

SUPREME COURT OF ARKANSAS

No. CR-06-1327

TERRY LEE WARD

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered June 6, 2013

PRO SE MOTION FOR COPIES AT PUBLIC EXPENSE OF SEALED RECORDS, SEALED DOCUMENTS, SEALED VIDEOTAPES, SEALED PICTURES AND SEALED INFORMATION FROM RECORD ON APPEAL AND MOTION FOR IMMEDIATE ACTION ON MOTION [PULASKI COUNTY CIRCUIT COURT, 60CR-05-4985]

MOTION FOR COPIES AT PUBLIC EXPENSE DENIED; MOTION FOR IMMEDIATE ACTION ON MOTION MOOT.

PER CURIAM

In 2006, petitioner Terry Lee Ward was sentenced to life imprisonment for the rape of an eleven-year-old girl. We affirmed. *Ward v. State*, 370 Ark. 398, 260 S.W.3d 292 (2007).

In the course of petitioner's bifurcated trial, the prosecution introduced evidence that was seized from petitioner's recreational vehicle, including a videotape of a child getting into and out of the shower and numerous compact discs containing thousands of pornographic pictures. After the record was lodged on appeal, the State filed a motion to seal certain parts of the record and briefs containing material that showed naked minors and argued that good cause existed to protect minors from embarrassment and exploitation. We granted the

motion, noting that the request was a particularized request for which good cause had clearly been asserted. *Ward v. State*, 369 Ark. 313, 253 S.W.3d 927 (2007) (per curiam).

On May 10, 2013, petitioner filed the instant motion, seeking at public expense a copy of the following material from the record lodged on direct appeal, most of which appears to be included in the material under seal: records; documents; both original and any copy of the videotape of the child getting into and out of the shower; pictures and information, including a description “by the seconds with meter readouts every ten seconds,” of the original and any copy of the shower videotape. Petitioner appended his affidavit of indigency to the motion. He asks by motion that immediate action be taken on the request.

As grounds for the request for the copies, petitioner states that he was denied access to the material at trial and has a need to know what exactly was contained in the evidence in order to file effective and meaningful petitions. Also, without further explanation, he expresses concern that the shower videotape could be altered or edited. Petitioner offers no statement as to what issues he desires to raise in future petitions that would require access to the material he requests and no statement as to what postconviction remedy is available to him at this time.

Indigency alone does not entitle a petitioner to free copying of any material on file with this court. *See Mendiola v. State*, 2013 Ark. 92 (per curiam); *see also Daniels v. State*, 2012 Ark. 124 (per curiam); *Cox v. State*, 2011 Ark. 96 (per curiam); *Evans v. State*, 2009 Ark. 529 (per curiam); *Nooner v. State*, 352 Ark. 481, 101 S.W.3d 834 (2003) (per curiam). As with requests for photocopying of transcripts and other written material at public expense, a

petitioner seeking a copy of exhibits introduced at trial that are contained in a record on file with this court or the Arkansas Court of Appeals¹ must show a compelling need for the copy to support a specific allegation contained in a timely petition for postconviction relief. See *Mendiola*, 2013 Ark. 12; see also *Vance v. State*, 2012 Ark. 254 (per curiam); *Daniels*, 2012 Ark. 124; *Henderson v. State*, 2011 Ark. 522 (per curiam); *Hickey v. State*, 2010 Ark. 299 (per curiam); *Avery v. State*, 2009 Ark. 528 (per curiam); *Bradshaw v. State*, 372 Ark. 305, 275 S.W.3d 173 (2008) (per curiam).

If there is indeed a timely postconviction remedy available to petitioner, he has not demonstrated that there is any particular issue that he cannot adequately raise to the court without access to the material he seeks to obtain. Accordingly, he has failed to show that the material should be provided to him. *Mendiola*, 2013 Ark. 92; see also *Daniels*, 2012 Ark. 124; *Hickey*, 2010 Ark. 299; *Johnson v. State*, 2010 Ark. 15 (per curiam).

It should also be noted that when material in a direct appeal or other proceeding in this court is placed under seal, it is sealed for good cause after careful consideration. We have recognized the inherent authority of the trial court to control court records, and, thus, the right to inspect public records is not absolute. *Ward*, 369 Ark. 313, 253 S.W.3d 927. A request for sealing a file, or part of a file, must be particularized and must state some good cause. *Id.* (citing *Arkansas Dep't of Human Servs. v. Hardy*, 316 Ark. 199, 124, 871 S.W.2d

¹With respect to post-appeal motions that seek a copy at public expense of transcripts lodged in an appeal or other material on file with either this court or the court of appeals, this court rules on the motions because such motions are considered to be requests for postconviction relief. *Mendiola*, 2013 Ark. 92; *Daniels*, 2012 Ark. 124 (citing *Williams v. State*, 273 Ark. 315, 619 S.W.2d 628 (1981)(per curiam)).

352, 355 (1994)). Motions to release sealed material are decided on a case-by-case basis, and petitioner here has fallen far short of demonstrating that he is entitled to a copy of any material on file with this court, whether it be among the sealed portions of the file or any other portion of the file.

Motion for copies at public expense denied; motion for immediate action on motion moot.

Terry Lee Ward, pro se petitioner.

No response.