

Cite as 2017 Ark. 369
SUPREME COURT OF ARKANSAS
No. CR-14-580

KOU HER		Opinion Delivered: December 14, 2017
	APPELLANT	APPEAL FROM THE JOHNSON COUNTY CIRCUIT COURT [NO. 36CR-13-77]
V.		
STATE OF ARKANSAS	APPELLEE	HONORABLE WILLIAM M. PEARSON, JUDGE
		<u>CONCURRING OPINION.</u>

JOSEPHINE LINKER HART, Associate Justice

On September 8, 2017, Kou Her filed a pro se motion titled “Motion for Full Motion of Discovery and All Exhibits.” While I do not take issue with the disposition of that motion, I write this concurrence to further explain my reasoning.

This court affirmed Her’s conviction in 2015. *Her v. State*, 2015 Ark. 405. It appears Her is now seeking a copy of the record of his direct appeal. Rule 19 of the Arkansas Rules of Appellate Procedure—Criminal (2017) states the following:

- (a) A convicted offender who seeks, at public expense, a copy of an appellate brief, the trial record, or a transcript must file a motion in the Supreme Court stating that he or she has requested the documents from his or her counsel and that counsel did not provide the documents. In addition, if the moving party seeks a photocopy (as opposed to a disk or other electronic medium), he or she must demonstrate some compelling need for the brief, record, or transcript.

The reason that a party must first request the record or other documents from his attorney is that the court reporter is required to deliver an original and a copy to the court clerk who must complete the record. An original copy is filed with the supreme court clerk, while the other copy is retained by the attorney.

Rule 19 also states:

(c) An attorney has an obligation under Ark. R. Prof'l Conduct 1.16(d) to surrender documents such as an appellate brief, record or transcript to the client. This obligation requires the attorney to provide only what already exists in his or her possession. But if the attorney possesses paper copies that have been requested, the attorney must supply those paper copies. The attorney's obligation is determined by Ark. R. Prof'l Conduct 1.16(d), and this rule is not intended to enlarge or diminish the obligation.

Rule 1.16(d) of the Arkansas Rules of Professional Conduct involves the termination of representation. According to that rule, upon termination, the attorney shall "surrender papers and property to which the client is entitled," but may "retain papers relating to the client to the extent permitted by other law."

Here, Her's motion requests that "copies of the full motion of discovery and all exhibits pertaining to case No. CR-2013-77" be made at the public expense due to him being an "indigent inmate." Her attached an "Affidavit in Support of Request to Proceed In Forma Pauperis" to his motion.¹

¹ While Her attached this affidavit to his motion, Her has not filed a "Petition for Leave to Proceed In Forma Pauperis" in case no. CR-14-580. The only "Petition for Leave to Proceed In Forma Pauperis" filed by Her was filed in the Johnson County Circuit Court on February 1, 2016, simultaneously with his "Petition for Post-Conviction Relief" and "Motion for Transcript for Rule 37 Proceedings." Because Her's filings were untimely, the Johnson County Circuit Court entered an order on February 5, 2016, dismissing his

Her's motion requesting a copy of the record fails to meet the predicate requirement of Rule 19 for multiple reasons. Her failed to indicate that he had requested the desired materials from his counsel. If he did not make such a request, he should begin there. If the request was made and his counsel failed to provide the documents, he must state that in his motion. Moreover, regarding the "compelling need" standard, indigency alone does not require the court to provide photocopies at public expense.

For the reasons stated above, I do not believe the syllabus entry, as stated, adequately addressed the motion.

I concur.

petitions and motion for lack of jurisdiction. Her has not filed a petition for "Leave to Proceed In Forma Pauperis" in this court.