

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) **Case No. CR-05-043-WH**
)
JIMMY C. CHISUM,)
)
Defendant.)

ORDER

Before the Court is the motion of the defendant for transcript at government expense.

Defendant correctly cites 28 U.S.C. §753(f) which states in pertinent part that “Fees for transcripts furnished in criminal proceedings to persons proceeding under the Criminal Justice Act (18 U.S.C. 3006A) . . . shall be paid by the United States out of moneys appropriated for those purposes.” The Tenth Circuit has stated: “On direct appeal, a trial transcript is an absolute matter of right for an indigent criminal defendant.” *Ruark v. Gunter*, 958 F.2d 318, 319 (10th Cir.1992).

The present record is unclear as to defendant’s status. He has never filed a formal motion requesting IFP (in forma pauperis) status. Early in the case, Magistrate Judge West entered an Order (docket no.7), based on a financial affidavit submitted by defendant, which stated “the Court finds that the affiant is financially unable to obtain counsel.” Stephen Knorr was appointed, and ultimately served only as standby counsel as defendant exercised his right of self-representation throughout the trial.

Rule 24(a)(3) of the Federal Rules of Appellate Procedure states that “A party . . . who was determined to be financially unable to obtain an adequate defense in criminal case, may proceed on appeal in forma pauperis without further authorization [unless the district court finds to the contrary or a statute otherwise provides.]” The latter two conditions are not present here, and therefore the Court considers defendant to be proceeding on appeal IFP and thus entitled to a trial transcript¹.

It is the Order of the Court that the defendant’s motion for transcript at government expense (#123) is hereby GRANTED.

ORDERED THIS 31st DAY OF JULY, 2006.



Ronald A. White
United States District Judge
Eastern District of Oklahoma

¹Defendant has paid for transcripts of other proceedings during this action, and paid the filing fee for his appeal. This raises the question of whether defendant views himself as proceeding IFP and the question of defendant’s financial resources. The Court declines to revisit Magistrate Judge West’s previous finding on this latter point. Furthermore, the possibility that the Defendant has hidden assets is a can of worms the Court would prefer not to open at this point in time.