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**DISTRICT IV**

October 7, 2015

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

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2013AP2408-CR

State of Wisconsin v. Dominique R. Hale (L.C. # 2012CF1844)

Before Kloppenburg, P.J., Sherman and Blanchard, JJ.

Dominique Hale appeals a judgment convicting him of second-degree reckless homicide, burglary armed with a dangerous weapon, and battery—each as a repeat offender. The sole issue on appeal is whether Hale was sentenced based upon inaccurate information in the form of a presentence investigation report (PSI) that Hale contends was authored by a Division of Community Corrections agent who was biased against him. After reviewing the briefs and

record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).<sup>1</sup> We affirm.

A defendant has a due process right to be sentenced based upon accurate information. *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. If a defendant can establish by clear and convincing evidence both that inaccurate information was presented at sentencing and that the court relied upon the misinformation in reaching its determination, the burden shifts to the State to show that the error was harmless. *Id.*, ¶26. We will independently review the constitutional question whether a defendant has been denied due process by being sentenced on inaccurate information. *State v. Groth*, 2002 WI App 299, ¶21, 258 Wis. 2d 889, 655 N.W.2d 163.

Hale bases his primary claim of bias upon several comments the agent made in the “Agent’s Assessment and Impressions” section of the PSI. In particular, Hale takes issue with the agent’s statements that: “Hale’s description of the offenses is simply not believable;” and “this is an intentional homicide case. It is not a case of self-defense, imperfect or otherwise.” Hale contends that these comments led the circuit court to make an inaccurate determination that his offense was aggravated, rather than mitigated imperfect self-defense as he had acknowledged with his plea.

However, the mere fact that a defendant disputes a conclusion drawn by a corrections agent or the circuit court does not render the conclusion “inaccurate.” Hale does not point to any personal connection that the agent in this case had to Hale, or any discriminatory views the agent

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

had that would have skewed her ability to assess either Hale's character or the nature of the offenses. Rather, the agent explained in detail why she believed that Hale's account of killing Willie Taylor in self-defense after Hale's ex-girlfriend, Porsha Davis, invited Hale into her apartment could not be squared with: (1) the account by Davis, who described Hale kicking in her door while she called 911 and begged him to leave her alone, then immediately attacking Taylor, stomping on Taylor once he was down, following Taylor out of the residence after Davis intervened to give Taylor a chance to escape, and again punching and stomping on Taylor after catching him in the parking lot (which was also witnessed by a third party), as well as punching Davis when she again tried to intervene, and then chasing Davis through the parking lot threatening to kill her until she hid under a car; (2) the physical characteristics of the victim who weighed considerably less than Hale and was disabled with a deformed right hand and one leg that was smaller than the other; and (3) 911 calls from both Davis and Taylor that captured a portion of the attack and corroborated Davis's account of Hale breaking down the door as she begged him to leave. The agent acknowledged that Taylor was the one who had initial possession of the knife that Hale used to stab Taylor, but concluded that Taylor had "a legitimate and legal right" to defend himself after Hale broke in and attacked him. In sum, the agent's discussion demonstrates an objective evaluation of Hale's credibility and character based upon all of the facts within the agent's possession, and does not reflect any discernable bias.

Moreover, the circuit court explicitly stated it would be making its own assessment of the nature of the offense based upon the facts set forth in the complaint as supplemented by the record, rather than accepting the agent's view of Hale's self-defense claim. The court proceeded to discuss how Davis's and Taylor's 911 calls not only corroborated Davis's account of how Hale broke into her apartment and attacked Taylor, but also how Davis's refusal to identify the

attacker during the call fit the pattern of a domestic abuse situation in which the victim did not want to identify the perpetrator to the authorities for fear of retaliation. In contrast, the court noted that the 911 calls contradicted several of the claims Hale had made about his entry into the house, and pointed out that Hale himself had not called 911 to report having been attacked by a man with a knife. The court therefore rejected what it deemed to be Hale's "rationalizations and ... distortions of what occurred" and instead concluded that Taylor had armed himself with the knife in justifiable self defense against Hale because Hale was "acting like a wild man" breaking into Davis's apartment in a fit of jealous rage, engaging in "unrestrained, unmitigated, vicious, bloody" behavior. The court concluded that the offense was "most aggravated" as a second-degree reckless homicide charge, in comparison to the original charge of first-degree intentional homicide. The court's discussion makes clear that it did not rely upon the opinion of the PSI agent, and that the court's own assessment that the offense was aggravated was based upon information in the record and cannot be deemed "inaccurate."

Hale also argues that the agent took into consideration a psychological report written by an intern that offered a different diagnosis than prior psychological assessments had offered, and that the defense was not given access to that report to assess its accuracy or the intern's qualifications. However, the circuit court noted that, based upon Hale's motion to strike, it did not read and would not consider the portion of the PSI relating to the intern's new diagnosis.

Even if we were to assume that the new intern's diagnosis was inaccurate, the record plainly shows that the circuit court relied on Hale's own actions, rather than the intern's diagnosis, when drawing its own conclusions as to Hale's character and future danger to the community. For example, the court noted that it took the prosecutor's comments during oral argument that Hale was a psychopathic killer with a grain of salt, and that it had no interest in

trying to diagnose Hale. In assessing Hale’s character, the court placed considerable emphasis on Hale’s prior conviction for his participation in the “sadistic orgy” of an hours-long torture of another man. The court viewed Hale’s role in the torture as evincing “an uncommon level of depravity, cruelty, and inhumanity” and considered the present offenses with that in mind. The court took Hale’s commission of the present offenses—while still on supervision for the torture case—as evidence that Hale was a recidivist with a persistent pattern of offending and was resistant to the attempts of the correctional system to change his behavior. Thus, we conclude that Hale was not sentenced based on inaccurate information.

IT IS ORDERED that the judgment of conviction is summarily affirmed under WIS. STAT. RULE 809.21(1).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*