

FILED IN CHAMBERS
AT IDAHO FALLS
BONNEVILLE COUNTY
HONORABLE JON J. SHINDURLING
DATE May 17, 2012
TIME 10:50 AM
DEPUTY CLERK JW/2012

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 DEMAND
)	FOR OPPORTUNITY TO BE HEARD
)	REGARDING ISSUANCE OF DEATH
)	WARRANT
RICHARD A. LEAVITT,)	
)	
Defendant/Petitioner.)	

The Defendant/Petitioner Richard A. Leavitt filed a Notice of Demand for Opportunity to be Heard Regarding Issuance of Death Warrant on May 15, 2012. The motion asserts 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 indicates that it appears no stay of execution is in place. Leavitt argues 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

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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.

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 Notice of Demand for Opportunity to be Heard Regarding Issuance of Death Warrant is DENIED.

IT IS SO ORDERED.

Dated this 17 day of May, 2012.



Jon J. Shindurling
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of May, 2012, I served a true and correct copy of the foregoing ORDER DENYING 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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Sara J. Staub
Clerk of the District Court
Bingham County, Idaho

by 
Deputy Clerk

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