

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

05-CR-0004-C

v.

GEORGE L. GOINS,

Defendant.

Defendant has filed a motion for transcripts and investigative reports and petition and affidavit for leave to proceed in forma pauperis, requesting a copy of his plea, sentencing and grand jury transcripts as well as copies of investigative reports and discovery at government expense. Defendant states that he wishes to use the transcripts and documents to assist in drafting a pro se motion under 28 U.S.C. § 2255. I construe the motion as a request for preparation of the plea and sentencing hearing transcripts at government expense, pursuant to 28 U.S.C. §753(f), which provides in relevant part:

Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States . . . 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.

Defendant has also asked for a copy of the grand jury transcripts. "To obtain grand jury material, despite the presumptive secrecy imposed by Fed. R. Crim. P. 6(e), a litigant must show that the information 'is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that [the] request is structured to cover only material so needed.'" United States v. Campbell, 324 F.3d 497, 499 (7th Cir. 2003) (quoting Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211, 222 (1979)). Defendant will have to explain in detail what aspect of his conviction he wishes to challenge in his post conviction motion and how the grand jury transcripts are necessary to decide the issue. The court will then determine whether defendant's reasons are adequate to breach the presumption of secrecy of the grand jury. For now, defendant's request for preparation of the grand jury transcripts at government expense will be denied without prejudice.

As to defendant's request for discovery materials, Rule 6 of the rules relating to § 2255 actions provides that a party is entitled to discovery only "if, and to the extent that, the judge in the exercise of [the judge's] discretion and for good cause shown grants leave." This rule implies that the judge must know what issues are being raised in the motion in order to exercise discretion. Such knowledge can come only after the § 2255 motion has been filed.

Because defendant has not said what aspect of his conviction he wishes to challenge or explained how the transcripts and documents are necessary to decide the issue, I cannot certify either that his motion would not be frivolous or that the transcripts are necessary.

If defendant wishes, he may obtain a copy of the transcripts, with the exception of the grand jury transcripts, at his own expense by writing directly to the Court Reporters Office, United States District Court, 120 N. Henry Street, Madison, WI, 53703, (608) 255-3821.

ORDER

IT IS ORDERED that defendant's motion for preparation of transcripts at government expense pursuant to 28 U.S.C. §753(f) is DENIED without prejudice.

Entered this 25th day of October, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge

