

In the Supreme Court of Florida

**EXECUTION SCHEDULED FOR
FEBRUARY 23, 2023, at 6:00 p.m.**

DONALD DAVID DILLBECK,

Appellant,

v.

CASE NO.: SC23-190
ACTIVE WARRANT CAPITAL CASE

STATE OF FLORIDA,

Appellee.

_____/

STATE'S RESPONSE TO MOTION FOR ORAL ARGUMENT

On February 10, 2023, Dillbeck, represented by registry counsel Baya Harrison III and the Capital Habeas Unit of the Office of the Federal Public Defender of the Northern District of Florida (CHU-N), filed a motion for an oral argument in this active warrant capital case. The motion should be denied.

There are no substantial issues being presented to this Court in either the appeal of the fourth successive postconviction motion or in the successive habeas petition. The three issues being raised in the

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appeal are variously not cognizable at all under existing precedent, untimely, conclusively rebutted by the record, or meritless under this Court's precedent. And the three issues being raised in the successive habeas petition are all procedurally barred and dilatory.

Furthermore, all six issues are fully explored in the briefing. *See, e.g.* Fed. R. App. P. 34(a)(2)(c) (noting one of the standards for determining if an oral argument should be conducted by the circuit court is whether "the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument"). So, conducting an oral argument would not be of significant benefit to this Court.

This Court's current standard policy is not to conduct oral arguments in active warrant cases. By the time a capital case has reached the warrant stage, this Court has already conducted two oral arguments in the case — in the direct appeal and in the initial postconviction appeal. As this Court is well aware, it has been this Court's uniform policy, for decades, to hold an oral argument in the direct appeal and the initial postconviction appeal of every capital

case. So, in the prototypical capital case, there has already been two oral arguments conducted by this Court by the time a warrant is signed. There is no need for a third oral argument.

The case that opposing counsel relies on, as support for the request for an oral argument during an active warrant case, is *Asay v. State*, 210 So.3d 1 (Fla. 2016). But the oral argument in that case was held in 2016, nearly seven years ago. Moreover, the main issue in *Asay* was the application of *Hurst v. Florida*, 577 U.S. 92 (2016), to Florida, and the retroactivity of *Hurst*, both of which, obviously, were significant issues. *Asay*, 210 So.3d at 14 (noting that the United States Supreme Court had left to this Court the question of “whether and how to apply *Hurst v. Florida* and whether any *Hurst v. Florida* error can be harmless”). The *Asay* decision ultimately resulted in four different concurring opinions, as well as a dissenting opinion.¹ In the absence of an issue of similar magnitude, this Court should follow its current

¹ *Asay*, 210 So.3d at 29 (Labarga, J., concurring with opinion); *Asay*, 210 So.3d at 29 (Polston, J., concurring with opinion); *Asay*, 210 So.3d at 30 (Lewis, J., concurring with opinion); *Asay*, 210 So.3d at 32 (Pariente, J., concurring with opinion); *Asay*, 210 So.3d at 37 (Perry, J., dissenting with opinion).

standard policy and not conduct any oral argument in active warrant cases. No issues of a similar magnitude are being raised in this Court in this case.

Accordingly, the motion for an oral argument should be denied.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL OF FLORIDA

/s/ Charmaine Millsaps

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing STATE'S RESPONSE TO MOTION FOR ORAL ARGUMENT has been furnished via the e-portal to BAYA HARRISON III, P.O. Box 102, 736 Silver Lake Rd, Monticello, FL 32345, phone: 850-997-8469; email: bayalaw@aol.com and LINDA McDERMOTT, Chief, Capital Habeas Unit of the Office of the Federal Public Defender of the Northern District of Florida, 227 N. Bronough Street, Suite 4200, Tallahassee, FL 33301; phone: (850) 942-8818; email: Linda_Mcdermott@fd.org this 13th day of February, 2023.

/s/ Charmaine Millsaps

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