IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

JASON WILLIAM ATTRIDE,

Petitioner,

v. Case No. 5D19-2614

DIANE K. DAVISON, ESQUIRE,

Respondent.

_____/

Opinion filed February 28, 2020

Petition for Writ of Mandamus,
A Case of Original Jurisdiction.

Jason William Attride, Mayo, pro se.

Diane K. Davison, of Diane K. Davison, Law Office, P.L., Jacksonville, for Respondent.

LAMBERT, J.

Jason William Attride petitions this court for a writ of mandamus to compel his former court-appointed appellate counsel, Diane K. Davison,[1] to provide him with a copy of the approximately 2600-page record from his criminal case that was prepared by the clerk of the circuit court and transmitted to Davison for Attride's direct appeal. At first

[1] Attorney Davison is a private attorney who was appointed by the court to represent Attride on direct appeal following the previous withdrawals of the Public Defender's Office and the Office of Regional Conflict Counsel.

blush, the resolution to this proceeding would seem clear, as it is undisputed that Attride was an indigent defendant in a criminal case and that these records were prepared at public expense. *See generally LaFlower v. State*, 929 So. 2d 58, 58 (Fla. 5th DCA 2006) (recognizing that an indigent defendant in a criminal case is entitled to copies of depositions and transcripts, or any other materials in his former attorney's possession that were prepared at public expense) (citations omitted). However, as we explain, because Attride appears to raise a factual dispute as to whether or not his counsel has complied with his request to provide him with a copy of these records, we find that this matter is better addressed by the trial court.

Attride appealed his judgment and prison sentence that was imposed by the trial court following a negotiated plea. After Attride's direct appeal was eventually dismissed by court order for lack of jurisdiction, Attride requested that Davison provide him with a copy of the records from his criminal case that were prepared by the clerk of the circuit court for the appeal. Unhappy with Davison's response, Attride filed the present mandamus petition, later amended, asking that we issue a writ compelling Davison to provide him with a copy of these records.

We ordered Davison to respond to Attride's amended petition, which she did. Davison raised no issue with Attride's entitlement to a copy of the records. Her response was that she received the approximately 2600-page record from the clerk of the circuit court "in only PDF/CD form" and that she sent these records in the same PDF/CD format to Attride at the correctional facility where Attride was housed. Davison acknowledges

that this PDF/CD record has subsequently been returned to her by the facility.[2] She states that she is willing to provide Attride with a separate paper copy of these records, as long as Attride pays her the estimated $350 cost for the printing and shipping. Davison explains that, upon inquiry, she has been advised that this cost will not be reimbursed to her by the State and contends that she should not be required to pay $350 out of her own pocket.

Attride was given leave by this court to reply to Davison's response, which he did. Pertinent here, Attride challenged the truthfulness of Davison's representations that the circuit court clerk only provided the appellate record to her in a PDF/CD format. Resultingly, Attride disputes that Davison has provided him with a copy of his records "in the same format it was received by Davison."

We find that, for two reasons, the present dispute should initially be addressed in the trial court. First, by questioning whether Davison received the records of his criminal court proceedings for his appeal only in PDF/CD format, as opposed to also receiving a paper copy, Attride raises a factual dispute which, as an appellate court, we are not suited to resolve. *See Dumas v. Marrero*, 864 So. 2d 531, 532 (Fla. 5th DCA 2004) ("An appellate court is not an appropriate forum to consider the issues raised by this petition [seeking records from appointed counsel] because we do not conduct evidentiary or fact-finding hearings."). Thus, an evidentiary hearing is required to resolve whether Davison also received a paper copy of the appellate record.

Second, at this evidentiary hearing, if the trial court finds that Davison received the

[2] Florida Administrative Code Rule 33-210.102(6)(b)1. precludes inmates in the Florida Department of Corrections from receiving "[n]on-paper items" in their legal mail.

subject records from the clerk of the circuit court solely in the non-paper PDF/CD format, then a separate determination would appear necessary to address whether a clerk of court should also prepare and provide a separate paper copy of the trial court proceedings in a criminal case, in addition to the PDF/CD formatted copy of the records, to court-appointed counsel where, as here, counsel is representing an indigent, incarcerated defendant on direct appeal. *See Lewis v. State*, 142 So. 3d 879, 880 (Fla. 1st DCA 2014) (explaining that as a "practical, working solution," the clerk of court should provide a paper copy of the trial court record to appointed counsel representing an indigent defendant on appeal "until such time as a rule or statute provides otherwise"). The clerk of the circuit court is not a party to the mandamus proceedings here and would seemingly need to be a party below when the trial court addresses these two issues.

Accordingly, we deny Attride's amended petition for writ of mandamus, but we do so without prejudice to Attride seeking relief in the trial court.[3]

AMENDED PETITION DENIED, without prejudice.

EDWARDS and HARRIS, JJ., concur.

[3] Attride also expressed concern in the amended petition that his inability to obtain a paper copy of the requested records is impeding his ability to timely pursue postconviction relief under Florida Rule of Criminal Procedure 3.850. That issue is not directly before us, and is also better addressed by the postconviction court. *See Petit-Frere v. State*, 108 So. 3d 681, 683 (Fla. 2d DCA 2013) ("A postconviction court may, under rule 3.050, extend the two-year rule 3.850 deadline 'for good cause shown.'" (quoting *State v. Boyd*, 846 So. 2d 458, 460 (Fla. 2003))).