

STATE OF TEXAS ,)	
)	296 ^h DISTRICT COURT
Plaintiff,)	
)	COLLIN COUNTY, TEXAS
v.)	
)	
XXXX XXXX,)	
)	
Defendant.)	
_____)	

MOTION FOR PREPARATION OF REPORTER’S RECORD AT STATE EXPENSE

Defendant, XXXX XXXX, hereby moves this Court to order that the reporter’s record in this case be prepared at state expense for purposes of his appeal. In support of this motion, Mr. XXXX sets forth the following facts and argument.

1. Undersigned counsel was retained by a friend of Mr. XXXX to represent him on appeal. Mr. XXXX, himself is indigent.. All attorney fees to date have been paid by the friend.

2. The Court of Criminal Appeals has made clear that, simply because a defendant is represented by retained counsel, does not mean that he cannot qualify as indigent for purposes of obtaining an appellate record. Indeed, as noted by the Court in *Abdnor v. State*, 712 S.W.2d 136, 142 (Tex. Crim. App. 1986).

[A]n appellant cannot be deprived of his right to a free statement of facts on appeal by the mere fact he was represented by retained counsel at trial. Retained trial counsel is not bound to furnish appellate record at his own expense or to handle the appeal without fee. The fact that an appellant was represented by retained counsel and was out on bond at the time of the probation revocation hearing and out on bond pending appeal is not determinative of appellant's indigency at the time of the appeal. (citations omitted)

See also, *Ramadan v. State*, 89 S.W.3d 744, 746 (Tx. Ct. App.--Houston [1st Dist.] 2002).¹

“Outside sources *such as relatives* and even employers are not to be considered unless they are legally bound to pay for defendant's appellate expenses.” *Abdnor*, 712 S.W.2d at 142 (citation omitted) (emphasis added).

3. In fact, without the assistance of his friend, Mr. XXXX would be unable to retain

¹See also *Fullan v. Commissioner of Corrections*, 891 F.2d 1007, 1111-12 (2d Cir. 1989) (“The determinative consideration is that a state has no right to dictate how the defendants' family and friends will spend their money. Insofar as the state's prosecution of a defendant is concerned, family and friends are bystanders. Bystanders have no obligation to the state; they have no responsibility for the expenses of the person convicted. The state, however, once it has provided a right of appeal generally, does have an obligation to provide the wherewithal for an appeal by an indigent prisoner. Since the state has no right to dictate how the benefactors' money will be spent, it has no right to require that the defendant choose between forgoing retained counsel and forgoing an appeal.” (citations omitted)), *cert. denied*, 496 U.S. 942 (1990); *United States v. Sacco*, 430 F.3d 1304, 1305 (2d Cir. 1971); *Hill v. State*, 802 S.W.2d 144 (Ark. 1991) (citing *Fullan*); *Pendry v. State*, 367 A.2d 624, 626 (Del. 1976) (holding that an indigent's right to all necessary portions of a trial transcript “is not lost by an indigent [appellant] who has parents financially able to pay the expenses of appeal”) (citation omitted); *Arline v. State*, 277 So. 2d 791, 792 (Fla. Ct. App. 1974) (“ We know of no rule of law that precludes a person from being adjudicated and proceeding as an insolvent solely because he has the services of private counsel.”); *People v. Arquette*, 202 Mich. App. 227, 507 N.W.2d 824, 826 (Mich. Ct. App. 1993) (stating that “the fact that a third party provided funds to retain counsel does not change this indigent defendant's status and, therefore, does not trigger the general policy denying transcripts [to non-indigent appellants] at public expense”); *State v. Pederson*, 600 N.W.2d 451, 454 (Minn. 1999) (“even though an indigent criminal appellant chooses not to accept one thing to which his indigency status entitles him--representation by the public defender--he may still choose to accept another thing to which his indigency status entitles him--all or necessary parts of his trial transcript.”); *State v. Breen*, 100 Nev. 85, 675 P.2d 996, 997 (Nev. 1984) (holding that “the acceptance of representation by counsel provided by a third party does not, in and of itself, affect an appellant's indigency status, at least insofar as that status relates to payment for trial transcripts”); *State v. Morgenstein*, 147 N.J. Super. 234, 371 A.2d 96, 98 (N.J. Super. Ct. App. Div. 1977) (holding that the state must provide a trial transcript at public expense to an indigent appellant whose parents offered to pay the attorney's fees of private counsel and stating that to hold otherwise “would, in effect, be sanctioning the practice * * * of withholding the required assistance as a constraint upon parents or other close friends and relatives who also sense a moral duty to bear this cost”); *State v. Bosworth*, 105 S.E.2d 1 (W.Va. 1958) (Where counsel was employed by defendant’s relatives, indigent defendant qualified for transcript at public expense).

counsel and pay transcript expenses and, therefore, the court would be forced to provide for legal representation on appeal *in addition to* the costs of the transcript. *See Fullan*, 891 F.2d at 1011 ("The expense here would be greater if the State were required to pay the attorney's fee as well as the cost of the transcript.")

4. Counsel is attempting to obtain a financial affidavit from Mr. XXXX in order to present to the Court. Nevertheless, because Mr. XXXX has been transferred from one institution to another in the past few weeks it has been impossible for counsel to correspond with Mr. XXXX in order to send him a financial affidavit for him to complete. Counsel will present a financial affidavit to the Court upon completion by Mr. XXXX but, because of appellate requirements, counsel believes it is necessary to file this motion pending the completion of such affidavit.

WHEREFORE, XXXX XXXX respectfully requests this Court to order that the reporter's record in this case be prepared at state expense for purposes of his appeal.

Respectfully submitted,

F. Clinton Broden
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Attorney for Defendant
Chad XXXX

CERTIFICATE OF SERVICE

I, F. Clinton Broden, do hereby certify that, on this 15th of June, 2012, I caused a copy of the foregoing document to be served on the Collin County District Attorney's Office, 2100 Bloomdale Road, McKinney, TX 75071

F. Clinton Broden

No. 366-8024707

STATE OF TEXAS ,)	
)	296 ^h DISTRICT COURT
Plaintiff,)	
)	COLLIN COUNTY, TEXAS
v.)	
)	
XXXX XXXX,)	
)	
Defendant.)	
_____)	

ORDER

Upon consideration of Defendant's Motion for Reporter's Record at State Expense, said motion is this ____ day of _____, 2012 GRANTED.

A Reporter's Record of the proceedings in this case are ORDERED to be prepared at state expense.

JUDGE PRESIDING