

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,

v.

ANTONIO RUSSELL,

Defendant.

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ID No. 1707010054

Date Submitted: September 25, 2019

Date Decided: November 15, 2019

ORDER

Upon consideration of Defendant's *pro se* Motion for Transcripts and *In Forma Pauperis* Affidavit, **IT APPEARS THAT:**

1. On September 25, 2019, Defendant filed a Motion for Transcripts and an *In Forma Pauperis* Affidavit, requesting the production of his January 25, 2019 Sentencing transcript at State expense.<sup>1</sup> Defendant states that he needs this transcript in order to file a motion for postconviction relief under Delaware Superior Court Criminal Rule 61.

2. "There is no blanket constitutional right to a free transcript for the purpose of preparing a post-trial motion."<sup>2</sup> Instead, "[t]he Constitution requires that materials such as transcripts are provided only after judicial certification that they

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<sup>1</sup> D.I. 53.

<sup>2</sup> *State v. Whitfield*, 2007 WL 3108331, at \*1 (Del. Super. Oct. 23, 2007) (citing *State v. Allen*, 2002 WL 31814750, at \*1 (Del. Super. Nov. 4, 2002)); see also *Miller v. State*, 2008 WL 623236, at \*2 (Del. Mar. 7, 2008) (citing *United States v. MacCollum*, 426 U.S. 317, 325–26 (1976)).

are necessary to decide non-frivolous issues in a pending case.”<sup>3</sup> Pursuant to Rule 61(d)(4), the Court “may order the preparation of a transcript of any part of the prior proceedings in the case needed to determine whether the movant may be entitled to relief.”<sup>4</sup> Thus, it is within the discretion of the Court to review the motion and the contents of the record and determine whether to order preparation of a transcript at State expense.<sup>5</sup> “[W]hen a defendant offers no factual basis and fails to clearly identify the fundamental rights he claims were violated, the Court will deny the motion.”<sup>6</sup>

3. While the Court evaluates *pro se* pleadings under a “‘less stringent standard’ than a pleading filed by an attorney, there are limits to this rule of liberal

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<sup>3</sup> *State v. Fennell*, 2008 WL 4227332, at \*1 (Del. Super. Sept. 15, 2008) (citing *State v. Johnson*, 1999 WL 1568387, at \*1 (Del. Super. Feb. 8, 1999)).

<sup>4</sup> Super. Ct. Crim. R. 61(d)(4); *see also State v. Ketchum*, 2002 WL 234745, at \*1 (Del. Super. Jan. 31, 2002) (“[I]t is within the discretion of the judge who has examined the motion and contents of the record to determine whether to order the preparation of a transcript of any part of the proceedings.”).

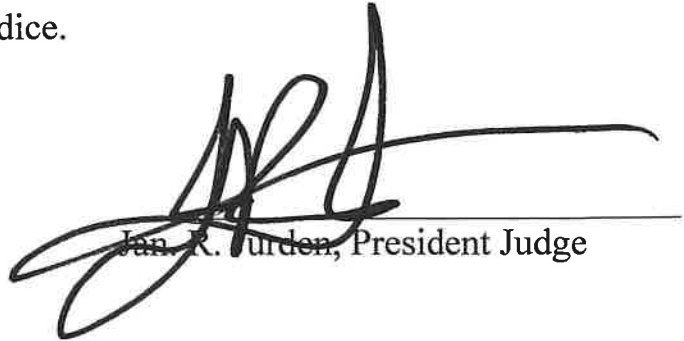
<sup>5</sup> *Fennell*, 2008 WL 4227332, at \*1.

<sup>6</sup> *State v. Allen*, 2002 WL 31814750, at \*1 (Del. Super. Nov. 4, 2002) (quoting *State v. Ketchum*, Del. Super., ID No. 86011157DI, Gebelein, J. (Jan. 31, 2002) (Order)); *see also Demby v. State*, 2014 WL 4898138, at \*2 (Del. Sept. 29, 2014) (“Although indigent defendants have a right to transcripts at State expense on appeal, they do not have an absolute right to transcripts at State expense on collateral attacks. Absent a showing of good cause, it was within the Superior Court’s discretion to deny [Defendant’s] request for transcripts at State expense. Given the conclusory and untimely nature of [Defendant’s] claims, the Superior Court did not abuse its discretion in denying [Defendant’s] motion for transcripts.”); *Brown v. State*, 2014 WL 4264923, at \*3 (Del. Aug. 28, 2014) (“[I]n the absence of a showing of good cause, a defendant does not have a right to free transcripts to pursue postconviction relief.”); *State v. Monroe*, 2008 WL 3865338, at \*1 (Del. Super. Aug. 12, 2008) (citing *Freeman v. State*, 2003 WL 1857605, at \*1 (Del. Apr. 8, 2003)) (“The defendant is required to make a showing of a ‘particularized need’ for a transcript.”).

interpretation,”<sup>7</sup> Defendant’s Motion does not provide information that enables the Court to infer a “particularized need.”<sup>8</sup>

**NOW THEREFORE**, for the foregoing reasons, Defendant’s Motion for Transcript is **DENIED** without prejudice.

**IT IS SO ORDERED.**



Jan. R. Furden, President Judge

Original to Prothonotary

cc: Antonio Russell, *pro se* (SBI# 00836045)  
Matthew B. Frawley, DAG

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<sup>7</sup> *Monroe*, 2008 WL 3865338, at \*1 (citing *Johnson v. State*, 442 A.2d 1362, 1364 (Del. 1982)) (citing *Browne v. Saunders*, 2001 WL 138497 (Del. Feb. 14, 2001)).

<sup>8</sup> *Id.*