

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

JAVARIOUS R. THOMAS,

Petitioner,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D15-4603

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed April 20, 2016.

Petition Alleging Ineffective Assistance of Appellate Counsel -- Original
Jurisdiction.

Javarious R. Thomas, pro se, Petitioner.

Pamela Jo Bondi, Attorney General, and Samuel B. Steinberg, Assistant Attorney
General, Tallahassee, for Respondent.

PER CURIAM.

The petition alleging ineffective assistance of appellate counsel is granted.

Following the procedure set forth in Brooks v. State, 180 So. 3d 1094, 1096 (Fla. 1st DCA 2015), we reverse Thomas's judgment and sentence in this case, and remand for the trial court to hold a *nunc pro tunc* hearing to determine Thomas's competency to stand trial. As in Brooks,

If there is evidence that existed previously which supports a finding that [Thomas] was competent at the time of trial, the court may make a determination of competency, *nunc pro tunc*, with no change in the judgment. . . . However, if the court cannot make a retroactive determination, it must properly adjudicate [Thomas's] present competency and, if [Thomas] is competent to proceed, conduct a new trial.

Brooks, 180 So. 3d at 1096 (citations omitted).

PETITION GRANTED; REMANDED.

ROBERTS, C.J., SWANSON and KELSEY, JJ., concur.