

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

STATE OF FLORIDA,

Appellant,

v.

Case No. 5D16-4393

MICHEL NOEL,

Appellee.

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Opinion filed October 27, 2017

Appeal from the Circuit Court  
for Orange County,  
Renee A. Roche, Judge.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Rebecca Rock  
McGuigan, Assistant Attorney General,  
Daytona Beach, for Appellant.

James S. Purdy, Public Defender, and  
Noel A. Pelella, Assistant Public  
Defender, Daytona Beach, for Appellee.

PER CURIAM.

We reverse the order dismissing the information based upon the ostensible, permanent incompetency of the defendant because the order was premature. Fla. R. Crim. P. 3.213(a)(1); *State v. Carey*, 212 So. 3d 448 (Fla. 3d DCA 2017) (dismissal premature until lapse of five years after determination of incompetency). We reject Appellee's contention that dismissal was proper pursuant to Florida Rule of Criminal

Procedure 3.213(a)(2). The record does not support the assertion that Appellee met the statutory definition of “intellectual disability.”

REVERSED AND REMANDED.

TORPY, WALLIS and LAMBERT, JJ., concur.