

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

v.

WILLIAM WITTER,

Respondent.

Electronically Filed
Oct 06 2017 08:22 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 73431

CASE NO: 73444

MOTION FOR CONSOLIDATION

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, STEVEN S. OWENS, and files this Motion for consolidation. This motion is based on the following memorandum and all papers and pleadings on file herein.

Dated this 5th day of October, 2017.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ Steven S. Owens

STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
Office of the Clark County District Attorney

MEMORANDUM

The State seeks consolidation pursuant to NRAP 3(b) of two appeals, SC# 73431 and SC# 73444, which involve the same parties and arise from the same criminal case and the same final judgment. In a number of cases, this Court has indicated the factors it considers in consolidating cases – either prior to or after briefing. This Court has consolidated cases when the issues raised are identical. Schmidt v. Washoe County, 123 Nev. 128, 130, 159 P.3d 1099, 1101 (2007); O’Guinn v. State, 118 Nev. 849, 850, 59 P.3d 488, 489 (2002); Gebers v. State, 118 Nev. 500, 501, 50 P.3d 1092 (2002); Ewell v. State, 105 Nev. 897, 898, 785 P.2d 1028, 1029 (1989). The Court also looks at whether the facts relating to the issues are similar or are not the deciding aspects of the cases. Barnes v. Eighth Judicial District Court, 103 Nev. 679, 748 P.2d 483, 484 (1987). Whether the arguments presented below and on appeal are similar or identical is also a factor. Levinson v. Second Judicial District Court, 103 Nev. 404, 406, 742 P.2d 1024, 1025 (1987). Finally, judicial economy is also relevant. Jackson v. State, 115 Nev. 21, 22, 973 P.2d 241 (1999).

In the criminal case below, C117513, the district court denied Witter’s fourth petition for writ of habeas corpus, but in doing so also held that there was no final judgment of conviction in the case and ordered the filing of an amended judgment which removed a reference to an uncertain amount of restitution. Witter has

appealed from the denial of his habeas petition (SC# 73444) and the State has appealed from that part of the decision which required the filing of an amended judgment for lack of finality (SC# 73431). Both appeals involve the same issues and facts and should be consolidated for purposes of judicial economy and for consistency. The State requests that Witter be designated the Appellant and the State be designated as the Cross-Appellant in the consolidated appeal and that briefing proceed in that manner per NRAP 28.1.

WHEREFORE, the State requests the two appeals be consolidated.

Dated this 5th day of October, 2017.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Steven S. Owens*

STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2750

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on October 5, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

DAVID ANTHONY
TIFFANY NOCON
Assistant Federal Public Defender

STEVEN S. OWENS
Chief Deputy District Attorney

BY /s/ E. Davis

Employee,
Clark County District Attorney's Office

SSO//ed