

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

STANLEY RAY COOKSTON,

Appellant,

v.

Case No. 5D19-2523

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_ /

Opinion filed July 10, 2020

Appeal from the Circuit Court  
for Seminole County,  
Jessica J. Recksiedler, Judge.

James S. Purdy, Public Defender, and  
Louis A. Rossi, Assistant Public Defender,  
Daytona Beach, for Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and Nora Hutchinson Hall,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

Stanley Cookston was convicted, after a jury trial, of armed burglary of a dwelling. On appeal, he argues that the trial court committed fundamental error when it failed to hold a competency hearing and enter a competency order. We agree.

Prior to trial, defense counsel moved for a competency determination pursuant to Florida Rule of Criminal Procedure 3.210(b). The trial court granted the motion and

appointed an expert to examine Cookston to determine if he was competent to proceed. Defense counsel subsequently “stipulated” that his client was competent to proceed. However, the record does not indicate that any competency hearing was held, nor does the record contain an order adjudicating competency.

If a trial court appoints an expert to determine a defendant’s competency to proceed, it must thereafter make an independent determination of the defendant’s competency. *Dougherty v. State*, 149 So. 3d 672, 679 (Fla. 2014). Failure to do so constitutes fundamental error. *Alexander v. State*, 254 So. 3d 1157, 1158 (Fla. 5th DCA 2018). Furthermore, a trial court may not simply accept defense counsel’s stipulation that his client is competent to proceed. *Dougherty*, 149 So. 3d at 678 (“However, nothing in our precedent or the State’s argument persuades us that a defendant can stipulate to the ultimate issue of competency, even where the written reports reach the same conclusion.”).

We reverse and remand for the trial court to determine whether it can conduct a hearing to determine Cookston’s competency at the time of trial. *See Parcilla v. State*, 257 So. 3d 156, 157 (Fla. 5th DCA 2018). If it is possible to hold such hearing, and the court determines that Cookston was competent, then it shall enter a nunc pro tunc written order adjudicating him competent. *Id.* If the court determines that Cookston was incompetent, or if the court is unable to conduct a hearing, it shall vacate Cookston’s judgment and sentence and conduct further proceedings. *Id.*

REVERSED and REMANDED with instructions.

EVANDER, C.J., LAMBERT and GROSSHANS, JJ., concur.