IN THE SUPREME COURT OF FLORIDA
CASE NO. SC2025-1422

EXECUTION SCHEDULED FOR
SEPTEMBER 30, 2025 AT 6:00 PM

VICTOR TONY JONES,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURTOF THE ELEVENTH JUDICIAL CIRCUIT, MIAMI-DADE COUNTY, FLORIDA

LOWER CASE NO. 1990-CF-50143

REPLY BRIEF OF APPELLANT

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REPLY TO ARGUMENT I

Newly Discovered Evidence Of The State Of Florida's Recognition Of Jones's Abuse At Okeechobee And His Entitlement To Compensation As A Victim Of A Crime Is Material Evidence Which Renders His Death Sentence Unreliable And Would Probably Lead To A Life Sentence On Retrial.

In Response, the State argues that Mr. Jones's claim that the January 6, 2025 letter he received from the Attorney General's Office of Victim Compensation is newly discovered evidence which would probably result in a lesser sentence is untimely, procedurally barred, and meritless. In making these arguments, the Attorney General distorts the evidence presented in support of Jones's request for an evidentiary hearing and makes arguments premised on facts that are demonstrably false. The true facts are known to them, or reasonably should be known to them, because they are based on documents within the control of the Attorney General's Office that the Attorney General has refused to provide despite Jones's public records requests. Their arguments should fail for this reason alone, but other reasons, as will be set out below, also demonstrate their arguments are meritless.

A. The Claim is Timely.

The State argues that Jones's claim is untimely because receipt of the January 6, 2025 letter doesn't make his abuse "'new.'" (Answer, p. 27) The State argues that Jones would have known of any abuse when it happened 50 years ago. (Answer, p. 27) In making this argument, the State twists Jones's claim, as it has done repeatedly during the course of this litigation.

Jones's claim has always been that it is the State of Florida's January 6, 2025 recognition of him as a victim of abuse, the State's apology, and the notification that he had been approved for compensation as a member of the victim class—all of which is contained in the January 6, 2025 letter—is the new evidence. Jones's has *never* said during this litigation that the letter makes the abuse he suffered new or that the "evidence of his mistreatment is new." (Answer, p. 27)

The State misapprehends Jones's claim. The fact that the State of Florida recognized Jones's abuse at Okeechobee, at the hands of State employees, and that the abuse was so severe that the State was going to compensate him 50 years later is a remarkable new fact, which nobody could have predicted 50, 30,

40, 20, 10 or even 5 years ago. It is the State of Florida's apology and compensation that is new. It is powerful, relevant, material and they type of evidence that could persuade a reasonable juror to vote for life.

The State cites to this Court's opinions in *Cole v. State,* 392 So. 3d 1054, 1061-62 (Fla. 2024), *Barwick v. State*, 361 So. 3d 785, 793 (Fla. 2023), and *Zack v. State*, 371 So. 3d 335 (Fla. 2023) to argue that the individualized letter that Jones received from the State in January of this year, is akin to abstract data, reports, legislation, or scientific studies that were properly rejected in *Barwick, Zack* and *Cole*. These cases are not similar and address loosely connected studies, data or legislation that was not directly linked to the defendants or their cases.

Jones's case is more akin to *Duckett v. State*, 148 So. 3d 1163, 1167 (Fla. 2014). Duckett raised a claim of newly discovered evidence based on an 1997 FBI report and study, which resulted in a 2011 report directly about Duckett's case. This Court explained:

> After the 1997 Department of Justice report was issued, the FBI hired independent experts to examine the prior work and testimony of various agent analysts, including Malone. One independent analyst reviewed many cases—particularly death penalty cases—in which Malone

> offered expert testimony. Subsequently, in August 2011, the same independent analyst reviewed Malone's hair-analysis work and testimony in Duckett's trial and issued a report (2011 Report).

Id. at 1167. While this court denied Duckett's claim, it did so on the merits.

Duckett subsequently raised another claim which this Court also denied, premised on a 2014 report and subsequent DOJ letter to the State Attorney for the Fifth Judicial Circuit again identifying that the testimony by the lab analyst in Duckett's case contained "some erroneous statements. " *Duckett v. State*, 231 So. 3d 393, 399 (Fla. 2017). This Court stated that, "Even assuming that Duckett's claim is timely, we conclude that Duckett has failed to demonstrate that the alleged newly discovered evidence—the 2014 DOJ Review—is of such a nature that it would probably produce an acquittal on retrial." *Id.* While it is not entirely clear from reading *Duckett* as to why this court suggested Duckett's claim was untimely, this Court suggests it is because Duckett was not included in the 2014 report. *Id.* at 399, n. 2. Nonetheless, *Duckett* provides that studies that produce letters directly linked to a defendant's case qualify as newly discovered evidence.

While it is true that the claim in *Cole* related to the Victim Compensation Fund, the case is still clearly distinguishable. Cole claimed that he was "entitled to relief based upon newly discovered evidence *regarding his treatment*" at Dozier. *Cole,* 392 So. 3d at 1060 (emphasis added). Cole premised this claim on the passage of CS/HB 21, which is the same bill that resulted in Jones receiving the apology letter and compensation. *Id.* at 1061. But Cole was not a member of the compensation class, Cole was not entitled to any money, nor did Cole ever receive a letter from the State apologizing for the abuse he suffered. *Id.* at 1061, n. 11.

The State minimizes Jones's claim to keep it within the framework of *Cole*, by suggesting that the January 6, 2025 letter, (WR. 811), is less than it is. The State mischaracterizes the letter as merely "recognizing that Jones was in the class of individuals *possibly* eligible for compensation." (Answer, p. 29) (emphasis added) The use of the word "possibly" is misleading.

In his application for compensation, Mr. Jones was required to establish that he was both at the Okeechobee School during the relevant time periods AND that he was abused. Mr. Jones met both requirements.

In bold and all caps at the top of the letter are the words: "NOTICE OF DETERMINATION—ELIGIBLE." (WR. 811) In the body of the letter, which is addressed to "Victor Jones," the Attorney General's Office of Victim Compensation wrote: "You are receiving this letter because you filed an application for benefits" through the Dozier/Okeechobee School Victim Compensation Plan. (WR. 811) The letter continued, stating: "Please know *we are sorry* to hear about the circumstances that prompted you to apply for compensation." (WR. 811) (emphasis added).

And then, confirming the heading of the letter, the Attorney General's Office of Victim Compensation told Mr. Jones: "Your claim was *determined eligible* on January 6, 2025." The letter speaks for itself, it contains an apology which is commonly understood to be an admission or acknowledgment of a wrong and it tells Mr. Jones he is in the eligible class and has been approved for compensation.

The State makes a number of other remarkable arguments about Jones's status as an eligible member of the Victim Compensation Fund that are misleading. The Attorney General's Office managed this program, sent out notification letters, processed the applications, sent out eligibility letters like the one

Jones received, and also managed the disbursement of money, which Jones received on July 7, 2025, along with all the other eligible members of the class. Yet, the State makes a number of assertions that are disproved by records that exist in the Attorney General's Office, but which have not been disclosed.

The State argues that the "letter did not acknowledge that any abuse occurred to Mr. Jones, just that the State had processed his application." (Answer, p. 30). The State cuts a fine distinction here, especially so because the State knows, or reasonably should know, that in order to be determined eligible, Jones had to show that abuse occurred, as Jones plead in his motion and argued at the Case Management Conference.

Again, the Attorney General's Office has these documents, and they either know or should know that in order to be eligible for funds Jones had to submit an application form—created by the Attorney General's Office—that established his confinement at Okeechobee within the relevant time frame **and that he suffered physical, mental, emotional or sexual abuse.** The Attorney

General's Office is literally in custody and control of the form Jones signed establishing that he suffered the requisite abuse.[1]

The State then makes another disingenuous argument, which they did not raise below, that Jones failed to "present any information to the lower court that he had been compensated from the fund or that he had appealed any decision of the Fund." (Answer, p. 30) As noted *supra*, the State compensated Jones, along with all the other eligible claimants in July of 2025. And just like the existence of Jones's application form, **the Attorney General's Office has the records demonstrating Jones received money because they administered the Fund**. Indeed, Jones's money was placed in his Florida Department of Corrections account. Their assertion is not based on fact, and they either know, or should know, that the State of Florida compensated Jones.

The State then uses these false assertions to argue Jones's position is like Cole's: "Jones's position is actually the same as Cole's—both had been at the relevant institutions, *but neither could*

[1] The Attorney General surely cannot be arguing that it gave out $20 million dollars of Florida tax payer money to just anyone without requiring them to demonstrate that they fit the class. .

take the additional step of showing any abuse happened to them." (Answer, p. 30) (emphasis added). This statement as it relates to Jones is not true. **The Attorney General's Office has in its possession the records which demonstrate their assertions of fact to this Court are false. Jones took the additional step, showed that abuse happened to him and received compensation from the State of Florida Victims Compensation Fund.**

Mr. Jones understands that the Attorney General's Office is a large state entity and that the Assistant Attorneys General who wrote the Answer Brief in this case may not personally be familiar with Jones's records within the Attorney General's Office of Victim Compensation, but before they make a factual assertion to this Court, or any court for that matter, especially in a capital case, they should be sure that what they are saying is true. Nor can the State create facts that do not exist. Likewise, the Attorney General should not be permitted to hide behind the truncated warrant period or Fla. R. Crim. Pro. 3.852 as a means to advance an argument premised on facts that are demonstrably false.

Prosecutors are "representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern

impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 88 (1935) A prosecutor is in a "very definite sense the servant of the law[.]" *Id.* "He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Id.*

The Attorney General successfully used the unnecessarily truncated warrant process to preclude Jones's access to his records regarding the Victim Compensation Fund, and is now employing that adverse legal finding to make demonstrably false assertions to gain a benefit in their argument. This is a violation of Jones's Fifth, Eighth, and Fourteenth Amendment rights and this Court should not countenance such a tactic, especially in a death penalty case.

Additionally, the State's argument establishes that the lower court's denial of evidentiary development was in error. At a hearing Jones can demonstrate that he established the abuse necessary to

qualify and result in the letter and that he received compensation. Jones can also prove that the establishment of the Compensation Fund and his inclusion in the class of survivors eligible for compensation is an acknowledgment by the State of Florida that Jones was abused by agents of the State while he was in their custody as a child.

Jones deserves nothing less. Allowing Jones's execution to go forward on this record would serve to undermine confidence in our judicial system and damage the perceived integrity of this Court.

B. The Claim is Not Procedurally Barred

The State argues that because Jones was aware of the abuse he experienced at Okeechobee this claim is barred. (Answer, p. 31-33. The State's argument deserves little response other than, as stated throughout the course of this litigation, his claim is that the State of Florida apologized to him for the abuse he suffered while in the State's care and recognized him as a victim of severe abuse and it is therefore new.

C. The Claim Has Merit

The State argues that Jones's claim lacks merit because the letter doesn't qualify as newly discovered and that prior testimony

of abuse Jones presented was found not credible. (Answer, p. 33) Essentially, the State argues the letter isn't new and there is no probability of a less severe sentence. (Answer, p. 34)

In support of their argument, the State oddly asserts that "Jones has never, including in his post-warrant successive postconviction motion, presented evidence that he was actually abused by the State—a claim he first specifically makes in this initial brief. He only alluded to possible abuse in his motion." (Answer, p. 34). The State is mistaken.

Jones expressly stated in his post-warrant successive postconviction motion on page 1, that "Victor Jones is an intellectually disabled ("ID"), indigent Black defendant, who was brutally abused as a teenager by agents of the State of Florida at the Okeechobee School for Boys." (WR. 833) The heading of Jones's first claim in his motion includes these words: "Jones Experienced Trauma and Abuse at the Hands of the State[.]" (WR. 844).

In the body of his motion in Claim I, Jones stated: "While confined at Okeechobee, Jones was beaten multiple times with the thick leather strap, witnessed frequent gang-rapes" and was "placed in solitary confinement" (WR. 844) "The effects of this treatment . . .

was pronounced, causing him to suffer from Post-Traumatic Stress Disorder [and] suicidal ideation." (WR. 844)

Jones also adopted the contents of Dr. Castillo's report into his motion. (WR. 844). Relevant details from Dr. Castillo's report and her descriptions of the abuse he suffered at Okeechobee were set out in Jones's initial brief to this Court. The relevant portion of Dr. Castillo's report, which was attached to Jones's motion and filed in the circuit court, can be found at WR. 519-521. The State's assertion on this matter is without merit.

Because the lower court denied Jones's claim without an evidentiary hearing, this Court must accept his facts as alleged as true. Jones has alleged abuse, severe abuse. To the extent that the State might not think being exposed to or witnessing repeated gang-rapes as a teenager while your caretaker looks away is not abuse, the State lacks insight, and, nonetheless, a factual discrepancy demonstrates the need for an evidentiary hearing.

The State argues that this evidence would not have been likely to result in a life sentence because this is a highly aggravated case and Jones showed little mitigation at trial. (Answer, p. 35) However, Jones does not need to show that he will definitively prevail in order

for the court to conduct an evidentiary hearing, and, regardless, the letter is powerful evidence, particularly under the unique facts of Jones's case.

As set forth in Jones's initial brief, Jones's case is not the most aggravated and least mitigated murder case. And, because one of Jones's aggravators was under a sentence of imprisonment, the evidence of the letter and the State of Florida's apology to Jones and admission of abuse, is particularly salient.

In closing argument, the prosecutor emphasized that Jones had recently been released from prison and also mocked the defense expert's suggestion that Jones could do well with treatment. The prosecutor told the jury that, Jones "was given opportunities through the prison system, drug counseling, educational counseling." (R. 2732) He further argued that, "The man has rejected every societal attempt to make him productive. How much can we do as a society?" (R. 2732). He implied to the jury that the State of Florida had offered Jones so much help but he simply didn't want it.[2]

[2] The Compensation Bill also includes a provision that "allows the Commissioner of Education to award a standard high school

"Dr. Toomer would have you believe that if you order the defendant into some program that some good would happen. You know better than that Folks. You got to want to have help. You got to want it." (R. 2732-33)

In light of the State of Florida's current recognition that Okeechobee was not a place that "helped" the boys sentenced there, but rather a vicious and dangerous place where the guards traumatized and damaged the children in their care, the State could not make such an argument at a new penalty phase proceeding, or, the State could but it wouldn't carry weight with a reasonable juror.

Additionally, even if the trial court didn't find any mitigation, there clearly were undisputed facts presented at trial, and later on in the postconviction proceedings, which have mitigating value: that Jones's alcoholic mother abandoned him, that his I.Q. falls within the bottom 2.3% of the population, and other facts a reasonable

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diploma to a person so compensated who has not completed high school graduation requirements." (WR. 632) This provision was included because education credits, if any, that the survivors received at Dozier or Okeechobee were non-transferable. Many of the survivors failed to complete high school because of the lack of a meaningful educational component at Dozier and Okeechobee. Jones would be eligible for this as well since he did not complete high school, no doubt in part because of his time at Okeechobee.

juror could conclude mitigate Jones's moral culpability and serve as a basis for a sentence of less than death.

Notably, at the postconviction hearing, where the court found Jones's sister and cousin not credible when they described the abuse from Laura Long and her son, Jones's trial lawyer stated that he never felt Laura Long was "open or candid" with him. (PCR. 592) Trial counsel said that his failure to fully investigate and resolve the conflict between Jones's claims of Long's beatings and Long's testimony describing Jones's life with her as idyllic was "fatal because it obscures the truth. It destroys the truth-seeking process." (PCR 594-95) As he explained it:

> The discrepancy sits between Laura Long's description of their lives and his [description]. That was particularly critical to me because I think studies have shown generally that we manufacture killers, frankly, by abusing young children, so that was a very critical factor.

(PCR. 596).

Jones has shown he deserves an evidentiary hearing on this claim and has made a sufficient showing of a probability of a less severe sentence.

REPLY TO ARGUMENT II

The Lower Court Abused Its Discretion in Denying Jones Access to Public Records in Violation of the Fifth, Eighth and Fourteenth Amendments to the United States Constitution and the Corresponding Provisions of the Florida Constitution.

The State argues that as to demands for records related to the Okeechobee School, which is the focus of Jones's appeal on this claim, that public records requests are circumscribed under warrant. (Answer, p. 45) As Jones set out in his initial brief, Rule 3.852 "was never intended to . . . diminish a citizen's constitutional right to public records." *In re Amends. To Fla. R. Crim. P.-Cap. Postconviction Recs. Prod.,* 683 So. 2d 475, 477 (Fla. 1996) (Anstead, J. specially concurring).

The State cites no authority for its argument on statutory construction, which is an attempt to invalidate an express portion of Rule 3.852. Rule 3.852(i) was the proper vehicle to obtain records that nether concerned the initial production of records nor the request of records from agencies Jones requested from in his initial postconviction process.

The State next argues that the denial of records did not amount to a due process violation. (Answer, p. 46). The State's

argument must fail. Jones demonstrated in his initial brief why the denial of records related to the Okeechobee School rose to the level of a due process violation as it hamstrings his ability to effectively plead his claim, and, that those documents are related to a colorable claim, or are reasonably calculated to lead to the discovery of admissible evidence.

The State asserts that "Jones has not even bothered to justify why he waited until the ink dried upon his death warrant" to seek the Okeechobee records. But the January 6, 2025 letter had only been known to Jones for approximately eight months at the time the Governor signed his death warrant. Jones still had more than four more months to file a successive 3.851 motion on his claim and to seek records.

But perhaps most significantly, Jones's due process violation is best demonstrated by the State's brief. As noted *supra*, the Attorney General's Office is in possession of the records related to Jones's claim of abuse and confirmation into the Victims Compensation Fund but has refused to disclose them. The Attorney General's Office originally claiming it had no relevant records and then later admitting they had responsive records but objecting to

disclosure.

In spite of having these records, the State has advanced a false narrative about the status of Jones's claim in order to advance an argument that Jones's claim fits neatly within this Court's holding in *Cole*. Jones is unable to produce documents in the Attorney General's control to counter their argument and is left in this Court to assert that the Attorney General's factual claims are false, which they are. Surely that is a denial of fundamental fairness and the right to be meaningfully heard.

As to any other arguments on this Claim, Jones stands on his initial brief.

REPLY TO ARGUMENT III

Florida's Warrant Process Deprived Jones Of A Full And Fair Postconviction Proceeding In Violation Of His Constitutional Right To Substantive and Procedural Due Process Under The Fifth And Fourteenth Amendments To The United States Constitution And Corresponding Provisions Of The Florida Constitution, And The Proceedings Further Ran Afoul Of The Requirement for Heightened Reliability in Capital Cases.

The State argues that Jones's claim is untimely, that the truncated warrant schedule did not deny Jones access to public records and that an incomplete record does not bar Jones form

litigating his claims.

As to the State's argument that his claim is untimely, the State's argument lacks merit. Jones could not have possibly previously raised this claim as it would not have been ripe. This argument deserves no further attention.

The State asserts that the Constitution does not give Jones the "right to protest a procedural inconvenience for a situation he brought upon himself by committing a double homicide." (Answer, p. 50) Not only does the State reduce to irrelevance the unnecessarily hurried nature of the warrant period but also fails to squarely acknowledge that the Constitution does provide a criminal defendant the right to be heard in a meaningful manner. "[A]n essential principle of due process is that a deprivation of life . . .be preceded by notice and opportunity for hearing appropriate to the nature of the case." *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Mullane v. Cent. Hannover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

The State also criticizes Jones because Jones has failed to "indicate any issue the expedited schedule foreclosed." (Answer, p. 52) But as the State's brief makes clear, Jones has been hampered

in his ability to litigate his newly discovered evidence claim and the State has used that to advance facts that are simply not true as noted *supra*.

As Jones set out in his initial brief, the truncated time failed to provide sufficient time for agencies to conduct a search, two agencies had to clarify or correct their responses, including the Attorney General's Office, who claimed they had no records, but corrected that response to claim the records were exempt. Yet, the court refused to require the Attorney General to identify the nature of the exemptions with specificity or conduct an *in camera* review of the records. Those records have become highly relevant to Jones's newly discovered evidence claim. Jones has demonstrated that the unnecessarily truncated nature of the warrant period has denied him due process.

CONCLUSION AND RELIEF SOUGHT

Based upon the foregoing and the record, Mr. Jones respectfully urges this Court to reverse the lower court, stay his execution, and remand to the circuit court for a full and fair opportunity to be heard at an evidentiary hearing, and an opportunity to be provided and review the public records requested,

or grant such other relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND FONT

Pursuant to Fla. R. App. P. 9.045, I hereby certify that the Initial Brief of the Appellant has been produced in Bookman Old Style 14-point font. Pursuant to Fla. R. App. P. 9.210(a)(2)(D), this brief complied with the word count (4,232words).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing pleading has been electronically filed through the Florida State Courts e-filing portal and served to the parties listed below on September 18, 2025.

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