

SUPREME COURT OF ARKANSAS

No. CACR 08-969

WILBERT L. JOHNSON
PETITIONER

V.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered January 14, 2010

PRO SE MOTION FOR USE OF
TRIAL TRANSCRIPT [CIRCUIT
COURT OF PULASKI COUNTY, CR
2007-3675]

MOTION TREATED AS MOTION
FOR PHOTOCOPYING AT PUBLIC
EXPENSE AND DENIED.

PER CURIAM

Wilbert L. Johnson was found guilty by a jury of breaking or entering, a felony, misdemeanor theft of property, and misdemeanor fleeing. An aggregate sentence of 180 months' imprisonment was imposed. The Arkansas Court of Appeals affirmed. *Johnson v. State*, 2009 Ark. App. 201 (unpublished).

Petitioner Johnson, who contends that he is indigent, now asks by pro se motion to be allowed to use the transcript of his trial lodged on direct appeal.¹ He states that there is an evidentiary hearing scheduled in the trial court on his petition for postconviction relief

¹For clerical purposes, the motion was filed under the docket number assigned to the direct appeal of the judgment that was lodged in the court of appeals. This court decides motions for transcript because such motions are considered to be requests for postconviction relief. *See Williams v. State*, 273 Ark. 315, 619 S.W.2d 628 (1981); *see also Wright v. State*, 2009 Ark. 604 (per curiam).



2010 Ark. 15

pursuant to Criminal Procedure Rule 37.1, but he does not offer any specific reason for requiring the transcript.

Providing petitioner with access to the transcript by forwarding a copy to his place of incarceration would require photocopying it at public expense, inasmuch as records lodged with this court may not be checked out by non-attorneys. Accordingly, a motion for use of a transcript is considered under the same criteria as a motion seeking a copy of a transcript for the petitioner to keep. We have consistently held that a petitioner is not entitled to photocopying at public expense unless he or she demonstrates some compelling need for specific documentary evidence to support an allegation contained in a petition for postconviction relief. *Wright v. State*, 2009 Ark. 604 (per curiam); *Moore v. State*, 324 Ark. 453, 921 S.W.2d 606 (1996); see *Austin v. State*, 287 Ark. 256, 697 S.W.2d 914 (1985). Indigency alone does not entitle a petitioner to photocopying at public expense. *Layton v. State*, 2009 Ark. 438 (per curiam). *Washington v. State*, 270 Ark. 840, 606 S.W.2d 365 (1980). As petitioner has not alleged that there is any specific documentary evidence in the transcript to support a postconviction claim or that having a copy of the transcript is necessary to his raising a particular postconviction claim at the evidentiary hearing on his Rule 37.1 petition, he has failed to show that the transcript lodged on appeal should be provided to him at no cost.

It should be noted that when an appeal has been lodged in either this court or the court of appeals, all material related to the appeal remains permanently on file with our clerk. Persons may review the material in the clerk's office and photocopy all or portions of it. An incarcerated person desiring a photocopy of material related to an appeal may write this court, remit the



2010 Ark. 15

photocopying fee, and request that the copy be mailed to the prison. All persons, including prisoners, must bear the cost of photocopying. *Giles v. State*, 2009 Ark. 264 (per curiam).

Motion denied.

BOWEN, J., not participating.