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Summary of *Slaatte v. State*, 129 Nev. Adv. Op. 23

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CRIMINAL LAW – RESTITUTION

Summary

An appeal from a judgment of conviction that imposed restitution in an uncertain amount. Slaatte argued that Nevada law requires that a district court set a fixed amount of restitution when it determines that restitution is appropriate as part of a sentence.

Disposition/Outcome

Appeal dismissed. Because the judgment of conviction contemplates restitution in an uncertain amount, it is not a final order and therefore is not appealable.

Facts and Procedural History

Appellant, Jon Robert Slaatte, pleaded guilty to a single count of lewdness with a child under 14 years of age. At his sentencing hearing the district court imposed a sentence of life in prison with the possibility of parole after 10 years. The district court also determined that restitution was appropriate and ordered Slaatte to appear at 9 a.m. on a Tuesday law-and-motion calendar within 60 days after his release from prison “to have [the district] Court determine what restitution for victim compensation that will be ordered at that time.”² Slaatte filed a timely appeal challenging the order of restitution. The State conceded the error and urged the Court to remand the matter so that restitution could be specified.

Discussion

A three justice panel of the Supreme Court of Nevada issued a per curiam opinion.³

The Court agreed that the district court clearly erred noting that N.R.S. 176.033(1)(c) requires a district court to set an amount of restitution.⁴ N.R.S. 176.105(1)(c) further requires that the sentence must include the “amount and terms” of the restitution.⁵ Consistent with these statutory mandates the Court has held that a district court is not allowed “to award restitution in uncertain terms.”⁶ In cases where a district court violated this prescription, the court has historically remanded the proceedings for the district court to set a specific amount of restitution.⁷

¹ By David H. Rigdon.

² *Slaatte v. State*, ___ P.3d ___ (Adv. Op. No. 23, April 18, 2013 at 2).

³ The case was heard before C.J. Pickering and J.J. Hardesty and Saitta.

⁴ Nev. Rev. Stat. § 176.033(1)(c).

⁵ Nev. Rev. Stat. § 176.105(1)(c).

⁶ *Botts v. State*, 854 P.2d 856, 857 (Nev. 1993).

⁷ *Washington v. State*, 922 P.2d 547, 551-52 (Nev. 1996); *Smith v. State*, 920 P.2d 1002, 1003 (Nev. 1996); *Roe v. State*, 917 P.2d 959, 960-61 (Nev. 1996); *Botts*, 854 P.2d at 857.

The court noted, however, that none of those prior decisions addressed the issue of whether the judgment was final despite being non-compliant with N.R.S. 176.105(1). On this point the Court found the recent decision in *Whitehead v. State*, 285 P.3d 1053 (Nev. 2012) to be controlling. In that case the Court stated “that a judgment of conviction that imposes a restitution obligation but does not specify its terms is not a final judgment” and therefore it did not trigger the one-year period for filing a habeas petition.⁸ Given the decision in *Whitehead*, the Court concluded that an appeal of a judgment of conviction based on indeterminable restitution is not appealable and therefore the Court lacks jurisdiction to consider it.

Conclusion

A judgment of conviction which includes a sentence of restitution in an uncertain amount is not final and, thus, not appealable. Lacking jurisdiction, the Court dismissed the appeal.

⁸ *Whitehead v. State*, 285 P.3d 1053, 1055 (Nev. 2012).