

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

HENRY LEE CRAIG

PETITIONER

v.

CAUSE NO. 1:16CV371-LG-FKB

**J. BRADLEY, Warden, and
G. WALKER, Warden**

RESPONDENTS

**ORDER DENYING MOTION FOR RELEASE FROM
CUSTODY/DISCHARGE FROM MISSISSIPPI DEPARTMENT
OF CORRECTION CUSTODY AND MOTION FOR TRANSCRIPT**

BEFORE THE COURT are the Motion [48] for “Release from Custody/Discharge from Mississippi Department of Correction Custody” and Motion [49] for “Transcript of Cause No. 1:16CV371-LG-FKB for Appeal” filed by the petitioner Henry Lee Craig. After reviewing the Motions, the record in this matter, and the applicable law, the Court finds that both Motions should be denied.

BACKGROUND

A Jackson County, Mississippi jury convicted Craig of murder, and he was sentenced to life in prison. After the Mississippi Court of Appeals affirmed his conviction, Craig filed a petition for writ of habeas corpus. This Court dismissed Craig’s petition as untimely on August 24, 2017. Craig filed a Notice of Appeal of the dismissal of his petition on September 21, 2017. Soon afterwards, he filed a Motion for Release from Custody/Discharge from MDOC Custody, citing insufficient evidence and wrongful deprivation of his federal constitutional rights. He also filed a Motion for Transcript in which he seeks a copy of the “transcript/record of this . . .

cause 1:16cv371-LG-FKB to supporting relating [sic] facts/evidence in his appellant [sic] appeal.”

DISCUSSION

“Generally, the filing of a valid notice of appeal from a final order of the district court divests that court of jurisdiction to act on the matters involved in the appeal, except to aid the appeal, correct clerical errors, or enforce its judgment” *In re Hermesmeier*, 688 F. App’x 300, 303-04 (5th Cir. 2017) (citing *Avoyelles Sportsmen’s League, Inc. v. Marsh*, 715 F.2d 897, 928 (5th Cir. 1983)). The aiding the appeal exception permits the district court to “tak[e] any steps during the pendency of the appeal that will assist the court of appeals in its determination.” *Id.* at 304.

Craig’s Motion seeking release from custody for insufficient evidence and violation of his constitutional rights pertains to the merits of Craig’s appeal before the Fifth Circuit. In order to grant the relief Craig requests, this Court would be required to first rescind its Order dismissing Craig’s petition as untimely. The timeliness of Craig’s petition is a matter that is pending before the Fifth Circuit. Therefore, this Court does not have jurisdiction to consider the Motion for release from custody, and the Motion must be denied.

The Court does have jurisdiction to consider Craig’s Motion for copies of transcripts and pleadings filed in this matter, because resolution of that Motion could aid the appeal. However, “[a]n indigent habeas prisoner is not entitled to a free copy of his trial transcript and record to search for possible . . . defects merely

because he is an indigent.” *Johnson v. Johnson*, No. 98-10947, 194 F.3d 1309, at *1 (5th Cir. Sept. 3, 1999); *see also Brewer v. Dir. of Miss. Dep’t of Corr.*, No. 2:09cv224-P-S, 2010 WL 503062, at *2 (N.D. Miss. Feb. 8, 2010). Craig has not explained how the pleadings he seeks would assist him in preparing his appeal, and it is unlikely that the pleadings would assist him because his petition was dismissed as untimely. As a result, Craig’s Motion for copies of transcripts and pleadings is denied.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Motion [48] for Release from Custody/Discharge from Mississippi Department of Correction Custody and Motion [49] for Transcript of Cause No. 1:16CV371-LG-FKB for Appeal filed by the petitioner Henry Lee Craig are **DENIED**.

SO ORDERED AND ADJUDGED this the 8th day of November, 2017.

s/ *Louis Guirola, Jr.*
Louis Guirola, Jr.
United States District Judge