

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 14, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2004AP3389

Cir. Ct. No. 1994CF942137

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

SCOTT A. KONITZER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JEFFREY A. CONEN, Judge. *Affirmed.*

Before Wedemeyer, P.J., Curley and Kessler, JJ.

¶1 PER CURIAM. Scott Konitzer, now known as Donna Dawn Konitzer, appeals from an order denying her request to have access to two presentence investigation reports. Because we conclude that the circuit court did not err when it denied her request, we affirm.

¶2 Konitzer was convicted in 1994 of thirteen counts of various crimes and received a sentence of more than 123 years. Prior to sentencing, two presentence investigation (PSI) reports were prepared, one by the probation department, and one apparently at the request of Konitzer's counsel (the Bach report). Konitzer appealed from the judgment and this court summarily affirmed. In November 2004, Konitzer filed a motion in the circuit court seeking access to the two PSI reports. The court denied the motion.

¶3 The circuit court's decision to deny access to a PSI report is reviewed for an erroneous exercise of discretion. *See State v. Zanelli*, 212 Wis. 2d 358, 378, 569 N.W.2d 301 (Ct. App. 1997). Under WIS. STAT. § 972.15(4) (2003-04), a PSI may be made available after sentencing only upon specific authorization of the court.¹ This rule applies to the defendant. The reason for maintaining the confidentiality of the reports, is to encourage candid disclosure by those who are interviewed for the report, and to prevent the disclosure of information that might cause irreparable harm to the defendant, family members, or informants. *State v. Comstock*, 168 Wis. 2d 915, 924-25, 485 N.W.2d 354 (1992).

¶4 In this case, the circuit court denied Konitzer's motion because she had had the opportunity to review the reports with defense counsel at sentencing, and the direct appeal deadline has long since expired. Konitzer did not explain to the circuit court her reasons for seeking the PSIs. As the State asserts, Konitzer has at this time a limited right to file a motion for postconviction relief under WIS. STAT. § 974.06. Further, if she were to use the report to support a motion for

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

sentence modification based on a legitimate new factor, she might not be time-barred but she might be barred by the finality requirement of *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Because Konitzer did not explain to the circuit court the purpose for which she sought access to the PSIs, we cannot conclude that the court erroneously exercised its discretion when it denied her motion. Further, Konitzer may be able to obtain access to the Bach report by means of a public record request. Consequently, we affirm the order of the circuit court.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

