

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

Case No. 15-10152-02-JTM

HIPOLITO MERAZ LEYVA,  
Defendant.

MEMORANDUM AND ORDER

This matter is before the court on the motion of defendant Hipolito Marez Leyva for authorization of payment for the transcript of his sentencing, which was conducted December 21, 2016. (Dkt. 227). Leyva seeks the transcript “to present my § 2255 motion,” but gives no statement as to what arguments he might present in such a motion. No § 2255 motion is before the court.

Under 28 U.S.C. § 753(f), the United States will pay for transcripts in proceedings pursuant to 28 U.S.C. § 2255 brought by persons proceeding in forma pauperis, “if the trial judge or a circuit judge 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.”

The statute does not authorize payment for a transcript where no proceeding is pending. *See Ruark v. Gunter*, 958 F.2d 318, 319 (10th Cir. 1992) (prisoner does not have right

to free transcript simply to search for error in record); *Harless v. United States*, 329 F.2d 397, 398-99 (5th Cir.1964) (statutory right to proceed in forma pauperis does not include right to obtain copies of transcripts, without payment therefor, for use in proposed or prospective litigation).

Rather, to obtain free copy of transcript, a habeas petitioner must demonstrate his is claim not frivolous and that the requested materials are needed to decided the issues presented by him. *See Brown v. N.M. Dist. Court Clerks*, 141 F.3d 1184, 1998 WL 123064, at \*3 n.1 (10th Cir. Mar. 19, 1998); *United States v. Horvath*, 157 F.3d 131, 132 (2d Cir. 1998) (motion for free transcript under Section 753 not ripe until Section 2255 motion has been filed). *See also United States v. Jones*, 2015 WL 859039, \*1 (D. Kan. Feb. 27, 2015) (request for transcript denied in the absence of current pending § 2255 motion,” and “failed to articulate in his request for the materials any bases for any anticipated motion for substantive relief.

IT IS ACCORDINGLY ORDERED this 24th day of January, 2018, that defendant’s Motion to Auhorize Payment (Dkt. 271) is hereby overruled.

s/ J. Thomas Marten  
J. THOMAS MARTEN, JUDGE