

**SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

Case No. 6D2024-2086
Lower Tribunal No. 2022-MM-000604

EUGENE ANDREW KOLEK,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Appeal from the County Court for Highlands County.
Anthony L. Ritenour, Judge.

February 26, 2026

PER CURIAM.

Appellant, Eugene Andrew Kolek, appeals an order of restitution dated April 4, 2023, on the basis that the trial court lacked jurisdiction to enter it because his plenary appeal was then pending. Appellee, the State of Florida, confesses error in its brief, and agrees with Appellant that the “trial court lacked jurisdiction to hold the restitution hearing or enter an order of restitution” and that the “case should be remanded back to the trial court where another restitution hearing may be conducted.”

It is a generally accepted principle that a “party’s filing of a notice of appeal divests the trial court of jurisdiction to enter a restitution order.” *Jenkins v. State*, 954 So. 2d 738, 738 (Fla. 2d DCA 2007). Accordingly, we accept the State’s confession of error, reverse the trial court’s order on restitution and remand for further proceedings. On remand, the trial court may conduct another hearing for restitution. *See Nguyen v. State*, 655 So. 2d 1249, 1250 (Fla. 1st DCA 1995).

REVERSED and REMANDED with directions.

WHITE, SMITH and BROWNLEE, JJ., concur.

Blair Allen, Public Defender, and Tosha Cohen, Assistant Public Defender, Bartow for Appellant.

James Uthmeier, Attorney General, Tallahassee, and Christopher Manon, Assistant Attorney General, Tampa, for Appellee.

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