

06-313 ROPER V. WEAVER

DECISION BELOW: 438 F3d 832

LOWER COURT CASE NUMBER: 03-2880, 03-2938

QUESTION PRESENTED:

Since this court has neither held a prosecutor's penalty phase closing argument to violate due process, nor articulated, in response to a penalty phase claim, what the standard of error and prejudice would be, does a court of appeals exceed its authority under 28 U.S.C. §2254(d)(1) by overturning a capital sentence on the ground that the prosecutor's penalty phase closing argument was "unfairly inflammatory?"

DISMISSED AS IMPROVIDENTLY GRANTED.

CERT. GRANTED 12/7/2006