

[3] In reading the statute in question, it is clear that there is no requirement that the results of the first blood alcohol test be furnished so that the person tested can decide whether to request a second test. Moreover, the statute as currently drafted makes good common sense. Even without knowing the results of the first test, the person whose blood is examined may well want to have a second test performed immediately to assure the validity and accuracy of the testing procedures. We conclude that the circuit court did exactly as the State contends and added an element to the statute which the General Assembly did not include.

We further note that under the circuit court's interpretation, testing would have to occur promptly for the person to learn the results and have an opportunity for a valid second test. The reason for this is that blood alcohol content dissipates over a period of time. *David v. State*, 286 Ark. 205, 691 S.W.2d 133 (1985); *Elam v. State*, 286 Ark. 174, 690 S.W.2d 352 (1985). A requirement for testing with instant test results could well work a hardship when the equipment and expertise for determining those results is not available.

We hold that the circuit court erred in its interpretation as a matter of law.

Dewayne MAXIE v. Mike GAINES, Leroy Brownlee,
Carol Bohannon, Jim Handy, Board of Parole Members

94-313

876 S.W.2d 572

Supreme Court of Arkansas
Opinion delivered May 31, 1994

1. APPEAL & ERROR — CIVIL CASE CHALLENGING CONDITION OF PAROLE — NO RIGHT TO HAVE BRIEF DUPLICATED AT PUBLIC EXPENSE. — A petition challenging a condition of parole is a civil action, and there is no right under Arkansas rules or any constitutional provision to have a brief in a civil case duplicated at public expense; however,

in those cases where the indigent appellant is able to make a substantial showing on proper motion that he is entitled to relief and that he cannot provide the appellate court with a sufficient number of copies of the appellant's brief, the court will request the Attorney General to duplicate the brief tendered by the appellant.

2. APPEAL & ERROR — BRIEFING — CIVIL CASE TO BE DUPLICATED BY ATTORNEY GENERAL — PROCEDURE. — As with indigent appellants in criminal cases under Sup. Ct. R. 4-3(i), the appellant must submit one double-spaced typewritten copy of the brief to the Attorney General and one to the Clerk of the appellate court not later than the due date of the brief; then, the time for the filing of the Attorney General's brief will be extended by five days.
3. APPEAL & ERROR — FAILURE TO SHOW MERIT TO APPEAL IN CIVIL CASE — MOTION TO COMPEL ATTORNEY GENERAL TO DUPLICATE BRIEF DENIED. — Where appellant stated only that the Department of Correction declined to allow incarcerated persons access to a copy machine, but made no statement in the motion as to the merit of the appeal and thus failed to make the substantial showing of merit required before the appellate court will request that the Attorney General duplicate the brief, the motion was denied.

Pro Se Motion to Compel Attorney General to Duplicate Appellant's Brief; *Fred Davis*, Judge; denied.

Appellant, pro se.

No response.

PER CURIAM. The appellant Dewayne Maxie filed a *pro se* petition for writ of mandamus and declaratory judgment against the members of the Arkansas Board of Pardons and Parole, alleging that the parole board was wrong to require that he should serve his term of parole under a plan whereby he would live outside Arkansas. The petition was denied, and appellant has lodged the record in this court on appeal. He tendered a brief and now asks that the Office of the Attorney General be compelled to duplicate the brief at public expense.

[1, 2] A petition challenging a condition of parole is a civil action. *See Virgin v. Lockhart*, 288 Ark. 92, 702 S.W.2d 9 (1986). There is no right under our rules or any constitutional provision to have a brief in a civil case duplicated at public expense. Nevertheless, in those cases where the indigent appellant is able to make a substantial showing on proper motion that he is entitled

to relief and that he cannot provide this court with a sufficient number of copies of the appellant's brief, we will request the Attorney General to duplicate the brief tendered by the appellant. As with indigent appellants in criminal cases under our Rule 4-3 (i), the appellant must submit one double-spaced typewritten copy of the brief to the Attorney General and one to the Clerk of this court not later than the due date of the brief. In such instances, the time for the filing of the Attorney's General's brief will be extended by five days.

[3] The instant motion is denied because the appellant states only that the Department of Correction has declined to allow incarcerated persons access to a copying machine. He makes no statement in the motion as to the merit of the appeal and thus has failed to make the substantial showing of merit required before this court will request that the Attorney General duplicate the brief.

Motion denied.
