

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

CHANDLER CAMPBELL,

Appellant,

v.

Case No. 5D19-2054

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed March 13, 2020

Appeal from the Circuit Court
for Seminole County,
Melissa Souto, Judge.

James S. Purdy, Public Defender, and
Matthew Funderburk, Assistant Public
Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Kristen L. Davenport,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Chandler Campbell appeals his judgment and sentences imposed following his open, nolo contendere plea to fifteen felony charges. Campbell's sole argument on appeal is that the trial court abused its discretion when, after receiving certain responses from Campbell during the change of plea colloquy, it did not sua sponte schedule a

hearing pursuant to Florida Rules of Criminal Procedure 3.210–.212 to determine his competency to tender a plea.¹

While “[a] defendant’s competency at the time he enters a guilty or no contest plea is an issue bearing upon the voluntary and intelligent character of the defendant’s plea,” *Hicks v. State*, 915 So. 2d 740, 741 (Fla. 5th DCA 2005) (citing *Trawick v. State*, 473 So. 2d 1235, 1238 (Fla. 1985)), before raising such an issue on appeal, the defendant must first file a motion to withdraw the plea with the trial court. *Id.*; see also Fla. R. App. P. 9.140(b)(2)(A)(ii)c. (providing that a defendant who pleads guilty or nolo contendere may directly appeal an involuntary plea only if preserved by a motion to withdraw plea); *Leonard v. State*, 760 So. 2d 114, 119 n.13 (Fla. 2000) (noting that for a direct appeal raising the voluntary and intelligent character of the plea, this issue must be preserved for appeal by first filing a motion to withdraw the plea in the trial court).

Here, Campbell failed to file a motion to withdraw his plea. As such, we lack jurisdiction to consider his claim.² See *Hicks*, 915 So. 2d at 741; accord *Ovenshire v. State*, 278 So. 3d 103 (Fla. 5th DCA 2019); *Hammonds v. State*, 275 So. 3d 797 (Fla. 5th DCA 2019); *Murphy v. State*, 181 So. 3d 574 (Fla. 5th DCA 2015); *Garcia-Manriquez v. State*, 146 So. 3d 134 (Fla. 3d DCA 2014); but see *Dortch v. State*, 242 So. 3d 431, 433

¹ Campbell’s trial counsel never moved to have Campbell’s competency evaluated, nor was any mention made at the hearing about Campbell’s competency.

² Neither party raised the question of whether this court had jurisdiction to consider this appeal. Nevertheless, it is our duty to determine the existence of jurisdiction in a case and to dismiss the case if we lack jurisdiction. See *Pelham v. State*, 279 So. 3d 852, 854 (Fla. 1st DCA 2019) (citing Philip J. Padovano, *Fla. Appellate Practice*, § 1.5 (2018 ed.) (noting that “[t]he appellate court has an independent duty to determine the existence of jurisdiction in every case and to dismiss a case that is not within its jurisdiction”).

(Fla. 4th DCA) (receding from the position that a criminal defendant who may be incompetent to proceed must file a motion to withdraw plea to preserve the issue of his or her competency to enter the plea for appellate review), *review granted*, Case No.: SC18-681, 2018 WL 3635017 (Fla. July 11, 2018).

Consequently, we dismiss the appeal, but we do so without prejudice to Campbell's right to seek appropriate and timely postconviction relief below.

DISMISSED.

LAMBERT and EISNAUGLE, JJ., concur.
COHEN, J., concurs specially, with opinion.

COHEN, J., concurring specially.

I agree with denying Campbell's request for relief because he never moved to withdraw his plea. However, I believe this case should be affirmed rather than dismissed. As pointed out in Dortch v. State, 242 So. 3d 431, 435–37 (Fla. 4th DCA 2018) (Forst, J., concurring), there has been inconsistency (including by the undersigned) in the manner of disposition of cases presenting this issue. I am of the view that we are bound by Leonard v. State, 760 So. 2d 114, 119 (Fla. 2000), which held that when a defendant enters a nolo contendere plea but fails to move to withdraw his plea prior to appealing, this Court has subject matter jurisdiction to hear the appeal and thus, should affirm rather than dismiss.