

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

JEROME D. CLARK

Defendant.

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I.D. # 0103004655

Date Submitted: August 10, 2005

Date Decided: October 17, 2005

OPINION

Upon Defendant's Pro Se Motion for Transcripts at State's Expense – GRANTED

Appearances:

Loren C. Meyers, Esquire, Department of Justice, Carvel State Building, 820 North French Street, Wilmington, Delaware 19801, for the State of Delaware.

Jerome D. Clark, Delaware Correctional Center, 1181 Paddock Road, Smyrna, Delaware 19977, Defendant, *pro se*.

JURDEN, J.

Background

On July 26, 2002, the defendant, Jerome D. Clark, was found guilty of Possession Within 1,000 Feet of a School, a Class G felony. The defendant was sentenced to a prison term of four years at supervision Level V, to be suspended after serving two years, for two years at supervision Level III. On August 5, 2005, the defendant appealed this Court's denial of his July 26, 2005 Motion for Correction of Sentence. His appeal is pending before the Delaware Supreme Court. On August 10, 2005, the defendant filed his present Motion for Transcripts at State's Expense with accompanying Affidavit in Support of Motion to Proceed *in forma pauperis*. For the following reasons the defendant's motion is **GRANTED**.

Discussion

Supreme Court Rule 9(h), "*Payment for costs of transcripts*," permits an indigent party to apply for "an order determining responsibility for payment of the cost of the transcript at public expense when such payment is required or permissible under law." As a general rule, indigent criminal defendants are "entitled, at public expense, to all or such portions of the transcript of their trial as may be necessary" to appeal a criminal sentence.¹ As the United States Supreme Court has held, "[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has."²

Presently, the defendant seeks copies of three transcripts to complete his record on appeal. The defendant's August 5, 2005 Notice of Appeal designated the following transcripts in accordance with Supreme Court Rules 7(c)(6) and 9(e)(ii): the July 26, 2002 sentencing hearing, the August 6, 2004 violation of probation hearing and the June 21, 2005 violation of probation

¹ *State v. Pendry*, 367 A.2d 624, 627 (Del. 1976), citing *Griffin v. Illinois*, 351 U.S. 12, 76 (1956).

hearing. The certificate of service attached to the defendant's Notice of Appeal indicates it was served on the Superior Court Reporter and the Clerk of the Supreme Court on August 4, 2005. Thus, the defendant has complied with the procedural requirements of Supreme Court Rule 9(c)(ii). Further, the defendant provides sufficient evidence to establish his inability to pay fees associated with preparation of these transcripts. In his "Affidavit in Support of Application to Proceed *in forma pauperis*," the defendant states he has no bank account, no real estate, and no personal property.³ He also states that during his incarceration he has incurred debts to the Department of Correction for legal expenses and mailing supplies.⁴

Accordingly, for the foregoing reasons, the Defendant's Motion for Transcripts is **GRANTED**. The Court orders the Superior Court Reporter to prepare transcripts of the July 26, 2002 sentencing hearing, the August 6, 2004 violation of probation hearing, and the June 21, 2005 violation of probation hearing, forthwith, at State expense.

IT IS SO ORDERED.

Jan R. Jurden, Judge

² *Griffin v. Illinois*, 351 U.S. 12, 19 (1956).

³ Affidavit in Support of Motion to Proceed *in forma pauperis* at 3, 5.

⁴ *Id.* at 5.