

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RODRIGUEZ MENDOZA GUADALUPE,

Defendant.

Case No. 09-10055-01-EFM

ORDER

On June 7, 2011, Defendant Guadalupe Rodriguez-Mendoza pled guilty to a violation of 18 U.S.C. § 922(g)(5) pursuant to a Fed. R. Crim. P. 11(c)(1)(C) plea agreement.¹ The Court sentenced Defendant on August 24, 2011 to three years imprisonment, and the clerk entered judgment on August 30, 2011.² The matter is currently before the Court on Defendant's motion for copies of his sentencing and plea transcripts.³ Defendant indicates that he needs copies of the transcripts so that he can file a 28 U.S.C. § 2255 motion.⁴

¹See Docs. 16, 17.

²Doc. 20. The Clerk entered an Amended Judgment on September 1, 2011. Doc. 22.

³Doc. 24.

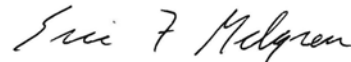
⁴Defendant also requests that the Court provide him with an estimate of the costs to obtain these transcripts and whether he is entitled to a fee waiver due to his incarceration. As to the costs associated with filing a § 2255 motion, no filing fee is required for filing the motion. See *United States v. Garcia*, 164 F. App'x 785, 786 (10th Cir. 2006).

28 U.S.C. § 753(f) governs the request by indigent prisoners for free transcripts. There are several reasons for denying Defendant's motion. First, because Defendant has not yet filed a § 2255 motion, his request is not yet ripe.⁵ Second, even if the Court considered Defendant's request, he does not state a particularized need for the transcript as required under § 753(f).⁶ A prisoner does not have a right to a free transcript simply to search for error in the record.⁷ Finally, to obtain a free copy of a transcript, a habeas petitioner must demonstrate that his claim is not frivolous.⁸ Defendant does not come forward with any specific factual allegations demonstrating that he may have non-frivolous § 2255 claims. As such, the Court denies his request for copies of sentencing and plea transcripts.

IT IS THEREFORE ORDERED that Defendant's Motion for Copies of Federal Sentencing Transcript and Plea Transcripts (Doc. 24) is **DENIED**.

IT IS SO ORDERED.

Dated this 23rd day of January, 2012.



ERIC F. MELGREN
UNITED STATES DISTRICT JUDGE

⁵See *United States v. Adams*, 2007 WL 1302543, at *1 (D. Kan. May 3, 2007); *United States v. Horvath*, 157 F.3d 131, 133 (2d Cir. 1998). See also *Sistrunk v. United States*, 992 F.2d 258, 259 (10th Cir. 1993) (declining to determine whether the actual filing of a § 2255 motion is a prerequisite to a §753(f) transcript request).

⁶See *Sistrunk*, 992 F.2d at 259.

⁷See *Ruark v. Gunter*, 958 F.2d 318, 319 (10th Cir. 1992).

⁸See *Sistrunk*, 992 F.2d at 259; 28 U.S.C. § 753(f) (requiring the trial judge or circuit judge to certify that the appeal is not frivolous before an indigent prisoner is entitled to a free transcript for a proceeding brought under § 2255).