

NOV 22 2022

KATHY M. ACKERMAN  
CLERK OF DISTRICT COURT  
*Kathy Ackerman* DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

	)	CASE NO. CR-1985-22075
	)	CV-2003-34748
STATE OF IDAHO	)	
	)	MEMORANDUM OPINION AND
Plaintiff,	)	ORDER ON MOTION TO
	)	STAY EXECUTION PENDING
v.	)	U.S. SUPREME COURT
	)	PROCEEDINGS
GERALD ROSS PIZZUTO, JR.,	)	
	)	
Defendant.	)	
_____	)	

This matter came on before the Court on the Defendant's Motion to Stay Execution Pending U.S. Supreme Court Proceedings. The Defendant was represented by Jonah Horwitz, of the Federal Defender Services of Idaho. The State was represented by LaMont Anderson, of the Idaho Attorney General's Office. The Court heard argument on November 22, 2022. The Court, being fully advised in the matter, hereby renders its decision.

**PROCEDURAL BACKGROUND**

The procedural background of this case, including commutation proceedings, has been set forth most recently by the Idaho Supreme Court in *State v. Pizzuto*, 518 P.3d 796 (Idaho 2022), *reh'g denied* (Oct. 28, 2022). A remittitur was issued on October 28, 2022. Following the remittitur, Pizzuto filed a motion to preclude the issuance of a death warrant to allow for All Writs Act litigation to continue in the federal court. This motion

was denied by this Court on November 15, 2022. A death warrant was entered on November 16, 2022. Immediately thereafter the Defendant filed the pending motion to stay execution until proceedings are complete at the U.S. Supreme Court regarding his due process challenge of the recent Idaho Supreme Court decision.

### ANALYSIS

Pizzuto asserts that a stay is both permissible under Idaho law and necessary as a practical matter to allow him to seek review at the United States Supreme Court of any matter of federal constitutional law, specifically a due process challenge of the recent Idaho Supreme Court opinion. Chapter 27, Title 19 of the Idaho Code sets forth the procedural requirements for execution of judgments, including sentence of death, in the State of Idaho. On November 16, 2022 this Court issued a death warrant after inquiring of the State whether there was an existing death sentence and valid stay of execution, as required by I.C. § 19-2715. Given the circumstances of an existing death sentence and the absence of a valid stay of execution, this Court was required to sign the death warrant. *See State v. Leavitt*, 153 Idaho 142, 147, 280 P.3d 169, 174 (2012)(holding the trial court did not err in failing to inquire beyond the requirements of I.C. §19-2715(4) prior to issuing a death warrant). By signing the death warrant, this Court confirmed there was no valid stay of execution in place.

**1. This Court's ability to issue a stay of execution is limited to the provisions of Chapter 27, Title 19, Idaho Code.**

I.C. § 19-2708 states “No judge, court or officer, can suspend the execution of a judgment of death, except as provided in sections 19-2715 and 19-2719, Idaho Code.”

I.C. § 19-2715(1) sets forth limited reasons for the issuance of a stay of execution:

Hereafter, no further stays of execution shall be granted to persons sentenced to death except that a stay of execution shall be granted during an appeal taken pursuant to section 19-2719, Idaho Code, during the automatic review of judgments imposing the punishment of death provided by section 19-2827, Idaho Code, by order of a federal court or as part of a commutation proceeding pursuant to section 20-240, Idaho Code.

*Id.* At this time, none of these reasons for a stay are present in this case.<sup>1</sup>

In 2021, following the appeal and remittitur issued in Pizzuto's post-conviction action in Idaho County Case CV2003-34748, this Court issued a death warrant.

However, the execution was stayed when the Commission of Pardons and Paroles agreed to consider commutation of Pizzuto's sentence. As noted above, commutation proceedings are a basis to enter a stay of execution.

The results of the commutation proceedings were appealed, and considered by the Idaho Supreme Court. The Idaho Supreme Court reversed this Court's determination on the issue of whether Pizzuto's sentence was illegal following the Governor's decision regarding commutation. Remittitur was issued following that appeal.<sup>2</sup> Following the remittitur, this Court was required to sign a death warrant if it was presented by the state. At this time, Pizzuto is deemed to have exhausted all state remedies.<sup>3</sup> As a result, there is

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<sup>1</sup> I.C. § 19-2719 addresses special appellate and post-conviction procedure for capital cases, including the application of an automatic stay while those reviews are in process. The "special procedures shall be interpreted to accomplish the purpose of eliminating unnecessary delay in carrying out a valid death sentence." *Id.* I.C. § 19-2719(10) explains that when the review procedures have concluded, the defendant is deemed to have exhausted all state remedies. The special appellate and post-conviction procedures pursuant to I.C. § 19-2719 and the review of death sentence pursuant to I.C. § 19-2827 have been carried out in this case.

<sup>2</sup> I.C. § 19-2715(2) requires the state to apply for a warrant upon remittitur:

Upon remittitur or mandate after a sentence of death has been affirmed, the state shall apply for a warrant from the district court in which the conviction was had, authorizing execution of the judgment of death. Upon such application, the district court shall set a new execution date not more than thirty (30) days thereafter.

<sup>3</sup> There are four reasons that a stay may be issued pursuant to I.C. §19-2715(1). Following the conclusion of the commutation proceedings, the only basis this Court may have to issue a stay is if a federal order is entered requiring the Court to do so. No other avenues for a stay are available to Pizzuto following the lengthy litigation process of this case.

no basis for a stay pursuant to I.C. § 19-2715 or § 19-2719. Therefore, pursuant to I.C. § 19-2708, this Court is precluded from issuing a stay of execution in this matter.

**2. I.C. § 19-2715(1) does not violate the separation of powers.**

Pizzuto contends that if this Court finds that I.C. § 19-2715(1) prohibits the issuance of a stay in this matter, the statute would violate the separation of powers and thus cannot be so interpreted and enforced. Separation of powers was addressed by the Idaho Supreme Court in *State v. Olivas*, 158 Idaho 375, 347 P.3d 1189 (2015).

“This [C]ourt has in the past been very circumspect in protecting the autonomy envisioned for the judiciary within our constitution.” *State v. McCoy*, 94 Idaho 236, 240, 486 P.2d 247, 251 (1971).

The Idaho Constitution prohibits any branch of government from exercising powers that properly belong to another branch, unless the constitution expressly so directs or permits. Idaho Const. art. II, § 1.

The power to define crimes and prescribe penalties belongs to the legislative department whereas the authority to sentence offenders who have been found guilty of those crimes lies with the judiciary.

*Spanton v. Clapp*, 78 Idaho 234, 237, 299 P.2d 1103, 1104 (1956).

*Gibson v. Bennett*, 141 Idaho 270, 276, 108 P.3d 417, 423 (Ct.App.2005).

“This [C]ourt always must be watchful, as it has been in the past, that no one of the three separate departments of the government encroach upon the powers properly belonging to another.” *McCoy*, 94 Idaho at 241, 486 P.2d at 252.

In “direct recognition and reiteration of the separation of powers provided by Art. 2, § 1,” Article V, Section 13 “forbids the legislature from exercising powers rightly pertaining to the judicial department.” *R.E.W. Constr. Co. v. Dist. Court of the Third Judicial Dist.*, 88 Idaho 426, 437, 400 P.2d 390, 397 (1965). In this respect, Article V, Section 13 states:

“The legislature shall have no power to deprive the judicial department of any power or jurisdiction which rightly pertains to it as a coordinate department of the government....” Idaho Const. art. V, § 13.

*Id.* 379-80, 347 P.3d at 1193-94. The Court is obligated to seek an interpretation of the statute that upholds its constitutionality.

[T]he Court will critically review the statute to avoid an untenable encroachment on judicial power. We are “obligated to seek an

interpretation of a statute that upholds its constitutionality.” *In re Bermudes*, 141 Idaho 157, 159, 106 P.3d 1123, 1125 (2005).

Whenever an act of the Legislature can be so construed and applied as to avoid conflict with the Constitution and give it the force of law, such construction will be adopted by the courts; and it is held by many courts that where there is room for two constructions of a statute, both equally obvious and equally reasonable, the court must, in deference to the Legislature of the state, assume that it did not overlook the provisions of the Constitution, and designed the act to take effect.

*Grice v. Clearwater Timber Co.*, 20 Idaho 70, 77, 117 P. 112, 114 (1911) (citation omitted) (internal quotation marks omitted). Thus, to maintain the separation of powers, we will narrowly construe a sentencing statute against an infringement on the judiciary's inherent sentencing authority. Any other method of construction could permit the legislature to exercise powers properly belonging to the judiciary without invoking the appropriate constitutional authority.

*Id.* at 380, 347 P.3d at 1194.

As explained in I.C. § 19-2719, the Legislature enacted Chapter 27, Title 19 of the Idaho Code with the intent “to accomplish the purpose of eliminating unnecessary delay in carrying out a valid death sentence.” The Idaho Supreme Court has not addressed a separation of powers claim with respect to Chapter 27, Title 19, Idaho Code.

At argument, Pizzuto argued the Court has the power to stay a judicial order because the Court has the fundamental power to stay its own orders and to maintain the status quo. The Court recognizes its inherent powers, however, in this case, where Pizzuto has exhausted all state remedies, the Court will not issue a stay of execution without one of the reasons enumerated in I.C. § 19-2715(1).

**3. The United States Supreme Court is not precluded from issuing a stay in this matter.**

Pizzuto is seeking a stay of execution on the basis that he has the right to seek review of the Idaho Supreme Court decision at the U.S. Supreme Court, specifically arguing due process violations from the commutation proceedings. *See* 28 U.S.C. §

1257(a); *Oregon v. Guzek*, 546 U.S. 517, 521 (2006). Both Pizzuto and the State argued regarding a traditional four-part test that the U.S. Supreme Court discussed with respect to federal habeas corpus practice in *Hilton v. Braunskill*, 481 U.S. 770, 107 S.Ct. 2113, 95 L.Ed.2d 724 (1987).

Different Rules of Procedure govern the power of district courts and courts of appeals to stay an order pending appeal. See Fed.Rule Civ.Proc. 62(c); Fed.Rule App.Proc. 8(a). Under both Rules, however, the factors regulating the issuance of a stay are generally the same: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

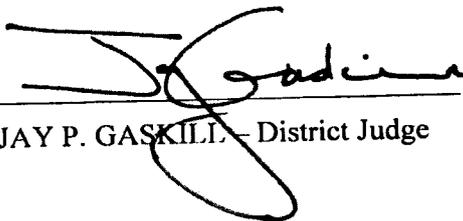
*Id.* at 776, 107 S. Ct. at 2119. This Court will not engage in this analysis where it has already determined that the federal courts are not precluded from issuing an order which would result in a stay in this case. Should the federal court issue an order, Pizzuto may then seek a stay pursuant to I.C. § 19-2715(1).

#### ORDER

The Defendant's Motion to Stay Execution Pending United States Supreme Court Proceedings is hereby DENIED.

IT IS SO ORDERED.

DATED November 22, 2022

  
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JAY P. GASKILL - District Judge

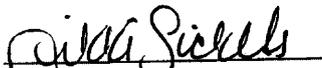
CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing MEMORANDUM OPINION AND ORDER ON MOTION TO STAY U.S. SUPREME COURT PROCEEDINGS was delivered via electronic court filing by the undersigned at Grangeville, Idaho, this 22 day of November, 2022, on:

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By:   
Deputy