

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 10, 2015

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. 2014AP2064-CR
2014AP2065-CR
2014AP2066-CR
2014AP2067-CR**

**Cir. Ct. Nos. 2012CM4565
2012CM5249
2013CM992
2013CM2202**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TRAVIS DEON WILLIAMS,

DEFENDANT-APPELLANT.

APPEALS from judgments and an order of the circuit court for Milwaukee County: MEL FLANAGAN, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Travis Deon Williams appeals the judgments of conviction, following guilty pleas, in four consolidated circuit court cases.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Williams also appeals the circuit court's order denying his motion for resentencing. We affirm.

BACKGROUND

¶2 This is an appeal from four misdemeanor cases, resulting in seven charges against Williams. Williams entered guilty pleas in Milwaukee County case Nos. 2012CM4565, 2012CM5249, 2013CM992, and 2013CM2202. We discuss the relevant details of each case below.

¶3 In case No. 2012CM4565, Williams was charged with one count of domestic abuse disorderly conduct and one count of criminal trespass. The charges stemmed from an incident which took place on August 24, 2012. According to the criminal complaint, Shavonica Hamilton, Williams's live-in girlfriend at the time, called Milwaukee Police to report that she was assaulted by Williams at their apartment. When the police attempted to arrest Williams, he fled to a random apartment and forced entry into the apartment. He was sentenced to eighty-six days of time served on the disorderly conduct charge, and nine months in the House of Corrections, concurrent to his sentence in case No. 2013CM2202.

¶4 In case No. 2012CM5249, Williams was charged with one count of domestic abuse battery, again stemming from an incident with Hamilton. The complaint alleged that on November 26, 2012, while Hamilton was in the process of moving from her apartment, Williams struck Hamilton in the back of the head and stated "Oh bitch, you don't want to tell me when you moving." A no-contact order between Williams and Hamilton was issued. He was sentenced to nine

months in the House of Corrections, concurrent to his sentence in case No. 2013CM2202.

¶5 In case No. 2013CM992, Williams was charged with one count of domestic abuse disorderly conduct and one count of bail jumping for violating the no-contact order. According to the criminal complaint, on February 16, 2013, Hamilton heard someone pounding on her door in the early hours of the morning. Williams threatened Hamilton through the door, shouting “[o]pen the door bitch, open the door!” The complaint alleges that Hamilton was fearful because a few days prior, Williams approached Hamilton and said, “I should have killed you before ... I bet you didn’t think I would find you?” For the disorderly conduct conviction, Williams was sentenced to ninety days, concurrent to his sentence in case No. 2013CM2202. For the bail jumping conviction, Williams was sentenced to six months consecutive to any other sentence.

¶6 In case No. 2013CM2202, Williams was charged with two counts of domestic abuse-bail jumping. According to the criminal complaint, the charges arose from Williams’s failure to appear for a jury trial in case Nos. 2012CM4565 and 2012CM5249. Williams was sentenced to one year of initial confinement and one year of extended supervision, on each conviction, consecutive to any other sentence.

¶7 One year after sentencing, Williams filed a postconviction motion alleging that the circuit court sentenced him based on inaccurate information. Specifically, Williams argued that at the sentencing hearing, the State incorrectly stated that Hamilton was the victim in four uncharged criminal referrals, when, in fact, Hamilton was not the victim. Williams corrected the prosecutor and put the

court on notice that Hamilton was not the victim in those referrals. Williams argued that the circuit court's comments at sentencing indicated that the court relied on the inaccurate information. The circuit court denied the motion without a hearing. This appeal follows. Additional facts will be included as relevant to the discussion.

DISCUSSION

Standard of Review.

¶8 Criminal defendants have a due process right to be sentenced on accurate information. *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. This includes information pertaining to “the offense and the circumstances of its commission, ... and the defendant’s personality, social circumstances and general pattern of behavior.” *State v. Perez*, 170 Wis. 2d 130, 140, 487 N.W.2d 630 (Ct. App. 1992) (internal citation omitted). “Whether a defendant has been denied this due process right is a constitutional issue that an appellate court reviews de novo.” *Tiepelman*, 291 Wis. 2d 179, ¶9.

¶9 To be entitled to resentencing, Williams “must establish that there was information before the sentencing court that was inaccurate, and that the circuit court actually relied on the inaccurate information.” *See id.*, ¶¶2, 31. The test for actual reliance is “whether the court gave ‘explicit attention’ or ‘specific consideration’ to it, so that the misinformation ‘formed part of the basis for the sentence.’” *See id.*, ¶14 (citation omitted). Williams must show the court’s actual reliance by clear and convincing evidence. *See State v. Harris*, 2010 WI 79, ¶34, 326 Wis. 2d 685, 786 N.W.2d 409. To satisfy this standard, Williams must

“provide evidence indicating that it is ‘highly probable or reasonably certain’ that the circuit court actually relied” on inaccurate information. *See id.*, ¶35 (citation omitted). If Williams establishes actual reliance, then the burden shifts to the State to prove that the error was harmless. *See id.*, ¶32.

Inaccurate Information.

¶10 At sentencing, the State told the circuit court that Hamilton was the victim of: (1) a 2004 battery while armed; (2) a 2005 misdemeanor battery; (3) a 2008 reckless endangerment; and (4) a 2007 misdemeanor battery. The police reports in those cases do not name Hamilton as the victim, and Williams informed the court at sentencing that he did not begin dating Hamilton until 2007, therefore she could not have been the victim of the 2004 and 2005 uncharged batteries.

¶11 The State concedes that it made inaccurate references to Williams’s criminal history, but contends that the circuit court did not rely on the information. The circuit court told Williams that he had a break from referrals from “this victim” between 2007 and 2010 when he was incarcerated; that “knock[ing] off ’04 and ’05 we still have ... seven referrals that weren’t charged between you and her”; and “this is an ongoing, chronic problem.” Williams contends that these comments indicate that the “court clearly considered the inaccurate information when sentencing Williams based on the fact that the [circuit] court was so concerned over the referrals and discussed the bad relationship between the two.” We disagree.

¶12 As indicated, the test for actual reliance is “whether the court gave ‘explicit attention’ or ‘specific consideration’ to ... the misinformation[.]” *See*

Tiepelman, 291 Wis. 2d 179, ¶14 (citation omitted). In its decision denying Williams’s resentencing motion, the circuit court stated that it did not specifically rely on the inaccurate referrals. A full review of the sentencing transcript supports the circuit court’s decision. The court noted that Williams had a significant prior record, including seventeen convictions; that Williams abused Hamilton in front of their child; and that Williams and Hamilton had a volatile relationship rife with threats and abuse. The court also noted that its sentencing decision would not have been different had the State not provided the inaccurate information. Consequently, Williams has not shown by clear and convincing evidence that the sentencing court actually relied on the four inaccurate referrals. As a result, we need not address the State’s argument that, even if the court relied on inaccurate information, the error was harmless. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (appellate court need not address every issue raised by the parties when one is dispositive).

By the Court.—Judgments and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

