

**SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE)	
)	
)	I.D. # 0405005159
v.)	
)	
)	
CHARLES MONROE)	
)	

ORDER

Defendant has appealed from the denial of his motion for post conviction relief and now seeks an order of this Court directing the court reporter to prepare, at state expense, transcripts of certain proceedings before this Court. For the reasons stated below, his application is **DENIED**.

A. The procedural history of this case and the defendant's request for transcripts.

Defendant was convicted of weapons and other offenses in a 2005 trial. Thereafter, upon the State's motion, he was declared an habitual offender and was sentenced to 12 years in prison, suspended after nine years

for probation and a fine. On direct appeal the Supreme Court affirmed both his conviction and sentence.¹

While his case was first pending in this Court defendant elected to waive his right to counsel and proceed *pro se*. He did so despite having received a letter from a judge of this Court warning him of the dangers of proceeding without counsel. Defendant's conviction apparently did not diminish his zeal to proceed *pro se*, and he sought to prosecute his direct appeal without the assistance of counsel. On appeal the Supreme Court remanded the matter to this Court for the purpose of making a determination whether defendant's decision to proceed without counsel on appeal was voluntary. This Court conducted an evidentiary hearing on November 16, 2005 in response to the Supreme Court's remand. Upon return to the Supreme Court that court appointed different counsel to represent defendant on his appeal.

Defendant now seeks an order compelling production of a transcript of that hearing. He also asks to be furnished with transcripts of two pretrial hearings in which he allegedly complained about his trial counsel.

B. Defendant is not entitled to be furnished at state expense with the transcripts he requests.

¹ Monroe v. State, 2006 WL 3482182 (Del. Dec. 4, 2006).

Requests for state-purchased transcripts by a criminal defendant seeking post conviction relief are addressed to this Court's discretion.² The defendant is required to make a showing of a "particularized need" for a transcript.³ If a defendant fails "to demonstrate how the transcript would assist him in [his] appeal"⁴ it is well within this Court's discretion to deny the request for a transcript.

Defendant Monroe makes no showing whatsoever, let alone a particularized showing, why he needs the transcripts he has requested. He simply states in conclusory fashion that they "are directly related to a matter that has been submitted to the Supreme Court of Delaware, which involves the violation of the defendant's Constitutional rights." Even though this Court evaluates *pro se* pleadings by a "less stringent standard" than a pleading filed by an attorney,⁵ there are limits to this rule of liberal interpretation.⁶ Here there is simply nothing from which this Court can infer a "particularized need" for the transcripts. Accordingly, defendant's request must be denied.

² Miller v. State, 2008 Del. LEXIS 108 (Del. March 7, 2008).

³ Freeman v. State, 2003 Del. LEXIS 210 (Del. April 8, 2003).

⁴ Amaro v. State, 2003 Del. LEXIS 313 (Del. June 9, 2003); United States v. Maccollom, 426 U.S. 317, 330 (1976) ("Nor does the Constitution require that an indigent be furnished every possible legal tool, no matter how speculative its value, and no matter how devoid of assistance it may be.").

⁵ Johnson v. State, 442 A.2d 1362, 1364 (Del. 1982).

⁶ See Browne v. Saunders, 2001 Del. LEXIS 66 (Del. Feb. 14, 2001) (granting motion to dismiss despite "liberal pleading standards applied to pro se litigants.").

There is a second reason his request must be denied. Examination of his request shows that some of the requested transcripts relate to post conviction claims which are procedurally barred. Moreover, none of the transcripts relate to issues raised in defendant's Rule 61 motion.

In his Rule 61 motion defendant challenged this Court's grant of his request to proceed without counsel during trial. As this Court is required to do,⁷ it first considered whether defendant's Rule 61 claim is procedurally barred. It determined that defendant's Rule 61 claim—insofar as he claimed that his decision during trial to proceed *pro se* was not voluntary--was barred because it was not presented on his direct appeal. The November 16, 2005 hearing, which concerned only the voluntariness of defendant's decision to proceed without counsel on appeal, has nothing to do with the procedural bar to defendant's Rule 61 claim, nor does it have anything to do with the merits of his claim. Consequently in addition to the reasons previously stated, the Court denies defendant's request for this transcript.⁸

Defendant also asks to be furnished with transcripts of two pretrial hearings during which he allegedly complained of purported shortcomings of his trial counsel. But his Rule 61 motion did not address those alleged

⁷ Flamer v. State, 585 A.2d 736, 747 (Del. 1990) (court must first apply procedural requirements of Rule 61 before giving consideration to the merits).

⁸ Robinson v. State, 2006 Del. LEXIS 464 (Del. Sept. 7, 2006) (not abuse of discretion to refuse request for transcript where there was procedural bar to Rule 61 motion).

shortcomings; rather defendant used the opportunity to complain about his appellate counsel only. The pretrial complaints about trial counsel are therefore not relevant to the issues presented in Mr. Monroe's appeal and, therefore, he is not entitled to these transcripts.

So Ordered this 12th day of August, 2008.

John A. Parkins, Jr.
Judge

pc. Cathy Howard
Clerk of the Supreme Court
No. 271, 2008