

## SUMMARY STATEMENT

*Pizzuto v. State*  
Docket No. 47709

This appeal concerns a motion to alter or amend a judgment entered in a post-conviction relief case. In 1985, Gerald Ross Pizzuto Jr. murdered Berta Herndon and Delbert Herndon. Pizzuto was convicted of two counts of murder in the first degree, two counts of felony murder, one count of robbery, and one count of grand theft. He was sentenced to death for the murders. Between 1986 and 2003, Pizzuto filed five petitions for post-conviction relief. His fifth petition was predicated on the holding in *Atkins v. Virginia*, 536 U.S. 304 (2002), in which the Supreme Court of the United States held that the execution of an intellectually disabled person constituted cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. In his petition, Pizzuto asserted that his death sentence should be “reversed and vacated” because he is intellectually disabled. The district court summarily dismissed Pizzuto’s petition. The Idaho Supreme Court, in *Pizzuto v. State (Pizzuto 2008)*, 146 Idaho 720, 202 P.3d 642 (2008), held that the district court did not err when it dismissed Pizzuto’s petition on the basis that Pizzuto had failed to raise a genuine issue of material fact supporting his claim that he was intellectually disabled at the time of the murders and prior to his eighteenth birthday.

Pizzuto also pursued his *Atkins* claim in a federal habeas corpus action. In 2016, the U.S. District Court for the District of Idaho denied Pizzuto’s successive petition for writ of habeas corpus after determining that Pizzuto had failed to demonstrate that he was intellectually disabled at the time of the murders and prior to his eighteenth birthday. The U.S. Court of Appeals for the Ninth Circuit affirmed the federal district court’s decision, but noted in dicta that its decision does not preclude Idaho courts from reconsidering whether Pizzuto was intellectually disabled at the time of the murders. Based on that dicta, Pizzuto filed a motion with the district court to alter or amend the judgment dismissing his fifth petition for post-conviction relief in accordance with Idaho Rule of Civil Procedure 60(b)(6). The district court denied Pizzuto’s motion, and Pizzuto timely appealed.

On appeal, the Idaho Supreme Court concluded that *Pizzuto 2008* was correctly decided based on the law at that time. Second, the Court observed that the federal district court, after conducting a four-day evidentiary hearing, had determined that Pizzuto was not intellectually disabled at the time of the murders and prior to his eighteenth birthday. Third, the Court held that the district court did not abuse its discretion when it denied Pizzuto’s motion as being untimely. Finally, the Court held that the district court did not abuse its discretion when it denied Pizzuto’s motion on the basis that he had failed to establish unique and compelling circumstances necessary to justify relief under Idaho Rule of Civil Procedure 60(b)(6). Consequently, the Idaho Supreme Court affirmed the district court’s decision denying Pizzuto’s motion.

\*\*\*This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.\*\*\*