

APPENDIX B

Timothy Dunlap

The offense in Timothy Dunlap's case occurred in Idaho in 1991. *State v. Dunlap*, 873 P.2d 784, 785-86 (Idaho 1993). Mr. Dunlap, represented by counsel, accepted a plea agreement that explicitly permitted the State to seek a death sentence. *Id.* at 531. A judge sentenced Mr. Dunlap to death in 1992. *Id.* at 532. The Supreme Court of Idaho affirmed the trial court's judgment in 1993. *Id.* at 539. Mr. Dunlap's federal habeas counsel, however, discovered that the attorney who represented Mr. Dunlap at trial and on direct appeal, despite Idaho's unitary review procedures, never filed a post-conviction relief ("PCR") petition in state court. *Dunlap v. State*, 961 P.2d 1179 (Idaho 1998). Thus, Mr. Dunlap returned to state court to file his PCR petition in 1994. *Id.* The trial court dismissed the petition as untimely, but, as a result of counsel's errors, the Supreme Court of Idaho vacated that dismissal and reinstated Mr. Dunlap's right to file a PCR petition. *Id.* at 577.

When Mr. Dunlap's case was sent back to the trial court for PCR proceedings, the State conceded that his trial attorneys had erred, entitling him to re-sentencing, but proceedings continued on his remaining guilt-phase PCR issues.¹ By then, it was 2002. *See Dunlap v. State*, 106 P.3d 376, 382 (Idaho 2004). When the trial court denied his guilt-phase related PCR claims, Mr. Dunlap again appealed to the Supreme Court of Idaho, which did not issue its opinion until 2004.

The Court affirmed the trial court's denial of his guilt-phase PCR claims, but remanded for resentencing, noting that, during Mr. Dunlap's proceedings, the United States Supreme Court had decided *Ring v. Arizona*, 536 U.S. 584 (2002), and that a jury-sentencing was now required. *Dunlap*, 313 P.3d at 14. Re-sentencing did not take place until February 2006. After that sentencing, Mr.

¹ The trial court—at the State's request—stayed resentencing while the courts addressed guilt-phase issues. *State v. Dunlap*, 313 P.3d 1, 14 (Idaho 2013).

Dunlap, pursuant to Idaho's unitary review process, again filed a PCR petition with the trial court in May 2008. *Id.* The court summarily dismissed his petition, and, finally, the Supreme Court of Idaho reviewed the dismissal and issued its opinion in August 2013—over 21 years after the date of the offense. *Id.*; *see also* Brief of Respondent, *Dunlap*, 313 P.3d 1 (Nos. 32773, 37270), 2011 WL 4563817 at *1-2.

Darrell Payne

The offense in Darrell Payne's case occurred at the beginning of July 2000. *State v. Payne*, 199 P.3d 123, 131 (Idaho 2008). His trial began in September 2001, and a judge sentenced him to death. *Id.* at 132. Pursuant to Idaho's unitary review procedures, Mr. Payne filed his notice of PCR on July 10, 2002. It took over a year, however, to have the trial transcripts prepared and Mr. Payne's counsel required time to investigate issues within and without the record. Thus, he filed his first and second amendments to his PCR petition in January and March of 2004. *Id.* at 142. On the government's motion, the trial court summarily dismissed the guilt-phase issues of his PCR petition. *Id.* at 132. The court, however, granted relief as to his sentence, concluding it violated *Ring*, 536 U.S. 584.

Both Mr. Payne and the government appealed, and the Supreme Court of Idaho conducted a consolidated review of his trial and PCR proceedings. Although the Court affirmed the denial of his guilt-phase claims, it remanded the case for resentencing. The Court's reasoning, rather than examining any *Ring* violation, was that the trial court had admitted evidence in violation of *Payne v. Tennessee*, 501 U.S. 808 (1991) (admitting certain types of victim-impact evidence violates Eighth Amendment). *Id.* at 148-50.

A jury re-sentenced Mr. Payne to death in 2010. *See* Talk Radio 950 KOZE-AM, "Idaho inmate sentenced to death again" (Mar. 15, 2010) *available at* <http://www.koze950.com/2010/03/15/idaho-inmate-sentenced-to-death-again/> (last accessed March 10, 2014). Upon information and belief, Mr. Payne's PCR proceedings are still pending before the trial court in Idaho, and no unitary appeal

has even begun. Again, over thirteen years since the date of the offense, Mr. Payne's PCR proceedings remain pending, despite Idaho's unitary review system.

Of special note, had Mr. Payne's direct appeal taken place before his PCR proceedings, it is possible that his case would have been "final" before the United States Supreme Court's 2002 decision in *Ring*, 536 U.S. 584. Under these circumstances, the trial court may never have granted sentencing relief in the first place. See *Schriro v. Summerlin*, 542 U.S. 348 (2004) (*Ring* not retroactively applicable to death penalty cases final on direct review). Thus, Idaho's unitary review system gave Mr. Payne the retroactive benefit of a case that otherwise may not have applied. In addition, on his first consolidated appeal, the Court ultimately remanded for re-sentencing on a *Payne* claim that could have been raised and resolved as a part of a direct appeal alone.

Dale Shackelford

The offense in Dale Carter Shackelford's case took place in 1999, trial began in October 2000, and a judge sentenced him to death in 2001. *State v. Shackelford*, 247 P.3d 582, 589 (Idaho 2010); see also Brief of Appellant, *Shackelford*, 247 P.3d 582 (Nos. 27966, 31928), 2008 WL 4143652 at *1-9. The trial court permitted several amendments to the PCR petition, and did not address its merits until 2005. *Id.* at 590; see also 2008 WL 4143652 at *8. When it did so, it granted sentencing relief based on *Ring*, 536 U.S. 584, found all other sentencing issues moot, and dismissed all remaining claims. *Id.* Both parties appealed. *Id.* As the Supreme Court of Idaho acknowledged, *Ring* applied to Mr. Shackelford's case because it was not final at the time the United States Supreme Court decided *Ring*. *Id.* at 613. The Court agreed with the district court that no other issues merited relief. *Id.* at 615. Again, without Idaho's unitary review procedures, the result may have been entirely different.

On remand for resentencing, the government decided not to seek the death penalty again and, after further litigation, Mr. Shackelford was sentenced to fixed

life sentences. *State v. Shackelford*, 314 P.3d 136, 139 (Idaho 2013). Because Idaho's unitary review system does not apply to non-capital cases, review of Mr. Shackelford's direct appeal was completed approximately two years after the trial court imposed its judgment. *Id.*

Donald Fetterly

In Donald Fetterly's case, the offenses took place in 1983—before Idaho initiated a unitary review system. *See State v. Fetterly*, 710 P.2d 1202, 1204 (Idaho 1985). The trial judge sentenced him to death in 1984, and the Supreme Court of Idaho affirmed his convictions and sentences in 1985. *Id.* at 1209. It affirmed the denial of his PCR petition in 1988. *State v. Fetterly*, 766 P.2d 701, 702 (Idaho 1988). With the State's acquiescence, however, the federal courts remanded his case for resentencing. *Fetterly v. Paskett*, 163 F.3d 1144, 1145 (9th Cir. 1998). In 2000, a state court judge again sentenced Mr. Fetterly to death. *See* Brief of Appellant, *State v. Fetterly*, 52 P.3d 874 (Idaho 2002) (Nos. 26563, 27180), 2001 WL 34643282 at *5. By then, Idaho had adopted unitary review and, thus, Mr. Fetterly litigated his PCR petition before the trial court, which dismissed all of his claims. *See Fetterly*, 52 P.3d at 875. Mr. Fetterly then sought review from the Supreme Court of Idaho and, by the time of its decision, the United States Supreme Court had decided *Ring*, 536 U.S. 584. The Court remanded the case for resentencing, *id.*, where Mr. Fetterly received a life sentence. *See* Idaho Dep't of Corr., Offender Details, *available at* <https://www.accessidaho.org/public/corr/offender/search.html> (last accessed Mar. 14, 2014).