

BOISE, MONDAY, JUNE 13, 2022, AT 10:00A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|----------------------------------|---|-------------------------|
| STATE OF IDAHO, |) | |
| |) | |
| Plaintiff-Appellant, |) | |
| |) | |
| v. |) | Docket No. 49489 |
| |) | |
| GERALD ROSS PIZZUTO, JR., |) | |
| |) | |
| Defendant-Respondent. |) | |
| _____ |) | |
| |) | |
| GERALD ROSS PIZZUTO, JR., |) | |
| |) | |
| Petitioner-Respondent, |) | Docket No. 49531 |
| |) | |
| v. |) | |
| |) | |
| STATE OF IDAHO, |) | |
| |) | |
| Respondent-Appellant. |) | |
| _____ |) | |

Appeal from the District Court of the Second Judicial District of the State of Idaho, Idaho County. Jay P. Gaskill, District Judge.

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

Federal Defender Services of Idaho, Boise, for Respondent.

Gerald Pizzuto, convicted of two counts of first-degree murder, was sentenced to death in 1986. This Court affirmed his sentence in 1991. *State v. Pizzuto*, 119 Idaho 742, 810 P.2d 680 (1991). Following years of litigation and denied petitions for post-conviction and federal habeas relief, Pizzuto’s execution was stayed in 2021 when the Idaho Commission of Pardons and Parole (“Commission”) granted Pizzuto’s request for a commutation hearing. A majority (4-3) on the Commission subsequently voted to commute Pizzuto’s death sentence to life without the possibility of parole. The Commission then forwarded this determination to the Governor, who denied it shortly thereafter.

Before the district court, Pizzuto filed a motion to correct the sentence under Idaho Criminal Rule 35(a). He argued that the death sentences in his case were illegal as a result of the Commission voting to commute his sentences to life in prison without parole because Article IV, Section 7 of the Idaho Constitution places the commutation power exclusively in the hands of the Commission. The district court agreed with Pizzuto’s interpretation and ultimately concluded

that the legislature cannot “usurp the Commission’s power and shift their decision making authority to the governor.” The court granted Pizzuto’s Rule 35(a) motion and his motion to preclude issuance of the death warrant. Pizzuto then filed a sixth successive post-conviction petition based on the same grounds and issues as in his Rule 35(a) motion. The district court also granted the post-conviction relief pursuant to Idaho Code section 19-4901(a)(3) “because the death sentences exceed the maximum authorized by law.” The State timely appealed both decisions, which are consolidated in this expedited appeal.