

Third District Court of Appeal

State of Florida, July Term, A.D. 2009

Opinion filed September 30, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D07-860
Lower Tribunal No. 04-15472

Gary Ortiz,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Barbara Areces,
Judge.

Andrew F. Rier, for appellant.

Bill McCollum, Attorney General, and Douglas J. Gland, Assistant Attorney
General, for appellee.

Before GERSTEN and CORTIÑAS, JJ., and SCHWARTZ, Senior Judge.

PER CURIAM.

The contentions raised on appeal were not preserved below and do not
present fundamental error. Moreover, the allegations concerning the adequacy of
trial counsel's representation do not fall within the exception to the rule that the
issue is not cognizable on direct appeal. See *Smith v. State*, 998 So. 2d 516, 522-

523 (Fla. 2008); *Smith v. State*, ___ So. 3d ___ (Fla. 1st DCA Case no. 1D08-2286, opinion filed, August 28, 2009) [34 Fla. L. Weekly D1788]. The convictions and sentence are therefore affirmed without prejudice to an application for Rule 3.850 relief.

Affirmed.