

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

Coy A. Mathis,

Plaintiff,

v.

Case No. 07-3049-JWL

Sam Cline et al.,

Defendants.

MEMORANDUM & ORDER

In February 2009, this court denied Mr. Mathis's § 2254 petition and, in July 2009, the Tenth Circuit dismissed Mr. Mathis's appeal for lack of prosecution. More than five years later, Mr. Mathis has now filed a motion for transcript (doc. 64) for use in connection with Mr. Mathis's appeal in the Kansas Court of Appeals and a motion to proceed with a successive § 2254 motion in forma pauperis (doc. 65).

In the motion for transcript, Mr. Mathis seeks to obtain a transcript of a September 2, 2008 motion hearing held in this court on Mr. Mathis's motion for production of medical records relating to the autopsy of the decedent in the underlying criminal case. Mr. Mathis seeks to obtain the transcript free of charge in light of his indigent status—a status which defendants do not dispute. Mr. Mathis does not indicate why he needs the transcript but the government reasonably presumes that the request relates to Mr. Mathis's plans to file a successive § 2254 petition, as suggested by Mr. Mathis in his motion for leave to proceed in forma pauperis.

To obtain a free transcript, Mr. Mathis must first demonstrate that his habeas petition is not frivolous. *See Ruark v. Gunter*, 958 F.2d 318, 319 (10th Cir. 1992) (“An indigent § 2254

petitioner does not have a constitutional right to access a free transcript in order to search for error.”). Because Mr. Mathis has failed to articulate in his request for the transcript any bases for his anticipated habeas petition, Mr. Mathis has not and cannot demonstrate that he intends to pursue a nonfrivolous claim. The court, then, must deny Mr. Mathis’s motion for transcript.

IT IS THEREFORE ORDERED BY THE COURT THAT Mr. Mathis’s motion for transcript (doc. 64) is **denied** and Mr. Mathis’s motion for leave to proceed in forma pauperis (doc. 65) is **granted as unopposed**.

IT IS SO ORDERED.

Dated this 22nd day of September, 2014, at Kansas City, Kansas.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge