

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2009

KELVIN TOLLIVER, et al.,

Appellant,
v. Case Nos. 5D08-137 and
5D08-187

STATE OF FLORIDA,

Appellee.

/

Opinion filed June 12, 2009

Appeal from the Circuit Court
for Orange County,
Jay P. Cohen, Judge.

Adam H. Sudbury, of Dorough,
Calzada, Soto & Sudbury LLP,
Orlando, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Kellie A. Nielan,
Assistant Attorney General, Daytona
Beach, for Appellee.

PALMER, C.J.,

In this consolidated appeal, Kelvin Tolliver and Diamond Williams (defendants) appeal their judgments and sentences which were entered by the trial court after a jury found the men guilty of committing the crime of armed robbery. Finding no reversible error, we affirm.

We write to address concerns arising from statements made by counsel during oral argument indicating that an affirmance by this court in this matter might be used to later argue that the defendants are not entitled to pursue post-conviction relief for

alleged ineffective assistance of counsel claims due to the fact that such claims were raised in this direct appeal. Such is not the case. Although the defendants raised claims of ineffective assistance of counsel in this direct appeal, the record evidence is insufficient to allow us to rule on said claims. However, the defendants are not precluded by this opinion from raising their claims through a properly filed post-conviction motion because such claims are ordinarily raised in a motion for post-conviction relief and it is the rare case where such a claim can be disposed of on direct appeal. See Smith v. State, 998 So. 2d 516 (Fla. 2008).

AFFIRMED.

ORFINGER, J. and THOMPSON, Jr., E., Senior Judge, concur.