

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

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

WILLIAM SCHULTZ,

Petitioner,

v.

Case No. 5D20-1052

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed August 21, 2020

Petition for Alleging Ineffectiveness of
Appellate Counsel,
A Case of Original Jurisdiction.

Loren D. Rhoton, Tampa, for Petitioner.

Ashley Moody, Attorney General,
Tallahassee, and Robin A. Compton,
Assistant Attorney General, Daytona
Beach, for Respondent.

PER CURIAM.

In his petition for writ of habeas corpus, Petitioner raises a single ground for relief, arguing that appellate counsel was ineffective for failing to raise the trial court's failure to conduct a competency hearing and make a finding on competency. Although the trial court appointed an expert to evaluate Petitioner, it did not hold a competency hearing or enter an order adjudicating Petitioner competent. Therefore, we find appellate counsel ineffective for failing to address this issue in Petitioner's direct appeal. See Joseph v.

State, 244 So. 3d 416, 416–17 (Fla. 5th DCA 2018). Accordingly, we grant the petition and remand this cause to the trial court to make a retroactive competency determination, if possible. See Silver v. State, 193 So. 3d 991, 993–94 (Fla. 4th DCA 2016). If a retroactive determination cannot be properly made, or if the court determines Petitioner was incompetent at the time of trial, a new trial should be set once Petitioner's competency is restored. See id. at 994.

PETITION GRANTED.

EVANDER, C.J., LAMBERT and GROSSHANS, JJ., concur.

A

In the Circuit Court of the
Ninth Judicial Circuit, in and
for Orange County, Florida

Division: Div 16
Case No: 2017-CF-014180-A-O
Courtroom: 7-D

State of Florida,
Plaintiff,

vs.

WILLIAM JOSEPH SCHULTZ
Defendant.

Date of birth: 12/25/1967

COURT ORDER & SETTING / RESET NOTICE

This cause came on this day for: **Status Hearing**. The following persons are hereby notified that the honorable Elaine A Barbour, has set the above styled case for hearing(s). **with Asst State Attorney, J. Lawton appeared virtually, present** and you, the defendant, **WILLIAM JOSEPH SCHULTZ** being now Not Present **represented by LOREN RHOTON** Present **appeared virtually**

<u>Hearing Type</u>	<u>Judge</u>	<u>Date</u>	<u>Time</u>	<u>Location</u>
Virtual Competency Review Status Hearing	Barbour, Elaine A	Thursday, May 27, 2021	9:00 AM	Room 7-D On The 7th Floor

Orange County Courthouse: 425 N Orange Avenue, Orlando, FL 32801

Court Minutes
Per the Court:

Court vacate jury verdict on 6-27-18 and vacate and set aside judgment and sentence on 09-13-18. order to be filed by the court.
Speedy trial toll nunc pro tunc 3-29-18.
Court vacate order appointing Dr. Olander on 1-13-21. In accordance with an order to be filed by the state.
court appoints Dr. Oses to evaluate defendant in accordance with an order to be filed by the state.
State to prepare a transport order.

DONE, ORDERED and FILED in Open Court on March 27, 2021

Honorable Judge:


Elaine A Barbour

WILLIAM JOSEPH SCHULTZ 855 ALTAMIRA ST NW
PALM BAY, FL, 32907

Deputy Clerk in Attendance: Kenisha M., Eileen F., Pam B.
Office of Tiffany M. Russell, Orange County Clerk of the Circuit and County Courts

Copies to: _____ DEFT _____ PROB _____ STATE _____ PD _____ CT DEPUTY
_____ DOCKETS _____ Attorney LOREN RHOTON Loren Rhoton P.A.
412 E Madison St Ste 1111
Tampa, FL, 33602

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator, Human Resources, Orange County Courthouse, 425 N. Orange Avenue, Suite 510, Orlando, Florida, (407) 836-2303, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.