

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	I.D. # 86013220DI
)	
SAMUEL B. BISHOP,)	
)	
Defendant.)	

Date Submitted: March 14, 2006
Date Decided: May 17, 2006

ORDER

*Upon Defendant's Pro Se Motion for Transcripts at State's Expense: **DENIED***

Mark H. Conner, Esquire, Deputy Attorney General, Department of Justice, 820 North French Street, Wilmington, Delaware, 19801, Counsel for the State.

Samuel B. Bishop, Delaware Correctional Center, 1181 Paddock Road, Smyrna, Delaware, 19977, Defendant, *Pro Se*.

JURDEN, J.

Samuel B. Bishop (hereinafter the “Defendant”) filed the instant Motion for Transcripts at the State’s Expense. For the reasons that follow, the Defendant’s Motion is **DENIED**.

I. Factual and Procedural Background

On April 24, 1979, a jury convicted the Defendant of Rape in the First Degree and Kidnapping in the First Degree. On June 15, 1979, the Court sentenced the Defendant to two consecutive life sentences at Level V. The Defendant appealed his conviction and on September 25, 1980, the Supreme Court affirmed the judgment of this Court. Since that time, the Defendant has regularly petitioned the Court for relief. His filings include four Motions for Postconviction Relief,¹ two Motions for Transcripts,² two Motions for Modification of Sentence,³ and one Motion for Correction of Sentence.⁴ The Court denied all of these motions. The present Motion of Transcripts, submitted on February 14, 2006, is the Defendant’s third such Motion.⁵

II. Summary of Defendant’s Request

The Defendant requests all trial transcripts, tapes made by the victim, tape recorded statements, the jury charge and sentencing transcripts. He states that he is

¹ See D.I. 24, 32, 40, 60.

² See D.I. 28, 39.

³ See D.I. 49, 58.

⁴ See D.I. 31.

⁵ D.I. 63.

an indigent, incarcerated *pro se* defendant, who requires these transcripts to proceed with his postconviction remedies.⁶ He asserts that this information is needed to “send to Courts or Office of Disciplinary Counsel ... Board of Professional Responsibility... on Edward Pankowski...” presumably because there “should of been a FBI DNA test.”⁷

III. Discussion

“There is no blanket constitutional right to a free transcript for the purpose of preparing a post-trial motion.”⁸ “The Constitution requires that materials such as transcripts are provided only after judicial certification that they are necessary to decide nonfrivolous issues in a pending case.”⁹ Superior Court Criminal Rule 61(d)(3) states: “[t]he judge 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.” Therefore, “it is within the discretion of the Judge who examines the Motion and contents of the record to determine whether to order preparation of a transcript....”¹⁰

A “criminal defendant who fails to articulate specific allegations of

⁶ See Mot. for Transcripts, *State v. Bishop*, I.D. 86013220DI (Feb. 14, 2006) (D.I. 63).

⁷ Mot. for Transcripts, D.I. 63, at 3.

⁸ *State v. Allen*, 2002 WL 31814750, at *1 (Del. Super.); see e.g. *State v. Quill*, 1999 WL 1229313, at *1 (Del. Super.).

⁹ *State v. Johnson*, 1999 WL 1568387, at *1 (Del. Super.), citing *State v. Bordley*, 1989 WL 135691, at *1 (Del. Super.).

¹⁰ *State v. Quill*, 1999 WL 1229313, at *1 (Del. Super.).

constitutional infirmity is not entitled to a transcript as a matter of right.”¹¹ The decisions of this Court make clear that “when the defendant offers no factual basis and fails to clearly identify any fundamental rights that were violated, the Court will find the defendant’s claim ‘frivolous’ and deny the motion.”¹²

The Defendant has failed to articulate any facts in his motion that relate to “specific, nonfrivolous issues.”¹³ Thus, the Defendant is not entitled to transcripts. Moreover, the Court reminds the Defendant that it summarily dismissed his May 17, 2005 Motion for Postconviction Relief (in which he alleged “that he was denied DNA testing when it became available after his conviction”) because (1) his claim was time-barred, and (2) he failed “to meet the criteria for post-conviction forensic DNA testing.”¹⁴

The Defendant’s Motion for Transcripts at the State’s Expense is **DENIED**.

IT IS SO ORDERED.

Judge Jan R. Jurden

¹¹ *State v. Johnson*, 1999 WL 1568387, at *1 (Del. Super.), citing *Mazzatenta v. State*, 1991 WL 148285, (Del. Supr.).

¹² *State v. Boardley*, 1992 WL 354176, at *1 (Del. Super.).

¹³ *State v. Johnson*, 1999 WL 1568387 at *1 (Del. Super.).

¹⁴ *State v. Bishop*, 2005 WL 1952861, at *1 (Del. Super.).