

ARKANSAS SUPREME COURT

No. CACR 07-592 & CACR 07-647

DAVID LEE DANIELS
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered May 1, 2008

PRO SE MOTIONS FOR
TRANSCRIPT [CIRCUIT COURT
OF BENTON COUNTY, CR 2005-
902(A) HON. DAVID S. CLINGER,
JUDGE, & CIRCUIT COURT OF
WASHINGTON COUNTY, CR 2005-
2864, HON. KIM M. SMITH, JUDGE]

MOTIONS DENIED.

PER CURIAM

A Benton County jury found petitioner David Lee Daniels guilty of theft of property and sentenced him as a habitual offender to fourteen years' imprisonment. He appealed and the Arkansas Court of Appeals affirmed. *Daniels v. State*, CACR 07-592 (Ark. App. Mar. 5, 2008). A Washington County jury found petitioner guilty of possession of cocaine and possession of drug paraphernalia and sentenced him to 360 months' imprisonment. Petitioner also appealed that judgment and the court of appeals again affirmed. *Daniels v. State*, CACR 07-647 (Ark. App. Jan. 30, 2008). Following the decisions of the court of appeals, petitioner, who contends that he is indigent, filed three pro se motions for transcript in this court.¹

In the motions, petitioner requests a copy of, or access to, the trial transcripts lodged on

¹ For clerical purposes, the motions have been filed under the docket numbers that were, in each case, 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).

direct appeal in the two cases, stating that he requires the transcripts in order to prepare petitions for postconviction relief under Ark. R. Crim. P. 37.1. However, petitioner's motions do not make the requisite showing to provide those transcripts to him at public expense.

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). Because petitioner is incarcerated, providing him with access to the materials would require photocopying at public expense, inasmuch as he is not in a position to examine the material in our clerk's office. A petitioner will not be provided a copy of the transcript to facilitate a postconviction proceeding without a showing that the record is necessary and that specific anticipated points cannot be properly raised without access to the transcript. *See id.*

Here, petitioner indicates that he seeks to bring claims of ineffective assistance of counsel. He identifies generally some of those claims, stating the bases of failure to use evidence and testimony, failure to investigate or perform pretrial functions, and failure to make arguments on appeal. He does not describe any specific point that he would raise, however, and he does not point to the specific documentary evidence contained in one of the transcripts that would support the point. He does not show how either transcript is needed to support a specific allegation or that he cannot properly raise the points without either one of the transcripts.

A petitioner is not entitled to photocopying at public expense without demonstrating some compelling need for *specific* documentary evidence to support an allegation contained in a petition for postconviction relief. *See Austin v. State*, 287 Ark. 256, 697 S.W.2d 914 (1985) (per curiam). Because petitioner has failed to demonstrate that need, we deny the motion.

It should be noted that when an appeal or an original action has been filed in this court, the

material pertaining to it remains permanently on file with the clerk, unless it is being maintained under seal. Persons may review the material in the clerk's office and photocopy all or portions of it. An incarcerated person desiring a photocopy of a 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).

Motions denied.