

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

April 26, 2006

Elisabeth A. Shumaker
Clerk of Court

LESTER WILLIAM NORTONSEN,

Plaintiff-Appellant,

v.

LARIMER COUNTY DISTRICT
COURT, State of Colorado; MESA
COUNTY DISTRICT COURT, State
of Colorado; MARICOPA COUNTY
SUPERIOR COURT, State of Arizona;
EL PASO COUNTY DISTRICT
COURT; State of Texas; COURT
CLERKS OF EL PASO COUNTY
DISTRICT COURT, State of Texas;
COURT CLERKS OF MARICOPA
COUNTY SUPERIOR COURT, State
of Arizona; COURT CLERKS OF
MESA COUNTY DISTRICT COURT,
State of Colorado,

Defendants-Appellees.

No. 05-1390

(D.C. No. 05-CV-01041-ZLW)

(D. Colo.)

ORDER AND JUDGMENT*

Before **KELLY, McKAY**, and **LUCERO**, Circuit Judges.

After examining the briefs and the appellate record, this panel has

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2). The case is therefore ordered submitted without oral argument.

Appellant Lester William Nortonsen is a prisoner in the Colorado State Penitentiary. He filed a pro se 42 U.S.C. § 1983 complaint alleging that Appellees had unconstitutionally denied him free copies of court transcripts and other documents that he claims Appellees possessed. He wishes to access the transcripts and documents to pursue post-conviction relief in state court. He also seeks money damages for depriving him of the copies. The district court dismissed Mr. Nortonsen's claim as legally frivolous and denied him leave to appeal because, the court held, Mr. Nortonsen "ha[d] not shown the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues to be raised on appeal." Order Denying Leave to Proceed on Appeal Pursuant to 28 U.S.C. § 1915 and Fed. R. App. P. 24, 1 (D. Colo. Nov. 1, 2005).

As the district court noted, indigent prisoners seeking postconviction collateral relief do not have an automatic right to free copies of court transcripts and documents. Order and Judgment of Dismissal, 3 (D. Colo. Aug. 5, 2005). Criminal defendants have an absolute right to a trial transcript for direct appeals, but, if they are seeking postconviction collateral relief, they must first demonstrate a nonfrivolous claim. *Ruark v. Gunter*, 958 F.2d 318, 319 (10th Cir.

1992) (per curiam).

Because the district court, applying 28 U.S.C. § 1915, denied Mr. Nortonsen leave to appeal, we must first address his challenge of this denial. While we have not yet determined whether the standard of review of an order denying leave to appeal under § 1915 is de novo or abuse of discretion, we would reach the same decision under either standard in this case. *See Plunk v. Givens*, 234 F.3d 1128, 1130 (10th Cir. 2000). We have carefully reviewed Mr. Nortonsen's brief, the district court's orders, and the record on appeal, and for substantially similar reasons to the those laid out by the district court in its August 5, 2005 and November 1, 2005 orders, we **AFFIRM** the district court's dismissal of Mr. Nortonsen's claim and the district court's denial of leave to appeal. We grant Mr. Nortonsen's motion to proceed without prepayment of the appellate filing fee, but we remind him of his continuing obligation to make partial payments until the entire fee has been paid.

Entered for the Court

Monroe G. McKay
Circuit Judge