

# Supreme Court of Florida

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August 23, 2022

The Honorable Wilton Simpson  
President  
The Florida Senate  
409 The Capitol  
404 South Monroe Street  
Tallahassee, Florida 32399-1100

The Honorable Chris Sprowls  
Speaker  
The Florida House of Representatives  
420 The Capitol  
402 South Monroe Street  
Tallahassee, Florida 32399-1300

Re: Annual Report Required Pursuant to “Timely Justice Act of 2013”

Dear President Simpson and Speaker Sprowls:

Enacted as part of the Timely Justice Act of 2013, section 924.056(1), Florida Statutes, requires the Supreme Court to report annually to the Legislature on “the status of each capital case in which a postconviction action has been filed that has been continuously pending for more than 3 years.”

On June 30, 2022, thirteen capital postconviction actions were pending in the trial courts for more than three years (out of a total of 25 cases pending in the trial courts). Six of those cases involve defendants who were declared incompetent to proceed and thus those postconviction proceedings are stayed pending competency restoration.

The first section of this report details the seven postconviction actions pending in circuit court for longer than three years as of June 30, 2022. The second section details the six cases involving defendants who are incompetent to proceed.

### **Pending for More than Three Years**

**Leo Kaczmar**, case number 102009CF000233000AMX, Clay County, Fourth Judicial Circuit, filed his initial postconviction motion on May 29, 2019. The Honorable Michael Sharrit is the presiding judge. Multiple status conferences have been held. An evidentiary hearing was scheduled for July 2020 and January 2021, but was continued due to COVID-19 restrictions. The evidentiary hearing was eventually held on April 11-12, May 6, and June 13, 2022. Written closing arguments are due July 25, 2022, and then a final order should be issued.

**Jermaine Foster**, case number 491993CF000346XXCRXX, Osceola County, Ninth Judicial Circuit, was remanded for an evidentiary hearing by the Florida Supreme Court on January 17, 2019. The Honorable Jon Morgan is the presiding judge. Multiple status conferences have been held from 2019 to present. A hearing on defendant's intellectual disability was set for March 14, 2022, but was continued and all pending motions are now set to be heard on July 22, 2022.

**Johnny Calhoun**, case number 302011CF000011CFAXMX, Holmes County, Fourteenth Judicial Circuit, filed a successive

The Honorable Wilton Simpson  
The Honorable Chris Sprowls  
August 23, 2022  
Page: 3

postconviction motion on August 17, 2018. The Honorable Christopher Patterson is the presiding judge. On August 22, 2018, the case was stayed pending disposition of defendant's initial postconviction motion in the Florida Supreme Court. On November 21, 2019, the Florida Supreme Court affirmed the circuit court's order denying defendant relief from his conviction, lifting the stay in this case. On February 13, 2020, the State filed a motion to reinstate death sentence and on February 19, 2020, defendant filed their response to that motion. On April 1, 2020, the Florida Supreme Court issued an order staying this case pending disposition of *State of Florida v. Michael James Jackson*, Case No. SC20-257 and *State of Florida v. Bessman Okafor*, Case No. SC20-323. The stay was lifted by the Florida Supreme Court on February 18, 2021. Multiple status conferences have been held from 2021 to present. An evidentiary hearing was held on May 17, 2022, and disposition of this case is anticipated in the next quarter.

**Daniel Doyle**, case number 061981CF009310A88810, Broward County, Seventeenth Judicial Circuit, filed a successive postconviction motion on October 5, 2017. Judge Edward Merrigan, Jr. is the presiding judge. Multiple status conferences have been held since 2017. A Huff hearing was held on February 19, 2020. On June 15, 2020, the Court entered an order granting defendant's postconviction motion to the extent that he shall be entitled to an evidentiary hearing on his intellectual disability claim. A status conference was set for September 14, 2021, but was canceled due to the Judge's schedule. Proceedings are to be set when numerous witness are contacted and counsel is available.

**Randy Tundidor**, case number 062010CF006496A88810, Broward County, Seventeenth Judicial Circuit, filed his initial postconviction motion on February 26, 2019. The Honorable Elizabeth Scherer is the presiding judge. Multiple status conferences were held from 2019 until April of 2020, when they were temporarily paused due to the COVID-19 pandemic. Multiple status conferences have been

The Honorable Wilton Simpson  
The Honorable Chris Sprowls  
August 23, 2022  
Page: 4

held from April 27, 2021 to present, with the next status conference scheduled for August 10, 2022.

**Henry Jones**, case number 052009CF031876AXXXX, Brevard County, Eighteenth Judicial Circuit, filed his initial postconviction motion on September 20, 2018. The Honorable Nancy Maloney is the presiding judge. On March 19, 2019, Judge Maloney entered an order staying defendant's postconviction proceedings until the resolution of defendant's Tennessee warrant. On November 15, 2019, an order was entered appointing experts for a competency evaluation of the defendant. Multiple status conferences have been held since 2019. At a status conference held on December 6, 2021, it was determined that one of the two doctors appointed to evaluate the defendant went to see him, but defendant refused to participate. The second doctor had not visited defendant at that time due to COVID-19 restrictions. At a status conference held on March 15, 2022, the Court was advised that defendant agreed to cooperate with the competency evaluation. The Court is currently awaiting the report following defendant's second competency evaluation and the next status conference is scheduled for September 30, 2022.

**Dale Middleton**, case number 472009CF000448CFAXMX, Okeechobee County, Nineteenth Judicial Circuit, filed his initial postconviction motion on February 23, 2019. Judge Robert Belanger is the presiding judge. There have been multiple status conferences held from 2019 to present. There have also been multiple public records hearings held, but there are currently no outstanding public records issues. There remain 32 potential witnesses that must be interviewed or reinterviewed – 28 of which are in Florida, Georgia, and Alabama; and 4 in other geographic locations. Written status reports were filed on June 1, 2022, in lieu of an in person status conference due to COVID-19 restrictions. The next status conference is scheduled for September 30, 2022.

The Honorable Wilton Simpson  
The Honorable Chris Sprowls  
August 23, 2022  
Page: 5

### **Incompetent to Proceed, Pending for More than Three Years**

**Steven Cozzie**, case number 662011CF000353CFAXMX, Walton County, First Judicial Circuit, filed his initial postconviction motion on March 1, 2019. The Honorable Kelvin Wells is the presiding judge. At a status conference held on May 7, 2019, defendant had a pending motion to determine competency and an order was issued appointing experts. As of December 30, 2019, the Court was waiting on the report from the second expert's evaluation, which was set back due to COVID-19. Currently, defendant's competency evaluation remains pending. A status conference was held on May 17, 2022. On June 27, 2022, Judge Wells issued an order appointing two experts to complete new competency evaluations for defendant. The next status conference will be scheduled once the new evaluations are filed.

**Tony Watts**, case number 161988CF011505AXXXMA, Duval County, Fourth Judicial Circuit, filed his initial postconviction motion on September 16, 1993. Judge Lawrence P. Haddock presided from September 1993 through October 2011. Judge Brad Stetson was appointed in October 2011, and a commitment order dated April 30, 2015, was signed by Judge Waddell Wallace. On June 3, 2016, the court issued an Order for Competency Evaluation appointing a mental health expert to determine whether defendant was competent to proceed. During a status conference on June 21, 2016, parties reported that mental health experts were conducting their evaluations of defendant regarding his competency. Following several status hearings, Judge Wallace entered an order on March 24, 2017, continuing commitment of defendant and adjudging him incompetent to proceed. After a competency review hearing on June 13, 2018, Judge Angela Cox appointed an expert to further evaluate the defendant. The evaluations were reviewed before the court on August 1, 2018. On August 9, 2018, Judge Cox entered an order regarding defendant's continued commitment. Additional status conferences were held before Judge Cox on May 15, 2019,

and June 13, 2019. At a status conference held before Judge Marianne Aho on December 18, 2019, the parties agreed to pass this case to February 4, 2020. On February 4, 2020, Judge Aho entered orders appointing two mental health experts to evaluate defendant's competency and a status conference was held on July 21, 2020. On August 18, 2020, a competency review hearing was held, and defendant was found incompetent to proceed. Status conferences were held on July 15, 2021, and July 23, 2021. On August 8, 2021, a hearing was held on defendant's competency and on September 7, 2021, the defendant was adjudged incompetent and was ordered continued commitment. Another competency review hearing was scheduled for June 28, 2022, and then July 7, 2022, but has been postponed until August 2, 2022, as there has been a delay in the experts' reports.

**Gary McCray, II**, case number 102004CF001149000AMX, Clay County, Fourth Judicial Circuit, filed his initial postconviction motion on March 12, 2013. The State filed its response to defendant's motion for postconviction relief on May 9, 2013. At the status conference on April 25, 2016, the court continued the proceedings to await the Florida Supreme Court's decision in *Lambrix*. Numerous status conferences were held throughout 2016, 2017, and 2018. On March 18, 2019, Judge Don H. Lester held that the defendant remained incompetent to proceed. A status conference was held on June 17, 2019. At a status conference on December 16, 2019, it was determined that defendant remains incompetent to proceed. Multiple status conferences were held from December 2020 to May 2021. On July 13, 2021, an expert was appointed to determine defendant's competency. On January 4, 2022, a status conference was held and it was determined that defendant remains incompetent. A status conference was scheduled for July 5, 2022. Another competency review hearing should be scheduled next quarter.

The Honorable Wilton Simpson  
The Honorable Chris Sprowls  
August 23, 2022  
Page: 7

**Bill Marquardt**, case number 602006CF000768CFAXFX, Sumter County, Fifth Judicial Circuit, filed his initial postconviction motion and a motion for determination of competency on September 21, 2016. The Honorable William Hallman was the presiding judge until January 2022. A competency report was filed on November 21, 2016. A status conference was held December 12, 2016, where the Court appointed two additional doctors to evaluate defendant. Multiple status conferences were held, appointing additional experts to evaluate the competency of defendant. On May 20, 2020, the Court found defendant incompetent to proceed. On April 16, 2021, a stipulated order was entered, directing Department of Corrections to release medical records and/or information as to the defendant's current medical condition. On September 15, 2021, an order was entered appointing experts to evaluate defendant's competency. On January 25, 2022, the case was reassigned to the Honorable G. Richard Singletary. A competency hearing was scheduled for March 28, 2022, but was canceled. An order was issued on April 14, 2022, appointing experts to evaluate defendant's competency and a competency hearing is currently scheduled for August 24, 2022.

**Franklin Floyd**, case number 521997CF020160XXXNO, Pinellas County, Sixth Judicial Circuit, filed his initial postconviction motion on January 8, 2007. The Honorable Nancy Ley is the presiding judge. A status conference was held on April 19, 2017. On May 2, 2017, the court issued an order stating the defendant was incompetent to proceed. Following another competency hearing on May 16, 2018, Judge Ley issued orders directing the Department of Corrections to release records on defendant's current medical condition to counsel and declaring that defendant remained incompetent to proceed. Following the June 12, 2019, status conference, Judge Ley held the defendant remained incompetent to proceed. Status conferences have been reset multiple times from August 2020 to March 2021, due to the COVID-19 Pandemic. On September 3, 2021, it was determined that defendant remained

The Honorable Wilton Simpson  
The Honorable Chris Sprowls  
August 23, 2022  
Page: 8

incompetent. The next competency review hearing is scheduled for September 28, 2022.

**Carlton Francis**, case number 501997CF008545AXXXMB, Palm Beach County, Fifteenth Judicial Circuit, filed his initial postconviction motion on December 12, 2003. The Honorable Jeffrey Colbath was the presiding judge until July 2013. The case was reassigned to Judge Glenn Kelley. Status conferences regarding competency were held on January 10, 2018, January 17, 2018, May 15, 2018, May 15, 2019, and July 15, 2019. On June 13, 2019, the Department of Corrections submitted an updated report regarding defendant's current mental status pursuant to the trial court's direction. Status hearings were held on July 15, 2020, and September 15, 2020. On July 1, 2022, it was determined that defendant remains incompetent. The next competency review hearing is scheduled for June 30, 2023.

Please do not hesitate to contact me if you have any questions regarding this report.

Sincerely,



John A. Tomasino

JAT/kc