

ARKANSAS SUPREME COURT

No. CACR 05-726

NOT DESIGNATED FOR PUBLICATION

HENRY J. BUNCH
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered April 20, 2006

PRO SE MOTION FOR RECONSIDERATION
OF MOTION FOR TRANSCRIPT [CIRCUIT
COURT OF WASHINGTON COUNTY, CR
2004-2659-1]

MOTION DENIED

PER CURIAM

Petitioner Henry J. Bunch was found guilty of aggravated robbery, three counts of attempted capital murder, felon in possession of a firearm, theft by receiving, possession of methamphetamine, possession of pseudoephedrine with intent to manufacture methamphetamine, and simultaneous possession of drugs and a firearm. Petitioner was sentenced to 360 months' imprisonment for the aggravated robbery charge, 300 months for the simultaneous possession charge, and an aggregate of 480 months on the remaining offenses, with the sentences for the aggravated robbery and simultaneous possession charges to run consecutively to each other and the remaining charges to run concurrently, for a total of 1,140 months' imprisonment. The Arkansas Court of Appeals affirmed the judgment with the modification that the aggravated robbery charge must be merged into one of the attempted-capital-murder charges. *Bunch v. State*, ___ Ark. App. ___, ___ S.W.3d ___ (February 15, 2006). Following the decision of the court of appeals, petitioner filed in this court a *pro se* motion for transcript, which was denied.¹ *Bunch v. State*, CACR 05-726 (Ark. March 23,

¹For clerical purposes, the motion has been filed under the docket number assigned to the direct appeal of the judgment which was lodged in the court of appeals. This court decides motions for transcripts 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*).

2006) (*per curiam*). Petitioner now requests reconsideration of our decision to deny the motion for transcript.

In support of his motion for reconsideration, petitioner again provides specific anticipated points, and this time provides greater detail in describing the claims he anticipates raising in his petition for postconviction relief under Ark. R. Crim. P. 37.1. As we noted in our previous decision, a petitioner is not entitled to access a trial record unless there is a specific point which cannot be raised in a postconviction proceeding without the record or some portion of it. *See Thomas v. State*, 328 Ark. 753, 945 S.W.2d 939 (1997) (*per curiam*). Once again, he does not show how the transcript is necessary or that those points cannot be properly raised without access to the transcript.

For example, petitioner indicates he would raise a claim that counsel was ineffective for failure to move to suppress a video tape, and he provides great detail as to the events leading up to the actions that apparently appeared in the video. Petitioner asserts that he advised counsel that another person, rather than petitioner, was actually the person appearing in the video and that counsel refused to bring this defense. While petitioner urges that the trial proceedings concerning the video are relevant to this issue, he still fails to explain how this prevents him from raising the argument in a Rule 37.1 petition.

Petitioner explains that he may be able to use the transcript to bolster his arguments, but he has not shown how the transcript is essential to raising his arguments in a Rule 37.1 petition. While allegations must have a factual basis, providing evidence in support of his arguments is simply not necessary at this stage in the proceedings, and petitioner can raise his arguments, including specific allegations, without it. The trial court may conduct an evidentiary hearing, if appropriate.

We find that petitioner has stated no reason to revisit our previous decision on this issue. Petitioner's motion for reconsideration is denied.

Motion denied.