

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

KENNETH PADEN,

Petitioner,

v.

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

CASE NO. 1D09-1722

STATE OF FLORIDA,

Respondent.

Opinion filed November 20, 2009.

Petition Alleging Ineffective Assistance of Appellate Counsel -- Original
Jurisdiction.

Kenneth Paden, pro se, Petitioner.

Bill McCollum, Attorney General, and Anne C. Conley, Assistant Attorney
General, Tallahassee, for Respondent.

PER CURIAM.

Kenneth Paden presents a timely claim of ineffective assistance of appellate
counsel. He faults his counsel for failing to argue that the trial court fundamentally

erred when, after initially adjudicating him incompetent, it thereafter proceeded to trial without holding an appropriate hearing or making a determination that he had been restored to competency. The state forthrightly concedes the trial court's error in this regard, and that its error is fundamental. See Jackson v. State, 880 So. 2d 1241 (Fla. 1st DCA 2004). Accordingly, we grant Paden's petition, vacate the August 31, 2008, judgment and sentence in Gadsden County Circuit Court case number 05-770CF, and remand for such further proceedings as may be warranted pursuant to Florida Rule of Criminal Procedure 3.212.

PETITION GRANTED, JUDGMENT AND SENTENCE VACATED, and REMANDED.

HAWKES, C.J., BARFIELD and CLARK, JJ., CONCUR.