IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

GEORGE FREDRICK HICKS,

Appellant,

v. Case No. 5D19-722

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed October 2, 2020

Appeal from the Circuit Court
for Volusia County,
Dennis Craig, Judge.

James S. Purdy, Public Defender, and
Allison A. Havens, Assistant Public
Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Rebecca Rock
McGuigan, Assistant Attorney General,
Daytona Beach, for Appellee.

WALLIS, J.

Appellant, George Fredrick Hicks, appeals the judgment and sentence entered after a jury found him guilty of violation of injunction against repeat violence and resisting arrest with violence. Appellant argues that because he had been adjudicated incompetent, it was error for the trial court to proceed to trial without issuing a written

order containing findings of his competency. The State concedes that the trial court did not issue a written order on Appellant's competency.

"Generally, a proper hearing to determine whether competency has been restored after a period of incompetence requires 'the calling of court-appointed expert witnesses designated under Florida Rule of Criminal Procedure 3.211, a determination of competence to proceed, and the entry of an order finding competence.'" Yancy v. State, 280 So. 3d 1112, 1113 (Fla. 5th DCA 2019) (quoting Dougherty v. State, 149 So. 3d 672, 677 (Fla. 2014)). If the parties and judge agree, "the trial court may decide the issue of competency on the basis of written reports alone." Id. (quoting Dougherty, 149 So. 3d at 678). If the trial court finds the defendant competent to proceed, "it must enter a written order adjudicating the defendant competent." Rumph v. State, 217 So. 3d 1092, 1095 (Fla. 5th DCA 2017).

Prior to trial, Appellant underwent court-ordered mental evaluations and was subsequently adjudicated incompetent to proceed. After his commitment to a mental health facility, a psychologist attempted to evaluate Appellant on two occasions, but Appellant was uncooperative. Thus, the psychologist could not opine as to Appellant's competency. Thereafter, the trial court held a competency hearing and orally ruled that Appellant was competent to stand trial. The transcripts from that hearing show that no expert witnesses were called to testify, and it does not appear that the trial court relied on expert reports to make an independent determination of Appellant's competency. This constitutes reversible error. See Yancy, 280 So. 3d at 1113 ("Because we are unable to ascertain from the record on appeal whether the trial court read the expert's evaluation and made an independent determination of Yancy's competency, we are required to

remand for a nunc pro tunc determination of such."). Moreover, the record does not contain a written order with the trial court's findings of competence. This too amounts to reversible error. See Rumph, 217 So. 3d at 1095 ("Because there is no written order in the record adjudicating Rumph competent, remand is necessary.").

Therefore, we reverse and remand for the trial court to retroactively determine if Appellant was competent to proceed to trial and to enter a written order nunc pro tunc on Appellant's competency. If the trial court finds that Appellant's pre-trial competency cannot be retroactively determined, or if the trial court finds that Appellant was not competent, the trial court must grant Appellant a new trial. See Bynum v. State, 247 So. 3d 601, 604 (Fla. 5th DCA 2018).

REVERSED and REMANDED with Instructions.

ORFINGER and HARRIS, JJ., concur.