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**DISTRICT I**

April 23, 2018

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

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2017AP1456-CR

State of Wisconsin v. Perk Eugene Thomas  
(L.C. # 1997CF972838)

Before Brennan, P.J., Kessler and Dugan, 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).**

Perk Eugene Thomas, *pro se*, appeals from orders of the circuit court that denied his request for access to his presentence investigation report (PSI). 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> The orders are summarily affirmed.

In 1998, Thomas beat his wife with a baseball bat and stabbed her to death. He pled guilty to one count of first-degree intentional homicide and was sentenced to life imprisonment with parole eligibility after forty years. As of August 25, 2015, he had pursued seven postconviction motions, six of them while representing himself. *See State v. Thomas*, No. 2014AP2898-CR, unpublished slip op. ¶10 (WI App Aug. 25, 2015).

In June 2017, Thomas moved the circuit court for access to his PSI so that he could pursue a motion for resentencing on the grounds of inaccurate information. The circuit court denied the motion. It noted that Thomas had been granted “limited access” to the PSI in 2014 and, in light of that recent access, “the court decline[d] to release the report for further examination, particularly under circumstances where the defendant’s postconviction rights in this case have been thoroughly exhausted.”

In July 2017, Thomas moved for reconsideration, stating he needed access to the PSI so that he could make a claim for resentencing based on a new factor. The circuit court again denied the motion. It noted that Thomas could “not evade the procedural bar of” *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), “simply by labelling new postconviction arguments as new factors. The defendant’s intent to raise his resentencing claim

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

as a new factor does not persuade the court to release the presentence report for the second time.” Thomas appeals.<sup>2</sup>

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). We also review a circuit court’s denial of reconsideration for a proper exercise of discretion. *See State v. White*, 2008 WI App 96, ¶9, 312 Wis. 2d 799, 754 N.W.2d 214. “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. Here, Thomas has failed to establish that the circuit court erroneously exercised its discretion in either instance.

The circuit court implicitly concluded that, given Thomas’s history of litigation, any sentence modification motion based on inaccurate information would likely be procedurally barred. When Thomas claimed he needed to access the PSI to bring a new factor motion,<sup>3</sup> the circuit court noted that Thomas could not avoid the *Escalona* procedural bar just by relabeling

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<sup>2</sup> The State points out that the notice of appeal indicates an appeal from only the July 2017 order; it does not mention the June 2017 order. However, an appellant’s designation of documents appealed from is not necessarily dispositive of this court’s jurisdiction, and, in this case, the notice of appeal is timely as to both orders. *See* WIS. STAT. § 808.04(1) (time limits for appeals); WIS. STAT. RULE 809.10(1)(e) (“The filing of a timely notice of appeal is necessary to give the court jurisdiction over the appeal.”). It is not entirely evident whether Thomas intended to appeal one or both of the 2017 orders, and we choose to address both. We do note, however, that contrary to the captions on Thomas’s briefs, we have no jurisdiction in this appeal to review his judgment of conviction.

<sup>3</sup> We note that Thomas’s 2014 motion, filed after he had been granted access to the PSI, purported to seek sentence modification based on a new factor, but the circuit court denied the motion because it failed to actually identify any new factor. *See State v. Thomas*, No. 2014AP2898-CR, unpublished slip op. ¶¶10-11 (WI App Aug. 25, 2015).

his sentence modification argument as a new factor claim.<sup>4</sup> Thomas’s primary contention on appeal is thus a claim that the circuit court erred in the reconsideration order when it applied *Escalona* to “deny the defendant to file a sentence modification motion under the new factor law.”

However, the circuit court did not deny Thomas the ability to file a sentence modification or a new factor motion but, rather, simply denied Thomas’s attempts to access the PSI again because he did not sufficiently show a need for that access. Thomas does not establish that the law requires a court to grant a defendant access to his 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 a single conclusory sentence, Thomas also asserts that the circuit court “denied his legal right under *State v. Skaff* to review his PSI report[.]” *Skaff* holds only that defendants have a due process right “to timely disclosure” of the PSI “to ensure its accuracy as well as the integrity of the sentencing proceeding.” *See State v. Skaff*, 152 Wis. 2d 48, 53, 58, 447 N.W.2d 84 (Ct. App. 1989). This is consistent with the *DeMars* requirement that objections to the PSI must be made at sentencing. *Skaff* does not require unlimited or infinite access to the PSI.

In order for the circuit court to properly exercise its discretion, it must be given adequate facts on which to base a decision. Thomas did not provide those facts to the circuit court, and

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<sup>4</sup> We do not think the circuit court erred in its inference that Thomas is merely relabeling arguments that are likely barred because he takes the same approach on appeal: in his appellate brief, Thomas asserts that if the court concludes he is not entitled to “bring forth a sentence modification motion at this time, the merits of his motion for resentencing still would be reached within an ineffective assistance of counsel [claim].”

even on appeal, Thomas does not attempt to explain what his inaccurate information or new factor claims might be or how he expects the PSI to help further either claim. Though Thomas contends he is not required to disclose his new factor at this stage, he must nevertheless make some objective showing that justifies his request for access to the PSI. In the absence of any specific and articulable need for the PSI, we cannot conclude the circuit court erroneously exercised its discretion in denying Thomas access. The circuit court is not required to authorize a fishing expedition.

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

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*