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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  
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**DISTRICT I/IV**

January 24, 2018

To:

Hon. Ellen R. Brostrom  
Circuit Court Judge  
Br. 6  
821 W. State 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

Nicole M. Masnica  
Assistant State Public Defender  
735 N. Water St., Ste 912  
Milwaukee, WI 53202-4105

Gregory M. Weber  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

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

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2017AP635-CR

State of Wisconsin v. Pablo A. Perez (L.C. # 2015CF4369)

Before Sherman, Kloppenburg and Fitzpatrick, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Pablo Perez appeals a judgment of conviction and an order denying his postconviction motion for resentencing. Perez argues that the circuit court relied on inaccurate information as to Perez's risk of recidivism. 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 (2015-16).<sup>1</sup> We summarily affirm.

In February 2016, Perez pled guilty to third-degree sexual assault and impersonating a police officer. The circuit court sentenced Perez to the maximum on each count, imposed consecutively, for a total of eight years of initial confinement and eight years of extended supervision. Perez moved for resentencing, arguing that the court had relied on its inaccurate belief that Perez has a high risk to reoffend due to his lack of a history of criminal or sexually deviant behavior and the court's view of Perez as a "predator." In support of the motion for resentencing, Perez submitted a postconviction psychological evaluation report that indicated that Perez has a low risk of sexual recidivism and has no diagnosis of a sexually deviant predatory disorder. The court denied the motion, finding that the psychologist's opinion as expressed in the report did not establish that the court had relied on inaccurate information at sentencing.

A defendant has a due process right to be sentenced based on accurate information. *State v. Johnson*, 158 Wis. 2d 458, 468, 463 N.W.2d 352 (Ct. App. 1990). A defendant seeking resentencing based on a claimed violation of that right "must establish two things: that some of the information presented was inaccurate, and that the sentencing court actually relied on that misinformation." *State v. Tiepelman*, 2006 WI 66, ¶¶26, 28, 291 Wis. 2d 179, 717 N.W.2d 1.

Perez contends that the circuit court imposed consecutive maximum sentences based on its inaccurate subjective opinion that Perez has a high risk to reoffend. Perez argues that the

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

psychological evaluation conducted after his sentencing relied on an objective, evidence-based actuarial tool commonly accepted in Wisconsin, which disproved the court's belief that Perez has a high risk to reoffend and that he is a "predator." He asserts that, according to the evaluation, Perez has a low risk to reoffend and has no psychosexual diagnosis. Perez asserts that the court erred by discounting the evaluation as merely the psychologist's opinion, and argues that the court had no basis to reach a contrary opinion as to Perez's risk to reoffend. Thus, according to Perez, the court's sentence was based on its inaccurate belief as to Perez's risk for recidivism. We are not persuaded.

The circuit court explained at sentencing that the court considered Perez a "predator" because his act of impersonating a police officer to sexually assault women was "not an accident. This is not a set of actions taken while under the influence. This is premeditated predator activity. You went out into the community with a gun on a sexual assaulting spree is effectively what this is." The court explained that it did not believe that Perez had remorse for his actions, and that it considered Perez "a grave danger to the community." The court further explained that Perez had committed "a horrific set of crimes," which did not match with the rest of Perez's character and lack of criminal record. The court stated that the contradiction made it "all the more concerned ... for other women in this community."

The circuit court's opinions as to Perez's character and the danger he posed to the public, based on Perez's history and his conduct underlying his convictions, do not constitute "inaccurate information." See *Tiepelman*, 291 Wis. 2d 179, ¶26. Rather, they are the circuit court's opinions based on the information before the court at the time of sentencing. Because the court's opinions as to Perez's character and dangerousness cannot be characterized as "inaccurate information," Perez has not shown that he was deprived of due process at sentencing.

Moreover, we disagree with Perez’s characterization of the postconviction psychological evaluation report as establishing that the circuit court’s opinions were “inaccurate.” A circuit court is not required to accept a psychologist’s opinion whenever the opinion is based on accepted scientific methodology. *See State v. Slagoski*, 2001 WI App 112, ¶9, 244 Wis. 2d 49, 629 N.W.2d 50 (holding that the circuit court “was entitled to accept or disregard ... as it deemed appropriate” a postconviction psychiatric opinion that the defendant claimed rendered inaccurate the psychiatric evaluation the court relied on at sentencing).

Finally, we disagree with Perez’s contention that the circuit court was required to accept the postconviction psychological evaluation because the court had nothing more than its own opinion to support its contrary assessment of Perez’s dangerousness. The circuit court reached its opinions as to Perez’s character and dangerousness based on Perez’s “horrific” conduct in this case, and the stark contradiction between Perez’s apparently law-abiding history and the conduct underlying his offenses. The circuit court’s inferences were reasonable. *See McCleary v. State*, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971) (a circuit court may base a sentence on inferences reasonably derived from the record). Accordingly, we conclude that Perez was not deprived of his due process right to be sentenced on accurate information.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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