

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
BINGHAM COUNTY, IDAHO

2012 MAY 21 PM 2:20

CASE#
SARA STAUB CLERK
BY *MS* DEPUTY

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

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,)	Case No. CR-1985-4110
)	
)	Case No. CV-2008-857
)	
vs.)	ORDER DENYING MOTION TO
)	RECONSIDER DEMAND FOR
)	OPPORTUNITY TO BE HEARD
)	REGARDING ISSUANCE OF DEATH
)	WARRANT
RICHARD A. LEAVITT,)	
)	
Defendant/Petitioner.)	
_____)	

The Defendant/Petitioner Richard A. Leavitt filed a "Motion to Reconsider Order Denying Demand For Opportunity To Be Heard Regarding Issuance of Death Warrant" on May 18, 2012. The prior motion asserted the judgment of death has not been executed for reasons other than those set forth in Idaho Code § 19-2715(1) and that legal reasons exist against the execution of judgment. The motion indicated that it appears no stay of execution is in place. Leavitt argued that failure to grant his motion would result in a death warrant issuing in derogation of his "rights to due process of law, the assistance of counsel, a fair trial and sentencing hearing, and to be free from cruel and unusual punishment, as guaranteed by the Fifth, Sixth and Eighth Amendments to the United States Constitution and Article 1, § 13 of the Idaho Constitution."

A stay of execution was granted pursuant to Idaho Code § 19-2715(1) but that stay has been lifted. Pursuant to Idaho Code § 19-2715(3), after the state applies for another warrant, this Court "shall set a new execution date not more than thirty (30) days thereafter." Further, action by this Court is ministerial only and "[n]o hearing shall be required for setting a new execution date and the court shall inquire only into the fact of an existing death sentence and the absence of a valid stay of execution." Idaho Code § 19-2715(5). Leavitt does not assert that a stay of execution is in place and does not dispute the fact of an existing death sentence.

This Court has no current jurisdiction other than that granted by statute, which is ministerial in nature, to sign the warrant. Leavitt's arguments regarding the death warrant being issued in derogation of his various legal rights must be addressed to a court with proper jurisdiction to hear them. There is no right to be heard given to defendants pursuant to Idaho Code § 19-2715.

Therefore, Defendant/Petitioner Leavitt's Motion to Reconsider the Court's denial of his Notice of Demand for Opportunity to be Heard Regarding Issuance of Death Warrant is DENIED.

IT IS SO ORDERED.

Dated this 21 day of May, 2012.



Jon J. Shindurling
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of May, 2012, I served a true and correct copy of the foregoing ORDER DENYING MOTION TO RECONSIDER DEMAND FOR OPPORTUNITY TO BE HEARD REGARDING ISSUANCE OF DEATH WARRANT upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes.

Defendant/Petitioner

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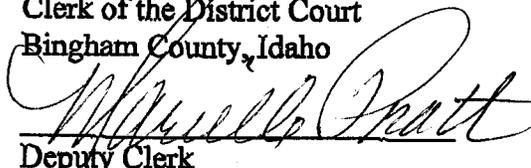
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Sara J. Staub
Clerk of the District Court
Bingham County, Idaho

by


Deputy Clerk

ORDER DENYING MOTION TO RECONSIDER DEMAND FOR OPPORTUNITY TO BE HEARD
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