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

DENNIS T. HUTTO,

Appellant,

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

v.

CASE NO. 1D16-0908

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed December 29, 2017.

An appeal from the Circuit Court for Nassau County.
Robert M. Foster, Judge.

Andy Thomas, Public Defender, and Steven L. Seliger, Assistant Public Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and David Llanes, Assistant Attorney General, Miami, for Appellee.

PER CURIAM.

Appellant, Dennis Hutto, challenges his judgment and sentence. He argues the trial court fundamentally erred in entering a sentencing order without conducting a sentencing hearing, and without orally pronouncing the sentence in court. We agree and remand for a new sentencing hearing.

Appellant pleaded guilty to the charge of driving with a permanently revoked license. He faced a maximum sentence of five years imprisonment due to numerous prior convictions. On July 15, 2015, at a scheduled sentencing hearing, the State and Appellant acknowledged a dispute as to the appropriate calculation of Appellant's scoresheet. As a result, the trial court postponed the sentencing hearing to September 17, 2015, at which time the State and Appellant disagreed as to whether two DUIs should have been included on his proposed scoresheet. Appellant's counsel requested additional time to research a 2006 hearing transcript regarding one of the DUIs at issue. The trial court granted the request and postponed the matter to October 8, 2015, and then again to October 22, 2015. However, on October 20, 2015, without Appellant present and two days before the scheduled reconvening of the sentencing hearing, the trial court entered an order declaring the State's scoresheet to be proper, and sentencing Appellant to five years in prison.

Appellant appeared before the trial court on another matter on October 22, the date set for the reconvening of the sentencing hearing. He expressed to the trial court his concern regarding the trial court's entry of the order deeming as correct the State's proposed scoresheet. The trial court responded that it had already ruled on the matter, and Appellant could "take the appropriate action" if he disagreed. The sentence imposed in the subject order was not orally discussed or pronounced during this exchange.

A new sentencing hearing should be granted if a defendant has not been given an opportunity to be heard. *Dean v. State*, 60 So. 3d 532, 533 (Fla. 1st DCA 2011) (citing *Ventura v. State*, 741 So. 2d 1187, 1189 (Fla. 3d DCA 1999)). Here, the trial court granted two extensions of the sentencing hearing to allow the parties to research an issue relating to the scoresheet determination. However, prior to the date the hearing was to be reconvened, and without explanation, the trial court entered a sentencing order. Thus, in violation of Florida Rule of Criminal Procedure 3.720(b), Appellant was deprived of the opportunity to be heard at the sentencing hearing regarding a final scoresheet determination.

"Every sentence . . . of the case shall be pronounced in open court." Fla. R. Crim. P. 3.700(b). A written sentence is merely a record that must conform to the orally pronounced sentence. *Justice v. State*, 674 So. 2d 123, 125 (Fla. 1996). Thus, by entering the sentencing order before concluding the sentencing hearing process, the trial court failed to orally pronounce the sentence and to provide Appellant the opportunity to be heard on the matter.

Accordingly, we REVERSE and REMAND to the trial court for a new sentencing hearing.

BILBREY, WINSOR, and M.K. THOMAS, JJ., CONCUR.