

SUPREME COURT OF ARKANSAS

No. CACR02-419

EDWARD CHARLES WRIGHT
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered April 1, 2010

PRO SE MOTION TO REMIT
PHOTOCOPYING FEE [CIRCUIT
COURT OF PULASKI COUNTY, CR
01-445, HON. JOHN PLEGGE,
JUDGE]

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

PER CURIAM

Edward Charles Wright was found guilty by a jury of breaking or entering, two counts of terroristic threatening, and theft of property. He was also found to be a habitual offender. An aggregate sentence of 540 months' imprisonment was imposed. The Arkansas Court of Appeals affirmed. *Wright v. State*, CACR 02-419 (Ark. App. Feb. 19, 2003) (unpublished).

Petitioner Wright, who contends that he is indigent, has filed the "Motion Habeas Corpus[,] Motion in forma pauperis[,] and Remit Photocopying Fee" that is now before us. Despite the reference to habeas corpus, the motion is a request for a copy of the transcript of his trial at public expense, and it will be treated as such.¹ In the motion, petitioner notes that

¹This is the eighth such motion filed by petitioner in this court. None of the prior motions has been granted. For clerical purposes, the instant motion, as well as each of the prior motions, 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) (per curiam).



Cite as 2010 Ark. 155

his prior requests for transcript have been denied. He now cites *Hutcherson v. State*, 262 Ark. 535, 558 S.W.2d 156 (1977), in support of his motion, and he argues that *Hutcherson* requires the State of Arkansas to pay for copies if an inmate cannot afford them. Specifically, petitioner seeks “all portions of transcripts[,] notices[, and] any other necessary papers.”

Providing petitioner with a 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 nonattorneys. *Johnson v. State*, 2010 Ark. 15 (per curiam). 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. *Id.*; *Layton v. State*, 2009 Ark. 438 (per curiam); *Moore v. State*, 324 Ark. 453, 921 S.W.2d 606 (1996) (per curiam); see *Austin v. State*, 287 Ark. 256, 697 S.W.2d 914 (1985) (per curiam).

Petitioner asserts that the fact that he does not have the money to pay for a copy of the transcript is in itself a compelling need. We disagree, as we have previously held that indigency alone does not entitle a petitioner to photocopying at public expense. *Gardner v. State*, 2009 Ark. 488 (per curiam); *Washington v. State*, 270 Ark. 840, 606 S.W.2d 365 (1980) (per curiam). Petitioner does not reference any specific portion of the transcript that would contain documentary evidence that might support a claim for postconviction relief, nor does he allege that there is a postconviction remedy available to him at this time that would require petitioner to access the transcript in order to fully develop his claim. Therefore, he has failed



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to show that the transcript lodged on appeal should be provided to him at no cost. See *Johnson*, 2010 Ark. 15.

Petitioner's citation to *Hutcherson*, 262 Ark. 535, 558 S.W.2d 156, is unavailing. First, with respect to photocopying a transcript at public expense, *Hutcherson* dealt with a defendant's right to the transcript from his first trial prior to retrial following a hung jury, not a petition for postconviction relief as is the case here. 262 Ark. at 537, 558 S.W.2d at 158. Second, this court stated in *Hutcherson* that a defendant had no right to photocopying at public expense where he did not establish that he was indigent and it was not clear that access to the transcript was necessary for appellant's defense. 262 Ark. at 539–40, 558 S.W.2d 156 at 159. Both because it is inapposite to the instant case and because it does not support petitioner's contention, *Hutcherson* does not change our decision on the merits of petitioner's argument.

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 photocopying fee, and request that the copy be mailed to the prison. All persons, including prisoners, must bear the cost of photocopying. *Layton*, 2009 Ark. 438; *Giles v. State*, 2009 Ark. 264 (per curiam).

Motion treated as motion for photocopying at public expense and denied.