

# ARKANSAS SUPREME COURT

No. CACR 07-962

HOZIE ERVIN, JR.  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

Opinion Delivered      December 4, 2008

PRO SE MOTION FOR PHOTOCOPY  
OF TRANSCRIPT AT PUBLIC  
EXPENSE [CIRCUIT COURT OF  
PULASKI COUNTY, CR 2006-3518]

MOTION DENIED.

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## PER CURIAM

Petitioner Hozie Ervin, Jr., was found guilty of committing a terroristic act, two counts of aggravated assault, and committing a felony with a firearm. He was sentenced as a habitual offender to serve an aggregate term of 480 months' imprisonment. The Arkansas Court of Appeals affirmed. *Ervin v. State*, CACR 07-962 (Ark. App. June 4, 2008).

Petitioner, who contends that he is indigent, now seeks at public expense a copy of the trial transcript lodged on appeal.<sup>1</sup> As grounds for the request, petitioner states only that he cannot file a proper petition pursuant to Arkansas Rule of Criminal Procedure 37.1 without a copy of the transcript. Petitioner does not refer to any particular allegation he desires to raise in a Rule 37.1

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<sup>1</sup>For clerical purposes, the motion has been filed under the docket number assigned to the direct appeal of the judgment that was lodged in the Arkansas Court of Appeals. This court decides all motions for photocopying at public expense 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).

petition. Moreover, the time to file a petition had already elapsed when the instant motion was filed.<sup>2</sup>

Indigency alone does not entitle a petitioner to free photocopying. *Washington v. State*, 270 Ark. 840, 606 S.W.2d 365 (1980) (per curiam). A petitioner is not entitled to a photocopy of material on file with either appellate court unless he or she demonstrates 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). Petitioner has not made a showing of compelling need for a copy of the transcript of his trial.

It should be noted that when an appeal has been lodged in either this court or the court of appeals, the appeal transcript remains permanently on file with the clerk. Persons may review a transcript in the clerk's office and photocopy all or portions of it. An incarcerated person desiring a photocopy of a transcript 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).

Motion denied.

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<sup>2</sup>Criminal Procedure Rule 37.2(c) provides in pertinent part that a petition for postconviction relief must be filed within sixty days of the date the mandate was issued following affirmance of the judgment of conviction. The mandate in this case was issued June 24, 2008. Petitioner filed this motion 104 days after that date. Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Benton v. State*, 325 Ark. 246, 925 S.W.2d 401 (1996) (per curiam).