

**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

CASE NO: 1996-CF-008093A

v.

**DEATH WARRANT SIGNED
EXECUTION SCHEDULED**

SAMUEL LEE SMITHERS, JR.,

October 14, 2025, 6:00 p.m.

Defendant.

_____ /

**DEFENDANT’S SUCCESSIVE MOTION TO VACATE DEFENDANT’S
SENTENCE OF DEATH**

COMES NOW, Defendant, SAMUEL LEE SMITHERS JR., by and through undersigned counsel, files this motion pursuant to Florida Rule of Criminal Procedure 3.851. The grounds for this motion are as follows:

(A) JUDGMENT AND SENTENCE UNDER ATTACK

On January 22, 1999, Mr. Smithers was sentenced to death on two counts for the death of Christie¹ Cowan and Denise Roach. Mr. Smithers challenges his death sentence pursuant to Florida Rule of Criminal Procedure 3.851. The Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County, rendered the judgments of conviction and sentence under consideration. See Appendix A, “Judgment and Conviction.”

¹It appears that in the Indictment filed on June 12, 1996 at Vol. 1/R22, the State has Ms. Cowan’s first name spelled incorrectly as “Christy.”

(B) PREVIOUS POSTCONVICTION CLAIMS AND DISPOSITION

See, Appendix B, “The Course of Prior Proceedings and Statement of the Case, filed by the State on September 15, 2025, Filing # 231547442.”

(C) REASON CLAIM RAISED IN PRESENT MOTION WAS NOT RAISED IN FORMER MOTION

Smithers asserts that his execution scheduled to occur on October 14, 2025, amounts to cruel and unusual punishment, in violation of the Eighth Amendment of the United States Constitution and corresponding provision of the Florida Constitution due to the fact that he is 72 years-old and thus older than 65 years-old. Smithers prayer for relief is predicated upon this age, which could not have been raised previously and would not be ripe for review until the Governor signed the warrant for Smithers’ execution.

(D) NATURE OF RELIEF SOUGHT

Mr. Smithers respectfully requests:

- (1) that he be granted leave to amend this successive motion, as necessary;
- (2) an evidentiary hearing on the claim presented below;
- (3) a stay of his execution; and
- (4) this Court vacate his death sentence.

[INTENTIONALLY LEFT BLANK]

(E) CLAIM FOR WHICH AN EVIDENTIARY HEARING IS SOUGHT:

The execution of Smithers is cruel and unusual punishment because of his advanced age and status as elderly, in violation of the Eighth Amendment of the United States Constitution and corresponding provision of the Florida Constitution.

The execution of our society's most vulnerable persons, such as the elderly, serves no deterrent or retributive effect. Smithers' prayer for relief under this claim is not addressing an argument that the sentence of death is prohibited by the Eighth Amendment, this issue raised by Smithers is whether the implementation and carrying out of his sentence of death, triggered by the signing of his death warrant, would *now* constitute cruel and unusual punishment. Using the framework and analysis of analogous cases shows the execution of Samuel Smithers on October 14, 2025, violates the Eighth Amendment of the United States Constitution. The execution of Mr. Smithers no longer serves the intended and stated purposes of the death sentence. Executing Mr. Smithers, a 72-year-old person, offends the evolving standards of decency and is cruel and unusual punishment.

1. The Evolving Standards of Decency Analysis

Analysis of the evolving standards of decency provides the framework for the analysis of the Eighth Amendment's prohibition against cruel and unusual punishment. *Roper v. Simmons*, 543 U.S. 551, 560-561 (2005) (*citing*, *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958)). The evolving standards dictate when a punishment has become cruel and unusual punishment. *Id.* The analysis is not confined to method in which a death sentence is ultimately carried out but

rather the contemporary values. *Ford v. Wainwright*, 477 U.S. 399, 406 (1986). Contemporary values determine “whether a particular punishment comports with the fundamental human dignity that the [Eighth] Amendment protects.” *Id.*

The evolving standards of decency analysis is informed and shaped by objective indicia of society’s standards expressed in legislative enactments and state practice. *Roper*, 543 U.S. at 563. The contemporary standards and values provide objective evidence that the execution of the elderly would not comport with fundamental human dignity the Eighth Amendment of the United States Constitution demands.

Florida’s stance on protecting the elderly provides evidence of a clear and expressed consensus of protecting the elderly, especially those 65 years of age and older. This consensus evidences the evolved standards of protecting the vulnerable and provides objective evidence of contemporary values. Florida’s standards and contemporary values are reflected in many statutes that reclassify criminal offenses and provide for enhanced punishment when the victim is 65 years of age and older. Florida has recognized the need for extra protections for those over 65 years of age as evidenced by the legislature’s enactment of criminal statutes which enhance criminal sanctions and reclassify criminal offenses based on the victim’s age.

Florida Statue § 784.08(1) imposes a minimum term of prison for the offense of aggravated assault or aggravated battery upon a person 65 years of

age or older. Florida legislature also included the reclassification of misdemeanor battery, making the offense a third-degree felony based on the victim being 65 years of age or older rather than a first-degree misdemeanor. Florida seeks to protect the elderly not just in violent crime, Florida law also reclassifies theft offenses, creating enhanced criminal penalties. Fla. Stat. § 812.0145. (2025). Florida also enacted legislation which protects those 65 years or older from exploitation. Fla. Stat. 817.5695(2) (2025). The fragility and cognitive decline in older adults is also recognized by Florida as a significant factor in their vulnerability. See, “Florida’s Elder Abuse Benchbook,” (2025).²

A distinction between adults and older adults can also be seen in the enactment of statutes that allow a person 70 years or older to request excusal from jury service, even *permanently*. 28 U.S.C. § 1863(b)(5)(A). Florida Statute § 40.013(2)(8) states that a “person 70 years of age or older shall be excused from jury service upon request.” (2025). The Statute goes further even making it permissible for a person 70 years or older to request permanent excusal from jury service. Fla. Stat. § 40.013(2)(8) (2025). This is evidence that Florida also recognizes a distinction between adults and adults 70 years or older, even in areas of civil obligations. Florida allowing the request for permanent excusal is even more significant upon consideration that Florida Statute allows the same

² “Protecting the Vulnerable; Florida’s Elder Abuse Benchbook,” (2025) [https://www.flcourts.gov/content/download/2456475/file/FINAL%20Elder%20Abuse%20Benchbook%20\(with%20cover\)%20\(0826\).pdf](https://www.flcourts.gov/content/download/2456475/file/FINAL%20Elder%20Abuse%20Benchbook%20(with%20cover)%20(0826).pdf) (Last Accessed Sept. 19, 2025).

excusal request, both temporary and permanent, for those with mental illness and intellectual disability. Fla. Stat. § 40.013(2)(9) (2025).

Legislation reflects that evolving standards of decency reject the execution of the elderly. The execution of Samuel Smithers, who is 72 years of age, violates the evolving standards of decency of the Eighth Amendment.

2. Cruel and Unusual Punishment Analysis

The execution of Mr. Smithers on October 14, 2025, would be cruel and unusual punishment in violation and forbidden by the Eighth Amendment. The purposes of the death penalty are no longer accomplished by the execution of the elderly.

The Supreme Court has recognized that the death penalty serves two purposes: retribution and deterrence. *Lackey v. Texas*, 514 U.S. 1045, 1421 (1995). “[A] punishment is ‘excessive’ and unconstitutional if it (1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime. A punishment might fail the test on *either* ground.” *Coker v. Georgia*, 433 U.S. 584, 592 (1977) (emphasis added); *See also, Roper*, 543 U.S. at 559.

The Supreme Court’s opinions in cases of the insane, intellectually disabled, and children, are analogous to the issue presented before this Honorable Court, in respect to review of whether the execution of Mr. Smithers makes any measurable contribution to the intended “goals” of his death

sentence. See, *Ford v. Wainwright*, 477 U.S. 399 (1986) (holding, the Eighth Amendment prohibits states from inflicting the penalty of death upon a prisoner who is insane); *Atkins v. Virginia*, 536 U.S. 304 (2002) (holding, executions of the intellectually disabled is cruel and unusual punishment prohibited by the Eighth Amendment); *Roper v. Simmons*, 543 U.S. 551 (2005) (holding, the execution of individuals who are juveniles at the time of their capital offense is prohibited by the Eighth and Fourteenth Amendment).

In *Ford*, the Supreme Court was asked to resolve “whether the Constitution places a substantive restriction on the State’s power to take the life on an insane prisoner.” 477 U.S. at 405. The Court looked to common law principles barring the execution of the insane and noted “the practice consistently has been branded ‘savage and inhuman.’” *Id.* at 406. (internal citation omitted). The Court noted there are two possible explanations for the common-law principle prohibiting the execution of the insane, “[o]ne explanation is that the execution of an insane person simply offends humanity, ... another [is] that it provides no example to others and thus contributes nothing to whatever deterrence value is intended to be served by capital punishment.” *Id.* at 407; *See also, Atkins v. Virginia*, 536 U.S. 304 (2002) (“Unless the imposition of the death penalty on a mentally retarded person ‘measurably contributes to one or both of these goals, it ‘is nothing more than the purposeless and needless imposition of pain and suffering,’ and hence an unconstitutional punishment.”) In respect to executing the “insane,” the Supreme Court has “seriously question[ed] the retributive value of executing a

person who has no comprehension of why he has been singled out and stripped of his fundamental right to life.” *Ford*, 477 U.S. at 409. Similarly, the Supreme Court was guided by the penal goals of capital punishment in its decision in *Roper v. Simmons*. Although, in *Roper* the Court’s analysis was largely focused on the goal of deterrence on the juveniles themselves, the analysis was on penal goal of deterrence, nonetheless.

When a person’s execution no longer has a retributive value, the Supreme Court has said the execution amounts to nothing more than exacting mindless vengeance, offending the dignity of society. *See also, Ford*, 477 U.S. at 410 (“this Court is compelled to conclude that the Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane. Whether its aim be to protect the condemned from fear ... or to protect the dignity of society itself from the barbarity of exacting mindless vengeance, the restriction finds enforcement in the Eighth Amendment.”). It is illogical to conclude that the execution of a prisoner who is elderly and has been incarcerated for more than 26 years serves either a deterrent or retributive purpose.

The State’s interest in punishment has been and will continue to be satisfied by the continued incarceration of Mr. Smithers, absent his execution being carried out in violation of the United States Constitution. *See, Lackey*, 514 U.S. at 1421. (Memorandum Justice Stevens, respecting the denial of certiorari) (“...prisoners who have spent some 17 years under a sentence of

death... [before his death warrant had been signed] ... after such an extended time, the acceptable state interest in retribution has arguably been satisfied by the severe punishment already inflicted.”). Thus, the execution amounts to a violation of the Eighth Amendment. “A sanction is... beyond the State’s authority to inflict if it makes ‘no measurable contribution’ to acceptable penal goals.” *Roper*, 543 U.S. at 589.

The rarity in which a punishment is inflicted is of important consideration in this Court’s analysis. Capital punishment amounts to unusual punishment when it is rarely inflicted. 1,538 executions have occurred post-*Furman*.³ Of the 1,538 executions that have occurred post-*Furman*, only 41 of them have been of people 65 years or older.⁴ See, Appendix C, Table 1, “Age at Time of Execution, 65 Years or Older.” It is clear that the rarity in which the government implements the sentence of death creates an argument that it is unusual. It is not difficult to conclude that if juries knew that the person they were sentencing to death would ultimately be executed when the person is at their most vulnerable, juries would reconsider their finding of death. Society has identified that children and elderly people are the most vulnerable of us.

³ Death Penalty Information Center, *Execution Database*, <https://deathpenaltyinfo.org/facts-and-research/data/executions> (Last accessed Sept. 19, 2025).

⁴ “Death Penalty Information Center,” Execution Database, filtered for “age,” “65 years and older”

We diminish our human dignity and what it means to be a civilized society when we the people of Florida resort to the execution of the most vulnerable.

3. Cruel and Unusual Punishment Analysis as it applies to Mr. Smithers

The prohibition against the execution of people who are insane at the time of execution, does not consider culpability at the time of the offense. The prohibition only focuses on the person's state *at the time of the execution*. This is analogous to those that have reached the age for consideration as being elderly.⁵ The execution of the elderly should similarly be void of consideration of culpability at the time of the offense, with the focus of the analysis on the person's age at the time of the execution. Just as it has been recognized as cruel and unusual punishment to the insane, the same principals and protections of the Eighth Amendment must be applied to prohibit the execution of the elderly. Executing the elderly serves neither the purpose of deterrence nor retribution.

Smithers anticipates the government will make the argument that Smithers' execution being carried out has been delayed by postconviction review. Mr. Smithers exercise of postconviction review can hardly be seen as the cause of several Governors failing to sign a warrant for decades even though Mr. Smithers was warrant eligible under Florida law. Smithers was sentenced in 1999 and his last filing was in 2017 under *Hurst*. Prior to his

⁵ For purposes of this successive motion, "elderly" is defined in accordance with the Legislature's protections of those 65 years of age and older as discussed above in Section (E)(1) of this motion.

Hurst review, Smithers had not filed a postconviction pleading since 2006. The State of Florida has had decades to end Mr. Smithers' life. Executing the elderly who have been serving their punishment living in near complete isolation in a six foot by nine foot cell for a significant number of years is a forfeiture of their life satisfying the State's interest in deterrence and retribution.

Protecting those that are elderly has been explicitly expressed by the Florida legislature through the enactment of statutes, which acknowledge the vulnerability and fragility of those 65 years of age and older. These protections and enhanced criminal sanctions are irrespective of the victim's physical abilities or cognitive function. This stance on elderly people establishes that evolving standards support a finding that the elderly are a distinct and distinguishable class of adults in need of protections due to their fragility and vulnerability. Samuel Smithers, who is 72 years old, falls squarely within this class of people Florida legislation recognizes as elderly persons it seeks to protect by numerous Florida statutes.

The execution of Mr. Smithers would amount to cruel and unusual punishment. The penal goals of capital punishment are not served by the execution of the elderly. Just as the execution of the insane serves no deterrent effect, the execution of the elderly no longer serves as a deterrent or retributive effect that has not already been satisfied by his 26 years of incarceration. The execution of Mr. Smithers would not further the State's interest in deterrence

or retribution. Additionally, the retributive purpose of Smithers' 1999 death sentence being carried out in 2025 is even further diminished by the fact that at least one of the victim's family members expressly stated that he does not seek retribution.

In 1999, the father of Christie Cowan spoke out at the *Spencer* hearing, proclaiming that his daughter's memory is not served by the violence of execution. On April 15, 1999, John G. Cowan, father of victim Christie Cowan testified at the *Spencer* hearing before Samuel Smither's sentencing. He told the trial court (in part): [Supp. Record on Appeal, Vol. VI, R766-69]

The last time I heard her voice was May 21, 1996, a week before she was murdered. She was in and out of prison a lot, both in Connecticut and late in Florida. She used to tell me about other women in with her what they had done and what they were like. She saw them as troubled souls, not as worthless people. Of course, she didn't see herself in the same way.

Your honor, I know my daughter and in her natural state without the influence of crack she would not want Mr. Smithers to be executed. My opposition to Mr. Smither's execution comes partly for a need to honor the memory of my beloved daughter, Christie. And not to subject with more violence done in her name. Like it or not Mr. Smithers is one of us and like us he is also a child of God. I know it is not my place to decide when any person should die, and I don't believe it's the States place to do that either. That kind of judgment is something that only God is qualified to make.

I was here during the punishment phase of the trial. I saw Mr. Schmoll graphically describe my daughter's murder. I saw from a distance the pictures of Christie that Mr. Schmoll held up to the jury. I realize that after Mr. Smithers left her for dead she was probably still alive. And after – and that after being brutalized with an ax she probably still had to suffer through a death of drowning. It was almost like being murdered twice.

Your Honor, I have not had an uninterrupted night of sleep in almost three years. Her memory, the knowledge of Mr. Smithers did this to her is also with me. If Mr. Smithers is sentenced to death I will

spend many more years without any resolution to this tragedy. And if he is actually executed after all the appeals are over it will be for me the worse and most brutal possible kind of closure. Something that will make me sick and ashamed for the rest of my life whenever I think of my beloved daughter, Christie.

Your Honor, I have to see this through to the end for Christie's memory's sake. If Mr. Smithers is executed I will have to be there, and I will have to watch, and then I'll have to live with the memory of what I saw. And I will also have to live with the knowledge that great harm has been done to Jonathan Smithers and Jonathan's mother in my daughter's memory – in my daughter's, Christie's, name.

Your Honor, I hope that Mr. Smithers will spend the rest of his life in prison.

Additionally, Mr. Cowan wrote in a letter to the judge, dated January 27, 1999, "We are all victims in this case, and I don't see what possible good purpose can be served by inflicting additional pain on all of us." [Supp. Record on Appeal, Vol. VII/R854]

It bears importance to note that there seems to be an indica of consensus evolving in "real time" as more and more families of murder victims are speaking out against capital punishment being imposed. This evolution is significant for the constitutional analysis and consideration of whether capital punishment continues to serve the stated purpose of retribution and whether the retributive purpose is diminishing. Precedent established by the Supreme Court provides clear direction that when the infliction of capital punishment no longer serves as a deterrent or retribution it is prohibited by the Eighth Amendment.

Furthermore, the execution of Mr. Smithers would be unusual. Since 1977, only 16 of the 1,538 people executed have been over the age of 70 years

of age at the time of their execution.⁶ See, Appendix C, Figure 2 and Table 2, “Age at Time of Execution, 70 years or older.” This amounts to only 1% of people executed are over the age of 70.⁷ See, Appendix C, Figure 2, “Age at Time of Execution, 70 years or older.” The objective evidence would suggest and support that rarity of the execution of the elderly reflects the evolved standards and supports the finding of the unusual nature of executing the elderly. Further development and support of this conclusion would lend itself to support an evidentiary hearing to allow Smithers to present objective evidence for this Court’s consideration.

The gradual decline in cognitive function and the brain is recognized by the Florida Courts. In “Protecting the Vulnerable; Florida’s Elder Abuse Benchbook” published by the Office of the State Courts Administrator, Office of Family Courts, and Florida Institute on Interpersonal Violence, the vulnerability caused by cognitive decline is explicitly recognized in Florida.⁸ There are numerous areas of the brain that are affected by aging which “make it harder to process new information and react quickly to complex situations,

⁶ “Death Penalty Information Center,” Execution Database, filtered for “age” 70 years and older.

⁷ “Death Penalty Information Center,” Execution Database, filtered for “age” 70 years and older.

⁸ “Protecting the Vulnerable; Florida’s Elder Abuse Benchbook,” *Changes in Brain Chemistry as We Age*, p. 13 of PDF (2025) [https://www.flcourts.gov/content/download/2456475/file/FINAL%20Elder%20Abuse%20Benchbook%20\(with%20cover\)%20\(0826\).pdf](https://www.flcourts.gov/content/download/2456475/file/FINAL%20Elder%20Abuse%20Benchbook%20(with%20cover)%20(0826).pdf) (Last Accessed Sept. 19, 2025).

which can be particularly concerning when making legal or financial decisions.” Id.

The effect of aging on Mr. Smithers is especially underscored given the mental health and brain damage testimony presented during the penalty phase of his trial. Trial counsel presented testimony and evidence that Mr. Smithers’ PET scan was “clearly and strikingly abnormal” and showed brain damage. [ROA, Vol. 15/R1880;1883.] Mental health evaluations indicated impairment from brain injury on both the left and right hemisphere. [ROA, Vol. 14/R1735.] Additionally, evaluations indicated “psychotic disturbance” and “delusional paranoid thinking.” [ROA, Vol.14/R1723.]

Furthermore, Dr. Hyman Eisenstein evaluated Mr. Smithers on September 18, 2025 and found that Mr. Smithers’ has had further cognitive decline. See, Appendix D, “Initial Neuropsychological Findings, dated Sept. 19, 2025”. Dr. Eisenstein’s initial findings reveal that Mr. Smithers Full Scale I.Q. score has dropped since his initial IQ score 111 in 1997. Mr. Smithers’ full scale IQ score in present day is 103. This is considered both clinically and statistically significant. Mr. Smithers’ current verbal comprehension score is 89 (low average) which is a significant drop from his prior verbal score of 102 in 1997. Dr. Eisenstein opined that the comparison of the present-day scores to the scores in 1997 are “significant and indicative of cognitive decline.” See, Appendix D, “Initial Neuropsychological Findings, dated Sept. 19, 2025.” Dr. Eisenstein further opined that: “Mr. Samuel Smithers is currently presenting

with an insidious decline of mental function which will progress to a state of dementia.” See, Appendix D, “Initial Neuropsychological Findings, dated Sept. 19, 2025.”

Smithers anticipates the State will highlight Mr. Smithers’ current and past scores as an indication of Smithers’ level of intelligence. However, Mr. Smithers is not asserting that he is intellectually disabled. Florida Statutes concerning the elderly do not discuss or concern themselves with any findings of IQ.

The evaluation and objective data Dr. Eisenstein could gather in a short amount of time provide relevant evidence for this Court’s consideration of cognitive decline. The information further supports that Smithers falls within the bounds of those that are elderly that Florida identifies as vulnerable and are given special consideration through Florida Statutes, as discussed above.

While Florida Statutes which recognize the vulnerability and distinction of elderly adults does not require a specific finding of cognitive decline or cognitive disorder, evidence of Mr. Smithers’ cognitive decline caused by his advanced age should bear significant weight upon this Court’s analysis. Mr. Smithers’ cognitive decline further supports the conclusion that his execution would amount to cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution. His cognitive decline is precisely within the concerns for which Florida recognizes the distinction of the elderly, whom Florida seeks to protect.

4. Conclusion

“By protecting *even those convicted of heinous crimes*, the Eighth Amendment reaffirms *the duty of the government* to respect the dignity of all persons.” *Roper*, 543 U.S. at 560 (emphasis added). Executing Samuel Smithers, who is elderly, defies human dignity and the evolving standards and serves neither a deterrent nor retributive purpose.

This Honorable Court should vacate Samuel Smithers’ death sentence.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 19th day of September, 2025, the foregoing Defendant’s Successive Motion to Vacate Defendant’s Sentence of Death has been electronically filed with the Clerk of the Circuit Court by using the Florida Courts e-portal filing system which will send a notice of electronic filing to the following: The Honorable Christopher C. Sabella, Chief Circuit Judge, 800 Twiggs Street, Tampa, Florida 33602, cornelcm@fljud13.org; the Honorable Michelle Sisco, Circuit Judge, 401 N. Jefferson St., Room 102, Tampa, Florida 33602 diazcra@fljud13.org; the Office of the Attorney General, capapp@myfloridalegal.com; Joshua E. Schow, Asst. Attorney General, joshua.schow@myfloridalegal.com; Rick A. Buchwalter, Sr. Asst. Attorney General, rick.buchwalter@myfloridalegal.com, Paula.montlary@myfloridalegal.com, arianna.balda@myfloridalegal.com, elizabeth.bueter@myfloridalegal.com; John Terry, Assistant State Attorney, Office of the State Attorney, Thirteenth Judicial Circuit, 419 North Pierce

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Florida Supreme Court, 500 South Duval Street, Tallahassee, Florida 32399,
warrant@flcourts.org, canovak@flcourts.org.

WE HEREBY FURTHER CERTIFY that a copy has also been furnished via
U.S. mail, this 19th day of September, 2025, to Samuel L. Smithers, DOC #
124639, at Florida State Prison, P.O. Box 800, Raiford, Florida 32083.

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