

RENDERED: JANUARY 14, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2010-CA-000053-MR

JONATHAN A. BEXLEY

APPELLANT

v. APPEAL FROM POWELL CIRCUIT COURT  
HONORABLE FRANK A. FLETCHER, JUDGE  
ACTION NO. 05-CR-00154

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KELLER AND THOMPSON, JUDGES; SHAKE,<sup>1</sup> SENIOR JUDGE.

THOMPSON, JUDGE: Jonathan A. Bexley filed this *pro se* appeal from an order denying his motion to obtain a copy of the trial court record at no expense. We affirm.

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<sup>1</sup> Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Pursuant to a guilty plea, on July 25, 2007, Bexley was sentenced to twenty-years' imprisonment for six counts of first-degree wanton assault, one count of fourth-degree wanton assault, one count of leaving the scene of an accident, one count of operating a motor vehicle under the influence of an intoxicant, one count of failure to maintain insurance and one count of resisting arrest. No direct appeal was filed.

In December 2007, the Powell Circuit Court Clerk received a "letter" from Bexley requesting a copy of the court record. The Clerk responded by informing Bexley that the record was available at a cost of twenty-five cents per page and that a copy of the hearing transcript would have to be obtained directly from the court reporter.

Subsequently, Bexley filed a "motion to order production of documents and record" and a "motion to produce file of attorney of record." Two days later, he filed a motion to proceed *in forma pauperis*. Although the trial court granted Bexley's motion to proceed *in forma pauperis*, it denied his motions seeking his court records. No appeal was taken from the court's order.

On October 29, 2009, Bexley filed a "motion to obtain court records," requesting a copy of the transcript of record as well as any video recordings stating that he needed the records to prepare an RCr 11.42 motion. The trial court denied

the motion on November 16, 2009, and Bexley filed a timely notice of appeal.<sup>2</sup>

Bexley asserts that he is entitled to obtain a copy of his court records in his action at state expense prior to filing his RCr 11.42 motion. The law is to the contrary.

The Kentucky Supreme Court has held that an indigent criminal defendant is not entitled to a copy of the court record at the expense of the state for the purpose of preparing to file a motion for post-conviction relief. *Jones v. Breslin*, 385 S.W.2d 71 (Ky. 1964); *Gilliam v. Commonwealth*, 652 S.W.2d 856 (Ky. 1983). In *Bowling v. Commonwealth*, 964 S.W.2d 803 (Ky. 1998), the Court explained that ten days after entry of the final judgment the trial court has no jurisdiction to consider a motion made in preparation of filing a post-conviction motion. It further stated that:

It could be reinvested with jurisdiction only upon the filing of a proper motion under RCr 11.42 or CR 60.02, or a petition for a writ of habeas corpus under KRS 439.020, *et seq.* *T. Bowling v. Commonwealth*, Ky., 926 S.W.2d 667, 669-70 (1996); *Jones v. Breslin*, Ky., 385 S.W.2d 71 (1964). In fact, in *T. Bowling v. Commonwealth*, *supra*, we held that a “pre-RCr 11.42 motion” was a legal nonentity. *Id.* at 669. A defendant may choose not to file for post-judgment relief from his conviction and sentence. Until and unless he does so, he is not entitled to funds for investigations or “fishing expeditions.” *Gilliam v. Commonwealth*, Ky., 652 S.W.2d 856 (1983); *Moore v. Ropke*, Ky., 385 S.W.2d 161 (1964).

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<sup>2</sup> After the notice of appeal was filed, Bexley filed a “motion for ruling” regarding his *in forma pauperis* motion, which to this Court, appears to have been futile because the trial court had previously granted Bexley’s motion to proceed *in forma pauperis*. We mention it only to clarify that Bexley did not appeal the trial court’s order regarding that motion.

*Id.* at 804. If Bexley “files a sufficient motion under RCr 11.42 his rights will be fully protected and he . . . will have all records available.” *Jones*, 385 S.W.2d at 72. Until that time, he is not entitled to the records at state expense.

This Court notes that denying an indigent criminal defendant a copy of the court records at state expense until he files a post-conviction motion would seem to encourage frivolous motions. Without a copy of the proceedings, the motion must be filed without being fully researched or supported by the record. In an era when court proceedings are routinely electronically recorded and transcription costs rare, it may serve the Court and the citizens of the Commonwealth that the issue be revisited by our Supreme Court or the General Assembly. However, we cannot deviate from established precedent.

For the foregoing reasons, the order of the Powell Circuit Court is affirmed.

ALL CONCUR.

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