

ARKANSAS SUPREME COURT

No. CACR 05-781

NOT DESIGNATED FOR PUBLICATION

LARRY WAYNE STEPHENS
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered April 27, 2006

PRO SE MOTION FOR TRANSCRIPT AND
OTHER MATERIAL AT PUBLIC EXPENSE
[CIRCUIT COURT OF LONOKE COUNTY, CR
2004-482]

MOTION DENIED

PER CURIAM

Petitioner Larry Wayne Stephens was found guilty of rape, kidnapping, terroristic threatening, and domestic battering. An aggregate term of forty years' imprisonment was imposed. The Arkansas Court of Appeals affirmed. *Stephens v. State*, CACR 05-781 (Ark. App. March 22, 2006).

Now before us is petitioner's *pro se* motion seeking a copy at public expense of the transcript lodged on direct appeal and a copy of all material related to the appeal, including motions and briefs filed in the course of the appeal.¹ Petitioner, who avers that he is indigent, contends that access to the transcript and other material is necessary to the preparation of the petition for postconviction relief pursuant to Criminal Procedure Rule 37.1 that he intends to file in the trial court. As grounds for the request, petitioner states in conclusory fashion that his attorney at trial "made several errors in the directed verdict areas" and that the trial judge had to raise unspecified issues himself because petitioner's attorney was inexperienced. Petitioner does not explain how access to the transcript or other material from the direct appeal would further development of any specific claim to be raised

¹ For clerical purposes, the motion was filed under the docket number assigned to the direct appeal of the judgment. 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*).

in the Rule 37.1 petition.

A petitioner is not entitled to a copy at public expense of a trial transcript or other material filed on appeal unless there is a specific point which cannot be raised in a postconviction proceeding without access to the transcript or the material. *See Thomas v. State*, 328 Ark. 753, 945 S.W.2d 939 (1997) (*per curiam*). This court does not provide free photocopying simply to facilitate a postconviction proceeding. The petitioner has the burden of demonstrating that the material requested is necessary to raise specific issues and that the specific anticipated points cannot be properly raised without access to certain written material. *See id.* Petitioner has not alleged that the transcript, briefs, or motions contain specific documentary evidence without which he would be unable to raise or to adequately support a claim cognizable under our postconviction rule. As a result, he has not met his burden of establishing a need for the transcript or other material at no cost to him.

It should be noted that when an appeal is lodged in either this court or the court of appeals, the transcript and all material pertaining to the appeal remain permanently on file with the clerk. Unless it is maintained under seal, persons may review the transcript and other material in the clerk's office and photocopy all or portions of it. An incarcerated person desiring a photocopy of a transcript or other material on file here 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. *Moore v. State*, 324 Ark. 453, 921 S.W.2d 606 (1996) (*per curiam*). It is well settled that a petitioner is not entitled to photocopying at public expense merely because he or she is able to establish indigency. *Id.*; *see also Austin v. State*, 287 Ark. 256, 697 S.W.2d 914 (1985) (*per curiam*).

Motion denied.