

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

KIRK JOHN NORTHUP	§	
TDCJ-CID NO. 1469152	§	
v.	§	C.A. NO. C-10-085
	§	
RICK THALER	§	

**OPINION DENYING PETITIONER’S MOTION FOR COURT RECORDS**

Petitioner is an inmate in the Texas Department of Criminal Justice, Correctional Institutions Division, and is currently incarcerated at the Beto Unit in Tennessee Colony, Texas. Proceeding pro se, he filed a habeas petition pursuant to 28 U.S.C. § 2254 challenging a state conviction. (D.E. 1). Pending is petitioner’s motion for court records, transcripts, and documents pertaining to the instant case. (D.E. 51).

Fees for transcripts furnished to persons permitted to appeal *in forma pauperis* shall be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question). 28 U.S.C. § 753(f). As the Fifth Circuit has established, “[i]n order to succeed on a motion for production of transcripts at government expense, a party must also show why the transcripts are necessary for proper disposition of his appeal.” Norton v. Dimazana, 122 F.3d 286, 293 (5th Cir. 1997) (citing Harvey v. Andrist, 754 F.2d 569, 571 (5th Cir.1985)). There were no hearings in this action, so no transcripts exist for proceedings in federal court. Additionally, any documents filed in this action as well as any documents regarding his challenged conviction should be documents petitioner already possesses.

Payment by the United States for printing of the record on appeal and transcripts may also be ordered if the record or transcript is **required** by the appellate court. 28 U.S.C.

§ 1915(c); Harvey, 754 F.2d at 571. The Fifth Circuit Court of Appeals has not indicated it required a transcript of any of the proceedings in this case. Indeed, petitioner was denied a certificate of appealability by this Court. (D.E. 47). To date, the Fifth Circuit has not issued a certificate of appealability.

Accordingly, petitioner's motion for court records, transcripts, and documents pertaining to the instant case, (D.E. 51), is DENIED without prejudice.

ORDERED this 23rd day of September 2010.

  
BRIAN L. OWSLEY  
UNITED STATES MAGISTRATE JUDGE