who have been executed; and (3) executive clemency records related to the executive's exercise of its clemency power, including its power and authority to issue a death warrant.[2] The Commission identifies Defendant's 6.a. - 6.i., as seeking clemency records related to Defendant, Defendant's 6.l., n., and o., as seeking clemency records related to inmates other than Defendant, and Defendant's 6.j., k., and m., as seeking clemency records related to the manner in which the executive exercises its clemency power.

3. The Commission objects to the production of all records that are the subject of Defendant's demand.[3]

Defendant's Rule 3.852(i), Fla. R. Crim. P., demand.

4. Defendant's demand made pursuant to Rule 3.852(i), Fla. R. Crim. P., must be denied because Defendant has failed, as outlined below, to establish by affidavit that the records he seeks are either relevant to the subject matter of the postconviction proceeding or are reasonably

[2] The Commission submits that this categorization is not to be strictly construed. Several of Defendant's demands, his 6.l., n., and o., for example, could be categorized as either records related to inmates other than Defendant or records related to the manner in which the executive exercises its clemency power, or both.

[3] By filing the instant response and objections, the Commission makes no representation that the requested records exist, and is not, at this time, setting forth all potential statutory or constitutional exemptions and arguments. The Commission does not waive the right to claim any exemptions or make any argument should this Court grant any part of the underlying demand.

calculated to lead to the discovery of admissible evidence. See Rule 3.852(i)(1)(C), Fla. R. Crim. P.

5. The underlying demand is the first demand Defendant has ever made to the Commission or the Office of Executive Clemency for clemency records. In addition to the Rule 3.852(i)(1)(C), Fla. R. Crim. P., requirement of being relevant to the subject matter of the postconviction proceeding or reasonably calculated to lead to the discovery of admissible evidence, Defendant must show good cause for failing to seek records prior to the signing of the death warrant. Dailey v. State, 283 So. 3d 782, 792 (Fla. 2019) (records demands made under Rule 3.852(i), Fla. R. Crim. P., "must show how the records relate to a colorable claim for postconviction relief *and* good cause as to why the public records request was not made until after the death warrant was signed") (emphasis supplied), *quoting* Bowles v. State, 276 So. 3d 791, 795 (Fla. 2019). See also Hannon v. State, 228 So. 3d 505, 512 (finding that defendant waited until the "eve of execution" and until a death warrant was signed to request records and refusing to condone such an "eleventh hour attempt" to delay the execution with records requests). Defendant has failed to make—or even attempt to make—this good cause showing.

Clemency is an exclusively executive function.

6. It is well-settled that the clemency power reposes exclusively in the executive. Sullivan v. Askew, 348 So. 2d 312, 314 (Fla. 1977). See also Article IV, Section 8, Fla. Const. The pardon and other clemency power "flows from the Constitution and not from any legislative enactment[.]" Sullivan, 348 So. 2d at 314, *citing In re* Advisory Opinion of the Governor, 334 So. 2d 561 (Fla. 1976). By adopting this "self-executing constitutional provision, the people of this state chose to vest sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace." Id. at 315. Furthermore, the Florida Supreme Court "has always viewed the

pardon powers expressed in the Constitution as being peculiarly within the domain of the executive[.]" *In r*e Advisory Opinion of the Governor, 334 So. 2d at 562-63. See also Sullivan, 348 So. 2d at 314 (the principle of separation of powers requires the judiciary to adopt an extremely cautious approach in analyzing questions involving "this admitted matter of executive grace").

Clemency records are confidential.

7. Pursuant to s. 14.28, Fla. Stat., "[a]ll records developed or received by any state entity pursuant to a Board of Executive Clemency investigation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution." These records may only "be released upon the approval of the Governor." See s. 14.28, Fla. Stat.

8. Pursuant to Rules 15 and 16, Rules of Executive Clemency, "all records and documents generated and gathered in the clemency process as set forth in the Rules of Executive Clemency are confidential and shall not be made available for inspection[.]" Additionally, "[o]nly the Governor, and no other member of the Clemency Board, nor any other state entity that may be in possession of Clemency Board materials, has the discretion to allow such records and documents to be inspected or copied." See Rules 15 and 16, Rules of Executive Clemency.

9. In Chavez v. State, 132 So. 3d 826, 830-31 (Fla. 2014), the Florida Supreme Court held that Rule 16, Rules of Executive Clemency, protects "all records in the clemency process [as] confidential[,]" even non-investigatory records.

10. *Even in an active death warrant proceeding*, clemency files and records are not subject to disclosure and are exempt from production. See Muhammad v. State, 132 So. 3d 176, 203 (Fla. 2013) (clemency files and records are exempt from production in postconviction warrant proceeding); King v. State, 840 So. 2d 1047, 1050 (Fla. 2003) (clemency records exempt from production in postconviction warrant proceeding); Roberts v. Butterworth, 668 So. 2d 580, 582

(Fla. 1996) (clemency records not subject to disclosure and only the Governor has the authority to disclose).

11. In Parole Comm'n v. Lockett, 620 So. 2d 153, 157-58 (Fla. 1993), the Florida Supreme Court held that "the clemency investigative files and reports produced by the Parole Commission on behalf of the Governor and Cabinet relating to the granting of executive clemency are subject solely to the Rules of Executive Clemency[,]" and a "trial judge's order [to disclose clemency records] would effectively overrule the rules of executive clemency, resulting in a violation of the separation of powers doctrine."

Clemency is not a colorable claim for post-conviction relief.

12. The Florida Supreme Court has repeatedly stressed and long held that collateral postconviction records requests are not to be used for fishing expeditions and that the defendant bears the burden of proving that the records he requests are, in fact, related to a colorable claim for post-conviction relief. See Moore v. State, 820 So. 2d 199, 204 (Fla. 2002); Glock v. Moore, 776 So. 2d 243, 253 (Fla. 2001); Johnson v. State, 804 So. 2d 1218, 1224 (Fla. 2001); Valle v. State, 70 So. 3d 530 (Fla. 2011).

13. Requests made pursuant to Rule 3.852 are described as postconviction discovery requests. See Amendments to Fla. R. Crim. P. 3.852, 754 So. 2d 640, 643 (Fla. 1999). The Florida Supreme Court has further determined that it is proper to deny postconviction discovery requests if the documents sought would not support a valid claim. See Reaves v. State, 942 So. 2d 874, 881-82 (Fla. 2006); Rutherford v. State, 926 So. 2d 1115, 1117 (Fla. 2006).

14. Here, Defendant has demanded records related to executive clemency, a claim the Florida Supreme Court has routinely and repeatedly held is not a cognizable or colorable claim for postconviction relief. Because clemency is not a colorable claim for postconviction relief, no

clemency record can be relevant to the subject matter of a postconviction proceeding or reasonably calculated to lead to the discovery of admissible evidence. See Muhammad, 132 So. 3d at 203 (clemency records do not relate to a colorable claim because claims challenging clemency proceedings are meritless); Carroll v. State, 114 So. 3d 883, 888-89 (Fla. 2013) (a claim challenging the sufficiency of a clemency proceeding is without merit because a court will not second-guess the executive on matters of clemency); Pardo v. State, 108 So. 3d 558, 568 (Fla. 2012) (clemency claim rejected because it is not a court's prerogative to second-guess the executive branch on matters of clemency in capital cases); Asay v. Fla. Parole Comm'n, 649 So. 2d 859 (Fla. 1994) (clemency investigation records are not subject to the requirements of Brady v. Maryland, 373 U.S. 83 (1963)); Chavez, 132 So. 3d at 831-32 (holding clemency processes and proceedings are within the exclusive purview of the executive and will not be second-guessed by the judiciary); Bundy v. State, 497 So. 2d 1209, 1211 (Fla. 1986) (when the Governor has attested in a death warrant that it has been determined that executive clemency is not appropriate, it is not the "prerogative [of the court] to second-guess the application of this exclusive executive function"); Marek v. State, 8 So. 3d 1123, 1129-30 (rejecting a claim that Florida's clemency process is "one-sided, arbitrary, and standardless"), Ferguson v. State, 101 So. 3d 362, 366 (Fla. 2012) (denying claim that the warrant selection process is arbitrary and lacks safeguards); Gore v. State, 91 So. 3d 769, 780 (Fla. 2012) (rejecting claim that Governor's absolute discretion to sign a death warrant renders the process arbitrary and standardless); Valle, 70 So. 3d at 551-52 (rejecting argument that the Governor's discretion in signing a death warrant results in an arbitrary and capricious selection process); Johnston v. State, 27 So. 3d 11, 25-26 (Fla. 2010) (rejecting claim of an inadequate clemency proceeding and holding no specific procedures are mandated in the clemency process).

15. Notwithstanding that the Florida Supreme Court has long held that clemency does not present a cognizable claim for relief and so no clemency records can be found relevant to the subject matter of a post-conviction proceeding or reasonably calculated to lead to the discovery of admissible evidence, the Commission notes Defendant has failed to even attempt to make any showing or argument that the records he demands are relevant to or could lead to the discovery of admissible evidence—he simply says it is so. Even if the Florida Supreme Court had not foreclosed clemency as a colorable claim in postconviction proceedings, Defendant's simple and unsupported statement that "Florida's clemency process, and the arbitrary and capricious manner in which the Governor determined that [Defendant] should receive a death warrant on July 1, 2025, violates the Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding provisions of the Florida Constitution[,]" would be insufficient to meet the required Rule 3.852(i)(1)(C), Fla. R. Crim. P., burden and to overcome the prohibition on using postconviction records requests for a "fishing expedition." The requirement that Defendant establish the requested records are relevant to the subject matter of the postconviction proceeding or reasonably calculated to lead to the discovery of admissible evidence mandates a claim be supported by some fact or argument or record evidence of its own—at a minimum, something more than just saying it is so.

Defendant's simple statement cannot be found to make the required Rule 3.852(i)(1)(C), Fla. R. Crim. P., showing because the Florida Supreme Court has repeatedly held that the manner in which the Governor determines to sign a death warrant is not arbitrary nor capricious and does not violate the Eighth or Fourteenth Amendments. See Johnston, 27 So. 3d at 24 (rejecting a claim that Florida's clemency process is arbitrary, lacks standards, and is one-sided); Marek, 8 So. 3d at 1129-30 (rejecting constitutional challenge to Florida's clemency process and declining to second-guess the executive's application of its clemency power); Carroll, 114 So. 3d at 887-88 (rejecting

claim that the Governor's power to select which death row inmate for whom he will sign a death warrant is arbitrary, without standards, and without process for review); Mann v. State, 112 So. 3d 1158 (Fla. 2013) (rejecting claim that Governor's unfettered discretion to select inmates for execution is unconstitutional); Gore, 91 So. 3d at 779-80 (rejecting challenge to Governor's unfettered discretion to exercise his clemency power under the Rules of Executive Clemency and the separation of powers doctrine); Valle, 70 So. 3d at 551-52 (Governor's absolute discretion to sign death warrants does not render Florida's death penalty structure unconstitutional).

16. Likewise, and, again, notwithstanding that the Florida Supreme Court has long held clemency is foreclosed as a colorable or cognizable claim for postconviction relief, the Commission notes that Defendant has made "any and all" demands for clemency records. Even if clemency claims were not foreclosed, these *de facto* all-records demands are improper under Rule 3.852, Fla. R. Crim. P. See Mills v. State, 786 So. 2d 547, 551-52 (Fla. 2001) (holding that requests that ask for "[a]ll notes, memoranda, letters, electronic mail and/or files, drafts, charts, reports, and/or other files" are improper and do not meet the requirements of Rule 3.852). See also Diaz v. State, 945 So. 2d 1136, 1148-50 (Fla. 2006); Hill v. State, 921 So. 2d 579, 584-85 (Fla. 2006).

Conclusion.

17. The Florida Supreme Court has fully considered and rejected all claims of entitlement to clemency records of any type or form and to all challenges to the manner in which the executive exercises its clemency power. Defendant cannot identify a single instance in which a court in this state has found an inmate, including an inmate under an active death warrant, has been entitled to any executive clemency record—not one related to him, not one related to an inmate other than him, and not one related to the manner in which the executive exercises its clemency power. No record demanded by Defendant, then, is relevant to a colorable claim of relief

or is reasonably calculated to lead to the discovery of admissible evidence. Defendant cannot overcome this first requirement to demonstrate entitlement to the records sought and so the inquiry ends here.

WHEREFORE, based on the foregoing arguments and authorities, the Commission respectfully requests this Court enter an order sustaining the Commission's objections to production of all records identified in Defendant's July 3, 2025, Demand for Public Records.

Respectfully submitted,

RANA WALLACE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of the Circuit Court, Okaloosa County, through the Florida Courts E-Portal Filing System, and that the following have been served electronically with the same: HONORABLE LACY POWELL CLARK, Circuit Judge, First Judicial Circuit, E: judge.clark@flcourts1.gov, E: amanda.bailey@flcourts1.gov; Zachary Loyed, Assistant General Counsel, Executive Office of the Governor, E: zachary.loyed@eog.myflorida.com; CHARMAINE MILLSAPS, Senior Assistant Attorney General, Office of the Attorney General, E: charmaine.millsaps@myfloridalegal.com, E: capapp@myfloridalegal.com, E: amajah.wallace@myfloridalegal.com, E: brianna.cook.@myfloridalegal.com; JANINE ROBINSON, Assistant Attorney General, Office of the Attorney General, E: Janine.robinson@myfloridalegal.com, E: capapp@myfloridalegal.com,

E: ariana.balda@myfloridalegal.com; BRIDGETTE JENSON, Chief Assistant State Attorney, Office of the State Attorney, First Judicial Circuit, E: bjensen@osa1.com; MATTHEW CASEY, Assistant State Attorney, Office of the State Attorney, First Judicial Circuit, E: mcasey@osa1.org; CHRISTINA PORRRELLO, Assistant General Counsel, Department of Corrections, E: christina.porrello@fdc.myflorida.com; ALICIA HAMPTON, Assistant Capital Collateral Regional Counsel, Office of Capital Collateral Regional Counsel—North, E: alicia.hampton@ccrc-north.org; LISA M. FUSARO, Assistant Capital Collateral Regional Counsel, Office of Capital Collateral Regional Counsel—North, E: lisa.fusaro@ccrc-north.org; and THE FLORIDA SUPREME COURT, E: warrant@flcourts.org, on this, the 7th day of JULY, 2025.



RANA WALLACE

Filing # 226676406 E-Filed 07/07/2025 11:33:14 AM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**

_____/

**Case No. 1994-CF-1283**
**ACTIVE DEATH WARRANT**
**Execution scheduled for**
**July 31, 2025 at 6:00 p.m.**

**RESPONSE AND OBJECTION TO DEFENDANT'S DEMAND FOR PUBLIC RECORDS FROM THE OKALOOSA COUNTY SHERIFF'S OFFICE**

COMES NOW the Okaloosa County Sheriff's Office, by and through undersigned counsel, who responds and object to Edward Zakrzewski's Demand for Public Records filed on July 3, 2025 pursuant to Florida Rules of Criminal Procedure 3.852(i), and states as follows:

**I. Defendant Failed To Meet His Burden Under Rule 3.852(i)**

Defendant failed to meet his burden under Florida Rule of Criminal Procedure 3.852(i). For Defendant to obtain public records under this rule, Defendant bears the burden of proving that: (1) counsel made a timely and diligent search of the state records repository; (2) counsel identified with specificity what the additional public records are; (3) the additional public records are related to a colorable claim for relief;[1] and (4) the additional records request is not overly

[1] Florida Rule of Criminal Procedure 3.852(i)(1)(C) and (i)(2)(C) require that the demand be "relevant to the subject matter of" a postconviction proceeding "or appear reasonably calculated to lead to the discovery of admissible evidence." The Florida Supreme Court has equated the showing required by these rules with a colorable claim requirement. See Tompkins v. State, 994 So. 2d 1072, 1090 (Fla. 2008) (equating Rule 3.852(i)(2)(C) with a "colorable claim" requirement); Banks v. State, 150 So. 3d 797, 802 (Fla. 2014) (using the relevance and colorable claim language interchangeably).

broad or unduly burdensome.[2] For post-warrant demands, the Florida Supreme Court has also held that in order for Defendant to obtain public records under rule 3.852(i), the Defendant must demonstrate good cause as to why this demand for additional public records was not made until after the death warrant was signed. *Asay v. State*, 224 So.3d 695, 700 (Fla. 2017) (quoting *Tompkins v. State*, 872 So.2d 230, 244 (Fla. 2003)). The Defendant has failed to meet the burden established by rule 3.852(i) and his demand should be denied.

## II. The Records Sought Are Not Related To A Colorable Claim

Defendant has not shown how the requested records relate to a colorable claim for Relief. The Defendant is required to actually identify a claim to which his records relate before a Rule 3.852(i) demand can be granted. *See Twilegar v. State,* 175 So.3d 242, 250 (Fla. 2015) (capital defendants are required "to articulate a claim to which the records" relate). Merely making a request and citing to a number of potential claims is not sufficient. *Hojan v. State,* 212 So.3d 982, 995 (Fla. 2017) (affirming the denial of a public records demand where the demand did not specify "(1) the purpose for which" the defendant needed the "files and other records, or (2) how he would use the public records to collaterally attack his convictions or sentences").

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[2] Florida Rule of Criminal Procedure 3.852(i)(1)(A-C); 3.852(i)(2)(A-D) as follows:
(1) In order to obtain public records in addition to those provided under subdivisions (e), (f), (g), and (h) of this rule, collateral counsel shall file an affidavit in the trial court which:
(A) attests that collateral counsel has made a timely and diligent search of the records repository; and
(B) identifies with specificity those public records not at the records repository; and
(C) establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence; and
(D) shall be served in accord with subdivision (c)(1) of this rule.
(2) Within 30 days after the affidavit of collateral counsel is filed, the trial court may order a person or agency to produce additional public records only upon finding each of the following:
(A) collateral counsel has made a timely and diligent search of the records repository;
(B) collateral counsel's affidavit identifies with specificity those additional public records that are not at the records repository;
(C) the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and
(D) the additional records request is not overly broad or unduly burdensome.

Likewise, the Defendant's demand for public records does not specify the purpose for the request nor how the records would be used to collaterally attack his conviction or sentence; thus, his demand should be denied.

### III. Defendant's Demand Is A Fishing Expedition And A Delay Tactic

Defendant's demand is a fishing expedition and a delay tactic. The purpose of Florida Rule of Criminal Procedure 3.852 was not to allow capital defendants, much less capital defendants with an active warrant, to engage in a fishing expedition for public records. *Long v. State,* 271 So.3d 938, 948 (Fla. 2019). The Florida Supreme Court has long been wary of public records demands made after the signing of a warrant and it has explained that the purpose of Florida Rule of Criminal Procedure 3.852(i) was, in fact, aimed to prevent capital defendants "from engaging in an eleventh hour attempt to delay the execution." *Dailey v. State*, 283 So.3d 782, 793 (Fla. 2019). Moreover, the Court has long held that Rule 3.852 demands are "not intended to be a 'procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief.'" *Wyatt,* 71 So.3d at 111, quoting *Moore,* 820 So.2d at 204; *see also, Twilegar,* 175 So.3d at 250.

In the present case, the Defendant waited until after his warrant was signed to make this demand to the Okaloosa County Sheriff's Office without providing any explanation as to why he waited to file such an expansive and overly broad demand. The United States Supreme Court has exhorted lower courts when presiding over capital cases to "police carefully" against tactics used to "interpose unjustified delay" and encouraged courts to invoke their equitable powers to prevent such delays. *Bucklew v. Precythe,* 139 S.Ct. 1112, 1134 (2019). The Defendant's demand is an improper fishing expedition and delay tactic and should be denied.

## IV. The Okaloosa County Sheriff's Office Does Not Have Any Responsive Records

Records from the Okaloosa County Sheriff's Office in this matter were sent to the Florida State Archives, which were received by the State Repository on May 11, 1999.[3] In addition, the Okaloosa County Sheriff's Office has conducted a diligent search of its records and has determined that there are no further records responsive to this demand other than those that have been previously provided to the Florida State Archives. Therefore, the Defendant's demand is moot and should be denied.

## V. The Defendant's Demand For Records Is Overly Broad, Unduly Burdensome, And Lacks Specificity

The Defendant's demand for public records is on its face, overly broad, unduly burdensome, and lacks specificity.[4] According to the Florida Supreme Court, overbroad and unduly burdensome requests for "any and all" records are improper under Rule 3.852. *Wyatt v. State,* 71 So.3d 86, 111 (Fla. 2011) (finding that the requirement that a public records request not be overly broad or unduly burdensome is a "reasonable restriction on access to those records"); *Moore v. State*, 820 So.2d 199, 204 (Fla. 2002) (holding that it was proper when the trial court denied demand for additional records which were "overly broad, of questionable relevance, and unlikely to lead to discoverable evidence"); and *Dennis v. State*, 109 So.3d 680, 699 (Fla. 2012) (finding no abuse of discretion denying an "any and all" request for criminalist's past case work, quoting *Diaz v. State*, 945 So.2d 1136, 1150 (Fla. 2006)).

Furthermore, the Florida Supreme Court has rejected demands made pursuant to Florida Rule of Criminal Procedure 3.852(h) with similar language to the demand filed by the Defendant. *See e.g., Mills v. State*, 786 So.2d 547, 551-52 (Fla. 2001) (affirming the trial court's

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[3] See Exhibits A and B attached hereto.

[4] See Florida Rule of Criminal Procedure 3.852(i)(2)(D); 3.852(i)(1)(B); and 3.852(i)(2)(B).

finding that the defendant's demand for "all notes, memoranda, letters, electronic mail, and/or other files generated or received by any and all members of your agency which are related to [Defendant]"); *Glock v. Moore*, 776 So.2d 243, 254 (Fla. 2001). The Defendant's expansive demand for documents contained in paragraph 4(a-c) is precisely the type of overly broad and unduly burdensome request that has previously been rejected by the Florida Supreme Court; and, his demand should also be denied.

**WHEREFORE** the Okaloosa County Sheriff's Office is respectfully requesting that for the foregoing reasons this Court sustain this objection and deny the demand from the Defendant.

*/s/ Marsha L. Weaver*
Marsha L. Weaver
FBN: 986356
General Counsel
Okaloosa County Sheriff's Office
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Shalimar, Florida 32579
Office: (850)613-2213
mweaver@sheriff-okaloosa.org




IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

Edward J. Zakrzewski II,,

Defendant.

_____/ Case No. 94-1283

RECEIVED & DOCKETED
FLORIDA ATTORNEY GENERAL
APR 19 1999
CAPITAL COLLATERAL
SECTION - TALLAHASSEE

**NOTICE OF COMPLIANCE BY LAW ENFORCEMENT AGENCY**

TO: Robert A. Butterworth
Office of the Attorney General
The Capitol
Tallahassee, FL 32399-1050

The undersigned, as Chief Law Enforcement Office with The Okaloosa County Sheriff's Office, involved in this case by an investigation, arrest, prosecution or incarceration, hereby gives notice to the Attorney General of compliance by delivery of public records involving this case to the records repository of the Secretary of State. I further certify that, to the best of my knowledge and belief, all public records in possession of this agency or in the possession of any employee of this agency have been copied, sealed, indexed and delivered to the records repository of the Secretary of State.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the Okaloosa County Circuit Court, Robert A. Butterworth, Attorney General, Assistant State Attorney Robert C. Elmore, and Andrew Thomas, Chief Assistant, Office of The Capital Collateral Counsel, Northern Region of Florida, this 12th of April, 1999.

Charlie Morris

CHARLES W. MORRIS
SHERIFF

C:\My Documents\RECORDS REQUESTS\Zakrzewski, Edward-CCR\NoticeofCompliance.wpd

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Library and Information Resources
Form LS/TEMP/CCR100

# TRANSMITTAL RECEIPT
# TRANSFER OF CAPITAL COLLATERAL POST CONVICTION RECORDS TO THE FLORIDA STATE ARCHIVES

1. RECORD GROUP NO. 660
SERIES NO. 1739 CCR 539

2. AGENCY
Okaloosa County Sheriff's Office

3. DIVISION
Bureau of Investigations

4 BUREAU
Investigations

5. ADDRESS (Street, City, and Zip Code)
1C 9th Avenue
Shalimar, Fl. 32579

6. CONTACT (Name and Telephone Number)
Kathy Wilson
850-609-2000

EXHIBIT tabbies B

7. SUBMIT TO:
Florida Department of State
Bureau of Archives and Records Management
Mail Station 9A
R. A. Gray Building
500 South Bronough Street
Tallahassee FL 32399-0250

8. SCOPE DATES: 1994

RECORDS SERIES TITLE: CCR Post Conviction Records

DEFENDANT NAME & CASE # Edward Zakrzewski
94-17426

9. DESCRIPTION

Box Number One, see attached description of files.

VOLUME One Cubic (CUBIC FEET)

(USE CONTINUATION SHEET IF NECESSARY)

10. TYPE OF RECORD (CHECK EACH TYPE THAT APPLIES)

a. X PAPER COPIES b. X PHOTOGRAPHS c. X OTHER 3 VCR Tapes

11. LIST BOXES WITH SEALED RECORDS (RESTRICTED ACCESS) (CITE APPLICABLE STATUTE)

N/A

12. THE ABOVE DESCRIBED RECORDS ARE TRANSFERRD TO THE CUSTODY OF THE CAPITAL COLLATERAL POST CONVICTION RECORDS REPOSITORY (FLORIDA STATE ARCHIVES)

TRANSMITTING AGENCY: I AUTHORIZE THE TRANSFER OF THE RECORDS HEREIN DESCRIBED

Judy Zoerb 4-12-99
SIGNATURE DATE

Judy Zoerb Records Manager
TYPE NAME AND TITLE

13. FLORIDA STATE ARCHIVES;
I ACCEPT CUSTODY OF THE RECORDS HEREIN DESCRIBED.

Jim Burbrick 5-11-99
BUREAU CHIEF DATE

Dena Hochberg 5-10-99
CCR POST CONVICTION RECORDS ARCHIVIST DATE

1) CASE #94-17426 ZAKRZEWSKI
OKALOOSA COUNTY SHERIFF'S OFFICE
INITIAL REPORT

2 ) CASE #94-17426 ZAKRZEWSKI
WARRANT

3 )CASE #94-17426 ZAKRZEWSKI
EVENT DETAIL REPORT

4) CASE #94-17426 ZAKRZEWSKI
MAROON VEHICLE

5) CASE #94-17426 ZAKRZEWSKI
INFO ON CAR

6) CASE #94-17426 ZAKRZEWSKI
ROI-RAMIREZ AND BURDEN

7) CASE #94-17426 ZAKRZEWSKI
AFOSI ANALYSIS REPORT

8) CASE #94-17426 ZAKRZEWSKI
ROI-GRIGGS

9) CASE #94-17426 ZAKRZEWSKI
ROI-DONALDSON

10) CASE #94-17426 ZAKRZEWSKI
MCCOLLOUGH CRIME SCENE

11) CASE #94-17426 ZAKRZEWSKI
ROI-CLARNO

12) CASE #94-17426 ZAKRZEWSKI
INTERVIEW, JULIA BATES

13) CASE #94-17426 ZAKRZEWSKI
YOUNG/ BANK TRANSACTIONS

14) CASE #94-17426 ZAKRZEWSKI
AFOSI, PSYCH MILITARY HISTORY

15) CASE #94-17426 ZAKRZEWSKI
SKETCHES OF RESIDENCE

16) CASE #94-17426 ZAKRZEWSKI
POSTERS

17) CASE #94-17426 ZAKRZEWSKI
NEWSPAPER ARTICLES

18) CASE #94-17426 ZAKRZEWSKI
FAMILY PICTURES

19) CASE #94-17426 ZAKRZEWSKI
MORTAGE PAPERS

20) CASE #94-17426 ZAKRZEWSKI
MAILBOXES, INC.

21) CASE #94-17426 ZAKRZEWSKI
PHONE TOLLS

22) CASE #94-17426 ZAKRZEWSKI
PHONE RECORDS

23) CASE #94-17426 ZAKRZEWSKI
BANK TRANSACTIONS

24) CASE #94-17426 ZAKRZEWSKI
VIDEO CLUB INFORMATION

25) CASE #94-17426 ZAKRZEWSKI
COMPUTER DISC INFORMATION

26) CASE #94-17426 ZAKRZEWSKI
PERSONAL PAPERS

27) CASE #94-17426 ZAKRZEWSKI
MEDICAL RECORDS

28) CASE #94-17426 ZAKRZEWSKI
DENTAL RECORDS

29) CASE #94-17426 ZAKRZEWSKI
FINGER PRINTS, PALM PRINTS, ETC.

30) CASE #94-17426 ZAKRZEWSKI
AUTOPSY REPORTS

31) CASE #94-17426 ZAKRZEWSKI
ITEMS COLLECTED, EVIDENCE INVENTORY

32) CASE #94-17426 ZAKRZEWSKI
LAB REPORTS

33) CASE #94-17426 ZAKRZEWSKI
RADIO REPORTS

34) CASE #94-17426 ZAKRZEWSKI
TELETYPES

35) CASE #94-17426 ZAKRZEWSKI
UNSOLVED MYSTERIES

36) CASE #94-17426 ZAKRZEWSKI
AMERICA'S MOST WANTED

37) CASE #94-17426 ZAKRZEWSKI
SCHOOL RECORDS

38) CASE #94-17426 ZAKRZEWSKI
NOTES

39) CASE #94-17426 ZAKRZEWSKI
ATTEMPTED ESCAPE

40) CASE #94-17426 ZAKRZEWSKI
INMATE PROPERTY RELEASE

41) CASE #94-17426 ZAKRZEWSKI
HAWAII EXTRADITION ARREST

42) CASE #94-17426 ZAKRZEWSKI
NOTIFICATION OF EXERCISE OF RIGHTS

43) CASE #94-17426 ZAKRZEWSKI
PROPERTY RELEASE

44) CASE #94-17426 ZAKRZEWSKI
PICTURES OF CAR

45) CASE #94-17426 ZAKRZEWSKI
3 PORNO TAPES FOUND IN HOME

46) CASE #94-17426 ZAKRZEWSKI
PICTURES OF CAR

47) CASE #94-17426 ZAKRZEWSKI
PICTURES OF FAMILY

48) CASE #94-17426 ZAKRZEWSKI
PICTURES OF FAMILY

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT**
**IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Case No. 1994-CF-1283**
**CAPITAL CASE**
**Execution Scheduled for**
**July 31, 2025 at 6:00pm**

**v.**

**EDWARD JAMES ZAKRZEWSKI II,**

**Defendant.**
_____/

**FLORIDA DEPARTMENT OF LAW ENFORCEMENT'S RESPONSE AND OBJECTION TO DEFENDANT'S DEMAND FOR PUBLIC RECORDS RELATED TO LETHAL INJECTION PROTOCOL**

COMES NOW, the Florida Department of Law Enforcement ("FDLE"), by and through the undersigned counsel, who responds and objects to Defendant Edward Zakrzewski's Demand for Additional Public Records pursuant to Florida Rule of Criminal Procedure 3.852(i).

## I. BACKGROUND

Edward Zakrzewski ("Defendant") is a prisoner under sentence of death. On July 3, 2025, Defendant filed a Demand for Public Records Related to Lethal Injection Protocol pursuant to Florida Rule of Criminal Procedure 3.852(i) relating to Lethal Injection Protocols. The Defendant seeks records regarding Florida's lethal injection protocols below:

A. All records concerning the review process which led to the promulgation of the lethal injection procedures, including but not limited to computer print-outs or copies of research or literature reviewed, emails, faxes, letters, minutes or notes of meetings, telephone call records or notes, including any communications with FDOC, Office of the Attorney General, the Office of the Governor, any other outside agencies, experts (medical or other), other states or state departments of corrections, and/or the federal government;

B. All records relating to any correspondence, from September 9, 2013, to the present, with any federal agency including the Drug Enforcement Administration (DEA), the Food and Drug Administration (FDA), the Federal Bureau of Prisons (BOP), or the Department of Justice (DOJ) relating to Florida's execution procedures or the drugs used for lethal injection, including, but not limited to, any application or registration for permits and/or licenses, or permits and/or licenses required by any federal agency in connection with the purchase, storage, use, research, and disposal of rocuronium bromide, potassium acetate and etomidate, and/or any communications including discussions of same.

C. Batch numbers of the etomidate the State intends to use to carry out the execution of Mr. Zakrzewski, to ensure they were not part of a recall of etomidate in 2014, or in the alternative, a certification from FDLE that the etomidate was not part of the recall and that the drug they intend to use is unexpired;

D. All records relating to execution training exercises, including logs, checklists, sign-in sheets, photographs, and videos related to the two designated FDLE monitors required by FDOC lethal injection procedures to be present during the execution of Mr. Zakrzewski;

E. Any records relating to any correspondence with any Florida state agency including the Florida Department of Health, from January 4, 2017, through the present, relating to the acquisition of rocuronium bromide, potassium acetate and etomidate;

F. All records, including logs or record books regarding the purchase, storage, maintenance, use, distribution, disposal, and expiration dates of pentobarbital and/or etomidate hydrochloride that show compliance (or non-compliance) with Federal Controlled Substances Act and Florida Statutes, Chapters 828, 893, and 465 from September 9, 2013, to the present;

G. Any records consisting of photographs or videos of the execution chamber, including close-up photographs of all connections and tubing;

H. All records relating to the executions by lethal injection of (including the required logs, notes, memoranda, letters, electronic mail, and facsimiles) Louis Gaskin (DC#75116), Darryl Barwick (DC#092501), Duane Owen (DC#101660), James Barnes (DC#071551), Michael Zack III (DC#124439), Loran Cole (DC#335421), James Ford (DC#763722), Edward James

(DC#969121), Michael Tanzi (DC# K04389), and Jeffrey Hutchinson (DC# 124849), Glen Rogers (DC#124400), Anthony Wainwright (DC#123847), and Thomas Gudinas (DC#379799);

I. Any records consisting of photographs and videos of the actual executions by lethal injection of Louis Gaskin (DC#75116), Darryl Barwick (DC#092501), Duane Owen (DC#101660), James Barnes (DC#071551), Michael Zack III (DC#124439), Loran Cole (DC#335421), James Ford (DC#763722), Edward James (DC#969121), Michael Tanzi (DC# K04389), and Jeffrey Hutchinson (DC# 124849), Glen Rogers (DC#124400), Anthony Wainwright (DC#123847), and Thomas Gudinas (DC#379799);

J. Any records of the training, and experience of all individuals directly involved with the executions of Louis Gaskin (DC#75116), Darryl Barwick (DC#092501), Duane Owen (DC#101660), James Barnes (DC#071551), Michael Zack III (DC#124439), Loran Cole (DC#335421), James Ford (DC#763722), Edward James (DC#969121), Michael Tanzi (DC# K04389), and Jeffrey Hutchinson (DC# 124849), Glen Rogers (DC#124400), Anthony Wainwright (DC#123847), and Thomas Gudinas (DC#379799); and

K. All records related to the investigation and/or review of the executions of Louis Gaskin (DC#75116), Darryl Barwick (DC#092501), Duane Owen (DC#101660), James Barnes (DC#071551), Michael Zack III (DC#124439), Loran Cole (DC#335421), James Ford (DC#763722), Edward James (DC#969121), Michael Tanzi (DC# K04389), and Jeffrey Hutchinson (DC# 124849), Glen Rogers (DC#124400), Anthony Wainwright (DC#123847), and Thomas Gudinas (DC#379799).

Demand at Paragraphs 4 A. through K.

FDLE objects to the Demand as the Defendant failed to comply with Rule 3.852 and Florida Supreme Court precedent, and it should be denied in its entirety.

## II. RESPONSE AND OBJECTIONS

To obtain post-death warrant records on lethal injection under Rule 3.852(i)(2), the Defendant must demonstrate, and this Court must find, each of the following:

(A) collateral counsel has made a timely and diligent search of the records repository;

(B) collateral counsel's affidavit identifies with specificity those additional public records that are not at the records repository;

(C) the additional public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and

(D) the additional records request is not overly broad or unduly burdensome.

Fla. R. Crim. P. 3.852(i)(2)(A)-(D). This Court may not grant the Demand unless the Defendant demonstrates that the records are related to a colorable postconviction claim and "good cause" for failing to seek the records prior to the signing of the death warrant has been shown. *See Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019) (holding, the capital defendant under a death warrant must show ". . . good cause as to why the public records request was not made until after the death warrant was signed.") (quoting *Bowles v. State*, 276 So. 3d 791, 795 (Fla. 2019)); *see also, Hannon v. State*, 228 So. 3d 505, 511 (Fla. 2017).

The Defendant failed to meet his burden to show a colorable claim for relief required by Rule 3.852(i)(1)(C). Postconviction counsel argues that the lethal injection-related records are necessary for the Defendant to investigate a claim. Demand at 6. Counsel claims the records are necessary to investigate a facial constitutional challenge and a constitutional challenge as applied to the Defendant. Demand at 6. Counsel cites *Glossip* while seeking records from previous executions to "prove that the current procedures are 'very likely to cause serious illness and needless suffering,' and there is a 'substantial risk of serious harm' to Mr. Zakrzewski if the State of Florida executes him under the current method." Demand at 8.

To prevail on a constitutional challenge to the method of execution under *Glossip*, "a condemned prisoner must: (1) establish that the method of execution presents a substantial and

imminent risk that is sure or very likely to cause serious illness and needless suffering and (2) identify a known and available alternative method of execution that entails significantly less severe risk of pain." *Asay v. State* (*Asay VI*), 224 So. 3d 695, 701 (Fla. 2017), *citing Glossip v. Gross*, 576 U.S. 863, 877 (2015). The Defendant failed to establish the first predicate as the Defendant's Demand makes clear that counsel is still investigating or awaiting the records to begin investigating this claim. Furthermore, beyond merely quoting the language from *Glossip*, the Defendant has certainly not *established*, as is required, that the lethal injection method of execution presents a "substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering." Additionally, the Defendant failed to identify a known and available alternative as required by precedent. The Defendant offered only boilerplate language without any evidence to support the claim. This speculative and vague stance fails to meet a "good cause" standard.

The Defendant acknowledges the Florida Supreme Court's current precedent finding that lethal injection records requests do not relate to a colorable claim for postconviction relief. Demand at 7. Additionally, the Defendant's allegations of the potential for challenges fall short of the standard established by Florida Supreme Court precedent. The Demand should be denied on this basis alone. *See Dailey* at 792.

The Florida Supreme Court has considered and rejected constitutional challenges to Florida's lethal injection protocol. In *Jimenez v. State*, 265 So. 3d 462 (Fla. 2018) the court upheld the trial court's decision to deny a records demand related to lethal injection protocol and explained,

> . . . production of records relating to lethal injection are "unlikely to lead to a colorable claim for relief [when] the challenge to the constitutionality of lethal injection as currently administered in Florida has been fully considered and rejected by the Court."

*Jimenez, 265 So. 3d at 473, quoting Hannon*, 228 So. 3d at 511-12, *quoting Walton v. State*, 3 So. 3d 1000, 1014 (Fla. 2009). The *Jimenez* court went on to reiterate its approval of use of etomidate as first drug in lethal injection protocol noting, "we have consistently rejected [the] challenge that the DOC should substitute the current three-drug protocol with a one-drug protocol." (alteration in original) (*quoting Hannon*, 228 So. 3d at 509). *Id.* at 475.

The Defendant has not presented either new argument or evidence that requires the Florida Supreme Court to revisit *Asay VI*. Challenges to the constitutionality of Florida's lethal injection protocol, as currently administered, have been fully considered and repeatedly rejected. *See Dailey* at 792 (recently 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 v. State*, 271 So. 3d 938, 943-46 (Fla. 2019) (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.") *cert. denied* 139 S. Ct. 2635; *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).

Moreover, the Florida Supreme Court has consistently held that records related to prior executions, execution protocols, personnel or other matters are not relevant to a colorable claim for relief. *See e.g.*, *Chavez v. State*, 132 So. 3d 826, 829-30 (Fla. 2014) (affirming the denial of demand for execution logs and notes created by FDLE agents who observed eleven prior executions); *Muhammad v. State*, 132 So. 3d 176, 202 (Fla. 2013) ("[R]equests 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) (holding that records of past five executions were "not related to a colorable Eighth Amendment claim.").

Recently, in *Cole v. State,* the Florida Supreme Court reiterated that a constitutional challenge to Florida's current lethal injection protocol is not a colorable claim. *Cole v. State,* 392 So. 3d 1054, 1066 (Fla. 2024). In *Cole,* the Florida Supreme Court agreed that existing precedent demonstrates that records requests of this kind do not relate to a colorable claim for postconviction relief, and arguments of this kind are foreclosed by precedent. *Id.* The Court also rejected the argument that it should recede from that precedent. *Id.*

The Florida Supreme Court "has long acknowledged that the public records procedure under [Rule 3.852] 'is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief.'" *Long v. State*, 271 So. 3d 938, 948 (Fla. 2019), *cert. denied*, 139 S. Ct. 2635 (2019) (quoting *Muhammad* 132 So. 3d at 200). Instead, Rule 3.852 is "a carefully tailored discovery rule[,]" *In re Amendment to Florida Rules of Criminal Procedure-Capital Postconviction Public Records Production*, 683 So. 2d 475, 476 (Fla. 1996) that is subject to the limitations imposed by Rule 3.852(k)(1) that the records sought are "not privileged or immune from production and are either relevant to the subject matter of the proceeding under rule 3.851 or are reasonably calculated to lead to the discovery of admissible evidence."

To this end, FDLE briefly addresses the Demand specifics, which is no more than an unauthorized fishing expedition, in the Defendant's speculative hope that he may uncover something to show cruel and unusual punishment, through further investigation:

Paragraphs 4.A., 5.B., and 5.E.: Records concerning communications between agencies and the review process leading to the promulgation of the current lethal injection protocol fails the

relevancy requirement of Rule 3.852(i)(2)(C). The Defendant cannot establish relevancy to a colorable Eighth or Fourteenth Amendment challenge because the Florida Supreme Court has fully considered and rejected challenges to lethal injection as currently administered in Florida. *See e.g.*, *Dailey*, 283 So. 3d at 792 ("Because we have upheld the constitutionality of the current lethal injection protocol, such records 'are unlikely to lead to a colorable claim for relief.'") Additionally, this request is overbroad and unduly burdensome as it would require FDLE to amass and review potentially hundreds of irrelevant records based on the keywords that would be used to search FDLE's records and email server.

Paragraph 4.C and 4 F.: The Defendant requests records related to the protocol drugs. The February 18, 2025, Lethal Injection Protocol adopted and certified by the Florida Department of Corrections (FDC) requires that the chemicals have not reached or surpassed their expiration dates:

> Purchase and Maintenance of Lethal Chemicals: A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

*See* FDC's Execution by Lethal Injection Procedures at page 5.

Demands for records relating to the selection, acquisition, and storage of drugs used in the lethal injection protocol consistently have been found to be unrelated to a colorable claim of relief. *See Asay, Hannon, Muhammad, Long, Bowles,* and *Dailey.* Both the United States Supreme Court and the Florida Supreme Court have held that post-conviction claims based on nothing more than the source of lethal injection drugs do not present a cognizable claim that a lethal injection procedure is unconstitutional. *Brewer v. Landrigan*, 131 S. Ct. 445 (2010) (vacating a stay of execution that was based upon a finding that the condemned inmate had a

substantial likelihood of success on the merits of his claim that the use of sodium thiopental obtained from a foreign source and not approved by the FDA creates a substantial and unnecessary risk of serious harm in violation of the Eighth Amendment*); Valle*, 70 So. 3d at 549 (requests for records to demonstrate that pentobarbital may have been procured illegally are speculative and conclusory and amount to no more than a "fishing expedition" for which Rule 3.852 is not intended).

Paragraphs 4.D. and 4 H. through 4 K.: The Defendant seeks records relating to the two designated FDLE monitors required to be present during the Defendant's execution as well as records related to prior executions. The issue of production of records related to prior executions has been previously litigated, and the Florida Supreme Court has ruled that records from past executions are not related to a colorable claim. Records photos, and videos of prior executions are not likely to lead to a colorable constitutional challenge and should be denied "because there is a presumption that members of the executive branch will perform their duties properly." *Muhammad*, 132 So. 3d at 202-03. The Defendant cannot overcome that presumption with his fishing expedition or unidentified speculations as to personnel's qualifications. Moreover, the Florida Supreme Court has repeatedly held that records related to prior executions are not relevant to a colorable Eighth Amendment claim. *See e.g.*, *Chavez*, 132 So. 3d at 826 (affirming the denial of demand for execution logs and notes created by FDLE agents who observed eleven prior executions); and *Valle*, 70 So. 3d at 549 (holding that records of past five executions were "not related to a colorable Eighth Amendment claim.")

FDLE directs this Court to recent circuit court post-warrant decisions denying similar demands on lethal injection. *See State v. Dillbeck*, 1990-CF-2795, Leon County, FL (Order entered January 7, 2023); *State v. Gaskin*, 1990-CF-00001, Flagler County, FL (Order entered

March 17, 2023); and *State v. Barwick*, 1986-CF-940, Bay County, Florida (Order entered April 6, 2023). In all three cases, the trial courts sustained FDLE's and other agencies' objections to demands for lethal injection records. The courts found that the requested records were not related to colorable constitutional claims and unsupported assertions that the records *may* contain relevant information does not satisfy a defendant's burden.

The Florida Supreme Court has affirmed this Court's order *Hutchinson v. State*, 2025 WL 1198037 (Fla. Apr. 25, 2025) *cert. denied, Hutchinson v. Florida,* 145 S. Ct. 1980 (2025) (Mem.), holding,

> …As for subdivision (i), the court found that the requests did not meet the standards established in the rule or in the case law interpreting it. Indeed, the court determined that many of the requests did not relate to a colorable claim for relief and, thus, amounted to a prohibited fishing expedition. *Id.* At 3.

The same is true in Zakrzewski's Demand.

## CONCLUSION

This Court should deny the Demand in its entirety because it epitomizes the type of fishing expedition the Florida Supreme Court has repeatedly held is not permitted by Rule 3.852. The Demand seeks records that the Florida Supreme Court has previously determined are not relevant to a colorable Eighth Amendment claim. More to the point, however, the Florida Supreme Court has held that once it has fully considered and rejected a constitutional challenge to the lethal injection protocol, as currently administered, records related to lethal injection are not relevant to a colorable Eighth Amendment claim. The Florida Supreme Court has already fully considered and rejected challenges to lethal injection as currently administered in Florida. Therefore, such records are not relevant to a colorable Eighth Amendment claim.

WHEREFORE, based on the foregoing, the Florida Department of Law Enforcement respectfully requests that this Court deny Defendant's Demand for Public Records Relating to Lethal Injection Protocol.

Respectfully submitted,

/s/ *Lindsey Brigham*

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Florida Bar No. 1000330

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to counsel of record via the Florida Courts E-Filing Portal on July 7, 2025.

/s/ *Lindsey Brigham*

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Florida Bar No. 1000330

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA**,
Plaintiff,
v.

**EDWARD ZAKRZEWSKI, II**,
Defendant.
_____/

**CASE NO:** 1994-CF-1283
**DIVISION:** 001
**DEATH WARRANT SIGNED
FOR EXECUTION – JULY 31, 2025**

**STATE'S RESPONSE AND OBJECTION TO DEFENDANT'S DEMAND FOR PUBLIC RECORDS [STATE ATTORNEY'S OFFICE]**

**COMES NOW** the Office of the State Attorney in and for the First Judicial Circuit of Florida and files this Response and Objection to the Defendant's Demand for Public Records Pursuant to Florida Rule of Criminal Procedure 3.852(i) and states:

**BACKGROUND**

1. The Defendant, Edward Zakrzewski, is a prisoner under sentence of death for the first-degree murders of his wife and two children on June 9, 1994.
2. On July 1, 2025, Governor Ron DeSantis signed a death warrant for the execution of Edward Zakrzewski, and Zakrzewski's execution is scheduled to occur on Thursday, July 31, 2025, at 6 p.m.
3. In his current demand for public records from the State Attorney's Office for the First Judicial Circuit, the Defendant seeks the following: a. Any files, records, reports, letters, memoranda, notes, drafts, and/or emails in the possession or control of your agency relating to the investigation and/or prosecution of Edward Zakrzewski (DOB 1/31/1965) and/or the investigation of the death of [redacted]e the date of last production; and/or any

documents that were, for any reason, not produced previously; b. All emails, text messages, faxes, letters, and other forms of correspondence, as well as any memos or notes documenting communications or phone calls, between any Office of the State Attorney employee or former employee (including, but not limited to, victim advocates) and the family/acquaintances of the victims, regarding Edward Zakrzewski (DOB 1/31/1965); c. Any *Brady* or *Giglio* material in possession or control of your agency; and d. All emails, text messages, faxes, letters, and other forms of correspondence, as well as any memos or notes documenting communications or phone calls, between any Office of the State Attorney employee or former employee (including, but not limited to, victim advocates) and the Office of the Attorney General; the Executive Office of the Governor, Florida Commission on Offender Review and/or the Office of Executive Clemency, regarding Edward Zakrzewski (DOB 1/31/1965), on or after July 1, 2024.

**REPONSE AND OBJECTIONS**

**The Records Sought are Not Related to a Colorable Claim.**

4. 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. 2017).
5. Specially, Rule 3.852(h) is limited to seeking updated records from "persons and agencies who were the recipients of a public records request at the time the defendant began his or her postconviction odyssey." *Dailey v. State*, 283

So. 3d 782, 792 (Fla. 2019) (quoting *Sims v. State*, 753 So. 2d 66, 70 (Fla. 2000)).

6. The Florida Supreme Court has repeated that Rule 3.852 is "not intended to be 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) (noting the public records procedure under Florida Rule of Criminal Procedure 3.852(h) is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief); *Long v. State*, 271 So. 3d 938, 948 (Fla. 2019) (same). *Bowles v. State*, 276 So. 3d 791, 795 (Fla. 2019) (denying a request for records related to the lethal injection protocol because Rule 3.852(h) is not intended to authorize fishing expeditions); *Moore v. State*, 820 So. 2d 199, 204 (Fla. 2002) (noting that Rule 3.852 does not authorize fishing expeditions for records that are not directly relevant to colorable claims); *Glock v. Moore*, 776 So. 2d 243, 253 (Fla. 2001) (same); and *Mills v. State*, 786 So. 2d 547, 552 (Fla. 2001) (same).

7. Here, the Defendant has not even articulated, much less sufficiently demonstrated, any colorable claim for relief he intends to raise that are related to all the records he is seeking to obtain in reference to this case. Therefore, his demand should be denied.

**The Defendant's Demand for Records is Vague, Overbroad, and Unduly Burdensome.**

8. Vague, overbroad, and unduly burdensome requests for "any and all" documents or records like the request the Defendant now makes are improper under Florida Rule of Criminal Procedure 3.852. *Wyatt v. State*, 71 So. 3d 86,

111 (Fla. 2011) (finding that the requirement that a public records request not be overly broad or unduly burdensome is a "reasonable restriction on access to those records"); *Moore v. State*, 820 So. 2d 199, 204 (Fla. 2002) (finding that it was proper for a trial court to deny demands for additional records which are "overly broad, of questionable relevance, and unlikely to lead to discoverable evidence").

9. The Florida Supreme Court has rejected overly broad demands like the one the Defendant now makes. *See e.g. Mills v. State*, 786 So. 2d 547, 551-52 (Fla. 2001) (affirming the trial court's finding that the defendant's demand for "[a]ll notes, memoranda, letters, electronic mail, and/or files, drafts, charts, reports, and/ or other files generated or received by any and all members of your agency which are related to Gregory Mills."); *Glock v. Moore*, 776 So. 2d 243, 254 (Fla. 2001) (finding no abuse of discretion in the denial of public records request that was "quite broad" and included more than simply an update on information previously requested).

10. The Defendant has demanded that the Office of the State Attorney provide "Any files, records, reports, letters, memoranda, notes, drafts, and/or emails …" "since the date of last production; and/or any documents that were, for any reason, not produced previously."

11. The Office of the State Attorney previously provided records in 1999 to the Florida State Archives, and this type of expansive demand is precisely the type of overly broad request that would place an undue burden upon this office to comply with, especially in the short amount of time provided.

12. Defendant's demand is a fishing expedition and a delay tactic. The purpose of Florida Rule of Criminal Procedure 3.852 is not to allow capital defendants, especially those with an active warrant, to engage in a fishing expedition for public records. *Long v. State*, 271 So. 3d 938 (Fla. 2019).

13. The Office of the State Attorney sent records to the Florida State Archives and those records were received by the State Repository on February 17, 1999. The State Attorney's Office Records Supervisor conducted a search beginning July 2, 2025, and submits there are no additional records responsive to this demand.

For all of the foregoing reasons, the Defendant is not entitled to public records from the State Attorney's Office for the First Judicial Circuit. Therefore, this Court should sustain the instant objections and deny the Defendant's demand.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a copy of the foregoing has been furnished to counsel for the Defendant, Lisa Fusaro, Esq., and Alicia Hampton, Esq., CCRC-North, 1004 DeSoto Park Drive, Tallahassee, FL 32301, by e-filing and/or email on July 7, 2025.

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/s/ MATTHEW CASEY
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ASSISTANT STATE ATTORNEY

Filing # 226694825 E-Filed 07/07/2025 01:43:43 PM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA**,

**Plaintiff,**

**v.** **CASE NO: 1994-CF-1283**
**DEATH PENALTY CASE**

**EDWARD J. ZAKRZEWSKI,**

**Defendant.**

_____/

**DEPARTMENT OF CORRECTIONS' RESPONSE AND OBJECTION TO DEFENDANT'S DEMAND FOR ADDITIONAL PUBLIC RECORDS**

COMES NOW, the Florida Department of Corrections ("Department" or "FDC"), by and through undersigned counsel, and hereby files its response and objection to Defendant's Demand for Additional Public Records filed on July 3, 2025, pursuant to Florida Rule of Criminal Procedure 3.852(i). In support thereof, the Department states as follows:

**PRELIMINARY STATEMENT**

In paragraphs (4)(A) through (4)(K), the Defendant requests records related to the Department's lethal injection protocol, procedures, and process. The current lethal injection protocol has been fully litigated - the Florida Supreme Court has ruled that the current Etomidate protocol is constitutional and that record demands relating to it are not related to a colorable claim for postconviction relief. Nothing in the Defendant's demand overcomes the Florida Supreme Court rulings made in multiple postconviction cases and warrant cases addressing the constitutionality of the lethal injection procedures. The Defendant's arguments, the same arguments that have been presented before other Florida Courts, do not establish any justification for a departure from this well-established precedent. FDC objects to the entirety of this demand and requests that the Court deny the request for records based upon well-established statutory and case law.[1]

## MEMORANDUM OF LAW

### I. Improperly Filed Demand Under Subsection (i) When No Previous Demands Have Been Filed

Florida Rule of Criminal Procedure 3.852(i) governs requests for *additional* public records from agencies where records have already been sought.

Fla. R. Crim. P. 3.852(i) states:

> (i) *Limitation* on Postproduction Request for *Additional Records*
>
> (1) In order to obtain public records *in addition to those provided under subdivisions (e), (f), (g), and (h) of this rule*, collateral counsel shall file an affidavit in the trial court which:
>
> (A) attests that collateral counsel has made a timely and diligent search of the records repository; and
>
> (B) identifies with specificity those public records not at the records repository; and
>
> (C) establishes that the *additional* public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence; and
>
> (D) shall be served in accord with subdivision (c)(1) of this rule.
>
> (2) Within 30 days after the affidavit of collateral counsel is filed, the trial court may order a person or agency to produce *additional* public records only upon finding each of the following:
>
> (A) collateral counsel has made a timely and diligent search of the records repository;
>
> (B) collateral counsel's affidavit identifies with specificity those *additional* public records that are not at the records repository;
>
> (C) the *additional* public records sought are either relevant to the subject matter of a proceeding under rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence; and

[1] FDC makes no representation that any records responsive to this demand exist. FDC does not waive the right to put forth other applicable exemptions should the Court grant any part of the Demand.

> (D) the *additional* records request is not overly broad or unduly burdensome.

(Emphasis added).

Based on a review of this Court's docket, state postconviction counsel has never requested *any* records from FDC in the 26 years since his judgment and sentence became final. There are multiple references to "additional" records in subsection (i). The plain language of this subsections implies that there have been previous demands for records filed pursuant to subsections (e), (f), (g), and/or (h). Rule 3.852 subsection (i)(1) use of past tense language and the multiple references to "additional" records leads to the conclusion that in order to file a demand pursuant to subsection (i), there needed to have been a previous demand filed under (e), (f), (g), and/or (h). This demand is improperly filed under subsection (i) because this is the first time records have been requested. [2]

State postconviction counsel filed four successive motions for postconviction relief, before his warrant was signed, without requesting any records from FDC. "A postconviction court may not grant an (i) demand unless the defendant shows "good cause" for failing to seek the records prior to the signing of the death warrant." *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019) ( ... records requests made under Rule 3.852(i) must show how the requested records relate to a colorable claim for postconviction relief and good cause as to why the public records request was not made until after the death warrant was signed.") (quoting *Bowles v. State*, 276 So. 3d 791, 795 (Fla. 2019)).

The demand contains the "boilerplate" language of an (i) demand and does not contain the specific facts required by the statute to show how the requested records relate to a colorable claim for postconviction relief and good cause as to why the public records request was not made

[2] FDC hereby incorporates by reference the arguments and objections made by the Office of the Attorney General to Zakrzewski's Rule 3.852(i) Demands.

until after the death warrant was signed. Filing a demand for Additional records under subsection (i), when no previous record demands have been made, is improper.

**Statutory Exemption(s)**

In addition to the record-specific objections asserted below, the Defendant's demand for most of the lethal injection records relates to information that is confidential and exempt from public records disclosures pursuant to Florida law. Section 945.10 of the Florida Statutes establishes a broad restriction on the disclosure of records and information relating to executions and FDC's operations for carrying them out. Section 945.10(1)(g) exempts from public disclosure "[i]nformation which identifies an executioner, or any person prescribing, preparing, compounding, dispensing, or administering a lethal injection." In 2022, the Florida Legislature broadened this protection and added an additional subsection. Section 945.10(1)(j), F.S., exempts from disclosure:

> (j)1. Information or records that identify or could reasonably lead to the identification of any person or entity that participates in, has participated in, or will participate in an execution, including persons or entities administering, compounding, dispensing, distributing, maintaining, manufacturing, ordering, preparing, prescribing, providing, purchasing, or supplying drugs, chemicals, supplies, or equipment necessary to conduct an execution in compliance with chapter 922.
> 2. The exemption in subparagraph 1. Applies to information and records held by the department before, on, or after the effective date of the exemption.
> […]

Section 945.10(1)(j), Fla. Stat. (2022).

Not only have courts consistently overruled the disclosure of lethal injection records (see case citations, *infra*.) the Florida Legislature has taken further steps to maintain the confidentiality of these records, and those persons and entities "administering, compounding,

dispensing, distributing, maintaining, manufacturing, ordering, preparing, prescribing, providing, purchasing, or supplying drugs, chemicals, supplies, or equipment necessary to conduct an execution in compliance with Chapter 922." The language used in §945.10(1)(j)(2) expresses the desire of the Legislature for these protections to be retroactively applied. In passing the amended language, the Legislature found:

> that it is a public necessity that information or records that identify or could reasonably lead to the identification of those persons or entities that participate in an execution be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of information or records that identify or that could reasonably lead to the identification of those persons or entities that participate in an execution could jeopardize the safety of such persons or entities by exposing them to potential harassment, intimidation, or harm and could also thwart the ability of the Department of Corrections to obtain the necessary personnel, drugs, chemicals, supplies, or equipment needed to carry out executions. Therefore, the Legislature finds that it is a public necessity that this information be kept confidential and exempt from public disclosure.

*See* Laws of Fla., Ch. 2022-115, Section 2. These findings demonstrate that "persons or entities that participate in an execution" should remain anonymous. The Defendant's demand states he is seeking "public" records relating to the lethal injection protocol; however, much of the information he seeks has been deemed confidential and exempt from public disclosure by the Florida Legislature. Records requested in the demand would, if they exist, necessarily contain this statutorily confidential and exempt information.

**II. Records Requested by Defendant Do Not Relate to a Colorable Claim**

Pursuant to Rule 3.852, Fla. R. Crim. P., a court must find: (a) counsel has made a timely and diligent search of the records repository; (b) counsel's written demand identifies with specificity those additional public records that are not in the repository; (c) the additional public records sought are either relevant to the subject matter of a Rule 3.851 proceeding, or appear reasonably calculated to lead to the discovery of admissible evidence; and (d) the additional

records request is not overly broad or unduly burdensome. "The Defendant bears the burden of demonstrating that the records sought relate to a colorable claim for postconviction relief." *See Mann v. State*, 112 So.3d 1158, 1163 (Fla. 2013). The Florida Supreme Court has routinely and unwaveringly affirmed trial court orders sustaining FDC's objections to the disclosure of records related to the lethal injection protocol since the current protocol was established in 2017.[3] These opinions have established that such records requests do not relate to a colorable claim and such records necessarily contain information that is confidential and exempt pursuant to the Florida Statutes, specifically §945.10(1)(g) and §945.10(1)(j), Florida Statutes The substance of this demand is similar to the other (g), (h), or (i) demands that are filed in postconviction litigation pursuant to Rule 3.852. Those demands were denied; this demand should also be denied.

**Potential "As-Applied" Arguments**

A defendant seeking to mount a successful Eighth Amendment challenge to a state's lethal injection protocol must demonstrate that "the conditions presenting the risk [of cruel and unusual punishment] must be 'sure or very likely to cause serious illness and needless suffering,' and give rise to 'sufficiently imminent dangers.'" *Baze*, 553 U.S. at 49-50 (*quoting Helling v. McKinney*, 509 U.S. 25, 33, 34-35 (1993)) (plurality opinion). Additionally, "speculation cannot substitute for evidence that the use of the drug is 'sure or very likely to cause serious illness and needless suffering.'" *Brewer*, 131 S. Ct. at 445 (2010) (*quoting Baze*, 553 U.S. at 50). These types of claims need to be supported by specific facts and evidence.

To prevail on an "as-applied" claim under *Glossip v Gross*, 576 U.S. 863 (2015) "a condemned prisoner must: (1) establish that the method of execution presents a substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering, and (2)

[3] *Asay v. State* 224 So.3d 695 (Fla. 2017); *Hannon v. State* 228 So.3d 505 (Fla. 2017); *Branch v. State* 236 So.3d 981 (Fla. 2018); *Jimenez v. State* 265 So.3d 462 (Fla. 2018); *Long v. State* 271 So.3d 938 (Fla. 2019), *Bowles v. State* 276 So.3d 791 (Fla. 2019); *Dailey v. State*, 283 So.3d 782 (Fla. 2019).

identify a known and available alternative method of execution that entails a significantly less severe risk of pain." *Long* at 944. In *Long*, the trial court concluded after an evidentiary hearing that there had been no showing that any alternatives to the current protocol involving a significantly less severe risk of pain was available to FDC. *Id* at 945. Additionally, Long failed to show that the current execution method presents a substantial and imminent risk of needless suffering, *even after alleging that he suffered from specific medical conditions*. In this case, the Defendant does not allege any facts or evidence to support an as-applied challenge and fails to address both prongs of the *Glossip-Baze* test.

A recent post-warrant case that addressed an as-applied challenge to lethal injection was *State of FL v. Loran Cole*, Marion County Case No. 94-CF-498. In this case, Mr. Cole's as-applied challenge centered around his Parkinson's disease and placement of the intravenous needle. The Court stated, "However, the Defendant's claim is speculative. . . he merely speculates that he will suffer because of his involuntary body movements. This is insufficient to establish a 'substantial and imminent risk that is sure or very likely to cause serious illness and needless suffering' or to require an evidentiary hearing." The Court cited to *Jiminez v. State*, 265 So.3d 462 (Fla. 2018) (speculative and conclusory allegations that legal [sic] injection protocols present a substantial risk of serious harm insufficient) and (Defendant's mere speculation that his medical condition may make it more difficult to follow the current protocols is "insufficient to require revisiting [the Florida Supreme Court's] holding in *Asay IV*…") *Jiminez* at 475. The Court also quoted *Baze*, "Simply because an execution method may result in pain, either by accident or as an inescapable consequence of death, does not establish the sort of 'objectively intolerable risk of harm' that qualifies as cruel and unusual." *Baze v. Rees*, 553 U.S. 35 (2008).

The Defendant has not demonstrated that he seeks records related to a claim not previously considered, and rejected, by the Florida Supreme Court. The Department maintains

that requests of this nature are fishing expeditions[4] to obtain confidential and exempt information in Florida's lethal injection protocol.

The substance of this demand is also similar to the demands filed in the 2023, 2024, and 2025 post-warrant cases.[5] In all such cases, the trial courts ruled that the defendants failed to state a claim to which the requested records might be related, much less establish that they would be entitled to relief where similar demands have been held by the Florida Supreme Court to have been properly denied. The case law precedent is well-settled in Florida with respect to the Etomidate protocol; the current lethal injection records discussion has been fully litigated, and the Florida Supreme Court has found that these types of demands do not lead to colorable claim. The Defendant's arguments, the same arguments that have been presented before other Florida Courts, do not justify a departure from this well-established precedent.

***Categories of Lethal Injection Records in the Demand***

**1. Paragraph 4(A) - Records Relating to the Promulgation of FDC's Lethal Injection Procedures**

Record demands for execution and lethal injection records was squarely addressed by the Florida Supreme Court in *Dailey v. State*, 283 So.3d 782 (Fla. 2019). In *Dailey*, the defendant requested records from several agencies, including FDC and the Medical Examiner. After hearing objections and argument, the trial court denied Mr. Dailey's request, specifically for record requests related to the lethal injection protocol. On appeal to the Florida Supreme Court,

[4] The Florida Supreme Court has repeatedly stressed and long held that collateral post-conviction public records requests are not to be used for fishing expeditions and that the defendant bears the burden of proving that the records he requests are, in fact, related to a colorable claim for post-conviction relief. *See Moore v. State*, 820 So. 2d 199, 204 (Fla. 2002).

[5] *See State v. Dillbeck*, Leon County Case No.1990-CF- 2795; *State v. Gaskin*, Flagler County Case No. 1990-CF-01; *State v. Barnes*, Brevard County Case No.2006-CF-014592; *State v. Barwick*, Bay County Case No. 86-0940-CFMA; *State v. Owen*, Palm Beach County Case No. 50-1984-CF-004000; *State v. Zack*, Escambia County Case No. 1996-CF-2517; *State v. Cole*, Marion County Case No. 94-CF-498; *State v. Ford*, Charlotte County Case No. 97-CF-000351; *State v. James*, Seminole County Case No. 1993-CF-3237; *State v. Hutchinson*, Okaloosa County Case No. 98-CF-1382 and *State v. Rogers*, Hillsborough County Case No. 1995-CF-15314.

Mr. Dailey argued that the trial court erred in denying his requests for records. The Florida Supreme Court ruled that the argument was without merit. *See Dailey* at 792. ("Because we have upheld the constitutionality of the current lethal injection protocol, such records " are 'unlikely to lead to a colorable claim of relief'" *Hannon*, 228 So. 3d at 512 (quoting *Walton v. State*, 3 So. 3d 1000, 1014 (Fla. 2009)). The Court reiterated, " As we recognized in *Long*, "[t]he DOC is entitled to a presumption that it will properly perform its duties while carrying out an execution ... [and] *our 'role is not to micromanage the executive branch in fulfilling its own duties relating to executions.' "* *Long*, 271 So. 3d at 946 (alterations in original) (quoting *Hannon*, 228 So. 3d at 509) (Emphasis added). As such, this Court should not order the production of any records related to a fishing expedition based on speculation that the Department may not be properly performing its duties.

FDC's etomidate protocol has been used in all executions since 2017 and has been found constitutional whenever challenged since its adoption. *See Asay v. State*, 224 So.3d 695; *Hannon* 228 So.3d 505; *Branch* 236 So.3d 981; *Jimenez* 265 So.3d 462; *Long* 271 So.3d 938; *Bowles* 276 So. 3d 791.

**2. Paragraphs 4(B) through 4(E) - Records Relating to the Protocol Drugs**

The February 18, 2025 Lethal Injection Protocol adopted and certified by FDC requires that the chemicals have not reached or surpassed their expiration dates:

> Purchase and Maintenance of Lethal Chemicals: A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

*See* FDC's Execution by Lethal Injection Procedures at page 5.

Demands for records relating to how FDC selects, obtains, and stores the drugs used in the lethal injection protocol have been consistently found to be unrelated to a colorable claim of relief.[6] Both the United States Supreme Court and the Florida Supreme Court have held that post-conviction claims based on nothing more than the source of lethal injection drugs do not present a cognizable claim that a lethal injection procedure is unconstitutional. *Brewer v. Landrigan*, 131 S. Ct. 445 (2010) (vacating a stay of execution that was based upon a finding that the condemned inmate had a substantial likelihood of success on the merits of his claim that the use of sodium thiopental obtained from a foreign source and not approved by the FDA creates a substantial and unnecessary risk of serious harm in violation of the Eighth Amendment*); Valle*, 70 So. 3d at 549 (requests for records to demonstrate that pentobarbital may have been procured illegally are speculative and conclusory and amount to no more than a "fishing expedition" for which Rule 3.852 is not intended).

FDC objects to the disclosure of any records regarding the drugs used in the lethal injection procedure because the Florida Supreme Court has held that the source of the drugs, drug lot numbers, and expiration dates is of insufficient relevance to a colorable Eighth Amendment claim.

**3. Paragraphs 4(F), 4(G), and 4(J) - Records Relating to Training & Experience of the Execution Team Members and FDC Personnel**

The Defendant requests records related to the training and experience of all individuals who were involved in the executions of Louis Gaskin, Darryl, Barwick, Duane Owen, James Barnes, Michael Zack III, Loran Cole, James Ford, Michael Tanzi, Jeffrey Hutchinson, Glen Rogers, Anthony Wainwright, and Thomas Gudinas. Any information which identifies an executioner is confidential pursuant to Fla. Stat. §945.10(1)(g). *See Correll v. State*, 184 So.3d

[6] *See Asay, Hannon, Muhammad, Long,* and *Bowles. See also Dailey v. State*, 283 So.3d 782 (Fla. 2019).

478 (holding that a death row inmate is not entitled to know the identities or backgrounds of his execution team members). In *Correll*, the Defendant argued that Florida Statutes Section 945.10 was unconstitutional by exempting information and identities of the execution team members. The *Correll* Court opined:

> this Court has previously rejected constitutional challenges to section 945.10, as well as claims that an inmate facing execution has the right to know the identities of execution team members. *See, e.g.*, *McLean*, 147 So.3d at 513; *Darling v. State*, 45 So.3d 444, 447–48 (Fla.2010) ("Darling simply requests that we recede from prior precedent so that he may engage in an in-depth review of his executioners' qualifications and training. We refuse to do so."); *Henyard v. State*, 992 So.2d 120, 130 (Fla.2008) ("We [have] previously found section 945.10 facially constitutional and decline to recede from our decision now."). We have further explained, "there is a presumption that the members of the executive branch will properly perform their duties in carrying out an execution." *Lightbourne v. McCollum*, 969 So.2d 326, 343 (Fla.2007) (quoting *Provenzano v. State*, 761 So.2d 1097, 1099 (Fla.2000)). Moreover, the recent executions of Johnny Kormondy, Chadwick Banks, Eddie Davis, John Henry, and Robert Hendrix have been carried out with no subsequent allegations of difficulties.
>
> Correll has failed to justify reconsideration of prior rulings that have upheld the constitutionality of section 945.10 and determined that death row inmates do not have a right to know the identities and qualifications of execution team members. Accordingly, we reject this claim.

*Id* at 486.

In addition to holding that inmates are not entitled to know the identities and background of execution team members, the Florida Supreme Court has repeatedly upheld the presumption that the Department is will properly carry out its duties related to executions. *Lightbourne v. McCollum*, 969 So.2d 326, 343 (Fla.2007).

**4. Paragraphs 4(H), 4(I), and 4(K) – Records, Photos, and Videos Related to Prior Executions**

Defendant requests records related to the prior executions of Louis Gaskin, Darryl, Barwick, Duane Owen, James Barnes, Michael Zack III, Loran Cole, James Ford, Michael Tanzi, Jeffrey Hutchinson, Glen Rogers, Anthony Wainwright, and Thomas Gudinas. Production of records related to prior executions has previously been litigated and the Florida Supreme Court has ruled that records from past executions are not related to a colorable claim.

In the *Jimenez* post-warrant litigation, the defense requested records of four prior executions. In *Hannon*, defense counsel requested "…logs, notes, memoranda, letters, electronic mail, and facsimiles" relating to the executions of eight different inmates and records relating to "execution training exercises." When considering such a request in *Hannon*, the Florida Supreme Court affirmed its prior holding in *Valle* which held records of the last five executions were "not related to a colorable Eighth Amendment claim." *Hannon* at 512. (citing *Valle* at 549); (records related to the Department's administration of previous executions are not related to a colorable Eighth Amendment claim); *Valle*, at 549. Similarly, the court found no abuse of discretion in the denial of Jimenez's demand for execution records of previous prisoners. *Jimenez* at 473. Because the Defendant has failed to meet a threshold requirement of Fla. R. Crim. P. 3.852, Defendant's requests are required to be denied under all controlling case law.

**CONCLUSION**

The Florida Supreme Court has fully considered and rejected all constitutional challenges to Florida's current lethal injection protocol. The records that the Defendant seeks do not support cognizable claims. The Florida Supreme Court's opinions regarding this type of demand are clear: such demands cannot lead to a colorable claim and should be denied. The Department

respectfully requests this Court to sustain the objections to Defendant's Demand for Additional Public Records.

Respectfully submitted,

*/s/ William W. Gwaltney*
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**CERTIFICATE OF SERVICE**

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, Assistant Collateral Counsel Lisa Fusaro (Lisa.fusaro@ccrc-north.org), Assistant Capital Collateral Counsel Alicia Hampton (Alicia.Hampton@ccrc-north.org) Assistant Attorney General Janine D. Robinson (Janine.Robinson@myfloridalegal.com and capapp@myfloridalegal.com), Senior Assistant Attorney General Charmaine Millsaps

(Charmaine.Millsaps@myfloridalegal.com), Chief Assistant State Attorney Bridgette Jensen, (Bjensen@osa1.com), Assistant State Attorney Matt Casey (mcasey@osa1.org), , the Honorable Lacey Powell Clark (Judge.Clark@flcourts1.gov and Amanda.Bailey@flcourts1.gov); and the Florida Supreme Court (warrant@flcourts.org) on this **7th day of July 2025**.

Respectfully submitted,

*/s/ William W. Gwaltney*_____
**WILLIAM W. GWALTNEY**
**SENIOR ATTORNEY**

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**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT**
**IN AND FOR OKALOOSA COUNTY, FLORIDA**

STATE OF FLORIDA,

v. *ACTIVE DEATH WARRANT*
Case No. 1994-CF-1283

EDWARD J. ZAKRZEWSKI, II,

*Defendant*.

_____/

**THE EXECUTIVE OFFICE OF THE GOVERNOR'S RESPONSE**
**AND OBJECTION TO DEFENDANT'S DEMAND FOR PUBLIC RECORDS**

On July 3, 2025, Defendant Edward J. Zakrzewski, II served a "Demand For Additional Public Records" ("Demand") upon the Executive Office of the Governor ("EOG"), pursuant to Florida Rule of Criminal Procedure 3.852(i). The Demand seeks records spanning twelve separate categories and containing information related to (a) correspondence between EOG and the victims' family and friends; (b) correspondence between EOG and the Florida Commission on Offender Review and/or Office of Executive Clemency; (c) correspondence between EOG and the Office of the Attorney General; (d) correspondence between EOG and the State Attorney's Office for the First Judicial Circuit; (e) correspondence between EOG and the Okaloosa County Clerk of Court; (f) information expressly related to the Governor's clemency process; and (g) correspondence between EOG and the Florida Supreme Court. EOG objects and responds as follows:[1]

[1] EOG makes no representation that the requested public records exist and, accordingly, is not, at this time, setting forth all potential statutory and constitutional exemptions and arguments. EOG does not waive the right to claim those exemptions or make those arguments should this Court grant any part of the demand.

## BACKGROUND

The Governor signed a death warrant for Edward J. Zakrzewski, II on July 1, 2025.

On July 3, 2025, Defendant–*for the first time*–demanded the following records from EOG:

(1) All communications and correspondence regardless of form, including, but not limited to, emails, faxes, letters, minutes or notes of meetings, and/or telephone call records or notes, between Governor Ron DeSantis, and/or any current or former employee of the Executive Office of the Governor, and any of the victims' family or friends, regarding EDWARD ZAKRZEWSKI (DOB: 1/31/1965; DC# 554000);

(2) All communications and correspondence regardless of form, including, but not limited to, emails, faxes, letters, minutes or notes of meetings, and/or telephone call records or notes, between Governor Ron DeSantis and/or any current or former employee of the Executive Office of the Governor, and the Florida Commission on Offender Review and/or Office of Executive Clemency related to EDWARD ZAKRZEWSKI (DOB: 1/31/1965; DC# 554000)

(3) All communications and correspondence regardless of form, including, but not limited to, emails, faxes, letters, minutes or notes of meetings, and/or telephone call records or notes, between Governor Ron DeSantis and/or any current or former employee of the Executive Office of the Governor, and the Office of the Attorney General related to EDWARD ZAKRZEWSKI (DOB: 1/31/1965; DC# 554000);

(4) All communications and correspondence regardless of form, including, but not limited to, emails, faxes, letters, minutes or notes of meetings, and/or telephone call records or notes, between Governor Ron DeSantis and/or any current or former employee of the Executive Office of the Governor, and the State Attorney's Office for the First Judicial Circuit related to EDWARD ZAKRZEWSKI (DOB: 1/31/1965; DC# 554000);

(5) All communications and correspondence regardless of form, including, but not limited to, emails, faxes, letters, minutes or notes of meetings, and/or telephone call records or notes, between Governor Ron DeSantis and/or any current or former employee of the Executive Office of the Governor, and any current or former employee of the Okaloosa County Clerk of Court related to EDWARD ZAKRZEWSKI (DOB: 1/31/1965; DC# 554000);

(6) All policies, procedures, internal memoranda, or other documents (or a statement indicating lack of same) outlining the criteria and selection process for inmates to receive executive clemency, including but not limited to how an inmate is selected for consideration of clemency, when an inmate

is eligible for consideration, and any other pertinent information regarding the selection process and criteria;

(7) All policies, procedures, internal memoranda, or other documents (or a statement indicating lack of same) outlining the criteria for determining how to grant executive clemency, including but not limited to, what factors are considered in determining whether to grant clemency, how much weight should be given to each factor, and any other pertinent information regarding the process;

(8) The number of individuals presently on death row who have been selected for clemency review, as well as the number of individuals whose clemency review has been completed;

(9) All policies, procedures, internal memoranda, or other documents outlining the criteria and selection process for inmates to receive a death warrant, including but not limited to how an inmate is selected for a warrant, when an inmate is eligible for a warrant, what factors are considered in determining whether to issue a warrant, and any other pertinent information regarding the process;

(10) Any document, record, list or other memoranda naming individuals currently on Florida's Death Row who have had complete or partial clemency investigations or whose cases have resulted in a clemency, pursuant to the authority prescribed in Article IV, Section 8(a) of the Florida Constitution and Rule 15 of the Rules for Executive Clemency. This request does not seek documents generated in any particular individual's clemency investigation, but only records indicating the existence of such an investigation and/or clemency determination;

(11) Any document, record, list or other memoranda indicating, for those individuals to whom clemency was denied, the date of the denial of clemency by the Governor and Clemency Board. This request does not seek documents generated in any particular individual's clemency investigation, but only records indicating that a clemency determination has been made; and

(12) Any letters, emails, notices, or other written correspondence, regardless of form, received by the Executive Office of the Governor from the Florida Supreme Court notifying the Governor of the names of individuals sentenced to death who are eligible for a death warrant, between January 1, 2015 and the present.

Zakrzewski's Demand at 2-5. EOG objects to producing all requested records.

## ARGUMENT

Florida Rule of Criminal Procedure 3.852(i)(1) provides that collateral counsel may obtain public records "in addition to those provided under subdivisions (e), (f), (g), and (h) of this rule" if counsel files an affidavit in the trial court which

> (A) attests that collateral counsel has made a timely and diligent search of the records repository; and
>
> (B) identifies with specificity those public records not at the records repository; and
>
> (C) establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence; and
>
> (D) shall be served in accord with subdivision (c)(l) of this rule.

Mr. Zakrzewski's Demand fails to satisfy Rule 3.852(i), and should thus be denied, for three reasons. First, the records Mr. Zakrzewski demands are exempt from disclosure under Florida law and the Rules of Executive Clemency. Second, Mr. Zakrzewski's Demand is overly broad, unduly burdensome, and not related to a colorable claim for postconviction relief. Third, Mr. Zakrzewski has not shown good cause why he has not requested these records before.

### I. Mr. Zakrzewski is not entitled to the records he demands because the records are exempt from disclosure under Florida law and the Rules of Executive Clemency.

Mr. Zakrzewski is not entitled to the records he demands because the records are exempt from disclosure under Florida law and the Rules of Executive Clemency. Section 14.28, Florida Statutes, makes clear that "[a]ll records developed or received by any state entity pursuant to a Board of Executive Clemency investigation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution." §

14.28, Fla. Stat. These records may only "be released upon the approval of the Governor." *Id.* Similarly, the Rules of Executive Clemency provide that "all records and documents generated and gathered in the clemency process as set forth in the Rules of Executive Clemency are confidential and shall not be made available for inspection[.]" Rule 16, Rules of Executive Clemency (emphasis added). Indeed, the Florida Supreme Court held in *Chavez v. State* that Rule 16 protects "all records in the clemency process [as] confidential[,]" even non-investigatory records. 132 So. 3d 826, 830-31 (Fla. 2014) (emphasis added). Thus, these provisions protect all clemency records that may be in EOG's possession, which includes the entire scope of Mr. Zakrzewski's Demand because all the records he seeks from EOG—irrespective of their subject matter—would only exist if they were created as part of the Governor's consideration of whether to grant clemency or to sign a death warrant.

Only the Governor "has the discretion to allow such records and documents to be inspected or copied." Rule 16, Rules of Executive Clemency. No individual or branch of government may disclose or order the production of these records. Recognizing this principle, the Florida Supreme Court held in *Parole Commission v. Lockett*, 620 So. 2d 153, 157-58 (Fla. 1993) that "the clemency investigative files and reports produced by the Parole Commission on behalf of the Governor and Cabinet relating to the granting of executive clemency are subject solely to the Rules of Executive Clemency[,]" and a "trial judge's order [to disclose clemency records] would effectively overrule the rules of executive clemency, resulting in a violation of the separation of powers doctrine."

Mr. Zakrzewski has not pointed to a single case in which a Florida court has required a state agency to produce clemency records. That is because the Florida Constitution recognizes the Governor's solemn prerogative with respect to clemency and death warrants.

*See Carroll v. State*, 114 So. 3d 883, 888 (Fla. 2013) ("The clemency process in Florida derives solely from the Florida Constitution and we have recognized that the people of the State of Florida have vested 'sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace.'") (quoting *Sullivan v. Askew*, 348 So. 2d 312, 315 (Fla. 1977)). Accordingly, Mr. Zakrzewski is not entitled to the records he seeks because the entirety of his Demand seeks clemency records, and this Court must therefore deny his Demand.

## II. Mr. Zakrzewski is not entitled to the records he seeks because his Demand is overly broad, unduly burdensome, and not related to a colorable claim for postconviction relief.

Mr. Zakrzewski is not entitled to the records he seeks because his Demand is overly broad, unduly burdensome, and not related to a colorable claim for postconviction relief. It is well-settled that, to be entitled to records requested under Fla. R. Crim. P. 3.852(i), a defendant must "show how the requested records relate to a colorable claim for postconviction relief." *Dailey v. State*, 283 So. 3d 782, 792 (Fla. 2019); *Chavez*, 132 So. 3d at 829 (Fla. 2014) ("a defendant bears the burden of demonstrating that the records sought relate to a colorable claim for postconviction relief.") (emphasis added). Moreover, Rule 3.852(i)(2)(c) expressly prohibits "overly broad or unduly burdensome" requests. The Demand fails on both grounds.

First, the Demand is not related to a colorable claim for postconviction relief because it expressly states that the records are being sought in hopes of discovering evidence to investigate a potential constitutional challenge to Florida's clemency process. *See* Zakrzewski's Demand at 5 (noting the records are being sought to uncover "evidence that Florida's clemency process, and the manner in which the Governor determined that Mr. Zakrzewski should receive a death warrant on July 1, 2025, was arbitrary and capricious in

violation of the Eighth and Fourteenth Amendments to the United States Constitution"). The Florida Supreme Court, however, has routinely held that legal challenges rooted in clemency do not relate to a colorable claim for postconviction relief. For instance, in *Muhammad v. State*, the Court said:

> In addition, the records would not relate to a colorable claim because we have held many times that claims challenging clemency proceedings are meritless. "The clemency process in Florida derives solely from the Florida Constitution and we have recognized that the people of the State of Florida have vested 'sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace.'"

132 So. 3d 176, 203-04 (Fla. 2013) (quoting *Sullivan*, 348 So. 2d at 315); *see also Pardo v. State*, 108 So. 3d 558, 568 (Fla. 2012) ("[W]e have consistently recognized that clemency is an executive function and that, in accordance with the doctrine of separation of powers, we will not generally second-guess the executive's determination that clemency is not warranted."); *Valle v. Stale*, 70 So. 3d 530, 551-52 (Fla. 2011).

Moreover, the Florida Supreme Court has consistently and repeatedly held that the Governor's absolute discretion whether to sign a death warrant does not violate the Florida or United States Constitutions. *See Gore v. State*, 91 So. 3d 769, 780 (Fla. 2012) ("As recently as last year, we rejected claims that because of the Governor's absolute discretion to sign death warrants, thereby deciding who lives and who dies, the death penalty structure of Florida violates the United States Constitution."); *Ferguson v. State*, 101 So. 3d 362, 366 (Fla. 2012) (same); *Carroll*, 114 So. 3d at 888 (rejecting the argument that "the clemency process [the defendant] received was conducted in an arbitrary and capricious manner in violation of the Eighth and Fourteenth Amendments to the federal constitution and in violation of the Florida constitution."). Thus, it is clear that requests aimed at the clemency process, such as the Demand at issue here, bear no relation to any colorable claim for postconviction relief and

are instead an effort to engage in exactly what the strict limitations in Rule 3.852(i) seek to prevent: "[an] eleventh hour attempt to delay the execution rather than a focused investigation into some legitimate inquiry." *Sims v. State*, 753 So. 2d 66, 68 (Fla. 2000). Accordingly, a demand seeking to challenge the constitutionality of Florida's clemency process and second-guessing the Governor's absolute discretion to sign a death warrant cannot relate to a colorable claim for postconviction relief, and Mr. Zakrzewski's Demand must be denied.[2]

Second, the Demand is overly broad and unduly burdensome because it seeks a significant number of public records spanning twelve separate categories and at least seven different topics. Zakrzewski's Demand at 2-5. Indeed, the Florida Supreme Court has held that Rule 3.852 does not permit similar substantial requests because they are overly broad and unduly burdensome. *See Mills v. State*, 786 So. 2d 547, 551-52 (Fla. 2001); *see also Sims*, 753 So. 2d at 70 (reasoning that Rule 3.852 is not intended to authorize "a fishing expedition for records unrelated to a colorable claim for postconviction relief"); *Glock v. Moore*, 776 So.2d 243, 253-54 (Fla. 2001). Additionally, because the Demand does not include a time frame, every single record would need to be examined to determine whether it was in the possession of not only Governor DeSantis but all of his predecessors as well. Given that the murders in this case occurred in 1994, the records that may need to be inspected could span decades and could encompass inspection of every EOG record from every different gubernatorial administration over the last thirty-one years. Thus, because Mr. Zakrzewski's Demand is

[2] The Demand is also not related to a colorable claim for postconviction relief because its only other grounds are that the information sought, which includes EOG correspondence with the victims' family and friends and EOG communications with other agencies, "may contain, or through further investigation may lead to the discovery of, evidence" that Mr. Zakrzewski's convictions and/or sentences were unconstitutional for a variety of reasons. Zakrzewski's Demand at 5 (emphasis added). However, despite reciting a series of constitutional rights, the Demand fails to meet its burden of showing—or even attempting to show—how any of the records sought would relate to a colorable claim for postconviction relief based on those rights. Thus, Mr. Zakrzewski has not met his burden of demonstrating that the records sought relate to a colorable claim.

overly broad, unduly burdensome, and not related to any colorable claim for postconviction relief, this Court must deny it.[3]

### III. Mr. Zakrzewski is not entitled to the records he seeks because he has not shown good cause why he has not requested the records before.

Mr. Zakrzewski is not entitled to the records he seeks because he has not shown good cause why he has not requested the records before. Florida Rule of Criminal Procedure 3.852(i) is titled "Limitation on Postproduction Request for *Additional* Records." Fla. R. Crim. P. 3.852(i) (emphasis added). And the Florida Supreme Court has explained that requests under Rule 3.852(i) must not only "show how the requested records relate to a colorable claim for postconviction relief," but must also show "good cause as to why the public records request was not made until after the death warrant was signed." *Dailey*, 283 So. 3d at 792 (citing *Asay v. State*, 224 So. 3d 695, 700 (Fla. 2017)). Despite styling the Demand as a request for "additional" public records, Mr. Zakrzewski does not allege that he requested the records from EOG before the Governor signed his death warrant, nor does Mr. Zakrzewski explain that failure, much less demonstrate any good cause for it. As a result, Mr. Zakrzewski is not entitled to the records he seeks, and this Court must deny his Demand.

[3] Notably, the Florida Supreme Court has consistently affirmed a circuit court's denial of public records requests seeking similar records, such as in the case of James Dailey, a defendant who was also under an active death warrant. *See Dailey*, 283 So. 3d at 792-93 ("The circuit court denied all requests to which the agencies objected, concluding that none were related to a colorable claim for postconviction relief. Dailey subsequently moved for reconsideration of his requests to certain agencies; his motions were denied. Dailey has not presented any reason for us to hold that the circuit court abused its discretion in denying his requests."). And more recently, every single Circuit Court that has received a similar records requests from defendants under active death warrants has denied the requests. *See State v. Gaskin*, No. 1990-CF000001 (Fla. 7th Cir. Ct. Mar. 17, 2023); *State v. Barwick*, No. 1986-CF-940 (Fla. 14th Cir. Ct. Apr. 13, 2023); *State v. Owen*, No. 1984-CF-004000 (Fla. 15th Cir. Ct. May. 19, 2023); *State v. James*, No. 1993-CF-003237-A (Fla. 18th Cir. Ct. Feb. 21, 2025); *State v. Tanzi*, No. 2000-CF-573-A-K (Fla. 16th Cir. Ct. Mar. 13, 2025); *State v. Hutchinson*, No. 1998-CF-1382 (Fla. 1st Cir. Ct. Apr. 4, 2025); *State v. Gudinas*, No. 1994-CF-7132 (Fla. 9th Cir. Ct. May 29, 2025). Indeed, Mr. Zakrzewski's Demand is nearly identical to the demands in *Gaskin*, *Owen*, *Hutchinson*, and *Gudinas*. This court too should deny Mr. Zakrzewski's Demand.

## CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities, the Executive Office of the Governor respectfully requests this Court enter an order denying disclosure of the records.

Respectfully submitted,

/s/ *Zachary Loyed*
RYAN NEWMAN (FBN #1031451)
*General Counsel*
ZACHARY S. LOYED (FBN #1050004)
*Assistant General Counsel*

EXECUTIVE OFFICE OF THE GOVERNOR
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Zachary.Loyed@eog.myflorida.com

*Counsel for Governor Ron DeSantis and the Executive Office of the Governor*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida E-Filing Portal, which provides notice to all parties, on July 7, 2025.

/s/ *Zachary Loyed*

Filing # 226695941 E-Filed 07/07/2025 01:52:22 PM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT**
**IN AND FOR OKALOOSA COUNTY, FLORIDA**

STATE OF FLORIDA,

v.

*ACTIVE DEATH WARRANT*
Case No. 1994-CF-1283

EDWARD J. ZAKRZEWSKI, II,

*Defendant*.
_____/

**LIMITED NOTICE OF APPEARANCE**

PLEASE TAKE NOTICE THAT Zachary Loyed, Assistant General Counsel, for the Executive Office of the Governor, hereby enters his appearance as counsel for the Executive Office of the Governor for the purpose of responding to Defendant's Rule 3.852, Florida Rule of Criminal Procedure, Demand for Public Records and to present argument as to the same at hearing, if necessary.

The undersigned respectfully request inclusion in service of all pleadings, demands, notices, memoranda, orders, or other service of filings to the following email addresses:

Zachary.Loyed@eog.myflorida.com

Gov.Legal@eog.myflorida.com

Respectfully submitted,

/s/ *Zachary Loyed*
ZACHARY S. LOYED (FBN #1050004)
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*Counsel for Governor Ron DeSantis and the Executive Office of the Governor*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida E-Filing Portal, which provides notice to all parties, on July 7, 2025.

/s/ *Zachary Loyed*

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT**
**IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**vs.**

**EDWARD J. ZAKRZEWSKI, II,**

**Defendant.**

**CASE NO.: 1994-CF-1283**
**DIV.: 001**
**ACTIVE DEATH WARRANT - EXECUTION SCHEDULED FOR JULY 31, 2025**

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**NOTICE OF HEARING ON OBJECTIONS TO PUBLIC RECORDS REQUESTS ON JULY 8, 2025, AT 8:00 A.M. CENTRAL TIME (9:00 A.M. EASTERN TIME)**
**and**
**DIRECTIONS TO COURT REPORTER**

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**NOTICE IS HEREBY GIVEN,** pursuant to Florida Rule of Criminal Procedure 3.851(h)(6), that a hearing on the following objections to public records requests is scheduled for **Tuesday, July 8, 2025, at 8:00 a.m. Central Time**, **9:00 a.m. Eastern Time**, at the Okaloosa County Courthouse Annex Extension, 1940 Lewis Turner Blvd, Fort Walton Beach, FL 32547, via Zoom videoconference:

a. *Office of the Florida Attorney General's Objection to Demand for Public Records* filed on July 7, 2025;

b. *Florida Commission on Offender Review's Response and Objections to Defendant's Demand for Public Records* filed on July 7, 2025;

c. *Florida Department of Law Enforcement's Response and Objection to Defendant's Demand for Public Records Related to Lethal Injection Protocol* filed on July 7, 2025;

d. *Department of Corrections' Response and Objection to Defendant's Demand for Additional Public Records* filed on July 7, 2025;

e. *The Executive Office of the Governor's Response and Objection to Defendant's Demand for Public Records* filed on July 7, 2025;

f. *District Eight Medical Examiner's Objections to Demand for Additional Public Records* filed on July 7, 2025;

g. *State's Response and Objection to Defendant's Demand for Public Records (State Attorney's Office)* filed on July 7, 2025;

h. *Response and Objection to Defendant's Demand for Public Records from the Okaloosa County Sheriff's Office* filed on July 7, 2025;

i. *Defendant's Demand for Public Records (Okaloosa County Clerk of Court)* filed on

July 3, 2025. As of the time of filing of this Notice, no objection has been received by this Court.

Unless otherwise indicated, **it is anticipated that out-of-town counsel will attend via Zoom/teleconference,** and Defendant's presence is not required.

To join the hearing by Zoom videoconference from your **computer**, go to:
**https://zoom.us/j/6562095036.**
Then, type in the meeting ID number: **656 209 5036.**

To join the hearing from your **telephone**, dial: 1 312 626 6799 US (Primary), 1 929 205 6099 US (Secondary).
Then, type in the meeting ID number: **656 209 5036.**

Be advised that this is a court event and may be digitally recorded. All participants could be recorded from the time they log in until they exit.

This hearing shall be reported by the Official Court Reporter for Okaloosa County, Florida. Pursuant to Florida Rule of Criminal Procedure 3.851(h)(7), **the Court Reporter is DIRECTED** to report the proceedings using the most advanced and accurate technology available in general use at the Okaloosa County Courthouse Annex Extension. The court reporter shall also prepare the transcript expeditiously.

**PLEASE GOVERN YOURSELVES ACCORDINGLY.**

**DONE AND ORDERED** in Chambers in Fort Walton Beach, Okaloosa County, Florida.

07/07/2025 16:21:27

signed by CIRCUIT COURT JUDGE LACEY POWELL CLARK 07/07/2025 04:21:27 wnGJgJX1

**LACEY POWELL CLARK**
**CIRCUIT COURT JUDGE**

**Clerk of Court to Serve a Copy of this Order on the Following:**

**EDWARD J. ZAKRZEWSKI, II**, DC No. 554000, Florida State Prison, Post Office Box 800, Raiford, Florida 32083

**LISA FUSARO**, Assistant Capital Collateral Counsel- Northern Region, Lisa.Fusaro@ccrc-north.org

**ALICIA HAMPTON**, Assistant Capital Collateral Counsel- Northern Region, Alicia.Hampton@ccrc-north.org

**JANINE D. ROBINSON**, Assistant Attorney General, Janine.robinson@myfloridalegal.com

**CHARMAINE MILLSAPS**, Senior Assistant Attorney General,
charmaine.millsaps@myfloridalegal.com, capapp@myfloridalegal.com

**OKALOOSA COUNTY COURT REPORTERS**, Okaloosa.Reporters@FLCOURTS1.GOV

**FLORIDA SUPREME COURT**, warrant@flcourts.org

**RANA WALLACE**, Florida Commission on Offender Review, ranawallace@fcor.state.fl.us

**LINDSEY BRIGHAM**, Assistant General Counsel, Florida Department of Law Enforcement,
LindseyBrigham@fdle.state.fl.us

**BRIDGETTE JENSEN**, Chief Assistant State Attorney, bjensen@osa1.org

**MATTHEW CASEY**, Assistant State Attorney, mcasey@osa1.org

**ZACHARY LOYED**, General Counsel for the Executive Office of the Governor,
Zachary.loyed@eog.myflorida.com

**MARSHA L. WEAVER**, General Counsel for the Okaloosa County Sheriff's Office,
mweaver@sheriff-okaloosa.org

**KRISTEN J. LONERGAN**, Executive Senior Attorney, Florida Department of Corrections,
Kristen.lonergan@fdc.myflorida.com

**WILLIAM W. GWALTNEY**, Assistant General Counsel, Florida Department of Corrections,
William.Gwaltney@fdc.myflorida.com; courtfilings@fdc.myflorida.com

**CHRISTINA PORRELLO**, Assistant General Counsel for the Florida Department of Corrections, christina.porrello@fdc.myflorida.com

**BRAD E. EMBRY, OKALOOSA COUNTY CLERK OF COURT**
bembry@okaloosaclerk.com
janderson@okaloosaclerk.com
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kbryan@okaloosaclerk.com

**If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact:**

**Court Administration, ADA Liaison**
**Okaloosa County**
**1940 Lewis Turner Boulevard**
**Fort Walton Beach, FL 32547**
**Phone (850) 609-4700 Fax (850) 651-7725**
**ADA.Okaloosa@flcourts1.gov**

**at least 7 days before your scheduled Court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.**

Filing # 226733033 E-Filed 07/07/2025 05:57:30 PM

**IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT**
**IN AND FOR OKALOOSA COUNTY, FLORIDA**

STATE OF FLORIDA,

Case No.: 1994-CF-01283
CAPITAL CASE

v.

EDWARD J. ZAKRZEWSKI,

*Defendant.*
_____/

**OKALOOSA COUNTY CLERK OF COURT'S**
**OBJECTIONS TO DEMAND FOR PUBLIC RECORDS**

COMES NOW, Brad E. Embry, as the Okaloosa County Clerk of Court (the "Clerk"), and files its response and Objections to the Demand for Public Records (the "PR Demand") that was filed by the Defendant, Edward J. Zakrzewski.

1. The PR Demand was filed and docketed by the Clerk on July 3, 2025, at 1:28 P.M. C.T.
2. Contemporaneously with the filing of the PR Demand, the Defendant's attorney provided a copy of it to the Clerk's Appeals Clerk, Susan Crawford, who, in turn provided it to the Clerk's Public Records Coordinator, Cody Nicholson, for processing.
3. The Clerks' office did not realize that it was required to file any responses and objections it may have to the PR Demand by 1:00 p.m. on July 7, 2025, pursuant to the Court's Scheduling Order in this matter.
4. By the time the Clerk realized this time limit had been imposed, it was too late for the Clerk's undersigned attorney to prepare and timely file this Objection.

5. The Clerk's failure to comply with this time limit was not willful or intentional and instead resulted from excusable neglect, and its acceptance by the Court will not cause any prejudice or undue hardship to the Defendant. Therefore, the Clerk hereby requests this Court accept this Objection as if it has been timely filed.

6. Contemporaneously with the service of the PR Demand on the Clerk, the Defendant also served Demands for Public Records on The Florida Attorney General's Office, the Executive Office of the Governor, and the Florida Commission on Offender Review. All these Public Records Requests are somewhat similar and overlapping with regard to the scope and nature of the requested documents, in particular the requests for documents relating to Florida's clemency and warrant process.

7. It would be redundant and repetitive for the Clerk to make the same arguments and objections that are fully set forth and briefed by these other entities.

8. Consequently, to the extent they are relevant to the PR Demand served on the Clerk, the Clerk hereby adopts and incorporates by reference the responses, arguments, and objections made by the Florida Attorney General's Office, the Executive Office of the Governor, and the Floria Commission on Offender Review in their respective Objections to the Demands for Public Records that were served on them.

WHEREFORE, the Clerk hereby files its Objections to the Demand for Public Records that was served on it in this matter and requests this Court to sustain this Objection and deny production of the records sought by the Defendant herein.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 7th day of July 2025, I electronically filed the foregoing Objection with the Clerk of Court by using the E-Portal system, which will send

copies of the foregoing to the interested parties and all attorneys of record herein with a notice of electronic filing.

Respectfully submitted,

ANCHORS ◆ SMITH ◆ GRIMSLEY
A Professional Limited Company

***/s/ Steven B. Bauman***
STEVEN B. BAUMAN, ESQ.
sbauman@asglegal.com
Florida Bar No. 434220
909 Mar Walt Drive, Suite 1014
Fort Walton Beach, Florida 32547
(850) 863-4064 (Telephone)
(850) 863-1138 (Facsimile)
Attorney for the Clerk of Court

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**vs.**

**EDWARD J. ZAKRZEWSKI, II,**

**Defendant.**

**CASE NO.: 1994-CF-1283**
**DIV.: 001**
**DEATH WARRANT SIGNED FOR EXECUTION - JULY 1, 2025**

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**ORDER SUSTAINING OBJECTIONS AND DENYING DEFENDANT'S DEMANDS FOR PUBLIC RECORDS**

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**THIS MATTER** came before the Court upon Defendant's filings of July 3, 2025, demanding production of additional public records pursuant to Florida Rule of Criminal Procedure 3.852(i), and upon objections filed on July 7, 2025, by the Office of the Attorney General; the Office of the Medical Examiner, District Eight; the Executive Office of the Governor; the Florida Department of Law Enforcement; the Florida Department of Corrections; the Florida Commission on Offender Review; the Office of the Okaloosa County Clerk of Court; the Okaloosa County Sheriff's Office; and the Office of the State Attorney.

A hearing was held on this matter by Zoom on July 8, 2025. The following people were present: Alicia Hampton and Lisa Fusaro of the Office of Capital Collateral Regional Counsel – North; Zachary Loyed of the Executive Office of the Governor; Charmaine Millsaps of the Office of the Attorney General; Janine Robinson of the Office of the Attorney General and also appearing on behalf of the Office of the Medical Examiner, District Eight; Bridgette Jensen of the Office of the State Attorney; William Gwaltney and Kristen Lonergan of the Florida Department of Corrections; Lindsey Brigham of the Florida Department of Law Enforcement;

Rana Wallace of the Florida Commission on Offender Review; Marsha Weaver of the Okaloosa County Sheriff's Office; Steven Bauman on behalf of the Office of the Okaloosa County Clerk of Court; Don Allgood, Senior Director of Operations, Office of the Okaloosa County Clerk of Court; Valarie Walker, Deputy Clerk, Office of the Okaloosa County Clerk of Court; and Kim Sanders, Official Circuit Court Reporter.

Having considered the demands, objections, the applicable law, and otherwise being fully informed, the Court finds as follows:

**Demand on the Office of the Attorney General**

Defendant's demand can properly be categorized as an overbroad "any and all" request. See Mills v. State, 786 So. 2d 547, 552 (Fla. 2001). Further, part of the demand concerns clemency records, which are confidential. See § 14.28, Fla. Stat. (2024); Chavez v. State, 132 So. 3d 826, 831 (Fla. 2014). Defendant otherwise fails to meet his burden under rule 3.852(i). Accordingly, for at least those reasons, the objection is sustained. See Fla. R. Crim. P. 3.852(i); Asay v. State, 224 So. 3d 695, 700 (Fla. 2017); Tompkins v. State, 872 So. 2d 230, 244 (Fla. 2003), as revised on denial of reh'g (Apr. 22, 2004) ("A defendant must show how the requested records relate to a colorable claim for postconviction relief and good cause as to why the public records request was not made until after the death warrant was signed."); Diaz v. State, 945 So. 2d 1136, 1149 (Fla. 2006); Sims v. State, 753 So. 2d 66, 70 (Fla. 2000) ("[T]his discovery tool is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief."). Accordingly, this demand is **DENIED**.

**Demand on the Office of the Medical Examiner, District Eight**

Defendant requests records pertaining to lethal injection and requests the complete files of postmortem examinations of 13 executed defendants and any records relating to their autopsy

protocols. For at least the reason that Defendant fails to show good cause for not requesting these records until after the death warrant was signed, the demand should be denied. See Dailey v. State, 283 So. 3d 782, 792 (Fla. 2019).

Moreover, defense counsel acknowledges the current precedent finding that lethal injection records do not relate to a colorable claim for relief. (Demand, p. 3-4). The objection is sustained, and the demand is **DENIED**.

**Demand on the Executive Office of the Governor**

Defendant's demand can properly be categorized as an overbroad "any and all" request. See Mills, 786 So. 2d at 552. Further, Defendant fails to show good cause for not requesting the records before the death warrant was signed, so for at least that reason, the demand is not well-taken. See Dailey, 283 So. 3d at 792. Moreover, the demand pertains at least in part to records concerning clemency. Such records are confidential. See § 14.28, Fla. Stat. (2024); Chavez, 132 So. 3d at 831.

"[C]lemency files and records are not subject to chapter 119 disclosure and are exempt from production in a records request filed in a postconviction proceeding. In addition, the records would not relate to a colorable claim because we have held many times that claims challenging clemency proceedings are meritless." Muhammad v. State, 132 So. 3d 176, 203 (Fla. 2013) (citations omitted). Defendant fails to meet his burden. See Fla. R. Crim. P. 3.852(i); Chavez, 132 So. 3d at 829 ("[A] defendant bears the burden of demonstrating that the records sought relate to a colorable claim for postconviction relief.").

Moreover, this Court does not have authority to order the disclosure of clemency records. See Gudinas v. State, No. SC2025-0794, 2025 WL 1692284, at *9 (Fla. June 17, 2025), cert. denied sub nom. Gudinas v. Florida, No. (24A1251), 2025 WL 1739159 (U.S. June 24, 2025).

Accordingly, the objection is sustained, and the demand is **DENIED**.

**Demand on the Florida Department of Law Enforcement (Lethal Injection Protocol)**

Defendant demands records concerning promulgation of lethal injection procedures, batch numbers of the etomidate the State intends to use in this case, records relating to execution training exercises, and various other records pertaining to lethal injection, including records concerning past executions.

Defense counsel acknowledges the current precedent finding that lethal injection records do not relate to a colorable claim for relief. (Demand, p. 5). The Court finds that the objection should be sustained and the demand denied for at least the reason that Defendant fails to meet his burden to show good cause for failing to seek the records prior to the signing of the death warrant and to show a colorable claim for relief. See Tanzi v. State, 407 So. 3d 385, 391 (Fla. 2025), cert. denied sub nom. Tanzi v. Dixon, 145 S. Ct. 1914 (2025); Dailey, 283 So. 3d at 792 ("Because we have upheld the constitutionality of the current lethal injection protocol, such records are unlikely to lead to a colorable claim for relief.") (quotations omitted). Accordingly, the objection is sustained, and the demand is **DENIED**.

**Demand on Florida Department of Corrections (Lethal Injection Protocol)**

Defendant's demand pertains to records concerning lethal injection procedures. Defense counsel acknowledges the current precedent finding that lethal injection records do not relate to a colorable claim for relief. (Demand, p. 5). For the same reasons noted above, this demand is also not well-taken. Defendant fails to meet his burden to show good cause for failing to seek the records prior to the signing of the death warrant and to show a colorable claim for relief. See Tanzi, 407 So. 3d at 391; Dailey, 283 So. 3d at 792. Accordingly, the objection is sustained, and the demand is **DENIED**.

**Demand on the Florida Commission on Offender Review**

Defendant's demand can properly be categorized as an overbroad "any and all" request. See Mills, 786 So. 2d at 552. Defendant fails to meet his burden to show good cause for failing to seek the records prior to the signing of the death warrant and to show a colorable claim for relief. See Dailey, 283 So. 3d at 792. Moreover, the demand concerns clemency records, and such records are confidential. See § 14.28, Fla. Stat. (2024); Chavez, 132 So. 3d at 831; Muhammad, 132 So. 3d at 203 ("[C]lemency files and records are not subject to chapter 119 disclosure and are exempt from production in a records request filed in a postconviction proceeding."). Thus, for at least these reasons, the objection must be sustained, and the demand is **DENIED**.

**Demand on the Office of the Okaloosa County Clerk of Court**

Defendant's demand is an overbroad "any and all" type of demand. See Mills, 786 So. 2d at 552. "[R]ule 3.852 is not intended to be a procedure authorizing a fishing expedition for records unrelated to a colorable claim for postconviction relief." Valle v. State, 70 So. 3d 530, 549 (Fla. 2011) (quotations omitted). Here, Defendant fails to show how the requested records relate to a colorable claim for postconviction relief and good cause as to why the public records request was not made until after the death warrant was signed. See Asay, 224 So. 3d at 700. Thus, for at least these reasons, the objection must be sustained. The demand is **DENIED**.

**Demand on the Okaloosa County Sheriff's Office**

The Okaloosa County Sheriff's Office asserts in its response and objection to the demand that it has conducted a diligent search of its records and that there are no further records responsive to the demand other than those that have been previously sent to the Florida State Archives. At the hearing, defense counsel acknowledged that the demand is moot.

Even if the demand were not moot, the demand would not be well-taken. The demand is an overbroad "any and all" type of demand, and the demand fails to satisfy the burden under rule 3.852(i). Defendant fails to demonstrate good cause for not making the request until after the signing of the death warrant. See Asay, 224 So. 3d at 700. Defendant also fails to show how the records relate to a colorable claim for relief. See Dailey, 283 So. 3d at 792. The objection is sustained, and the demand is **DENIED**.

**Demand on the Office of the State Attorney**

The State asserts in its response and objection that records were sent to the Florida State Archives and received by the State Repository on February 17, 1999, and there are no additional records responsive to this demand. At the hearing, defense counsel acknowledged that the demand is moot.

Even if the demand were not moot, the demand is an "any and all" overbroad demand and fails to meet the burden under rule 3.852(i). Defendant fails to demonstrate good cause for not making the request until after the signing of the death warrant. See Asay 224 So. 3d at 700. Defendant also fails to show how the records relate to a colorable claim for relief. See Dailey, 283 So. 3d at 792. The objection is sustained, and the demand is **DENIED**.

**DONE AND ORDERED** in Chambers in Fort Walton Beach, Okaloosa County, Florida.

07/08/2025 11:14:05

signed by CIRCUIT COURT JUDGE LACEY POWELL CLARK 07/08/2025 11:14:05 QNr82bTn

**LACEY POWELL CLARK**
**CIRCUIT COURT JUDGE**

LPC/eeb

**Clerk of Court to Serve a Copy of this Order on the Following:**

**EDWARD J. ZAKRZEWSKI, II**, DC No. 554000, Florida State Prison, Post Office Box 800, Raiford, Florida 32083

**ALICIA HAMPTON**, Assistant Capital Collateral Counsel-Northern Region, Alicia.Hampton@ccrc-north.org

**LISA FUSARO**, Assistant Capital Collateral Counsel-Northern Region, Lisa.Fusaro@ccrc-north.org

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**MATTHEW CASEY**, Assistant State Attorney, mcasey@osa1.org

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**OKALOOSA COUNTY COURT REPORTERS**, Okaloosa.Reporters@FLCOURTS1.GOV

**FLORIDA SUPREME COURT**, warrant@flcourts.org

IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA

STATE OF FLORIDA,

vs. CASE NO: 1994-CF-1283

EDWARD J. ZAKRZEWSKI, II,

Defendant

_____/

Proceedings held in the above-styled cause before the Honorable LACEY POWELL CLARK, Circuit Judge, on the 8th day of July, 2025, appearing remotely via video conferencing.

KIM SANDERS
CIRCUIT COURT REPORTER

APPEARANCES:

| | |
|---|---|
| FOR THE STATE and DISTRICT EIGHT MEDICAL EXAMINER'S OFFICE: | CHARMAINE MILLSAPS, ESQUIRE<br>Senior Assistant Attorney General<br>JANINE D. ROBINSON, ESQUIRE<br>Assistant Attorney General<br>The Capitol - Pl-01<br>Tallahassee, FL 32399 |
| | BRIDGETTE JENSEN, ESQUIRE<br>Assistant State Attorney<br>190 Governmental Center<br>Pensacola, FL 32502 |
| FOR THE DEFENDANT: | LISA FUSARO, ESQUIRE<br>ALICIA HAMPTON, ESQUIRE<br>Assistant Capital Collateral Counsel<br>1004 DeSoto Park Drive<br>Tallahassee, FL 32301 |
| FOR THE GOVERNOR'S OFFICE: | ZACHARY LOYED, ESQUIRE<br>General Counsel- Executive Office<br>The Capitol, PL-5<br>Tallahassee, FL 32399 |
| FOR THE DEPT. CORRECTIONS: | KRISTEN LONERGAN, ESQUIRE.<br>WILLIAM GWALTNEY, ESQUIRE<br>Assistant General Counsel<br>501 South Calhoun Street<br>Tallahassee, FL 32399 |
| FOR THE OKALOOSA COUNTY SHERIFF'S OFFICE: | MARSHA WEAVER, ESQUIRE<br>General Counsel<br>50 Second Street<br>Shalimar, FL 32579 |
| FOR THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT: | LINDSEY BRIGHAM, ESQUIRE<br>Assistant General Counsel<br>5054 Commerce Park Circle<br>Pensacola, FL 32505 |
| FOR THE FLORIDA COMMISSION ON OFFENDER REVIEW: | RANA WALLACE, ESQUIRE<br>Attorney at Law<br>4070 Esplanade Way<br>Tallahassee, FL 32399 |
| FOR THE OKALOOSA COUNTY CLERK'S OFFICE: | STEVE BAUMAN, ESQUIRE<br>Anchors Smith Grimsley<br>909 Mar Walt Drive<br>Fort Walton Beach, FL 32547 |

P R O C E E D I N G S

THE COURT: Good morning. I'm Judge Clark. And we are here on Case 1994-CF-1283, Edward James Zakrzewski, II. And we are here for a hearing on the objections to the public records request. And let me go ahead and get appearances and I will start with defense counsel, please.

MS. FUSARO: Good morning, Your Honor. Lisa Fusaro on behalf of the Defense from CCRC-North. And then I also have my co-counsel Alicia Hampton here on Zoom as well.

THE COURT: Thank you. And for the attorney general's office?

MS. ROBINSON: Good morning, Your Honor. Janine Robinson on behalf of the attorney general's office and we are also appearing on behalf of the District Eight Medical Examiner's Office.

MS. MILLSAPS: Charmaine Millsaps with the attorney general's office in Tallahassee.

THE COURT: Great. And do I have someone here from FDLE?

MS. BRIGHAM: Lindsey Brigham on behalf of FDLE.

THE COURT: Wonderful. Thank you.

And do I have someone present from the State

Attorney's Office for the First Judicial Circuit?

MS. JENSEN: Yes, ma'am. Good morning, Judge. Bridgette Myers-Jensen for the state attorney's office.

THE COURT: Thank you. And do I have someone present from the Executive Office of the Governor?

MR. LOYED: Yes, Your Honor. Zachary Loyed for Governor DeSantis.

THE COURT: Thank you. And do I have someone present for the Okaloosa County Sheriff's Office?

MS. BAUMAN: Yes, Your Honor. Steve Bauman for the Okaloosa County Sheriff's Department (sic). I see Don Allgood is also -- he's not an attorney, but he's a clerk.

THE COURT: Okay.

MS. WEAVER: Your Honor, Marsha Weaver here for the sheriff's office as general counsel.

THE COURT: Okay. So, Mr. Bauman, you're here for the sheriff's office also?

MS. BAUMAN: No, Your Honor, just the clerk.

THE COURT: Oh, okay.

MS. BAUMAN: Ms. Weaver I think is there for the sheriff's department.

THE COURT: Okay. Thank you. So Ms. Weaver is present for the sheriff's office.

Mr. Bauman, you're here for the Okaloosa

County Clerk of Court, correct?

MS. BAUMAN: Yes, ma'am.

THE COURT: And Mr. Allgood, you're here -- you're one of the deputy clerks?

MR. ALLGOOD: I am. Yes, ma'am.

MS. BAUMAN: Yes, ma'am.

THE COURT: And I also have Ms. Walker who is a member of the clerk's office as well. All right.

Do I have someone present from the Florida Department of Corrections?

MR. GWALTNEY: Yes, Your Honor. William Gwaltney on behalf of the Department of Corrections. Also, Ms. Kristen Lonergan is here. And Christina Porrello may be checking in, in a few moments.

THE COURT: All right. Great. Thank you.

And is there anyone present who I did not cover? I don't see anyone here from the Florida Commission on Offender Review. Do I have anyone present for that organization? Okay.

MS. ROBINSON: Your Honor, I'll reach out to FCOR right now.

THE COURT: Thank you. I'm going to wait and let Ms. Robinson do that before I get started.

MS. ROBINSON: Your Honor, I'm going to go off camera and try to call her right now.

THE COURT: No problem.

MS. MILLSAPS: Your Honor?

THE COURT: Yes.

MS. MILLSAPS: I just reached out to Rana Wallace at FCOR. She said she would be on in two minutes. I didn't -- I just moved her to let's get on, so if you will give her two minutes she will be right with us, Your Honor.

THE COURT: Wonderful. Thank you. I'm going to go ahead and get started and then when Ms. Wallace enters the Zoom waiting room I will bring her in.

So I know that Ms. Jensen had a hearing this morning, so I'm going to take the state attorney's office first because I know you have to be in front of another judge very soon.

MS. JENSEN: Thank you, Judge. I actually got in touch with Judge Simon and he was able to move me to nine, but I'm still happy to go first if you prefer.

THE COURT: All right. Let's go ahead. So I reviewed the defendant's demand for public records that was directed to the state attorney's office and I also reviewed the State's response and objection, and so I obviously read the objection, and then I got paragraph 13 and it states that you don't have any additional records other than what you have provided to the

repository, correct?

MS. JENSEN: That's correct, Judge. It is certainly our position that the defendant has not met its burden under Florida Rules of Criminal Procedure 3.852 to obtain the public records requested of the state attorney's office. However, after our case management conference on July 2nd, I did get in touch with our records supervisor and just asked him to do a search to the best of his ability and he did that and reported back to me that he didn't feel like we had any additional records that were responsive to the defendant's request.

THE COURT: Okay. Thank you.

And would the Defense like to be heard on anything on this particular request?

MS. FUSARO: No. No, our request is moot. If they have no records, then we are done with that.

THE COURT: Okay. All right. And then that takes care of the state attorney's office pretty easily then without the State waiving its objections. I thought I would just cut to that say even if, you know, even if you didn't object, you didn't have any records so.

Okay. Well, Ms. Jensen, you are welcome to stay with us if you would like or if you need to get to

Judge Simon's court, then I certainly understand. All right.

So the attorney's general request or objection, rather, I, of course, reviewed the demands directed to the office of the attorney general. I reviewed the objections.

Would the Defense like to be heard on this request?

MS. FUSARO: Yes, Your Honor, just briefly. I just wanted to respond to a couple of points regarding the wording of 3.852. So the office of the attorney general is really focused on the additional records. However, we submit that additional records means exactly what it says in 3.851(i)(1), but they're records that have not been produced previously at all under 3.852(e)(f)(g) or (h). It does not mean additional records from the agency that was previously submitted records to the repository because that's the wording in 3.852(h), so we submit if it was supposed to pertain to 3.852(i), that it could have been stated in (i) as well. And then I would also submit that the reasoning behind 3.852(i)(1)(a) and (b) is so that counsel is not requesting the same records from an agency that the agency already submitted to the repository or that counsel could have already received

from the repository, so basically making duplicate work for everyone.

And then other than that, I would just say that their arguments regarding the use of past tense, citing *Sims v. State* and updated information previously received or requested, that is also all premised on 3.852(h), which again is not the provision that we are seeking public records under.

Then in summary, we just submit that the requested records do relate to a postconviction claim which only became ripe upon signing of the warrant and if the Court should find that the records requested are too overly broad or burdensome, then we would argue that we are at least entitled to the records from the past year. So it's not only those that would be related to constitutional violations, but it could also lead to claims of newly discovered evidence. Thank you.

THE COURT: Thank you.

And would the attorney general's office like to respond?

MS. ROBINSON: Briefly, Your Honor. Our discussion of subsection (i)(1) and defense counsel's comments on our argument is really a distinction without a difference. The attorney general's office

has not received a prior demand or has not produced any records so that disposes of (i). But nonetheless, they have not complied as Your Honor has read in our response with subsection (2), which there -- no colorable claim has been stated and we are not sure what is ripe upon signing the warrant. If that means the clemency records, then that obviously that -- the clemency records have been well decided by the Florida Supreme Court.

THE COURT: Thank you. All right.

Ms. Fusaro, this is your request. Anything further you would like to say?

MS. FUSARO: No, Your Honor, we stand on the demand. Thank you.

THE COURT: Thank you. All right. And I'm also noting that Ms. Wallace from the Florida Commission on Offender's Review is with us.

MS. WALLACE: Good morning, Your Honor. Please excuse my latest. Thank you.

THE COURT: Thank you. All right. Next would be -- actually on my stack, it is the commission on offender review.

So, Ms. Wallace, I did review the response and objection that you filed. I'm going to ask defense counsel if she would like to be heard.

MS. FUSARO: Yes, Your Honor. And if you wouldn't mind, I would like for efficiency, address both of the public records demands that are related to clemency together which would be the Florida Commission Offender Review, as well as the Executive Office of the Governor. We do acknowledge that the state of the law in Florida does favor non-disclosure of the record, however, we still have to raise our arguments to preserve Mr. Zakrzewski's constitutional rights under the Eighth and the Fourteenth Amendments because if there is a clemency process, it does need to comport with the minimum requirements of due process.

And also as the United States Supreme Court has suggested in *Ohio Adult Parole Authority vs. Woodard*, an equal protection claim may be relevant in connection with a clemency decision. So we submit that the manner in which the Florida death row inmates are selected for clemency and when they are selected, as well as the time frame between when they go through clemency and the denial of clemency, which the inmate only finds out upon signing of a warrant, is all unconstitutionally, arbitrary and capricious and does not comport with due process or equal protection.

And just to give an example here. Mr. Zakrzewski went through clemency around 2007 and

his death warrant was signed approximately 18 years later in 2025. Some other individuals have had clemency within the past year and their death warrants were signed in 2025. And then some other individuals who went through clemency around a similar time as Mr. Zakrzewski, they have had a second more recent round of clemency.

So Mr. Zakrzewski is similarly situated to those same inmates, but he didn't have any updated clemency review. So we submit that that violates the equal protection clause.

Other than that and for good cause the public records demand was not made until after the warrant. Mr. Zakrzewski did not know that clemency was denied until the warrant was signed. So we submit that that is when the postconviction claims became ripe. Since he went through the clemency process 18 years ago, he would have no reason to think that his warrant was going to be signed, especially since he did not go through any updated clemency proceedings.

Again, we're aware the precedent is not in our favor from the Florida Supreme Court, but we just want to ensure the arguments are on record.

THE COURT: Understood. Thank you.

And, Ms. Wallace, would you like to be heard?

MS. WALLACE: Yes, Your Honor. And for efficiency purposes, I will stand on my written response and I do agree with counsel for the inmate that all of the claims raised in her written demand and today in today's hearing are -- have been adjudicated and are well settled law. Clemency, including the way that the executive exercises its clemency power, is not a cognizable or colorable claim for relief so no records requested can lead to admissible evidence or can lead to a colorable claim.

THE COURT: Thank you.

And, Mr. Loyed, would you like to be heard as well?

MR. LOYED: Yes, Your Honor. I would echo the sentiments that the records -- the clemency records, they're shielded by statute and the Florida Supreme Court precedent. There's also a long line of Florida Supreme Court cases that have consistently and repeatedly upheld the governor's absolute discretion in choosing whether or not to sign a death warrant and whether or not to grant clemency. So there's that precedent upon this court as well.

I would also submit that merely the signing of the death warrant does not provide good cause as to why the records were not requested as before because the

Florida Supreme Court has said there has to be some reason other than simply the signing of a death warrant as to why the records haven't been requested before. So for all those reasons, we would ask the Court to deny disclosure.

THE COURT: Thank you.

Ms. Fusaro, anything further on either of those two requests?

MS. FUSARO: No, Your Honor.

THE COURT: Okay. Thank you.

Ms. Fusaro, is there one in particular you would like to address next, a group of them?

MS. FUSARO: Yes, Your Honor. I would say that the Okaloosa County Sheriff's Office, I would like to address them as well. They also stated in paragraph four of their response and objection that they previously sent all of their records to the repository. So since they didn't have any further response of records, I would submit that that demand is also moot.

THE COURT: Ms. Weaver, anything to add?

MS. WEAVER: I agree.

THE COURT: Okay. The Court so finds. Thank you.

MS. WEAVER: Thank you.

THE COURT: All right. Ms. Fusaro, which one

would you like to address next?

MS. FUSARO: I would also like to address, as a group, the three records demands that are related to lethal injection. Those are the demands for the Florida Department of Corrections, Florida Department of Law Enforcement and the District Eight Medical Examiner because again on that we acknowledge that the current state of law in Florida does favor non-disclosure of the records, but again, we still have to raise the arguments in order to preserve Mr. Zakrzewski's constitutional rights under the Eighth and Fourteenth Amendments. The precedent from the Florida Supreme Court currently seems to suggest that a defendant would only be able to challenge the lethal injection protocol when there's a change in the protocol, which in essence means, that every single death row inmate would have to litigate whether the protocol is cruel and unusual or whether the protocol is cruel and unusual as applied to that individual every single time that the protocol changes even though the warrant may never be signed or they might pass away naturally before a warrant is signed.

So again, we would just submit that these constitutional claims do not become ripe until a warrant is actually signed and the inmate is aware of

which protocol that they will be subject to. And aside from that, we would stand on our written arguments as well.

THE COURT: All right. Thank you.

Mr. Gwaltney, would you like to respond on behalf of the Department of Corrections.

MR. GWALTNEY: Your Honor, I can. First of all, I echo everyone else's arguments that have come before us. And as you can see from our response, we wholly adopt the response filed by the attorney general's office as well. We would just add that there is a very well settled case law with regard to the lethal injection procedures.

And Your Honor ruled recently in another case very similarly in *State v. Hutchinson*, in 1998-CF-1382, just a couple of months ago, on a very similar issue where you denied the records release.

THE COURT: Thank you.

And, Ms. Brigham?

MS. BRIGHAM: Thank you, Your Honor. Yes, FDLE echos the same arguments as FDOC and the other agencies. FDLE stands by the written response. This has already been litigated and the Florida Supreme Court has fully considered and already upheld or already held that the records are not related to a

colorable claim.

THE COURT: Thank you.

And, Ms. Robinson, for the District Eight Medical Examiner's Office.

MS. ROBINSON: The medical examiner's office relies on its written submission and the arguments made.

THE COURT: Thank you.

Ms. Fusaro, anything you would like to add on these three requests?

MS. FUSARO: No, Your Honor.

THE COURT: Okay. Thank you.

And then I believe that just leaves the Okaloosa County Clerk of Court.

And, Ms. Fusaro, would you like to be heard?

MS. FUSARO: Yes. I would just like to note that we've only made one request of the clerk, so we would argue that the request is not overly broad or burdensome since it only relates to one defendant in one case. And we also submit that the requested records do relate to postconviction claims denying his constitutional rights, which again, we submit would become ripe as soon as he has his warrant signed. However, if you do find that the request is too overly broad or burdensome, we would submit that we are at

least entitled to the response of records created in the last year. That's only one year of records so that definitely shouldn't create any sort of burden on the agency since we are only requesting records related to Mr. Zakrzewski and his case. And otherwise, we would stand on our arguments in the written demand.

THE COURT: Thank you.

Mr. Bauman.

MS. BAUMAN: Thank you, Your Honor. Yes, on behalf of the clerk's office I filed a memorandum yesterday that essentially adopted the memorandums of the attorney general, the governor's office and the Florida Commission on Offender Rights. We would standby those arguments. They generally overlap. All of the arguments are generally the same so there's no need to burden the court with regurgitating the same arguments that were being made in those three briefs.

We would point out that the records in paragraph five of their request, it says that they would lead to evidence of Florida's clemency and warrant process violates the U.S. and state constitution. And as stated, the courts have clearly held that the clemency records are confidential and free from production and that the warrant process does not present a colorable claim. That's all I have to

say. Thank you, Your Honor.

THE COURT: Thank you.

Anything further, Ms. Fusaro?

MS. FUSARO: No, Your Honor.

THE COURT: Okay. Thank you. Did I cover all of the requests? I just want to make sure I didn't miss one.

MS. FUSARO: I believe so.

THE COURT: Okay. All right. I will have a written order entered prior to my deadline, which is, I believe, noon central, one o'clock eastern today. So you should all receive a copy of that. Be on the look out for it. And unless there's anything else we need to cover or discuss, I'll leave that to the attorneys to tell me if there is.

MS. FUSARO: Nothing from the Defense, Your Honor. Thank you.

MS. ROBINSON: Nothing from the attorney general, Your Honor.

THE COURT: Thank you.

Does anyone else have anything else I need to cover on this matter?

MS. BAUMAN: No, Your Honor.

THE COURT: Okay. So just to run through our deadlines one more time. In the event any of the

requests were granted, the deadline to produce those records would be four o'clock central time, five o'clock eastern time today.

The motion from the defendant would be due tomorrow at -- that's Wednesday, July 9th at one o'clock central, two o'clock eastern. State's answer would be due on Thursday, July 10th at eight o'clock central, nine o'clock eastern.

And we are going to have our second case management conference on Thursday, July 10th at one o'clock central, two o'clock eastern time. And then I will have the order done from that that same day at three o'clock central, four o'clock eastern.

Then if an evidentiary hearing is required, we will have that on Friday, July 11th at eight o'clock central, nine o'clock eastern.

And then my final order is due on Monday, July 14th no later than ten o'clock central and eleven o'clock eastern time.

I just wanted to run through the deadlines since I've got everybody here and that way we are all aware.

Well, if there is nothing else, that will conclude our hearing. I will be working on the order. And thank you all for being here. I know for those of

us on central time it was very early, so thank you all very much.

MS. BAUMAN: Thank you, Your Honor.

MR. GWALTNEY: Thank you, Judge.

MS. FUSARO: Thank you, Your Honor.

MS. ROBINSON: Thank you, Your Honor.

(Proceedings concluded)

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF OKALOOSA

I, KIM SANDERS, Official Court Reporter, do hereby certify that the foregoing, being pages numbered 1 through 21, inclusive, is a true and correct transcript of the proceedings held remotely via videoconferencing in the case of STATE OF FLORIDA vs. EDWARD J. ZAKRZEWSKI, II, Case No. 1994-CF-1283, on the 8th day of July, 2025, before the Honorable LACEY POWELL CLARK, Circuit Judge.

IN WITNESS WHEREOF, I have hereunto set my hand, this the 8th day of July, 2025.



KIM SANDERS
Official Circuit Court Reporter

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**
_____/

**Case No. 1994-CF-1283**
**Emergency Capital Case**
**Death Warrant Signed**
**Execution Scheduled for**
**July 31, 2025 at 6:00 p.m.**

**DEFENDANT'S SUCCESSIVE MOTION TO VACATE JUDGMENT AND DEATH SENTENCES UNDER FLA. R. CRIM. P. 3.851 AFTER DEATH WARRANT SIGNED**

Defendant, Edward James Zakrzewski, II, pursuant to Rule 3.851 and the United States and Florida Constitutions, moves to vacate and set aside his judgment and sentences of death.

**(A) JUDGMENT AND SENTENCES UNDER ATTACK**

In March 1996, Mr. Zakrzewski pled guilty to three counts of first-degree murder. R. 241-242; T. 442-51.[1] Following the penalty phase trial, the jury voted 7-5 for a death sentence on the first two counts, and on the third count, the jury voted for life imprisonment without possibility of parole. R. 263-64; T. 1274-80. Nonetheless, on April 19, 1996, the trial court overrode the jury's vote for life as to the third count, and sentenced Mr. Zakrzewski to death on all counts. R. 1028-51; *see also* Attachment A. Although the Florida Supreme Court ("FSC") affirmed on direct appeal, three Justices noted the issues with upholding the jury override. *Zakrzewski v. State*, 717 So. 2d 488 (1998), *cert denied, Zakrzewski v. Florida*, 525 U.S. 1126 (1999).

[1] References to the records in this case are as follows: "R. [page number]" refers to Volumes 1 through 3 of the record on direct appeal (FSC Case No. SC60-88367); "T. [page number]" refers to the penalty phase transcripts contained in Volumes 4 through 10 of the record on direct appeal.

## (B) ISSUES RAISED ON DIRECT APPEAL

On direct appeal, Mr. Zakrzewski raised nine claims:

> (1) the trial court erred by finding HAC; (2) the trial court erred by finding CCP; (3) the death sentence is not proportionately warranted in this case; (4) the trial court erred in overriding the jury's recommendation of life for [redacted]e trial court allowed prejudicial photographs of the victims to be admitted into evidence; (6) the trial court permitted State's mental health expert to testify about Nietzsche and his views on Christianity; (7) the trial court permitted the State's mental health expert to testify, when the testimony did not rebut the testimony of Zakrzewski's mental health expert; (8) the trial court failed to instruct the jury that Zakrzewski's ability to understand his conduct was substantially impaired; and (9) the trial court failed to instruct the jury on each of Zakrzewski's nonstatutory mitigating factors.

*Id.* at 492.

## (C) POSTCONVICTION PROCEEDINGS

Mr. Zakrzewski filed an initial motion for state postconviction relief which was denied after an evidentiary hearing. *Zakrzewski v. State*, 866 So. 2d 688, 689 (Fla. 2003). On appeal, he raised four issues, including that his death sentence was unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466, 482 (2000) and *Ring v. Arizona*, 536 U.S. 584, 584 (2002). *Id.* The FSC affirmed. *Id.* at 697.

In February 2004, Mr. Zakrzewski filed a petition for a writ of habeas corpus, which was denied and affirmed on appeal by the Eleventh Circuit Court of Appeals. *Zakrzewski v. McDonough*, 455 F.3d 1254 (11th Cir. 2006).

Mr. Zakrzewski filed a Federal Rule of Civil Procedure 60(b) motion to reopen proceedings on his habeas petition. The motion was denied as a successive habeas petition and Mr. Zakrzewski appealed. The Eleventh Circuit Court of Appeals reversed and remanded, instructing the district court to consider the merits of the motion. *Zakrzewski v. McDonough*, 490 F.3d 1264 (11th Cir. 2007). On remand, the district court denied the 60(b) motion, *Zakrzewski v. McDonough*, 2007

WL 2827735 (N.D. Fla. Sept. 26, 2007), and the Eleventh Circuit affirmed. *Zakrzewski v. McNeil*, 573 F.3d 1210 (11th Cir. 2009), *cert denied*, *Zakrzewski v. McNeil*, 560 U.S. 956 (2010).

Mr. Zakrzewski filed a successive motion in 2009 in state court, which was summarily denied, and affirmed on appeal. *Zakrzewski v. State*, 13 So. 3d 1057 (Fla. 2009) (unpublished). Another in 2010, which was also summarily denied and affirmed on appeal. *Zakrzewski v. State*, 115 So. 3d 1004 (Fla. 2012) (unpublished). In March 2013, Mr. Zakrzewski filed a third successive postconviction motion. The trial court summarily denied his claims and the FSC affirmed. *Zakrzewski v. State*, 147 So. 3d 531 (Fla. 2014) (unpublished), *cert denied, Zakrzewski v. Florida*, 575 U.S. 918 (2015).

On May 2, 2016, Mr. Zakrzewski filed a state petition for writ of habeas corpus seeking relief under *Hurst v. Florida*, 577 U.S. 92 (2016) and *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). The petition was denied. *Zakrzewski v. Jones, etc.,* 221 So. 3d 1159 (Fla. 2017).

In January 2017, Mr. Zakrzewski filed a fourth successive postconviction motion based on *Hurst*, which was summarily denied. On appeal, the FSC affirmed summary denial of the motion, concluding that the Court's prior denial of his habeas petition raising similar claims served as a procedural bar. *Zakrzewski v. State*, 254 So. 3d 324 (Fla. 2018), *cert denied, Zakrzewski v. Florida*, 587 U.S. 988 (2019).

On July 1, 2025, Governor Ron DeSantis signed a death warrant for Mr. Zakrzewski. His execution is scheduled for July 31, 2025 at 6:00 p.m.[2]

[2] All of the times detailed in this motion are listed in Eastern Daylight Time.

## (D) GROUNDS FOR POSTCONVICTION RELIEF

### CLAIM ONE

**THE EXECUTION OF AN INDIVIDUAL WHOSE JURY VOTE WOULD MAKE HIM INELIGIBLE FOR THE DEATH PENALTY TODAY, IS ARBITRARY AND VIOLATES THE FIFTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION**

Following the penalty phase of his trial, Mr. Zakrzewski received two jury recommendations of 7-5, and one recommendation of 6-6. If a jury returned those votes today, Mr. Zakrzewski would be ineligible for a death sentence and instead, it would be mandatory to sentence him to life in prison without the possibility of parole. *See* § 921.141(2)(c), Fla. Stat. (emphasis added) ("If at least eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of death. ***If fewer than eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of life imprisonment without the possibility of parole***.")

While nearly all states that utilize the death penalty require a unanimous jury vote in order to sentence a defendant to death, only two states do not: Florida and Alabama. However, even in Alabama at least ***ten*** jurors have to vote for a death sentence. *See* Ala. Code § 13A-5-46(f) ("The decision of the jury to recommend a sentence of death must be based on a vote of at least 10 jurors"). Florida not only does not require a unanimous jury recommendation, but Florida currently only requires ***eight*** jurors to recommend a death sentence, the lowest number in the country. Even still, this 8-4 margin, requires one more juror to vote for a death sentence than the 7-5 vote that Mr. Zakrzewski received for the first two counts.

Worse yet, on the third count, Mr. Zakrzewski should have received a life sentence back in 1996, because the jury voted 6-6 for a sentence of life in prison. Instead, the trial judge overrode the jury's life recommendation. *See Tedder v. State*, 322 So. 2d 908, 910 (Fla. 1975), *abrogated*

*by Hurst v. Florida*, 577 U.S. 92 (2016). That is ***two*** less jurors than what would be required to receive a death sentence today, and arguably unconstitutionally imposed even at the time that Mr. Zakrzewski was sentenced. *See infra* p. 7. It was without a doubt an extremely rare occurrence. Even in 2016, Justice Alito noted that "[n]o Florida trial court has overruled a jury's recommendation of a life sentence for more than 15 years." *Hurst v. Florida*, 577 U.S. 92, 105 (2016) (Alito J., dissenting). In fact, Mr. Zakrzewski is one of only three capital defendants on Florida's death row whose case has been subject to a judicial override. Mr. Zakrzewski was the last one of the three to receive his. After his trial judge overrode his jury vote for a life sentence, it appears no other capital defendant's jury override was upheld on appeal. The practice of jury override stopped completely by 2000, and was later fully abolished by *Hurst* in 2016. *See also Blakely v. Washington*, 542 U.S. 296, 304 (2004) (internal citation omitted) ("When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts which the law makes essential to the punishment," "the judge exceeds his proper authority").

Although rarely utilized, a jury override could be applied in limited circumstances in Florida, where "[i]n order to sustain a sentence of death following a jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ." *Tedder v. State*, 322 So. 2d 908, 910 (Fla. 1975), *abrogated by Hurst v. Florida*, 577 U.S. 92 (2016). Mr. Zakrzewski's trial judge cited the *Tedder* standard in his sentencing order, but he appeared to be improperly applying the law, because in fact there were many sound reasons to recommend a life sentence. R. 1049-51. To wit, six of the twelve jury members weighed the evidence presented and differed in opinion. Each member of the jury was polled and each juror answered in the affirmative on the record that "as to Count III did at least six jurors vote in favor of a life sentence?" T. 1277-80. These reasonable people took their duty as a

juror seriously and clearly considered the differing evidence on aggravators for each count.

A jury "override is improper if there is a reasonable basis in the record to support the jury's recommendation." *Esty v. State*, 642 So. 2d 1074, 1080 (Fla. 1994). The record in Mr. Zakrzewski's case is replete with mitigation that outweighed the aggravators, including two weighty statutory mitigators: 1) no significant prior criminal history and 2) the capital felony was committed while the Defendant was under the influence of extreme mental or emotional disturbance. In addition, 14 nonstatutory mitigators were found and given varying degrees of weight. *Zakrzewski*, 717 So. 2d at 497. Just because the trial judge substituted his own judgment for that of the jury and he would not have granted mercy on the third count, does not mean that no reasonable person would have. Which is further illustrated by the jury vote of 6-6 being just one vote off from the other counts. As in *Esty*, the "jury override [in Mr. Zakrzewski's case] was improper because the jurors could have relied on these factors established in the record to recommend a life sentence in this case." *Esty*, 642 So. 2d at 1080.

In the sentencing order, the trial judge's reasoning for overruling the life recommendation for the third count was, because that victim was the last to die, she must have been aware of her impending death.[3] Thus, he could not see how the jury could recommend a life sentence for her

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[3] On direct appeal, Justice Anstead dissected this flawed reasoning and found that even the direct appeal "majority opinion has demonstrated ***a number of reasonable bases for the life recommendation***." *Zakrzewski*, 717 So. 2d 488, 498 (Anstead, J., concurring in part and dissenting in part) (emphasis added). "However, beyond the consistency inference, the reference to the 'compelling' facts of [redacted]er is perplexing because the majority opinion notes that while [redacted]ed what his father was doing, ' *id.* at 477, '[t]he evidence was in conflict as to whether [redacted]ware of her impending death. ' *Id.* Hence, in addition to the unprecedented mitigation presented, the majority has itself identified another substantial basis for the jury's recommendation by pointing out that ***the jury could have reasonably concluded, because the evidence was in conflict, that [redacted] not aware of her impending death.*** In that event, for example, the jury would also not have found the HAC aggravator for [redacted]n since that aggravator requires a finding of consciousness of impending death." *Id.* at 497-98 (emphasis added).

while simultaneously recommending death for the first two counts. However, under today's standard in Florida, the 7-5 jury recommendation for the first two counts ***would be a life sentence*** and the judge would have had absolutely no excuses as to why an override was possible because the votes for each count would have ***all*** been for a life sentence without the possibility of parole.

Notably, Mr. Zakrzewski's jury override sentence was already suspect even on direct appeal:

> The majority has not considered the facts in a light most favorable to the recommendation of the jury, as we are required to do, or acknowledged the unchallenged reasonable basis in the record supporting the jury's vote as to [redacted] death. Further, the majority has ignored not only the evidence and inferences therefrom that would support the jury's recommendation, but has also ignored the fact that ***even the jury vote recommending death was by a slim seven to five margin, one vote away from a life recommendation*** for the appellant. Hence, the majority, in direct violation of the law and our decision in *Tedder* has substituted its subjective analysis of the facts for the views of the sworn and death-qualified jurors, who not only could have had reasonable but differing views as to whether death was appropriate, but *did* have those views and openly expressed them. The majority has apparently concluded that because its members would not have extended mercy, the views of the twelve citizens sitting on this jury extending mercy will be ignored.

*Zakrzewski*, 717 So. 2d at 497 (Anstead, J., concurring in part and dissenting in part with an opinion, in which Kogan, C.J., and Shaw, J., concur) (first emphasis added). Even in 1998, when *Tedder* was still good law, ***three*** FSC Justices found that Mr. Zakrzewski's jury override sentence was "in direct violation of the law."

One clear concern of the Justices *in Furman v. Georgia*, 408 U.S. 238 (1972), was the possible discriminatory application of the death penalty. Justice Douglas concluded that the capital statutes before him were "pregnant with discrimination," *id.* at 257, and thus ran directly counter to "the desire for equality . . . reflected in the ban against 'cruel and unusual punishments' contained in the Eighth Amendment." *Id.* at 255. These observations illuminate the holding of *Furman*, reaffirmed by SCOTUS in *Gregg* and subsequent cases, that the death penalty may "not

be imposed under sentencing procedures that create [] a substantial risk that it [will] . . . be inflicted in an arbitrary and capricious manner." *Gregg v. Georgia*, 428 U.S. 153, 188 (1976); *Godfrey v. Georgia*, 446 U.S. 420, 428 (1980); *Zant v. Stephens*, 456 U.S. 410, 413 (1982) (per curiam). The litany of issues associated with Mr. Zakrzewski's death sentences highlight that the death penalty has not been fairly and equally applied to his case.

Remarkably, Florida was such an outlier in capital sentencing over the years, that even prior to his trial in 1996, Mr. Zakrzewski raised and preserved the argument that a bare majority vote for a death sentence was unconstitutional. R. 195-96. Mr. Zakrzewski also timely raised and preserved arguments under *Apprendi* and *Ring*. Nonetheless, he was later barred from receiving *Hurst* relief because his sentence became final in 1999, merely years prior to the 2002 date where the FSC decided to arbitrarily draw the line. Justice Pariente recognized that "pre-*Ring* defendants whose sentences were the product of the ***clearly unconstitutional judicial override***" still "warrant relief under *Hurst*". *Zakrzewski v. Jones*, 221 So. 3d 1159, 1162 (Fla. 2017) (Pariente, J., concurring) (emphasis added). Especially, in light of the fact that Mr. Zakrzewski raised these claims at every chance and fully preserved the issues in his case related to his unconstitutional jury votes, Mr. Zakrzewski asserts that his case was decided wrong previously and manifest injustice would result from letting his death sentences stand. The "qualitative difference between death and other penalties calls for a greater degree of reliability when the death sentence is imposed." *Lockett v. Ohio*, 438 U.S. 586, 604 (1978).

Justice Labarga acknowledged the FSC's power to correct such errors in *Marshall*:

> Although his sentence admittedly became final prior to the issuance of *Ring*, this Court has 'the power to reconsider and correct erroneous rulings in exceptional circumstances and where reliance on the previous decision would result in manifest injustice, notwithstanding that such rulings have become the law of the case.' *State v. Owen*, 696 So. 2d 715, 720 (Fla. 1997). Marshall's death sentence, which was based upon a judicial override, constitutes an injustice that should be remedied.

*Marshall v. Jones*, 226 So. 3d 211 (Fla. 2017) (Labarga, C.J., dissenting). Although Mr. Zakrzewski is not on death row solely due to the trial judge overriding his life sentence, his sentence is uniquely paired with two death sentences that were the product of a bare majority vote, which would no longer be upheld in ***any*** state in the country if issued today. As SCOTUS has repeatedly held, "the Eighth Amendment 'must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.'" *Furman v. Georgia*, 408 U.S. 238, 242 (1972) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).

Failure to recognize, reconsider, and correct the fact that Mr. Zakrzewski's death sentences are unconstitutional would result in a manifest injustice. Reliance on the prior decisions in his case are unreliable, outdated, and erroneous. One exception to the law of the case doctrine "allows departure from the law of the case when there has been 'an intervening decision by a higher court contrary to the decision reached on the former appeal.'" *State v. Okafor*, 306 So. 3d 930, 934 (Fla. 2020) (quoting *Strazzulla v. Hendrick*, 177 So. 2d 1, 4 (Fla. 1965)). The intervening changes in law by SCOTUS in *Hurst v. Florida*, 577 U.S. 92 (2016), and then the 2023 revision to the statute which required at least eight votes to receive a death sentence, show that failure to receive even ***eight*** votes for death on any of his counts, requires the imposition of life sentences. *See* § 921.141, Fla. Stat. (2023). At the very least, this injustice should be remedied and Mr. Zakrzewski's death sentences should be vacated.

There are only two sentences in Florida for first-degree murder: life in prison without the possibility of parole, and a death sentence. To further the interests of justice and finality, when a death sentence is found to be unconstitutional, it must be commuted to a life sentence. § 775.082, Fla. Stat.; *see also Asay v. State*, 210 So. 3d 1, 41 (Fla. 2016) (Perry, J., dissenting). No justice is

served or retributive or deterrent effect gained[4] by executing an individual after nearly three decades on death row, especially not an individual such as Mr. Zakrzewski who the Florida Department of Corrections ("DOC") observed has adjusted exceptionally well to his conditions. This is further evidenced by the fact that he has only received one DR in the past ten years, for a minimal, nonviolent infraction.[5]

Whereas the State in *Okafor* asked for the FSC to revisit and undo a final judgment which would reinstate a death sentence, the opposite is requested here. *Okafor*, 306 So. 3d at 933-45. In essence, the State in *Okafor* was requesting an unconstitutional judicial override to sentence the defendant to death. In the instant case, the interest of finality based in the law of the case doctrine would actually be promoted by imposing a constitutional sentence of life in prison upon Mr. Zakrzewski. *See State v. Owen*, 696 So. 2d 715, 720 (Fla. 1997) (citing *Strazzulla,* 177 So. 2d at 3) ("the doctrine is not an absolute mandate, but rather a self-imposed restraint that courts abide by to promote finality and efficiency in the judicial process and prevent relitigation of the same issue in a case."). Mr. Zakrzewski has already taken accountability for the crimes and pled guilty, therefore, if he was resentenced to life in prison without the possibility of parole, he would have nothing to appeal, nothing to litigate, and true finality would be achieved in this case. *See Witt v. State*, 387 So. 2d 922, 926 (Fla. 1980) ("we must balance the interests of fairness and uniformity for [the defendant] against the interests of decisional finality").

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[4] "*Gregg* instructs that capital punishment is excessive when it is grossly out of proportion to the crime or it does not fulfill the two distinct social purposes served by the death penalty: retribution and deterrence of capital crimes." *Kennedy v. Louisiana*, 554 U.S. 407, 441 (2008) (citing *Gregg v. Georgia*, 428 U.S. 153 at 173, 183, 187).

[5] He may not have received more than one DR in longer than ten years, however only the last ten years of DOC records were produced to counsel due to the time constraints created by the active death warrant.

This claim only became ripe upon the signing of Mr. Zakrzewski's death warrant. He has already spent twenty-nine years on death row and is sixty years old. He went through clemency eighteen years ago. Until his death warrant was signed there was no indication that he would not continue to live out the rest of his days in prison on Florida's death row until passing away naturally. If Mr. Zakrzewski's death warrant had never been signed in his natural life, then he would have no injury to complain of. Albeit he would have had the additional cruel and unusual punishment of being on Florida's death row, but in essence he would have received exactly what he was entitled to based upon his constitutional rights and his jury vote: a life sentence in prison. Consequently, there was no reason to litigate this issue previously.

It is imperative to note that, today, if a Florida jury came back with ***any*** of the votes that Mr. Zakrzewski received at trial, he would receive a life sentence without the possibility of parole on ***all*** counts. It is clear that Mr. Zakrzewski is being deprived of the rights he is entitled to under the Equal Protection Clause and the Fifth, Eighth, and Fourteenth Amendments. Accordingly, Mr. Zakrzewski's death sentences are unconstitutional and should be commuted to three life sentences, which would truly create finality in this case. § 775.082, Fla. Stat. At the very least, he should be entitled to a new penalty phase replete with at least the minimal constitutional protections Florida currently has in place.

## CLAIM TWO

**SIGNING MR. ZAKRZEWSKI'S DEATH WARRANT IMMEDIATELY PRIOR TO THE HOLIDAY WEEKEND, WHILE MR. BELL'S DEATH WARRANT WAS STILL PENDING, VIOLATES HIS RIGHT TO ACCESS TO THE COURTS AND ACCESS TO COUNSEL UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS, AS WELL AS HIS RIGHT TO DUE PROCESS**

Undersigned counsel received notice that Mr. Zakrzewski's death warrant was signed the evening of July 1, 2025, with a scheduled execution date of July 31, 2025 at 6:00 p.m. That makes

his warrant period thirty days. However, later on July 1st, the FSC issued an expedited briefing schedule that detailed that all proceedings in the trial court shall be completed no later than 11:00 a.m., Monday, July 14, 2025. As of July 1, Mr. Zakrzewski was transported to death watch at Florida State Prison ("FSP") and DOC confiscated his tablet with e-mail access, leaving Mr. Zakrzewski at the mercy of counsel scheduling legal visits and calls in order to access the courts. Further, when Mr. Zakrzewski arrived at FSP, Michael Bell was already on death watch due to his execution being scheduled for July 15, 2025.[6]

The Supreme Court of the United States ("SCOTUS") has held that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with [ ] adequate assistance from persons trained in the law." *Lewis v. Casey*, 518 U.S. 343, 346 (1996) (quoting *Bounds v. Smith,* 430 U.S. 817, 818 (1977)). Mr. Zakrzewski has a "a constitutional right of access to the courts that is adequate, effective and meaningful." *Id.* Mr. Zakrzewski has been denied meaningful access to the court which hindered his efforts to pursue legal claims. *Lewis v. Casey*, 518 U.S. at 351.

Due to the Governor's thirty-day warrant period,[7] which led to the FSC's expedited briefing schedule, this Court had to expedite all proceedings at the circuit court level as well. Accordingly, in order to fit everything in so that Mr. Zakrzewski could at least have some semblance of due

[6] In 2023, prior to the Governor signing overlapping death warrants, Justice Labarga was already "extremely concerned by the recent pace of death warrants and the speed with which the parties and involved entities must carry out their respective duties." *Barwick v. State*, 361 So. 3d 785, 796 (Fla. 2023) (Labarga, J., concurring).

[7] "I feel compelled to again express my concerns about the extremely short time frame for this case and other recent death warrant cases." *Bell v. State*, No. SC2025-0891, 2025 WL 1874574, at *17 (Fla. July 8, 2025) (Labarga, J., concurring).

process, this successive motion was due at 2:00 p.m. on Wednesday, July 9, 2025. As all of Mr. Zakrzewski's legal claims are required to be raised in this motion in order to preserve the issues for appeal, and because undersigned counsel must certify that she has discussed the contents of this motion with Mr. Zakrzewski pursuant to Rule 3.851(e)(1)(F), this dictates that the most crucial time for Mr. Zakrzewski to have access to counsel was prior to the filing of this motion on July 9. Even without a holiday weekend, that is less than eight days to investigate, pursue, and discuss legal claims with Mr. Zakrzewski. However, due to Independence Day, Mr. Zakrzewski had no access to counsel or the courts from July 4-6, 2025 and, as detailed further below, arguably no meaningful access to counsel on July 3, due to only having a half hour phone call. This left Mr. Zakrzewski with approximately three days of the eight to pursue legal claims with counsel in order to ensure access to the courts.

Since the warrant was signed on July 1, Mr. Zakrzewski has had difficulties almost daily in trying to access counsel and the courts. In addition to the time constraints, more issues arose that deprived him of his rights due to Mr. Bell also being on death watch at the same time as Mr. Zakrzewski. Once the warrant was signed, undersigned counsel could not gain any access or communication with Mr. Zakrzewski until the morning of July 2, 2025. However, since Mr. Bell was also on death watch, undersigned counsel had to schedule around his legal visits and had to select a shorter legal visit which was at different time than requested. Counsel was told that there is only one room available for legal visits at FSP, therefore, counsel cannot schedule a legal visit with Mr. Zakrzewski if Mr. Bell already has a visit scheduled. Legal phone calls are limited to merely thirty minutes. Similarly, a legal call with Mr. Zakrzewski cannot be scheduled when Mr. Bell has a telephone call scheduled.

Next, additional issues arose because the Governor closed state offices on July 3, 2025, in addition to the regular office closures on July 4, to create a four-day holiday weekend for Independence Day. *See* Press Release, Governor Ron DeSantis, Governor Ron DeSantis Announces State Employees Will Receive an Extra Day Off for July 4th Weekend (June 23, 2025), https://www.flgov.com/eog/news/press/2025/governor-ron-desantis-announces-state-employees-will-receive-extra-day-july-4th. As the Governor made this announcement on June 23, 2025, this extended holiday weekend should have been taken into consideration and a warrant should not have been signed on July 1. By signing Mr. Zakrzewski's warrant on July 1, he should have been aware that it would cause difficulties with access to Mr. Zakrzewski and the courts, as well as create added complications with all of these state agencies who must litigate the warrant and public records demands during this time period.

Undersigned counsel was at least able to get a half hour phone call with Mr. Zakrzewski on July 3, however it took much of that time just to relay the contents of this Court's scheduling order promulgated at the hearing the prior afternoon. As DOC took Mr. Zakrzewski's tablet from him upon warrant signing, there would be no way to send him a copy of this Court's Order electronically. Further, due to the holiday weekend, there was no U.S. Mail on Friday, July 4 and per usual, no mail on Sunday, July 6. Therefore, in order to properly inform Mr. Zakrzewski of the timeline and due dates set by this Court on the evening of July 2, the only way to tell him all of the applicable due dates was by phone, that day. As there were a lot of deadlines that had to be communicated, there was not time for discussion of legal claims, thus shortly after the conclusion of the legal call on July 3, another legal call and a visit were requested via email to FSP.

The morning of July 6, after working on researching legal claims for Mr. Zakrzewski's successive motion under Fla. R. Crim. P. 3.851 throughout the holiday weekend, undersigned

counsel realized the need for a legal visit with Mr. Zakrzewski in order to properly research and develop legal claims in order to protect his constitutional rights. At that point, a legal visit was requested for Monday, July 7. As of the morning of July 7, no response or approval of the legal visit had been received (or for the legal call and visit requested on July 3).

Upon calling FSP that morning, the visit was almost declined due to the fact that Mr. Bell also had a legal visit on July 7. As mentioned above, FSP only has one room that the death watch inmates can utilize for legal visits. Only upon undersigned counsel explaining the below reasons as to why the legal visit could only be completed on Monday, July 7, was another room found to use for Mr. Zakrzewski.

Due to counsel's need to attend and present argument at a hearing in front of this Court on the morning of Tuesday, July 8, undersigned counsel could not schedule a legal visit for Tuesday morning. In addition, counsel could not confer with Mr. Zakrzewski that afternoon because the remainder of Tuesday was necessary for continuing to investigate and draft claims for this motion. The following day, Wednesday, July 9, would have been too late to schedule a legal visit to pursue additional legal claims. Counsel had to have all legal claims investigated, pursued, and drafted by Wednesday morning in order to discuss the contents of this motion with Mr. Zakrzewski prior to the 2:00 p.m. filing deadline so that a certification pursuant to Rule 3.851(e)(1)(F) could be included with this motion.

Moreover, while litigating another recent warrant, neither counsel nor its experts could access their client on death watch on April 8, 2025 due to FSP being on lockdown for another individual's execution. If Mr. Bell's execution proceeds on schedule, then FSP will be on lockdown on July 15, 2025 and a legal visit cannot be scheduled, which leaves Mr. Zakrzewski without access to the courts for yet another day during this extremely short thirty-day period.

Mr. Zakrzewski's lack of meaningful access to courts and counsel have hindered counsel from fully investigating and presenting his post-warrant claims for relief. The FSC has long recognized that "postconviction remedies are subject to the more flexible standards of due process announced in the Fifth Amendment, Constitution of the United States." *Steele v. Kehoe*, 747 So. 2d 931, 934 (Fla. 1999). Thus, at a minimum, in order to protect Mr. Zakrzewski's constitutional rights, this Court should grant a stay of execution for a reasonable time so that he can fully and adequately participate in the preparation of legal claims for his post-warrant successive motion under Rule 3.851 without the issues and constraints associated with having two individuals on death watch simultaneously.

## CLAIM THREE

**SIGNING MR. ZAKRZEWSKI'S DEATH WARRANT WITHOUT CONDUCTING A RECENT, UPDATED CLEMENCY REVIEW, WHICH OTHER INMATES HAVE BEEN ENTITLED TO, IS ARBITRARY AND VIOLATES HIS RIGHTS UNDER THE EQUAL PROTECTION CLAUSE, AS WELL AS THE FIFTH, EIGHTH, AND FOURTEENTH AMENDMENTS AND CORRESPONDING PROVISIONS OF THE FLORIDA CONSTITUTION**

Mr. Zakrzewski has been on Florida's death row since 1996 as a result of a bare majority jury vote and a jury override. After state and federal postconviction review ended in Mr. Zakrzewski's case, his clemency process was initiated in approximately 2007, ***eighteen*** years ago. His clemency presentation to the Florida Commission on Offender Review and a final clemency report would have been submitted as required by the rules on clemency, effectively marking the end of the clemency proceeding in Mr. Zakrzewski's case.[8] Since then, Mr. Zakrzewski has never been given the opportunity to supplement or update his clemency presentation.

During this time, there have been myriad advances in science, medicine, and the law,

[8] "The final report shall be forwarded to all members of the Clemency Board within 120 days of the commencement of the investigation, unless the time period is extended by the Governor." Fla. R. Exec. Clem. 15(D).

completely changing the question of whether a grant of mercy would be appropriate in this case. The reasoning behind an updated round of clemency review prior to the signing of a death warrant is obvious. People grow, change, and mature over time. Standards of decency evolve. *See Trop v. Dulles*, 356 U.S. at 101 ("the evolving standards of decency [ ] mark the progress of a maturing society"). An individual may have additional factors to demonstrate they are even more deserving of clemency than they were a generation ago. Despite this, the denial of clemency in the instant case was based on a clemency process that ended years ago, violating Mr. Zakrzewski's rights under the Eighth and Fourteenth Amendments.

Under the Fourteenth Amendment, Mr. Zakrzewski has the right to due process in his clemency proceeding. *See Ohio Adult Parole Authority, et al. v. Woodard*, 523 U.S. 272 (1998). As a majority of SCOTUS recognized in *Woodard*, Mr. Zakrzewski has a continuing interest in his life until his death sentence is carried out. *Id.* at 288 (plurality) ("A prisoner under a death sentence remains a living person and consequently has an interest in his life"); *id.* at 291-92. Therefore, when the clemency process is rendered effectively meaningless, as it was here, Florida's death penalty scheme is rendered constitutionally defective. In *Woodard*, SCOTUS gave two examples of clemency proceedings that would violate due process: "a scheme whereby a state official flipped a coin to determine whether to grant clemency, or in a case where the State arbitrarily denied a prisoner any access to its clemency process." *Id.* at 289.

Here, because Mr. Zakrzewski's clemency proceeding occurred nearly two decades before his death warrant was signed without any opportunity for Mr. Zakrzewski to be heard or provide an updated clemency application, he was effectively arbitrarily denied access to the clemency process. "The heart of executive clemency" is to allow the executive "to consider a wide range of factors not comprehended by earlier judicial proceedings and sentencing determinations." *Id.* at

280-81. As such, clemency is the "fail safe in our criminal justice system." *Harbison v. Bell*, 556 U.S. 180, 192 (2009). In order to fulfill the "failsafe" function, a condemned inmate must be able to present information that could form the basis of a grant of mercy, such as life history, cognitive impairments, or information lessening the culpability of his crime. *Id.* at 194; *see also Matthews v. White*, 807 F.3d 756, 763 (6th Cir. 2015); *Sanborn v. Parker*, 2011 WL 6152849, at *1 (W.D. Ky. Dec. 12, 2011). Conversely, a clemency decision based on a nearly two-decade old clemency report cannot include information that has come to light since the report was made or take into consideration any evolving standards of decency, essentially disregarding Mr. Zakrzewski's clemency review.

SCOTUS has repeatedly recognized the centralized importance clemency plays in capital cases. *Harbison*, 556 U.S. at 192; *Herrera v. Collins*, 506 U.S. 390, 411-12 (1993). Given the stakes for a condemned defendant, clemency is a particularly vital safeguard to prevent against a miscarriage of justice. *See Mickey v. Davis*, 2018 WL 3659298, at *4 (N.D. Cal. Aug. 2, 2018). To execute Mr. Zakrzewski after effectively shutting him out of the clemency process for almost twenty years renders his sentence cruel and unusual under the Eighth Amendment given that the denial of clemency was arbitrarily based on a stale clemency report. The extreme arbitrariness of this process means that, inevitably, the resulting clemency denial and warrant come as a complete surprise to individuals like Mr. Zakrzewski, who only learn clemency has been denied when, after decades on death row, (and in Mr. Zakrzewski's case, almost two decades since his clemency review), corrections officers come to read them the warrant and move them to death watch. One cannot treat a system entirely susceptible to caprice and chaos as the presumptive "remedy for preventing miscarriages of justice" where "judicial process has been exhausted," much less in instances such as this one, where judicial process has simply been cut short. *Herrera v. Collins*,

506 U.S. at 411-12.

The effective denial of clemency in this case was damning for Mr. Zakrzewski. Since his clemency proceedings ended, he has tried repeatedly to no avail to present his claims in court, only to be shutout by procedural bars and arbitrary rulings at every turn. His claims were based on the kind of compelling information that clemency – the failsafe of the criminal justice system – is designed to receive. For example, the FSC denied his *Hurst* claim despite his unreliable death sentences and the bare majority jury votes of 7-5, 7-5, and 6-6 jury override. *Zakrzewski v. Jones, etc.*, 221 So. 3d 1159 (Fla. 2017), *Zakrzewski v. State*, 254 So. 3d 324 (Fla. 2018), *cert denied*, *Zakrzewski v. Florida*, 587 U.S. 988 (2019). Mr. Zakrzewski's situation is even more alarming because the trial judge overrode the jury's vote for a life sentence on count three. R. 1028-51. Notably, in 2017, Justice Pariente detailed that Mr. Zakrzewski was ***one of only three*** defendants at the time, who received a death sentence as a result of a judicial override, despite SCOTUS's decision in *Hurst* overruling the cases the FSC relied on to uphold judicial override. *Zakrzewski*, 221 So. 3d at 1162. Granting clemency for Mr. Zakrzewski would have been one way to ensure he was not subject to an unconstitutional death sentence.

In contrast to states with an orderly clemency process and a method for determining whose death warrant will be signed next, the determination of who lives or dies in Florida is made by a single person for any reason, even a discriminatory reason, or no reason at all. Granting the Governor such unfettered discretion has in practice established an arbitrary selection process to determine who lives and dies.. *C.f. Furman v. Georgia*, 408 U.S. 238, 309-10 (1972) (Stewart, J., concurring) ("These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murders . . . many just as reprehensible as these, the petitioners are among a capriciously selected random handful upon

whom the sentence of death has in fact been imposed.").

Worse yet, similarly situated individuals on Florida's death row who have completed clemency review over a decade ago, have received an updated, second round of clemency review. Mr. Zakrzewski inexplicably received no such opportunity. It appears that the same situation Justice Stevens proposed as a "valid reason[] for concluding that these proceedings are not entirely exempt from judicial review" is explicitly present in Mr. Zakrzewski's case. *Woodard*, 523 U.S. at 292 ("I think, for example, that no one would contend that a Governor could ignore the commands of the Equal Protection Clause and use race, religion, or political affiliation as a standard for granting or denying clemency. Our cases also support the conclusion that if a State adopts a clemency procedure as an integral part of its system for finally determining whether to deprive a person of life, that procedure must comport with the Due Process Clause.") Mr. Zakrzewski's decades old clemency review, and lack of update thereof, is unconstitutionally arbitrary and capricious and does not comport with due process or equal protection.

Mr. Zakrzewski lacks the capability to attach records and information necessary to present more specific and detailed evidence regarding these constitutional violations. The issue is twofold. First, this Court has denied his demand for public records related to the claim because clemency and the warrant selection process have been found to be confidential under Florida law. § 14.28, Fla. Stat.; *see also Gudinas v. State*, No. SC2025-0794, 2025 WL 1692284, at *9 (Fla. June 17, 2025). Second, the time constraints placed upon Mr. Zakrzewksi due to the expedited warrant schedule and holiday weekend do not allow him enough time to investigate and procure the data himself.

In sum, multiple other similarly situated inmates who underwent the clemency process around the same time period of Mr. Zakrzewski were provided a more recent opportunity to

undergo an updated clemency review. However, Mr. Zakrzewski was denied the chance to do so. This arbitrary process and specific discrimination are a violation of both the Eighth and Fourteenth Amendments. This Court should issue a stay so Mr. Zakrzewski can be treated the same as all the other similarly situated individuals who received recent clemency; and also revisit its denial of Mr. Zakrzewski's demand for records, so that Mr. Zakrzewski can amend his claim to add detailed evidence in support.

## CONCLUSION AND RELIEF SOUGHT

Mr. Zakrzewski prays for the following relief, based on his *prima facie* allegations demonstrating violation of his constitutional rights: (1) that his death sentences be vacated and/or commuted to life sentences without the possibility of parole; (2) that this Court stay his execution to allow Mr. Zakrzewski and his counsel time to investigate and pursue legal claims without the expedited warrant schedule; (3) that he be granted an evidentiary hearing on his claims; (4) that he be allowed leave to amend this motion should new claims, facts, or legal precedent become available; and (5) that this Court grant any other relief it deems appropriate.

## CERTIFICATION OF COUNSEL

Pursuant to Rule 3.851(f), undersigned counsel certifies that she has discussed the contents of this motion with Mr. Zakrzewski. Counsel further certifies that the motion is filed in good faith, and counsel has complied with Rule 4-1.4 of the Rules of Professional Conduct.

## CERTIFICATE OF SERVICE

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, Assistant Attorney General Janine D. Robinson (Janine.Robinson@myfloridalegal.com and capapp@myfloridalegal.com), Senior Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com), Chief Assistant State Attorney Bridgette Jensen, (Bjensen@osa1.com), Assistant State Attorney Matt Casey (mcasey@osa1.org), the Honorable Lacey Powell Clark (Judge.Clark@flcourts1.gov and Amanda.Bailey@flcourts1.gov); and the Florida Supreme Court (warrant@flcourts.org) on this 9th day of July 2025.

Respectfully submitted,

**/s/ Lisa M. Fusaro**
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Telephone: (850) 487-0922
Facsimile: (850) 487-1422

# Attachment A

30

|_| PROBATION VIOLATION

|_| COMMUNITY CONTROL VIOLATOR

|_| RETRIAL

|_| RESENTENCE
(Check if Applicable)

IN THE CIRCUIT COURT,
FIRST JUDICIAL CIRCUIT,
IN AND FOR
OKALOOSA COUNTY, FLORIDA

DIVISION _____

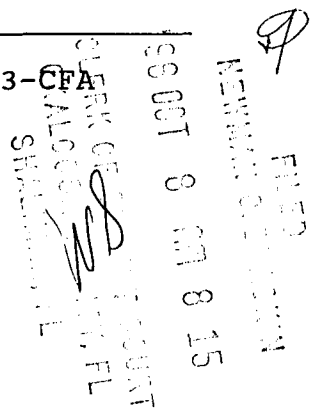
CASE NUMBER: 94-01283-CFA

STATE OF FLORIDA

- vs -

ZAKRZEWSKI, EDWARD J II
Defendant

** OFFICIAL RECORDS **
BK 2028 PG 208



THIRD
AMENDED
JUDGMENT

The Defendant ZAKRZEWSKI, EDWARD J II, being personally before this Court represented by PUBLIC DEFENDER, his attorney of record, and the state represented by ATTORNEY STATE, and having:

|_| been tried and found guilty by jury/by court of the following crime(s).

|X| entered a plea of guilty to the following crime(s).

|_| entered a plea of nolo contendre to the following crime(s).

| COUNT | CRIME | OFF STATUTE NUMBER(S) | DEGREE OF CRIME | CASE NUMBER |
|---|---|---|---|---|
| 001 | 1ST DEGREE MURDER W/WEAPON | 78204 1A | C | 94-01283-CFA |
| 002 | 1ST DEGREE MURDER W/WEAPON | 78204 1A | C | 94-01283-CFA |
| 003 | 1ST DEGREE MURDER W/WEAPON | 78204 1A | C | 94-01283-CFA |

|X| and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

|_| and pursuant to section 943.325, Florida Statutes, having been convicted of attempts or offenses relating to sexual battery (ch.794) or lewd and lascivious conduct (ch. 800) the defendant shall be required to submit blood specimens.

|_| and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

STATE OF FLORIDA

- vs -

ZAKRZEWSKI, EDWARD J II
Defendant

IN THE CIRCUIT COURT,
FIRST JUDICIAL CIRCUIT,
IN AND FOR
OKALOOSA COUNTY, FLORIDA

DIVISION _____

CASE NUMBER: 94-01283-CFA

** OFFICIAL RECORDS **
BK 2028 PG 209

CHARGES/COSTS/FEES

The Defendant is hereby ordered to pay the following sums if checked:

|X| $50.00 pursuant to section 960.20, Florida Statutes (Crimes Compensation Trust Fund).

|X| $3.00 as a court cost pursuant to section 943.25(3), Florida Statutes (Criminal Justice Trust Fund).

|_| $2.00 as a court cost pursuant to section 943.25(13), Florida Statutes (Criminal Justice Education by Municipalities and Counties).

|_| A fine in the sum of $_____ pursuant to section 775.0835, Florida Statutes. (This provision refers to the optional fine for the Crimes Compensation Trust Fund and is not applicable unless checked and completed Fines imposed as a part of a sentence to section 775.083, Florida Statutes are to be recorded on the sentence page(s).)

|_| $20.00 pursuant to section 939.015, Florida Statutes (Handicapped and Elderly Security Assistance Trust Fund).

|_| A 10% surcharge in the sum of $_____ pursuant to section 775.0836, Florida Statutes (Handicapped and Elderly Security Assistance Trust Fund).

|_| A sum of $_____ pursuant to section 27.3455, Florida Statutes (Local Government Criminal Justice Trust Fund).

|_| A sum of $_____ pursuant to section 939.01, Florida Statutes (Prosecution/Investigative Costs).

|_| A sum of $_____ pursuant to section 27.56, Florida Statutes (Public Defender Fees).

|_| Restitution in accordance with attached order.

|_| Other_____

DONE AND ORDERED in open court in Okaloosa County, Florida, this 7th day of October, 19 96.

NUNC PRO TUNC (April 19, 1996)

Circuit Judge, G. Robert Barron

DEFENDANT: Edward T. Zakrzewski II
CASE NO: 94-1283 CFA

Imposition of Sentence Stayed and Withheld (Check if Applicable) [ ] The Court hereby stays and withholds the imposition of sentence as to count(s) _____ and places Defendant on probation for a period of _____ under the supervision of the Department of corrections (Conditions of probation set forth in separate order).

Sentence Deferred Until Later Date (Check if Applicable) [ ] The Court hereby defers imposition of sentence until _____ (date)

The Defendant in Open Court was advised of his right to appeal from this Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

DONE AND ORDERED in Open Court at OKALOOSA County, FLORIDA this 25th day of March, A.D., 1996.

** OFFICIAL RECORDS **
BK 2028 PG 210

CIRCUIT JUDGE
G. ROBERT BARRON

FINGERPRINTS OF DEFENDANT

[redacted]

Fingerprints taken by:

NAME AND TITLE

** OFFICIAL RECORDS **
BK 1994 PG 1358

DONE AND ORDERED in Open Court at OKALOOSA County, FLORIDA this 25th day of March, A.D. 1996.

I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant, Edward J. Zakrzewski and that they were placed thereon by said defendant in my presence in Open Court this date.

CIRCUIT JUDGE
G. ROBERT BARRON

Defendant ZAKRZEWSKI, EDWARD J II
Case Number: 94-01283-CFA
OBTS Number: 0006162187

S E N T E N C E
(As to Count 001)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, PUBLIC DEFENDER, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown

(Check one if applicable.)

|_| and the Court having on _____ deferred imposition of sentence until this date

|_| and the Court having previously entered a judgment in this case on _____ now resentences the defendant

|_| and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

** OFFICIAL RECORDS **
BK 2028 PG 211

IT IS THE SENTENCE OF THE COURT that:

|_| The defendant pay a fine of $_____, pursuant to section 775.083, Florida Statutes, plus $_____ as the 5% surcharge required by section 960.25, Florida Statutes.

|X| The defendant is hereby committed to custody of the Department of Corrections.

|_| The defendant is hereby committed to the custody of the Sheriff of OKALOOSA County, FLORIDA.

|_| The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED (Check one; unmarked sections are inapplicable.):

|_| For a term of Natural Life without the possibility of parole.

|X| For a term of Death.

|_| Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

Case Number: 94-01283-CFA
OBTS Number: 0006162187

S E N T E N C E
(As to Count 001)

If "split" sentence, complete the appropriate paragraph.

|_| Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a seperate order entered herein.

|_| However, after serving a period of _____ imprisonment in State Prison, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a seperate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS
(As to Count 001)

By appropriate notation, the following provisions apply to the sentence imposed:

** OFFICIAL RECORDS **
BK 2028 PG 212

Mandatory/Minimum Provisions:

| | | |
|---|---|---|
| Firearm | |_| | It is further ordered that the 3-year minimum imprisonment provisions of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count. |
| Drug Trafficking | |_| | It is further ordered that the _____ mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count. |
| Controlled Substance Within 1,000 Feet of School | |_| | It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count. |
| Habitual Felony Offender | |_| | The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a seperate order or stated on the record in open court. |

SPECIAL PROVISIONS
(As to Count 001)

| | | |
|---|---|---|
| Habitual Violent Felony Offender | [ ] | The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a seperate order or stated on the record in open court. |
| Law Enforcement Protection Act | [ ] | It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes. |
| Capital Offense | [ ] | It is further ordered that the defendant shall serve a life term without the possibility of parole provisions of section 775.082(1), Florida Statutes. |
| Short-Barreled Rifle Shotgun, Machine Gun | [ ] | It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count. |
| Continuing Criminal Enterprise | [ ] | It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count. |
| Taking a Law Enforcement Officer's Firearm | [ ] | It is further ordered that the three-year mandatory minimum imprisonment provision of section 773.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this count. |

Other Provisions:
---

** OFFICIAL RECORDS **
BK 2028 PG 213

| | | |
|---|---|---|
| Retention of Jurisdiction | [ ] | The Court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983). |
| Jail Credit | [X] | It is further ordered that the defendant shall be allowed a total of 0543 days as credit for time incarcerated before imposition of this sentenc |
| Prison Credit | [ ] | It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing. |
| Consecutive/ Concurrent As To Other Counts | [ ] | It is further ordered that the sentence imposed for this count shall run (check one) ___ consecutive to ___ concurrent with the sentence set forth in count _____ of this case. |

Defendant ZAKRZEWSKI, EDWARD J II
Case Number: 94-01283-CFA
OBTS Number: 0006162187

S E N T E N C E
(As to Count 002)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, PUBLIC DEFENDER, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown

(Check one if applicable.)

|_| and the Court having on _____ deferred imposition of sentence until this date

|_| and the Court having previously entered a judgment in this case on _____ now resentences the defendant

|_| and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

** OFFICIAL RECORDS **
BK 2028 PG 214

IT IS THE SENTENCE OF THE COURT that:

|_| The defendant pay a fine of $_____, pursuant to section 775.083, Florida Statutes, plus $_____ as the 5% surcharge required by section 960.25, Florida Statutes.

|X| The defendant is hereby committed to custody of the Department of Corrections.

|_| The defendant is hereby committed to the custody of the Sheriff of OKALOOSA County, FLORIDA.

|_| The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED (Check one; unmarked sections are inapplicable.):

|_| For a term of Natural Life without the possibility of parole.

|X| For a term of Death.

|_| Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

Case Number: 94-01283-CFA
OBTS Number: 0006162187

S E N T E N C E
(As to Count 002)

If "split" sentence, complete the appropriate paragraph.

|_| Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a seperate order entered herein.

|_| However, after serving a period of _____ imprisonment in State Prison, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a seperate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS
(As to Count 002)

By appropriate notation, the following provisions apply to the sentence imposed:

** OFFICIAL RECORDS **
BK 2028 PG 215

Mandatory/Minimum Provisions:

| | | |
|---|---|---|
| Firearm | |_| | It is further ordered that the 3-year minimum imprisonment provisions of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count. |
| Drug Trafficking | |_| | It is further ordered that the _____ mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count. |
| Controlled Substance Within 1,000 Feet of School | |_| | It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count. |
| Habitual Felony Offender | |_| | The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a seperate order or stated on the record in open court. |

Case Number: 94-01283-CFA

SPECIAL PROVISIONS
(As to Count 002)

| | | |
|---|---|---|
| Habitual Violent Felony Offender | \|_\| | The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a seperate order or stated on the record in open court. |
| Law Enforcement Protection Act | \|_\| | It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes. |
| Capital Offense | \|_\| | It is further ordered that the defendant shall serve a life term without the possibility of parole provisions of section 775.082(1), Florida Statutes. |
| Short-Barreled Rifle Shotgun, Machine Gun | \|_\| | It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count. |
| Continuing Criminal Enterprise | \|_\| | It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count. |
| Taking a Law Enforcement Officer's Firearm | \|_\| | It is further ordered that the three-year mandatory minimum imprisonment provision of section 773.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this count. |

Other Provisions:
---

** OFFICIAL RECORDS **
BK 2028 PG 216

| | | |
|---|---|---|
| Retention of Jurisdiction | \|_\| | The Court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983). |
| Jail Credit | \|_\| | It is further ordered that the defendant shall be allowed a total of _____ days as credit for time incarcerated before imposition of this sentenc |
| Prison Credit | \|_\| | It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing. |
| Consecutive/ Concurrent As To Other Counts | \|X\| | It is further ordered that the sentence imposed for this count shall run (check one) XXX consecutive to ___ concurrent with the sentence set forth in count I of this case. |

Defendant ZAKRZEWSKI, EDWARD J II
Case Number: 94-01283-CFA
OBTS Number: 0006162187

S E N T E N C E
(As to Count 003)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, PUBLIC DEFENDER, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown

(Check one if applicable.)

|_| and the Court having on _____ deferred imposition of sentence until this date

|_| and the Court having previously entered a judgment in this case on _____ now resentences the defendant

|_| and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control.

** OFFICIAL RECORDS **
BK 2028 PG 217

IT IS THE SENTENCE OF THE COURT that:

|_| The defendant pay a fine of $_____, pursuant to section 775.083, Florida Statutes, plus $_____ as the 5% surcharge required by section 960.25, Florida Statutes.

|X| The defendant is hereby committed to custody of the Department of Corrections.

|_| The defendant is hereby committed to the custody of the Sheriff of OKALOOSA County, FLORIDA.

|_| The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED (Check one; unmarked sections are inapplicable.):

|_| For a term of Natural Life without the possibility of parole.

|X| For a term of Death.

|_| Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

Case Number: 94-01283-CFA
OBTS Number: 0006162187

S E N T E N C E
(As to Count 003)

If "split" sentence, complete the appropriate paragraph.

|_| Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a seperate order entered herein.

|_| However, after serving a period of _____ imprisonment in State Prison, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a seperate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS
(As to Count 003)

By appropriate notation, the following provisions apply to the sentence imposed:

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Mandatory/Minimum Provisions:

Firearm |_| It is further ordered that the 3-year minimum imprisonment provisions of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.

Drug Trafficking |_| It is further ordered that the _____ mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

Controlled Substance Within 1,000 Feet of School |_| It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.

Habitual Felony Offender |_| The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a seperate order or stated on the record in open court.

SPECIAL PROVISIONS
(As to Count 003)

| | | |
|---|---|---|
| Habitual Violent Felony Offender | \|_\| | The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a seperate order or stated on the record in open court. |
| Law Enforcement Protection Act | \|_\| | It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes. |
| Capital Offense | \|_\| | It is further ordered that the defendant shall serve a life term without the possibility of parole provisions of section 775.082(1), Florida Statutes. |
| Short-Barreled Rifle Shotgun, Machine Gun | \|_\| | It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count. |
| Continuing Criminal Enterprise | \|_\| | It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count. |
| Taking a Law Enforcement Officer's Firearm | \|_\| | It is further ordered that the three-year mandatory minimum imprisonment provision of section 773.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this count. |

Other Provisions:
---

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| | | |
|---|---|---|
| Retention of Jurisdiction | \|_\| | The Court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983). |
| Jail Credit | \|_\| | It is further ordered that the defendant shall be allowed a total of _____ days as credit for time incarcerated before imposition of this sentenc |
| Prison Credit | \|_\| | It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing. |
| Consecutive/ Concurrent As To Other Counts | \|X\| | It is further ordered that the sentence imposed for this count shall run (check one) XXX consecutive to ___ concurrent with the sentence set forth in count II of this case. |

Consecutive/Concurrent As To Other Convictions

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one) ___ consecutive to ___ concurrent with the following: (check one)

|_| any active sentence being served.

|_| specific sentences: _____

_____

_____

_____

In the event the above sentence is to the Department of Corrections, the Sheriff of OKALOOSA County, FLORIDA, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigenc

In imposing the above sentence, the court further recommends _____

_____

_____

_____

_____

** OFFICIAL RECORDS **
BK 2028 PG 220

NUNC PRO TUNC (April 19, 1996)

DONE AND ORDERED in Open Court at ,
OKALOOSA County, FLORIDA, this 7th day of
October A.D., 1996.

G ROBERT BARRON
Circuit Judge

IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO. 94-1283-CFA

STATE OF FLORIDA

VS

EDWARD J. ZAKRZEWSKI, II

FILED
NEWMAN C. BRACKIN
CLERK OF CIRCUIT COURT
OKALOOSA COUNTY, FLORIDA
'96 APR 19 PM 2
SHALIMAR, FL

SENTENCING ORDER

The Defendant entered a plea of guilty, as charged, to three counts of First Degree Premeditated Murder on March 19, 1996. The Court, upon having determined that the Defendant's plea was entered freely and voluntarily, scheduled the matter for a penalty phase proceeding before a jury. Following jury selection, the penalty phase jury began receiving evidence on March 25, 1996, and evidence in support of aggravating factors and mitigating factors was heard. On March 30, 1996, the jury returned a seven to five recommendation that the Defendant be sentenced to death in the electric chair on Counts I and II, the murder of [redacted] and the murder of [redacted] That same jury returned a recommendation of life in prison without the possibility of parole on Count III, the murder of [redacted] At that time, the Court requested memoranda from both counsel for the State and counsel for the Defendant. The defense memorandum was received on April 10, 1996, and the memorandum from the State was received on April 16, 1996. Both memoranda were reviewed in detail by the Court.

On April 18, 1996, the Court held a further sentencing hearing wherein the defense presented additional evidence consisting of the depositions of Dr. James Larson and Dr. Barry Crown, along with three letters written by the Defendant while incarcerated. Following legal argument from both sides, the Court recessed in order to allow final reflections upon final sentencing by the Court.

Upon consideration by the Court, the Court having heard the evidence presented before the jury in the penalty phase, having had the benefit of legal memoranda from counsel, additional evidence and further argument both in favor and in opposition of the death penalty, finds as follows as to each count:

Count I - First Degree Murder of [redacted]

A. AGGRAVATING FACTORS

1. The Defendant was previously convicted of two other capital offenses, to-wit: the first degree murder of [redacted] and the first degree murder of [redacted] This aggravating factor is obviously uncontroverted and proved beyond a reasonable doubt.

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2. The murder of [redacted] was committed in a cold, calculated, and premeditated manner without pretense of legal or moral justification.

Unrebutted evidence was offered through the testimony of a neighbor, a friend of the Defendant's, that on two prior occasions several weeks and months before the murders, the Defendant had stated that before he allowed his wife to divorce him, he would kill her and the children. On the morning of June 9, 1994, the Defendant's son, [redacted] called the Defendant at work and told him that his mother, [redacted] was going to file divorce papers that day. During his lunch break that same day, the Defendant went to an Army Surplus Store and purchased a machete, took it home, sharpened it, and positioned it behind the bathroom door in the house. He also placed a crowbar in the bedroom, cut a piece of rope and also placed the rope in the bedroom. He then returned to work, completed his normal work day, and attended his college course that afternoon. Upon returning home that evening, the Defendant sent the children to watch television in the TV room, then called [redacted] to the bedroom where he had hidden the crowbar and the rope for the purpose of killing her. When she failed to respond, the Defendant walked to where she was sitting on the couch in the living room, and struck her at least twice in the head and face with the crowbar without any conversation or provocation. The Defendant then carried [redacted] to the bedroom where he placed her on the bed and struck additional blows with the crowbar. The Defendant then moved [redacted] to the floor because "she was bleeding too much" and placed her head on a plastic bag in an obvious attempt, at that point, to conceal the existence of as much blood as possible. He then proceeded to choke [redacted] with the rope. The Defendant then went to the bathroom, called his son, [redacted] to the bathroom to "brush his teeth" and when [redacted] entered the bathroom , the Defendant struck him several times with the machete. The Defendant then called [redacted] into the bathroom, also to "brush her teeth" and proceeded to murder [redacted] with the machete. The Defendant then returned to the bedroom and moved [redacted] to the bathroom where he placed her in a kneeling position with her head over the edge of the tub next to [redacted] and then struck her several times across the head and neck with the machete. The bodies of all three victims, [redacted] lying in the bottom of the tub, and [redacted] draped over the tub would indicate an obvious pre-planned attempt to drain the blood of the victims into the tub in order to facilitate cleanup and body removal.

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The evidence in this case, along with the testimony of the Defendant, indicates that the murder of [redacted] was the product of probably months and undeniably hours of cool, calm reflection, and careful planning without any pretense of legal or moral justification. [redacted] murder is clearly set apart from most domestic homicides in that it did not arise during the course of any domestic dispute or heated argument and was certainly not the result of any sudden provocation or heat of anger. This aggravating circumstance was proved beyond a reasonable doubt.

3. The murder was committed in an especially heinous, atrocious, or cruel manner.

The testimony of the medical examiner, along with the Defendant's own testimony, indicates that [redacted] was first beaten with a crowbar, then strangled with a rope while still alive, and then literally butchered with a machete. The Defendant's own testimony indicates that he dragged [redacted] to the bathroom after he had murdered his two children and left them in the bathroom. Medical testimony was inconclusive as to whether [redacted] was dead when she was dragged into the bathroom and struck with the machete. We will never know. There is no possible way for us to know whether [redacted] was still conscious and able to perceive her two dead children in the bathroom prior to the final blows being struck to her head and neck with the machete. The brutal and atrocious nature of the Defendant's murder of his wife [redacted] was indeed a conscienceless, pitiless crime which was unnecessarily torturous to the victim. This aggravating circumstance was proved beyond a reasonable doubt.

None of the other aggravating factors enumerated by statute are applicable to this Count and none other was considered by this Court.

Nothing except as previously indicated in paragraphs 1 through 3 above was considered in aggravation.

B. MITIGATING FACTORS

Statutory Mitigating Factors:

In its sentencing memorandum, the Defendant requested the Court to consider the following statutory mitigating circumstances:

1. No significant prior criminal history.

This mitigating circumstance was established by the evidence and the Court has given significant

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weight to the consideration of the Defendant's lack of any prior criminal history. However, this statutory mitigator is over-shadowed by the fact that the Defendant committed three premeditated murders during the course of the evening in question.

2. The capital felony was committed while the Defendant was under the influence of extreme mental or emotional disturbance.

Three doctors testified during this penalty phase proceeding. Two were called by the Defendant, and one was called by the State. While the ultimate findings and conclusions of these three doctors differ to some extent, the Court finds that the evidence presented is sufficient to establish the existence of this mitigating factor, and the Court has given significant weight to the existence of this statutory mitigator. However, testimony of two of the psychologists, Dr. Larson for the defense and Dr. McClaren for the State were in agreement that while the Defendant was, at the time of the murders, "under the influence of extreme mental or emotional disturbance", the Defendant's mental or emotional distress did not prevent him from appreciating the criminality of his conduct or substantially impair his ability to conform his conduct to the requirements of law. Accordingly, while this mitigating circumstance does exist, the Court finds that it is entitled to "significant" rather than "great" weight.

Nonstatutory Mitigating Factors:

The Defendant has asked the Court to consider the following nonstatutory mitigating factors:

1. The Defendant turned himself in.

2. The Defendant pled guilty.

3. The Defendant is an exceptionally hard worker.

4. The Defendant was on the Dean's List in his third year of college.

5. The Defendant served in an exemplary manner in the United States Air Force.

6. The Defendant showed sincere grief and remorse.

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7. The Defendant was a loving husband and father until the offense.

8. The Defendant was under great stress due to work, college, child care, housework and lack of sleep.

9. The Defendant is a patient and humble man.

10. The Defendant was raised without his natural father in his home.

11. The Defendant had a lack of prior domestic relationships.

12. The Defendant's role in his marriage was passive in a union dominated by his wife.

13. The Defendant received little religious upbringing.

14. The Defendant has embraced the Christian Faith since the offense.

15. The Defendant was a hyperactive child and was medicated with ritalin.

16. The Defendant has a long term adjustment disorder.

17. The Defendant was suffering from a major depressive episode.

18. The Defendant has a potential for rehabilitation.

19. The Defendant exhibited good behavior while hiding for an extended period of time under an assumed name.

20. The Defendant was a loving and good son.

21. The Defendant is intelligent.

22. The Defendant is well thought of by friends, neighbors and co-workers.

23. The Defendant was impaired by alcohol at the time of the offense.

24. The Defendant is not a psychopath.

(1 and 2)- The Defendant turned himself in and thereafter pled guilty. The fact that the Defendant turned himself in after being identified by friends on the TV show "Unsolved Mysteries" has been established by the evidence but is given little

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weight by the Court since the Defendant realized he had been identified at that point and had little option. The fact that the Defendant pled guilty has also been given little weight by the Court since the State had a varietal "mountain of evidence" including bloody fingerprints and footprints, obvious flight by the Defendant after evidence was undeniable that he would have known of the murder of his family, and an otherwise very strong, convincing case. After his arrest the Defendant waited a year and four months before pleading guilty, and the guilty plea was entered only approximately one week prior to the date set for trial. The plea of guilty in the face of overwhelming evidence would indicate a strategic attempt to gain sympathy from the jury rather than an overwhelming sense of grief and remorse.

(3, 4 and 5)- The fact that the Defendant was an exceptionally hard worker, a good student, and an exemplary member of the United States Air Force was established by the evidence and those mitigators have been given significant weight by the Court.

(6 and 7)- The evidence has established that the Defendant was a loving husband and father until the offense and his testimony indicates that he does appear to be truly remorseful for what he has done. Both of these mitigating circumstances are found to exist by the Court and have been given substantial weight by the Court.

(8)- The fact that the Defendant was under great stress due to work, college, child care, housework, and lack of sleep was established by the evidence but given little weight by the Court.

(9,10 and 11)- The Court finds that these mitigating factors have been established by the evidence but are entitled to little weight.

(12)- The Court finds that this mitigating factor was not established by the evidence.

(13 and 14)- The fact that the Defendant received little religious upbringing but has embraced the Christian Faith since the commission of the offenses has been established by the evidence but has been given little weight by the Court.

(15)- The fact that the Defendant was medicated for one month on ritalin as a child is not a mitigating circumstance.

(16 and 17)- The Defendant's "long term adjustment disorder" and "major depressive disorder" were established to some degree by the evidence but were

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considered by the Court in discussing the statutory mitigator of extreme mental disturbance and are not considered separately as nonstatutory mitigators.

(18)- Potential for rehabilitation was not established by the evidence,it is speculative at best, and has been given no weight by the Court.

(19)- The fact that the Defendant exhibited good behavior while hiding for an extended period of time following the commission of the offenses has been established by the evidence and given slight weight by the Court.

(20, 21 and 22)- These nonstatutory mitigators have been established by the evidence but are entitled to no weight in consideration of the Defendant's sentence.

(23)- The Defendant's use of alcohol immediately prior to the murders was slight and did not significantly impair him or his recollection of the events. This circumstance is entitled to no weight.

(24)- The fact that the Defendant is not a psychopath is not a nonstatutory mitigator.

The Court has very carefully considered and weighed the aggravating and mitigating circumstances found to exist in the murder of [redacted] being ever mindful that human life is at stake and in the balance. The Court finds, as did the jury, that the aggravating circumstances present in this Count outweigh the mitigating circumstances present.

Accordingly, it is

ORDERED AND ADJUDGED that the Defendant, Edward J. Zakrzewski, II, is hereby sentenced to death for the murder of the victim, [redacted] The Defendant is hereby committed to the custody of the Department of Corrections of the State of Florida for execution of this sentence as provided by law.

Count II - First Degree Murder of [redacted]

A. AGGRAVATING FACTORS

1. The Defendant was previously convicted of two other capital offenses, to-wit: the first degree murder of [redacted] and the first degree murder of [redacted] This aggravating factor has been proved beyond a reasonable doubt.

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2. The murder of [redacted] was committed in a cold, calculated, and premeditated manner without pretense of legal or moral justification. The Court's previous discussion of the plans and preparations leading to [redacted] murder are reiterated herein. [redacted] murder was the second in a carefully planned deliberate act after having bludgeoned [redacted] but prior to killing [redacted] After bludgeoning [redacted] with a crowbar, the Defendant called [redacted] into the bathroom and as [redacted] entered the bathroom struck him with a machete. [redacted] murder was obviously planned in the same cold, calculated, and premeditated manner without pretense of legal or moral justification as described in the murder of [redacted] This aggravating factor has been proven beyond a reasonable doubt.

3. The murder of [redacted] was committed in an especially heinous, atrocious, or cruel manner. After beating [redacted] with a crowbar, the Defendant called his [redacted] son into the bathroom and brutally hacked him to death with a machete. By the Defendant's own admission, [redacted] saw what his father was about to do to him and raised his hand in meager defense of his young life, at which time his hand was nearly severed at the wrist. [redacted] was undoubtedly aware for a period of time that he was about to be murdered by his own father. We will never know for what period of time [redacted] experienced this horror. We do know that the Defendant struck [redacted] over and over with the machete nearly decapitating him, shearing his right ear from his head, severing his spinal cord, and splashing [redacted] blood on the floor, walls, sink, toilet, tub and ceiling of the bathroom. This agravating circumstance has been proven beyond a reasonable doubt.

None of the other aggravating factors enumerated by statute are applicable to this Count and none other was considered by this Court.

Nothing except as previously indicated in paragraphs 1 through 3 above was considered in aggravation.

B. MITGATING FACTORS

The Court has considered and weighed each of the statutory and nonstatutory mitigating factors as discussed under Count I and the Court finds the same mitigating factors and the weight to be given thereto are applicable to Count II.

The Court has very carefully considered and weighed the aggravating and mitigating circumstances found to exist in the murder of [redacted] being ever mindful that human life is at stake and in the balance. The Court finds, as did the jury, that the aggravating circumstances present in Count Ii outweigh the mitigating circumstances present.

Accordingly, it is

ORDERED AND ADJUDGED that the Defendant, Edward J.Zakrzewski,II, is hereby sentenced to death for the murder of the victim, [redacted] The Defendant is hereby committed to the custody of the Department of Corrections of the State of Florida for execution of this sentence as provided by law.

Count III - First Degree Murder of [redacted]

A. AGGRAVATING FACTORS

1. The Defendant was previously convicted of two other capital offenses, to-wit: the first degree murder of [redacted] the first degree murder of [redacted] This aggravating circumstance has been proven beyond a reasonable doubt.

2. The murder was committed in a cold, calculated and premeditated manner without pretense of legal or moral justification.

   The Court's findings as to the facts tending to establish this aggravating factor were previously discussed under Count I. By the Defendant's own admission, [redacted] was the third of the three execution-style murders committed by the Defendant. The heightened premeditation with which the Defendant carried out the murders of [redacted] clearly applies to [redacted] murder, as she was the last to be killed. In fact, the Defendant had more time to consider and reflect on the murder of [redacted] than either of the other two. This aggravating circumstance has been proved beyond a reasonable doubt.

3. The murder was committed in an especially heinous, atrocious, or cruel manner. The Defendant testified that after bludgeoning [redacted] and hacking [redacted] to death with the machete, he called [redacted] into the bathroom to "brush her teeth." He then testified that he struck [redacted] as she entered the doorway to the bathroom. The physical evidence in the case established by blood-stain pattern

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analyst Jan Johnson is in direct contradiction of the Defendant's testimony as to where the murder of [redacted] actually occurred. All of the physical evidence in the case establishes beyond a reasonable doubt that [redacted] was first struck with the machete and was murdered while she was in a kneeling position with her head bent over the edge of the tub just as her body was found. The physical evidence establishes beyond any reasonable doubt that [redacted] was still living when the Defendant knelt her down over the tub where her brother's mutilated, bloody, lifeless body had been placed by the Defendant and was thereupon murdered in execution-style fashion with the machete. The photos of [redacted] body at autopsy, as well as the Medical Examiner's testimony, indicate that [redacted] suffered cuts to her right hand and elbow, demonstrating that at some point she made a futile attempt to ward off blows. Based upon the physical evidence and expert testimony relating thereto, the Court is convinced beyond any reasonable doubt that prior to [redacted] death she not only experienced the horror of knowing that she was about to be murdered by her own father, but she also experienced the absolute horror of knowing that her brother had been murdered and that she was next. This Court could not imagine a more heinous and atrocious way to die. This aggravating circumstance has been proved beyond a reasonable doubt.

None of the other aggravating factors enumerated by statute are applicable to this Count and none other was considered by this Court.

Nothing except as previously indicated in paragraphs 1 through 3 above was considered in aggravation.

B. MITIGATING FACTORS

The Court has considered and weighed each of the statutory and nonstatutory mitigating factors as discussed under Count I and the Court finds the same mitigting factors and the weight to be given thereto are applicable to Count III.

The Court has very carefully considered and weighed the aggravating and mitigating circumstances found to exist in the murder of [redacted] being ever mindful that human life is at stake and in the balance. The Court finds that the aggravating circumstances present in the murder of [redacted] outweigh the mitigating circumstances present and the Court further finds that the facts suggesting a sentence of death are so clear and convincing that no reasonable person could differ. [redacted] murder was the product of an

even more heightened, cold, calculated premeditation and was beyond all reasonable doubt, even more heinous, atrocious, and cruel than the murder of [redacted] The Court can find no sound reason for recommending a life sentence for [redacted] murder after having found sufficient reason to recommend a death sentence in the murders of [redacted] Even if the jury reached a conclusion in total contradiction of the physical and expert opinion evidence that the murder of [redacted] was not heinous, atrocious, or cruel, the Court finds that the two remaining aggravating circumstances established beyond a reasonable doubt would outweigh all mitigating circumstances. Accordingly, the Court will override the recommendation of the jury for a life sentence in the murder of [redacted] and,

Accordingly, it is

ORDERED AND ADJUDGED that the Defendant, Edward J. Zakrzewski, II, is hereby sentenced to death for the murder of the victim, [redacted] The Defendant is hereby committed to the custody of the Department of Corrections of the State of Florida for execution of this sentence as provided by law.

DONE AND ORDERED in Shalimar, Okaloosa County, Florida, this 19th day of April, 1996.

G. ROBERT BARRON
CIRCUIT JUDGE

Copies to:
State Attorney
Attorney of Record
Defendant

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Newman C. Brackin
Clerk of Court

BY Deputy Clerk

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**
_____/

**Case No. 1994-CF-1283**
**Emergency Capital Case**
**Death Warrant Signed**
**Execution Scheduled for**
**July 31, 2025 at 6:00 p.m.**

## DEFENDANT'S MOTION FOR STAY OF EXECUTION

**COMES NOW** the Defendant, EDWARD JAMES ZAKRZEWSKI, II, by and through undersigned counsel and respectfully moves this Court to enter a stay of the scheduled execution, currently set for Thursday, July 31, 2025, and as grounds therefore states:

1. Mr. Zakrzewski is under sentences of death imposed by this Court and under a Death Warrant signed by Governor Ron DeSantis on Tuesday, July 1, 2025. Mr. Zakrzewski's execution has been scheduled for Thursday, July 31, 2025, at 6:00 p.m.

2. Concurrent with this motion, Mr. Zakrzewski has filed Defendant's Successive Motion to Vacate Judgment and Death Sentences Under Florida Rule of Criminal Procedure 3.851 After Death Warrant Signed. Mr. Zakrzewski incorporates any arguments regarding staying his execution within those pleadings into the instant motion.

3. This Court has the authority to issue a stay of execution. Circuit courts "have the power to issue … all writs necessary or proper to the complete exercise of their jurisdiction." Art. V, 5, Fla. Const. Under their All Writs power, circuit courts have jurisdiction "to enter a stay of execution where the stay is filed with a motion for postconviction relief or where the application for stay itself shows grounds under which the defendant might be entitled to postconviction relief."

*Amendments to Fla. R. Crim. P. 3.851(h)*, 828 So. 2d 999, 1000-01 (Fla. 2002). Accordingly, Mr. Zakrzewski respectfully requests that this Court enter a stay of execution based on the grounds below. *State v. Branch*, 2018 WL 4560536, at *3 (Fla. Cir. Ct. Feb. 1, 2018) (trial court found it appropriate to rule on merits of stay application).

4. The essential requirement of due process in an adversarial system is that an accused be zealously represented at "every level"; in a death penalty case, such representation is the "very foundation of justice." *Wilson v. Wainwright*, 474 So. 2d 1162, 1164 (Fla. 1985). Here, the truncated litigation schedule in Mr. Zakrzewski's case deprives him of due process, fundamental fairness, and his right to access to counsel and the courts.

5. The right to due process entails "notice and opportunity for hearing appropriate to the nature of the case." *Cleveland Bd. of Ed. V. Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). "[F]undamental fairness is the hallmark of the procedural protections afforded by the Due Process Clause." *Ford v. Wainwright*, 477 U.S. 399, 424 (1986) (Powell, J., concurring in part and in the judgment).

6. The Florida Supreme Court explained in *Key Citizens for Gov., In. v. Florida Keys Aqueduct Auth.*, 795 So. 2d 940 (Fla. 2001):

> The basic due process guarantee of the Florida Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law." Art. I, § 9, Fla. Const. The Fifth Amendment to the United States Constitution guarantees the same. As the Florida Supreme Court explained in *Department of Law Enforcement v. Real Property*, 588 So. 2d 957, 960 (Fla. 1991), **"[p]rocedural due process serves as a vehicle to ensure fair treatment through the proper administration of justice where substantive rights are at issue." Procedural due process requires fair notice and a real opportunity to be heard.** *See id*. As the United States Supreme Court explained, the notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (citations

> omitted). **Further the opportunity to be heard must be "at a meaningful time and in a meaningful manner."** *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *accord Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (stating that procedural due process under the Fourteenth Amendment of the United States Constitution guarantees notice and an opportunity to be heard at a meaningful time and in a meaningful manner).
>
> The specific parameters of the notice and the opportunity to be heard required by procedural due process are not evaluated by fixed rules of law, but rather by the requirements of the particular proceeding. *See Gilbert v. Homar*, 520 U.S. 924 (1997); *see also Mullane*, 339 U.S. at 313 (stating that notice and opportunity for hearing need only be appropriate to the nature of the case). As the Supreme Court has explained, due process, "unlike some legal rules, is not a technical concept with a fixed content unrelated to time, place and circumstances." *Cafeteria & Restaurant Workers Union, Local 473, AFL-CIO v. McElroy*, 367 U.S. 886, 895 (1961). Instead, "due process is flexible and calls for procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

(emphasis added).

7. The short timeframe of the warrant period deprives Mr. Zakrzewski of his right to due process and meaningful postconviction proceedings. On June 23, 2025, Governor DeSantis announced the closure of all state agencies for Thursday, July 3, 2025. *See* Press Release, Governor Ron DeSantis, Governor Ron DeSantis Announces State Employees Will Receive an Extra Day Off for July 4th Weekend (June 23, 2025), https://www.flgov.com/eog/news/press/2025/governor-ron-desantis-announces-state-employees-will-receive-extra-day-july-4th. However, just two days prior, on Tuesday, July 1, 2025, Governor DeSantis signed Mr. Zakrzewski's death warrant and scheduled his execution for Thursday, July 31, 2025 at 6:00 p.m. The decision to sign a death warrant, while simultaneously closing state agencies obstructed Mr. Zakrzewski's access to counsel and courts in an already truncated warrant schedule over the Independence Day weekend. By signing his warrant right before the holiday weekend, it also created added complications for all of these state agencies who must litigate the warrant and public records demands during this time period.

8. Further, the extremely short period between the signing of the death warrant and the execution date gives rise to the genuine danger that substantial claims will be inadequately considered or not considered at all. The courts must not take this kind of "fire drill" approach to Mr. Zakrzewski's claims. In granting Jimenez a stay of execution, Justice Pariente wrote in a concurring opinion:

> This extremely short warrant period created a fire drill approach to the review of Jimenez's claims. It was not until after the postconviction court denied Jimenez's sixth successive postconviction motion (filed on August 6, 2018) that this Court entered a stay of execution. … The postconviction court and Jimenez's attorneys were forced to race against the clock in reviewing and presenting all of Jimenez's claims, respectively. But for this Court entering a stay of execution as a result of Jimenez's second post-warrant appeal, this Court would have also had inadequate time to thoroughly review his claims. *Id*.
>
> Before an execution may proceed, this Court has the solemn obligation to carefully ensure that there are no constitutional bars to the execution and that the defendant's rights have been protected. *See id*. ("[S]ome claims, such as those challenging the execution method, cannot be raised or evaluated until the signing of the death warrant. At the least, defendants must have adequate time to investigate and raise and courts must have adequate time to properly review these warrant-based claims."). When the machinery of the State is used to execute someone, this Court must remain vigilant, even if claims arise at the last minute.

*Jimenez v. Bondi*, 259 So. 3d 722, 726-27 (Fla. 2018) (Pariente, J., concurring).

9. In addition, a stay of execution would ensure a meaningful process and make certain that Mr. Zakrzewski is not denied due process. Notably, even in 2023, prior to the Governor signing overlapping death warrants, Justice Labarga expressed his concerns:

> As the majority observes, "post-warrant litigation is arduous," *see* majority op. at 7, and a death warrant by its very nature requires expedited proceedings. However, these solemn proceedings ultimately involve carrying out a sentence of death for the most aggravated and least mitigated of murders and must still ensure due process of law. I am extremely concerned by the recent pace of death warrants and the speed with which the parties and involved entities must carry out their respective duties.
>
> Barwick has raised concerns about the accelerated timetable and argues that "[t]he death warrant proceedings in [his] case lacked any indicia of meaningfulness."

> While I agree that Barwick's claims are not entitled to relief under this Court's precedent, I nonetheless caution that even in this final stage of capital proceedings, a meaningful process must be ensured.

*Barwick v. State*, 361 So. 3d 785, 796 (Fla. 2023) (Labarga, J., concurring), *cert. denied sub nom. Barwick v. Florida*, 143 S. Ct. 2452 (2023).

10. The concern as to whether constitutional violations are present in Mr. Zakrzewski's case requires review that is not truncated by the exigencies of an imminent execution during a warrant period. A stay of execution should be granted to allow for a meaningful determination of Mr. Zakrzewski's claims and to conduct any additional proceedings relevant thereto.

**WHEREFORE**, Mr. Zakrzewski respectfully requests that this Court enter a stay of execution.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, Assistant Attorney General Janine D. Robinson (Janine.Robinson@myfloridalegal.com and capapp@myfloridalegal.com), Senior Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com), Chief Assistant State Attorney Bridgette Jensen, (Bjensen@osa1.org), Assistant State Attorney Matt Casey (mcasey@osa1.org), the Honorable Lacey Powell Clark (Judge.Clark@flcourts1.gov and Amanda.Bailey@flcourts1.gov); and the Florida Supreme Court (warrant@flcourts.org) on this 9th day of July 2025.

Respectfully submitted,

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IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs. CASE NO: 1994 CF 1283

EDWARD JAMES ZAKRZEWSKI,II

Defendant

_____/

Proceedings held in the above-styled cause before the Honorable Lacey Powell Clark, Circuit Judge, on the 2nd day of July, 2025, appearing remotely via videoconferencing.

HYACINTHE REAVES
CIRCUIT COURT REPORTER

APPEARANCES:

| | |
|---|---|
| FOR THE STATE: | BRIDGETTE MYERS-JENSEN, ESQUIRE<br>MATTHEW CASEY, ESQUIRE<br>Assistant State Attorney<br>190 Governmental Street<br>Pensacola, Florida 32502 |
| FOR THE ATTORNEY GENERAL: | CHARMAINE MILLSAPS, ESQUIRE<br>Senior Assistant Attorney General<br>JANINE D. ROBINSON, ESQUIRE<br>Assistant Attorney General<br>PL - 01, The Capitol<br>Tallahassee, Florida 32399 |
| FOR THE DEFENDANT: | LISA FUSARO, ESQUIRE<br>ALICIA HAMPTON, ESQUIRE<br>Assistant CCRC<br>Capital Collateral Regional<br>Counsel - Northern Region<br>1004 DeSoto Park Drive<br>Tallahassee, Florida 32301 |
| FOR THE FLORIDA DEPARTMENT OF CORRECTIONS: | KRISTEN LONERGAN, ESQUIRE<br>Executive Senior Attorney<br>CHRISTINA PORRELLO, ESQUIRE<br>WILLIAM GWALTNEY, ESQUIRE<br>Assistant General Counsel<br>501 South Calhoun Street<br>Tallahassee, Florida 32399 |
| FOR THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT: | LINDSEY BRIGHAM, ESQUIRE<br>Assistant General Counsel<br>5054 Commerce Park Circle<br>Pensacola, Florida 32505 |

P R O C E E D I N G S

THE COURT: Good afternoon. We still have some people joining us.

All right. I think everyone that was in the Zoom waiting room has joined.

I'm Judge Clark, and we are here on Case 1994-CF-1283. Edward Zakrzewski is the defendant's name, and let me get appearances.

I will start with -- oops. I'm sorry. I do have more people joining. Let me wait until they get joined.

All right. So let me start with appearances from the Attorney General's Office -- if I could get those appearances first, please.

MS. ROBINSON: Good afternoon, Your Honor. Janine Robinson with the Attorney General's Office, and Charmaine Millsaps is here as well.

MS. MILLSAPS: I'm right here, Your Honor, Charmaine Millsaps with the Attorney General's Office in Tallahassee.

THE COURT: Wonderful. Thank you.

Do I have anyone else present from the Attorney General's Office?

MS. ROBINSON: No, ma'am.

THE COURT: All right. Now, let me get

appearances from attorneys for the defendant.

MS. FUSARO: Good morning, Your Honor. I apologize. We're on the way back, and we did not make it back in time.

THE COURT: No problem.

MS. FUSARO: Lisa Fusaro from CCRC-North from -- for the defendant.

THE COURT: Thank you.

MS. HAMPTON: Good afternoon, Your Honor, Alicia Hampton from CCRC-North on behalf of Mr. Zakrzewski.

THE COURT: Thank you.

And do I have any other Defense counsel present?

Okay. And then it looks like I have someone from the Department of Corrections present, Ms. Porrello.

MS. LONERGAN: Good morning, Your Honor. Kristen Lonergan for the Florida Department of Corrections. We also have Ms. Porrello, as well as our new attorney, William Gwaltney, on the line.

THE COURT: All right. Great. Thank you.

And I have some attorneys with the State Attorney's Office for the First Judicial Circuit.

MS. MYERS-JENSEN: Good afternoon, Judge. I'm

Bridgette Myers-Jensen with the State Attorney's Office.

MR. CASEY: Matt Casey also with the State Attorney's Office.

THE COURT: Great. Thank you.

I have somebody that's appearing on a telephone, and that phone number is (656)209-5036. If that person could please state their name.

The person on the telephone number (656)209-5036, if you could just state your name.

It looks like you're on mute right now.

That person is on mute. Does anyone in the hearing know who that is on the telephone number (656)209-5036?

MS. ROBINSON: No, ma'am.

THE COURT: Okay. That looks like my Zoom ID number. I'm not sure why that's showing up as a participant.

Okay. Is there anyone present other than -- let's see. I have someone from the clerk's office here. I have a court reporter present, and I have two staff attorneys for the First Judicial Circuit.

Okay. Now, I know who that is. It is someone from our clerk's office who's appearing on that -- what looks like a telephone number, (656)209-5036. Thank

you.

I have several people from our Okaloosa County Clerk of Court present.

If you'll just bear with me. I'm making sure I get all the names in my notes.

Here in my chambers with me, I also have one of our staff attorneys from the First Judicial Circuit present.

Okay. Is there anyone who I did not get their name down or their presence noted? I just want to make sure I didn't miss anyone.

MS. BRIGHAM: Lindsey Brigham on behalf of FDLE.

THE COURT: Wonderful. Thank you very much.

Anyone else present that I did not get their name down?

Okay. I think I have everyone.

First of all, I want to thank you all for being available on such short notice for this hearing, and I appreciate you making yourselves available.

We're here for a case management conference to try to schedule some events and deadlines. The governor has signed a death warrant for Mr. Zakrzewski, and the execution is currently scheduled for July 31 at 6 p.m. Eastern Time, and the Florida Supreme Court has

issued an order that the proceedings here in the trial court must be concluded by Monday, July 14, at 11:00 Eastern Time.

So the State filed a motion for a scheduling order, which has some proposed deadlines in it, and I want to make sure before I go any further that Defense counsel has had an opportunity to review that motion.

MS. FUSARO: I've been able to skim it. It looks pretty standard.

THE COURT: Okay. Well, what I plan to do is go through, essentially, almost paragraph by paragraph through the motion and address each of the proposed deadlines because I think I'm going to need to change a few of them, and I'd like to get some input, especially from Defense counsel and from the Attorney General's Office as well, obviously, and anyone else that's affected by the deadlines.

So I'm looking at the motion, and I don't -- I probably could share my screen, actually. Does anyone need me to do that so that you can see the motion, or do you all have access to it?

If anyone needs me to share the screen, I will do that.

Okay. I don't hear anybody needing me to share the screen. If somebody does, please just speak

up and let me know.

So I'm on page five of the motion, paragraph two, and this is the deadline -- proposed deadline for the Florida Department of Corrections to provide updated inmate records. The State's motion proposes that that deadline be Monday, July 7, at 10:00 Eastern Time, 9:00 Central Time.

First of all, let me ask the Defense. Does that deadline work for you to get those records, or do you need them sooner?

MS. HAMPTON: I think Ms. Fusaro's internet is going out. Were you able to hear that?

THE COURT: No. I'm sorry. I did not hear Ms. Fusaro.

MS. HAMPTON: Okay. She just let me know that she can't hear at all.

THE COURT: Okay.

MS. HAMPTON: She might have to call into the meeting.

THE COURT: Okay. What we'll do -- no problem. If you could let her know, we're going to just pause, and we're not going to do anything without her. So tell her not to panic. Take her time. Call in, and I'll repeat what I just said. Anything she missed, I'll repeat.

MS. HAMPTON: Okay. Thank you, Judge.

THE COURT: Sure. If she needs the phone number, I can provide that as well.

MS. HAMPTON: I think I have it pulled up here, so I'll send it to her.

THE COURT: Okay. I still see Ms. Fusaro. Is she going to --

MS. HAMPTON: She was on her laptop, Judge, so I think she's getting the number now to call in.

THE COURT: Okay.

MS. HAMPTON: I just sent it to her as well. Thank you.

THE COURT: Sure. No problem.

All right. Someone just joined us by phone. Is that Ms. Fusaro?

MS. FUSARO: Yes; Lisa Fusaro for the Defense. I'm sorry, Your Honor.

THE COURT: No problem.

MS. FUSARO: It is, apparently, not a great signal here.

THE COURT: No problem. How far away are you from your office?

MS. FUSARO: I'm about fifteen minutes.

THE COURT: You know, if it would be easier for you -- I know that you're in your car, and, you

know, it's probably hard to, you know, have access -- not to have access to all your documents and things. If you -- if no one has an objection, we can postpone this hearing by about thirty minutes and let you get back to your office and get settled so that you can, you know, have your file and whatever you need.

MS. ROBINSON: That's agreeable with the State, Your Honor.

MS. FUSARO: Okay. I appreciate that if that's okay with everyone. Unfortunately, there's a big traffic jam because there's a -- there's holiday traffic, and there's construction.

THE COURT: Well, does anyone that's in the hearing have a problem or is not available to reconvene in about thirty minutes? If you're not available in thirty minutes, please let me know.

Okay. I don't see anybody objecting. So why don't we do that? Why don't we just end this call right now -- or this meeting and let Ms. Fusaro get back to her office, and then in about thirty minutes -- that would be about 2:45 Central Time; I guess 3:45 Eastern Time. We'll reconvene then.

Don't worry, Ms. Fusaro. We'll wait for you, okay?

MS. FUSARO: Thank you, Your Honor. I'm like

literally fifteen minutes away. I was going to get there, probably, about 3:01, and I didn't want to be late.

THE COURT: No problem. In fact, why don't we give you an extra five minutes, and let's convene at 2:50 Central, 3:50 Eastern, and that way you can have time to park your car and get in the building.

MS. FUSARO: Okay. I mean, I should be fine by 3:45. I mean, it's up to you.

THE COURT: Okay.

MS. FUSARO: I'll get on early if I can.

THE COURT: Okay. Well, I'll be on in thirty minutes, at 3:45 Eastern, 2:45 Central, and then, you know, we'll just wait until everybody joins us, okay?

MS. FUSARO: Thank you, Your Honor. I appreciate it.

THE COURT: I'll see everybody in thirty minutes.

MS. FUSARO: Bye.

THE COURT: All right. Bye-bye.

(Recess)

THE COURT: All right. I think I still have some people that are connecting their audio.

Okay. It looks like everybody is connected, and I'm Judge Clark. We are here -- we've reconvened

after about a thirty-minute recess on Case No. 1994-CF-1283, Edward Zakrzewski, and we're here for a case management conference.

I am going to call out the names of the people that were present when the hearing started about forty-five minutes ago. Please just let me know you're here.

I have Lindsey Brigham from FDLE.

Yes. I see her.

Okay. Alicia Hampton.

MS. HAMPTON: Yes, Judge.

THE COURT: Great. Wonderful. Thank you.

Ms. Bridgette Jensen.

MS. MYERS-JENSEN: Yes, ma'am. Present.

THE COURT: Thank you.

Janine Robinson.

MS. ROBINSON: Yes, ma'am. I'm here.

THE COURT: Wonderful, Attorney General's Office.

Kristen Lonergan from the Department of Corrections.

I think I see her; yes.

And William -- is it "Gwaltney"?

MR. GWALTNEY: Yes, Your Honor.

THE COURT: Wonderful.

And let's see. You're with Department of Corrections as well, right?

MR. GWALTNEY: Yes, ma'am.

THE COURT: Okay. Thank you.

And Christina Porrello with Department of Corrections?

MS. PORRELLO: Yes, Your Honor. Thank you.

THE COURT: Wonderful. Great.

And Lisa Fusaro.

MS. FUSARO: Yes. Thank you, Your Honor. I apologize for that earlier.

THE COURT: No problem. I'm glad you were able to get back to your office.

MS. FUSARO: It's much better here.

THE COURT: Yes.

And Matt Casey --

MR. CASEY: Here, Your Honor.

THE COURT: -- from the State Attorney's Office. All right. Great. Thank you.

And I have Ms. Charmaine Millsaps.

MS. MILLSAPS: Yes, Your Honor. I'm here.

THE COURT: Wonderful, from the Attorney General's Office.

Did I miss anybody other than -- I see that we have clerks and a court reporter and two staff

attorneys. Anybody else that's on the Zoom call that I did not call out your name?

Okay. I think I've got everybody.

So Ms. Fusaro, I know you were having problems hearing because your connection was bad. So I'm going to just start from scratch because I don't know where you lost me.

MS. FUSARO: I think we were on DOC records, is where I lost you.

THE COURT: Oh, okay. All right. So, yes, I'm on the State's motion for scheduling order.

If anyone needs me to share my screen so you can see that, please let me know, and I'll be happy to do that.

I am on page five of that motion, and I'm looking at paragraph two, which is a suggested deadline for the Florida Department of Corrections to provide updated inmate records. The suggested deadline is Monday, July 7, at 10:00 Eastern Time.

My question is to the defendant's counsel. Does that deadline work for you?

MS. FUSARO: Yes. That will work for us as long as it will work for DOC.

THE COURT: Okay. And to DOC, does that work for you?

MS. LONERGAN: Your Honor, we had a couple of questions. We just wanted to make sure that we're all on the same page.

THE COURT: Sure.

MS. LONERGAN: The proposed schedule order wrote it as five years of records, so the past five years of records. We just wanted to make sure that that is what the Defense is contemplating to or whether we should -- we want to avoid, you know, doing it piecemeal and then doing a demand for his own records if they're going to seek more.

MS. FUSARO: Your Honor, so the previous counsel on this case passed away. So if we're able to get more than five years, we would greatly appreciate it, but we'll take what we can get in this short amount of time.

THE COURT: Department of Corrections, what are y'all able to provide within that timeframe?

MS. LONERGAN: So we can have -- we believe we can have five years of records to them, actually, by close of business tomorrow. We don't need until Monday.

THE COURT: That would be wonderful. I'm sure they would -- the Defense would appreciate that.

MS. FUSARO: Yes, Your Honor.

THE COURT: Okay. So you -- Ms. Lonergan, you mentioned something about trying to avoid piecemeal, you know, production of records. Ms. Fusaro mentioned that she, you know, would probably be happy to get any records that you could provide.

I guess I need to ask Ms. Fusaro. Are you seeking more than five years?

MS. FUSARO: Well, I mean, after speaking with the client today, probably not unless there's something in his records that, you know, shows he has some serious health issue that we don't know about. That would be the only reason why I would request more records.

THE COURT: Okay.

MS. LONERGAN: Your Honor, we just wanted to make sure. So because we're doing this kind of as a matter of course rather than through a demand, we hadn't anticipated producing the repository copy and just focusing on getting the attorney version of the records to Ms. Fusaro and her team. We just wanted to make sure that everybody was on the same page on that.

THE COURT: Any objection to what Ms. Lonergan just proposed?

MS. FUSARO: None from the Defense.

THE COURT: Okay. All right. So Department

of Corrections will provide the past five years worth of inmate records by close of business tomorrow, July 3.

And then, of course, if, you know, there's an additional request for public records, then, you know, we'll address those deadlines in just a second. In fact, that is going to be -- that's paragraph three of the motion. It's "Demands for additional public records on all agencies."

The proposed deadline is -- this is for their request, the records request to be filed by the Defense. The proposed deadline is Monday, July 7, at 4 Eastern Time. Because we -- you know, the Florida Supreme Court has set the deadline of July 14 for the trial court to finish its work, which means we have to do a lot next week since we have -- this Friday is a holiday, and also the governor has declared tomorrow, July 3, as a holiday for state employees. So I know that, perhaps, some of the agencies may not be open tomorrow, but we are having to move very quickly so we can fit everything in.

So I need to ask the Defense. Would you be able to get your records requests done tomorrow so that the agencies would -- you know, I'm planning on moving up the deadline for them to respond. So --

MS. FUSARO: So -- sorry, Your Honor.

THE COURT: That would give them more time to review the request rather than if they receive it on Monday.

MS. FUSARO: My only concern is that if we send it to them tomorrow, they likely will not be there. If they're not in, then we wouldn't be able to technically -- we're supposed to serve it on them by, you know, e-mailing or by mailing, so they might not receive it. That's my concern. At least if a deadline was at some point on Monday, at least it would be a day we would be able to know that the offices were all open.

THE COURT: Okay. I'm going to have to maybe get some input from the State here. Is there -- because we are dealing with potential closures tomorrow, July 3, and then, obviously, the 4th is a holiday. I'm really trying to move up the deadline for the objections for these requests, if any, because of the other deadlines that come after that. Is there --

MS. ROBINSON: Your Honor, if I may?

THE COURT: Yes.

MS. ROBINSON: Janine Robinson with the Attorney General. Does Defense counsel have an idea of the agencies that they want to file demands on, or is

that too premature to know?

MS. FUSARO: Generally, there's the standard agencies that we always serve on, you know, just to preserve the defendant's rights in terms of lethal injection, in terms of clemency and offender review and all that. So we'll definitely be serving all that, and then it's generally like the sheriff's office up there, if they had any *Brady* material, the State Attorney's Office, if they had any *Brady* material that they haven't turned in. Things like that, we'd obviously be putting a request for. I mean, I have no issue with doing it at some point on Monday. If we want to like move up the deadline from 4 p.m. to some time during the day, if that would be helpful.

THE COURT: Well, what I was thinking -- and Ms. Robinson, you may have contacts at some of the agencies that might be expecting a request, and I know that we have --

MS. ROBINSON: Right.

THE COURT: -- the First Circuit State Attorney's Office, two representatives on this -- or in this hearing with us. So they can be expecting a request.

MS. ROBINSON: Yes, ma'am, and FDLE is here as well.

THE COURT: FDLE is here, yes, and so is Department of Corrections. So --

MS. MILLSAPS: Your Honor, may I explain what -- our problem is, we're concerned about the smaller agencies. If it's the major players -- I don't know any better way to put it than, DOC, FDLE, the major players, they're not going to be a problem. We could move them up. The problem, if it's a smaller agency, we won't even be able to get them on the phone.

THE COURT: Okay.

MS. MILLSAPS: So, really, when we're asking -- if they're going to limit their public records to the major players, then this -- then we can move everything up.

MS. ROBINSON: And just to reiterate, the purpose of the "I" demands -- because as we said in our proposed scheduling order of the motion, "H" doesn't apply. So they're going to have to make their demands for records that are related to a colorable successive post-conviction claim. So if it can be narrowed -- and not, by any means, to limit the defendant's rights to additional public records, but if it can be done sensibly.

THE COURT: Okay. Well, here's what I'm thinking. The agencies that are on this -- in this

Zoom meeting with us are on notice right now that there's probably going to be a request coming and, perhaps, they could designate someone who would be checking their e-mail or a point of contact where -- although tomorrow has been declared, you know, a paid holiday by the governor, somebody might need to be available to receive a request tomorrow.

MS. ROBINSON: And, Your Honor, the Attorney General's Office, we will be working, so we can help monitor and do what we can. I can't promise that we'll be able to get in touch with any of the smaller agencies, for example, Okaloosa Sheriff's Department. I have no idea if we're going to be able to get a hold of them, but we can help monitor as well, and we'll be glad to assist the Defense any way we can to facilitate it.

THE COURT: So, perhaps, I can ask Ms. Jensen and Mr. Casey as attorneys with the State Attorney's Office in the First Circuit. Perhaps, you could reach out to Okaloosa County Sheriff's Office to give them a heads-up that there could be a request coming and maybe get a point of contact for the Defense to send that request to, somebody that will be checking their e-mail, you know, even though it is a holiday weekend. I mean, this is the sheriff's office. They should be

open tomorrow.

MS. MYERS-JENSEN: Judge, Bridgette Myers-Jensen for the State. I can do that. I can reach out to Okaloosa County Sheriff's Office general counsel, Marsha Weaver. I can ask her for a contact for the public records request to be sent to.

THE COURT: Excellent.

And Ms. Millsaps, when you mentioned smaller agencies, other than the sheriff's office -- I mean, obviously, the attorneys involved in this case know the case thoroughly. I mean, can you think of any other smaller agencies that we would be talking about?

MS. MILLSAPS: No, and, Your Honor, really, they -- because of when the mandate was issued in this case, there should only be updates on agencies that they've already requested public records from, but I don't know what agencies they're going to request from.

THE COURT: Right.

MS. MILLSAPS: Major players are not going to be a problem, Your Honor.

THE COURT: Okay. So Ms. Fusaro, what I'm going to ask the Defense to do -- I'm asking for your input as well. I'm thinking of putting the deadline for the Defense to submit these requests some time tomorrow in the afternoon, not close of business,

because, for those agencies that are fully staffed tomorrow, that way, they have time to get it before they close for the 4th, and then if you could get those requests done tomorrow afternoon -- do you think that's doable on your end?

MS. FUSARO: I think that could be doable. One other agency that -- I'm not sure who actually does their objection and response usually, but the District 8 Medical Examiner.

MS. ROBINSON: That would be sent to the Attorney General's Office. Actually, she could send it to me.

MS. FUSARO: Okay. Thank you.

THE COURT: Okay. That's great. So Ms. Robinson --

MS. FUSARO: I don't think there's anything else in terms of agencies, but I'm not positive because --

THE COURT: Right.

MS. FUSARO: -- we haven't had time to look through everything yet.

THE COURT: I won't hold you to it. I'm just trying to get you -- you know, to give me some sort of indication if you think you could get all of your requests done, you know, in the next 24 hours or so.

MS. FUSARO: We could do that, Your Honor.

THE COURT: Okay.

MS. FUSARO: Like I said, if there is someone small that we didn't happen to think of, you know, that would be the only exception.

THE COURT: Right. So that way, if there is one of the smaller agencies -- like for instance, if there is a municipal police department -- and you mentioned the sheriff's office -- but if there's some other law enforcement agency that's, you know, on the city level or something like that, perhaps, the State Attorney's Office could also receive a copy of it, and then they can reach out.

I don't want to speak for you, Ms. Jensen and Mr. Casey, but I don't know if there's, you know, a municipal law enforcement agency that might receive one of these requests. If you could get copied on it, then you might be able to know who to get a hold of to alert them.

MS. MYERS-JENSEN: Yes, Your Honor. I can and, actually, while we're speaking, I've been -- I'm sorry to be disrespectful --

THE COURT: No.

MS. MYERS-JENSEN: -- but I've been texting with Ms. Weaver, and I have a contact for the Okaloosa

County Sheriff's Office. It will be Ms. Weaver, and I can send the e-mail address to Ms. Fusaro, and then they've asked to be copied on -- to have another person copied, but, yes, I'm happy to facilitate whatever I can that will help.

THE COURT: Okay. Great. Thank you.

So Ms. Fusaro, yes. If there's someone that you're not thinking of at this instant and you learn that you do need to send a request to them and they're one of the, you know, local agencies or smaller agencies, if you will copy -- I mean, I think all the parties are going to get copied on everything, anyway, but if you could alert Ms. Jensen and Mr. Casey, they would be familiar with a lot of the points of contact for local law enforcement and local agencies.

MS. ROBINSON: And if the Attorney General's Office could be copied as well just for another pair of eyes.

THE COURT: Yes. That would help.

So if we had those requests tomorrow, let's say, by -- I mean, would 3:00 Eastern Time be acceptable to the Defense and to the agencies that we have present on the Zoom call?

MS. FUSARO: The Defense can make that happen, yes.

THE COURT: Okay. That would be great.

3:00 Eastern on July 3 would be the deadline for the Defense to submit their public records request to whatever agencies they deem appropriate.

And then the deadline for those agencies to respond or object, I would like to move that. This is paragraph four of the State's motion. The proposed deadline is Tuesday, July 8, at 10:00 Eastern Time. I am considering moving that to Monday afternoon, July 7. The reason is -- and this is why I wanted to move the requests up early, earlier than was proposed, because I suspect the Defense would need the outcome of these requests to finalize their motion or any motions that may be filed.

You would need those, right?

MS. FUSARO: Yes, Your Honor, if there's anything that's produced. Some of the agencies tend not to have anything.

THE COURT: But if, you know, there are records that are produced, I would think you would need those to prepare your motion.

MS. FUSARO: We definitely will need them if there are records, yes.

THE COURT: So I'm trying to get you the -- if any or if applicable. I'm trying to get you the

records sooner.

So does anyone see a problem or have an objection to the agencies responding to the requests, whether it's a response or an objection or, you know, whatever it is, Monday afternoon? That's July 7, and the time -- I just noted in the afternoon. I would like some input on that because what I'm trying to do is then make sure that the Defense has time to review the responses and prepare for the hearing, and also the Attorney General's Office would need to do the same.

MS. ROBINSON: As far as the Attorney General's Office, Your Honor, any time the judge sees fit because we'll have the weekend to do it. I don't want to speak for the other agencies or obligate them in any way. I'm just speaking for the Attorney General's Office.

THE COURT: Okay. So anyone that's here in the hearing that's with an agency that might receive one of these requests, does Monday afternoon -- that's July 7, and we'll figure out a time. Does Monday afternoon -- is that doable for you to file a response, assuming you get the records request tomorrow afternoon?

MS. LONERGAN: From the Department of Corrections, that works for us, Your Honor. What you

order, we'll make happen.

MS. BRIGHAM: That works for FDLE.

THE COURT: Okay.

MS. MYERS-JENSEN: Same from the State Attorney's Office, Judge.

THE COURT: Great. Thank you.

So, obviously, if one of the agencies or one of the smaller ones or if somebody needs more time, then they could file the appropriate motion and request an extension because I'd also like to -- I mean, some of these other deadlines, I'm going to ask about moving those up, too, like, for instance, the hearing on the public records. I'm going to try to change the time on that one next.

Would 2:00 Eastern Time on Monday, July 7 work for the deadline for the agencies to file their objections or responses?

MS. ROBINSON: That works for the Attorney General, Your Honor.

MS. LONERGAN: That works for FDC.

THE COURT: Okay.

MS. MYERS-JENSEN: Yes for the State Attorney's Office.

THE COURT: Thank you.

MS. BRIGHAM: Yes for FDLE.

THE COURT: All right. Great.

Does that work for the Defense?

MS. FUSARO: Yes, Your Honor.

THE COURT: Okay. So this is paragraph four of the motion. I am changing the deadline for the agencies to respond and/or object to the public records requests from the proposed deadline of Tuesday, July 8, at 10:00 Eastern Time. I'm changing it to Monday, July 7, at 2:00 Eastern Time, which is 1:00 Central Time.

Next is the hearing on the public records demands. This is for objections that would be filed by any of the agencies. The suggested deadline -- this is in paragraph five of the State's motion on page seven. The suggested deadline is Tuesday, July 8, at 1:00 Eastern Time, and I would like to change that to first thing in the morning so that that gives more time for me to rule on the objections, get the order done, and then that would move up the compliance time, too, so that the Defense would have more time for those things to occur before they have to finalize their motion. So I'm proposing that we have the hearing on the public records requests at 9:00 Eastern, which would be 8:00 Central Time on Tuesday, July 8.

Does anyone have any objection to moving that?

Instead of 1:00 Eastern Time on July 8, it would be 9:00 Eastern Time. So I'm moving it up by about four hours. Anybody have an objection, or does that not work for anybody?

MS. FUSARO: No objection from the Defense.

THE COURT: Does that give the Attorney General's Office and the Defense enough time between the time that the objections or responses are due until the hearing?

Oh, Ms. Robinson, you're on mute.

MS. ROBINSON: I think it's more contingent on the Defense. That's fine for the Attorney General's Office.

MS. FUSARO: We'll make it work as well for the Defense. Thank you.

THE COURT: Okay. Sure.

All right. So paragraph five of the motion -- this is the hearing on the public records demands. I am setting that hearing for Tuesday, July 8, at 9:00 a.m. Eastern Time, 8:00 a.m. Central Time, and --

MS. ROBINSON: Your Honor, just to confirm -- I'm so sorry.

THE COURT: Go ahead.

MS. ROBINSON: Just to confirm, we're going to use the same Zoom contact?

THE COURT: Yes, same Zoom link you are on right now, yes, and I'll put that in the order that I will do after this hearing. I will have the Zoom link in there for the hearing.

MS. MYERS-JENSEN: Judge, if I may -- Bridgette Myers-Jensen for the State. I've got a status conference on a death penalty case with Judge Simon at 8:30 on Tuesday. So if we -- if the State Attorney's Office does get a public records request, I would just ask that we be able to be heard first, so then I can jump over to Judge Simon's.

THE COURT: Yes, and if you'll remind me.

MS. MYERS-JENSEN: Yes, ma'am.

THE COURT: Okay.

MS. MYERS-JENSEN: Yes.

THE COURT: Just remind me when we start the hearing because -- I'll make a note of it.

MS. MYERS-JENSEN: Okay. Thank you.

THE COURT: But you may need to remind me.

Okay. Anything else about the hearing on the public records demands? Anything anybody needs to address?

MS. ROBINSON: Just one small thing, Your Honor. I believe we put in the proposed scheduling order that the Court would make an oral ruling at the

hearing and then follow up with a written order. Is that -- did I -- okay. I'm sorry. No. That was in, I think -- my mistake. I'm sorry.

THE COURT: No. It does say that.

MS. ROBINSON: It does?

THE COURT: In paragraph six.

MS. ROBINSON: Oh, okay. I'm looking at the wrong paragraph.

THE COURT: Okay.

MS. ROBINSON: But I'll leave that up to Your Honor.

THE COURT: Okay. I will do the best I can, but I can't promise you --

MS. ROBINSON: Yes, ma'am.

THE COURT: -- I will be able to give a verbal ruling on the spot. I may need to review things a little further, but I am going to move up my deadline for written order, which is in paragraph six.

So this is paragraph six of the motion. It's the deadline for the Court to do the order on the public records objections, and the proposed deadline is Tuesday, July 8, at 4:00 Eastern Time. I am moving that up because I moved up the hearing. So I'm moving up the time for me to do the order. It would be 1:00 Central Time, 2:00 Eastern Time. Hopefully, you would

have it before. So it's the same date, Tuesday, July 8. I'm just changing the time that you can expect the written order. Like I said a second ago, I will do my best to make a verbal ruling if I can. If not, then, of course, I will rule on everything in the written order.

And then the next paragraph is the compliance for the agencies, the deadline for them to comply, and I am moving that up as well because, again, all of these deadlines that we've been working on so far are -- I'm trying to speed up the timeframe that the Defense would have any records that are going to be produced because the Defense would need that, theoretically, to complete their -- the motion.

So compliance, I was considering -- instead of the proposed deadline, which is Wednesday, July 9, at 1:00 Eastern, I am proposing to have compliance on Tuesday. That's July 8, shortly after I issue the order, within a few hours after I issue the order ruling on the objections.

So what that would mean for the agencies -- and I know we have several of them in this hearing -- is, you know, once you get the request, you need to -- I'm sure that you all will -- start scoping out and figuring out what records, if any, you have that may

comply. Then that way -- and have somebody on standby if you object and it's overruled -- then you would have a short turnaround time to produce the records. So I'm considering having that by 5:00 Eastern Time. So that would be a minimum of three hours after the order, the written order comes out.

MS. LONERGAN: Your Honor --

THE COURT: Yes.

MS. LONERGAN: From the Florida Department of Corrections. It seemed like the Defense is anticipating the usual request for lethal injection records and things, but just to the extent that there might be a demand for additional inmate records for the defendant, those are quite voluminous. There's about 3,000 pages that are outside of that five-year period, so that would be a difficulty.

THE COURT: Okay. So let's -- maybe we can make an exception for those records and make that longer. How long would you need to provide inmate records outside of that five-year timeframe?

MS. LONERGAN: It would really depend on what timeframe we're talking about. I mean, it doesn't appear that there's ever been a demand for defendant's records, so we're -- there's 35 years of records that we have, and they require substantial redaction and

review. So usually it takes us, you know, three to four days with the whole team working on it when there's a warrant that comes down if that whole thing is contemplated.

THE COURT: All right. So --

MS. FUSARO: That explains why we couldn't find them yet. We appreciate you mentioning that.

THE COURT: In that case I would think that maybe the Department of Corrections ought to get somebody, maybe, working on it right away to anticipate -- I mean, I wouldn't think it would be unusual for the Defense to request all those records.

MS. LONERGAN: That was -- that was kind of what I was getting at earlier of asking if the Defense anticipated asking for more than those five years that we were giving as a matter of course for his own records.

MS. FUSARO: Honestly, on the Defense side, it's going to depend on what's in those five years of records because if there's something that I need to see background into or things like that, then I may need more, but I honestly cannot tell you without looking at the records. Usually, we're just provided all the records, or we've received the case from someone where we've already -- like the attorney had requested

records previously, but, apparently, in this case, the previous attorney did not.

THE COURT: Okay. So --

MS. MILLSAPS: Now, Your -- excuse me, Your Honor. But since there weren't previous requests -- really, these are supposed to be additional records that were previously requested. So if there haven't been any -- you know, look, I think under *Muhammad*, they get recent ones no matter what because the purpose of those is a *Ford* claim so they can see the defendant's current -- by "current," I mean within a timeframe -- mental health, but, you know, it wouldn't really matter what it was 22 years ago, and these should be -- these should be ones that were -- they're supposed to be updates from the last request.

MS. FUSARO: My only -- my only issue with that would be if there is something in the records -- I mean, I don't foresee a *Ford* claim coming, but if there was something of that nature, then I might have to see when it started, if this has been an ongoing situation. I don't anticipate that to be an issue in this case, but without seeing the records, there might be something that we don't know yet, and then something would be under an "I" demand because it would be something that would be colorable to a post-conviction

claim.

MS. LONERGAN: Your Honor --

THE COURT: Yes.

MS. LONERGAN: As just kind of a potential -- if there's no objection that's made or upheld, if we could just have the rest of that evening and produce the rest of those by the next morning. You know, we'll work through the night if we have to, if it comes to that.

We do have one other --

THE COURT: All right. And then we'll circle back to that. Okay.

MS. LONERGAN: We don't currently have a release for CCRC for the defendant. I don't know if one was signed this morning during their visit, but we just need that. We need to know whether we need to facilitate that to make that happen fast.

MS. FUSARO: We can e-mail that over to you after the hearing.

MS. LONERGAN: Fantastic. Thank you.

THE COURT: So -- okay. What I'm doing is, I'm asking one of the staff attorneys about moving the deadline up for me to complete the order to give the agencies more time.

So for the other records requests other than

inmate records, which we'll circle back to in a second, again, I am considering a deadline for compliance at 5:00 Eastern Time on Tuesday, July 8. Do the agencies that are present anticipate that being an issue?

MS. BRIGHAM: No, Your Honor.

MS. ROBINSON: I can't speak for the 8th M.E., but I don't see it being a problem, given what's been requested historically.

THE COURT: Okay.

All right. So with the exception of possible inmate records, then I'm going to put the deadline for compliance with public records demands as Tuesday, July 8, at 5:00 Eastern Time, 4:00 Central Time. So that would be a few hours after the order is entered and -- okay. So I'm going to move up the deadline for that order to be entered to give the agencies more time.

Okay. So what I'll do is put 1:00 Eastern Time, 12:00 Central Time for the deadline for the order to be entered.

MS. LONERGAN: Your Honor --

THE COURT: Yes.

MS. LONERGAN: I did just hear from one of my teammates, that we are actually looking at by close of business tomorrow is ten years, not five years. There

was a miscommunication.

THE COURT: Oh, that's wonderful. I'm sure that that's very much appreciated by the Defense.

MS. FUSARO: It definitely is, Your Honor.

Thank you very much, Ms. Lonergan.

MS. LONERGAN: Hopefully, that will help alleviate. So we should have that to you by tomorrow.

MS. FUSARO: Thank you.

THE COURT: That's great. Thank you. Thank you.

So I will have the order entered on the records requests by 1:00 Eastern Time on July 8. So that's about four hours after we start the hearing. So it's noon Central, 1:00 Eastern Time is when the agencies should have the order if I have not ruled verbally. Either way, there is going to be a written order entered by that time.

Then if there are records ordered to be produced, the deadline for those agencies to produce those records would be 5:00 that same day, so about four hours after the order comes out. I know that's not a lot of time, but the agencies will be on notice of the request, obviously, so they should be prepared -- or making contingency plans in the event their objections are overruled, to be able to provide

the records quickly after the order.

That brings us to No. 8, which is the successive Rule 3.851 post-conviction motion, and what I've been trying to do with the other deadlines to get those records produced sooner is to get them, obviously, to the Defense, if applicable, so that this motion can be completed sooner because I think the timeframes that are suggested later on in this motion cannot work, some of them. That's why I'm having to move up some of the deadlines.

So the successive post-conviction motion, which is paragraph eight of the State's motion for scheduling order, the proposed deadline is Wednesday, July 9, at 5:00 Eastern Time. I would like to move that up by a few hours. So I'm proposing to move it up, actually, by three hours, to 2:00 Eastern Time instead of 5:00 Eastern Time.

MS. FUSARO: We'll make that work, Your Honor. Thank you.

THE COURT: Okay. Thank you.

And then paragraph nine, which is on page eight of the State's motion -- this is the State's answer to the successive post-conviction motion. The proposed deadline is Thursday, July 10, at 4:00 Eastern Time.

Now, to the Attorney General's Office, I'm going to have to move that deadline up because this is where we really start to, you know, get into where some of the deadlines can't work, is after this. I need the State to be able to file its response by 9:00 Eastern Time on Thursday, July 10. Now, I know that's going to require people to work after normal business hours, and I apologize in advance for that.

So I'm asking the Attorney General's Office, can you get your response, your answer, to the successive post-conviction motion filed by 9:00 in the morning Eastern Time on Thursday, July 10?

MS. ROBINSON: We'll make it work. It's going to be difficult, to be quite honest with you, Your Honor, because we have supervisors that -- given the gravity of what we're doing, supervisors must put eyes on it.

THE COURT: Uh-huh. Well --

MS. ROBINSON: But we will -- we'll make it work.

THE COURT: Thank you. Will the supervisors -- you know, they may have to be available after hours as well.

All right. So the State's answer will be due by 9:00 in the morning Eastern Time on Thursday,

July 10, and then that will result in the second case management hearing being moved up as well.

So I plan to have the second case management hearing -- this is paragraph ten of the State's motion that we're going through today. The proposed time for that hearing is Thursday, July 10, at 5:00 Eastern Time, 4:00 Central Time. The problem with that is that the next paragraph after that is the deadline for me to have the order done on that hearing, and it is one hour after the beginning of the hearing, which is -- I mean, I don't know how long the hearing will last. So I would expect the hearing would be at least thirty minutes, possibly an hour. There's no way I can get an order done one hour after I start a hearing of this magnitude, and also that order that we're talking about on the *Huff* hearing, that will determine whether or not there will be an evidentiary hearing the next day. So I think people need some notice of that -- more notice of that as well.

So regarding the second case management hearing, I plan to have that -- well, I'm proposing, and I'm going to ask for input -- at 2:00 Eastern Time, 1:00 Central Time on Thursday, July 10. So that would be moving it up by about three hours compared to the proposed time.

Does anyone have an objection or a problem or an inability to be prepared -- and I mean that honestly -- by -- if I move that hearing time from the proposed time of 5:00 Eastern Time to 2:00 Eastern Time?

MS. FUSARO: No objection from the Defense, Your Honor.

MS. ROBINSON: That's good for the AG, Your Honor.

THE COURT: Okay. Great.

MS. MYERS-JENSEN: Judge, you know we have that day -- all-day hearing is on Timothy Paul Price Williams.

THE COURT: Yes.

MS. MYERS-JENSEN: Okay.

THE COURT: I'm going to have to get coverage for that.

MS. MYERS-JENSEN: Okay.

THE COURT: I am working right now -- I am clearing -- just so that everybody knows, I found out that I was assigned to this matter yesterday early evening, and I am clearing my calendar. I have a packed week next week, three trials and two all-day motion hearings. I'm getting coverage for everything, and I will be working incessantly on nothing but this

case.

So Ms. Jensen, I suspect you're going to be in -- you were going to be in that hearing that I'm --

MR. JENKINS: Yes.

THE COURT: -- that's scheduled in my division for next Thursday, the 10th. We will have to -- or you'll have to take a recess, and I'll make sure whoever is covering for me is well aware that you'll have to take a recess so that you can come to this hearing on Mr. Zakrzewski's case.

MS. MYERS-JENSEN: Okay. Thank you, Judge.

THE COURT: Sure.

That would be at 1:00 Central Time, 2:00 Eastern Time on Thursday, July 10; and Ms. Jensen, I'm going to make a big note so that I can let the judge that's going to cover that hearing for me, let them know that you must be in the hearing with me at that time.

I don't think that applies to Mr. Casey, but, Mr. Casey, correct me if I'm wrong. I think it's --

MR. CASEY: It does not, Your Honor.

THE COURT: Okay.

MR. CASEY: I'll be honest. I'm actually going to be out of town next week, which is why you haven't heard me pipe in about the deadlines for next

week.

THE COURT: Okay.

Okay. Ms. Jensen, I made a note, and whichever judge covers the all-day hearing on Thursday in my division will be aware that you will have to be in a hearing with me at 1:00 Central Time. So I don't know if they'll decide to take a later lunch or what, but arrangements will be made for you to be able to attend the second case management conference in Mr. Zakrzewski's case.

MS. MYERS-JENSEN: Thank you, Judge.

THE COURT: Sure.

So the order on that hearing, the second case management conference, the *Huff* hearing, I plan to have an order done by 4:00 Eastern Time, 3:00 Central Time on July 10, and that way the proposed deadline was -- for the order to be done at 6:00 Eastern Time, 5:00 Central Time. So I am moving that up by two hours.

MS. FUSARO: Thank you, Your Honor. I appreciate that.

THE COURT: Yes, absolutely.

So that people will know. I mean, for instance, if we are going to have an evidentiary hearing, I would think that the Department of Corrections would need to know as soon as possible, and

hours would matter since y'all would need to transport the defendant.

MS. PORRELLO: Yes, Your Honor. Christina Porrello on behalf of the Department. I have preliminarily checked with the Florida State Prison, and they are on notice of the proposed time, and afterward, I will advise again of the time.

THE COURT: Wonderful. Thank you.

Another reason I'm trying to get that -- the order done earlier than the proposed deadline in this motion is, I would like to move the time of the potential evidentiary hearing up an hour earlier because the hearing -- if an evidentiary hearing is warranted, we will be having it on Friday, July 11, but I have no idea how long such a hearing would last, and then what would have to happen after that is, you know, at the conclusion of the hearing, I have to get an order done and filed Monday morning. That's July 14. So one hour can make all the difference.

I'm asking if anybody has a conflict, problem, objection or anything if we start the hearing, instead of 10:00 Eastern, 9:00 Eastern, which will be 8:00 Central Time? I know that's early for all of us here that are in Central Time, but that would be starting the hearing an hour earlier than the proposed time

because of so many unknowns of how long the hearing would last and then the need for me to get an order entered the following Monday morning.

MS. ROBINSON: And, Your Honor, that would be personal appearance, correct?

THE COURT: Yes. Yes, it would.

MS. ROBINSON: Okay.

MS. FUSARO: The Defense is fine with moving it up an hour.

THE COURT: Well, what about the Attorney General's Office? Would moving it from, you know, 10:00 Eastern to 9:00 Eastern -- it's going to be over here in Okaloosa.

MS. ROBINSON: We'll make it work, Your Honor. We'll just get up a little earlier. It's okay.

MS. MILLSAPS: And so it would be in the Okaloosa County Courthouse?

THE COURT: Correct. Just so that you know, there are two courthouses in Okaloosa County, and I am in the one in Fort Walton Beach.

MS. MILLSAPS: Okay. Thank you.

MS. ROBINSON: Oh.

THE COURT: Yes, Fort Walton Beach, and that's the Okaloosa County Courthouse Annex Extension, and the street address is 1940 Lewis, L-E-W-I-S, Turner

Boulevard, Fort Walton Beach, Florida 32547. I will put the street address in the order that sets all of the hearings; but just to clarify, if you go to the Crestview Courthouse, then they're going to send you to the other one, and it will take you about thirty minutes to get there, but we would wait on you.

So -- yes. So everybody is able to be present. If we end up having an evidentiary hearing, you could all be present at 9:00 Eastern, 8:00 Central Time at the Fort Walton Beach Courthouse in Okaloosa County on July 11?

MS. LONERGAN: Your Honor, Ms. Porrello just went off camera. She's doublechecking with the institution just to doublecheck about the defendant.

THE COURT: Okay.

MS. LONERGAN: She should be here in just a minute.

In the meantime, I just wanted to doublecheck. Because of the special circumstances of a death watch inmate, may we provide the proposed transport order?

THE COURT: Of course, yes. Absolutely.

So I'll wait for Ms. Porrello to get an answer, and then I can circle back to that time. Let's see. Closing arguments -- you would -- the attorneys would present those orally at the end of the

evidentiary hearing, and then this Court will have a written order entered by the deadline that's set by the Florida Supreme Court, which is Monday, July 14, at 10:00 Central Time, 11:00 Eastern Time. So I will meet that deadline.

And then the clerk -- I know the clerk is aware of their deadline to complete the record on appeal and provide it -- and the court reporter as well -- transcripts. The complete record would have to be provided to the Florida Supreme Court by Monday, July 14, at 4:30 Eastern Time, 3:30 Central Time, and, again, that's in the Florida Supreme Court's order that I know everybody has received and reviewed with the deadlines.

So I believe Ms. Porrello is probably still conferring with the institution.

MS. LONERGAN: Yes, Your Honor.

THE COURT: Okay. So any questions, objections, concerns or anything anyone wants to be heard on about anything we've covered?

MS. FUSARO: Not at this time, Your Honor.

MS. LONERGAN: We do have just an administrative question, Your Honor.

THE COURT: Yes.

MS. LONERGAN: We've been having difficulty

accessing documents on the docket.

THE COURT: Yes. Yes.

MS. LONERGAN: Is there something special that we need to do in order to get access?

THE COURT: No. In fact, I do have some representatives from the clerk's office present, and maybe they can weigh in, but I can give you a little bit of a heads-up on what's going on. Our clerk's office is changing their software, and that is -- the switchover has caused a little bit of a delay in things being posted to the docket, but I think I'll defer to either Ms. Walker or Ms. Bryan from the clerk's office and let them weigh in on that.

THE CLERK: We're in the process of getting it imaged into our new system, so we won't have that problem soon.

THE COURT: Okay. Great.

So what we can do is -- and I know that -- well, I've noticed that everybody is very good about copying everybody on everything. So any time anyone files something, I know that the attorneys will get e-served, but please continue to send courtesy copies of everything to not only my judicial assistant but also to my own e-mail address. I check my e-mail, you know, all the time, night and day. So that way we can

be sure that, you know, that I'm receiving everything.

Is there a point of contact with the clerk's office that -- and I'm going to defer to the clerk on this. Is there someone that the attorneys could reach out to on this case regarding things being docketed or if they're not able to view a document?

THE CLERK: Yes. Can you hear me?

THE COURT: Yes.

THE CLERK: Okay. If they could, reach out to Susan Crawford. She's the appeals clerk, and she will be the one that's overseeing -- making sure everything is in the case that should be.

THE COURT: Okay. And --

MS. ROBINSON: And, Your Honor, just for everyone's information, the Attorney General's Office has a global e-mail distribution that -- regardless of the party who's filing the document, we send it out to everybody.

THE COURT: That's excellent. Do you know if Ms. Susan Crawford from the Okaloosa County Clerk is on that circulation?

MS. ROBINSON: I don't know that -- if not, but we will doublecheck and make sure that she is. If we can get an e-mail address for her?

THE CLERK: Yes. It's scrawford,

C-R-A-W-F-O-R-D, @okaloosaclerk.com.

MS. ROBINSON: Thank you.

THE CLERK: You're welcome.

MS. ROBINSON: We'll make sure -- we'll make sure she's added. If there's anyone else that needs to be added, just let us know because our paralegals are with us, so they're making notes.

THE CLERK: Okay. You can also include me, which is Kim Bryan, kbryan@okaloosaclerk.

MS. ROBINSON: B-R-Y-A-N, right?

THE CLERK: B-R-Y-A-N, yes.

THE COURT: Ms. Bryan, I believe there is another e-mail address. I just need to make sure. Does this need to be included as well? I think it's appeals -- it's either appeal or appeals@okaloosaclerk.com. Would that --

THE CLERK: You can also use that e-mail address. That's a group e-mail.

THE COURT: Is it appeals with an "S" on the end or no "S"?

THE CLERK: "S" on the end.

THE COURT: Okay. Thank you.

MS. ROBINSON: I'm sorry. So it's appeals with an "S" @okaloosaclerk?

THE CLERK: Yes.

MS. ROBINSON: Dot what?

THE COURT: Com.

THE CLERK: .com. Sorry.

MS. ROBINSON: Okay.

THE COURT: And then someone from the clerk's office could -- once they see those documents come through, make sure that those are posted as soon as reasonably possible to the docket?

THE CLERK: Yes, we will. Thank you.

THE COURT: Thank you. That is much appreciated.

I know that the clerk's office, you know, with this transition is very busy, and it's stressful.

THE CLERK: Yes, ma'am.

THE COURT: Yes. I appreciate your help very, very much, very much.

So did everyone -- or did the Attorney General's Office get all those e-mails because you -- Ms. Robinson, you mentioned you're going to be sending out --

MS. ROBINSON: I think we got them all.

THE COURT: Okay. That's great. Okay.

MS. LONERGAN: Your Honor --

THE COURT: Yes.

MS. LONERGAN: So the institution has inquired

if it's possible to consider having the defendant appear at an evidentiary hearing by Zoom. If not, we can make it happen, but there is some administrative issues that could potentially be an issue for the institution, so they wanted us to ask.

THE COURT: That -- well, I would have to see what the Defense's position is on that.

MS. FUSARO: We would object to that because we'd have to have a way to communicate with the defendant, and I don't think there would be a good way to do that, unfortunately, if we were in person and he wasn't.

THE COURT: Yeah. The Court would have to agree that it would be, basically, impossible for the Defense and the defendant to confer if the Defense is present in person and the defendant is on Zoom.

MS. LONERGAN: Understood, Your Honor. We'll make it happen.

THE COURT: Thank you, yes.

So would there be an issue with changing the proposed time from 8:00 -- I'm sorry -- from 9:00 Central, which is 10:00 Eastern, to 8:00 Central, 9:00 Eastern for that potential hearing on July 11?

MS. LONERGAN: No, Your Honor. It's actually not the starting time that the institution had a

concern about. It was about the shift changes at the end of the day, depending on how long the hearing went.

THE COURT: Right. I understand. So -- well, hopefully, starting an hour earlier than the proposed time would help with that.

So in the event an evidentiary hearing is warranted, that will occur on July 11, at 8:00 Central Time. That's where the Court is located, in Central Time, which is 9:00 Eastern Time, and it would be in person, and the defendant would need to be present.

So are there any other concerns, issues or matters or anything I need to cover?

MS. MILLSAPS: Your Honor, I would like to just give you my telephone number. I think if we all had everybody's telephone number, that might help. So I'd like to give you -- I can give you my cell phone over -- you know, over the thing, or I can -- we can e-mail each other or something.

THE COURT: Okay. So do you --

MS. MILLSAPS: I will --

THE COURT: Would you like to send an e-mail and then copy, I mean, or --

MS. MILLSAPS: Yes. I'll send out to the attorneys -- we'll send out, sort of, a mass e-mail, including Your Honor and your JA, with my cell phone

number, and then we can just switch -- we can just pass around our cell phone numbers.

THE COURT: Okay.

MS. MILLSAPS: If anybody would like to give me theirs, we'd like to have it.

THE COURT: Okay. Is there -- I mean, would the attorneys need my cell phone number -- and I mean that sincerely. I mean, is there a need or --

MS. MILLSAPS: Well, Your Honor, that's more at Your Honor's desire. You could call me. I'm perfectly happy with you being able to call me. I wouldn't necessarily reach out to you, but whatever Your Honor wants to do.

THE COURT: Okay.

MS. MILLSAPS: I just would like the inner group, just the attorneys. We won't do the mass e-mail for that, but just the attorneys working down at the trial court level to have my cell phone number. What everybody else wants to do is, of course, their business.

THE COURT: Okay. So if any of the attorneys thinks they may need my cell phone number, please call my judicial assistant. I really would not like to put that out there, you know, in an e-mail or any other method. If you need it, my judicial assistant will

provide it. Like I said, I do check my e-mail a lot, and that means at night and on the weekend. So, you know, always copy me on all of the e-mails, not just my JA, and I'll be sure to see it if there's some, you know, unforeseen issue or some emergency or something that happens.

Any other matters or any other concerns or issues?

MS. FUSARO: Nothing from the Defense.

MS. ROBINSON: Nothing from the Attorney General.

THE COURT: All right. Anything from the Department of Corrections? Anything else that we need to cover?

MS. LONERGAN: No, Your Honor.

THE COURT: Okay. Did everybody get all the deadlines, or does anybody need me to go over them one more time and run through them?

MS. MILLSAPS: No, Your Honor.

THE COURT: Okay. All right. What I'm going to do is, I'm going to step out of the hearing for a second, confer with the staff attorney who's present with me, and make sure there's nothing that I'm missing or anything that I need to clarify. So if you'll excuse me for just a moment, and I'll be right back in

the hearing.

(Pause in proceedings)

THE COURT: Okay. There is one matter that I need to circle back to, and I am grateful for the reminder. This is on paragraph seven of the State's motion for scheduling order, and it's the compliance with public records demands.

I did set the time for that to occur on Tuesday, July 8, at 5:00 Eastern, but there was an exception, or we were going to circle back to the Department of Corrections if, you know, there were additional inmate records requested, and then after that is when Ms. Lonergan stated that DOC plans to produce ten years worth of inmate records by close of business tomorrow, July 3.

So do I still need to address some sort of expansion of the deadline for public records compliance as to DOC records?

MS. LONERGAN: I think given, kind of, the direction that Defense seems to say that they are going in, that maybe that's not necessary, and we can let the Court know and seek an extension in an emergency if we don't think we're going to be able to comply in time.

THE COURT: Okay. Or even, you know, at the hearing on the public records demands, you know, if --

because I know you haven't even seen the requests yet because, you know, the deadline for that is tomorrow. So we can address that at the hearing, if need be.

MS. LONERGAN: Sounds good, Your Honor. Thank you.

THE COURT: Thank you very much.

All right. Has anyone else -- or anybody thought of any other concerns or issues that I need to address before we adjourn?

All right. Well, I will get an order done from this hearing that sets all of the deadlines that we have discussed and that the Court has ordered, and then the next time we will all see each other will be at the hearing on the public records demands, which is Tuesday, July 8, at 9:00 Eastern, 8:00 Central on this same Zoom link. That will be our next hearing.

All right.

MS. ROBINSON: Thank you, Your Honor.

THE COURT: Thank you all very much. Have a good rest of your day.

MR. CASEY: Thank you.

(Proceedings concluded)

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF OKALOOSA

I, HYACINTHE REAVES, Official Court Reporter, do hereby certify that the foregoing, being pages numbered 1 through 59, inclusive, is a true and correct transcript of the proceedings held in the case of STATE OF FLORIDA vs. EDWARD JAMES ZAKRZEWSKI, Case No. 1994 CF 1283, on the 2nd day of July, 2025, before the Honorable Lacey Powell Clark, Circuit Judge, appearing remotely via videoconferencing.

IN WITNESS WHEREOF, I have hereunto set my hand, this the 9th day of July 2025.

*Hyacinthe Reaves*
HYACINTHE REAVES
Official Circuit Court Reporter

**IN THE FIRST JUDICIAL CIRCUIT COURT**
**IN AND FOR OKALOOSA COUNTY, FLORIDA**

**EXECUTION SCHEDULED FOR JULY 31, 2025**
**AT 6:00 P.M. ET (5:00 P.M. CT)**

**TRIAL COURT PROCEEDINGS MUST BE COMPLETED BY**
**Monday, July 14, 2025, at 11:00 a.m. ET (10:00 a.m. CT)**

STATE OF FLORIDA,

*Plaintiff,*

v.

EDWARD J. ZAKRZEWSKI,

*Defendant.*
_____/

Case No.: 1994-CF-01283
CAPITAL CASE

**STATE'S ANSWER TO FIFTH SUCCESSIVE POSTCONVICTION MOTION**

On July 9, 2025, Edward J. Zakrzewski, represented by state postconviction counsel Capital Collateral Regional Counsel – Northern Region ("CCRC-N"), filed his fifth successive Fla. R. Crim. P. Rule 3.851 postconviction motion to vacate judgment and sentence ("Motion"). The Motion raises three claims: (1) the trial court's override of the jury's recommendation for a life sentence for the murder of [redacted] (2) the compressed warrant schedule violates the Fifth, Sixth, and Fourteenth Amendments; and (3) Florida's clemency process is arbitrary and violates the Fifth, Eighth, and Fourteenth Amendments. These claims should be

summarily denied without an evidentiary hearing as procedurally barred, untimely, not cognizable, or legally insufficient.

## BACKGROUND AND PROCEDURAL HISTORY

On June 9, 1994, Edward Zakrzewski murdered his wife and two young children, [redacted] Zakrzewski pleaded guilty and was sentenced to death for all three murders. The detailed facts of the case and procedural history are set forth in the Facts of the Crime and Procedural History filed for the benefit of the Court on July 2, 2025.

Governor Ron DeSantis signed a death warrant on Tuesday, July 1, 2025, scheduling Zakrzewski's execution for July 31, 2025 at 6:00 p.m. ET (5:00 p.m. CT).

## SUMMARY DENIAL OF SUCCESSIVE POSTCONVICTION CLAIMS

Successive postconviction motions must be filed within one year after the judgment and sentence has become final, unless one of the following 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.

Rule 3.851(d)(1) and (d)(2). If one of the foregoing is not established, the motion may be summarily denied as untimely. *See Dillbeck v. State*, 357 So. 3d 94, 101 (Fla. 2023) *cert. denied, Dillbeck v. Florida*, 143 S. Ct. 856 (2023). It is incumbent on Zakrzewski to establish the timeliness of his successive postconviction motion. *See Dillbeck*, 357 So. 3d at 101 (quoting *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020)).

A facially sufficient Rule 3.851 motion requires specific legal and factual grounds that demonstrate a cognizable claim for relief. *Davis v. State*, 875 So. 2d 359, 368 (Fla. 2003). Summary denial without an evidentiary hearing is appropriate if "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) *cert. denied, Cole v. Florida*, 145 S. Ct. 109 (2024) (citing *Parker v. State*, 904 so. 2d 370, 376 (Fla. 2005) ("a defendant is entitled to an evidentiary hearing on any well-pled allegations in a motion for postconviction relief unless (1) the motion, files, and records in the case conclusively show that the prisoner is entitled to no relief, or (2) the motion or a particular claim is legally insufficient.")); *Dailey v. State*, 329 So. 3d 1280, 1284 (Fla. 2021). Where there is "no issue of material fact to be determined," successive postconviction claims should be summarily denied. *Doty v. State*, 403 So. 3d 209, 214 (Fla. 2025).

Claims that were or should have been raised on direct appeal or in a prior postconviction motion are not proper and may be summarily denied as procedurally barred. *See Gudinas v. State*, 2025 WL 1692284, *4 (Fla. June 17, 2025) *cert. denied*, *Gudinas v. Florida*, 2025 WL 1739159 (U.S. June 24, 2025) (citing *Rogers v. State*, 2025 WL 1341642, at *3 (Fla. May 8, 2025) ("[I]n an active [death] warrant case, a postconviction claim that could have been raised in a prior proceeding is procedurally barred.")). Summary denial of a successive postconviction motion is also appropriate if "the motion, files, and records in the case conclusively show that the movant is entitled to no relief." *Wainwright v. State*, 2025 WL 1561151, at *3 (Fla. June 3, 2025) (quoting Fla. R. Crim. P. 3.851(f)(5)(B)). *See also* Fla. R. Crim. P. 3.851(h)(6).

Additionally, claims that are legally insufficient and meritless as a matter of law under controlling precedent should also be summarily denied. *Hutchinson v. State*, 2025 WL 1198037, at *3 (Fla. Apr. 25, 2025) (trial court may properly summarily deny successive postconviction claims that are untimely, procedurally barred, legally insufficient, or refuted by the record), *cert. denied*, *Hutchinson v. Florida*, 2025 WL 1261217 (U.S. May 1, 2025) (No. 24-7087); *Zack v. State*, 371 So. 3d 335, 338 (Fla. 2023) (affirming the postconviction court summarily denying the claims as "untimely, procedurally barred, and meritless"), *cert. denied*, *Zack v.*

*Florida*, 144 S. Ct. 274 (2023); *Valle v. State*, 70 So. 3d 530, 552 (Fla. 2011) (holding claim that length of time on death row is facially invalid under Florida Supreme Court precedent and summary denial was proper.). Zakrzewski also bears the burden to establish a prima facie case based on a legally valid claim and mere conclusory allegations are insufficient. *See Wainwright*, 2025 WL 1561151 at *3 (quoting *Franqui v. State*, 59 So. 3d 82, 96 (Fla. 2011).

## ARGUMENT

**CLAIM ONE: The Judicial Override Did Not Render Zakrzewski's Death Sentences Unconstitutional.**

Zakrzewski restates his direct appeal argument that his death sentences were unconstitutional due to the non-unanimous jury recommendation on two of the first-degree murder counts and the trial court's override of the jury's life recommendation, imposing a third death sentence for [redacted] murder. Motion at 4-11. The override claim is procedurally barred because it was raised on direct appeal and rejected by the Florida Supreme Court. Alternatively, this claim is not cognizable and untimely. The claim is also meritless under *Tedder v. State*, 322 So. 2d 908 (Fla. 1975).

Procedurally Barred

Zakrzewski's challenge to the judicial override of the jury's life recommendation for [redacted] murder is procedurally barred. On direct

appeal, Zakrzewski claimed that it was improper for the trial court to override the jury's life recommendation and did not meet the test under *Tedder v. State*, 322 So. 2d 908, 910 (Fla. 1975) (holding a trial court may override a jury's life sentence only if the "facts are 'so clear and convincing that virtually no reasonable person could differ'").

The Florida Supreme Court rejected Zakrzewski's argument and affirmed the trial court's override *Zakrzewski v. State*, 717 So. 2d 488, (Fla. 1988). The Court found that the override was proper under *Tedder*, stating "the facts suggesting the sentence of death for all three of these murders are clear and convincing and as to [redacted] even more compelling." *Id.* at 494. It noted, "that the trial judge found the same aggravating and mitigating circumstances applied to the murders of both [redacted]" *Id.* The Court ultimately concluded, "'no reasonable person could differ' as to the appropriateness of the death penalty for the murder of [redacted]" *Id.* Therefore, the jury override aspect of this claim is procedurally barred.

Not Cognizable

Second, this claim is not cognizable. Raising the issue of his third death sentence violates the terms of the collateral review statute as well as the concurrent sentence doctrine.

The judicial override issue is not cognizable under the applicable statute. The "terms and conditions of appeals and collateral review in criminal cases" statute, section 924.051(7), Florida Statutes (2024), provides:

> In a direct appeal or a collateral proceeding, the party challenging the judgment or order of the trial court has the burden of demonstrating that a prejudicial error occurred in the trial court. A conviction or sentence may not be reversed absent an express finding that a prejudicial error occurred in the trial court.

*Earl v. State*, 314 So. 3d 1253, 1255-56 (Fla. 2021) (affirming the dismissal of the motion, relying on § 924.051(3), Fla. Stat., to hold that no "prejudicial error occurred" because the movant could not show that the denial of relief resulted in any harm that may be remedied because his sentence would not have been "changed by a single day"). No prejudicial error occurred from the override due to Zakrzewski's two other death sentences.

The issue of the judicial override regarding one of his three death sentences is also not cognizable under the concurrent sentence doctrine. Courts do not entertain challenges to one sentence when there are other concurrent sentences of equal or greater severity. *In re Williams*, 826 F.3d 1351, 1357 (11th Cir. 2016) (denying an application to file a successive petition based on the concurrent sentence doctrine citing *United States v.*

*Pacchioli*, 718 F.3d 1294 (11th Cir. 2013)). Zakrzewski has two other death sentences. The override issue is not cognizable twice over.

Untimely

This claim is untimely. All of the facts underlying this claim have been known to Zakrzewski since trial in 1996. *See Hutchinson v. State*, 408 So. 3d 752, 754 (Fla. 2025) (rejecting a postconviction claim because the illness was a well-known condition at the time of the trial), *cert. denied*, *Hutchinson v. Florida*, 145 S. Ct. 1980 (2025)

Meritless

Moreover, even if this claim was not procedurally barred and was cognizable, it is meritless. As the Florida Supreme Court observed when it denied the override claim, the horrific facts and circumstances of this case were sufficient to meet *Tedder*'s test. *Zakrzewski*, 717 So. 2d at 490-91, 494. The clear and convincing facts found by the Florida Supreme Court are that Zakrzewski brutally murdered his [redacted] daughter with a machete, which he purchased and sharpened earlier in the day, upon calling her into the bathroom to innocently brush her teeth. No reasonable person could differ with recommending a death sentence for such a heinous, atrocious, and cruel act, which was cold, calculated and premeditated.

Zakrzewski also challenges the two death sentences for his wife and son, which were based on the jury recommendations of 7-5. Death sentences based on simple majority were statutorily authorized at the time of the penalty phase in 1996. *Cf. Thompson v. State*, 648 So. 2d 692, 698 (Fla. 1994) (stating a jury is allowed to recommend death on a simple majority vote citing *Brown v. State*, 565 So. 2d 304, 308 (Fla. 1990)). At that time the two death sentences became final in 1999, *Hurst v. Florida*, 577 U.S. 92 (2016), which is not retroactively applicable to Zakrzewski under either state or federal law. *Zakrzewski v. Jones*, 221 So. 3d 1159 (Fla. 2017); *McKinney v. Arizona*, 589 U.S. 139, 145 (2020). The Florida Supreme Court recently rejected an argument that the failure to reconsider prior rulings constituted manifest injustice. *James v. State*, 404 So. 3d 317, 328 (Fla. 2025).

Harmless error

The error, if any, regarding the judicial override of the jury's life recommendation for the murder of [redacted] is harmless. Given that the facts of [redacted] murder were even more compelling than the murders of her mother and brother, all reasonable judges would have overridden the jury's life recommendation. And, again, Zakrzewski has three death sentences, two of which were not the result of an override. Regardless of the override, Zakrzewski would still have two death

sentences. Any error is harmless because it did not have a "substantial and injurious effect or influence" on the outcome of the sentence. *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993).[1] Therefore, the fact that Zakrzewski was sentenced to death for his wife and son's murder, renders the third death sentence harmless.

**CLAIM TWO: The Warrant Litigation Period Does Not Violate Zakrzewski's Constitutional Rights.**

Zakrzewski claims that the 30-day warrant litigation period violates his due process rights and denied him meaningful access to the courts and counsel, hindering a full investigation and presentation of successive postconviction claims. Motion at 11-12. This claim is legally insufficient, meritless, and should be denied in accordance with Florida Supreme Court precedent.

The Florida Supreme Court most recently rejected this due process violation claim two days ago in *Bell v. State*, 2025 WL 1874574 (Fla. July 8, 2025). The *Bell* Court affirmed the trial court's summary denial, held the claim was meritless, and agreed with the trial court that the defendant "has not identified any matter on which he has been denied notice and an opportunity to be heard." *Id.* at *17 (citing *Tanzi v. State*, 407 So. 3d 385,

[1] The State employs the *Brecht* harmless error test for this postconviction claim because the harmless error test of *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986), is the test for direct appeals.

393 (Fla. 2025) (noting that "this Court has previously rejected similar constitutional arguments attacking the compressed warrant litigation schedule" (citing *Barwick v. State*, 361 So. 3d 785, 789 (Fla. 2023))), *cert. denied*, 145 S. Ct. 1914 (2025).

Zakrzewski makes the same claim that this Court summarily denied in *State v. Hutchinson*, Case No. 1998-CF-1382, Okaloosa County, Florida, Filing #220848308 and affirmed by the Florida Supreme Court. *Hutchinson v. State*, 2025 WL 1198037, *4 (citing *Tanzi* and *Barwick*). The *Hutchinson* Court stated, "although the warrant period in this case was admittedly short and the record lengthy, Hutchinson has been able to raise numerous postconviction claims and advance arguments to support them." In the accompanying footnote, the *Hutchinson* Court noted that "[b]ased on our own assessment of the record, we reject Hutchinson's premise that he "was not afforded any opportunity to address the specific concerns or issues raised by the judge who ultimately issued the order denying him relief." *Id.* at n.6.

In *Barwick*, the Court held that a 30-day warrant litigation schedule, which included religious days of Holy Week, Passover, and Ramadan did not violate either the Fourteenth Amendment's Due Process Clause or Art. I, § 9 of the Florida Constitution. *Barwick*, 361 So. 3d at 789-90. The Court further agreed with the trial court as Barwick did not identify any matter

on which he was "denied notice or an opportunity to be heard before it was decided." *Id.* at 790. Zakrzewski's Motion, like Hutchinson and Barwick, failed to specifically allege (1) what access he was denied; (2) what notice he was denied; or (3) what opportunity to be heard that he was denied to bring forth a claim or argument.

As to access to courts and counsel, Zakrzewski generically complains that counsel was unable to communicate with him until the "morning of July 2, 2025," despite the warrant being signed in the late afternoon on July, 1, 2025. Motion at 13. He also complains that inmate Bell's warrant litigation impeded access to the Florida State Prison. *Id.* at 13-15. However, Zakrzewski makes no factual allegation how this hindered postconviction counsel or impeded his access to the courts. Instead, he merely offers non-specific and conclusory statements that postconviction counsel's ability to "properly research and develop legal claims" was hindered. *Id.* at 15. This portion of the claim is meritless as well. See *Hutchinson*, 2025 WL 1198037 at *6 (citing *Dailey v. State*, 283 So. 3d 782, 791 (Fla. 2019); *Long v. State*, 271 So. 3d 938, 946 (Fla. 2019)).

Zakrzewski has been represented by experienced postconviction counsel for decades and has had ample opportunity to investigate and bring additional successive postconviction claims, but has not done so since his fourth successive Rule 3.851 motion in January 2017. *See*

*Zakrzewski v. State*, 254 So. 3d 324 (Fla. 2018), *cert. denied*, *Zakrzewski v. Florida*, 587 U.S. 988 (2019). In fact, CCRC-N has represented Zakrzewski for the past three years, since 2022. Although CCRC-N files this fifth successive postconviction motion on Zakrzewski's behalf, based on a truncated warrant litigation schedule, it has not pursued additional successive claims.

Because Zakrzewski's claim is speculative, legally insufficient, and well-settled by Florida Supreme Court precedent, summary denial is appropriate.

**CLAIM THREE: Clemency-Related Due Process, Equal Protection, and Eighth Amendment Violations Due to Lacking a Clemency Update.**

Zakrzewski raises three actual claims as "Claim 3": (1) a claim that holding his clemency proceedings in 2007 and denying clemency in 2025 without an update violates due process; (2) a claim that denying him clemency without an update, when other "similarly situated" individuals on death row have received one denies him equal protection; and (3) a claim that his clemency denial without an update is arbitrary in violation of the Eighth Amendment. These claims are insufficiently pleaded, untimely, procedurally barred, and meritless under their respective legal standards and should be summarily denied.

Insufficiently Pleaded

"Claim 3" is insufficiently pleaded because it invokes at three different sources of law (due process, equal protection, and the Eighth Amendment) with three different analytical frameworks in violation of Rule 3.851(e)(1). A claim is a *particular* legal basis tied to an operative factual foundation. *See Brown v. State*, 304 So. 3d 243, 272 (Fla. 2020); *Raulerson v. Warden*, 928 F.3d 987, 1005 (11th Cir. 2019). If either the legal basis for the claim, or the factual foundation, change, there are multiple claims instead of one. *See Green v. Sec'y, Dep't of Corr.*, 28 F.4th 1089, 1159 (11th Cir. 2022) (recommending Florida Courts require "more straightforward post-conviction pleading" to prevent abuses).

Due process and equal protection claims are not the same; they have different factual foundations, analytical frameworks, and sources of law. *E.g.*, *Osborne v. Folmar*, 735 F.2d 1316, 1317 (11th Cir. 1984). The same is true of Eighth Amendment claims.[2] Zakrzewski has thrown three claims in one in violation of Rule 3.851(e)(1) and thereby forfeited them at this point. *See Hutchinson v. State*, 408 So. 3d 752, 755 (Fla. 2025) ("We agree with the State that the claim was not properly presented below. Indeed, the paragraph discussing the Eighth Amendment is conclusory.").

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[2] The 30-day warrant period is no excuse for these pleading deficiencies. Florida's clemency system has remained the same for decades and these claims are nothing new.

Untimely

Rule 3.851(d)(2)(A) bars successive postconviction claims unless the claim is based on newly discovered evidence and timely asserted within a year of when the facts underlying the claim became discoverable by due diligence. *E.g.*, *Mungin v. State*, 320 So. 3d 624, 626 (Fla. 2020). Capital defendants must plead facts to establish the timeliness of their claims or else summary denial for untimeliness is proper. *Sparre v. State*, 391 So. 3d 404, 406 (Fla. 2024) (affirming summary denial); *Damren v. State*, 397 So. 3d 607, 613 (Fla. 2023) (same); *Dillbeck v. State*, 357 So. 3d 94, 101 (Fla. 2023) (same). Mere "conclusory allegations do not warrant an evidentiary hearing." *Cole v. State*, 392 So. 3d 1054, 1061 (Fla. 2024).

Zakrzewski's three clemency-related claims are untimely. He does not allege that any of his claims fit within an exception to the time-bar in Rule 3.851(d). Instead, he alleges that his clemency process concluded in 2007, and the Governor signed his warrant in 2025. He does not identify when any of the facts giving rise to any of his claims came into existence and could have raised every argument and claim in "Claim 3" long before now. *See Ferguson v. State*, 101 So. 3d 362, 366 (Fla. 2012) (holding a clemency-related claim was untimely raised after a warrant was signed when the defendant had spent "thirty (30) years on death row" and could

have raise the claim earlier); *cf. Cole v. State*, 392 So. 3d 1054, 1064 (Fla. 2024) (holding a lethal injection challenge untimely under *Furguson*).

Procedurally barred

Rule 3.851 bars claims that could have been raised in prior proceedings. *E.g.*, *Gudinas v. State*, No. SC2025-0794, 2025 WL 1692284, at *6 (Fla. June 17, 2025). A claim that the Governor could not constitutionally (under equal protection, due process, or the Eighth Amendment) sign a warrant without conducting a clemency update could have been raised long before now and is barred at this late date. *Cf. Ferguson*, 101 So. 3d at 366.

That is particularly true since Florida's Rules of Executive Clemency have long provided that cases "investigated under previous administrations may be reinvestigated *at the Governor's discretion*." Fla. R. Exec. Clemency 15.C. (emphasis added); *Zack v. Governor of Fla.*, No. 23-13021, 2023 WL 6376654, at *1 (11th Cir. Sept. 26, 2023). It is disturbing that, apparently, "no attempt was made by" state postconviction counsel "to request the Governor to exercise his authority" to reinvestigate Zakrzewski's case "before resorting to the courts." *Cf. Parole Comm'n v. Lockett*, 620 So. 2d 153, 158 (Fla. 1993).

Eighth Amendment Claim Analysis

Zakrzewski's perfunctory claim that it violates the Eighth Amendment's prohibition against arbitrariness in capital proceedings to deny him clemency without an update is legally insufficient under well-settled law.[3] Indeed, the Eighth Amendment's protection against arbitrariness "is satisfied" when a capital sentencing "statute sufficiently narrows the class of persons eligible for the death penalty" and has nothing to do with clemency. *See Hutchinson v. State*, No. SC2025-0517, 2025 WL 1198037, at *5 (Fla. Apr. 25, 2025).[4]

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[3] *E.g.*, *Dailey v. State*, 283 So. 3d 782, 787 (Fla. 2019) (To "the extent Dailey asserts that his execution would be arbitrary because he was not granted an additional clemency proceeding at which to present newly discovered evidence, his claim is foreclosed by our caselaw."); *Carroll v. State*, 114 So. 3d 883, 888 (Fla. 2013) (rejecting an Eighth Amendment challenge to Florida's clemency process); *Grossman v. State*, 29 So. 3d 1034, 1044 (Fla. 2010) (rejecting a claim that an execution would be "arbitrary and capricious" because the defendant's clemency proceeding occurred in October 1988); *Rutherford v. State*, 940 So. 2d 1112, 1121 (Fla. 2006) (rejecting a claim that the dismissal of a second clemency petition was arbitrary and capricious in violation of the Eighth Amendment).

[4] *Cf. Murray v. Giarratano*, 492 U.S. 1, 10 (1989) (plurality opinion) (The "safeguards imposed by the Eighth Amendment at the trial stage of a capital case are, we think, sufficient to assure the reliability of the process by which the death penalty is imposed"); *Barbour v. Haley*, 471 F.3d 1222, 1231 (11th Cir. 2006) ("Heightened procedural requirements do not apply" in capital "postconviction proceedings.").

Due Process Claim Analysis

Zakrzewski's claim that it violates due process to deny him clemency without an update also fails under well-settled law.[5] The failure to provide a clemency update after holding a full clemency proceeding in 2007 is not remotely akin to flipping "a coin to determine whether to grant clemency" or arbitrarily denying "a prisoner *any* access to" the "clemency process." *See Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) O'Conner, J., concurring) (emphasis added).[6] Likewise, the Executive's unbridled clemency discretion does not violate due process.[7]

Indeed, "the Supreme Court has never recognized a case in which clemency proceedings conducted pursuant to a state's executive powers

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[5] *E.g.*, *Pardo v. State*, 108 So. 3d 558, 568 (Fla. 2012) (rejecting an argument the "long time lapse between a defendant's clemency proceeding and the signing of his death warrant renders the clemency process inadequate or entitles the defendant to a second proceeding"); *Johnston v. State*, 27 So. 3d 11, 24-26 (Fla. 2010) (rejecting an argument that a 1987 clemency proceeding was inadequate because it was held long before the active-warrant, capital defendant's "mental health issues and life history were fully developed for consideration in the clemency process").

[6] Justice O'Connor's concurrence provides *Woodard*'s holding. *Barwick v. Governor of Florida*, 66 F.4th 896, 902 (11th Cir. 2023).

[7] *Gudinas v. State*, No. SC2025-0794, 2025 WL 1692284, at *9 (Fla. June 17, 2025) (collecting cases); *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."); *Barwick*, 66 F.4th 896, 904–05 (rejecting a due process challenge to Florida's "standardless" clemency system).

have implicated due process." *Schad v. Brewer*, 732 F.3d 946, 947 (9th Cir. 2013).

Equal Protection Claim Analysis

Zakrzewski's claim that it violates equal protection to provide some unidentified capital prisoners with updates but not him is legally insufficient on its face. The Florida Supreme Court has rejected the notion that Florida's clemency process violates equal protection. *See Rutherford v. State*, 940 So. 2d 1112, 1122 (Fla. 2006) ("In *King v. State* 808 So. 2d 1237, 1241 n. 5, 1246 (Fla. 2002), this Court concluded that the defendant's claim that Florida's clemency process violates due process and equal protection was meritless.").

Selective prosecution equal protection cases provide a helpful analog to judge Zakrzewski's claim. Those cases begin with a background presumption that the Executive Branch constitutionally discharged its duties in the absence of "clear evidence to the contrary." *United States v. Armstrong*, 517 U.S. 456, 464–65 (1996).

Claimants must demonstrate the challenged "policy had a discriminatory effect and" was "motivated by a discriminatory purpose." *Id.* A discriminatory effect occurs when "similarly situated" individuals are not prosecuted. *Id.* A discriminatory purpose requires the government to intentionally discriminate for an impermissible reason. *Wayte v. United*

*States*, 470 U.S. 598, 610 (1985). One "who seeks discovery on" a selective prosecution claim "must show some evidence of both discriminatory effect and discriminatory intent." *United States v. Bass*, 536 U.S. 862, 863 (2002).[8]

Zakrzewski provides speculation and zero factual allegations supporting the contention that Governor DeSantis either denied him an update for some constitutionally impermissible reason or has provided other inmates with updates during his administration. Zakrzewski simply asserts other inmates on death row have been provided updates without identifying them, comparing the facts of their crimes to Zakrzewski's, or indicating which administrations the updates occurred under. Conclusory allegations warrant only summary denial. *See Cole v. State*, 392 So. 3d 1054, 1061 (Fla. 2024).

More fundamentally, Zakrzewski has not, and cannot, show he is similarly situated to any of the unidentified capital defendants he claims had updates. Zakrzewski murdered his wife and two young children with a machete. The horrendous facts of this case—even as compared to the universe of capital cases—provide a rational basis to sign a warrant

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[8] Florida, likewise, does not permit Rule 3.852 demands when a defendant has not alleged anything to overcome the presumption the Executive Branch properly performs its duties and "waited until a death warrant was signed" to request the records. *E.g.*, *Hannon v. State*, 228 So. 3d 505, 512 (Fla. 2017).

without an update. *See Rutherford v. State*, 940 So. 2d 1112, 1122 (Fla. 2006) (declining to "say that the executive branch was required to go through the motions of holding a second proceeding when it could well have properly determined in the first that appellant was not and never would be a likely candidate for executive clemency").

A Remedy Remains

Zakrzewski's clemency-related claims fail for another reason. He, or his counsel, can submit whatever they want to be considered in support of clemency at any time before his execution. *See Zack*, 2023 WL 6376654, at *6 ("Because the Clemency Rules do not prevent Zack from submitting the updated FAS materials, we cannot conclude that the Board's purported failure to consider them violated Zack's right to due process.").

The DeSantis administration has invited postconviction counsel to submit clemency materials in the past and accepted their submissions. *Bowles v. DeSantis*, 934 F.3d 1230, 1236, 1245-46 (11th Cir. 2019). As a result, Zakrzewski cannot show an Eighth Amendment, equal protection, or due process violation for failure to provide him an update when he, or his postconviction counsel, can provide an update that will be considered before his execution.[9] The decision to grant clemency and call off

[9] The Attorney General's office has reconfirmed with Rana Wallace, counsel for the Florida Commission on Offender Review, that additional clemency submissions will be considered. And, as a matter of Florida Constitutional

Zakrzewski's execution based on that submission or deny it "lies exclusively with the Governor and the Clemency Board." *Zack*, 2023 WL 6376654, at *6.

Because these claims are insufficiently pleaded, untimely, procedurally barred, and meritless under their respective legal standards, this claim should be summarily denied.

## CONCLUSION

Zakrzewski's claims are untimely, procedurally barred, untimely, not cognizable, and meritless. Accordingly, this Court should summarily deny Zakrzewski's fifth successive postconviction motion.

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law, nothing can constrain the Executive Branch's unbridled discretion to grant clemency "at any time, for any reason." *See* Fla. R. Exec. Clemency 4.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of July, 2025, the foregoing **STATE'S ANSWER TO FIFTH SUCCESSIVE POSTCONVICTION MOTION** was electronically filed with the Clerk of the Court via the Florida Courts E-Portal Filing System for service to the following: The **Honorable Lacey Powell Clark**, Circuit Court Judge, judge.clark@Flcourts1.gov, Amanda.Bailey@Flcourts1.gov; **Lisa M. Fusaro**, Assistant Capital Collateral Regional Counsel – North, Lisa.Fusaro@ccrc-north.org; **Alicia A. Hampton**, Assistant Capital Collateral Regional Counsel – North, Alicia.Hampton@ccrc-north.org; **Bridgette Jensen**, Chief Assistant State Attorney, bjensen@osa1.org.; **Matthew Casey**, Assistant State Attorney, mcasey@osa1.org; **Christina Porrello**, Senior Attorney, Florida Department of Corrections, Christina.Porrello@fdc.myflorida.com; **Kristen Lonergan**, Executive Senior Attorney, Florida Department of Corrections, Kristen.Lonergan@fdc.myflorida.com; **William Gwaltney**, Senior Attorney, Florida Department of Corrections, bill.gwaltney@fdc.myflorida.com and the **Florida Supreme Court Clerk**, warrant@flcourts.org.

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**IN THE FIRST JUDICIAL CIRCUIT COURT**
**IN AND FOR OKALOOSA COUNTY, FLORIDA**

**EXECUTION SCHEDULED FOR JULY 31, 2025**
**AT 6:00 P.M. ET (5:00 P.M. CT)**

**TRIAL COURT PROCEEDINGS MUST BE COMPLETED**
**by Monday, July 14, 2025, at 11:00 a.m. ET (10:00 a.m. CT)**

STATE OF FLORIDA,

*Plaintiff,*

v.

EDWARD J. ZAKRZEWSKI,

*Defendant.*
_____/

Case No.: 1994-CF-01283
CAPITAL CASE

STATE'S RESPONSE TO MOTION FOR STAY OF EXECUTION

On July 9, 2025, Edward J Zakrzewski, represented by state postconviction counsel Capital Collateral Regional Counsel – Northern Region ("CCRC-N"), filed his Motion for Stay of Execution ("Motion"). In short, he asserts that the "truncated litigation schedule . . . deprives him of due process, fundamental fairness and his right to access to counsel and the courts" and meaningful postconviction proceedings. Motion at 2-3. This argument is meritless and

Zakrzewski fails to meet the requirements for this Court to grant his Motion and stay his execution.

## BACKGROUND, PROCEDURAL HISTORY, AND CURRENT WARRANT LITIGATION

On June 9, 1994, Edward Zakrzewski murdered his wife and two young children, [redacted] Zakrzewski pleaded guilty and was sentenced to death for all three murders. The detailed facts of the case and procedural history are set forth in the Facts of the Crime and Procedural History filed for the benefit of the Court on July 2, 2025.

Governor Ron DeSantis signed a death warrant on Tuesday, July 1, 2025, scheduling Zakrzewski's execution for July 31, 2025, at 6:00 p.m. ET (5:00 p.m. CT). In accordance with the Florida Supreme Court's order mandating that trial court proceedings be concluded by Monday, July 14, 2025, this Court issued its scheduling order on July 2, 2025.

Zakrzewski filed his fifth successive Fla. R. Crim. P. 3.851 motion on July 9, 2025, raising three claims: 1) the trial court's override of the jury's recommendation for a life sentence for the murder of [redacted] the compressed warrant schedule

violates the Fifth, Sixth, and Fourteenth Amendments; and (3) Florida's clemency process is arbitrary and violates the Fifth, Eighth, and Fourteenth Amendments. The State of Florida ("State") answered his successive postconviction motion on July 10, 2025, asserting that all of the claims were procedurally barred, untimely, not cognizable, legally insufficient, or meritless as a matter of law under controlling precedent. Further, since none of the claims hinged on factual issues, Zakrzewski was not entitled to an evidentiary hearing.

Zakrzewski contemporaneously filed his Motion for Stay of Execution with the postconviction motion. Although Zakrzewski only focuses on Claim Two: the compressed warrant litigation schedule. The State requests this Honorable Court deny the Motion as Zakrzewski failed to meet the standards required to grant a stay of execution.

Standard for Motions to Stay Execution
Substantial Grounds for Relief

A capital defendant has no constitutional right to a stay of execution. The United States Supreme Court has noted that a stay of execution is an equitable remedy that is not available as a matter of right. *Hill v. McDonough*, 547 U.S. 573, 584 (2006); *see also Long v.*

*Sec'y, Dep't of Corr.*, 924 F.3d 1171, 1176 (11th Cir. 2019) (observing that a stay of execution is "an equitable remedy and all of the rules of equity apply"); *Ex parte Chesser*, 112 So. 87, 89 (Fla. 1927) (stating that a stay of execution is based on public policy and a sense of propriety rather than any right of the convict). The United States Supreme Court has observed, last minute stays "should be the *extreme exception*, not the norm." *Barr v. Lee*, 591 U.S. 979, 981 (2020) (quoting *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019), vacating a stay of execution of a federal prisoner granted by a lower court). (emphasis added). Courts should "police carefully" against last minute claims being used "as tools to interpose unjustified delay" in executions. *Id.*

Zakrzewski must show that there are "substantial grounds for relief" in order be granted a stay of execution. *James v. State*, 404 So. 3d 317, 328-29 (Fla. 2025) (denying a stay of execution because the defendant failed to raise "substantial grounds upon which relief might be granted" quoting *Buenoano v. State*, 708 So. 2d 941, 951 (Fla. 1998), and *Bowersox v. Williams*, 517 U.S. 345 (1996)), *cert. denied, James v. Florida*, 145 S. Ct. 1351 (2025); *Dillbeck v. State*, 357

So. 3d 94, 103 (Fla. 2023) (denying a stay of execution because the claim was not "substantial" citing *Davis v. State*, 142 So. 3d 867, 873-74 (Fla. 2014)); *Barwick v. State*, 361 So. 3d 785, 791 (Fla. 2023) (affirming the lower court's denial of a stay because the defendant did not "establish any substantial grounds upon which relief might be granted"), *cert. denied*, *Barwick v. Florida*, 143 S. Ct. 2452 (2023). Zakrzewski has not provided substantial grounds to stay his execution.

Reasons to Deny the Stay

Zakrzewski raised three claims in his successive postconviction motion, in support of his motion for stay. However, he solely relies on Claim 2 regarding the 30-day warrant litigation period to support his motion for stay.[1] This claim is not substantial in order to grant a stay as it is and meritless as a matter of law under controlling Florida Supreme Court precedent.

[1] The State asserts that none of the three successive postconviction claims are substantial. As argued in its answer, all of the claims are procedurally barred, untimely, not cognizable, legally insufficient, or meritless as a matter of law under controlling precedent

The Florida Supreme Court has recently affirmed trial court denials of motions to stay based on claims that a compressed warrant schedule violated the defendant's due process rights. *See Bell v. State*, 2025 WL 1874574 (Fla. July 8, 2025); *Barwick v. State*, 361 So. 3d 785, 789-90 (Fla. 2023), *cert. denied*, 145 S. Ct. 1914 (2025); *Tanzi v. State*, 407 So. 3d 385, 390-91 (Fla. 2025); and *Hutchinson v. State*, 2025 WL 1198037, at *4 (Fla. Apr. 25, 2025), *cert. denied*, *Hutchinson v. Florida*, 2025 WL 1261217 (U.S. May 1, 2025).

Zakrzewski does not present a substantial claim. Instead, he asserts a highly speculative allegation that because of the compressed warrant schedule, "substantial claims will be inadequately considered or not considered at all," denying him due process unless a stay is granted. Motion at 4. Just as he did in the successive postconviction motion on this claim, Zakrzewski's does not identify or assert even one claim, substantial or otherwise, that has not or will not be considered in these proceedings.

Throughout the Motion, he generically states that his due process rights are violated, without giving a definitive example of one issue that is not being addressed or that he cannot raise. *See Dillbeck*, 357 So. 3d at 103 (denying motion for stay of execution

stating, "[p]ostconviction relief cannot be based on speculative assertions" (quoting *Jones v. State*, 845 So. 2d 55, 64 (Fla. 2003))).

Finally, Zakrzewski's anecdotal argument that the Governor's decision to sign his death warrant and simultaneously extend the Independence Day holiday for state agencies created added complications for the agencies. Motion at 3. While Zakrzewski's concern for state agency personnel who litigate warrant proceedings is magnanimous, it is of no merit. Simply, put, State agencies and their employees, even those litigating active warrant proceedings, serve the interests of the State of Florida and do whatever it takes to accomplish that end.

Importantly, in the context of an active death warrant, the State also serves the interests of the surviving families, who have an enormous interest in the finality and timely enforcement of valid criminal judgments. *See Ledford v. Comm'r, Ga Dep't of Corr.*, 856 F.3d 1312, 1320 (11th Cir. 2017) (denying an emergency stay of execution in a capital case because the claims were time-barred, not substantial, as well as due to the delay in raising the claims and noting the State and the victims' interest in the finality of the sentence). The people of Florida, as well as the surviving victims,

"deserve better" than the "excessive" delays that now typically occur in capital cases. *Bucklew*, 587 U.S. at 149.

This Court should deny Zakrzewski's attempt to rob his victims of finality by staying the execution of a capital sentence that was imposed over thirty years ago. Justice requires that Zakrzewski's sentence be carried out without further delay, and the equities of the case weigh against him and in favor of the State and of the victim's family members —who have patiently waited over thirty years to see justice done. *Gomez v. United States Dist. Court,* 503 U.S. 653, 654, 112 S. Ct. 1652, 1653 (1992) (observing that "[e]quity must take into consideration the State's strong interest in proceeding with its judgment."); *Hill v. McDonough*, 464 F.3d 1256, 1259 (11th Cir. 2006) (refusing to grant a stay and discussing the strong equitable principles against a stay).

WHEREFORE, the State of Florida respectfully urges this Honorable Court to deny Zakrzewski's motion for stay of execution because a compressed warrant schedule is not a substantial ground required to grant a stay.

Respectfully submitted,

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CO-COUNSEL FOR THE STATE OF FLORIDA

## CERTIFICATE OF SERVICE

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Assistant Attorney General

CO-COUNSEL FOR THE STATE OF FLORIDA

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT**
**IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**vs.**

**EDWARD J. ZAKRZEWSKI, II,**

**Defendant.**

**CASE NO.: 1994-CF-1283**
**DIV.: 001**
**DEATH WARRANT SIGNED FOR EXECUTION - JULY 1, 2025**

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**ORDER ON SECOND CASE MANAGEMENT CONFERENCE**
**AND**
**DENYING EVIDENTIARY HEARING ON**
**DEFENDANT'S POSTCONVICTION CLAIMS**

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**THIS MATTER** is before the Court for proceedings relating to the death warrant signed by the Honorable Ron DeSantis, Governor of Florida, on July 1, 2025. An execution date of July 31, 2025, has been set. On July 9, 2025, Defendant filed a Successive Motion to Vacate Judgment and Death Sentences pursuant to Florida Rule of Criminal Procedure 3.851. On July 10, 2025, the State filed its response.

On July 10, 2025, the Court conducted a second case management conference via Zoom to hear argument on whether an evidentiary hearing is necessary to resolve Defendant's postconviction claims. The following persons were present: Lisa Fusaro and Alicia Hampton of the Office of Capital Collateral Regional Counsel – North; Janine Robinson, Jason Rodriguez, and Charmaine Millsaps of the Office of the Attorney General; Bridgette M. Jensen of the Office of the State Attorney; William Gwaltney and Christina Porrello of the Florida Department of Corrections; Valarie Walker, Deputy Clerk, Office of the Okaloosa County Clerk of Court; and Kim Sanders, Official Circuit Court Reporter.

After considering the motion, the State's response, the relevant legal authority, and the arguments of the parties, the Court finds that an evidentiary hearing is not necessary to resolve Defendant's claims.

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Defendant's request for an evidentiary hearing is **DENIED**.
2. The evidentiary hearing previously scheduled for July 11, 2025, is cancelled.

**DONE AND ORDERED** in Fort Walton Beach, Okaloosa County, Florida.

07/10/2025 14:25:35

signed by CIRCUIT COURT JUDGE LACEY POWELL CLARK 07/10/2025 02:25:35 P2gkr-Ud

**LACEY POWELL CLARK**
**CIRCUIT COURT JUDGE**

LPC/may

**Clerk of Court to Serve a Copy of this Order on the Following:**

**EDWARD J. ZAKRZEWSKI, II**, DC No. 554000, Florida State Prison, Post Office Box 800, Raiford, Florida 32083

**ALICIA HAMPTON**, Assistant Capital Collateral Counsel-Northern Region, Alicia.Hampton@ccrc-north.org

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**FLORIDA SUPREME COURT**, warrant@flcourts.org

Filing # 227085153 E-Filed 07/11/2025 02:36:17 PM

IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA

STATE OF FLORIDA,

vs. CASE NO: 1994-CF-1283

EDWARD JAMES ZAKRZEWSKI, II,

Defendant

_____/

Proceedings held in the above-styled cause before the Honorable LACEY POWELL CLARK, Circuit Judge, on the 10th day of July, 2025, appearing remotely via video conferencing.

KIM SANDERS
CIRCUIT COURT REPORTER

APPEARANCES:

| | |
|---|---|
| FOR THE STATE: | CHARMAINE MILLSAPS, ESQUIRE<br>Senior Assistant Attorney General<br>JANINE D. ROBINSON, ESQUIRE<br>JASON RODRIGUEZ, ESQUIRE<br>Assistant Attorney General<br>The Capitol - Pl-01<br>Tallahassee, FL 32399 |
| | BRIDGETTE JENSEN, ESQUIRE<br>Assistant State Attorney<br>190 Governmental Center<br>Pensacola, FL 32502 |
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| FOR THE DEPARTMENT OF CORRECTIONS: | CHRISTINA PORRELLO, ESQUIRE.<br>WILLIAM GWALTNEY, ESQUIRE<br>Assistant General Counsel<br>501 South Calhoun Street<br>Tallahassee, FL 32399 |

P R O C E E D I N G S

THE COURT: Good afternoon. I'm Judge Clark. And we are here on Case 1994-CF-1283, State of Florida vs. Edward James Zakrzewski, II, and we are here for our second case management conference. And let me get appearances, but first let me make sure -- yes, I have a court reporter present and I have the clerk's office present, so let me get appearances starting with counsel for the defendant.

MS. FUSARO: Lisa Fusaro from CCRC-North for the defense and then I also have Alicia Hampton, my co-counsel here on Zoom.

THE COURT: Wonderful. Thank you.

And who do I have present from the attorney general's office?

MS. ROBINSON: Good afternoon, Your Honor. Janine Robinson and we have two others who will announce.

MS. MILLSAPS: Assistant Attorney General Charmaine Millsaps from Tallahassee, Florida with the attorney general's office.

MR. RODRIGUEZ: And Jason Rodriguez also with the attorney general's office.

THE COURT: Thank you. And it looks like I have some people present from the Department of

Corrections.

MR. GWALTNEY: Yes, Your Honor. William Gwaltney on behalf of the Department of Corrections and my colleague Christina Porrello is here as well.

THE COURT: Great. And then it looks like I also have Ms. Jensen is present.

MS. JENSEN: Yes, ma'am. Bridgette Myers-Jensen for the state attorney's office.

THE COURT: Wonderful. Thank you. And other than our court reporter and our clerk, is there anyone in the hearing who has not made an appearance? Okay. I think I got everybody. All right.

So the defendant's successive motion to vacate judgment and death sentences under Florida Rule of Criminal Procedure 3.851 after death warrant signed. That's the title of the motion that was filed yesterday. I have thoroughly reviewed it. And then this morning the State, through the attorney general's office, filed State's answer to fifth successive postconviction motion, which I thoroughly reviewed as well.

And before I hear legal argument, are there any preliminary matters I need to address? Okay. In light of that, whenever the Defense is ready you may proceed.

MS. FUSARO: Yes, Your Honor. I'll go claim by claim. The first claim I just wanted to make it clear that this claim is not based solely on the jury override. It's the fact that all three of his death sentences would be unconstitutional today, not only in Florida but everywhere else in the country. Florida does have the lowest margin at 8-4, but not one single state offers a 7-5 or 6-6 death sentence. So that also shows that the evolving standards of decency in the U.S.

Next I wanted to point out that defendants like Mr. Zakrzewski that were raising claims that were based on the unconstitutionality of Florida's death penalty scheme for literally decades before Hurst's progeny came out. Mr. Zakrzewski even raised this issue of a bear majority vote for death being unconstitutional prior to his own trial. And if defendants like him hadn't been raising these claims like under *Apprendi v. New Jersey* since 2000 and *Ring v. Arizona* since 2002, even though they've been denied many times before, then we wouldn't have had *Hurst v. Florida* in 2016.

We also submit that the issue only became ripe upon signing of his warrant because if his warrant was never signed, then he would, in essence, be getting a

life sentence in prison if he passed away of natural causes in prison. So we just submit that the failure to recognize, reconsider and correct the fact that all three of his death sentences are unconstitutional would result in manifest injustice. And we submit that the only constitutional sentence for Mr. Zakrzewski is three life sentences without the possibility of parole.

And since he was remorseful and took responsibility for his actions and pled guilty, if he had three life constitutional life sentences, then finality would finally be achieved in this case but he wouldn't have to be executed.

THE COURT: Thank you. Do you -- well, does the attorney general's office wish to argue claim by claim or do you wish for the defense to go through all three claims and then you respond to all three?

MS. ROBINSON: It's entirely up to Your Honor. I mean, I'm not going to be lengthy about it because we will stand on our motion, so it's entirely what the Court wants to do if you want to go claim by claim.

THE COURT: Okay. Let's maybe do that if you don't mind. So whoever will be arguing for the attorney general's office go ahead.

MS. ROBINSON: Janine Robinson for the attorney general. I'll speak to claim one. As I said,

we stand on our answer, but a couple of things that are very important. One, as counsel said, he did challenge the constitutionality of the statute that was in effect at the time of his trial. That was rejected. And the validity of the statute at the time stands and there is nothing retroactive to apply to undo his death sentences. He also -- tangentially he applied for *Hurst* relief. I believe it was in his third successive motion, that was denied. So this claim is procedurally barred and overall not cognizable as a postconviction claim. I don't know if either one of my colleagues have anything to add.

THE COURT: Okay. Thank you. And would the Defense wish to reply to the State's argument on claim one?

MS. FUSARO: We will stand on our motion. In essence, we acknowledge the fact that he did not get *Hurst* relief and he did bring it up, but it's still a manifest injustice regardless.

THE COURT: Thank you. And, Ms. Fusaro, would you like to be heard on claim two?

MS. FUSARO: Yes. On claim two we just want to note that this claim doesn't arise from any one factor. The claim stems from a combination of all the different factors that affected Mr. Zakrzewski during

this warrant period. First we have the short time frame of the warrant time period. Then we have the extended holiday weekend. And then we also have the fact that another death row inmate is on death watch at the same time as him. So I know the State has argued that other warrants have proceeded over holiday weekends previously and I'm aware that both of our agencies, as well as others, have been litigating these over the holiday weekends. But at least the ones I've litigated, those holidays never fell in that first crucial week where you need to investigate and pursue all your claims, and depending on the case, you have to attempt to find experts who are available and coordinate time with DOC to see your client where they have an evaluation done, things of that nature.

So the need for more time and access also ties into our third claim because the State said that we should have been able to produce more specific evidence. But when you have less than eight days to investigate, pursue and draft all the legal claims in the 3.851, and half of those fell on a holiday weekend, obviously that's a constitutional issue in our eyes.

And other than that, there were other claims that we were trying to investigate, but again, with the nature of the time, it's kind of hard and since it's --

I don't want to get in too much because it's health issues, but there were other things we were trying to investigate.

THE COURT: Thank you. And for the attorney general's office?

MS. ROBINSON: Janine Robinson again and just briefly. The Capital Collateral Regional Counsel North has had three years to investigate successive claims. Ms. Dawn McCready, with CCRC-North, entered her appearance in 2022 so that is not a persuasive argument that because the warrant was signed the week of a holiday, and as we cited in *Barwick*, similar situations have happened and in the last several months there have been overlapping death warrant litigation and death warrant defendants so none of those claims have merit and otherwise we stand on our written submission.

THE COURT: Thank you. And, Ms. Fusaro, would you like to reply?

MS. FUSARO: Just briefly. One of the claims that again, like I said, just for confidentiality, I don't want to get in too much but it had something to do with a procedure that happened last month, so obviously no one could have brought that up ahead of time unfortunately.

Other than that in terms of the overlapping

warrants, some individuals have much more litigation than others. Some have more family than others. Mr. Bell has been working towards all sorts of different claims so he's been very busy with his attorney so it's been harder to get in.

THE COURT: I'm taking notes. Thank you for your patience. All right. Thank you.

And as to claim three?

MS. FUSARO: Yes, Your Honor. I know the State has raised that we haven't parsed out the subclaims of claim three and I do apologize. The claim probably would have read better if I had broken it down into subclaims. If Your Honor deems it necessary I would be happy to amend the motion if need be, but if not, I'll just address a couple of points on it for now.

In essence, the whole clemency process is subject to public records -- if it was subject to public records demand instead of being confidential or if we had more time to investigate, then we would have been able to present evidence to prove that there is discrimination that's violating the equal protection clause. Other inmates did receive updated clemency review and those other inmates did receive it under Governor's DeSantis' administration.

Also with those tools if we had been to investigate further or had more time, we could have also proved how arbitrary it was in terms of the denial of due process based on the unfairness and the arbitrary of deprivation of life based on how the clemency process works or lack thereof. And we could not bring this claim before now because we had no idea this was an issue until Mr. Zakrzewski's warrant was signed. He didn't get an updated round of clemency but he had no way to know he wasn't getting an updated round of clemency until his warrant was signed, so he had no idea he wasn't being treated the same and that he was being arbitrarily until his warrant was signed and he did not get an updated round of clemency. That was all I had on that one.

THE COURT: And for the attorney general's office?

MR. RODRIGUEZ: Your Honor, I'll address claim three. And so I'll begin with the idea of more time to investigate. I do think that it's important to put this in the proper context, which is, we're talking about a conviction and sentence that have been litigated for the better part of almost thirty years now I think. There has been a lot and ample time to investigate to raise claims. And none of the claims

they raised are new. Equal protection, due process and Eighth Amendment arbitrariness have been litigated as it pertains to Florida's clemency for decades, so there is no excuse for just investigating the claim after a warrant is signed.

The idea that other inmates did receive clemency under Governor DeSantis is the allegation now at this point -- or did receive update rather under Governor DeSantis without -- of really end up analysis of those individuals in specific, you can't establish an equal protection violation. The mere fact that some people get it and some people don't, isn't an indication that they are actually similarly situated.

Mr. Zakrzewski is fairly unique when it comes to what he did. He murdered his wife and two young children with a machete. And we cited *Rutherford* from the Florida Supreme Court basically saying that the executive branch could do a clemency review and then decide, you know, look, this guy isn't going to be a candidate for clemency. I'm not saying that's what's happened here, but the Florida Supreme Court has said there's a rational basis effectively to update some and not update others. So without significant more information, there is no equal protection challenge.

And the idea that they've been precluded from

investigating because of the public records issues, I would note that even in federal court when you raise a selected prosecution claim, you're not entitled to discovery automatically because of the presumption that the executive branch is doing its duty in a constitutional way. They require a threshold showing. And Florida does the same thing. We cited *Hannon* from 2017 in the Florida Supreme Court in our response saying, you know, if you don't have any allegations to overcome that presumption, you don't get Rule 3.852 demands granted as well.

So the last thing that I will address is the ripeness aspect. The Florida Supreme Court in *Ferguson* rejected the idea that clemency related claims are not ripe until a warrant is signed. And I think the logic behind it if you look at it is as they pointed out Mr. Zakrzewski had his clemency in 2007. At some point, in CCRC's view, it became so stale that a warrant could not be signed whether that happened five years, ten years, whether it happened simultaneously with the denial of his last postconviction motion, I think it was denied in 2017 or 2018, at some point in their view the clemency investigation and proceedings in 2007 became too stale to sign a death warrant and that didn't happen until after the warrant was signed.

That means they could have raised that claim earlier and said ultimately you can't sign a death warrant on him until you give him a fair clemency.

And I apologize, the actual last thing that I wanted to say is as the Eleventh Circuit recognized in *Zack*, the fact that they have a complete cure for this issue means relief can't be granted on it. They can send whatever they want to the clemency board and to Governor DeSantis and it will, in fact, be considered. So there is a complete cure that is still available to them that cures all of the equal protection, due process and Eighth Amendment claims that they claim are there even though all of those claims have been rejected. And so because there is that complete cure, there's really no basis to bring this claim in state court rather than petition the Governor for clemency.

THE COURT: Thank you. And, Ms. Fusaro, anything further?

MS. FUSARO: Yes, Your Honor. I also just want to make the record clear that CCRC-North just took over this case after postconviction counsel that Mr. Zakrzewski previously had, Marty McLean, passed away, so we haven't had it for maybe as long as they may have thought. But I do want to mention, though, in terms of submitting additional clemency materials, we

will be accepting their invitation and we will submit those.

Other than that, if we had more time we could have done our own investigation. I mean, I know I have had clients that have updated clemency. A lot of my colleagues have. But with the limited time frame and I couldn't get ahold of that many people over on the weekend, so it's just been a little difficult. But I do submit to you that there are inmates that have just as terrible crimes that have gotten updated reviews.

THE COURT: All right. Thank you. Anything further, Ms. Fusaro, on anything to do with your motion, any further arguments you wish to make on anything?

MS. FUSARO: No. I just want to clarify whether you wanted me to amend on that third one to purse them out.

THE COURT: Give me just a minute on that if you would, please. I'm going to take a quick break.

MR. RODRIGUEZ: Your Honor, I may be able to jump in and make it easier.

THE COURT: Okay.

MR. RODRIGUEZ: Our position is ultimately that any amendment is going to be futile because, you know, even without that pleading deficiency, the claims

fail on the merits and for all the other reasons that we've given. So futility is a reason to deny amendments of any kind.

THE COURT: Thank you. Thank you.

Ms. Fusaro, do you want to speak to that?

MS. FUSARO: No, Your Honor. I just wanted to make sure if you were expecting something that I wanted to make sure I produced it to you.

THE COURT: If you will excuse me one second, maybe longer than a second, and I'll be right back.

(Pause in proceedings)

THE COURT: Thank you very much for your patience everyone. I'm back. So the question was about -- Ms. Fusaro, you asked whether the Court wished for you to amend claim three. Based on the time constraints that we are under as to the requirement to separately plead a number of claims and subclaims, the Court will look beyond the pleading deficiencies in claim three and consider the substance of the claims.

MS. FUSARO: Thank you, Your Honor.

THE COURT: Sure. Anything further I need to cover?

MS. ROBINSON: Nothing from the State, Your Honor.

MS. FUSARO: Nothing from the Defense.

THE COURT: Okay. I was just checking my time. It looks like I have about an hour and a half to get an order done. I need to get to work on it right away and I will meet that deadline. Thank you all very, very much. And I will get the order out just as quickly as I can.

MS. ROBINSON: Thank you, Your Honor.

THE COURT: Thank you.

(Proceedings concluded)

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF OKALOOSA

I, KIM SANDERS, Official Court Reporter, do hereby certify that the foregoing, being pages numbered 1 through 17, inclusive, is a true and correct transcript of the proceedings held remotely via videoconferencing in the case of STATE OF FLORIDA vs. EDWARD JAMES ZAKRZEWSKI, II, Case No. 1994-CF-1283, on the 10th day of July, 2025, before the Honorable LACEY POWELL CLARK, Circuit Judge.

IN WITNESS WHEREOF, I have hereunto set my hand, this the 11th day of July, 2025.



KIM SANDERS
Official Circuit Court Reporter

Filing # 227150866 E-Filed 07/14/2025 09:51:33 AM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT**
**IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**vs.**

**EDWARD J. ZAKRZEWSKI, II,**

**Defendant.**

**CASE NO.: 1994-CF-001283A**
**DIV.: 001**
**DEATH WARRANT SIGNED FOR EXECUTION – JULY 1, 2025**

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**ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION TO VACATE JUDGMENT AND DEATH SENTENCES AND MOTION FOR STAY OF EXECUTION WITH DIRECTIONS TO CLERK**

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**THIS CAUSE** is before the Court on Defendant's Successive Motion to Vacate Judgment and Death Sentences, filed on July 9, 2025, pursuant to Florida Rule of Criminal Procedure 3.851, and on Defendant's Motion for Stay of Execution, also filed on July 9, 2025. Having considered the motions, record, the State's Answer to the Fifth Successive Postconviction Motion, State's Response to the Motion for Stay of Execution, and the applicable law, the Court finds as follows:

**Background**

On June 9, 1994, after receiving a call from his [redacted] informing Defendant that his wife [redacted] was filing for divorce, Defendant used his lunch break to purchase a machete, took it home, sharpened it, and positioned it behind the bathroom door in their house. He also placed a crowbar and pieces of rope in a bedroom. Defendant then went back to work and completed his shift. Once everyone returned home that evening, Defendant had [redacted] and his [redacted] go into another room before he hit [redacted] in the

head with the crowbar and then choked her with the rope. After he choked [redacted] Defendant went to the bathroom, called [redacted] and murdered him with the machete. Defendant proceeded to call [redacted] to the bathroom where he then murdered [redacted] with the machete. On Monday, June 13, 1994, [redacted] were found dead in the bathroom; all three victims had been struck with the machete.

Defendant subsequently pleaded guilty to three counts of first-degree murder, and after the penalty phase, the jury recommended the death penalty for the murders of [redacted] and [redacted] but recommended life for the murder of [redacted] The Court affirmed the jury's death sentence recommendation for [redacted] and [redacted] but overrode the jury's recommendation of life for the murder of [redacted] and imposed another death sentence.

Defendant filed a direct appeal, and the Florida Supreme Court affirmed Defendant's conviction and death sentences.[1] The Supreme Court of the United States denied Defendant's petition for certiorari review on January 25, 1999.[2] Defendant then filed his initial motion for postconviction relief which was denied after an evidentiary hearing on June 17, 2002. On appeal, the Florida Supreme Court affirmed the denial.[3] Defendant then attempted to seek relief in federal court between 2004 and 2009.[4]

While he was seeking relief in federal court, Defendant continued to seek relief through this Court by filing the first of four successive motions for postconviction relief in 2007. Defendant filed his second, third, and fourth successive motions for postconviction relief between 2010 and 2017. Ultimately, all four successive motions for postconviction relief were

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[1] Zakrzewski v. State, 717 So. 2d 488 (Fla. 1998).
[2] Zakrzewski v. Florida, 525 U.S. 1126 (1999).
[3] Zakrzewski v. State, 866 So. 2d 688 (Fla. 2003).
[4] See Zakrzewski v. McDonough, No. 3:04CV66/RV, 455 F.3d 1254 (11th Cir. 2006); Zakrzewski v. McDonough, 2007 WL 2827735 (N.D. Fla. Sept. 26, 2007), aff'd sub nom. Zakrzewski v. McNeil, 573 F.3d 1210 (11th Cir. 2009); Zakrzewski v. McDonough, No. 3:04CV66/RV, 490 F.3d 1264 (11th Cir. 2007); Zakrzewski v. McDonough, 2008 WL 150050 (N.D. Fla. Jan. 14, 2008); Zakrzewski v. McNeil, 573 F.3d 1210 (11th Cir. 2009).

denied. Defendant appealed all four denials, and the Florida Supreme Court affirmed all denials on appeal.[5] During the pendency of Defendant's fourth successive motion, Defendant filed a petition for writ of habeas corpus in the Florida Supreme Court, which was denied on May 25, 2017.[6]

On July 1, 2025, Governor DeSantis signed Defendant's death warrant. That same day, the Florida Supreme Court entered an order setting time constraints on the proceedings. Pursuant to that order, all proceedings in the trial court shall be completed and orders entered no later than 10:00 a.m. Central, 11:00 a.m. Eastern, on Monday, July 14, 2025.

This Court held a capital postconviction case management conference via Zoom on July 2, 2025, pursuant to rule 3.851(h)(6). Following the hearing, the Court entered an order on the case management conference scheduling the remaining filing deadlines and hearings. Then on July 3, 2025, Defendant filed multiple demands for additional public records pursuant to rule 3.852(i). On July 7, 2025, the following entities filed objections to Defendant's demands: the Office of the Attorney General; the Office of the Medical Examiner, District Eight; the Executive Office of the Governor; the Florida Department of Law Enforcement; the Florida Department of Corrections; the Florida Commission on Offender Review; the Okaloosa County Clerk of Court; the Okaloosa County Sheriff's Office; and the Office of the State Attorney for the First Judicial Circuit. On July 8, 2025, the Court held a hearing via Zoom on the demands and objections. Following the hearing, the Court entered an order sustaining all objections and denying the demands.

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[5] Zakrzewski v. State, 13 So. 3d 1057 (Fla. 2009) (affirming denial of successive postconviction motion); Zakrzewski v. State, 115 So. 3d 1004 (Fla. 2012) (affirming denial of second successive postconviction motion); Zakrzewski v. State, 147 So. 3d 531 (Fla. 2014) (affirming denial of third successive postconviction motion); Zakrzewski v. State, 254 So. 3d 324 (Fla. 2018) (affirming denial of fourth successive postconviction motion).

[6] Zakrzewski v. Jones, 221 So. 3d 1159 (Fla. 2017).

On July 10, 2025, this Court held a second case management conference to hear arguments from the parties as to whether an evidentiary hearing would be needed to address the claims raised in Defendant's Successive Motion to Vacate Judgment and Death Sentences. That same day, the Court entered an order denying Defendant's request for an evidentiary hearing.

**SUCCESSIVE MOTION TO VACATE JUDGMENT AND DEATH SENTENCES**

Defendant raises three claims for relief and requests a stay of execution, an evidentiary hearing on his claims, leave to amend his motion "should new claims, facts, or legal precedent become available[,]" vacation of his judgment and death sentences and/or commutation to life sentences without the possibility of parole, and any other relief the Court deems appropriate. The Court declines to grant relief for the reasons discussed below.

**Claim 1**

*The Execution of an Individual Whose Jury Vote Would Make Him Ineligible for the Death Penalty Today, is Arbitrary and Violates the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and the Corresponding Provisions of the Florida Constitution*

Generally, a motion to vacate judgment of conviction and sentence of death must be filed within one year after the judgment and sentence become final. Fla. R. Crim. P. 3.851(d)(1). There are limited exceptions to the one-year time limit. The exceptions are set forth in rule 3.851(d)(2) as follows:

> No motion may be filed or considered under this rule if filed beyond the time limitation provided in subdivision (d)(1) unless it alleges:
>
> (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.

Defendant claims he is being deprived of rights under the Equal Protection Clause and the Fifth, Eighth, and Fourteenth Amendments, and he requests that his death sentences be "commuted to three life sentences" or that he be given a new penalty phase. Specifically, Defendant seeks relief claiming that the jury recommendations that he received following the penalty phase of his trial would, if received today, render him ineligible for a death sentence under the current version of section 921.141(2)(c), Florida Statutes. In a similar vein, Defendant challenges the judicial override of the jury's recommendation of a life sentence for the murder of [redacted]

Defendant's judgment and sentence became final decades ago, and he fails to establish how any of the exceptions to the one-year time limit in rule 3.851(d)(2) apply to his claim. To the extent Defendant attempts to suggest that rule 3.851(d)(2)(B) applies based on a "fundamental constitutional right," Defendant fails to establish, or even allege, that section 921.141(2)(c), Florida Statutes, applies retroactively. For at least that reason, the Court finds that Claim 1 is untimely.

Further, Defendant's argument that even when "*Tedder* was still good law, ***three*** [Florida Supreme Court] Justices found that [Defendant]'s jury override sentence was 'in direct violation of the law'"[7] doesn't provide a basis for relief. Defendant fails to point out that the **majority** concluded "that 'no reasonable person could differ' as to the appropriateness of the death penalty for the murder of [redacted] Accordingly, we find that the trial court did not err in overriding the

[7] Tedder v. State, 322 So. 2d 908 (Fla. 1975), abrogated by Hurst v. Florida, 577 U.S. 92 (2016).

jury's recommendation of life for the murder of [redacted]" Zakrzewski v. State, 717 So. 2d 488, 494 (Fla. 1998). Moreover, because this issue was raised on appeal, at which time this Court's ruling was affirmed, this portion of Defendant's claim is procedurally barred. See Hendrix v. State, 136 So. 3d 1122, 1124 (Fla. 2014) ("A successive postconviction motion may not be used to relitigate a claim that has been raised and rejected on direct appeal."); Freeman v. State, 761 So. 2d 1055, 1067 (Fla. 2000); Francis v. Barton, 581 So. 2d 583, 584 (Fla. 1991) ("Issues raised and disposed of on direct appeal are procedurally barred in postconviction proceedings.").

However, Defendant further asserts that the law of the case doctrine should not apply based on changes in the law, specifically, the decision in Hurst v. Florida, 577 U.S. 92 (2016), and the 2023 revisions to section 921.141, Florida Statutes. Therefore, according to Defendant, "his case was decided wrong previously and manifest injustice would result from letting his death sentences stand."

Defendant previously raised the argument that Hurst applies to his case on appeal;[8] therefore, this claim is procedurally barred. See Fla. R. Crim. P. 3.851; Hendrix, 136 So. 3d at 1125. Defendant attempts to differentiate this claim from his prior claims by making an "Eighth Amendment 'evolving standards of decency'" argument; however, the Florida Supreme Court has "rejected similar claims." James v. State, 404 So. 3d 317, 327 (Fla. 2025), cert. denied sub nom. James v. Florida, 145 S. Ct. 1351 (2025); see also Zack v. State, 371 So. 3d 335, 347 (Fla. 2023), cert. denied sub nom. Zack v. Florida, 144 S. Ct. 274 (2023) ("'using "a different argument to relitigate the same issue" ... is inappropriate.'") (citations omitted); Dillbeck v. State, 357 So. 3d 94 (Fla. 2023).

[8] Zakrzewski v. Jones, 221 So. 3d 1159, 1159 (Fla. 2017).

Defendant also appears to claim that he has been subject to cruel and unusual punishment due to the fact that he has been on Florida's death row. This type of claim has repeatedly been found to be meritless by the Florida Supreme Court. See Valle v. State, 70 So. 3d 530, 552 (Fla. 2011) ("[N]o federal or state court has accepted the argument that a prolonged stay on death row constitutes cruel and unusual punishment.") (quotation omitted); Carroll v. State, 114 So. 3d 883, 889 (Fla. 2013); James, 404 So. 3d at 325. Additionally, the Court also notes that this subclaim is not properly pleaded. See Fla. R. Crim. P. 3.851(e)(1), (2), (h)(5). Accordingly, Claim 1 is denied.

**Claim 2**

*Signing Mr. Zakrzewski's Death Warrant Immediately Prior to the Holiday Weekend, While Mr. Bell's Death Warrant Was Still Pending, Violates His Right to Access to the Courts and Access to Counsel Under the Fifth, Sixth, and Fourteenth Amendments, as Well as His Right to Due Process*

Defendant claims that the death warrant schedule violates his right to access the courts and counsel under the Fifth, Sixth, and Fourteenth Amendments and his right to due process. Defendant argues that "because the Governor closed state offices on July 3, 2025, in addition to the regular office closures on July 4," the "warrant should not have been signed on July 1." Defendant argues that the Governor "should have been aware" that signing the warrant on July 1 "would cause difficulties with [counsel's] access to Mr. Zakrzewski and the courts, as well as create added complications with all of these state agencies who must litigate the warrant and public records demands during this period."

Defendant also argues that due to another inmate being on death watch at the same time as Defendant, his access to counsel has been hindered. More specifically, Defendant claims the

"lack of meaningful access to courts and counsel have hindered counsel from fully investigating and presenting his post-warrant claims for relief." Defendant requests a stay of execution to allow him to "fully and adequately participate in the preparation of legal claims for his post-warrant successive motion under Rule 3.851 without the issues and constraints associated with having two individuals on death watch simultaneously."

"Due 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). Defendant's motion does not demonstrate that his due process rights have been violated. See Tanzi v. State, 407 So. 3d 385, 391 (Fla. 2025), cert. denied sub nom. Tanzi v. Dixon, 145 S. Ct. 1914 (2025); Barwick v. State, 361 So. 3d 785, 789 (Fla. 2023). Further, although Defendant claims that the warrant circumstances have caused "difficulties" concerning access to counsel, the motion demonstrates that despite the difficulties, Defendant has had access and communications with counsel on July 2, 3, 7, and 9. Therefore, the motion fails to demonstrate that he did not have meaningful access to the courts or counsel. Further, to any extent that Defendant claims that the circumstances result in ineffective assistance of counsel, "a claim of ineffective assistance of postconviction counsel does not provide a valid basis for relief." See Barwick, 361 So. 3d at 791. As to Defendant's request for a stay of execution, he fails to establish substantial grounds upon which relief might be granted. Thus, Claim 2 is denied.

**Claim 3**

*Signing Mr. Zakrzewski's Death Warrant Without Conducting a Recent, Updated Clemency Review, Which Other Inmates Have Been Entitled To, Is Arbitrary and Violates His Rights Under The Equal Protection Clause, as Well as the Fifth, Eighth, and Fourteenth Amendments and Corresponding Provisions of The Florida Constitution*

Defendant claims that his clemency process was "rendered effectively meaningless" because it "occurred nearly two decades before his death warrant was signed without any opportunity for Mr. Zakrzewski to be heard or provide an updated clemency application," which he claims is an arbitrary denial of "access to the clemency process." Defendant claims "there have been myriad advances in science, medicine, and the law, completely changing the question of whether a grant of mercy would be appropriate in this case." Defendant claims the circumstances make his sentence cruel and unusual in violation of the Eighth Amendment. Defendant also generally challenges the clemency process in Florida and states, "Granting the Governor such unfettered discretion has in practice established an arbitrary selection process to determine who lives and dies." Defendant also claims that because other inmates on Florida's death row have had second rounds of clemency review, his own "clemency review, and lack of update thereof, is unconstitutionally arbitrary and capricious and does not comport with due process or equal protection."

Defendant also claims that due to this Court's denial of his demand for public records, and due to the time constraints of the expedited warrant schedule, he "lacks the capability to attach records and information necessary to present more specific and detailed evidence regarding these constitutional violations." Defendant requests a stay of execution and that this Court "revisit" the denial of his demand for records for Defendant to "amend his claim to add detailed evidence in support."

The State points out in its answer that Claim 3 is insufficiently pleaded because it constitutes three separate claims. Although it appears that this claim fails to comply with the requirements of rule 3.851, which requires that "[e]ach claim or subclaim must be separately

pled and sequentially numbered beginning with claim number 1,"[9] the Court will look beyond that pleading deficiency and consider the substance of the claims. In doing so, the Court finds that even if the requirement to separately plead and number the claims were satisfied, Defendant is not entitled to relief, for the reasons discussed below.

First, Defendant does not demonstrate that his claims fit within one of the exceptions to the one-year time limit for filing a motion to vacate judgment and sentence of death, and accordingly, the claims are time-barred. See Fla. R. Crim. P. 3.851(d)(2).

Second, at least to the extent Defendant relies on claims that advances in science, medicine, and the law provide a basis for relief, the claims are conclusory, and they may be summarily denied. See Cole v. State, 392 So. 3d 1054, 1061 (Fla. 2024), cert. denied sub nom. Cole v. Florida, 145 S. Ct. 109 (2024).

Third, regardless of the above-stated reasons for denial, the claims do not demonstrate a basis for relief. "The clemency process in Florida derives solely from the Florida Constitution and we have recognized that the people of the State of Florida have vested sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace." Carroll, 114 So. 3d at 888 (quotations omitted). The Florida Supreme Court has stated, "It is not our prerogative to second-guess the application of this exclusive executive function. . . . [T]he principle of separation of powers requires the judiciary to adopt an extremely cautious approach in analyzing questions involving this admitted matter of executive grace." Bundy v. State, 497 So. 2d 1209, 1211 (Fla. 1986).

Defendant's motion acknowledges that he has had a clemency proceeding. Moreover, Defendant does not claim that he was not given an opportunity to be heard or that he did not

[9] See Fla. R. Crim. P. 3.851(e)(1), (2), (h)(5).

have legal representation during his clemency proceeding. Further, Defendant's death warrant states that executive clemency "was considered pursuant to the Rules of Executive Clemency, and it has been determined that executive clemency is not appropriate[.]" Defendant's arguments regarding the alleged Eighth Amendment, due process, and equal protection violations are unavailing. See Gudinas v. State, No. SC2025-0794, 2025 WL 1692284, at *9 (Fla. June 17, 2025) ("Florida's established clemency proceedings and the Governor's absolute discretion to issue death warrants do not violate the Florida or United States Constitutions."); Dailey v. State, 283 So. 3d 782, 788 (Fla. 2019) ("[T]o the extent Dailey asserts that his execution would be arbitrary because he was not granted an additional clemency proceeding at which to present newly discovered evidence, his claim is foreclosed by our caselaw."); Muhammad v. State, 132 So. 3d 176, 199 (Fla. 2013) ("No specific procedures are required in clemency proceedings . . . ."); Johnston v. State, 27 So. 3d 11, 26 (Fla. 2010) ("[W]e decline to depart from the Court's precedent, based on the doctrine of separation of powers, in which we have held that it is not our prerogative to second-guess the executive on matters of clemency in capital cases."); Grossman v. State, 29 So. 3d 1034, 1044 (Fla. 2010) (rejecting claim that the "death penalty is arbitrary and capricious as applied to [the defendant] because he had a clemency proceeding in October 1988, but has not had an opportunity to present further information about his life in a recent clemency proceeding."); Marek v. State, 8 So. 3d 1123, 1129 (Fla. 2009) (rejecting claim that the clemency process is one-sided, arbitrary, and standardless as meritless); King v. State, 808 So. 2d 1237, 1246 (Fla. 2002); Rutherford v. State, 940 So. 2d 1112, 1122 (Fla. 2006) ("In *King v. State* 808 So.2d 1237, 1241 n. 5, 1246 (Fla.2002), this Court concluded that the defendant's claim that Florida's clemency process violates due process and equal protection was meritless."); Bundy v. State, 497 So. 2d at 1211 ("We cannot say that the executive branch was required to go through

the motions of holding a second proceeding when it could well have properly determined in the first that appellant was not and never would be a likely candidate for executive clemency.").

Finally, as to Defendant's request for the Court to revisit the denial of his demands for records, he does not demonstrate any basis for relief. As to Defendant's request for a stay of execution, he fails to establish substantial grounds upon which relief might be granted. Thus, Claim 3 is denied.

**MOTION FOR STAY OF EXECUTION**

The Court has considered the arguments for a stay of execution presented in this motion, as well as in Defendant's Successive Motion to Vacate Judgment and Death Sentence, and the Court finds that Defendant fails to raise substantial grounds for relief warranting a stay. See Barwick, 361 So. 3d at 791; Chavez v. State, 132 So. 3d 826, 832 (Fla. 2014).

**Ruling**

Therefore, it is **ORDERED AND ADJUDGED** that Defendant's Successive Motion to Vacate Judgment and Death Sentences and Motion for Stay of Execution are **DENIED.** Pursuant to Florida Rule of Criminal Procedure 3.851(f)(5)(F), **the Clerk of Court is DIRECTED** to promptly serve on each party a copy of this Order, noting thereon the date of service by an appropriate certificate of service.

**DONE AND ORDERED** in Chambers in Fort Walton Beach, Okaloosa County, Florida.

07/14/2025 08:48:20

signed by CIRCUIT COURT JUDGE LACEY POWELL CLARK 07/14/2025 08:48:20 Dfrl479Xs

**LACEY POWELL CLARK**
**CIRCUIT COURT JUDGE**

LPC/may/eeb

**Clerk of Court to Serve a Copy of this Order on the Following:**

**EDWARD J. ZAKRZEWSKI, II**, DC No. 554000, Florida State Prison, Post Office Box 800, Raiford, Florida 32083

**ALICIA HAMPTON**, Assistant Capital Collateral Counsel-Northern Region, Alicia.Hampton@ccrc-north.org

**LISA FUSARO**, Assistant Capital Collateral Counsel-Northern Region, Lisa.Fusaro@ccrc-north.org

**CHARMAINE MILLSAPS**, Senior Assistant Attorney General, charmaine.millsaps@myfloridalegal.com, capapp@myfloridalegal.com

**JANINE D. ROBINSON**, Assistant Attorney General, Janine.Robinson@myfloridalegal.com

**JASON RODRIGUEZ**, Assistant Attorney General, Jason.Rodriguez@myfloridalegal.com

**CHRISTINA PORRELLO**, Assistant General Counsel, Florida Department of Corrections, christina.porrello@fdc.myflorida.com

**WILLIAM GWALTNEY**, Assistant General Counsel, Florida Department of Corrections, Bill.Gwaltney@fdc.myflorida.com

**KRISTEN LONERGAN**, Executive Senior Attorney, Florida Department of Corrections, kristen.lonergan@fdc.myflorida.com

**LINDSEY BRIGHAM**, Assistant General Counsel, Florida Department of Law Enforcement, LindseyBrigham@fdle.state.fl.us

**MATTHEW CASEY**, Assistant State Attorney, mcasey@osa1.org

**BRIDGETTE M. JENSEN**, Chief Assistant State Attorney, bjensen@osa1.org

**OKALOOSA COUNTY COURT REPORTERS**, Okaloosa.Reporters@FLCOURTS1.GOV

**SUSAN CRAWFORD, APPEALS CLERK**, Okaloosa County Clerk of Court, scrawford@okaloosaclerk.com; kbryan@okaloosaclerk.com; appeals@okaloosaclerk.com

**FLORIDA SUPREME COURT**, warrant@flcourts.org

IN THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT, OKALOOSA COUNTY, FLORIDA

STATE OF FLORIDA CASE #(S) 1994 CF 001283 A

-VS-

ZAKRZEWSKI, EDWARD JAMES

## CERTIFICATE OF SERVICE

Pursuant to FRCP 3.851(5)(F) this is to certify that a copy of the preceding order (ORDER DENING DEF'S SUCCESSIVE MOTIONTO VACATE JUDGMENT AND DEATH SENTENCES AND MOTION FOR STAY OF EXECUTION WITH DIRECTIONS TO CLERK) in the above styled cause to the following:

☒ Office of the State Attorney, via electronic mail.

☒ See attached:

Dated this 14 day of July, 20 25.

Brad E. Embry
Clerk of Circuit Court and Comptroller

By: Rusti Maynard
Deputy Clerk

**Clerk of Court to Serve a Copy of this Order on the Following:**

**EDWARD J. ZAKRZEWSKI, II**, DC No. 554000, Florida State Prison, Post Office Box 800, Raiford, Florida 32083

**ALICIA HAMPTON**, Assistant Capital Collateral Counsel-Northern Region, Alicia.Hampton@ccrc-north.org

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**WILLIAM GWALTNEY**, Assistant General Counsel, Florida Department of Corrections, Bill.Gwaltney@fdc.myflorida.com

**KRISTEN LONERGAN**, Executive Senior Attorney, Florida Department of Corrections, kristen.lonergan@fdc.myflorida.com

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**BRIDGETTE M. JENSEN**, Chief Assistant State Attorney, bjensen@osa1.org

**OKALOOSA COUNTY COURT REPORTERS**, Okaloosa.Reporters@FLCOURTS1.GOV

**SUSAN CRAWFORD, APPEALS CLERK**, Okaloosa County Clerk of Court, scrawford@okaloosaclerk.com; kbryan@okaloosaclerk.com; appeals@okaloosaclerk.com

**FLORIDA SUPREME COURT**, warrant@flcourts.org

Filing # 227157647 E-Filed 07/14/2025 10:38:05 AM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**
_____/

**Case No. 1994-CF-1283
Emergency Capital Case
Death Warrant Signed
Execution Scheduled for
July 31, 2025 at 6:00 p.m.**

## NOTICE OF APPEAL

COMES NOW, the Defendant, Edward James Zakrzewski, II, by and through undersigned counsel, takes and enters his Notice of Appeal to the Supreme Court of Florida to review the final order rendered by the Circuit Court of the First Judicial Circuit, in and for Okaloosa County, titled Order Denying Defendant's Successive Motion to Vacate Judgment and Death Sentences and Motion for Stay of Execution with Directions to Clerk, entered July 14, 2025.

The nature of the order appealed from is the denial of Mr. Zakrzewski's Successive Motion for Postconviction Relief filed pursuant to Rule 3.851 under warrant.

All parties to said cause are hereby notified of the entry of this appeal.

## CERTIFICATE OF SERVICE

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, Assistant Attorney General Janine D. Robinson (Janine.Robinson@myfloridalegal.com and capapp@myfloridalegal.com), Senior Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com), Chief Assistant State Attorney Bridgette Jensen, (Bjensen@osa1.org), Assistant State Attorney Matt Casey (mcasey@osa1.org), the Honorable Lacey Powell Clark (Judge.Clark@flcourts1.gov and Amanda.Bailey@flcourts1.gov); and the Florida Supreme Court (warrant@flcourts.org) on this 14th day of July 2025.

Respectfully submitted,

/s/ **Lisa M. Fusaro**
LISA M. FUSARO
Florida Bar No. 119074
Assistant CCRC
Lisa.Fusaro@ccrc-north.org

/s/ **Alicia Hampton**
ALICIA HAMPTON
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Capital Collateral Counsel
Regional Counsel – Northern Region
1004 DeSoto Park Drive
Tallahassee, FL 32301
Telephone: (850) 487-0922
Facsimile: (850) 487-1422

*Counsel for Mr. Zakrzewski*

Filing # 227157647 E-Filed 07/14/2025 10:38:05 AM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**
_____/

**Case No. 1994-CF-1283**
**Emergency Capital Case**
**Death Warrant Signed**
**Execution Scheduled for**
**July 31, 2025 at 6:00 p.m.**

**DIRECTIONS TO CLERK**

COMES NOW, the Defendant, Edward James Zakrzewski, II, by and through undersigned counsel, and directs the Clerk to include all items filed in this Florida Rule of Criminal Procedure 3.851 proceedings as described in Rules 9.142(a) and 9.200(a)(1), Florida Rules of Appellate Procedure. Pursuant to Rule 9.200(a)(2), Florida Rules of Appellate Procedure, Mr. Zakrzewski respectfully directs the Clerk to include in the record on appeal in this case all pleadings, notices, notices of hearings, orders, original documents, exhibits (whether entered into evidence or proffered for purposes of appeal), memorandums, and transcripts of proceedings from July 1, 2025 to the present.

## CERTIFICATE OF SERVICE

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, Assistant Attorney General Janine D. Robinson (Janine.Robinson@myfloridalegal.com and capapp@myfloridalegal.com), Senior Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com), Chief Assistant State Attorney Bridgette Jensen, (Bjensen@osa1.org), Assistant State Attorney Matt Casey (mcasey@osa1.org), the Honorable Lacey Powell Clark (Judge.Clark@flcourts1.gov and Amanda.Bailey@flcourts1.gov); and the Florida Supreme Court (warrant@flcourts.org) on this 14th day of July 2025.

Respectfully submitted,

/s/ **Lisa M. Fusaro**
LISA M. FUSARO
Florida Bar No. 119074
Assistant CCRC
Lisa.Fusaro@ccrc-north.org

/s/ **Alicia Hampton**
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*Counsel for Mr. Zakrzewski*

Filing # 227157647 E-Filed 07/14/2025 10:38:05 AM

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**
_____/

**Case No. 1994-CF-1283**
**Emergency Capital Case**
**Death Warrant Signed**
**Execution Scheduled for**
**July 31, 2025 at 6:00 p.m.**

## DESIGNATION TO THE COURT REPORTER

COMES NOW, the Defendant, Edward James Zakrzewski, II, by and through undersigned counsel, and files the following designation to the court reporter directing preparation of all transcripts, including but not limited to, hearings held on: July 2, 2025, July 8, 2025, and July 10, 2025.

I, counsel for Mr. Zakrzewski, certify that the Law Office of the Capital Collateral Regional Counsel – North is responsible for payments to the official court reporter for preparation of the transcripts, pursuant to *Porter v. State*, 700 So. 2d 647 (Fla. 1997), and the prompt payment will be made upon delivery of the transcript(s) and receipt of an invoice from the court reporter.

I hereby certify that a true copy of the foregoing has been furnished by electronic service to OKA-CourtReporters@flcourts1.gov.

## CERTIFICATE OF SERVICE

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, Assistant Attorney General Janine D. Robinson (Janine.Robinson@myfloridalegal.com and capapp@myfloridalegal.com), Senior Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com), Chief Assistant State Attorney Bridgette Jensen, (Bjensen@osa1.org), Assistant State Attorney Matt Casey (mcasey@osa1.org), the Honorable Lacey Powell Clark (Judge.Clark@flcourts1.gov and Amanda.Bailey@flcourts1.gov); and the Florida Supreme Court (warrant@flcourts.org) on this 14th day of July 2025.

Respectfully submitted,

/s/ **Lisa M. Fusaro**
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Lisa.Fusaro@ccrc-north.org

/s/ **Alicia Hampton**
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*Counsel for Mr. Zakrzewski*

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**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA COUNTY, FLORIDA**

**STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**EDWARD JAMES ZAKRZEWSKI, II,**

**Defendant.**
_____/

**Case No. 1994-CF-1283**
**Emergency Capital Case**
**Death Warrant Signed**
**Execution Scheduled for**
**July 31, 2025 at 6:00 p.m.**

## STATEMENT OF JUDICIAL ACTS TO BE REVIEWED

COMES NOW, the Defendant, Edward James Zakrzewski, II, by and through undersigned counsel, and files the following Statement of Judicial Acts to be Reviewed: Order Sustaining Objections and Denying Defendant's Demands for Public Records entered July 8, 2025; Order Denying Defendant's Successive Motion to Vacate Judgment and Death Sentences and Motion for Stay of Execution with Directions to Clerk, entered July 14, 2025; and all other rulings, actions, and acts rendered adversely to Mr. Zakrzewski.

## CERTIFICATE OF SERVICE

We hereby certify that the foregoing has been served electronically upon the Clerk of the Circuit Court, Assistant Attorney General Janine D. Robinson (Janine.Robinson@myfloridalegal.com and capapp@myfloridalegal.com), Senior Assistant Attorney General Charmaine Millsaps (Charmaine.Millsaps@myfloridalegal.com), Chief Assistant State Attorney Bridgette Jensen, (Bjensen@osa1.org), Assistant State Attorney Matt Casey (mcasey@osa1.org), the Honorable Lacey Powell Clark (Judge.Clark@flcourts1.gov and Amanda.Bailey@flcourts1.gov); and the Florida Supreme Court (warrant@flcourts.org) on this 14th day of July 2025.

Respectfully submitted,

/s/ **Lisa M. Fusaro**
LISA M. FUSARO
Florida Bar No. 119074
Assistant CCRC
Lisa.Fusaro@ccrc-north.org

/s/ **Alicia Hampton**
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Regional Counsel – Northern Region
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Tallahassee, FL 32301
Telephone: (850) 487-0922
Facsimile: (850) 487-1422

*Counsel for Mr. Zakrzewski*

# CERTIFICATE OF CLERK

STATE OF FLORIDA

COUNTY OF OKALOOSA

I, BRAD E. EMBRY, Clerk of the Circuit Court, for the County of OKALOOSA, State of Florida, do hereby certify that the foregoing pages contain a correct copy of the record in the case of State of Florida Vs Edward James Zakrzewski, II, and is a true and correct recital and inclusion of all such papers and proceedings in said cause as appear from the records and files of my office that have been directed to be included in said record pursuant to the Florida Rules of Appellate Procedure.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 14th day of July 2025.

BRAD E. EMBRY
CLERK OF CIRCUIT COURT
FOR OKALOOSA COUNTY, FLORIDA

BY _____
Deputy Clerk