

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,

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BY */s/ Steven S. Owens*

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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:

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SSO//jg