No. ___

IN THE

Supreme Court of the United States

EDWARD THOMAS JAMES,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE WITH AN EXECUTION SCHEDULED FOR THURSDAY, MARCH 20, 2025, AT 6:00 P.M.

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A1
Eleventh Circuit Order Denying Emergency Motion for Stay of Execution, March 13, 2025

[PUBLISH]

In the United States Court of Appeals
For the Eleventh Circuit

No. 25-10683

EDWARD THOMAS JAMES,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:18-cv-00993-WWB-RMN

Before WILLIAM PRYOR, Chief Judge, and GRANT and BRASHER, Circuit Judges.

PER CURIAM:

Edward Thomas James, a Florida inmate sentenced to death, has moved this Court to stay his execution, which is presently scheduled for March 20, 2025. We **DENY** the motion.

I.

One evening more than thirty years ago, James raped and strangled eight-year-old Toni Neuner to death. *James v. State*, 695 So. 2d 1229, 1231 (Fla. 1997). He then murdered an adult woman, Betty Dick, stabbing her to death in view of one of her grandchildren. *Id.* James took Dick's purse, jewelry bag, and car, and drove across the country. *Id.* He sold Dick's possessions for money along the way. *Id.* After he was arrested, he gave two videotaped confessions to police. *Id.*

James pleaded guilty to two counts of first-degree murder, along with other crimes. *Id.* at 1230. After a penalty-phase trial, a jury returned an advisory recommendation for a sentence of death for each of the first-degree murder convictions. *Id.* at 1233. The trial court followed the jury's recommendation and sentenced James to death on both first-degree murder convictions. *Id.*

James appealed, and the Florida Supreme Court affirmed his death sentences. *Id.* at 1238. The Supreme Court of the United States denied James's petition for a writ of certiorari on December 1, 1997. *James v. Florida*, 522 U.S. 1000 (1997).

In 1998, James, through counsel, moved for state postconviction relief. *James v. State*, 974 So. 2d 365, 366 (Fla. 2008). The trial court set an evidentiary hearing on some claims. *Id.* But before it held a hearing, James filed a *pro se* notice that sought dismissal of his postconviction proceedings. *Id.* The trial court held a hearing and engaged in a colloquy with James to ensure that he understood the consequences of his actions. *Id.* After concluding that James understood the consequences of his actions, the trial court discharged James's counsel and allowed James to withdraw his motion for postconviction relief. *Id.*

Years later, James sought reappointment of counsel and reinstatement of his state postconviction proceedings. *Id.* After holding a hearing, the trial court denied that motion. *Id.* The Florida Supreme Court affirmed the trial court's order. *Id.* at 368.

In 2018, more than ten years after his state proceedings ended, James petitioned for federal habeas relief. James sought—and the district court granted—a stay of James's habeas proceedings while he exhausted claims in state court. The state trial court summarily dismissed James's successive motion for postconviction relief, the Florida Supreme Court affirmed that decision, and the Supreme Court of the United States denied James's petition for a writ of certiorari. *James v. State*, 323 So. 3d 158, 161 (Fla. 2021), *cert. denied*, 142 S. Ct. 1678 (2022).

In 2022, the district court lifted the stay and James filed an amended habeas petition. In his amended habeas petition, James included mental health records to support his assertion that

"numerous experts have found red flags indicating that [James] was incompetent at the time of his postconviction waiver, and that incompetency persisted during the time after his waiver."

The district court held that James's habeas petition was barred by the statute of limitations. The district court held that James was not entitled to equitable tolling because he failed "(1) to show a causal connection between his mental impairments and his ability to timely file a § 2254 petition" and that he failed "(2) to demonstrate reasonable diligence." The district court further concluded that the actual innocence gateway was inapplicable, as there was no "reasonable likelihood that the new mental health evidence provided by Petitioner would prevent any reasonable juror from finding him guilty." The district court denied James's amended petition as untimely, and it denied a certificate of appealability. The district court denied James's motion for reconsideration.

James appealed to this Court. On February 3, 2025, a member of this Court denied James's application for a certificate of appealability, concluding that jurists of reason would not debate the district court's conclusions. On February 18, Florida Governor Ron DeSantis signed a death warrant and scheduled James's execution for March 20, 2025.

James then filed a motion for reconsideration and an emergency motion to stay his execution, which a three-judge panel of this Court denied. On the same day that James moved for reconsideration with this Court, he filed a motion to amend his habeas petition, or alternatively, a motion for relief from judgment under

Rule 60(b), Fed. R. Civ. P., in the district court. James supported his motions with newly received CT scans and expert reports about those scans.

The district court denied James's motion for relief under Rule 60(b), Fed. R. Civ. P., on the grounds that James's new evidence would not "produce a new result," or in other words, it would not "warrant the application of equitable tolling or the actual innocence gateway." The district court denied James's alternative motion to amend his habeas petition on the ground that it lacked jurisdiction to allow an amendment after the court had entered final judgment on the petition and James had appealed.

James filed a second motion to stay his execution with this Court. He also filed a notice of appeal and a motion for a certificate of appealability.

II.

James "bears the burden of establishing that he is entitled to a stay of execution." *Mann v. Palmer*, 713 F.3d 1306, 1310 (11th Cir. 2013). We may grant the equitable relief of a stay of execution only if James establishes that "(1) he has a substantial likelihood of success on the merits; (2) he will suffer irreparable injury unless the injunction issues; (3) the stay would not substantially harm the other litigant; and (4) if issued, the injunction would not be adverse to the public interest." *Valle v. Singer*, 655 F.3d 1223, 1225 (11th Cir.

2011) (quoting *DeYoung v. Owens*, 646 F.3d 1319, 1324 (11th Cir. 2011)).

III.

James argues that he has a substantial likelihood of success on appeal in two respects. And he argues that the equities warrant a stay so that he may fully litigate these issues on appeal. We disagree.

James argues that he has a substantial likelihood of establishing that the district court erroneously denied his motion for relief under Rule 60(b) of the Federal Rules of Civil Procedure. Rule 60(b)(2) provides that a "court may relieve a party . . . from a final judgment, order, or proceeding for . . . (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." The district court denied the motion because it concluded James could not establish "that consideration of the new evidence would probably produce a new result—*i.e.*, would warrant the application of equitable tolling or the actual innocence gateway—in this case." *See Waddell v. Hendry Cnty. Sheriff's Off.*, 329 F.3d 1300, 1309 (11th Cir. 2003).

We cannot say that James is likely to succeed on this argument. When we consider—as the district court did—James's newly offered medical evidence along with his previous evidence, we see a lack of connection between any mental impairment and "the relevant time—*i.e.*, the time immediately before, during, or after his waiver of collateral proceedings and through the end of his AEDPA

limitations period." As the district court said, the new evidence "fails to show a causal connection between [James's] mental impairments and his ability to file a timely petition." And the new evidence fails to explain James's lack of reasonable diligence "between the waiver of his post-conviction proceedings, the end of the AEDPA limitations period, and his later decision to attempt to reinstate his post-conviction proceedings," or "during the ten-year period between the Florida Supreme Court's affirmance of the denial of such reinstatement and his June 2018 motion in this Court for appointment of [counsel] to pursue federal habeas remedies." Nothing about that evidence establishes that, at the time James waived his post-conviction proceedings, he could not "understand the proceedings against him, the nature of his convictions and death sentence, and the nature of the consequences that would stem from his decision to withdraw his post-conviction motion." And, especially in light of the overwhelming evidence of James's guilt, this evidence has nothing to do with the actual innocence gateway to the statute of limitations.

James also argues that he is likely to succeed in establishing that the district court erred in denying his post-judgment motion to amend. We believe this argument fails for two reasons.

First, we have explained that "under jurisdictional principles common to all federal civil cases, a prisoner cannot amend a habeas petition and relitigate the case after the district court has entered its final judgment and he has appealed." *Boyd v. Sec'y, Dep't of Corr.*, 114 F.4th 1232, 1236 (11th Cir. 2024). Instead, "[a] final judgment

ends the district court proceedings, cutting off the opportunity to amend pleadings and precluding relitigation of any claim resolved by the judgment unless that judgment is first set aside." *Id.* James argues that a stay is appropriate because the Supreme Court has granted certiorari in *Rivers v. Lumpkin*, 99 F.4th 216 (5th Cir. 2024), *cert. granted*, 145 S. Ct. 611 (2024) (No. 23-1345), to address whether a post-judgment motion to amend a habeas petition is a successive petition under 28 U.S.C. §2244(b)(2). But "a grant of certiorari does not change the law." *Rutherford v. McDonough*, 466 F.3d 970, 977 (11th Cir. 2006); *see also Ritter v. Thigpen*, 828 F.2d 662, 665–66 (11th Cir. 1987); *Thomas v. Wainwright*, 788 F.2d 684, 689 (11th Cir. 1986). Indeed, it is "the unequivocal law of this circuit that, because grants of certiorari do not themselves change the law, they must not be used by courts of this circuit as a basis for granting a stay of execution that would otherwise be denied." *Schwab v. Sec'y, Dep't of Corr.*, 507 F.3d 1297, 1298 (11th Cir. 2007).

Second, and more importantly, even if the district court's jurisdictional ruling were incorrect, James's motion to amend would not alter his failure to file a federal habeas petition until many years after the statute of limitations had run. As we have already explained, James's newly proffered medical evidence does not support his equitable tolling argument. *See Hunter v. Ferrell*, 587 F.3d 1304, 1308 (11th Cir. 2009) ("[T]he alleged mental impairment must have affected the petitioner's ability to file a timely habeas petition."). And James's new evidence of a recent mental impairment does not open the actual innocence gateway.

Finally, we must consider that in seeking a stay of execution, James is seeking an equitable remedy, and equity is not on his side. *See Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992). The evidence of James's guilt is overwhelming, he pleaded guilty to the crime, and he voluntarily dropped his post-conviction challenges many years ago. "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). Nonetheless, this is James's second motion to stay his execution arising from the same federal habeas proceeding, and this motion raises essentially the same issues about the timeliness of his federal habeas petition that we have already addressed in denying his first motion for a certificate of appealability and his first motion for a stay. A stay of James's execution would be inequitable and "adverse to the public interest." *Valle*, 655 F.3d at 1225.

IV.

James's motion for a stay of execution is **DENIED**.

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District Court Order Denying Emergency Motion for Leave to Amend the Petition for Writ of Habeas Corpus, or Alternatively, for Relief from Judgment Pursuant to Rule 60(b), February 27, 2025

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

EDWARD THOMAS JAMES,

Petitioner,

v. Case No. 6:18-cv-993-WWB-RMN

SECRETARY, DEPARTMENT OF CORRECTIONS, *et al.*,

Respondents.
/

ORDER

THIS CAUSE comes before the Court on Petitioner Edward Thomas James's Emergency Motion for Leave to Amend the Petition for Writ of Habeas Corpus, or, Alternatively, for Relief from Judgment Pursuant to Rule 60(b). (Doc. 99). For the reasons that follow, the motion will be denied, and Petitioner will be denied a certificate of appealability.

I. BACKGROUND

On September 6, 2024, the Court denied as untimely (Doc. 90) Petitioner's Amended Petition for Writ of Habeas Corpus (Doc. 66), which challenged his state convictions for murder, aggravated child abuse, attempted sexual battery, kidnapping, grand theft, and grand theft of an automobile, as well as his death sentence. The Court also denied Petitioner a certificate of appealability. (Doc. 90 at 118–19).

In denying the Amended Petition as untimely, the Court determined, as relevant to the present motion, that Petitioner was not entitled to equitable tolling because he did not show a causal connection between his mental impairments and his ability to file a timely

petition. (Doc. 90 at 25). Petitioner provided no "specific allegations or evidence of the effect of his mental impairments on his daily life during the relevant time"—*i.e.*, during the time immediately before, during, or after his waiver of collateral proceedings and through the end of his limitations period under the AEDPA." (Doc. 90 at 32). Even if he had done so, Petitioner did "not allege reasonable diligence between the waiver of his post-conviction proceedings and the end of his AEDPA limitations period," (Doc. 90 at 32), or "during the following *ten-year period* before he moved in this Court for appointment of the CHU in June 2018 to pursue his federal remedies," (Doc. 90 at 33).

The Court also determined that equitable tolling was not applicable on Petitioner's allegations that counsel constructively abandoned him and led him to waive his post-conviction proceedings while incompetent. (Doc. 90 at 34–44). At the penalty-phase trial, Petitioner's own expert testified to Petitioner's above-average intelligence, his mild chronic depression, his normal EEG and SPECT scan results, and his ability to understand what he was doing when he committed the crimes, to understand that his actions were wrong, and to understand the consequences of those actions. (Doc. 90 at 36). And the Court determined that Petitioner

> d[id] not allege [in the Amended Petition] (1) an inability to communicate with, understand, or assist counsel regarding the preparation and filing of his Rule 3.850 motion; (2) any particular development in his mental health impairments [since the time of the penalty-phase trial]; or (3) any interaction or pattern of interactions with counsel that would give counsel reason to doubt his competency [by the time he waived his post-conviction proceedings].

(Doc. 90 at 36–37). Additionally, Petitioner's colloquy at the April 2003 hearing on his request to withdraw his Rule 3.850 motion "demonstrated that he had a rational and factual understanding of the proceedings against him (including the nature of his

convictions and death sentence and the consequences that would stem from his decision to withdraw his post-conviction motion)." (Doc. 90 at 43).

As for Petitioner's actual innocence claims, Petitioner "d[id] not persuade the Court that the new evidence he present[ed] would prevent *any* reasonable juror from voting to find him guilty." (Doc. 90 at 76; *see also* Doc. 90 at 118). This determination was founded on the speculative nature of Dr. London's opinion regarding the unreliability of the surviving victim's statements, the speculative and conclusory nature of various new lay witness statements, the consistency of some of the new evidence with the evidence of record, the consistency of the evidence of record with the surviving victim's statements, the surviving victim's "consistent identification of [Petitioner] as her grandmother's killer and her captor, Petitioner's possession of [the grandmother's] car and jewelry, [Petitioner's] flight from the scene and across the country,[] and [Petitioner's] own confessions." (Doc. 90 at 72–76). The Court also found that Petitioner's new mental health evidence relating to the reliability of his confessions was vague and speculative, that "Petitioner [did] not show[] that his inculpatory statements were the result of police suggestion or manipulation, . . . [that] his statements were not as 'wild[ly] inconsistent[]' as he contend[ed]," (Doc. 90 at 108 (internal record citation omitted)), and that Petitioner's "overall story of the commission of the crimes [was] consistent and corroborated by [the surviving victim's] statements[] and other evidence," (Doc. 90 at 114).

On November 18, 2024, the Court denied (Doc. 94) Petitioner's subsequent Motion to Alter or Amend Judgment and/or for Reconsideration of the Denial of a Certificate of Appealability (Doc. 93) and denied Petitioner a certificate of appealability (Doc. 94 at 3).

Petitioner then moved for a certificate of appealability from the Eleventh Circuit Court of Appeals. On February 3, 2025, the Eleventh Circuit denied Petitioner's application for a certificate of appealability. (Doc. 98); *James v. Sec'y Dep't of Corr.*, No. 24-14162, Doc. 9 (11th Cir. Feb. 3, 2025). The Eleventh Circuit determined that "[r]easonable jurists could not debate [this Court's] conclusion that James failed to establish that he was entitled to equitable tolling." (Doc. 98 at 6). This is because Petitioner "neither allege[d] facts nor provide[d] evidence of how any mental impairment caused him to discharge his counsel or discontinue his state postconviction proceedings," and therefore did not "establish[] a 'causal connection between [James's] alleged mental incapacity and his ability to file a timely petition." (Doc. 98 at 6–7 (quoting *Hunter v. Ferrell*, 587 F.3d 1304, 1308 (11th Cir. 2009)). Petitioner "also failed to allege that he acted with reasonable diligence between when he discontinued his postconviction proceedings and the end of the one-year limitation period." (Doc. 98 at 7).

As for Petitioner's claim of actual innocence, the Eleventh Circuit similarly found that no reasonable jurist could debate this Court's determination that Petitioner's new evidence does not overcome the time-bar. (Doc. 98 at 7). As the Eleventh Circuit explained, "James's newly offered evidence cannot overcome the sole eyewitness's identification of James as the killer, James's possession of one of the victim's [sic] car and jewelry, his cross-country flight from the crime scene, and his own confession to the crimes," and, thus, "fails to establish that no reasonable jury could have convicted him of the crimes." (Doc. 98 at 7).

On February 18, 2025, Florida Governor Ron DeSantis signed the death warrant to carry out Petitioner's execution, which is scheduled for March 20, 2025, at 6:00 p.m. (*See* Doc. 99 at 1); *James v. State*, No. SC1960-86834 (Fla. Feb. 18, 2025).

Although the Eleventh Circuit's denial of a certificate of appealability was issued as the mandate (Doc. 98 at 1), Petitioner moved on February 24, 2025, for reconsideration of the denial and filed an emergency motion for a stay of execution. *See James v. Sec'y Dep't of Corr.*, No. 24-14162, Doc. Nos. 11, 12 (11th Cir. Feb. 24, 2025). Those motions were denied on February 27, 2025. *See id.* at Doc. 17.

II. THE PRESENT MOTION

Petitioner now moves for leave to amend his Amended Petition, (Doc. 99 at 3–4), or, alternatively for relief under Federal Rule of Civil Procedure 60(b)(2), (Doc. 99 at 4–5), based on newly discovered evidence. Petitioner explains that, in January 2023, he suffered a near-fatal heart attack. "[I]mmediately upon learning Petitioner had been hospitalized, his federal counsel . . . contacted multiple facilities seeking all available information and medical records related to this event." (Doc. 99 at 7). Nevertheless, even though counsel "received copies of Petitioner's written medical records and numerous test results on March 24, 2023," and despite more than ten unsuccessful attempts to obtain the imaging—"and twice being informed there were no scans"—counsel did not receive Petitioner's CT scan imaging until February 14, 2025. (Doc. 99 at 7). Counsel promptly obtained expert review of the imaging. (Doc. 99 at 7).

Petitioner contends that "the neuroimaging scans provide concrete evidence of [his] abnormal brain structure[] and greatly support his § 2254 proffer that his longstanding cognitive impairments severely and deleteriously impacted his legal competency," (Doc.

99 at 9), which in turn supports his arguments that equitable tolling and actual innocence apply to bypass the time-bar and permit the Court's review of Petitioner's substantive habeas claims on the merits, (Doc. 99 at 7–14).

III. ANALYSIS

Petitioner requests leave to amend the Amended Petition. However, as Petitioner concedes, the Court lacks jurisdiction to permit such amendment. *See Boyd v. Secretary*, 114 F.4th 1232, 1236 (2024) ("[U]nder jurisdictional principles common to all federal civil cases, a prisoner cannot amend a habeas petition and relitigate the case after the district court has entered its final judgment and he has appealed. A final judgment ends the district court proceedings, cutting off the opportunity to amend pleadings and precluding relitigation of any claim resolved by the judgment unless that judgment is first set aside.").

Petitioner alternatively moves for relief under Rule 60(b)(2), which provides that, "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: . . . (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." As the Eleventh Circuit has explained,

> [f]or the court to grant relief based upon newly discovered evidence under Rule 60(b)(2), a movant must meet a five-part test: (1) the evidence must be newly discovered since the trial; (2) due diligence on the part of the movant to discover the new evidence must be shown; (3) the evidence must not be merely cumulative or impeaching; (4) the evidence must be material; and (5) the evidence must be such that a new trial would probably produce a new result.

Waddell v. Hendry Cnty. Sheriff's Off., 329 F.3d 1300, 1309 (11th Cir. 2003).

Upon review, considering the present motion as a timely motion for relief from a final judgment under Rule 60(b)(2), Petitioner is not entitled to relief.[1] Even if the Court were to decide Petitioner satisfied the first four elements of the five-part test set out above, Petitioner does not demonstrate that consideration of the new evidence would probably produce a new result—*i.e.*, would warrant the application of equitable tolling or the actual innocence gateway—in this case.

Petitioner presents the report of Erin David Bigler, Ph.D., who reviewed Petitioner's January 11, 2023 CT imaging and the radiologist's report of that imaging. (Doc. 99-1 at 17). Dr. Bigler reports that Petitioner underwent CT imaging due to "[a]ltered mental status[,] [a]tatus post-cardiac arrest," and to "[r]ule out neurological cause of trauma." (Doc. 99-1 at 17 (citing Doc.99-1 at 26)). The images show the existence of a "posterior scalp soft tissue swelling/hematoma," which "confirms [the] presence of [a] head injury, where Mr. James presumably fell backwards [during the heart attack], striking the back of his head." (Doc. 99-1 at 18 (citing Doc. 99-1 at 27)).

[1] "[A] Rule 60(b) motion is to be treated as a successive habeas petition if it: (1) 'seeks to add a new ground of relief;' or (2) 'attacks the federal court's previous resolution of a claim on the merits.'" *Williams v. Chatman*, 510 F.3d 1290, 1293–94 (11th Cir.2007) (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005)). In contrast, a Rule 60(b) motion is not considered a second or successive habeas petition if the motion "attacks, not the substance of the federal court's resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings." *Gonzalez*, 545 U.S. at 532. Consequently, if construed as a Rule 60(b) motion, the present motion is not considered a second or successive habeas petition because Petitioner does not raise a new claim for relief or attack the Court's resolution of a claim on the merits. Instead, Petitioner challenges the Court's decision that the Amended Petition was untimely because he was not entitled to equitable tolling or application of the actual innocence gateway. *See, e.g.*, *Stewart v. Sec'y, Dep't of Corr.*, 355 F. App'x 275, 280 (11th Cir. 2009) (finding Rule 60(b) motion challenging denial of equitable tolling was not a successive habeas petition).

Dr. Bigler explains that "the radiologist noted 'mild prominence of the sulci[2] and ventricles in a frontoparietal dominance,'" which "indicat[es] . . . volume reduction in the brain" and "is often an indicator of cerebral atrophy." (Doc.99-1 at 18 (quoting Doc. 99-1 at 26)). The CT shows that, due to the atrophy, the sulci "are wider than is typical, creating greater presence of [cerebrospinal fluid]" in those spaces. (Doc. 99-1 at 20 (citing Doc. 99-1 at 30)). Dr. Bigler notes that the imaging shows "increased [cerebrospinal fluid] atop the entire length of the frontal lobe, extending into the anterior parietal lobe," (Doc. 99-1 at 20 (citing Doc. 99-1 at 34–35)), instead of the normal finding of "minimal cortical surface" in a healthy, neurotypical individual, (Doc. 99-1 at 20). The CT also shows "Sylvian fissure widening . . . consistent with atrophic changes involving the frontal lobe," (Doc. 99-1 at 20 (citing Doc. 99-1 at 32)), and "increased density of the midbasilar artery, favored to be secondary to artifact in the posterior fossa," (Doc. 99-1 at 19, 28).

Dr. Bigler explains that "[a]ny kind of problem at the level of the basilar artery can result in falls and loss of consciousness, but can also lead to cognitive sequelae, especially with memory." (Doc.99-1 at 19). Further, "cerebral atrophy, especially involving the frontal lobes, is associated with a host of major neuropsychiatric conditions but is especially related to a history of repetitive head trauma." (Doc.99-1 at 18). "While cerebral atrophy can occur subsequent to an anoxic brain injury associated with cardiac arrest, that may take weeks to show up on a brain scan, especially CT imaging of the brain." (Doc. 99-1 at 18). Therefore, the "observation of sulcal prominence and ventricular enlargement has to reflect the chronic state of Mr. James' brain before the

[2] Dr. Bigler explains that "[s]ulci is plural for sulcus[,] and a sulcus is the groove (indented depression or valley) formed between the gyri[.] . . . [A] gyrus is the raised ridge involving the cortical surface of the brain." (Doc.99-1 at 19).

cardiac event. In other words, this abnormality predated Mr. James' cardiac arrest, possibly by many years," and Petitioner's "structural brain changes could have commenced as early as during his juvenile period." (Doc. 99-1 at 18, 24; *see also* Doc. 99-1 at 21).

The idea that Petitioner's identified cerebral atrophy predates his heart attack, Dr. Bigler opines, is supported by Dr. Eisenstein's 2022 reports of Petitioner's reduced neuropsychological test scores "in certain areas of auditory memory to include working memory and spatial processing" and Petitioner's "longstanding learning issues," from which Dr. Eisenstein concluded that Petitioner "presents with a neurodegenerative disorder, marked by significant decline over time[,] . . . consistent with a history of multiple head trauma and substance abuse." (Doc. 99-1 at 21; *see also* Doc. 90 at 20–21, 27–28) (describing the results of Dr. Eisenstein's evaluation of Petitioner)).

Dr. Bigler also opines that the cerebral atrophy is consistent with Dr. Castillo's finding of "transgenerational family distress . . . affecting neurodevelopmental factors in [Petitioner's] brain development" and his reports of Petitioner's early drug, inhalant, and polysubstance abuse, and history of head injuries. (Doc. 99-1 at 22–23; *see also* Doc. 90 at 21–23, 28) (describing the results of Dr. Castillo's evaluation of Petitioner)). Dr. Bigler notes that "[s]uch factors have been demonstrated in the clinical literature, especially with advanced neuroimaging methods magnetic resonance imaging (MRI) and various types of functional neuroimaging clinical studies," that "[h]istory of polysubstance abuse is a known factor that may be associated with loss of brain volume," that all the adverse influences described by Dr. Castillo occurred at critical times periods in Petitioner's brain development, and that "traumatic brain injury, especially repetitive types

of traumatic brain injury, . . . is more likely than not to be associated with some degree of brain volume loss [(especially within the frontoparietal distribution)] and potentially accelerated aging effects." (Doc. 99-1 at 22–23). Additionally, "repetitive head injuries that occur while the brain is still developing[] further disrupt inhibitory control over behavior." (Doc. 99-1 at 23).

Similarly, Dr. Bigler contends that the cerebral atrophy is consistent with Petitioner's report to Dr. Kessel of cognitive decline, as well as Dr. Kessel's statement that "the coupling of cognitive dysfunction and brain damage may very well aggravate [Petitioner's] depression, particularly given his memory impairments around the time of the offense," and her discussion regarding how "polysubstance abuse . . . can exacerbate underlying subclinical seizure disorder." (Doc. 99-1 at 23; *see also* Doc. 90 at 17–19) (describing the results of Dr. Kessel's evaluation of Petitioner)). Dr. Regnier, too, recorded Petitioner's history of drug and inhalant use and Petitioner's reports of cognitive decline, concluded that Petitioner suffered from "[m]ajor depressive disorder, alcohol dependence in remission due to incarceration, polysubstance dependence in remission due to incarceration, history of multiple traumatic brain injuries, rule out dementia," and recommended an "MRI to determine if his brain shows signs of cerebral atrophy related to the possibility [of] brain injury or other causes." (Doc. 99-1 at 24; *see also* Doc. 90 at 19–20, 27) (describing the results of Dr. Regnier's evaluation of Petitioner)).

Overall, Dr. Bigler opines that,

> Given the extensive historical evidence of Mr. James' longstanding and progressive cognitive symptoms, MRI results would clearly help to resolve the issues of underlying brain damage that are not fully captured in the CT imaging. Further, follow-up MRI could be compared to the 2023 baseline CT, which could determine the rate of brain volume loss. Polysubstance abuse, chronic depression/mood dysregulation disorders, multiple head

> injuries and prior hypoxic-ischemic brain injury are all risk factors for later in life dementing illnesses, including progressive deterioration in brain function and Alzheimer's disease. History of multiple head injuries is a known factor that may accelerate the normal aging process in the brain. A comparison between 2023 and present scans, particularly when viewed alongside neuropsychological testing from 2022 and 2024/2025, could be predictive of Mr. James' expected future cognitive functioning. It could also help to corroborate the level of cognitive impairment Mr. James has experienced at various points in his life.

(Doc. 99-1 at 24).

While Dr. Bigler's report provides support for the conclusions of the other experts that were considered in adjudicating the Amended Petition, the fact of Petitioner's mental impairment is not, alone, enough to toll the statute of limitations. *Hunter v. Ferrell*, 587 F.3d 1304, 1308 (11th Cir. 2009) (citation omitted). Considering this new evidence in conjunction with the prior evidence, Petitioner again, (*see* Doc. 90 at 25–32), fails to provide specific allegations or evidence of the effect of his mental impairments on his daily life during the relevant time—*i.e.*, the time immediately before, during, or after his waiver of collateral proceedings and through the end of his AEDPA limitations period—and fails to show a causal connection between his mental impairments and his ability to file a timely petition. The new evidence also fails to shed light on (1) Petitioner's lack of reasonable diligence between the waiver of his post-conviction proceedings, the end of the AEDPA limitations period, and his later decision to attempt to reinstate his post-conviction proceedings; or (2) Petitioner's lack of reasonable diligence during the ten-year period between the Florida Supreme Court's affirmance of the denial of such reinstatement and his June 2018 motion in this Court for appointment of the CHU to pursue federal habeas remedies. (*See* Doc. 90 at 32–33). Additionally, the new evidence does not bear on counsel's alleged abandonment or implicate any specific obvious

impairment demonstrating Petitioner's inability, at the time he waived his post-conviction proceedings, to rationally and factually understand the proceedings against him, the nature of his convictions and death sentence, and the nature of the consequences that would stem from his decision to withdraw his post-conviction motion. (*See* Doc. 90 at 34–44).

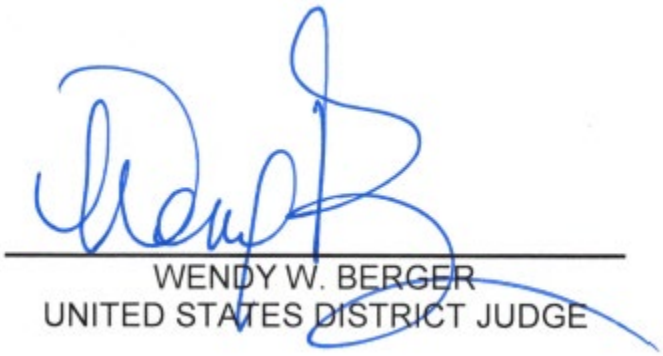
Finally, given the other evidence against him, as described above and in the order denying the Amended Petition, (*see* Doc. 90 at 72–76, 107–118), Petitioner does not persuade the Court that the newly discovered evidence presented here would prevent any reasonable juror from voting to find him guilty, and he therefore fails to demonstrate that the new evidence would result in application of the actual innocence gateway to overcome his limitations-based procedural default.

Accordingly, it is **ORDERED** that:

1. Petitioner's Emergency Motion for Leave to Amend the Petition for Writ of Habeas Corpus, or, Alternatively, for Relief from Judgment Pursuant to Rule 60(b) (Doc. 99) is **DENIED**.
2. This Court should grant an application for certificate of appealability only if the Petitioner shows "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2) ("A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right."). Petitioner has failed to

make a substantial showing of the denial of a constitutional right. Therefore, Petitioner is **DENIED** a Certificate of Appealability.

DONE and **ORDERED** in Orlando, Florida on February 27, 2025.



Copies furnished to:

Counsel of Record