



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

April 29, 2016

To:

Hon. Jeffrey A. Wagner
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Michael C. Sanders
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Steven N. Davis 382262
Jackson Corr. Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

You are hereby notified that the Court has entered the following opinion and order:

2015AP1377

State of Wisconsin v. Steven N. Davis (L.C. # 1999CF5187)

Before Curley, P.J., Brennan and Brash, JJ.

Steven Davis, *pro se*, appeals from a circuit court order that denied him access to his presentence investigation report (PSI) and from an order denying reconsideration. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We summarily affirm the orders.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

In 1999, Davis was convicted of felony murder, committed during an armed robbery, and taking and driving a motor vehicle without the owner's consent. At the start of the sentencing hearing, he indicated that he had no objections or changes to the PSI. The circuit court imposed a total of forty-five years' imprisonment. Appellate counsel prepared a no-merit report, to which Davis responded. This court ultimately affirmed the conviction. See *State v. Davis*, No. 2000AP2208-CRNM, unpublished op. and order (WI App Mar. 22, 2001). In 2009, Davis filed a motion to access his PSI, but the motion was denied. Davis appealed, but the appeal was dismissed when Davis failed to pay the filing fee or to obtain a waiver.

In 2015, Davis again moved for access to the PSI. He wrote, in relevant part, that he was "researching for an[d] preparing a motion for postconviction relief." He invoked WIS. STAT. § 972.15(4m) and *State v. Parent*, 2006 WI 132, 298 Wis. 2d 63, 725 N.W.2d 915, as authority permitting his access. The circuit court denied the motion, explaining that *Parent* applies only in a no-merit appeal. Davis moved for reconsideration, claiming that § 972.15(4m) has no such limitations, and that *State v. Buchanan*, 2013 WI 31, 346 Wis. 2d 735, 828 N.W.2d 847, says that "the circuit court may not altogether deny access to the PSI." *Id.*, ¶32. The circuit court denied the motion, noting that the record shows Davis previously had an opportunity to review the report. Davis appeals.

We review the circuit court's decision to grant or deny access to the PSI for an erroneous exercise of discretion. See *State v. Zanelli*, 212 Wis. 2d 358, 378, 569 N.W.2d 301 (Ct. App. 1997). "A proper exercise of discretion requires that the circuit court rely on facts of record, the applicable law, and, using a demonstrable rational process, reach a reasonable decision." *State v. Doss*, 2008 WI 93, ¶19, 312 Wis. 2d 570, 754 N.W.2d 150.

WISCONSIN STAT. § 972.15 provides, in relevant part:

(4) Except as provided in sub. (4m) ... after sentencing the presentence investigation report shall be confidential and shall not be made available to any person except upon specific authorization of the court.

(4m) The district attorney, the defendant's attorney, and ... the assistant attorney general are entitled to have and keep a copy of the presentence investigation report. *If the defendant is not represented by counsel, the defendant is entitled to view the presentence investigation report but may not keep a copy of the report...*

(Emphasis added.) Subsection (4m) does not specify whether the defendant is permitted to access the PSI again post-sentencing if the defendant viewed the PSI pre-sentencing, and Davis contends that “the circuit court suggests that because Davis viewed his PSI presentence (when he was a minor), he should be precluded from ever viewing it again.”

That is not what the circuit court said. In the original order, the circuit court stated that Davis's reliance on *Parent*, which Davis claimed “expressly allows [him] to view the PSI without court authorization,” was misplaced. The circuit court explained that “*Parent* held that a defendant in a no-merit appeal is entitled to a meaningful viewing of the report. There is no pending no-merit appeal in this case.” Davis does not show that the circuit court's decision is erroneous and, in fact, it is not.² See *Buchanan*, 346 Wis. 2d 735, ¶29 (“We conclude that the rule of *Parent* is confined to no-merit appeals.”), ¶34 (“Therefore, *Parent* is not controlling on the issue now before this court because [*Parent*] concerned access to the PSI in a no-merit appeal.”).

² The circuit court's order also indicates that Davis's motion is denied for the reasons given in 2009. Davis does not identify or address those reasons.

In the reconsideration motion, Davis asserted that under *Buchanan*, the circuit court could not “altogether deny access to the PSI.” The circuit court denied reconsideration because Davis had “already had an opportunity to view the report” at the time of the original sentencing. Relying on a single federal case,³ Davis, in his appellant’s brief, asserts merely that “a person’s PSI shouldn’t be kept from him/her.” But this in no way addresses whether the circuit court properly exercised its discretion, nor is it an appropriate application of existing law. We do not consider undeveloped arguments. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992); *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

In his reply brief, Davis claims that by denying access under *Parent* and *Buchanan*, “defendants are effectively cut off from viewing their PSIs for any reason.” This argument, however, merely serves to underscore Davis’s problem here: he has not sufficiently given any reason for needing access to his PSI.⁴ While he claims he is “simply exercising due diligence by attempting to view his PSI as part of [his] research and motion preparation,” he has not provided

³ See *United States Dep’t. of Justice v. Julian*, 486 U.S. 1 (1988). In that case, petitioners sought access to their federal PSIs under the Freedom of Information Act (5 U.S.C. § 552), FED. R. CRIM. P. 32, and the Parole Commission and Reorganization Act (18 U.S.C. § 4208(b)). The main tension in that case was between provisions of the procedural rule and the Parole Act that required disclosure of a PSI to a defendant, and portions of the rule that exempted certain information from disclosure. See *Julian*, 486 U.S. at 3-6. None of those rules, however, are applicable in this case.

⁴ Davis contends generally that access is necessary so he can raise, in nonconclusory fashion, all issues in his postconviction motion and avoid the procedural bar of *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), and WIS. STAT. § 974.06. The State asserts that Davis will be unable to avoid this bar because under *State v. Tillman*, 2005 WI App 71, ¶19, 281 Wis. 2d 157, 696 N.W.2d 574, Davis had to raise all his issues in the no-merit response. See also *State v. Allen*, 2010 WI 89, ¶4, 328 Wis. 2d 1, 786 N.W.2d 124. While Davis is correct that the procedural bar can be overcome with a showing of “sufficient reason” for not raising issues earlier, he still has not indicated with any specificity why he needs access to the PSI in this case.

even a hint of what he expects to find in the PSI.⁵ Thus, Davis has failed to establish that the law requires a court to grant a defendant access to his own PSI simply for the sake of taking a look, particularly when any objection or challenge to the PSI must be timely raised at sentencing. *See State v. DeMars*, 171 Wis. 2d 666, 676, 492 N.W.2d 642 (Ct. App. 1992).

In the absence of any specific and articulable need for the PSI, we cannot conclude the circuit court erroneously exercised its discretion in denying Davis access. Accordingly, we summarily affirm the orders.

IT IS ORDERED that the orders appealed from are summarily affirmed.

Diane M. Fremgen
Clerk of Court of Appeals

⁵ Davis points to *Easterling v. Thurmer*, 2015 U.S. Dist. LEXIS 161613 (E.D. Wis. 2015), as a case where the circuit court “complied with WIS. STAT. § 972.15.” Easterling had filed a federal lawsuit, claiming that prison officials had used erroneous information within his state PSI to deny him visitation with his daughter. The Wisconsin circuit court had granted the Department of Justice access to Easterling’s PSI for the case, so Easterling asked the federal court to grant him access as well. Aside from the fact that Easterling gave a reason for accessing the PSI, the main dispute in that case was not whether he should be able to access the PSI. Rather, the questions were whether the document should remain sealed to the public and whether Easterling should be allowed to keep a copy of the PSI for his own use.