COURT OF APPEALS
DECISION
DATED AND FILED

September 28, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-2732-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

NICKOLE FLYNN,

DEFENDANT-APPELLANT.

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

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

PER CURIAM. Nickole Flynn appeals, *pro se*, from a postconviction order denying her request for free transcripts, access to her presentence investigation report (PSI) and other documents. She claims that the trial court erred when it refused to provide her with these documents free of

charge. Because Flynn failed to raise any arguably meritorious issues, because she was given access to the PSI at sentencing and failed to demonstrate any right to a second review of the report, and because there is support in the record for the trial court's decision to deny her free access to public records, we affirm.

BACKGROUND

On April 1, 1997, Flynn and her co-defendant robbed a gas station located at 2009 West College Avenue in the City of Milwaukee. Flynn was charged with robbery, use of force, as party to a crime. Flynn admitted to her role in the robbery. On August 7, 1997, Flynn pled guilty to the crime charged. In September 1997, she was sentenced to forty-eight months in prison, to be served concurrently to a three-year sentence she was then serving. At the sentencing, Flynn signed a form indicating that she did not intend to pursue postconviction relief.

Approximately one year later, Flynn filed a *pro se* motion seeking "transcripts and access to pre-existing records." The trial court denied the motion, ruling that the time for Flynn's appeal had long expired, her motion failed to assert any "arguably meritorious claim for relief" and, therefore, it would not order production of the records. Flynn now appeals.

DISCUSSION

A. Transcripts.

Flynn claims that the trial court erred when it denied her access to the transcripts of the proceedings. She asserts that her trial counsel was ineffective and that the attorney induced her to plead guilty. The trial court denied her request because her time for appeal had long since expired and "[w]here the time for

appeal has expired, the court requires the assertion of an arguably meritorious claim for relief. The defendant has set forth several conclusory assertions, none of which constitutes a meritorious claim for relief." We agree with the trial court's conclusions.

This case is governed by § 814.29(1), STATS., which allows the court to enter an order waiving all fees in any action or proceeding if the litigant is indigent. Subsection (1)(c) of this statute provides in pertinent part: "The court may deny the request for an order if the court finds that the affidavit states no claim, defense or appeal upon which the court may grant relief."

The fee waiver statute's standard for deciding whether a proposed action states a claim is the same standard that is applied when considering a motion to dismiss in an ordinary civil case for "[f]ailure to state a claim upon which relief can be granted." *See* § 802.06(2)(a)6, STATS. Whether a claim for relief exists is a question of law that we determine independently. *See* ***Paskiet v. Quality State Oil Co.***, 164 Wis.2d 800, 805, 476 N.W.2d 871, 873 (1991). We have reviewed Flynn's motion papers and agree with the trial court's conclusion. She fails to assert any claim for relief. Flynn makes broad and general assertions that her trial counsel was ineffective, that she may have been sentenced on inaccurate information, that her plea was not entered with full knowledge and consent, and that her due process rights were violated. These conclusory allegations are insufficient to satisfy the requisite standard. *See* ***State ex rel. Richards v. Dane County Circuit Court***, 165 Wis.2d 551, 554, 478 N.W.2d 29, 30 (Ct. App. 1991). Therefore, the trial court did not err when it denied her motion seeking free transcripts.

B. PSI.

Flynn also claims that the trial court should have granted her access to her PSI so that she could determine whether it may contain any issues to appeal. The trial court ruled:

> At sentencing, the court was apprised that the defendant had reviewed the report in preparation for sentencing. Under circumstances where a defendant has had a previous opportunity to review the report and to make additions or corrections, the court will not permit further access to the report without a showing of a meritorious claim for relief.

We agree with the trial court's ruling.

Section 972.15(4), STATS., provides: "After sentencing, unless otherwise authorized under sub. (5) or ordered by the court, the presentence investigation report shall be confidential and shall not be made available to any person except upon specific authorization of the court." Flynn has failed to provide any rule of law requiring the trial court to grant her request. The trial court's ruling provided a reasonable rationale: unless Flynn could provide some showing of a meritorious claim, it was not going to allow access to a report, which she had already reviewed and corrected. The record demonstrates that the PSI was reviewed before the sentencing hearing. Defense counsel represented to the trial court that the PSI was reviewed with Flynn, and that one error was discovered in the report. Defense counsel told the trial court that the PSI attributed the "you're about to be robbed" comment to Flynn when, in fact, her co-defendant made that statement.

We conclude from this that Flynn was, in fact, afforded an opportunity to review the report for errors and correct any errors found. A

defendant has the duty to raise claims regarding a PSI at sentencing. *See* ***State v. DeMars***, 171 Wis.2d 666, 676, 492 N.W.2d 642, 647 (Ct. App. 1992). Any errors in the PSI not raised at sentencing are waived and cannot be raised for the first time in a motion for postconviction relief. *See* ***id.*** Consequently, in addition to failing to provide us with authority for a second look at the PSI, Flynn has waived any claim related to it. Accordingly, we conclude that the trial court did not err in denying her request for another opportunity to review the report.

C. Public Records.

Finally, Flynn contends that the trial court erred when it denied her request for "other file documents." The trial court construed this request to be one pursuant to our open records law. The trial court denied the request on the basis that the open records law requires requesters to pay $1.25 per page. The State points out that the trial court's belief that the open records law does not permit waiver of the copying fee when the requester is indigent is erroneous. Section 19.35(3)(e), STATS., of the law actually does permit the fee to be waived if waiver "is in the public interest." Despite the trial court's error, we believe it reached the right result and therefore affirm. *See* ***State v. Holt***, 128 Wis.2d 110, 124, 382 N.W.2d 679, 687 (Ct. App. 1985).

As noted, waiver of the copying fee for access to public records is allowed if waiver is in the public interest. Here, we cannot conclude that such public interest exists. Flynn has failed to allege an arguably meritorious claim. Her allegations are merely conclusory and phrased as mere possibilities. Under these circumstances, we conclude that waiver of the copying fee would not be in the public's best interest. The public should not have to assume the cost for copying public records relating to actions without any arguable merit.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.