

DISTRICT COURT  
SEVENTH JUDICIAL DISTRICT  
BINGHAM COUNTY, IDAHO

2012 MAY 18 AM 7:57

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BY \_\_\_\_\_ DEPUTY

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IN THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, COUNTY OF BINGHAM

STATE OF IDAHO,	)	Case No. CR1985-4110 AND
	)	CV2008-857
Plaintiff-Respondent,	)	
	)	
v.	)	<b>MOTION TO RECONSIDER</b>
	)	<b>ORDER DENYING DEMAND FOR</b>
RICHARD A. LEAVITT,	)	<b>OPPORTUNITY TO BE HEARD</b>
	)	<b>REGARDING ISSUANCE OF</b>
Defendant-Petitioner.	)	<b>DEATH WARRANT</b>
_____	)	

The Defendant Richard A. Leavitt, through counsel, respectfully moves the Court for its Order reconsidering its Order Denying Demand for Opportunity to be Heard, dated May 17, 2012.

This motion is made because the Order incorrectly concludes that a previous death warrant was not executed because of the pendency of a stay of execution, and the case is therefore governed by I.C. § 19-2715(3). Prior to the issuance of the Ninth Circuit's mandate on May 16, however, execution of Mr. Leavitt was barred by the permanent injunction of the federal

court, which is not “a temporary postponement of an execution,” I.C. § 19-2515(6).

As a result, the Court should have analyzed the State’s request for a death warrant under I.C. § 19-2715(4), under which the Court “may inquire into the facts ... .” Accordingly, the Court misunderstood the correct basis for the exercise of its discretion, and as a result the present motion should be granted.

This motion is based on the record herein and on the Affidavit of David Z. Nevin, contemporaneously filed.

DATED this 17<sup>th</sup> day of May, 2012.



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David Z. Nevin  
Andrew Parnes  
Attorney for Defendant-Petitioner

CERTIFICATE OF SERVICE

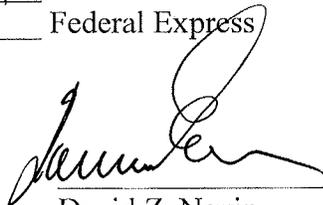
I HEREBY CERTIFY that on the 17<sup>th</sup> day of May, 2012, I served the foregoing document on all interested parties as follows:

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David Z. Nevin