

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 8, 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 No. 2015AP530-CR

Cir. Ct. No. 2013CF2364

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

FREDDRICK TERRELL POLLARD,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: TIMOTHY G. DUGAN, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Fredrick Terrell Pollard appeals a judgment convicting him of one count of armed robbery with a dangerous weapon, one count of third-degree sexual assault, and one count of felon in possession of a firearm. He also appeals an order denying his postconviction motion. Pollard

argues that the circuit court sentenced him on the basis of inaccurate information. We affirm.

¶2 “A defendant has a due process right to be sentenced based on accurate information.” *State v. Payette*, 2008 WI App 106, ¶46, 313 Wis. 2d 39, 756 N.W.2d 423 (citation omitted). “[A] defendant who requests resentencing based on inaccurate information must show both that the information was inaccurate, and that the court actually relied on the inaccurate information [when] sentencing.” *State v. Tiepelman*, 2006 WI 66, ¶17, 291 Wis. 2d 179, 717 N.W.2d 1 (citation omitted).

¶3 Pollard argues that the circuit court based its sentence on its unsubstantiated belief that he sold drugs to both children and to parents, who then neglected their children due to drug abuse. Pollard points to the following statements by the circuit court:

dealing drugs is an aggravating factor because you are under those circumstances selling drugs to kids, parents, and putting them in a position that you were, give them to parents, they get addicted, the drugs are more important [than the] kids, and they don't take care of them. Or you deal to kids and [they] get addicted.

Pollard contends that there is nothing in the record to support the circuit court's assertions.

¶4 We reject Pollard's argument. Considered in context, the circuit court's comments were about the effect of drugs on the community in general. The circuit court was not saying that Pollard, personally, had been selling drugs to children or had been selling drugs to parents who then abused their children. The circuit court clarified in its order denying postconviction relief that Pollard took its “comments out of context in relation to the information before the court and the

court's overall sentencing remarks." The circuit court reiterated the specific facts of this case, which involved Pollard and two accomplices going to the victim's apartment to steal money and marijuana. The circuit court noted that the men acted violently toward the victims during the robbery and that Pollard pointed his gun at the face of a four-year-old child when she came out of her bedroom and ordered her back into her room. The circuit court then explained:

It was at this point that the court noted defendant's prior drug related history and his poor performance on supervision. His probation and extended supervision were all revoked on those prior sentences. Further, the court stated that defendant's open drug and felon in possession of firearms cases reflected upon defendant's continued drug issues. The court went on to explain that while presiding over a drug calendar, the court saw and understood that drugs and guns go hand in hand – that people try to steal drugs and money from dealers and dealers try to steal money from buyers. It recognized that both dealers and buyers arm themselves with guns to accomplish the thefts, and those guns often go off during the drug transaction in which innocent people get shot. In fact, in this case, defendant was attempting to steal a large quantity of marijuana and money and armed himself to do so.

The court then addressed defendant's character as reflected in his past drug convictions. It noted that he hustled drugs to get material things that his mother could not provide. It was at this point that the court commented on what drug dealing does to the community. It noted that generally people who sell drugs sell them to kids who get addicted to those drugs or to parents of kids, and the drugs become more important to them than their own children and they don't take care of the children. The court never concluded that defendant was specifically selling to children or parents who didn't care for their children. Rather, the court was recognizing the general impact of drug dealing in the community, and the fact that defendant engaged in that conduct reflected negatively on his character, not positively.

Because the circuit court did not rely on inaccurate information about Pollard's activities when it sentenced him, we reject Pollard's argument that his due process rights were violated.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2013-14).

