

[APPELLATE COURT CAPTION]

VERIFIED PETITION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*
FOR PAYMENT OF COSTS FOR PREPARATION OF TRANSCRIPTS

The Appellant, by counsel, respectfully petitions this Court, pursuant to Indiana Rule of Appellate Procedure 40(A), for leave to proceed *in forma pauperis* thereby relieving Appellant of the obligation to pay the costs relating to the preparation of the transcripts for his appeal. In support of the Petition, the Appellant states the following:

1. The Appellant is appealing his conviction for [insert offense] and sentence of [insert sentence].
2. Therefore, jurisdiction of this appeal lies with the court pursuant to Indiana Rule of Appellate Procedure [CHOOSE ONE: 4 OR 5].
3. On [insert date], the Appellant filed a timely Notice of Appeal.
4. The Record of Proceedings is currently due to be filed with the Clerk of this court on [insert date].
5. The Appellant is indigent. *See Affidavit of Indigency herein attached and incorporated as Exhibit A.*
6. A non-party is paying for legal fees that will be incurred by undersigned counsel in the representation of the Defendant on appeal. Undersigned counsel's legal fees do not include the payment of the county's fees for preparation of the transcript or the payment of filing fees to the Court of Appeals. Undersigned counsel intends to continue to represent the Appellant in the appeal.
7. The court reporter notified undersigned counsel that the transcripts of the Appellant's trial and sentencing were complete, and cost a total of [insert amount].
8. The Appellant has no money, property or other financial resources sufficient to pay the court reporter for these transcripts. Therefore, on [insert date], the Appellant filed with the trial court Petition to Proceed *In Forma Pauperis*, according to Indiana Rule of

Appellate Procedure 40(2). *See Petition to Proceed In Forma Pauperis attached herein and incorporated as Exhibit B.*

9. On [insert date], the trial court denied the Petition [CHOOSE ONE: without a written Order or with a written Order herein attached and incorporated as Exhibit C].
10. [Insert paragraph explaining why Appellant is without means to pay for appellate costs].
11. The Appellant does not have the funds to pay the court reporter for these transcripts. Without the transcripts of his trial, the Appellant cannot file the Appendix required to be filed with the Brief.
12. The effect of proceeding *in forma pauperis* is to relieve the Appellant of the obligation to prepay filing fees or costs in either the trial court or the Court on appeal. Indiana Rule of Appellate Procedure 40(D).
13. The State is required to pay for the preparation of transcripts without cost to a criminal indigent person desiring to appeal whenever they do not have sufficient means to procure the transcripts. Moreover, it violates the state and federal constitutions to deny an indigent defendant access to the transcripts necessary for his appeal of right. Griffin v. Illinois, 351 U.S. 12 (1955); IND. CONST. Art. 6, Section 6 and Art. I, Section 12; I.C. 35-38-4-1.

WHEREFORE, the Appellant, by counsel, for leave to proceed *in forma pauperis*, thereby relieving Appellant of the obligation to pay the costs relating to the preparation of the transcripts for his appeal, and for all other relief just and proper in the premises.

(Signature)

VERIFICATION

Under penalty of perjury, the foregoing representations are true and accurate to the best of my knowledge and belief.

(Attorney Signature)

REFERENCES

Indiana Rule of Appellate Procedure 40 (providing procedure for Appellant to request to proceed in *forma pauperis* for purposes of the appeal if such motion is denied in the trial court; appellate motion must be filed within thirty (30) days of denial).

Form App. R. 40-1 (sample affidavit of indigency used in appellate motion).

I.C. 33-40-3-7 (allows court to order partial payment of the cost of services received by an indigent person if certain findings are made).

CASE LAW

Griffin v. Illinois, 351 U.S. 12 (1955) (“[There] can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”).

LaMonte v. State, 839 N.E.2d 172 (Ind.Ct.App. 2005) (the trial court erroneously ordered the Defendant to pay \$400 toward his appeal costs; determination of indigency must be based on a "thorough" rather than "superficial" examination of income and ownership of property).

Hall v. State, 826 N.E.2d 99 (Ind.Ct.App. 2005) (the trial court abused its discretion when it appointed appellate counsel for the Defendant, but ordered him to pay one-half of his appellate attorney fees and all of the costs of preparing transcript at a rate of \$100 per month).

Moore v. State, 401 N.E.2d 676 (Ind. 1980) (the fact that a defendant is able to post bond is not determinative of his non-indigency but is only one factor to be considered).

Campbell v. Criterion Group, 605 N.E.2d 150, 160 (Ind. 1992) (civil appellants cannot be denied an appeal because of their lack of funds; however, only when reconstruction of the record via the appellate rules is an inadequate mechanism to provide a record can the trial courts authorize additional accommodations, including transcripts, to assure indigents the right of appeal).

Beauchamp v. State, 788 N.E.2d 881 (Ind.Ct.App. 2003) (trial court urged to reconsider ruling, in event of retrial, denying a requests for funds for a forensic pathologist, ophthalmologist, and a pediatric neurologist made by Beauchamp who hired a private attorney but could not afford experts).