

IN THE SUPREME COURT OF THE STATE OF NEVADA

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WILLIAM WITTER,

Defendant/Appellant,

vs.

STATE OF NEVADA,

Plaintiff/Appellee.

Electronically Filed  
Jun 25 2018 04:18 p.m.  
Elizabeth A. Brown  
Supreme Court No. 73431 of Supreme Court

District Court Case No. C117513

(Death Penalty Case)

MOTION TO STAY APPEAL

Appellant William Witter respectfully requests the Court stay this appeal, Docket No. 73431, pending resolution of his direct appeal, Docket No. 73444.

Mr. Witter currently has two appeals before this Court. The instant appeal, no. 73431, concerns the Findings of Fact, Conclusions of Law and Order entered on May 31, 2017 in district court case number 94C117513. *See* Docket No. 73431, Doc. 17-22935 (Notice of Appeal). In that order, the district court considered and disposed of a single issue: whether the United States Supreme Court's decision in *Hurst v. Florida*, 577 U.S. \_\_\_,

136 S. Ct. 616 (2016), affords Witter post-conviction relief. *Id.* In contrast, appeal no. 73444 is a direct appeal from Witter’s amended judgment of conviction. *See* Docket No. 73444, Doc. 17-23231 (Notice of Appeal).

This Court denied the State’s request to consolidate the appeals, but ruled the appeals “will nonetheless by clustered based on the related subject matter to ensure that the appeals are resolved in a consistent and efficient manner.” *See* Docket No. 73444, Doc. 18-07121.

Pursuant to his Court’s desire for consistency and efficiency, Mr. Witter asks this Court to stay the instant appeal, pending resolution of his direct appeal. *Cf. United States v. Owen*, 553 F.3d 161, 164 (2d Cir. 2009) (“In the normal course, a ‘protective’ notice of appeal should be held in abeyance” until it “become[s] effective”). After briefing the issues in Mr. Witter’s direct appeal, 73444, undersigned counsel believes that resolution of the instant appeal, 73431, is premature at this time. *See* NRS 34.726(1) (post-conviction proceeding properly filed “after” this Court issues its remittitur on direct appeal). Resolution of this appeal is premature because if this Court resolves appeal no. 73444 in Mr. Witter’s favor, this post-conviction appeal becomes moot. Further, staying the

instant post-conviction appeal would conserve judicial resources because Mr. Witter has briefed the relevant *Hurst* issues in appeal no. 73444. Thus, resolution of the *Hurst* issues in no. 73444 may be duplicative of any resolution in the instant appeal.

Due to the foregoing, Mr. Witter respectfully asks this Court to stay the instant appeal, no. 73431, pending resolution of his direct appeal, no. 73444.

DATED this 25th day of June, 2018.

Respectfully submitted,

/s/ David Anthony

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## CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 25th day of June, 2018, electronic service of the foregoing MOTION TO STAY APPEAL shall be made in accordance with the Master Service List as follows:

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/s/ Sara Jelinek

An Employee of the Federal Public  
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