

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF OKLAHOMA
TRANSMITTAL SHEET
(Notice of Appellate Action)

<input type="checkbox"/>	Notice of Appeal	Style of case:	USA vs. JIMMY C. CHISUM
<input type="checkbox"/>	Amended NOA		
<input type="checkbox"/>	Cross Appeal	District Court Case No:	CR-05-43-RAW
<input type="checkbox"/>	Interlocutory Appeal		
<input checked="" type="checkbox"/>	Update Item**	Tenth Circuit Case No:	

Part 1

Notice of appeal is enclosed to all parties (except to appellant in civil cases); NOA, docket entries, district court order and CJA 20 (if applicable) are enclosed.

1. District Judge: Ronald A. White
2. Official Court Reporter(s): Gala Watkins, Karla McWhorter, Shannon Flores
3. Fees:

USA:	<input type="checkbox"/>	Fees waived
\$455.00 filing fee:	<input checked="" type="checkbox"/>	Fees paid in full
Pauper Status:	(date)	IFP GRANTED
	(date)	IFP DENIED
	(date)	IFP PENDING
4. State habeas cases: **CPC STATUS () DENIED**
ORIGINAL FILE SENT:
5. Transcript:

<input type="checkbox"/>	ordered	<input type="checkbox"/>	not ordered
<input type="checkbox"/>	not required	<input type="checkbox"/>	no in-court hearing
<input type="checkbox"/>	CJA pending	<input type="checkbox"/>	CJA furnished
<input type="checkbox"/>	pur. order furn.	<input type="checkbox"/>	docket stmt. furn.

**** SEE ATTACHED ORDERS DATED 7/31/06**

PART 2

TRANSMITTAL OF RECORD TO COURT OF APPEALS

ORIGINAL RECORD

SUPPLEMENT TO RECORD-SUPPLEMENT #

Pleadings: Vol.
Transcript: Vol.
Exhibits: Vol.
Depositions: Vol.
State Crt. Record: Vol.
Sealed: Vol.
No. of Boxes:

Pleadings: Vol.
Transcripts: Vol.
Exhibits: Vol.
Depositions: Vol.
State Crt. Record: Vol.
Sealed: Vol.
No. of Boxes:

Signature Clerk or Deputy Clerk

Phone (918) 684-7920

Date: July 31, 2006

/s/ L. Wilson

cc: counsel of record

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JIMMY C. CHISUM,

Defendant.

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Case No. CR-05-043-WH

ORDER

Before the Court is the motion of the defendant and request for access to law library and pro per [sic] form for appeal process. As to the second aspect of the motion, defendant complains that the Muskogee County Jail does not provide “access to forms for pro per/pro se filing for appeal, habeas corpus, or motion” It is not clear to what specific forms defendant refers. He has filed his notice of appeal, a habeas corpus motion is not appropriate at this time and any additional motions will presumably be filed with the Tenth Circuit Court of Appeals. Further, defendant will ultimately be transferred from the Muskogee County Jail to a federal facility, and the Jail’s deficiencies if any will become moot.

Defendant represented himself throughout the trial – with appointed counsel present as standby counsel – and continues to do so. When a prisoner voluntarily, knowingly and intelligently waives his right to counsel in a criminal proceeding, he is not entitled to access to a law library or other legal materials. *United States v. Cooper*, 375 F.3d 1041, 1052 (10th Cir.2004). Standby counsel is the equivalent of library access. *Id.*

It is the Order of the Court that the defendant for access to law library and pro per form (#122) is hereby DENIED.

ORDERED THIS 31st DAY OF JULY, 2006.

A handwritten signature in black ink, reading "Ronald A. White", written over a horizontal line.

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

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 JIMMY C. CHISUM,)
)
 Defendant.)

Case No. CR-05-043-WH

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.

A handwritten signature in cursive script, reading "Ronald A. White", written over a horizontal line.

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.