

RENDERED: DECEMBER 19, 2008; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-002078-MR

THOMAS WALTON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A.C. MCKAY CHAUVIN, JUDGE
ACTION NO. 99-CR-000052

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: FORMTEXT COMBS, CHIEF JUDGE; DIXON AND TAYLOR,
JUDGES.

TAYLOR, JUDGE: Thomas Walton brings this *pro se* appeal from a July 24,
2007, Order of the Jefferson Circuit Court denying his Motion to Obtain a
Certified Copy of the Complete and Accurate Court Record. We affirm.

Walton was indicted by a Jefferson County Grand Jury upon the
offense of rape in the first degree. In the indictment, it was alleged that Walton

engaged in sexual intercourse with a child less than twelve years of age. Following a jury trial, Walton was convicted of first-degree rape and sentenced to life imprisonment. The Kentucky Supreme Court affirmed Walton's conviction in Appeal No. 2001-SC-001013-MR.

On July 12, 2007, Walton filed a motion seeking to obtain a copy of the circuit court record at the Commonwealth's expense. Therein, Walton asserted that he was entitled to the circuit court record under the United States Constitution and Kentucky Constitution. He sought the record in order to prepare a Kentucky Rules of Criminal Procedure (RCr) 11.42 motion to vacate sentence. By order entered July 24, 2007, the circuit court denied Walton's motion. This appeal follows.

Walton argues that the circuit court erred by denying his motion for a copy of the circuit court record at the Commonwealth's expense. Specifically, Walton claims that he is entitled to the record under the Equal Protection Clause of the United States Constitution and Kentucky Constitution. By improperly denying the motion, Walton alleges the circuit court prevented him from effectively preparing an RCr 11.42 motion for postconviction relief.

It is well-established that the Equal Protection Clause of the United States Constitution and Kentucky Constitution requires an indigent criminal defendant be provided a free copy of the circuit court proceeding if he has filed a postconviction motion establishing a valid basis for relief. *Jones v. Breslin*, 385 S.W.2d 71 (Ky. 1964); *Gilliam v. Com.*, 652 S.W.2d 856 (Ky. 1983). However, it

has also been recognized that an indigent defendant is not entitled to be furnished with a free copy of the circuit court proceeding for the purpose of simply preparing to file a motion for postconviction relief. *Jones*, 385 S.W.2d 71, *Gilliam*, 652 S.W.2d 856. Simply put, an indigent criminal defendant is entitled to a copy of the circuit court record at the Commonwealth's expense if he has filed a postconviction motion asserting valid grounds for relief; on the other hand, an indigent criminal defendant is not entitled to a copy of the circuit court record at the Commonwealth's expense to merely assist in the preparation of a motion for postconviction relief. The distinction is pivotal.

In the case *sub judice*, the record clearly demonstrates that Walton has not filed a motion for postconviction relief. Rather, Walton seeks a copy of the circuit court record to simply assist him in preparing an RCr 11.42 motion. As such, the circuit court was not required to furnish Walton a copy of the record at the Commonwealth's expense. *See Gilliam*, 652 S.W.2d 856. Accordingly, we hold that the circuit court properly denied Walton's motion to obtain a copy of the circuit court record at the Commonwealth's expense.

For the foregoing reasons, the Order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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