

DISTRICT COURT  
SEVENTH JUDICIAL DISTRICT  
BINGHAM COUNTY, IDAHO

2012 MAY 21 AM 11:03

CR-85-4110

CLERK  
SARA STAUS CLERK

BY MLP DEPUTY

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Attorneys for Richard A. Leavitt

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

THE STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-1985-4110
	)	
vs.	)	
	)	NOTICE OF APPEAL
RICHARD A. LEAVITT,	)	
	)	
Defendant.	)	
	)	
_____	)	

**TO: PROSECUTING ATTORNEY, BINGHAM COUNTY, THE ATTORNEY  
GENERAL OF THE STATE OF IDAHO, AND THE CLERK OF THE  
DISTRICT COURT:**

**NOTICE IS HEREBY GIVEN THAT:**

1. The above-named defendant appeals against the plaintiff to the Idaho Supreme Court from the issuance of the death warrant entered by the Honorable Jon Shindurling, District Judge of the Seventh Judicial District in and for the State of Idaho, on May 17, 2012.

2. The party has the right to appeal to the Idaho Supreme Court, and the judgment above-described is an appealable order under and pursuant to Idaho Appellate Rules, Rules 11(c)(1), (6), and (8).

3. A preliminary list of issues on appeal includes 1) the district court did not have jurisdiction under I.C. § 19-2715 to issue the death warrant; 2) the district court failed to comply with I.C. § 19-2715(4); 3) the district court erred in not permitting Mr. Leavitt and/or counsel for Mr. Leavitt to appear; 4) the district court erred in not making a verbatim transcript of the proceedings; and 5) these errors individually and cumulatively violated Mr. Leavitt's rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Art. 1, § 13 of the Idaho Constitution.

4. The following Reporter's Transcript of proceedings are requested, if any record was made: All hearings, including any held in chambers, related to the issuance of the Death Warrant on or about May 17, 2012. For the information of the Court, counsel

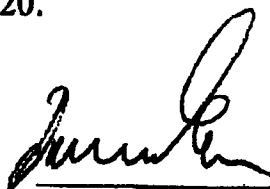
are advised by the Clerk that whatever interaction occurred between counsel and the trial court were not recorded.

5. The standard designation of the Clerk's record pursuant to Rule 28 is requested.

6. I certify:

- a. That I have served a copy of this Notice on the court reporter, Nancy Marlow.
- b. That Mr. Leavitt is exempt from paying the estimated cost of any transcript as he is indigent and has been in custody on death row since 1985.
- c. That Mr. Leavitt is exempt from paying the estimated cost of the clerk's record as he is indigent and has been in custody on death row since 1985.
- d. That there is no filing fee for appeals in criminal cases.
- e. That service has been made upon all parties, including the Prosecuting Attorney and the Attorney General, required to be served pursuant to Rule 20.

DATED: May 21, 2012.



Andrew Parnes  
David Z. Nevin  
Attorney for Defendant Richard A. Leavitt

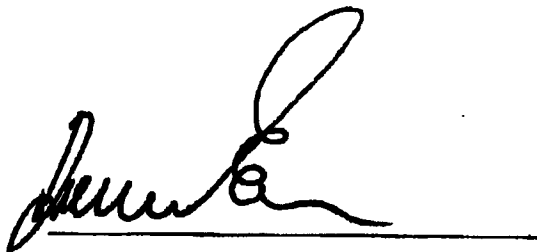
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 21<sup>st</sup> day of May, 2012, I served the foregoing document on all interested parties as follows by facsimile and U.S. Mail:

J. Scott Andrew  
Bingham County Prosecuting Attorney  
501 North Maple, #302  
Blackfoot, ID 83221

Lawrence Wasden  
Attorney General  
State of Idaho  
P.O. Box 83720  
Boise, Idaho 83720-0010

Nancy Marlow  
Court Reporter  
605 North Capital  
Idaho Falls, ID 83402



DISTRICT COURT  
SEVENTH JUDICIAL DISTRICT  
BINGHAM COUNTY, IDAHO

2012 MAY 17 AM 11:28

CASE# CR 85-4110  
SARA STAUB CLERK

BY GK DEPUTY

 ORIGINAL

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

STATE OF IDAHO	)	CASE NO. CR-1985-4110
	)	
Plaintiff,	)	
	)	
vs.	)	DEATH WARRANT
	)	
RICHARD A. LEAVITT,	)	
	)	
Defendant.	)	
_____	)	

TO: Brent Reinke, Director of the Idaho Department of Correction, and Randy  
Blades, Warden, Idaho Maximum Security Institution:

WHEREAS, the above-named Defendant, on the 25<sup>th</sup> day of September, 1985,  
was found guilty by a jury of the crime of First-Degree Murder as charged in the  
prosecutor's Amended Information; and,

**WHEREAS**, on the 19<sup>th</sup> day of December, 1985, this Court made and entered its Pronouncement of Sentence, finding that Defendant is guilty of Murder in the First-Degree and imposing the sentence of Death; and,

**WHEREAS**, on the 8<sup>th</sup> day of January, 1986, this Court made and entered its Judgment of Conviction, finding that Defendant is guilty of Murder in the First-Degree and imposing the sentence of Death; and,

**WHEREAS**, on the 1<sup>st</sup> day of May, 1987, this Court entered an order denying Defendant's Petition for Post-Conviction Relief; and,

**WHEREAS**, on the 30<sup>th</sup> day of May 1989, the Idaho Supreme Court issued its opinion upholding the conviction and denial of post-conviction relief stemming from conviction, but reversing the death sentence and remanding for resentencing; and,

**WHEREAS**, after a resentencing hearing, on the 25<sup>th</sup> day of January, 1990, this Court signed its Memorandum Decision and Findings of the Court in Considering the Death Penalty, finding that Defendant is guilty of Murder in the First-Degree and imposing the sentence of Death, which was filed on the 29<sup>th</sup> day of January, 1990; and,

**WHEREAS**, on the 15<sup>th</sup> day of March, 1990, this Court signed the Judgment of Conviction and Sentencing Order, finding that Defendant is guilty of Murder in the First-Degree and imposing the sentence of Death, which was filed on the 6<sup>th</sup> day of April, 1990; and,

**WHEREAS**, on the 27<sup>th</sup> day of November, 1991, the Idaho Supreme Court issued its opinion upholding the death sentence; and,

**WHEREAS**, this Court has entered orders denying all of Defendant's successive and subsequent petitions for post-conviction and other state collateral relief; and,

**WHEREAS**, the Idaho Supreme Court has affirmed the denial of Defendant's successive and subsequent petitions for post-conviction and other state collateral relief; and,

**WHEREAS**, on the 14<sup>th</sup> day of December, 2000, the Honorable B. Lynn Winmill entered Judgment granting Defendant federal habeas relief and ordering the state to initiate new trial proceedings; and,

**WHEREAS**, on the 14<sup>th</sup> day of June, 2004, the United States Court of Appeals for the Ninth Circuit, reversed the granting of federal habeas relief requiring the initiation of new trial proceedings, but remanded for consideration of Defendant's ineffective assistance of counsel claims arising from his resentencing; and,

**WHEREAS**, on the 28<sup>th</sup> day of September 2007, the Honorable B. Lynn Winmill entered Judgment granting Defendant federal habeas relief and ordering the state to initiate new sentencing proceedings; and;

**WHEREAS**, on the 17<sup>th</sup> day of May, 2011, the United States Court of Appeals for the Ninth Circuit reversed the granting of federal habeas relief requiring the initiation of new sentencing proceedings; and,

**WHEREAS**, on the 14<sup>th</sup> day of May, 2012, the United States Supreme Court denied Defendant's petition for certiorari, and;

**WHEREAS**, on the 16<sup>th</sup> day of May, 2012, the United States Court of Appeals for the Ninth Circuit issued its Mandate, which automatically lifted any stay imposed by Judge B. Lynn Winmill; and,

**WHEREAS**, Idaho Code § 19-2715(2) mandates that upon a remittitur or mandate being issued after a sentence of death has been affirmed, the district court shall set a new execution date; and,

**WHEREAS**, the Court is not aware of the existence of any stay of execution or other legal impediment to execution of the judgment.

**NOW THEREFORE, YOU ARE HEREBY COMMANDED**, pursuant to Idaho Code § 19-2716 and the Judgment of this Court, to receive said Defendant into your custody, and on the 12 day of June, 2012, you shall cause the execution of said sentence of death to take place, unless said sentence is stayed by law, and that you shall make a return upon this Death Warrant, showing the time, mode and manner in which it was executed pursuant to Idaho Code § 19-2718.

DATED this 17 day of May, 2012.

  
\_\_\_\_\_  
DISTRICT JUDGE



\*\*\*\*\*

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT STATE OF

IDAHO, IN AND FOR THE COUNTY OF BINGHAM

\*\*\*\*\*

STATE OF IDAHO,

Plaintiff / Respondent

-vs-

RICHARD A. LEAVITT,

Defendant / Appellant.

SUPREME COURT #

CLERK'S CERTIFICATE ON APPEAL

**APPEAL FROM:** The District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bingham, Honorable Jon J. Shindurling, presiding.

**CASE NUMBER FROM DISTRICT COURT:** Bingham County Case No. CR-1985-4110

**ORDER OR JUDGMENT APPEALED FROM:** Death Warrant Issued May 17, 2012

**ATTORNEY FOR APPELLANT:** Andrew Parnes, PO Box 5988, Ketchum, ID 83340 & David Nevin, PO Box 2772, Boise, ID 83701

**ATTORNEY FOR RESPONDENT:** State Attorney General; Statehouse Mail, Boise, Idaho 83720-0010.

**APPEALED BY:** Richard Leavitt

**APPEALED AGAINST:** State of Idaho

**NOTICE OF APPEAL FILED:** May 21, 2012

**AMENDED NOTICE OF APPEAL FILE:**

**NOTICE OF CROSS-APPEAL FILED:**

**AMENDED NOTICE OF CROSS-APPEAL FILED:**

**APPELLATE FEES PAID:**

None: Criminal Appeal

**RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL RECORD  
FILED:**

**RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL  
REPORTER'S TRANSCRIPT FILED:**

**TRANSCRIPT FILED:**

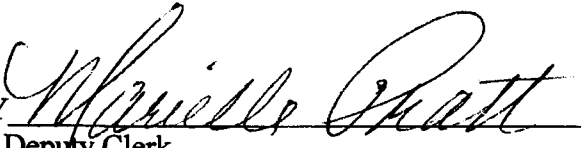
**WAS DISTRICT COURT REPORTER'S TRANSCRIPT REQUESTED:** Yes  
Nancy Marlow, 605 N. Capital Ave., Idaho Falls, ID

**ESTIMATED NUMBER OF PAGES:** Not known

**HARDCOPY:** ☐ **ELECTRONIC:** ☐ **BOTH:** ☐ **NOT SPECIFIED:** ☒

**DATED:** May 21, 2012

**SARA STAUB, CLERK OF THE COURT**

BY   
Deputy Clerk