

IN THE SUPREME COURT OF THE STATE OF NEVADA

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WILLIAM WITTER,

Petitioner/Appellant,

vs.

TIMOTHY FILSON, et al.,

Respondents/Respondents.

Supreme Court No. 73444 Electronically Filed  
Nov 28 2017 08:29 a.m.  
District Court Case No. CP17513 Elizabeth A. Brown  
Clerk of Supreme Court  
(Death Penalty Case)

OPPOSITION TO MOTION TO DISMISS APPEAL

William Witter opposes the State's Motion to Dismiss Appeal in Docket No. 73444. He bases this Opposition on the attached Points and Authorities and the entire file in this matter.

DATED this 27th day of November, 2017.

Respectfully submitted,

/s/ David Anthony

DAVID ANTHONY

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## POINTS AND AUTHORITIES

### I. INTRODUCTION

On July 12, 2017, the Eighth Judicial District Court entered a Third Amended Judgment of Conviction. Ex. 9. This Third Amended Judgment removed an uncertain restitution amount that rendered its predecessor non-final and non-appealable. Slaatte v. State, 129 Nev. \_\_\_, 298 P.3d 1170, 1171 (2013) (“Because the judgment of conviction contemplates restitution in an uncertain amount, it is not final and therefore is not appealable.”). The Third Amended Judgment left fully intact Witter’s first degree murder conviction and death sentence. Witter appealed from the Amended Judgment.

### II. WITTER’S FIRST DEGREE MURDER CONVICTION AND DEATH SENTENCE AGGREIVE HIM

On November 3, 2017, the State moved to dismiss Witter’s appeal. The State argues that Witter is not an “aggrieved party” and he therefore lacks standing to appeal from the Third Amended Judgment. Specifically, the State argues that the removal of the uncertain restitution amount favored Witter.

However, the State’s argument fails. The Eighth Judicial District Court entered the Third Amended Judgment that removed the uncertain restitution provision because that provision had made the previous judgment non-final and therefore non-appealable under Slaatte. The Third Amended Judgment is thus the first final appealable order in this matter and it aggrieved Witter by imposing the conviction of first degree murder and the sentence of death. Witter’s appeal challenges that conviction and sentence. Regardless of the removal of the uncertain restitution provision, the fact remains that, under that judgment, Witter suffers a first degree murder conviction and a death sentence—which is also why he has exclusive standing to file a direct appeal. NRS 177.015(3) (“The defendant only may appeal from a final judgment or verdict in a criminal case.”).

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### III. CONCLUSION

For the foregoing reasons, Witter requests that this Court deny the State's Motion to Dismiss Appeal.

DATED this 27th day of November, 2017.

Respectfully submitted,

/s/ David Anthony

DAVID ANTHONY

Assistant Federal Public Defender

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## CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 27th day of November, 2017, electronic service of the foregoing OPPOSITION TO MOTION TO DISMISS APPEAL shall be made in accordance with the Master Service List as follows:

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/s/ Stephanie Young

An Employee of the Federal Public  
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