

**SUPREME COURT OF ARKANSAS**

No. CR13-110

BRIAN KOONTZ

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** April 25, 2013PRO SE MOTION FOR EXTENSION  
OF BRIEF TIME [HEMPSTEAD  
COUNTY CIRCUIT COURT, CR  
98-114, DUNCAN CULPEPPER,  
JUDGE]APPEAL DISMISSED; MOTION  
MOOT.**PER CURIAM**

In 1999, appellant Brian Koontz, who is also known as Morris B. Koontz and Morris Brian Koontz, was found guilty by a jury of residential burglary and rape. An aggregate sentence of fifteen years' imprisonment was imposed. Appellant subsequently filed in this court a motion seeking leave to proceed with a belated appeal of the judgment, which was denied. *Koontz v. State*, CR 99-791 (Ark. Jan. 13, 2000) (unpublished per curiam).

On October 15, 2012, appellant filed in the trial court a pro se motion for a transcript of his trial at public expense.<sup>1</sup> The motion was denied on December 4, 2012. On December 27, 2012, appellant filed a motion for reconsideration. On January 9, 2013, he filed a notice of appeal from the December 4, 2012 order. That notice of appeal was not timely, inasmuch as a person desiring to appeal a circuit court's order must file a notice of appeal with the clerk

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<sup>1</sup>The record lodged with the motion for belated appeal in 1999 was a partial record without a transcript of the trial proceedings.

of the circuit court within thirty days of the date that the order is entered. *See* Ark. R. App. P.–Crim. 2(a) (2012).

On January 14, 2013, the motion for reconsideration was denied, and appellant filed a second “amended” notice of appeal, in which he designated both the December 4, 2012 order that denied the motion for transcript and the January 14, 2013 order that denied the motion for reconsideration. When the record-on-appeal was received by our clerk, the appeal was docketed as an appeal from the January 14, 2013 order, because the notice of appeal appellant filed January 29, 2013, was timely as to that order only.

Now before us is appellant’s motion for an extension of time to file his brief-in-chief in the appeal. After the motion was filed, appellant timely tendered the brief, rendering the motion moot. Nevertheless, the appeal is dismissed as it is clear from the record that appellant could not prevail on appeal. A motion for transcript is a request for postconviction relief. *See Mendiola v. State*, 2013 Ark. 92 (per curiam), and this court will not permit an appeal from an order that denied a petition for postconviction relief to go forward where it is clear that the appellant could not prevail. *Davis v. State*, 2013 Ark. 118 (per curiam); *Hickman v. State*, 2012 Ark. 359 (per curiam).

The motion for reconsideration filed by appellant reiterated the grounds raised in his original motion for transcript. He contended that he was indigent, that he had made diligent efforts over the years to obtain the transcript, and that the transcript was needed for him to “file and support other forms of relief.”

Appellant did not state a ground in the petition to warrant granting a motion for

transcript at public expense. Indigency alone does not entitle a petitioner to free photocopying. *Mendiola*, 2013 Ark. 92; *Daniels v. State*, 2012 Ark. 124 (per curiam); *Cox v. State*, 2011 Ark. 96 (per curiam); *Evans v. State*, 2009 Ark. 529 (per curiam); *Nooner v. State*, 352 Ark. 481, 101 S.W.3d 834 (2003) (per curiam). To be entitled to a copy of a trial transcript at public expense, a petitioner must show a compelling need for the transcript to support a specific allegation contained in a timely petition for postconviction relief. *Vance v. State*, 2012 Ark. 254 (per curiam); *Daniels*, 2012 Ark. 124; *Henderson v. State*, 2011 Ark. 522 (per curiam); *Bradshaw v. State*, 372 Ark. 305, 275 S.W.3d 173 (2008) (per curiam). If there was indeed a timely postconviction remedy available to appellant, he did not state what it was, and he did not demonstrate to the trial court that there was any particular issue that he could not adequately raise to the court without the transcript. Accordingly, he failed to show that the transcript should be provided to him at no cost, and the trial court did not err in denying the motion for reconsideration. *Daniels*, 2012 Ark. 124; see *Hickey v. State*, 2010 Ark. 299 (per curiam).

Appeal dismissed; motion moot.

*Appellant*, pro se.

No response.