

BOISE, WEDNESDAY, APRIL 27, 2022 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

TIMOTHY ALAN DUNLAP,

Petitioner-Appellant,

V.

STATE OF IDAHO,

Respondent.

Docket No. 47179

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Caribou County. Mitchell W. Brown, District Judge.

Eric D. Frederickson, State Appellate Public Defender, Boise, for Appellant.

Lawrence G. Wasden, Idaho Attorney General, Boise, for Respondent.

Timothy Dunlap (Dunlap) appeals from an order dismissing his petition for post-conviction relief regarding his death sentence, which he received in 2006. In 2008, Dunlap filed a petition for post-conviction relief, alleging that numerous reversible errors occurred at his 2006 resentencing hearing. The district court dismissed the petition in its entirety, and Dunlap appealed to this Court. In *State v. Dunlap*, 155 Idaho 345, 313 P.3d 1 (2013), this Court affirmed the dismissal of almost all of Dunlap’s claims, except two: (1) prosecutorial misconduct under *Brady v. Maryland*, 373 U.S. 83 (1963) and *Napue v. Illinois*, 360 U.S. 264 (1959); and (2) ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984).

Upon remand, the district court held two evidentiary hearings, one for each of Dunlap's claims. The district court found that Dunlap had failed to establish either claim and denied Dunlap's request for post-conviction relief. Dunlap timely appealed. The Idaho Supreme Court affirmed. *Dunlap v. State*, Dkt. No. 47179, 2022 WL 39096 (Idaho Jan. 5, 2022).

Dunlap petitioned for rehearing. This Court granted rehearing on the single issue articulated by Dunlap as: “Whether this Court violated Mr. Dunlap’s Due Process rights to notice and an opportunity to be heard when this Court relied on facts not before the district court to deny him relief on his *Brady* claim[.]”