

IN THE CIRCUIT COURT FOR THE
NINETEENTH JUDICIAL CIRCUIT IN AND
FOR INDIAN RIVER COUNTY, FLORIDA.
APPELLATE DIVISION

Circuit Case No. 18-AP-2
Lower Tribunal No. 17-MM-1147

JOSEPH SCOZZARI,

Appellant,

v.

Not final until time expires for filing motion
for rehearing, and if filed, disposed of.

STATE OF FLORIDA,

Appellee.

Decision filed January 29, 2019.

Appeal from the County Court for Indian River County; Joe Wild, Judge.

Philip Reizenstein, Woodward and Reizenstein, P.A., Miami, for appellant.

Bruce Colton, State Attorney, and Elise Kearney, Assistant State Attorney, Vero Beach, for appellee.

PER CURIAM.

The Appellant raises five issues on appeal. We affirm four issues without comment but write to address the direct contempt issue.

The Appellant argues that the trial court erred in holding him in direct contempt during the State's rebuttal closing argument. Fla. R. Crim. P. 3.830 governs direct criminal contempt:

A criminal contempt may be punished summarily if the court saw or heard the conduct constituting the contempt committed in the actual presence of the court. **The judgment of guilt of contempt shall include a recital of those facts on which the adjudication of guilt is based.** Prior to the adjudication of guilt the judge shall inform the defendant of the accusation against the defendant and inquire as to whether the defendant has any cause to show why he or she should not be adjudged guilty of contempt by the court and sentenced therefor. The defendant shall be given the opportunity to present evidence of excusing or mitigating circumstances. **The judgment**

shall be signed by the judge and entered of record. Sentence shall be pronounced in open court.

(Emphasis added). This rule defines the essence of due process in a direct criminal contempt proceeding, and it must be strictly followed in order to protect to the due process rights of the defendant. *State v. Diaz de la Portilla*, 177 So. 3d 965, 972-3 (Fla. 2015). A trial court’s direct contempt conviction is invalid if there is no written judgment reciting the facts on which the adjudication of guilt is based. *Morris v. State*, 667 So. 2d 982, 987 (Fla. 4th DCA 1996). When a trial court fails to adhere to the strict procedural requirements of Fla. R. Crim. P. 3.830, the correct remedy is to reverse and remand with instructions for a new contempt hearing that complies with the rule. *Swain v. State*, 226 So. 3d 250, 252 (Fla. 4th DCA 2017).

Interestingly, neither party references the fact that the trial court did not make written findings or sign a judgment and enter it into the record, as required by the rule.¹ Instead, they focused on whether the circumstances surrounding the trial court’s words at the contempt hearing satisfy the rule’s requirement that the trial court include a recital of facts before proclaiming his oral judgment. Since the only written document in the record is the clerk’s court notes of the contempt hearing, which are not signed by the trial court, the trial court did not comply with Fla. R. Crim. P. 3.830.² *Morris*, 667 So. 2d at 987. Therefore, the trial court’s failure to strictly adhere to the procedure required by Fla. R. Crim. P. 3.830 was reversible error, and a new contempt hearing is required. *Swain*, 226 So. 3d at 252.

Reversed and remanded for a new direct contempt proceeding that strictly complies with Fla. R. Crim. P. 3.830.

SWEET, SCHWAB, JJ., and ALONZO, Acting Circuit Judge, concur.

¹ At oral argument, upon our questioning, the State conceded that a written order is necessary in direct contempt cases, and one is not present in this case.

² Fla. R. Crim. P. 3.670 also requires the trial court to render a written order, sign it, and file it in the court file when it adjudicates a defendant. The relevant text of Fla. R. Crim. P. 3.670 is as follows:

“If the defendant is found guilty, a judgment of guilty and, if the defendant has been acquitted, a judgment of not guilty shall be rendered in open court and in writing, signed by the judge, filed, and recorded.” (Emphasis added). The trial court adjudicated the Appellant guilty of direct contempt.

Copies of above decision
were furnished to the attorneys/parties
of record on the same date
the decision was filed.