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IN THE SUPREME COURT OF THE STATE OF IDAHO

RORIQUE JAMES TOYE,)	
)	NO. 47344-2019
Petitioner-Appellant,)	
)	ADA COUNTY NO. CV01-18-10552
v.)	
)	
STATE OF IDAHO,)	APPELLANT'S BRIEF
)	
Respondent.)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE PATRICK J. MILLER
District Judge

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

BEN P. MCGREEVY
Deputy State Appellate Public Defender
I.S.B. #8712
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

**ATTORNEYS FOR
PETITIONER-APPELLANT**

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEY FOR
RESPONDENT**

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STATEMENT OF THE CASE

Nature of the Case

After the State filed a motion for summary disposition of Rorique James Toye's amended petition for post-conviction relief, the district court summarily dismissed all three of Mr. Toye's claims of ineffective assistance of counsel. The district court determined Mr. Toye had not shown prejudice as to the claim of pre-trial ineffective assistance of trial counsel, based in part on its taking judicial notice of its personal recollection of the prior trial proceedings. However, the district court took judicial notice of its personal recollection without obtaining the trial transcripts referenced. In this appeal, Mr. Toye asserts the district court erred when it summarily dismissed his amended petition with respect to the pre-trial claim, because the district court improperly took judicial notice of its personal recollection of the prior trial proceedings.

Statement of the Facts and Course of Proceedings

In Ada County No. CR01-17-6311, the State charged Mr. Toye with two counts of lewd conduct with a minor child and two counts of sexual battery of a minor, and he entered a not guilty plea. (R., p.36.) The charges related to allegations that Mr. Toye had fathered two children with his teenaged daughter. (See R., p.77.) Following a jury trial, the jury convicted Mr. Toye on all four counts. (R., p.36.) The district court imposed for each count a unified sentence of thirty years, with thirteen years fixed, with the sentences to run concurrently with each other. (R., p.37.) Mr. Toye did not appeal from the judgment of conviction. (R., p.37.)

Mr. Toye filed, pro se, a Petition and Affidavit for Post-Conviction Relief. (R., pp.12-19.) He also filed a Motion and Affidavit in Support for Appointment of Counsel. (R., pp.22-25.) The district court appointed conflict counsel to represent him. (See R., pp.29-30.)

Mr. Toye, through counsel, then filed an Amended Petition for Post-Conviction Relief. (R., pp.35-46.) He asserted that trial counsel was ineffective “[d]uring the pre-trial phase of the underlying criminal case,” because trial counsel “failed to adequately convey and/or explain plea agreement offers from the Government, so that Mr. Toye eventually proceeded to trial without a defense and against his wishes, and resulted in prejudice to Mr. Toye.” (R., p.37.) Mr. Toye asserted that “trial counsel failed to adequately inform him of the repercussions of proceeding to trial without a viable defense, such as the cost and loss of judicial resources, which contributed to Mr. Toye proceeding to trial without a viable defense and against his wishes, and resulted in prejudice to Mr. Toye.” (R., p.38.)

Mr. Toye also asserted that trial counsel was ineffective “[d]uring the jury trial phase of the underlying criminal case,” because trial counsel “caused bias against Mr. Toye with the jury during the jury selection process of the Petitioner’s trial, by tainting the jury with questions and comments which were biased against the Petitioner.” (R., p.38.) He asserted that trial counsel was ineffective “[d]uring the Sentencing phase of the underlying criminal case,” because trial counsel “failed to object to improper statements made by the District Judge at the Sentencing Hearing, which the Court relied upon in imposing a harsher sentence upon Mr. Toye. The District Court misstated items of factual information, to Mr. Toye’s detriment.” (R., p.39.)

Mr. Toye asserted that trial counsel “failed to provide the effective assistance of counsel during the pre-trial, jury trial, and sentencing phases of the case, in that his performance fell below objective standards of reasonableness for competent representation.” (R., p.42.) He then asserted that “he was prejudiced by proceeding to trial against his wishes, rather than pleading guilty, accepting responsibility for his offense, and saving valuable judicial resources.” (R., p.42.) He continued: “Mr. Toye asserts that had he done so, the Court would have taken

some mercy on him and considered a lesser sentence, rather than the thirty-year sentence he received. But for counsel's misdirection or lack of direction, Mr. Toye would not have proceeded to jury trial in the first place." (R., p.42.) Mr. Toye asserted that the absence of trial counsel's "errors during the pre-trial phase of Mr. Toye's case would have dramatically changed the outcome of the proceedings." (R., pp.42-43.) Further, Mr. Toye asserted prejudice with respect to the voir dire and sentencing claims. (*See* R., p.43.)

Mr. Toye requested that the judgment of conviction be vacated and his case remanded for further proceedings, as well as such other and further relief as the district court deemed proper. (R., p.44.) He did not sign the Verification of Petition. (R., p.45.) He also filed an Affidavit of Petitioner in Support of Petition for Post-Conviction Relief, which was unsigned. (R., pp.48-53.)

The State later filed a Motion for Summary Disposition of Amended Petition for Post-Conviction Relief. (R., pp.60-62.) The State asserted Mr. Toye did not raise a genuine issue of fact that his attorney's performance was deficient or prejudiced him, and he waived claims not contained in his amended petition. (R., pp.60-61.) The State requested the district court "take judicial notice of all court hearings and transcripts submitted to the court." (R., p.61.)

The State also filed a Brief in Support of Motion for Summary Disposition. (R., pp.63-71.) The brief requested "that the State's Answer be incorporated herein." (R., p.63.) In the brief, the State argued that Mr. Toye had not raised "a genuine fact that his attorney was deficient or that he was prejudiced," and he did not "provide the court with admissible evidence of any of the three claims" (R., p.69.) The State contended, "The Petition simply concludes that counsel was deficient without providing admissible evidence of facts to support his conclusion," and thus there was no way Mr. Toye "can show that counsel's tactical choices would have changed the outcome of the trial." (R., p.69.) On the pre-trial claim, while Mr. Toye

had asserted that he wanted to plead guilty and he proceeded to trial without a viable defense and against his wishes, the State argued, “As stated in the State’s Answer—the evidence against [Mr.] Toye was clear and overwhelming—he had no defense.” (R., pp.69-70.) The State also argued Mr. Toye had not presented admissible evidence to support the voir dire and sentencing claims in the amended petition. (*See R.*, p.70.)

Moreover, in the State’s Answer to Amended Petition for Post-Conviction (R., pp.72-80), the State argued, with respect to the pre-trial claim: “Respondent denies this constituted deficient performance or would have changed the outcome of the trial because: First, this allegation is not supported by any admissible evidence. To the contrary, the State has multiple admissible documents refuting this allegation” (R., p.74). The State argued it had conveyed plea offers to Mr. Toye’s trial counsel, but Mr. Toye decided to go to trial. (*See R.*, pp.74, 81-84.) The State further argued that Mr. Toye did not plead guilty, because he believed he had done nothing wrong. (*See R.*, pp.74-77.) That argument was based on the presentence report and other materials prepared after the jury trial. (*See R.*, pp.74-77, 85-102.) The State also argued it had held all the evidence in the underlying criminal case, including DNA evidence linking Mr. Toye to the offenses. (*See R.*, p.77.)

Mr. Toye subsequently filed a signed Affidavit of Petitioner in Support of Petition for Post-Conviction Relief. (R., pp.105-113.) On the pre-trial claim, Mr. Toye averred that he did not wish to proceed to a jury trial in his case, but trial counsel “either failed to communicate plea bargain offers to me, or took so little time doing so that I have minimal recollection of any such communications.” (R., p.107.) He asserted, “I do not recall hearing any actual firm plea offers or receiving any written settlement offers from the State.” (R., p.107.)

Further, Mr. Toye averred that trial counsel “did not take the time to assist me with the plea bargaining process, explain the process to me, explain the consequences of proceeding to trial without a viable defense, or provide guidance on how to proceed, other than to jury trial.” (R., p.107.) He asserted: “I eventually became so overwhelmed and disheartened that I ‘gave up’ and lost hope in his defense. My case then proceeded to jury trial, despite my lack of a viable defense, and I was convicted.” (R., p.107.) Mr. Toye later learned “that proceeding to trial without a viable defense would be considered a waste of judicial time and resources, and could weigh against me during sentence,” but trial counsel never discussed that with him. (R., p.107.)

Mr. Toye also filed a Petitioner’s Verification for Amended Petition for Post-Conviction Relief, with a signed Verification of Petition related to the amended petition. (R., pp.114-16.) He subsequently filed a Reply to State’s Motion for Summary Disposition of Amended Petition for Post-Conviction Relief. (R., pp.117-29.) The reply asserted that Mr. Toye’s amended “petition and supporting affidavit were (eventually) sworn and verified, and therefore constitute admissible evidence to support his claims.” (R., p.123.)

Regarding the pre-trial claim, Mr. Toye asserted in the reply that he had provided evidence to support the claim “in the form of his sworn declarations contained in his sworn amended petition and supporting affidavit.” (R., p.125.) This evidence “demonstrated that his counsel failed to properly advise him, in a fashion that would have lessened the prejudice against him in the case result,” thus providing a prima facie case of ineffective assistance of counsel. (R., p.125.) Mr. Toye also asserted his evidence supported a prima facie case of ineffective assistance counsel as to his other two claims. (See R., pp.126-28.) He therefore requested that the district court deny the State’s motion for summary disposition. (See R., p.128.) Mr. Toye

attached copies of the transcripts of trial counsel's voir dire and the sentencing hearing from the underlying criminal case. (R., pp.133-63.)

At the hearing on the motion for summary disposition, the district court stated it would be "considering the verified petition, the affidavit of the defendant, and the transcripts of proceedings in the underlying criminal case that were ordered." (Tr., p.6, L.22 – p.7, L.1.) The parties told the district court there were no other portions of the record that the district court had overlooked. (See Tr., p.7, Ls.2-6.)

On the pre-trial claim, the State argued that Mr. Toye had "decided not to plead guilty." (Tr., p.7, L.24 – p.8, L.6.) As for Mr. Toye's assertion that trial counsel failed to tell him he did not have a viable defense, the State argued: "I don't know how much clearer it could get when he already knew that he confessed to the crime and we had DNA. There was no viable defense to this crime." (Tr., p.8, Ls.8-13.) Later, the State contended that Mr. Toye "was never going to plead guilty" and "never thought he did anything wrong." (Tr., p.9, Ls.21-24.)

Mr. Toye asserted he only needed to make a prima facie showing of ineffective assistance of counsel to get past summary disposition. (See Tr., p.10, Ls.11-14.) He submitted that he had provided enough evidence for a prima facie showing for all three claims. (See Tr., p.10, L.14 – p.12, L.6.) When asked for clarification on what he was seeking, Mr. Toye explained he would be entitled to a new trial if he prevailed on the pre-trial or voir dire claims, and to a new sentencing hearing if he prevailed on the sentencing claim. (See Tr., p.12, L.16 – p.13, L.7.)

On the pre-trial claim, the district court determined, "there is a material fact—issue of fact as to what went on between trial counsel and the defendant." (Tr., p.13, Ls.13-16.) The district court determined, "so far as the first prong of [*Strickland v. Washington*, 466 U.S. 668 (1984)], there is a material fact that justifies an evidentiary hearing." (Tr., p.14, Ls.18-21.)

However, the district court also determined, “The second prong of *Strickland versus Washington* I do not believe has been made.” (Tr., p.14, Ls.22-23.) Mr. Toye had the burden of showing “that there is at least a factual issue that there would have been a different outcome.” (Tr., p.14, L.24 – p.15, L.3.)

The district court determined: “In terms of the trial, the evidence at trial was overwhelming. [The prosecutor] has accurately stated the nature of the record at trial, and, I guess, to some extent I am taking judicial notice of that even though I didn’t announce that to begin with.” (Tr., p.15, Ls.4-9.) The district court then determined, “But because I was there at the trial, the record of the trial clearly shows, if one transcribes it, that the victim testified as to the conduct, the defendant had admitted to the conduct, the DNA tests on the child, all of that showed that the outcome of the trial was really never in doubt.” (Tr., p.15, Ls.9-15.) The district court had presided over Mr. Toye’s trial in the underlying criminal case. (*See R.*, p.36.)

Additionally, the district court stated it would “never hold it against someone at sentencing the fact that they chose to go to trial and hold the State to its burden.” (Tr., p.15, L.25 – p.16, L.4.) The district court thought there was no logical connection between Mr. Toye not hearing the plea offers, and his receiving a harsher penalty because he went to trial. (*See Tr.*, p.16, L.20 – p.17, L.1.) Per the district court, because it was not bound by the sentencing recommendations of the parties, “the fact that Mr. Toye passed up the opportunity for a more lenient recommendation at sentencing is not proof that he would have received a more lenient sentence.” (*See Tr.*, p.17, L.2 – p.18, L.7.) The district court determined, “there just simply isn’t evidence sufficient to say that the sentence would have been more lenient had there not been a trial.” (Tr., p.18, Ls.22-25.)

The district court also determined the evidence was insufficient to support Mr. Toye's voir dire and sentencing claims. (*See* Tr., p.19, L.4 – p.27, L.1.) Thus, the district court granted the State's motion for summary disposition. (Tr., p.27, Ls.2-3.) Several months later, the district court, with a new presiding judge, ordered the preparation of a transcript of the old presiding judge's oral decision, and granted the motion for summary disposition based on the old presiding judge's reasoning. (Order Re: Summary Disposition, Aug. 28, 2019.)¹ The district court entered a Judgment dismissing with prejudice Mr. Toye's amended petition. (R., pp.164-65.)

Mr. Toye filed a Notice of Appeal timely from the district court's Order Re: Summary Disposition and Judgment. (R., pp.166-69.)

¹ The Order Re: Summary Disposition is the subject of Mr. Toye's Motion to Augment, filed contemporaneously with this brief.

ISSUE

Did the district court err when it summarily dismissed Mr. Teye's amended petition with respect to the pre-trial claim, because the district court improperly took judicial notice of its personal recollection of the prior trial proceedings?

ARGUMENT

The District Court Erred When It Summarily Dismissed Mr. Toye's Amended Petition With Respect To The Pre-Trial Claim, Because The District Court Improperly Took Judicial Notice Of Its Personal Recollection Of The Prior Trial Proceedings

A. Introduction

Mr. Toye asserts the district court erred when it summarily dismissed his amended petition with respect to the pre-trial claim of ineffective assistance of counsel, because the district court improperly took judicial notice of its personal recollection of the prior trial proceedings. The district court determined that the prosecutor “has accurately stated the nature of the record at trial, and, I guess, to some extent I am taking judicial notice of that even though I didn’t announce that to being with.” (Tr., p.15, Ls.5-9.) Based on its personal recollection of the trial proceedings from the underlying criminal case, the district court determined, “the record of the trial clearly showed, if one transcribes it, that the victim testified as to the conduct, the defendant had admitted to the conduct, the DNA tests on the child, all of that showed that the outcome of the trial was really never in doubt.” (Tr., p.15, Ls.9-15.) The district court used its personal recollection to support its determination that Mr. Toye had not shown prejudice on the pre-trial claim. (See Tr., p.14, L.22 – p.18, L.25.)

However, the district court improperly took judicial notice of its personal recollection of the trial proceedings in the underlying criminal case, because the district court did not obtain the transcripts of the trial proceedings referenced. Thus, the district court’s summary dismissal of Mr. Toye’s amended petition should be reversed as to the pre-trial claim, and the matter should be remanded for further proceedings.

B. Standard Of Review And Applicable Law

“An application for post-conviction relief under the Uniform Post Conviction Procedure Act (UPCPA) is civil in nature.” *Charboneau v. State*, 144 Idaho 900, 903 (2007). Like any other civil plaintiff, a petitioner for post-conviction relief must prove by a preponderance of the evidence the factual allegations upon which the application for post-conviction relief is based. *Id.* However, unlike a complaint in a normal civil action, “an application for post-conviction relief must include affidavits, records, or other evidence supporting its allegations, or must state why such supporting evidence is not included.” *Id.* (citing I.C. § 19-4903).

A claim of ineffective assistance of counsel may properly be brought under the UPCPA. *Barcella v. State*, 148 Idaho 469, 477 (Ct. App. 2009). “Claims for ineffective assistance of counsel are reviewed utilizing the two-prong test set forth in *Strickland v. Washington*, [466 U.S. 668 (1984)].” *State v. Yakovac*, 145 Idaho 437, 444 (2008). “To prevail on such a claim, the applicant for post-conviction relief must demonstrate (1) counsel’s performance fell below an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel’s errors, the result would have been different.” *Id.*

“Summary disposition of a petition for post-conviction relief is appropriate if the applicant’s evidence raises no genuine issue of material fact.” *Charboneau*, 144 Idaho at 903 (citing I.C. § 19-4906(b) & (c)). “A material fact has some logical connection with the consequential facts, and therefore is determined by its relationship to the legal theories presented by the parties. If such a factual issue is presented, an evidentiary hearing must be conducted.” *Yakovac*, 145 Idaho at 444 (internal quotation marks, citation, and alteration omitted).

On review of a summary disposition of a post-conviction petition, an appellate court “will determine whether a genuine issue of fact exists based on the pleadings, depositions and

admissions together with any affidavits on file and will liberally construe the facts and reasonable inferences in favor of the non-moving party.” *Charboneau*, 144 Idaho at 903. “A court is required to accept the petitioner’s un rebutted allegations as true, but need not accept the petitioner’s conclusions.” *Id.* “When the alleged facts, even if true, would not entitle the applicant to relief, the trial court may dismiss the application without holding an evidentiary hearing.” *Id.* Alleged facts would not entitle the applicant to relief when “(1) they are clearly disproved by the record of the original proceedings, or (2) do not justify relief as a matter of law.” *Id.*

C. The District Court Improperly Took Judicial Notice Of Its Personal Recollection Of The Trial Proceedings In Mr. Toye’s Underlying Criminal Case, Because The District Court Did Not Obtain The Transcripts Of The Trial Proceedings Referenced

Mr. Toye asserts the district court improperly took judicial notice of its personal recollection of the trial proceedings in the underlying criminal case, because the district court did not obtain the transcripts of the trial proceedings referenced. A district court “may judicially notice a fact that is not subject to reasonable dispute because it” either “is generally known within the trial court’s territorial jurisdiction,” or “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” I.R.E. 201(b)(1) & (2).

In a case where a district court had summarily dismissed a post-conviction petition after giving notice of its intent to dismiss under I.C. § 19-4906(b), the Idaho Supreme Court held, “prior to dismissing a petition for post-conviction relief, the district court is required to obtain that portion of the trial transcript as is necessary to a determination ‘on the basis of the application, the answer or motion, and the record,’ that there are no material issues of fact and that the petitioner is not entitled to post-conviction relief.” *Matthews v. State*, 122 Idaho 801, 808 (1992) (quoting I.C. § 19-4906(b)). The *Matthews* Court explained, “Facts may not be

judicially noticed simply because they are within the personal recollected knowledge of the judge, if those facts are not also generally known in the jurisdiction.” *Id.* at 807. The Court also indicated that facts attendant to a trial are not capable of accurate and ready determination, absent a trial transcript. *See id.* at 808. Further, “Judicial notice taken of prior reported but not transcribed testimony cannot be allowed because conclusions drawn from that source are incapable of being reviewed by an appellate court.” *Id.*

The *Matthews* Court emphasized, “We do not mean to hold that full trial transcripts are required in every case where a petitioner alleges ineffective assistance of counsel.” *Id.* “In some cases, no transcript will be necessary because the petitioner may be deficient on its face. In other cases, a partial transcript may be all that is required to satisfy the statute.” *Id.* The Court reversed the district court’s summary disposition as to the ineffective assistance of counsel claims where the district court had taken improper judicial notice, and remanded the claims for further proceedings. *Id.* at 808-09.

Later, in a child custody case, the Idaho Supreme Court held, “A judge may take judicial notice of personal recollection of prior proceedings to the extent that the judge recalls what occurred.” *Navarro v. Yonkers*, 114 Idaho 882, 887 (2007) (citing *State v. Nunez*, 138 Idaho 636, 643 (2003)). Based on *Matthews*, the *Navarro* Court then reiterated, “However, the previous hearing must be transcribed so that any alleged error in such judicial notice is subject to appellate review.” *Id.* (citing *Matthews*, 122 Idaho at 808).

Here, the district court took judicial notice of its personal recollection of the prior trial proceedings, without obtaining transcripts of the proceedings referenced. The district court determined that the prosecutor “has accurately stated the nature of the record at trial, and, I guess, to some extent I am taking judicial notice of that even though I didn’t announce that to

begin with.” (Tr., p.15, Ls.5-9.) The district court determined “the outcome of the trial was really never in doubt,” based on its judicial notice of its personal recollection of the record of the trial, showing “that the victim testified as to the conduct, the defendant had admitted to the conduct, the DNA tests of the child.” (Tr., p.15, Ls.11-15.) However, the transcripts of those parts of the trial record are absent from the record for this post-conviction case. The district court acknowledged that the trial transcripts referenced had not been obtained; rather, the district court knew, “because I was there at trial,” what “the record of the trial clearly showed, if one transcribes it” (See Tr., p.15, Ls.9-11.)

Thus, the district court’s judicial notice of its personal recollection of the prior trial proceedings was improper. The Court in *Matthews* held “that prior to dismissing a petition for post-conviction relief, the district court is required to obtain that portion of the trial transcript as is necessary to a determination ‘on the basis of the application, the answer or motion, and the record,’ that there are no material issues of fact and that the petition is not entitled to post-conviction relief.” *Matthews*, 122 Idaho at 808 (quoting I.C. § 19-4906(b)).

A district court must similarly obtain the necessary portion of the trial transcript for summary dismissals of post-conviction relief based on the motion of a party under I.C. § 19-4906(c). Much like the standard for a summary disposition initiated by a district court under subsection (b), subsection (c) provides, “The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of the fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” I.C. § 19-4906(c).

The two standards for summary disposition are essentially the same, as exemplified by the Idaho Supreme Court in *Charboneau* observing, “Summary disposition of a petition for post-conviction relief is appropriate if the applicant’s evidence raises no genuine issue of material fact.” *Charboneau*, 144 Idaho at 903 (citing I.C. § 19-4906(b) & (c)). Thus, in light of the standards for summary disposition and following the logic of *Matthews*, prior to dismissing a petition for post-conviction relief based on a party’s motion for summary disposition, the district court is required to obtain that portion of the trial transcript as is necessary to a determination “from the pleadings, depositions, answers to interrogatories, and admissions and agreements of the fact, together with any affidavits submitted,” that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Matthews*, 122 Idaho at 808; I.C. § 19-4906(c).

The district court here therefore improperly took judicial notice of its personal recollection of the trial proceedings in the underlying criminal case, because the district court did not obtain the transcripts of the trial proceedings referenced. *See Navarro*, 114 Idaho at 887; *Matthews*, 122 Idaho at 808. The district court’s judicial notice of its personal recollection does not rise to the level of what the district court must consider when addressing the motion for summary disposition, namely the “pleadings, depositions, answers to interrogatories, and admissions of agreements of fact, together with any affidavits submitted.” *See* I.C. § 19-4906(c). The *Matthews* Court rejected a similar notion that such judicial notice of trial proceedings was at “the equivalent level of a court record” for purposes of subsection (b). *See Matthews*, 122 Idaho at 807. Also, as the *Matthews* Court held, the judicial notice taken by the district court here, “of prior reported but not transcribed testimony cannot be allowed because conclusions drawn from that source are incapable of being reviewed by an appellate court.” *Matthews*, 122 Idaho at 808.

In sum, the district court improperly took judicial notice of its personal recollection of the trial proceedings in the underlying criminal case, because the district court did not obtain the transcripts of the trial proceedings referenced. *See Navarro*, 114 Idaho at 887; *Matthews*, 122 Idaho at 808. Thus, the district court erred when it summarily dismissed Mr. Toye's amended petition with respect to the pre-trial claim. *See Matthews*, 122 Idaho at 808. The district court's summary dismissal of Mr. Toye's amended petition should be reversed as to the pre-trial claim, and the matter should be remanded for further proceedings. *See id.* at 808-09.

CONCLUSION

For the above reasons, Mr. Toye respectfully requests that this Court reverse the district court's summary dismissal of his amended petition as to the pre-trial claim of ineffective assistance of counsel, and the remand the matter for further proceedings.

DATED this 13th day of December, 2019.

/s/ Ben P. McGreevy
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of December, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

BPM/eas»