

SUPREME COURT OF ARKANSAS

No. CR-09-722

DELLEMOND CUNNINGHAM
PETITIONER

V.

STATE OF ARKANSAS
RESPONDENT

Opinion Delivered: May 6, 2010

PRO SE MOTION FOR
PHOTOCOPY OF TRIAL
TRANSCRIPT AT PUBLIC EXPENSE

CIRCUIT COURT OF
WASHINGTON COUNTY,
[CR 2008-1654, CR 2009-247]

MOTION DENIED.

PER CURIAM

In 2009, petitioner Dellemond Cunningham was found guilty of being an accomplice to aggravated robbery, an accomplice to theft of property, and a felon in possession of a firearm, as well as intimidating a witness. An aggregate sentence of 444 months' imprisonment was imposed. He appealed the conviction for witness intimidation, and the Arkansas Court of Appeals affirmed. *Cunningham v. State*, 2010 Ark. App. 130.

On April 6, 2010, petitioner filed the instant pro se motion seeking at public expense a copy of the transcript lodged on direct appeal.¹ Appended to the motion is petitioner's affidavit of indigency. Petitioner bases his request for a copy of the transcript on the claim that he will be unable to raise all the issues he desires to raise in a petition under Arkansas Rule of Criminal Procedure 37.1 (2009) without a copy of the transcript. He contends that he will be at a disadvantage if he must rely on his memory and that he will only be able to present conclusory allegations to the court. Indigency alone does not entitle a petitioner to free photocopying. *Evans v. State*, 2009 Ark. 529 (per curiam); *Nooner v. State*, 352 Ark. 481, 101 S.W.3d 834

¹For clerical purposes, the motion was filed under the docket number assigned to the appeal lodged in the court of appeals. This court decides motions for transcript because such motions are considered to be requests for postconviction relief. *See Johnson v. State*, 2010 Ark. 15 (per curiam); *see also Williams v. State*, 273 Ark. 315, 619 S.W.2d 628 (1981) (per curiam).

(2003) (per curiam). To be entitled to a copy of a trial transcript, a petitioner must show a compelling need for specific documentary evidence to support an allegation contained in a timely petition for postconviction relief. *Wright v. State*, 2010 Ark. 155 (per curiam); *Avery v. State*, 2009 Ark. 528 (per curiam); *Bradshaw v. State*, 372 Ark. 305, 275 S.W.3d 173 (2008) (per curiam). Moreover, the petitioner must cite a particular ground for relief that requires documentation to be entitled to a copy of a transcript. *Burnett v. State*, 293 Ark. 300, 737 S.W.2d 631 (1987) (per curiam). Petitioner here has not stated any particular allegation to be raised in a Rule 37.1 petition for which specific documentary evidence is required.

It should be noted that when an appeal has been lodged in either this court or the court of appeals, the transcript and all material related to the appeal remains permanently on file with our clerk. Persons may review the transcript and material in the clerk's office and photocopy all or portions of it. An incarcerated person desiring a photocopy of a transcript or 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. *Gardner v. State*, 2009 Ark. 488 (per curiam); *Layton v. State*, 2009 Ark. 438 (per curiam).

Motion denied.

No briefs filed.