

BOISE, MONDAY, NOVEMBER 1, 2021 at 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

GERALD ROSS PIZZUTO, JR.,)	
)	
Petitioner-Appellant,)	
)	
v.)	
)	
IDAHO DEPARTMENT OF)	
CORRECTION, an Executive Department of)	Docket No. 48857
the State of Idaho; JOSH TEWALT,)	
Director, Idaho Department of Correction;)	
TYRELL DAVIS, Warden, Idaho Maximum)	
Security Institution,)	
)	
Respondents.)	
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Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Jonathan Medema, District Judge.

Charles Peterson, Federal Defenders Services of Idaho, Boise, for appellant.

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

This appeal concerns whether an execution protocol adopted by the Idaho Department of Correction (IDOC) must comply with procedural requirements for administrative rulemaking. Gerald Ross Pizzuto, Jr. is an inmate in the custody of IDOC sentenced to death. In March 2021, IDOC published a document detailing the “standard operating procedure” applying “to all IDOC staff members involved in the administration of capital punishment and to persons in IDOC custody sentenced to capital punishment” Pizzuto filed a complaint in district court seeking a declaratory judgment that the protocol was invalid because it had not been adopted in compliance with the Idaho Administrative Procedure Act (APA). The district court dismissed Pizzuto’s complaint. It found that Idaho Code section 19-2716, which provides that “[t]he director of the Idaho department of correction shall determine the procedures to be used in any execution[,]” was not a legislative grant of rulemaking authority and, therefore, the APA did not apply. Pizzuto argues that the district court erred in this determination, or, in the alternative, erred in denying him leave to amend his complaint to allege that the rulemaking requirements for the Idaho Board of Correction in Idaho Code section 20-212 applied in lieu of the APA.