

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

JOSE DOLORES NIEVES, JR.,

Appellant,

v.

Case No. 5D20-144

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed August 21, 2020

Appeal from the Circuit Court
for Seminole County,
Marlene M. Alva, Judge.

James S. Purdy, Public Defender, and
Darnelle Paige Lawshe, Assistant Public
Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and L. Charlene Matthews,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Jose Dolores Nieves, Jr. appeals his sentence after entering an open plea for burglary of a structure. Because Nieves failed to file a motion to withdraw his plea, we are without jurisdiction. See Hammonds v. State, 275 So. 3d 797, 797–98 (Fla. 5th DCA 2019); Ovenshire v. State, 278 So. 3d 103, 103 (Fla. 5th DCA 2019); Hicks v. State, 915

So. 2d 740, 741 (Fla. 5th DCA 2005). But see Dortch v. State, 242 So. 3d 431, 433 (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, No. SC18-681, 2018 WL 3635017 (Fla. July 11, 2018). Consequently, we dismiss the appeal, but we do so without prejudice to Nieves's right to seek appropriate and timely postconviction relief below.

DISMISSED.

GROSSHANS, SASSO and TRAVER, JJ., concur.