

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

March 15, 2019

Lyle W. Cayce
Clerk

No. 18-40769
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANSON CHI,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
No. 4:12-CR-155-1

Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:*

Anson Chi, who proceeded *in forma pauperis* ("IFP") and *pro se* in his

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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direct criminal appeal, appeals the denial of his emergency motion for a copy of the record at government expense. Chi asserts that he has been transferred multiple times and placed in high security housing and that prison officials deliberately and maliciously lost three record volumes. Chi maintains that he needs the lost portion to perfect his direct appeal to the Supreme Court and to file a 28 U.S.C. § 2255 motion.

After Chi filed the notice of appeal in his direct criminal appeal, the district court provided him the full record at government expense. Chi has indicated that he has "19 transcripts and volume 3" and that he is missing three of the four volumes of pleadings that he was previously provided.

A transcript at government expense is furnished to a defendant like Chi, who is proceeding IFP and *pro se*, rather than under the Criminal Justice Act, if we or the trial judge "certifies that the appeal is not frivolous (but presents a substantial question)." 28 U.S.C. § 753(f). Nothing in § 753(f) suggests, and Chi has not shown, that an IFP defendant is entitled to a second copy of transcripts at government expense if what was initially provided has been lost. See § 753(f). Moreover, an IFP defendant such as Chi must show why the transcript is necessary for proper disposition of his appeal and must alert this court to "any facts that might require a close examination of the trial transcript." *Harvey v. Andrist*, 754 F.2d 569, 571 (5th Cir. 1985). Thus, even if § 753(f) applies to Chi's request for a second copy, he fails to satisfy the requirements. See § 753(f); *Harvey*, 754 F.2d at 571.

IT IS ORDERED that the motion for a transcript at government expense is DENIED.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA

vs.

ANSON CHI

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§

CRIMINAL NO. 4:12CR155

**ORDER DENYING DEFENDANT'S EMERGENCY MOTION FOR LEAVE
TO FILE PRO SE DEFENDANT'S "EMERGENCY MOTION FOR
RECORD ON APPEAL IN ORDER TO DIRECT APPEAL TO
THE UNITED STATES SUPREME COURT"**

Pending before the court is the Defendant's "Emergency Motion for Leave to File *Pro Se* Defendant's 'Emergency Motion for Record on Appeal in Order to Direct Appeal to the United States Supreme Court'" (docket entry #296). The Defendant indicates that he placed his emergency motion in the prison mailing system on July 16, 2018. The court received the motion on July 30, 2018 and it was docketed on July 31, 2018.

In his emergency motion for leave, the Defendant states that he is missing a rather large portion of his record on appeal and that he requires the record on appeal in order to file a petition for writ of certiorari with the Supreme Court of the United States. The Defendant seeks to appeal the judgment of the United States Court of Appeals for the Fifth Circuit to the Supreme Court of the United States. A review of the Fifth Circuit's docket sheet reveals that the Defendant has until August 6, 2018 to file his petition for writ of certiorari.

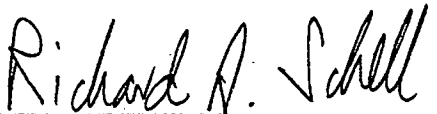
The Defendant is seeking a copy of his full record on appeal. The full record necessarily includes the record from the Fifth Circuit as well as the record from this court. In order to receive the full record, the Defendant's request should have been directed to the Fifth Circuit. Accordingly,

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the Defendant's "Emergency Motion for Leave to File *Pro Se* Defendant's 'Emergency Motion for Record on Appeal in Order to Direct Appeal to the United States Supreme Court'" (docket entry #296) is **DENIED**. Pursuant to this order, the clerk of court shall terminate the Defendant's "Emergency Motion for Record on Appeal in Order to Direct Appeal to the United States Supreme Court" (docket entry #297).

IT IS SO ORDERED.

SIGNED this the 31st day of July, 2018.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**