



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

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
Web Site: www.wicourts.gov

DISTRICT II

October 6, 2021

To:

Hon. Phillip A. Koss
Circuit Court Judge
Electronic Notice

Kristina Secord
Clerk of Circuit Court
Walworth County
Electronic Notice

Anne Christenson Murphy
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Steven Roy
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Zeke Wiedenfeld
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You are hereby notified that the Court has entered the following opinion and order:

2020AP1678-CR

State of Wisconsin v. Andre Jackson (L.C. #2017CF346)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Andre Jackson appeals from a judgment of conviction and an order denying his motion for reconsideration. He challenges the circuit court's sentence on due process grounds, claiming he is entitled to be resentenced because the court relied upon inaccurate information in sentencing him. 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 (2019-20).¹ For the following reasons, we affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

“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 (citations omitted). Whether a defendant has been denied this right is an issue we review de novo. *Id.* In reviewing a sentence on this ground, we apply a two-part test: (1) whether the information at issue was in fact inaccurate and (2) whether the sentencing court actually relied on it. *Id.*, ¶¶2, 26. The defendant must prove both prongs by clear and convincing evidence. See *State v. Harris*, 2010 WI 79, ¶34, 326 Wis. 2d 685, 786 N.W.2d 409; see also *State v. Littrup*, 164 Wis. 2d 120, 131-32, 473 N.W.2d 164 (Ct. App. 1991), *overruled on other grounds by Tiepelman*, 291 Wis. 2d 179, ¶2. Jackson has failed to do so.

Following a jury trial, Jackson was convicted of strangulation, false imprisonment, misdemeanor battery, and disorderly conduct, and he was subsequently sentenced. On appeal, he points to a “list of errors” in the pre-sentence investigation report (PSI), which errors he details in his brief in chief.

There is no indication that the court relied on any of these identified “errors.” Jackson’s counsel clarified at the sentencing hearing that these items in the PSI were inaccurate. Related to counsel’s various clarifications—including a clarification that Jackson had “a number of prior convictions for ... white-collar [crimes]” but “has no prior offenses for battery or disorderly conduct”—the court responded with either “all right,” “I agree,” or “okay.”

Jackson states that “[t]he sentence the State and the agent recommended, and the court adopted, is based on flawed information and the inaccurate belief Mr. Jackson has been assaulting others for 30 years. The court concluded the recommendation was ‘balanced well’ but

failed to address how the inaccurate information may have [a]ffected the recommendation.” This goes nowhere.

As indicated, the circuit court acknowledged defense counsel’s corrections of the PSI, including that Jackson “has no prior offenses for battery or disorderly conduct.” Related to Jackson’s “past record of criminal offenses,” the court further stated that

no matter which way you look at the inconsistencies in his record, it’s not good. It is lengthy. It is a long period of time. He’s been on probation. He’s been in prison. He’s been on extended supervision.

He’s had fines and yet here we are with this case and a pending case as well and that pretty much summarizes his history of undesirable behavior patterns....

There’s [sic] some *allegations* of prior domestics, but it looks like no *convictions* for that. Although, as the agent and everybody concedes, Illinois is tough to read....

....

The trouble is with his history. It’s kind of like a used car salesman. I don’t know what to believe....

(Emphasis added.)

Jackson notes in his appellate briefing that “this case is his first conviction for violent crimes. It is inaccurate to state he has been assaulting others for thirty years.” The circuit court did not state or even suggest that Jackson “has been assaulting others for thirty years,” and it in fact recognized that Jackson had no convictions for such crimes. The mere fact that the court indicated that the sentencing recommendation in the PSI and by the State was “balanced ... well” does not indicate that the court sentenced Jackson in reliance upon a belief that he “has been assaulting others for thirty years.” In short, Jackson has failed to demonstrate by clear and convincing evidence that the court relied upon inaccurate information in sentencing him.

IT IS ORDERED that the judgment and order of the circuit court are hereby 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