

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM LESTER WITTER,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

)
)
)
)
)
)
)

Electronically Filed
Dec 04 2017 02:54 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 73444

REPLY TO OPPOSITION TO MOTION TO DISMISS APPEAL

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, STEVEN S. OWENS, and submits this Reply to Opposition to Motion to Dismiss Appeal.

This motion is based on the following memorandum and all papers and pleadings on file herein.

Dated this 4th day of December, 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

Unlike the Slaatte case where this Court dismissed the appeal for lack of jurisdiction due to an uncertain amount of restitution in the judgment, this Court treated Witter's original judgment as final and ruled upon the merits of his direct appeal. Slaatte v. State, 129 Nev. ___, 298 P.3d 1170 (2013); Witter v. State, 112 Nev. 908, 921 P.2d 886 (1996). That decision has served as law of the case as to all subsequent issues and began the running of the one-year time bar for what has since been three habeas petitions. Witter wants to undo all of that history and those rulings and start over with a new direct appeal from the instant amended judgment.

But the law in effect at the time of Witter's direct appeal in 1996 was that an uncertain amount of restitution did not defeat jurisdiction for the appeal, but was simply an error which could be corrected upon remand after deciding the merits of the appeal. E.g., Washington v. State, 112 Nev. 1067, 1075, 922 P.2d 547, 551-52 (1996); Smith v. State, 112 Nev. 871, 873, 920 P.2d 1002, 1003 (1996); Roe v. State, 112 Nev. 733, 736, 917 P.2d 959, 960-61 (1996); Botts v. State, 109 Nev. 567, 569, 854 P.2d 856, 857 (1993). Because Slaatte disapproves of practices the court has sanctioned in prior cases and overturns a longstanding practice, it is a new rule that is not retroactively applicable. See also Sullivan v. State, 120 Nev. 537, 96 P.3d 761 (2004) (filing of amended judgment not good cause to overcome one year time bar where habeas claims were unrelated to the amendment).

WHEREFORE, the State respectfully requests that the instant appeal be dismissed for lack of jurisdiction.

Dated this 4th day of December, 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
(702) 671-2750

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on December 4, 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
Assistant Federal Public Defender

STEVEN S. OWENS
Chief Deputy District Attorney

BY /s/ J. Garcia
Employee, District Attorney's Office

SSO//jg