

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DAVID ZINK,)	
)	
Petitioner,)	
)	
v.)	Case No. 15-03099-CV-W-BP
)	
TROY STEELE,)	
)	
Respondent.)	

ORDER

This matter comes before the Court on Petitioner David Zink’s Motion for Relief from Judgment under Rule 60(b) and Alternative Motion for Stay of Execution. (Doc. 124.) Petitioner, relying on the dissent in the recent Supreme Court decision *Glossip v. Gross*, No. 14-7955, 2015 WL 2473454 (U.S. June 29, 2015), contends that the Court should conclude that the death penalty is unconstitutional in all instances. Further, he argues that the instant Motion is not a successive habeas petition. Thus, he requests that the Court vacate its judgment, declare the death penalty unconstitutional, and commute his sentence to life in prison without parole. In the alternative, Petitioner requests that the Court stay his execution pending disposition of this Motion, should the Court determine that further briefing or factual development is needed.

The Court concludes that further briefing and/or factual development are not necessary to resolve the issues in Petitioner’s Motion. Rather, the Court finds that the law on the issues before it is clear. In this case, regardless of whether the instant Motion is a successive habeas petition, the Court is not inclined to rely on the dissenting opinion in *Glossip* to declare the death penalty unconstitutional when the majority opinion clearly states that the death penalty is constitutional. *See Glossip*, 2015 WL 2473454, at *5 (“ . . . because it is settled that capital

punishment is constitutional, “[i]t necessarily follows that there must be a [constitutional] means of carrying it out.”) (internal citation omitted). Finding no other reason to grant Petitioner his requested relief, the Court concludes it is appropriate to deny his Motion.

Accordingly, Petitioner’s Motion for Relief from Judgment under Rule 60(b) and Alternative Motion for Stay of Execution, (Doc. 124), is **DENIED**. Further, the Court will not issue a certificate of appealability, as the issues raised are not debatable among reasonable jurists. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

IT IS SO ORDERED.

/s/ Beth Phillips
BETH PHILLIPS, JUDGE
UNITED STATES DISTRICT COURT

DATE: July 13, 2015