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

2020AP157-CR

State of Wisconsin v. Antwuan M. Hardy (L.C. # 2018CF3534)

Before Dugan, Graham and White, 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).

Antwuan Hardy appeals a judgment convicting him of multiple felonies for a violent home invasion and armed robbery. He also appeals an order denying his motion for postconviction relief.

Hardy argues that the circuit court relied on inaccurate information and considered an improper

factor when sentencing him. After review of the briefs and record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2017-18).¹ Upon review, we affirm.

Hardy and Brandon Lane robbed a family of five at gunpoint in their home. Over the course of three-and-a-half hours, Hardy and Lane terrorized the family by tying them up, threatening to kill them, and beating them, causing grave injuries to one of the victims, a five-year-old child. After a jury trial, Hardy was convicted of two counts of armed robbery with use of force, two counts of false imprisonment, one count of first-degree reckless injury, one count of second-degree recklessly endangering safety, and one count of burglary, all as a party to a crime. The circuit court sentenced Hardy to fifty years of imprisonment, with thirty-five years of initial confinement and fifteen years of extended supervision.

Hardy first argues that the circuit court relied on inaccurate information when it sentenced him. “A defendant has a constitutionally protected due process right to be sentenced upon accurate information.” *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. A defendant must show that information at the original sentencing was inaccurate and that the court actually relied on it when it imposed the sentence. *Id.*, ¶26. Whether the court relied on inaccurate information is a question of law that we review *de novo*. *Id.*, ¶9.

Hardy contends that the circuit court incorrectly stated that he did “absolutely nothing” to help the victims. Hardy argues that this information is inaccurate because he did something to help them. Specifically, he gave the victims water, untied one of the victims, and turned on the air conditioning to make them more comfortable.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Hardy's argument about inaccurate information fails to consider the context in which the circuit court's comment was made. When discussing Hardy's culpability at sentencing, the court told Hardy that "Lane [did] the beating but you stood by and let it happen." The court recounted that Lane tied up the child, who was screaming, put a bag over him, and gagged him while Hardy "stood by and let it happen." The court said, "You stood by while Lane did these horrible things and you did absolutely nothing." The court's statement that Hardy did "absolutely nothing" to help the victims, when read in context, meant that Hardy did absolutely nothing *of consequence* to help the victims. This assertion is accurate; Hardy did not attempt to stop Lane from beating the victims, and his minimal assistance was inconsequential given the victim's circumstances. Therefore, we reject Hardy's argument that the circuit court relied on inaccurate information.

Hardy next argues that the circuit court relied on an improper factor when it sentenced him. Hardy contends that the court unreasonably suggested that Hardy should have hit Lane in the head with the butt of a rifle with enough force to knock him out in order to stop Lane from beating the victims.

Again, Hardy fails to consider the circuit court's comments in context. After discussing the fact that Hardy did "absolutely nothing" to help the victims, the court suggested that Hardy could have knocked Lane out with the gun and freed the victims if he had wanted to help them. As the court explained in its order denying postconviction relief, its "comment about possibly knocking Lane out was merely a point of example." The court aptly explained that it "did not punish [Hardy] for failing to take that specific action—it punished him for his own role in this home invasion robbery and, to the extent that he objected to [Lane's] violent actions, for failing to take any action to stop him." Therefore, we reject Hardy's argument that the circuit court considered an improper factor.

Accordingly,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed.

See WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals