

Opinion No. 64-66

May 20, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General J. F Rosenthal, Assistant Attorney General

TO: Mr. Salomon Vallejos, District Court Clerk, Second Judicial District, County Court House, Albuquerque, New Mexico

QUESTION

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Does the Clerk of the District Court have to furnish transcripts of proceedings in criminal cases to both the petitioner in Habeas Corpus proceedings "in forma pauperis" and an attorney appointed later by the court to represent the petitioner?

CONCLUSION

See analysis.

OPINION

ANALYSIS

As stated in your letter of request there have been a large number of inmates seeking release from the penitentiary on writs of habeas corpus and in the past transcripts have been furnished both to the inmate as well as to his court appointed attorney, causing a considerable burden on the District Court Clerk's office.

Section 25-1-14, N.M.S.A., 1953 Compilation provides that one who makes an oath stating that he is too poor to pay costs may have "all and any process of the court free of costs." Section 22-11-38, N.M.S.A., 1953 Compilation (P.S.) allows the State of New Mexico to assume the costs of habeas corpus proceedings instituted by one confined in the penitentiary and who also files a pauper's affidavit. In light of the foregoing, there is no doubt of the petitioner's right to have copies of the transcript or other original proceedings to effectively pursue his remedy. This right has been affirmed in a line of cases starting with **Griffin v. Illinois**, 351 U.S. 12, **Douglas v. California**, 372 U.S. 353 through the recent case of **Hardy v. U.S.**, (No. 112 U.S., October term, 1964). Generally, the Supreme Court has held that under the due process and equal protection clauses of the Constitution there can be no denial to indigents in criminal proceedings which will draw a line between the rich and poor. These cases have dealt with the production of transcripts as well as appointment of counsel for appeal.

In regard to habeas corpus proceedings on application of those incarcerated in the New Mexico State Penitentiary, it is the practice of the First Judicial District Court to appoint an attorney to represent the petitioners seeking writs. The District Judges also order free process for the obtaining of transcripts. It is the duty of the appointed attorney to seek this material, not the inmate's. This office advises you that in the future, requests for transcripts should be refused unless accompanied by an order of the court granting free process. In most cases, this will be after an informal petition has been filed with the court and an attorney appointed. The attorney will pursue the matter, not the petitioner. In those cases in which the inmate is proceeding "pro se" and has not requested appointment of an attorney, but has been granted free process, the material must be furnished. Once this has been done, there is no necessity of duplicating that already released if an attorney is later provided for the inmate and this attorney requests a transcript. The laws of this state and the holdings of the Supreme Court of the United States do not require more being furnished than is necessary to effectively pursue the remedy sought, and one copy is adequate for this purpose. If the transcripts have been provided for the inmate previous to this opinion, and a request is now made by a court-appointed attorney for the previously furnished material, the attorney should be apprised of the petitioner's previous request and told to seek it from his client.