

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

IDAHO COUNTY DISTRICT COURT
FILED
AT 2:29 O'CLOCK A.M.

MAR 10 2023

KATHY M. ACKERMAN
CLERK OF DISTRICT COURT
DEPUTY

GERALD ROSS PIZZUTO, JR.,
Petitioner,
v.
TIM RICHARDSON, Warden,
Idaho Maximum Security Institution,
Respondent.

Case No. 1:22-cv-00452-BLW

CAPITAL CASE

ORDER GRANTING APPLICATION
FOR STAY OF EXECUTION

FOR IMMEDIATE FILING

Petitioner Gerald Ross Pizzuto, Jr., is scheduled to be executed by the State of Idaho on March 23, 2022. Pizzuto has filed an Application for Stay of Execution, contending that he is entitled to a stay pending the Court's adjudication of the instant petition for writ of habeas corpus. *See* Dkt. 13.

A federal district court has authority to stay state court proceedings, including the execution of a prisoner under a sentence of death, while a federal habeas corpus proceeding is pending. 28 U.S.C. § 2251(a)(1). A stay of execution pending adjudication of a habeas petition is appropriate if the petition presents "substantial grounds upon which relief might be granted." *Vargas v. Lambert*, 159 F.3d 1161, 1166 (9th Cir. 1998) (internal quotation marks and alteration omitted). That is, a "petitioner need not show that he should prevail on the merits....

Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues in a different manner; or that the questions are adequate to deserve encouragement to proceed further.” *Id.* (internal quotation marks, alterations, and emphasis omitted).

Whether to grant a stay under § 2251 is discretionary. However, the Supreme Court has made clear that, if a “district court cannot dismiss the petition on the merits before the scheduled execution, it is obligated to address the merits and must issue a stay to prevent the case from becoming moot.” *Lonchar v. Thomas*, 517 U.S. 314, 320 (1996).

ACCORDINGLY, IT IS ORDERED:

1. Because this Court is unable to fully consider and adjudicate the petition before the scheduled execution, Petitioner’s Application for Stay of Execution (Dkt. 13) is GRANTED.
2. **All state court and other proceedings related to the execution of Petitioner’s sentence of death, including preparation for execution, are STAYED pending the Court’s final adjudication of the instant Petition for Writ of Habeas Corpus.** Pursuant to Local Civil Rule 9.2(b)(1)(3), the Clerk of Court will immediately notify the following individuals of this stay of execution: counsel for Petitioner, the Idaho Attorney General, the warden of the Idaho Maximum

Security Institution, the clerk of the Idaho Supreme Court, and the clerk of the Ninth Circuit Court of Appeals.

3. It appears that, with the entry of the stay of execution, Petitioner's other pending motions (Dkt. 16 and 17) may be moot. Within 21 days after entry of this Order, the parties may respond to this Order if they disagree with the Court's conclusion on this point.
4. In light of the Court's grant of Petitioner's Application for Stay, Petitioner's request for expedited briefing on his latest motions is denied.



DATED: March 09, 2023

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill
U.S. District Court Judge