

**IN THE SUPREME COURT OF FLORIDA
Case Nos. SC23-190 & SC23-_____**

DONALD DAVID DILLBECK

Appellant/Petitioner,

v.

STATE OF FLORIDA,

Appellee/Respondent.
_____ /

**CAPITAL CASE
DEATH WARRANT SIGNED
EXECUTION SCHEDULED FOR
FEBRUARY 23, 2023**

APPELLANT/PETITIONER’S MOTION FOR ORAL ARGUMENT

Appellant/Petitioner Donald David Dillbeck respectfully moves for oral argument in this case, pursuant to Fla. R. App. P. 9.320. Mr. Dillbeck has been sentenced to death and is scheduled to be executed on February 23, 2023. Resolution of the issues raised in Mr. Dillbeck’s concurrently filed appeal and petition for writ of habeas corpus will determine whether he lives or dies. An opportunity to fully address all issues he presents to this Court is appropriate here given the fundamental importance of his claims and the stakes involved.

Oral argument is especially appropriate in this case because the appeal involves an important issue of first impression. Mr. Dillbeck has presented unrebutted evidence of a new consensus in the medical and scientific community, which establishes that Neurobehavioral Disorder

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associated with Prenatal Alcohol Exposure (“ND-PAE”) is an intellectual disability-equivalent condition. The medical community now recognizes that the unique, cognitive, practical, and social impairments inherent to ND-PAE are indistinguishable from those of intellectual disability. This consensus has given rise to an important constitutional issue: that Mr. Dillbeck is exempt from execution under the Eighth Amendment protections articulated in *Atkins v. Virginia*, 536 U.S. 304, 306 (2002), and its progeny. See, e.g., *Hall v. Florida*, 572 U.S. 701 (2014); *Moore v. Texas*, 581 U.S. 1 (2017).

Because the circuit court summarily denied Mr. Dillbeck’s claim without consideration of his proffered evidence, this appeal constitutes Mr. Dillbeck’s first real opportunity to present a legitimate claim that his execution would violate the Eighth and Fourteenth Amendments.

Additionally, this appeal presents a claim of newly discovered evidence regarding Mr. Dillbeck’s 1979 prior felony conviction, which materially changes the balance of aggravation and mitigation presented during the penalty phase of his capital trial. Mr. Dillbeck pled guilty to a first-degree murder conviction in Lee County, an aggravating conviction that featured heavily during Mr. Dillbeck’s capital trial. However, recently discovered evidence now casts doubt on the validity of that plea deal due to evidence of Mr. Dillbeck’s diminished capacity and possible insanity at the time of the

crime, and of his probable incompetence to stand trial when he pleaded guilty. Alternatively, had the evidence diminishing the aggravated nature of the prior conviction been known to the jury, it is likely that Mr. Dillbeck would have received a sentence less than death, given that four jurors voted for life without seeing this evidence.

Further, Mr. Dillbeck's concurrently filed petition for writ of habeas corpus presents additional important constitutional issues, including an Eighth Amendment challenge to his death sentence due to evolving standards of decency and a sociolegal consensus establishing that death sentences must be based upon a unanimous jury vote; and challenges to the validity of two additional aggravating circumstances used to secure his death sentence.

This Court has previously held oral argument at this procedural posture. *See, e.g., Asay v. State*, 22 So. 3d 695, 698-99 (Fla. 2017) (referencing this Court's order entering a stay of execution after holding appellate oral argument). Here, the weight of the significant issues to be considered, and the fact that this is a capital case with an imminent execution, favor granting Mr. Dillbeck's counsel the opportunity to orally address the Court. Mr. Dillbeck respectfully requests that the Court permit oral argument in this case.

Respectfully submitted,

/s/ Baya Harrison

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing motion has been furnished by electronic service to all counsel of record on this 10th day of February 2023.

/s/ Linda McDermott

Linda McDermott