

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

JANUARY TERM 2011

JEAN PIERRE FRANCIS,

Appellant,

v.

Case No. 5D10-3278

STATE OF FLORIDA,

Appellee.

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Opinion filed June 24, 2011

Appeal from the Circuit Court  
for Brevard County,  
John Harris, Judge.

James S. Purdy, Public Defender, and  
Susan A. Fagan, Assistant Public  
Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Kristen L. Davenport,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM

We affirm Jean Pierre Francis' conviction, but remand for the entry of a proper *nunc pro tunc* order finding Francis competent to stand trial. Although the trial court found Francis competent to proceed to trial after previously having found him to be incompetent, the only written confirmation thereof is contained in a document entitled "Court Minutes/Order" signed by the deputy clerk, not by the trial court. Accordingly, we remand this matter to the trial court for the entry of a proper written order of competence, *nunc pro tunc*. See Fla. R. Crim. P. 3.212(c)(7) (stating: "If, at any time after such commitment, the court decides, after hearing, that the defendant is

competent to proceed, it shall enter its order so finding and shall proceed."); Corbitt v. State, 744 So. 2d 1130, 1130 (Fla. 2d DCA 1999) (ruling: "[W]here the trial court has entered an oral finding that the defendant is competent, but no written order of competency has been entered, the proper remedy is to affirm the judgment and to remand the case to the trial court for entry of a *nunc pro tunc* order finding the defendant competent to stand trial."). Accord Hampton v. State, 988 So. 2d 103, 106 (Fla. 2d DCA 2008); Bailey v. State, 931 So. 2d 224, 225 (Fla. 1st DCA 2006). See also Ortiz v. State, 55 So. 3d 724, 724 (Fla. 5th DCA 2011).<sup>1</sup>

Judgment and Sentence AFFIRMED; Case REMANDED for entry of proper order.

MONACO, C.J., PALMER, and JACOBUS, JJ., concur.

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<sup>1</sup>The only difference between the situation in Ortiz and the instant case was that the defendant in Ortiz was found competent at the outset (i.e., she was never previously found incompetent and then restored to competency) and, thus, the applicable rule was rule 3.212(b), not rule 3.212(c)(7), of the Florida Rules of Criminal Procedure.