

SUPREME COURT OF ARKANSAS

No. CACR 04-395

RODELL AVERY, JR.

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered October 29, 2009

PRO SE MOTION FOR DUPLICATION
OF RECORDS AT PUBLIC EXPENSE
[CIRCUIT COURT OF CALHOUN
COUNTY, CR 2002-35, CR 2002-38]

MOTION DENIED.

PER CURIAM

In 2003, petitioner Rodell Avery, Jr., was found guilty by a jury of aggravated robbery, three counts of kidnapping, and second-degree escape. He was sentenced as a habitual offender to an aggregate term of 480 months' imprisonment. The Arkansas Court of Appeals affirmed. *Avery v. State*, 93 Ark. App. 112, 217 S.W.3d 162 (2005).

Now before us is petitioner's motion for duplication at public expense of certain documents and hearing transcripts contained in the direct appeal record.¹ Included with the motion is petitioner's affidavit of indigency. Additionally, pursuant to the Arkansas Freedom of Information Act ("FOIA"), codified as Arkansas Code Annotated §§ 25-19-101 to -109 (Repl. 2002 & Supp. 2007), petitioner requests a copy of the decision rendered by the court of appeals.

FOIA does not require a court to provide photocopying at public expense. *Moore v. State*, 324 Ark. 453, 921 S.W.2d 606 (1996) (per curiam). Also, indigency alone does not entitle a petitioner to free photocopying. *Nooner v. State*, 352 Ark. 481, 101 S.W.3d 834 (2003) (per curiam). To demonstrate entitlement to photocopying at public expense, the burden is on the

¹For clerical purposes, the motion has been filed under the docket number assigned to the direct appeal of the judgment.



petitioner to establish some compelling need for certain documentary evidence to support an allegation contained in a timely petition for postconviction relief. *Bradshaw v. State*, 372 Ark. 305, 275 S.W.3d 173 (2008) (per curiam).

Here, petitioner seeks a copy of eleven items.² He maintains in the motion that he intends to use the items to support a petition for writ of habeas corpus that has been, or will be, filed in state court in order to establish that the trial court lacked jurisdiction over the second-degree escape charge. The allegation that the court lacked jurisdiction, however, amounts to no more than a conclusory statement as petitioner fails to set out the specific legal and factual basis for the argument. A conclusory claim to be raised in a petition for postconviction relief is not grounds to grant a motion for photocopying at public expense because it does not establish a compelling need for a particular document.

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 v. State*, 2009 Ark. 438 (per curiam).

Motion denied.

²Petitioner seeks copies of (1) the felony information filed in the criminal case, (2) trial testimony of Rick Steelman, (3) trial testimony of Pam Simmons, (4) trial testimony of Raymond Naylor, (5) trial testimony of Terry Clark, (6) jury instructions, (7) bond hearing testimony of Pam Simmons, (8) bond-hearing testimony of Terry Clark, (9) opening statement of the prosecutor, (10) opening statement of trial counsel, and (11) the court of appeals' decision in *Avery v. State*, *supra*.