

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DERRICK LEE SMITH, #267009,

Petitioner,

v.

CASE NO. 5:10-11052
HONORABLE JOHN CORBETT O'MEARA

NICK LUDWICK,

Respondent.

ORDER DENYING PETITIONER'S MOTION FOR A STATEMENT [dkt. #15]

This is a habeas corpus case under 28 U.S.C. § 2254. The case has been stayed and closed for administrative purposes while Petitioner pursues additional post-conviction remedies in state court.

Pending before the Court is Petitioner's "Motion to Have Statement Swearing that the Trial Court did in Fact Provide One Complete Copy of the Trial Court Record as Stated in November 4, 2010 Court Ruling Stating so in Order of Denial of Transcripts Entire Court File Without Oral Argument." The motion appears to challenge Wayne County Circuit Judge Daniel P. Ryan's order dated November 4, 2010. In that order, Judge Ryan denied Petitioner's request for a copy of his entire criminal case file. Judge Ryan stated in his order that Petitioner was not entitled to the requested copies because the entire court file, including the transcripts, was sent to Petitioner's appellate attorney.

Petitioner appears to be saying in his pending motion before this Court that neither the trial court, nor his appellate attorney, provided him with a complete copy of

the trial court record, as alleged by Judge Ryan. Petitioner claims that, pursuant to Michigan Court Rule 5.433, he is entitled to one free copy of the entire state court record for purposes of pursuing post-conviction relief.

This Court is not free to overturn Judge Ryan's ruling on a matter of state law. *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624, 629-630 (1988); *Landrum v. Mitchell*, 625 F.3d 905, 923 (6th Cir. 2010), *petition for cert. filed*, No. 10-9911 (U.S. Apr. 4, 2011). Furthermore, Petitioner "has no constitutional right to a transcript to prepare for a post-conviction proceeding." *Rickard v. Burton* 2 F. App'x 469, 470 (6th Cir. 2001) (citing *Ruark v. Gunter*, 958 F.2d 318, 319 (10th Cir. 1992), and *United States v. MacCollum*, 426 U.S. 317, 325-26 (1976) (plurality) (upholding constitutionality of statute limiting availability of free transcripts in federal habeas corpus actions)). Therefore, this Court cannot grant the requested relief, and Petitioner's Motion for a Statement [dkt. #15] is **DENIED**.

s/John Corbett O'Meara
United States District Judge

Date: July 5, 2011

I hereby certify that a copy of the foregoing document was served upon the counsel of record on this date, July 5, 2011, using the ECF system and upon Petitioner at Michigan Reformatory, 1342 West Main Street, Ionia, MI 48846 by first-class U.S. mail.

s/William Barkholz
Case Manager