

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

STATE OF OHIO :
Plaintiff : **CASE NO. 2007 CR 00792**
vs. : **Judge McBride**
KEVIN MICHAEL THORNTON : **DECISION/ENTRY**
Defendant :

David Henry Hoffmann, assistant prosecuting attorney for the state of Ohio, 123 North Third Street, Batavia, Ohio 45103.

Donald R. Caster, attorney for the defendant Kevin Thornton, Ohio Innocence Project, University of Cincinnati College of Law, P.O. Box 210040, Cincinnati, Ohio 45221-0040.

This cause is before the court for consideration of the defendant Kevin Thornton's motion for preparation of transcript at the state's expense. The defendant is requesting a copy of the transcript of the oral argument held on June 15, 2012 on his motions for a new trial and post-conviction relief.

“ * * * [A] postconviction proceeding is a civil matter, and [the defendant] does not enjoy an unqualified right to transcripts at the state’s expense.”¹ The Ohio Supreme Court has explained the limits to an indigent defendant’s right to a transcript as follows:

“This court has held that an indigent prisoner is entitled to relevant portions of a transcript upon, *inter alia*, appeal or in seeking post-conviction relief. *State, ex rel. Partee, v. McMahon* (1963), 175 Ohio St. 243, 24 O.O.2d 386, 193 N.E.2d 266. However, the right is subject to certain limits. One limit previously established is that, *inter alia*, appeal or post-conviction action must be pending at the time the transcript is sought. *State, ex rel. Partee, v. McMahon*, *supra*; *State, ex rel. Catlino, v. Clerk of Courts* (1967), 9 Ohio St.2d 101, 38 O.O.2d 255, 224 N.E.2d 130; *State, ex rel. Clark, v. Marshall* (1980), 63 Ohio St.2d 107, 17 O.O.3d 65, 406 N.E.2d 1128. Another limit is that only one copy of a transcript need be provided. *State, ex rel. Vitoratos, v. Walsh* (1962), 173 Ohio St. 467, 20 O.O.2d 84, 183 N.E.2d 917, appeal dismissed (1962), 371 U.S. 114, 83 S.Ct. 210, 9 L.Ed.2d 168.”²

In the present case, the defendant filed an untimely petition for post-conviction relief, and the court determined that it lacked jurisdiction to consider this untimely petition because the court was unable to make a finding that either R.C . 2953.23(A)(1) or (A)(2) applied. As such, the court lacked ability “to entertain” the petition pursuant to R.C. 2953.23, and it is from the court’s finding as to lack of jurisdiction that the defendant is now appealing to the Twelfth District Court of Appeals. While the petition was untimely, and while the court determined that it lacked jurisdiction to consider the untimely conviction, it is self-evident that the defendant is seeking post-conviction relief. Furthermore, the defendant has requested only one copy of the transcript of the June

¹ *State v. Hackney* (Jan. 13, 1997), 12th Dist. No. CA96-08-071, 1997 WL 10916, *3, citing, *State v. Roberts*, 66 Ohio App.3d 654, 656-657, 585 N.E.2d 934 (Ohio App. 9th Dist., 1991).

² *State ex rel. Murr v. Thierry* (1987), 34 Ohio St.3d 45, 45-46, 517 N.E.2d 226. See also, *State v. Raypole* (Nov. 25, 1996), 12th Dist. No. CA96-04-006, 1996 WL 679672, *3 (requiring the trial court to provide the indigent defendant with a transcript of his sentencing hearing because he had a pending motion for post-conviction relief.)

15, 2012 hearing for the purpose of filing that transcript with the appellate court.³ The defendant has filed an affidavit of indigency attesting that he is indigent and unable to pay court costs and charges in the within matter.⁴

Therefore, the defendant has the right for one copy of the transcript of the June 15, 2012 hearing to be provided at the state's expense. As a result, the defendant's motion for preparation of a transcript at state's expense is well-taken and is hereby granted.

IT IS SO ORDERED.

DATED: _____

Judge Jerry R. McBride

³ See, *State v. Wyburn* (Jan. 4, 2011), 6th Dist. No. L-10-1292, 2011-Ohio-142, ¶ 5, quoting *State ex rel. Mramor v. Court of Common Pleas* (Dec. 31, 1997), 8th Dist. No. 73406 (The “duty to provide a transcript at State expense extends only to providing one transcript for the entire judicial system. It does not extend to sending the transcript to the indigent person in prison.”)

⁴ Affidavit of Indigency, filed September 5, 2012.

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via email this 29th day of October 2012 to all counsel of record and unrepresented parties.

Administrative Assistant to Judge McBride