

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

United States of America,

Plaintiff,

v.

Case No. 07-20168-22-JWL

Keith McDaniel,

Defendant.

MEMORANDUM & ORDER

Mr. McDaniel has filed a motion in which he requests that the court, at no cost to Mr. McDaniel, provide certain documents from this case, including all briefing and exhibits relating to Mr. McDaniel's motion to vacate; the court's memorandum and order resolving the motion to vacate; and all briefing relating to Mr. McDaniel's motion for relief under Rule 59(e). The motion is denied.

Under 28 U.S.C. § 753(f), the government shall pay the fees for transcripts in a § 2255 proceeding if the court "certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal." *Sistrunk v. United States*, 992 F.2d 258, 259 (10th Cir. 1993). The Tenth Circuit has previously looked to 28 U.S.C. § 753(f) to resolve requests for other court documents as well. *See Nortonsen v. Larimer County Dist. Court*, 2006 WL 1086437, at * 1 (10th Cir. Apr. 26, 2006) (holding that post-conviction prisoners do not have an automatic right to free copies of court documents and concluding that they must first demonstrate a nonfrivolous claim); *United States v. Lewis*, 1994 WL 563442, at *1 (10th Cir. Oct. 14, 1994) (applying the § 753(f) standard to a defendant's request for

documents). Because Mr. McDaniel has no motion that is pending at this time, and because he has failed to articulate in his request for documents any anticipated motion or any particularized need for the documents, Mr. McDaniel has not satisfied the requirements of § 753(f). *See id.* Moreover, because Mr. McDaniel does not have a pending habeas petition, he cannot avail himself of the specific statute that grants indigent petitioners “documents” or “parts of the record” without cost. *See* 28 U.S.C. § 2250.

IT IS SO ORDERED.

Dated this 22nd day of June, 2015, at Kansas City, Kansas.

s/ John W. Lungstrum

John W. Lungstrum

United States District Judge