

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-3686

DAVID LAWTON PETTY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Nassau County.
Robert M. Foster, Judge.

March 4, 2019

BILBREY, J.

Appellant, David Lawton Petty, challenges the trial court order finding him in indirect criminal contempt and imposing a ten-day jail sentence. We affirm the order finding him in contempt but reverse for resentencing in accordance with rule 3.840(g), Florida Rules of Criminal Procedure.

Rule 3.840(g) requires that prior to the pronouncement of sentence for indirect criminal contempt, the court “inform the defendant of the accusation and judgment,” “inquire as to whether the defendant has any cause to show why sentence should not be pronounced,” and afford the defendant “the opportunity to present evidence of mitigating circumstances.” In addition, the sentence must be pronounced “in open court and in

the presence of the defendant.” Fla. R. Crim. P. 3.840(g). The trial court did not comply with these requirements, and the failure to comply with rule 3.840(g) is fundamental error. *Gooden v. State*, 931 So. 2d 146 (Fla. 1st DCA 2006); *see also Ensign v. State*, 67 So. 3d 353 (Fla. 2d DCA 2011).

The order finding Appellant in willful contempt of court is affirmed, but the sentence imposed is reversed pursuant to *Gooden*. This cause is remanded for resentencing compliant with rule 3.840(g).

AFFIRMED in part, REVERSED in part, and REMANDED.

ROWE and KELSEY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331. Such a motion must be filed on or before March 7, 2019. In absence of such motion by that date, the Clerk shall issue the mandate thereafter forthwith. Any response to such motion may be filed on or before March 13, 2019.

Andy Thomas, Public Defender, and Jasmine Russell, Assistant Public Defender, Tallahassee, for Appellant.

Ashley B. Moody, Attorney General, and Virginia Chester Harris, Assistant Attorney General, Tallahassee, for Appellee.