

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

JONATHAN TARELL FISHER,

Appellant,

v.

Case No. 5D15-4306

STATE OF FLORIDA,

Appellee.

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Opinion filed May 12, 2017

Appeal from the Circuit Court  
for Osceola County,  
Leticia J. Marques, Judge.

James S. Purdy, Public Defender, and  
Robert Jackson Pearce III, Assistant  
Public Defender, Daytona Beach, for  
Appellant.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Allison Leigh Morris,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

This matter is before the court for a second time. In the prior case of *Fisher v. State*, 168 So. 3d 313 (Fla. 5th DCA 2015), the matter was remanded back to the trial

court for a *Sheppard* hearing.<sup>1</sup> At the hearing below, the trial court did not make an inquiry as to whether or not there was a conflict between Fisher and his trial counsel. Notwithstanding, it is apparent from the record that there was a definite conflict between trial counsel and Fisher. Appellant should have been appointed conflict free counsel prior to the hearing on whether to permit him to withdraw his plea. As a result, this matter is remanded to the trial court for appointment of conflict free counsel after which a hearing should be held on Appellant's motion to withdraw his plea.

REVERSED and REMANDED with directions.

EVANDER and LAMBERT, JJ., and JACOBUS, B.W., Senior Judge, concur.

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<sup>1</sup> *Sheppard v. State*, 17 So. 3d 275 (Fla. 2009).