IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

VERNSON EDWARD DORTCH,

Respondent.

Case No. SC18-681
4th DCA Case Nos. 4D16-2815, 4D16-2816

****

PETITIONER'S INITIAL BRIEF

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PRELIMINARY STATEMENT

Petitioner was the prosecution and Respondent was the defendant in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for Okeechobee County, Florida.

In this brief, the parties will be referred to as they appear before this Honorable Court, except that the Petitioner may also be referred to as the State.

The following symbols will be used:

R1 = Record on Appeal for case 4D16-2815 and 4D16-2816

R2 = Supplement filed November 9, 2016

R3 = Record on Appeal from Fourth District Court

STATEMENT OF THE CASE

On September 18, 2015, Respondent was charged by information in case 47-2015-CF-000526-A with five counts of possession of a firearm by a convicted felon, four counts of dealing in stolen property, and four counts of giving false information to a pawn broker. (R1-14-16). On October 30, 2015, defense counsel filed a motion for a competency examination of Respondent. (R1-20-21). On November 2, 2015, the trial court granted defense counsel's motion for a competency examination. (R1-26-29).

On March 29, 2016, Respondent was charged by information in case 47-2016-CF-000140-A with aggravated assault by a detainee with a deadly weapon and possession of a knife in a detention facility. (R1-40).

On August 3, 2016, Respondent pled no contest in case 47-2015-CF-000526-A to one count of possession of a firearm by a convicted felon and one count of dealing in stolen property. (R1-44). Also, on August 3, 2016, Respondent pled no contest in case 47-2016-CF-000140-A to one count of aggravated assault with a deadly weapon and one count of introduction of contraband into a county detention facility. (R1-44, 48). On August 15, 2016, the trial court sentenced Respondent to ten years in prison. (R1-49).

On August 16, 2016, Respondent filed his notice of appeal. (R1-60). On April 4, 2018, the Fourth District Court in an En Banc opinion reversed and

remanded the judgment and sentence of the trial court. (R3-98-107). Notice to invoke jurisdiction in this Court was filed May 4, 2018. (R3-117-118). On July 11, 2018, this Court accepted jurisdiction. (R3-122). The mandate was stayed pending the disposition of this Court's review. (R3-121).

STATEMENT OF THE FACTS

On January 9, 2015, Robert Keebler returned to his residence in Okeechobee County finding it out of order, as if someone had rummaged through it. (R1-9). Mr. Keebler informed the police that old coins totaling $3,000, an 1896 Marlin Daisy 30-30 caliber rifle with an octagonal barrel valued at $300, an SKS 7.62-39 caliber rifle valued at $400, and an 8mm caliber Mouser bolt action rifle with scope valued at $300 were all missing from his home. (R1-9). Mr. Keebler's residence had signs of forced entry through a broken window on the side of the house. (R1-9). Respondent confessed to pawning the items stolen from Mr. Keebler's home. (R1-11). Respondent was arrested and charged under case 47-2015-CF-000526-A.

On October 30, 2015, Respondent's counsel, Stanley Glenn, filed a motion for mental examination of Respondent. (R1-20). The motion alleged:

> 1) That the undersigned counsel hereby certifies that this motion is made in good faith and on reasonable grounds to believe that the Defendant is incompetent to proceed.
> 2) That the undersigned cannot allege further as any recitation of specific observations of and conversations with the Defendant would invade the lawyer-client privilege.

> 3) That the defendant hereby waives the required 20 day hearing, pursuant to Fla. R. Crim. P 3.210(b).

(R1-30). The Honorable Sherwood Bauer, Jr. presided over the motion, granted Respondent's motion, appointed Dr. Steven Edney, directed Dr. Edney to examine Respondent's mental condition, and ordered Dr. Edney to file a report with the trial court discussing Dr. Edney's findings. (R1-26-29). There is no indication in the record that any reports were entered and no indication in the record that a competency hearing was held. (R1-Index). Shortly thereafter, on February 15, 2016, Mr. Armand Murach entered his appearance as Respondent's counsel, substituting for Mr. Glenn. (R1-35).

On February 23, 2016, while incarcerated, Respondent fought another inmate. (R1-40). A video depicted Respondent squaring off in an aggressive manner towards the other inmate while concealing a weapon in Respondent's right hand. (R1-40). Respondent's right hand contacted the other inmate's face causing a laceration. (R1-40). The two separated and the corrections officers placed everyone on lockdown. (R1-40). The corrections officers collected a homemade shank from the ground where the two were fighting. (R1-40). Accordingly, Respondent was charged in case number 47-2016-CF-000140-A with aggravated assault with a deadly weapon and introduction of contraband into a county detention facility. (R1-40, 44).

On August 3, 2016, the trial court held a change of plea hearing. (R2-78). A

new judge, the Honorable Dan L. Vaughn presided over Respondent's case. (R2-76). Respondent entered into an open no contest plea, "[a]gainst the advice of counsel, Mr. Vernson Dortch is asking the Court to change his plea to an open plea before the Court." (R2- 82). Assistant State Attorney Robert Moeller covered for Assistant State Attorney Don Richardson on the date of the plea hearing. (R2-82-63). Respondent entered the open plea after the trial court specifically noted it was against the advice of Respondent's defense counsel. (R2-84-85). Respondent requested on multiple occasions to plea open to the court:

> THE DEFENDANT: Yes, sir. Your Honor, if I have a chance, could I say a word?
> THE COURT: Yes, sir. What did you want to say?
> THE DEFENDANT: All I need is mercy. I asked -- yes, sir. Thank you, sir. I ask, if I can, whatever charge the time carry to have it placed on probation. And I'll do my best honorable not never even appear before a judge again and on this side of the (Indiscernibles) in handcuffs and shackles.
> THE COURT: Okay. So do you wish to do this or do you not wish to?
> THE DEFENDANT: Yes, sir. I wish to do it. But I plead mercy and I ask for it to be on probation, which I serve no time, sir. If I can, please, sir.
> THE COURT: All right. Well, Mr. Dortch, you have - -
> THE DEFENDANT: (Indiscernibles).
> THE COURT: Okay. Listen carefully, sir. You have some choices that only you can make. You have the right to have a trial on these charges if you wish.
> THE DEFENDANT: Yes, sir
> THE COURT: You would have the right to have a lawyer represent you at those jury trials and the right to have the State prove your guilt to the jury beyond a reasonable doubt. You have the right to enter a no contest

plea with this agreement that I just spelled out for you with the State, if you wish.
THE DEFENDANT: Yes, sir.
THE COURT: If you wish to do this, I'll go along with it. Or you have the right to enter a guilty or no contest plea to all these charges, if you wish, and not have a trial. And I'll sentence you to what I think an appropriate sentence is. Now I'm going to tell you ahead of time I'm not going to tell you what I'll sentence you to.
THE DEFENDANT: Yes, sir.
THE COURT: Do you understand those three options?
THE DEFENDANT: Yes, sir.
THE COURT: Which do you prefer to do or do you want to think about it?
THE DEFENDANT: The last one, sir. I trust your judgment.
THE COURT: So you want to enter a no contest plea to all these charges without any agreement or recommendation from the State?
THE DEFENDANT: Yes, sir. I trust your judgment, sir, if I can, please.

(R2-79-81).

THE COURT: Okay. All right. Mr. Dortch, just so you know, if you don't want to accept the plea agreement or plea offer by the State that's outlined here in this form that we talked about a minute ago, that's fine with me. It's doesn't matter to me one way or another. Is it your desire to enter a no contest plea to those charges? They're still going to drop the same charges we talked about in case 15-526. So you're entering a plea to the same charges; it's just there's no guarantee as to what the sentence will be.
THE DEFENDANT: Yes, sir.
THE COURT: In other words, I'm not bound by this five-year offer. I'll listen to both sides. I promise to keep an open mind –
THE DEFENDANT: Yes, sir.
THE COURT: -- but I'm not bound by this. And I want you to understand that. I'll sentence you to what I think

> an appropriate sentence is. And it may be less than this; it may be more than this.
> THE DEFENDANT: Yes, Your Honor. I understand.
> THE COURT: You understand all this?
> THE DEFENDANT: I understand.
> THE COURT: And you still wish to do this?
> THE DEFENDANT: Yes, sir.

(R2- 83-84). The trial court led Respondent through a colloquy addressing the rights he was giving up by entering his plea:

> THE COURT: Okay. Did you read through this form or have somebody explain it to you before you signed it?
> THE DEFENDANT: Yes.
> THE COURT: Do you understand what's in it?
> THE DEFENDANT: Yes, sir.
> THE COURT: When you enter a no contest plea, sir, you give up a number of rights. These rights are spelled out here for you in this form. Do you understand those rights you're giving up?
> THE DEFENDANT: Yes, sir.
> THE COURT: Is everything in this form true?
> THE DEFENDANT: Yes, sir.
> THE COURT: Do you understand, sir, by entering this plea to these charges, you're giving up your right to have a jury trial?
> THE DEFENDANT: Yes, sir.
> THE COURT: You're giving up your right, sir, to have a lawyer represent you at that trial. If you couldn't afford one, one would be appointed to represent you. Do you understand that?
> THE DEFENDANT: Most definitely.
> THE COURT: You're also giving up your presumption of being innocent by entering this plea to these charges. Do you understand that?
> THE DEFENDANT: Yes, I do.
> THE COURT: You're giving up you right, sir, to have the State prove your guilt at the trial beyond and to the

> exclusion of every reasonable doubt to the jury. Do you understand that?
> THE DEFENDANT: Yes, I do.
> THE COURT: You're giving up your right, sir, to right to remain silent at the trial, that nobody can make you testify unless you wanted to. Do you understand that?
> THE DEFENDANT: Yes, sir, I do.
> THE COURT: You're giving up your right to confront and cross-examine witnesses against you and to compel or make witnesses testify on your behalf. Do you understand that?
> THE DEFENDANT: Yes, sir.
> THE COURT: You're giving up your right to an appeal, that there will be no appeal unless I were to give you an illegal sentence. Do you understand that?
> THE DEFENDANT: Yes, Your Honor.

(R2- 85-87). Following the colloquy, the trial court set sentencing for a later date, August 15, 2016. (R2-92). Appellant did not file a motion to withdraw plea before or after the sentencing hearing. (R1-R2).

SUMMARY OF THE ARGUMENT

The Fourth District Court of Appeal erred in finding fundamental error without allowing the trial court to develop the record. Such a finding was incorrect and undermined the avenue to appeal the voluntary and intelligent nature of a plea set forth by this Court in *Robinson v. State* and codified in Florida Rule of Appellate Procedure 9.140. Instead of making a premature finding of fundamental error, the Fourth District Court should have relinquished jurisdiction for the trial court to develop the record to determine the nature of any error.

ARGUMENT

THE FOURTH DISTRICT COURT OF APPEAL ERRED IN FINDING FUNDAMENTAL ERROR WITHOUT ALLOWING THE TRIAL COURT TO DEVELOP THE RECORD.

A. STANDARD OF REVIEW

"[A]ppellate courts apply a de novo standard of review when the construction of a procedural rule . . . is at issue." *Lukehart v. State*, 70 So. 3d 503, 516 (Fla. 2011).

B. LAW

A defendant may not appeal from a guilty or nolo contendere plea except as follows:

> (i) Reservation of Right to Appeal. A defendant who pleads guilty or nolo contendere may expressly reserve the right to appeal a prior dispositive order of the lower tribunal, identifying with particularity the point of law being reserved.
> (ii) Appeals Otherwise Allowed. A defendant who pleads guilty or nolo contendere may otherwise directly appeal only
> a. the lower tribunal's lack of subject matter jurisdiction;
> b. a violation of the plea agreement, if preserved by a motion to withdraw plea;
> c. an involuntary plea, if preserved by a motion to withdraw plea;
> d. a sentencing error, if preserved; or
> e. as otherwise provided by law.

Fla. R. App. P. 9.140. "[A]n appeal from a guilty plea should never be a substitute for a motion to withdraw a plea." *Robinson v. State*, 373 So. 2d 898, 902 (Fla.

1979). Moreover, "if the record raises issues concerning the voluntary or intelligent character of the plea, that issue should first be presented to the trial court in accordance with the law and standards pertaining to a motion to withdraw a plea." *Id*.

C. DISCUSSION

Contrary to the decisions of the Second, Third, and Fifth District Courts, the Fourth District Court held a motion to withdraw plea is not necessary to raise a claim that the trial court failed to conduct a competency hearing: "[t]o require a criminal defendant, who may be incompetent, to file a motion to withdraw plea before raising the issue on appeal is unwarranted." *Dortch v. State*, 242 So. 3d 431, 432 (Fla. 4th DCA 2018). The Fourth District reasoned that the failure to hold a competency hearing is fundamental error; yet, determined that a retroactive hearing on competency might cure any error. *Id*. at 433. The Fourth District's decision not only ignores the reasons for requiring defendants to file a motion to withdraw plea, but also fails to recognize available appellate tools, i.e. relinquishment of jurisdiction. *See State v. T.G.*, 800 So. 2d 204, 210 (Fla. 2001) ("without a timely filing of a motion to withdraw plea, 'there would be no record relating to the claim and there would be no ruling or decision to review in the appellate court.'").

1. A motion to withdraw plea is not "unwarranted." Respondent's situation is akin to a challenge to the voluntary and intelligent nature of the plea, where a motion to withdraw a plea is required.

Respondent's circumstance is no different than that of a typical defendant filing a motion to withdraw plea on grounds the plea was involuntary and unintelligent. For example, if Respondent alleged he was coerced, pressured, or unknowing of the penalty for his crime; he would be left with the normal avenue of filing a motion to withdraw his plea and entitled to representation while doing so. *See Stephens v. State*, 141 So. 3d 701 (Fla. 4th DCA 2014) ("A motion to withdraw plea is considered a critical stage of a criminal proceeding, and thus a defendant is entitled to counsel."). In other words, if Respondent was coerced into entering into his plea, he is essentially alleging that he did not truly understand what he was pleading guilty to, he did not have the proper mental capacity and may have been influenced into the plea. Similarly, in the present situation, Respondent is alleging he potentially did not have the mental capacity such that he truly did not understand what was occurring. In the coercion situation, the motion to withdraw plea is mandatory so that the trial court can understand what exactly occurred at the time of the plea. In Respondent's situation, the record was unclear as to what occurred at the time of the plea and, if any error occurred, why it was not addressed. Essentially, the motion to withdraw plea allows the District Court of Appeal perspective to understand exactly what happened in the trial proceedings.

The Fourth District is attempting to circumvent the requirements this Court has set forth for challenging the voluntary and intelligent requirement which a defendant may raise on appeal from a guilty or no contest plea. *See Robinson v. State*, 373 So.2d 898, 902 (Fla. 1979) (holding the voluntary and intelligent nature of a plea may be challenged after specifically reserving the right to do so through a motion to withdraw plea). Other district courts classify an issue of mental competency at the time of the plea as a challenge to the voluntary and intelligent nature of the plea. *See Hicks v. State*, 915 So. 2d 740 (Fla. 5th DCA 2005) (holding failure to hold a competency hearing falls within the voluntary and intelligent nature of a plea which must be preserved by a motion to withdraw plea); *Vestal v. State*, 50 So. 3d 733, 735 (Fla. 5th DCA 2010) (stating defendant's alleged incompetency at the time of entry of guilty or no contest plea is an issue bearing upon the voluntariness of defendant's plea and may not be raised on appeal where no motion to withdraw plea has been filed with trial court). The Fourth District's opinion does not reference the voluntary or intelligent nature of mental competency. Moreover, the Fourth District's opinion offers no analysis in choosing one procedural rule over another, rather the Fourth District focuses solely on mental competency. In doing so, the Fourth District circumvents the strict requirement this Court set forth in *Robinson v. State*. *See Robinson*, 373 So. 2d at 902 ("Once a defendant enters a plea of guilty, the only points available for an

appeal concern actions which took place contemporaneously with the plea. A plea of guilty cuts off any right to an appeal from court rulings that preceded the plea in the criminal process including independent claims relating to deprivations of constitutional rights that occur prior to the entry of the guilty plea.")

The Fourth District Court has ignored the obvious reasons for requiring a motion to withdraw plea. *See Counts v. State*, 376 So. 2d 59, 60 (Fla. 2d DCA 1979) ("[t]he purposes of requiring a motion to withdraw the guilty plea as a prerequisite to an appeal are obvious."). Filing a motion to withdraw plea enables the trial judge to pass on any points raised and establishes a record on which an appellate court may base an informed and reasoned disposition of the appeal. *See id*. Moreover, filing a motion to withdraw plea encourages issues to be to be resolved at the trial level which was the objective of this Court in *Robinson* and the legislature in adopting Florida Rule Appellate Procedure 9.140(b):

> [c]onsistent with the legislature's philosophy of attempting to resolve more issues at the trial court level, we are also promulgating Florida Rule of Criminal Procedure 3.170(l), which authorizes the filing of a motion to withdraw the plea after sentencing within thirty days from the rendition of the sentence, but only upon the grounds recognized by *Robinson* or otherwise provided by law.

Amendments to the Florida Rules of Appellate Procedure, 696 So. 2d 1103, 1105 (Fla. 1996). Often, the only evidence of voluntariness in the vast majority of appeals would be the colloquy between the trial judge and the defendant. *Counts*,

376 So. 2d at 60. Therefore, appellate courts do not have a sufficient basis to render an informed decision on the issue of voluntariness. *See id*. By requiring a defendant to make a prior motion to withdraw, the question of voluntariness will first be put to the trial court which can conduct an evidentiary hearing, and, if necessary, entertain collateral evidence in support of the defendant's position or conduct a retrospective competency hearing in a meaningful time and manner. *See id*; *Dougherty v. State*, 149 So. 3d 672, 679 (Fla. 2014) ("A new trial is not always necessary where the issue of competency was inadequately determined prior to trial; a retroactive determination of competency is possible."). If a trial court rules against the defendant on the motion to withdraw, that decision may be challenged upon appeal from the judgment and sentence. *Counts*, 376 So. 2d at 60.

In the present matter, the Fourth District erred in not recognizing *Robinson* as the controlling law. Filing a motion to withdraw plea allows the trial court to lay a foundational record for the possible error, timely provide relief for time sensitive errors like competency, and relieve the appellate courts of errors that can be easily disposed of in the trial court. In Respondent's case, due to the switching of the trial judges and his defense counsel, the trial court may not have realized the lack of resolution to the competency report order. However, we do not know what occurred. The Fourth District Court is assuming there was no resolution to the competency hearing, "[it] does not appear that an examination or a hearing on

competency ever took place." *Dortch*, 242 So. 3d at 432. Without a hearing, the Fourth District Court did not know what actually occurred during the trial proceedings. For example, the trial court may have held a competency hearing and failed to properly docket the hearing. The Fourth District Court simply based its decision on an unofficial court index printout which may or may not be a complete record of what occurred. If Respondent filed a motion to withdraw plea, the trial court would have developed a factual record as to any procedural issues that might have occurred.

2. The Fourth District Court's holding of fundamental error is premature before a retroactive determination of competency is completed.

The Fourth District Court based its decision in the case at hand on the fact that failure to hold a competency hearing is fundamental error and requires reversal. *Dortch*, 242 So. 3d at 433. The fundamental nature of a mental competency challenge is unknown until the trial court actually conducts the competency hearing. Moreover, in its finding, the Fourth District Court's holding undermines the ability of the trial court to initially recognize and address a possible error without involvement of appellate courts. Also, the Fourth District fails to recognize a defendant must preserve a substantive competency issue with a motion to withdraw plea. *See Williams v. State*, 134 So. 3d 975 (Fla. 1st DCA 2012) (holding the specific reservation challenging a mental competency determination in entering a no contest plea without filing a motion to withdraw plea does not

preserve the issue for appeal as the issue is not dispositive and a challenge to the voluntary and intelligent nature of the plea must be preserved by a motion to withdraw plea.)

The issue before this Court is whether the failure to hold a hearing amounts to fundamental error sufficient to reach "down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error" when a retrospective determination of competency is possible. *See Pierce v. State*, 198 So. 3d 1051, 1054 (Fla. 4th DCA 2016). It is well established that a trial court can determine competency retrospectively. *See Dougherty v. State*, 149 So. 3d 672, 679 (Fla. 2014) ("competency may be determined retrospectively"). Essentially, at the retrospective hearing, the trial court is tasked with determining whether a defendant's competency can be determined at the time he pled guilty or was adjudicated guilty by a trial court. The trial court is faced with two questions at the retrospective hearing: "(1) whether the court could make a meaningful retrospective evaluation of the defendant's competence at the time of trial; and, if so, (2) whether the defendant was in fact competent at the time of trial." *Jones v. State*, 740 So. 2d 520, 523 (Fla. 1999). A negative answer to either question results in a new trial. *See Mason v. State*, 597 So. 2d 776, 778 (Fla. 1992) ("[s]hould the trial court find, for whatever reason, that an evaluation of [the defendant]'s competency at the time of the original trial

cannot be conducted in such a manner as to assure [the defendant] due process of law, the court must so rule and grant a new trial."). Until either question is answered, the nature of the error is unknown.

Although error, the failure of a trial court to hold a competency hearing cannot be fundamental error when a retrospective competency hearing is possible. The ability of the trial court to conduct a retrospective competency hearing determines the degree of the error the trial court committed. The sole purpose of the retrospective hearing inherently implies that Respondent could very well be competent and the plea knowingly and intelligently made. On the other hand, at the hearing, if Respondent is found incompetent or the trial court unable to determine competency, fundamental error has occurred. No court knows what error occurred until the actual hearing is conducted, i.e., testimony is taken, evidence evaluated, and the trial court makes factual findings. Thus, until such time as the trial court conducts the retrospective hearing, the fundamental nature of Respondent's competency is unknown.

3. This Court should follow its previous holding in *Robinson v. State*; however, should an error like Respondent's situation be presented on appeal, this Court should require appellate courts to relinquish jurisdiction for the trial court to conduct a competency hearing.

In adopting the amendments to the Rules of Appellate Procedure, this Court concluded that *Robinson v. State*, 373 So. 2d 898 (Fla. 1979) foreclosed appeals from matters which transpired prior to the plea but did not prevent a defendant from raising four distinct matters: (1) subject matter jurisdiction, (2) illegality of the sentence, (3) failure of the government to abide by a plea agreement, and (4) the voluntary intelligent character of the plea. *See Amendments to the Florida Rules of Appellate Procedure*, 696 So. 2d 1103, 1105 (Fla. 1996) (citing *Robinson*, 373 So. 2d at 902). This Court's reasoning makes simple common sense, "[i]f the record raises issues concerning the voluntary or intelligent character of the plea, that issue should first be presented to the trial court in accordance with the law and standards pertaining to a motion to withdraw a plea." *State v. T. G.*, 800 So. 2d 204, 206 (Fla. 2001) (quoting *Robinson*, 373 So. 2d at 902).

Requiring a defendant to file a motion to withdraw plea allows not only quick and efficient disposal of the issue but also lays a proper record foundation for appellate courts. The Third and Fifth District recognize that the trial court is in the best position to provide the relief needed where a competency hearing is needed. *See Hanes v. State*, 232 So. 3d 1073 (Fla. 3d DCA 2017) (An issue relating to the voluntary and intelligent nature of the plea falls within the limited

class of issues which a defendant may raise on appeal from a guilty or no contest plea however, the defendant must first file a motion to withdraw plea); *Vestal v. State*, 50 So. 3d 733, 735 (Fla. 5th DCA 2010) (stating defendant's alleged incompetency at the time of entry of guilty or no contest plea is an issue bearing upon the voluntariness of defendant's plea and may not be raised on appeal where no motion to withdraw plea has been filed with trial court). Further, the narrow approach of the Fourth District does not utilize all the tools available for an appellate court, such as relinquishment of jurisdiction.

In the present matter, the Fourth District Court was particularly concerned that a defendant might be incompetent and unable to submit a motion to withdraw plea. The trial court is still in the best position to quickly and efficiently provide the proper relief to a defendant. Appellate courts can address this issue by relinquishing jurisdiction.

Relinquishment, as is the practice of the Second District, allows for the trial court to recognize a competency issue, allows the trial court to adjudicate the error, lay a record for the appellate court to review, and dispose of the issues in one timely appeal. *See Carrion v. State*, 235 So. 3d 1051 (Fla. 2d DCA 2018) (relinquishing jurisdiction to the trial court for sixty days to conduct a new competency hearing in order to determine if defendant "was competent at the time of the plea hearing" and if so "it must enter a nunc pro tunc order, and the

judgment and sentence need not change."). Moreover, relinquishment allows for the correction of the procedural issue which does not "go[] to the foundation of the case" so that the possible substantive error can be reviewed by the appellate court in one direct appeal. *See Daniels v. State*, 121 So. 3d 409, 417-18 (Fla. 2013). This Court should adopt a hybrid of the Second, Third, and Fifth District Court's holdings requiring Respondent to file a motion to withdraw plea or in the alternative requiring the district court to relinquish jurisdiction for the trial court to determine a defendant's competency. In other words, require a motion to withdraw plea but if, for whatever reason, a motion to withdraw plea is not filed, relinquish jurisdiction for sixty days to conduct a competency hearing so as to ensure the correction of the error within one appeal.

CONCLUSION

WHEREFORE based on the foregoing arguments and authorities, Petitioner respectfully requests this Honorable Court to reverse the decision of the Fourth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF TYPEFACE COMPLIANCE AND SERVICE

I HEREBY CERTIFY (1) that this brief has been prepared in Times New Roman font, 14 point, and double spaced and (2) that a true and accurate copy of the foregoing was sent by email to Benjamin Eisenberg, Esq., Assistant Public Defender, 421 Third Street, West Palm Beach, Florida 333401 at beisenberg@pd15.state.fl.us, gztaylor@pd15.state.fl.us, appeals@pd15.org on August 30, 2018.

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