

**01-093**

**CRIMINAL PROCEDURE: SENTENCE; JUDGMENT;  
EXECUTION OF SENTENCE.**

**COURTS OF RECORD: CLERKS, CLERKS' OFFICES AND  
RECORDS — CIRCUIT COURTS.**

**Circuit court, and not clerk, must make specific finding that indigent defendant has demonstrated particularized need for free copy of his trial transcript. Funds expended for preparation of transcript for indigent defendant may be reimbursed pursuant to circuit court order specifically providing for such payment. Indigent defendant previously provided with copy of arrest warrant, indictments and conviction orders is not entitled to additional copies. Circuit court clerk may not waive fees for copying document previously furnished to indigent defendant at no charge.**

The Honorable Judy L. Worthington  
Clerk, Circuit Court of Chesterfield County  
October 30, 2001

You inquire regarding the fees associated with preparing and furnishing copies of transcripts and other court documents requested by an indigent defendant.

You relate that an incarcerated defendant, acting pro se,<sup>1</sup> has filed a motion *in forma pauperis*<sup>2</sup> and a sketch order to obtain, without charge, copies of his trial records. You advise that the defendant needs these documents to prepare an appeal of his criminal conviction, a writ of habeas corpus, and a motion to vacate his conviction. You advise that the defendant specifically requested the clerk to arrange for the transcription of his criminal trial and each hearing regarding this matter, and to provide copies of his arrest warrants, indictments, orders of conviction, sentencing orders, the table of contents of his trial record, and the aforementioned transcripts.

You advise further that, although the defendant was convicted in 1997, he has yet to file a motion to vacate, notice of appeal, or petition for writ of habeas corpus. In addition, you advise that the defendant, prior to conviction, was provided, free of charge, copies of his arrest warrant, indictment and conviction order. You also relate that the defendant entered a guilty plea and was represented by counsel at trial. Finally, you state that you are not aware of any statute that requires the Commonwealth to pay

for the transcription of proceedings furnished, at no charge, to a defendant who has not filed a notice of appeal or a petition for writ of habeas corpus. You also note that neither the Compensation Board nor the county has allocated an appropriation for such a transcription to be paid out of the clerk's budget.

You first ask whether a circuit court clerk may waive fees associated with preparing or furnishing a transcript requested by an indigent defendant who has not filed a notice of appeal or petition for writ of habeas corpus.

An indigent defendant is entitled to a free copy of his trial transcript to perfect an appeal.<sup>3</sup> An indigent defendant, however, is not entitled to a copy of a trial transcript at public expense, even though the transcript is already in existence, for the purpose of combing the record in the hope of discovering some error.<sup>4</sup> An indigent defendant must demonstrate a particularized need for the free copy of the transcript in order to receive it.<sup>5</sup> In the case of *McCoy v. Lankford*, the Supreme Court of Virginia adopted the particularized need standard and held that the indigent defendant petitioning for a writ of habeas corpus should be furnished, without cost, certified copies of the arrest warrants, indictment and conviction order from the criminal file in the circuit court.<sup>6</sup> The Court, however, ruled that such indigent defendant who fails to demonstrate a particularized need for a trial transcript may not have a transcript prepared for his use at public expense.<sup>7</sup> Therefore, the circuit court, and not the clerk, must make a specific finding that the indigent defendant has demonstrated a particularized need for a free copy of his trial transcript.

You next inquire whether a circuit court clerk may bill the Commonwealth for fees associated with preparing and furnishing a copy of the trial and hearing transcript requested by an indigent defendant who has not filed a notice of appeal or petition for writ of habeas corpus.

Section 1-10, Item 30(A)(3) of the 2000 Appropriation Act allocates to the circuit courts in the Commonwealth funds to be expended "incident to the prosecution of a petition for a writ of habeas corpus by an indigent petitioner."<sup>8</sup> Item 30(A)(3) requires that expenses related to such prosecution "shall be paid upon receipt of an appropriate [circuit court] order."<sup>9</sup> Consequently, any funds expended for the preparation of a transcript for an indigent defendant may be reimbursed *only* pursuant to a valid order of the circuit court specifically providing for such payment.

Your final question is whether a circuit court clerk may waive the fees for copying a document previously furnished, free of charge, to an indigent defendant.

In the Commonwealth, an indigent defendant is entitled to file one habeas corpus petition challenging the validity of his conviction. Any subsequent petition is barred by § 8.01-654(B)(2) of the *Code of Virginia*.<sup>10</sup> Consequently, once the indigent defendant has been provided with a copy of the arrest warrant, indictments and conviction orders, he is not entitled to additional copies.<sup>11</sup> I am of the opinion, therefore, that the circuit court clerk may not waive fees for copying a document previously furnished, free of charge, to an indigent defendant.

<sup>1</sup>"One who represents oneself in a court proceeding without the assistance of a lawyer." Black's Law Dictionary 1237 (7<sup>th</sup> ed. 1999).

<sup>2</sup>"In the manner of an indigent who is permitted to disregard filing fees and court costs." Black's Law Dictionary, *supra*, at 783.

<sup>3</sup>*Cabaniss v. Cunningham*, 206 Va. 330, 334-35, 143 S.E.2d 911, 914 (1965).

<sup>4</sup>*Jones v. Superintendent, Virginia State Farm*, 460 F.2d 150, 152 (4<sup>th</sup> Cir. 1972).

<sup>5</sup>*Id.* at 152-53; see also *Morin v. United States*, 522 F.2d 8, 9 (4<sup>th</sup> Cir. 1975) (holding that defendant is not entitled to be supplied with his attorney's copy of trial transcript, absent showing of "particularized need").

<sup>6</sup>210 Va. 264, 170 S.E.2d 11 (1969); see also *Op. Va. Att'y Gen.: 1970-1971* at 107, 108; *id.* at 189, 192.

<sup>7</sup>*Id.* at 267, 170 S.E.2d at 14; see also *1970-1971 Op. Va. Att'y Gen., supra*.

<sup>8</sup>2000 Va. Acts ch. 1073, at 3220, 3241.

<sup>9</sup>*Id.*

<sup>10</sup>"Such petition shall contain all allegations the facts of which are known to petitioner at the time of filing and such petition shall enumerate all previous applications and their disposition. No writ shall be granted on the basis of any allegation the facts of which petitioner had knowledge at the time of filing any previous petition." Va. Code Ann. § 8.01-654(B)(2) (Michie Repl. Vol. 2000); see also *Dorsey v. Angelone*, 261 Va. 601, 544 S.E.2d 350, *cert. denied*, 2001 U.S. LEXIS 7053, 70 U.S.L.W. 3243 (BNA) (U.S. Oct. 1, 2001).

<sup>11</sup>See *Alley v. Paderick*, 373 F. Supp. 920, 922 (W.D. Va. 1974) (holding that habeas petitioner is not entitled to copies of exhibits filed by respondent, which he should already have from prior proceedings).

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