

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 13, 2012

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2011AP1497-CR
2011AP1498-CR**

**Cir. Ct. Nos. 2009CF319
2005CF572**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JORGE QUINONEZ,

DEFENDANT-APPELLANT.

APPEALS from judgments and orders of the circuit court for Walworth County: MICHAEL S. GIBBS and ROBERT J. KENNEDY, Judges.¹
Affirmed.

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

¹ The Honorable Michael S. Gibbs presided over trial and entered the judgments of conviction. The Honorable Robert J. Kennedy entered the orders denying the defendant's postconviction motions.

¶1 PER CURIAM. In these consolidated appeals, Jorge Quinonez appeals from a judgment convicting him of two drug offenses, a judgment sentencing him after revocation of his probation on another drug offense, and orders denying his challenge to his sentences. On appeal, Quinonez argues that the circuit court relied upon inaccurate information at sentencing and that his trial counsel was ineffective. We disagree and affirm.

¶2 At sentencing, the circuit court considered that while Quinonez did not use cocaine, he distributed cocaine to earn income. The court referred to Quinonez’s statement that he sold drugs for a Mexican cartel. The court observed that selling drugs contributes to rampant drug violence in Mexico, and the violence has spilled over into Texas. The court characterized Quinonez as part of a stream of commerce that results in death and crime. The court considered the severity of the offense, Quinonez’s character, criminal history and failure on probation, his culpability and the need to protect the public. The court imposed a ten-year sentence after revocation of Quinonez’s probation and a consecutive twenty-year sentence for the new drug offenses.

¶3 Postconviction, Quinonez sought resentencing because the circuit court relied upon inaccurate information about Quinonez’s involvement with Mexican drug trafficking and the deleterious effects of the Mexican drug trade. Quinonez also alleged that his trial counsel was ineffective because he did not object. The court denied postconviction relief.

¶4 A defendant has a “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. When a defendant seeks resentencing, the defendant must establish that the

circuit court actually relied upon inaccurate information. *Id.*, ¶31. We independently review a defendant’s due process challenge to the sentence. *Id.*, ¶9.

¶5 Quinonez argues that there was no evidence of his involvement with Mexican drug suppliers or Mexican drug violence. The record suggests otherwise. In its sentence memorandum, the State noted that upon his arrest, Quinonez stated that his Chicago drug supplier was tied in with a Mexican drug cartel and “they would kill him if he acted as a CI and did controlled buys.” The prosecutor repeated this information at sentencing. Quinonez did not meet his burden to show that the sentencing court’s reference to Mexican drug cartels and related violence was inaccurate based upon this record. The court considered appropriate sentencing factors. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76.

¶6 In his reply brief, Quinonez disputes the accuracy of his statement to law enforcement about the involvement of a Mexican drug cartel in his supply chain. Trial counsel disputed this statement at sentencing and suggested that something was lost in the translation.² Even though trial counsel disputed Quinonez’s statement, the sentencing court was free to draw its own inferences from Quinonez’s statement.

¶7 Because the sentencing court did not consider inaccurate information, trial counsel was not ineffective when he failed to object to the court’s reference to Mexican drug cartels and violence.

² Quinonez’s postconviction motion limited its ineffective assistance claim to counsel’s failure to object to the circuit court’s reference to Mexican drug violence. Quinonez did not argue that trial counsel was ineffective for failing to challenge Quinonez’s statement to law enforcement.

By the Court.—Judgments and orders affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5.

