NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

CARL W. SMITH, Appellant, v. STATE OF FLORIDA, Appellee.	)	Case No. 2D02-5097

Opinion filed September 3, 2004.

Appeal from the Circuit Court
for Pasco County;
W. Lowell Bray, Jr., Judge.

James Marion Moorman, Public
Defender, and Cynthia J. Dodge,
Assistant Public Defender, Bartow,
for Appellant.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Cerese Crawford Taylor,
Assistant Attorney General, Tampa,
for Appellee.

CANADY, Judge.

Carl W. Smith appeals two convictions based on jury verdicts in two trials conducted in September 2002. Smith argues that the trial court erred by failing to make

a proper competency determination after defense counsel suggested that Smith might have been incompetent and by permitting Smith to elect to proceed pro se while his competence was in question. We reverse.

On April 18, 2002, Smith's counsel in the two trial proceedings filed a motion to appoint experts for a competency evaluation. Although the motion cited Florida Rule of Criminal Procedure 3.210(b) as the basis for the motion, the motion did not include a certificate of good faith as required by the rule, nor did it state with particularity the basis for counsel's belief that Smith was incompetent. Nonetheless, on the same day, the trial court entered an order in response stating that the court had found "reasonable grounds to believe that the defendant may be incompetent to proceed" and appointing two experts, Drs. Cosma and Maher, to evaluate Smith for competency. On May 8, 2002, the trial court amended the order to appoint Drs. Maher and Rosen to perform the evaluation. On the same day, the trial court entered an order sealing a competency report of Dr. Maher, dated May 3, 2002, which found Smith competent to proceed. Dr. Maher's report is apparently the only such competency report in the court file, although a docket printout in the record shows that both Drs. Maher and Rosen were paid for their services.

On July 8, 2002, Smith's counsel informed the court that Smith wished to represent himself. After a colloquy that focused on the advantages of having an attorney, the trial court permitted Smith to discharge his counsel. No one at the hearing mentioned the issue of competency, and the trial court did not ask questions regarding Smith's competency. Following the discharge of Smith's counsel, the issue of competency was apparently not raised again at the trial level. Smith was found guilty at

the two trials in which he represented himself. Smith's testimony and bizarre behavior at these trials were suggestive of mental illness.

When the "trial court [has] information that create[s] reasonable grounds to believe that [a defendant] might be incompetent[,] . . . the trial court [is] obligated to hold a competency hearing." Brockman v. State, 852 So. 2d 330, 334 (Fla. 2d DCA 2003); see also Fla. R. Crim. P. 3.210. Here, the trial court's order appointing experts to examine Smith was predicated on a finding that such reasonable grounds existed. Despite the trial court's finding, no competency hearing was ever held. That was error. See Carrion v. State, 859 So. 2d 563, 565 (Fla. 5th DCA 2003) (holding that once "the trial judge actually entered a written order invoking the competency proceedings described in Rule 3.210 . . . [the trial judge] was required by the rule to follow the prescribed procedure and to hold a competency hearing").

Because Smith was entitled to a competency hearing and such a hearing generally cannot be held retroactively, we reverse Smith's convictions and remand for new trials following a determination that Smith is competent to stand trial. See Tingle v. State, 536 So. 2d 202, 204 (Fla. 1988).

Reversed and remanded.

CASANUEVA and SILBERMAN, JJ., Concur.