

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

ROQUE GAVILLA,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D14-850

[November 25, 2015]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Karen Miller, Judge; L.T. Case No. 2011CF009077 AXXXXMB.

W. Grey Tesh, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Allen R. Geesey, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Roque Gavilla (“appellant”) appeals his conviction and sentence for one count of trafficking in marijuana in an amount exceeding twenty-five pounds. He argues two issues on appeal. First, appellant asserts that his motion for judgment of acquittal should have been granted due to insufficient evidence. Second, he argues that his trial counsel was ineffective for not calling a witness at trial. We affirm on both issues, but write to address the second issue concerning appellant’s ineffective assistance of counsel claim.

Generally, appellate courts do not consider claims of ineffective assistance of counsel on direct appeal. *Baker v. State*, 937 So. 2d 297, 299 (Fla. 4th DCA 2006). Such claims are more appropriately addressed by the trial court during proceedings for post-conviction relief. *Id.* (citing *Jones v. State*, 815 So. 2d 772, 772 (Fla. 4th DCA 2002)); *Bradberry v. State*, 922 So. 2d 457, 458 (Fla. 4th DCA 2006) (citing *Gore v. State*, 784 So. 2d 418, 438 (Fla. 2001)). An exception to that general rule is “when the error is apparent on the face of the record, which is rarely the case.”

Nairn v. State, 978 So. 2d 268, 269 (Fla. 4th DCA 2008) (quoting *Desire v. State*, 928 So. 2d 1256, 1257 (Fla. 3d DCA 2006)).

Based on the face of this record, we do not find that appellant's counsel was ineffective for not calling the witness. See *Sims v. State*, 82 So. 3d 825, 825 (Fla. 4th DCA 2011) (affirming conviction on direct appeal because ineffective assistance of counsel claims were "not apparent on the face of the record").

Accordingly, we affirm on this issue without prejudice so that appellant may raise any claim of ineffective assistance of counsel in subsequent proceedings under Florida Rule of Criminal Procedure 3.850.

Affirmed.

WARNER, LEVINE and KLINGENSMITH, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.