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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0152**

Michelle Rae Wilson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 27, 2014
Affirmed
Kalitowski, Judge**

Ramsey County District Court
File No. 62-K7-08-000188

Michelle Rae Wilson, Shakopee, Minnesota (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Kaarin Long, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

In this appeal from the district court's summary denial of her petition for postconviction relief, pro se appellant Michelle Rae Wilson raises numerous pretrial,

trial, and post-trial issues, and challenges her ineligibility for representation by a public defender and payment of transcript costs. We affirm.

D E C I S I O N

In January 2008, appellant shot and killed the decedent in her St. Paul home. A jury convicted appellant of murder in the second degree (intentional), in violation of Minn. Stat. § 609.19, subd. 1(1) (2006), and murder in the second degree (felony murder), in violation of Minn. Stat. § 609.19, subd. 2(1) (2006). Appellant was sentenced to 350 months in prison. In April 2010, appellant, who was represented by private counsel at trial, filed a direct appeal and sought appellate public defender services and representation. The public defender's office determined that appellant was not indigent and declined to represent her on direct appeal. Her direct appeal was later dismissed by this court for failure to order transcripts and other filing deficiencies. Since then, appellant has continually sought assistance from the public defender's office, and she has repeatedly been declined representation and other services based on financial ineligibility.

In July 2012, appellant filed a pro se postconviction petition. The district court found appellant's request for postconviction relief time-barred under Minn. Stat. § 590.01, subd. 4 (2010), and further concluded that appellant's unsupported assertions were insufficient to sustain her postconviction petition. Transcripts were not provided to the postconviction court and transcripts have not been provided to this court on appeal.

Appellant now raises several issues relating to pretrial, trial, and post-trial matters. She also argues that the district court made erroneous determinations regarding her

financial ability to secure counsel and transcripts, the timeliness of her postconviction petition, and its denial of her request for a new trial and an evidentiary hearing.

On appeal, the decision of the postconviction court is reviewed only to determine whether there is sufficient evidence to support the postconviction court's findings, and the postconviction court's decision will not be disturbed absent an abuse of discretion. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). A petitioner seeking postconviction relief must prove the alleged facts "by a fair preponderance of the evidence." Minn. Stat. § 590.04, subd. 3 (2010). To meet that burden, the petition "must be supported by more than mere argumentative assertions that lack factual support." *Henderson v. State*, 675 N.W.2d 318, 322 (Minn. 2004).

At the district court, appellant raised many claims that she now abandons on appeal. In addition, appellant raises new claims on appeal that were not argued or presented to the district court. We will not consider these claims. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (declining to review a claim for the first time on appeal); *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997) (holding issues not briefed waived).

Transcript Costs

Appellant also asserts that because she previously received means-tested government benefits, she is entitled to have the transcript costs paid for by the state. But the supreme court has affirmed the determination of the state public defender's office that she is ineligible for public defender representation and services. *In re Application of Wilson*, No. ADM08-8001(Minn. Oct. 10, 2012) (order). And Minnesota Rule of

Criminal Procedure 28.02, subd. 5(5), provides the exclusive means of review regarding a determination by the state public defender's office regarding representation eligibility: "Any applicant who contests a decision of the State Public Defender's office that the applicant does not qualify for representation may apply to the Minnesota Supreme Court for relief." It is therefore not within our discretion to review a determination made by the public defender's office and affirmed by the supreme court. *Id.*; *see also McDonough v. State*, 707 N.W.2d 384, 387 (Minn. 2006) (holding that a postconviction court may summarily deny a petition when the issue has been previously decided by the supreme court in the same case). Moreover, it is the responsibility of appellant to provide a sufficient record to support her claims. *See* Minn. R. Crim. P. 28.02, subds. 8, 9 (stating that the record on appeal consists of the papers filed in the district court, the offered exhibits, and the transcript of the proceedings, and providing that the Minnesota Rules of Civil Appellate Procedure govern preparation and transmission of the transcript); Minn. R. Civ. App. P. 110.02, subd. 1(a) (providing for appellant ordering transcript and providing record).

Other Claims

Appellant raises various issues relating to pretrial, trial, and post-trial proceedings. After a thorough review of the limited record before us, we conclude that without a transcript of the trial proceedings and other hearings, we are unable to review appellant's alleged claims of error. *See State v. Anderson*, 351 N.W.2d 1, 2 (Minn. 1984) (stating that "[n]ormally, a criminal defendant cannot obtain a new trial on appeal" based on

claim of trial error “unless he provides this court with a complete transcript” or a stipulation as to the record).

Because the record here conclusively shows appellant was not entitled to postconviction relief, we need not address the district court’s determination that appellant’s claims were time-barred. We conclude that the district court did not abuse its discretion by summarily denying appellant’s unsupported assertions in her postconviction petition.

Affirmed.