

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2009

MARCUS L. BLACKMON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D08-2879

[December 16, 2009]

PER CURIAM.

We have for review the negotiated plea agreement and sentence of the appellant, Marcus Blackmon. Blackmon argues that his pleas of guilty were improperly accepted because he was incompetent at the time. We agree and reverse.

Blackmon was charged with two counts of burglary of a conveyance. The trial court adjudicated him incompetent to proceed and ordered the Department of Children and Families to provide competency restoration and treatment.

At a later hearing, Blackmon entered into a negotiated plea of guilty to one count of burglary of a conveyance and one count of attempted burglary of a conveyance. Blackmon was sentenced as a habitual felony offender to one year plus one day in prison on both counts, running concurrently. Prior to entering these pleas, no hearing was held adjudicating Blackmon competent to proceed.

Florida Rule of Criminal Procedure 3.210(a) states:

A person accused of an offense or a violation of probation or community control who is mentally incompetent to proceed at any material stage of a criminal proceeding shall not be proceeded against while incompetent.

“An individual adjudicated incompetent is presumed to remain incompetent until adjudicated restored to competence.” *Samson v. State*,

853 So. 2d 1116, 1116 (Fla. 4th DCA 2003) (citations omitted). To proceed against an incompetent defendant, the trial court must hold a competency hearing and enter a written order finding the defendant competent to proceed. See *Macaluso v. State*, 12 So. 3d 914, 915 (Fla. 4th DCA 2009) (citations omitted).

In the present case and almost identical to the circumstances in both *Macaluso* and *Samson*, the trial judge¹ did not conduct a competency hearing, did not take the testimony of any examining physicians and did not enter a written order stating that Blackmon was restored to competence. Therefore, he remained incompetent to proceed and his negotiated pleas and subsequent sentence must be reversed. See *Godinez v. Moran*, 509 U.S. 389, 396 (1993); *Catinella v. State*, 732 So. 2d 444, 445 (Fla. 4th DCA 1999).

Reversed and remanded for further proceedings consistent with this opinion.

MAY, DAMOORGIAN and CIKLIN, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Paul L. Backman, Judge; L.T. Case No. 07-003837 CF10A.

Carey Haughwout, Public Defender, and James W. McIntire, Assistant Public Defender, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and James J. Carney, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.

¹ It appears that the trial judge who actually accepted the negotiated plea agreement (and sentenced the appellant) was the fourth judge to preside over issues dealing with Blackmon's competency in this same prosecution.