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Witter v. State, 135 Nev. Adv. Op. 73444 (Nov. 14, 2019)

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Recommended Citation

Bays, John, "Witter v. State, 135 Nev. Adv. Op. 73444 (Nov. 14, 2019)" (2019). *Nevada Supreme Court Summaries*. 1273.

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INDETERMINATE RESTITUTION PROVISIONS AND FINALITY

Summary

The Court determined that (1) a judgment of conviction containing a restitution provision must contain the specific amount of restitution required; (2) a judgment of conviction containing an indeterminate restitution provision is not a final judgement for purposes of appeal or for purposes of triggering the deadline for filing a habeas petition; and (3) the principle of finality requires that even when such an error is made, if the defendant treats the judgment as final by litigating, the defendant is estopped from later arguing that judgment was not final and that subsequent proceedings were null and void for lack of jurisdiction.

Background

In 1995, William Witter was tried before a jury and found guilty of first-degree murder as well as several other charges. The District Court entered a judgment of conviction and shortly after amended the judgment, adding a provision requiring Witter to pay restitution “in the amount of \$2,790.00, with an additional amount to be determined.” Witter filed a direct appeal, and the conviction was affirmed by the Nevada Supreme Court in 1996. Witter then brought several postconviction petitions for writs of habeas corpus and also sought relief in federal court. Witter never challenged the indeterminate restitution provision or finality of the conviction in any of these proceedings. In 2017, Witter filed a postconviction petition for a writ of habeas corpus specifically arguing that his conviction was not final because the 1995 conviction contained an indeterminate restitution provision. The District Court denied the petition and amended the 1995 judgment to delete the provision. Witter appealed to the Nevada Supreme Court.

Discussion

Witter argued that because the 1995 judgment contained an indeterminate restitution provision, his conviction was not final until the third amended judgment deleting the provision in 2017. Witter further argued that this made the 1996 direct appeal and all subsequent proceedings null and void for lack of jurisdiction, allowing him to presently raise issues originating in the initial 1995 trial without regard to the “law of the case.” The State argued that the Court lacked jurisdiction over Witter’s current appeal and that the restitution provision was insignificant.

As an initial matter, the Court noted that Nevada statutory law requires that convictions containing restitution provisions must include the specific amount of restitution required.² Therefore, judgments that fail to comply with this requirement do not constitute final judgments.³ The Court noted that its prior holding in *Whitehead v. State* established that convictions containing indeterminate restitution provisions were not final judgments for the purpose of starting the one-year statutory period to file a postconviction habeas petition.⁴ The Court also highlighted its

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² NEV. REV. STAT. § 176.105(1)(c) (2017); NEV. REV. STAT. § 176.033(1)(c) (2017).

³ *Botts v. State*, 112 Nev. 567, 569 (1993).

⁴ 128 Nev. 259 (2013).

previous ruling in *Slaate v. State*, wherein the Court held that it lacked jurisdiction over an appeal from a judgment containing an indeterminate restitution amount on the grounds that the judgment was not final.⁵ The Court then rejected the State’s argument that indeterminate restitution provisions were insignificant and that the Court should follow federal court decisions on this matter. Although the Court recognized that federal courts did interpret federal statutes on the issue differently, the Court rejected the State’s argument on stare decisis grounds and refused to overturn its precedent. Furthermore, the Court rejected the contention that restitution specificity was insignificant under Nevada Statutory law.

However, although the Court affirmed its commitment to its prior precedent regarding the necessity of specificity in restitution provisions, it ultimately held that Witter’s case was distinguishable from prior precedent for two reasons. First, unlike *Slaate*, wherein the conviction resulted from a guilty plea, Witter’s conviction resulted from a jury verdict.⁶ This meant that, unlike the defendant in *Slaate*, Witter could appeal the judgment under the NRS 177.015(3) provision permitting a defendant to appeal from a “verdict”. Ultimately, since Witter could appeal from the verdict itself (and not just the final judgment like the defendant in *Slaate*), the finality of Witter’s conviction would not have affected the Court’s determination on jurisdiction.

However, the Court’s second and most important point in distinguishing Witter’s case *Whitehead* and *Slaate* was that Witter had treated the 1995 conviction as final and litigated the case extensively since. In both *Whitehead* and *Slaate*, the defendants raised the finality issue during their first appeals proceedings.⁷ In contrast, Witter had litigated a direct appeal and undertaken state and federal court proceedings regarding his conviction, all the while never challenging the indeterminate restitution provision. The Court noted that finality is a compelling concern in such delayed challenges, because significant delays burden both the parties and the courts with numerous practical difficulties.⁸ Ultimately, the Court therefore emphasized that under its longstanding precedent, a litigant cannot challenge the finality of a judgment or that the present court lacked jurisdiction in a prior appeal if the litigant has treated the initial judgment as final.⁹ Therefore, since had Witter had treated his 1995 conviction as a final judgment until 2017, the Court declared that he was prohibited from arguing that his conviction was not final and that subsequent proceedings were null and void on the grounds of lack of jurisdiction.

The Court briefly ended its discussion by rejecting the State’s arguments that it lacked jurisdiction over Witter’s appeal, since the issues arising from an amended conviction are appealable under Nevada statutory law.¹⁰ However, the Court did note that since Witter only raised issues arising from his initial trial in 1995, and not the 2017 amended judgment, Witter had failed to show any errors in the District Court’s judgment.

Conclusion

Ultimately, the Court’s decision emphasized that Nevada statutory law requires that any restitution provision in a judgment of conviction must be specific, rather than indeterminate. Furthermore, the Court affirmed its prior precedent and held that an indeterminate restitution

⁵ *Slaate v. State*, 129 Nev. 219, 221 (2013).

⁶ *Id.* at 220.

⁷ *Slaate*, 129 Nev. at 220; *Whitehead*, 128 Nev. at 261.

⁸ *Groesbeck v. Warden*, 100 Nev. 259, 260 (1984).

⁹ *Renfro v. Forman*, 99 Nev. 70, 71–72.

¹⁰ NEV. REV. STAT. § 177.015(3) (2017).

provision renders the judgment nonfinal. However, and crucially for Witter's case, the Court emphasized that even in circumstances such as this where an indeterminate restitution provision error has been committed in the initial conviction, if the defendant has proceeded to treat the initial judgment as final and litigated the matter, then the defendant has lost their right to challenge the initial conviction's finality on indeterminate grounds. Witter had certainly treated the 1995 conviction as final, litigating the conviction for over twenty years before challenging the conviction's finality on indeterminate grounds. Therefore, the Court ultimately held that concerns regarding finality outweighed concerns regarding the error of the indeterminate restitution provision and affirmed the 2017 amended judgment of the District Court.