

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Case No. 2014AP2064CR, 2014AP2065AP, 14AP2066CR, 14AP2067CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TRAVIS DEON WILLIAMS.

Defendant-Appellant.

**AN APPEAL FROM THE JUDGMENT OF CONVICTION
ENTERED ON MAY 21, 2013 AND SENTENCE IMPOSED ON
JUNE 12, 2013 AND ORDER DENYING WILLIAMS MOTION FOR
POSTCONVICTION RELIEF, ENTERED ON AUGUST 15, 2014 IN
THE CIRCUIT COURT OF MILWAUKEE COUNTY, THE
HONORABLE MEL FLANAGAN, PRESIDING**

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

Did the trial court err by finding that Williams is not entitled to a resentencing hearing?

Answer by Circuit Court: No

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The claims raised by Travis Williams do not present any change in law or warrant an extension in existing law therefore, oral argument and publication are not requested.

STATEMENT OF THE CASE

This is an appeal from four misdemeanor cases in the circuit court for Milwaukee County. On May 21 2013, Williams plead guilty to Count 1, Disorderly Conduct and Count 2, Criminal Trespass to Dwelling in case 12CM4565, to Count 1, Battery in case 12CM5249, to Count 1, Disorderly Conduct and Count 2, Bail Jumping in case 13CM992, and Counts 1 and 2, Bail Jumping in case 13CM2202. (14AP2064:53). On June 12, 2013 the Honorable Mel Flanagan presiding sentenced Williams to in case 12CM4565, on Count 1, Disorderly Conduct to 86 days time served and on Count 2, to 9 months in the House of Correction concurrent to case 13CM2202, in case 12CM5249 on Count 1, Battery to 9 months in the House of Correction concurrent to 13CM2202, in case 13CM992 on Count 1, Disorderly Conduct to 90 days concurrent to 13CM2202 and on Count 2, Bail Jumping to 6 months consecutive to any other sentence, and on case 13CM2202 on Count 1, Bail Jumping to 1 year initial confinement and 1 year extended supervision consecutive to Count 2, and any other sentence and on Count 2, Bail Jumping to 1 year initial confinement and 1 year extended supervision.

(14AP2064:22, 27, 28; 14AP2065:13; 14AP2066:11, 12; 14AP2067:9,10; App. 101-108). Williams filed a timely notice of intent in case 12CM4565, 12CM5249, 13CM992, and 13CM2202. (14AP2064:21; 14AP2065:12; 14AP2066:12; 14AP2067:11). On June 17, 2014, Williams filed a postconviction motion requesting a new sentencing hearing based on the trial court relying on inaccurate information when sentencing Williams. (14AP2064:37; App. 109-151). The circuit court set a briefing schedule. (14AP2064:38). The State filed a response on July 25, 2014. (14AP2064:39). Williams filed a reply to the State's Response on August 11, 2014. (14AP2064:40; App. 152-154). Without holding any hearing on the motion, the circuit court, the Honorable Mel Flanagan, presiding, denied the motion in an order dated August 15, 2014. (14AP2064:41, App. 155-157). Williams now appeals.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

In a criminal complaint in case 12CM4565 filed on August 28, 2012, Williams, was charged with disorderly conduct, criminal trespass to dwelling and possession of THC. (14AP2064:2). The charges in case 12CM4565 arose when Williams was at the home of Ms. Hamilton and he threatened her, entered her residence without permission and marijuana was found. (14AP2064:2). In a criminal complaint in case 12CM5249, filed on December 4, 2012, Williams was charged with battery and bail jumping. (14AP2065:2). The charges in case 12CM5249 arose from a battery with Ms. Hamilton and a bail jumping due to the prior case. (14AP2065:2). In a criminal complaint in case 13CM992 filed on March 1, 2013, Williams was charged with disorderly conduct and two counts of bail jumping. (14AP2066:2). The charges arose out of a disorderly conduct with Ms. Hamilton and the two counts of bail jumping were from the prior charged cases. (14AP2066:2). In a criminal complaint in case 13CM2202, filed on May 16, 2013, Williams was

charged with two counts of bail jumping related to the prior incidents which were charged. (14AP2067:2).

On May 21 2013, Williams plead guilty to Count 1, Disorderly Conduct and Count 2, Criminal Trespass to Dwelling in case 12CM4565, to Count 1, Battery in case 12CM5249, to Count 1, Disorderly Conduct and Count 2, Bail Jumping in case 13CM992, and Counts 1 and 2, Bail Jumping in case 13CM2202. (14AP2064:53).

On June 12, 2013, the trial court sentenced Williams to in case 12CM4565, on Count 1, Disorderly Conduct to 86 days time served and on Count 2, to 9 months in the House of Correction concurrent to case 13CM2202, in case 12CM5249 on Count 1, Battery to 9 months in the House of Correction concurrent to 13CM2202, in case 13CM992 on Count 1, Disorderly Conduct to 90 days concurrent to 13CM2202 and on Count 2, Bail Jumping to 6 months consecutive to any other sentence, and on case 13CM2202 on Count 1, Bail Jumping to 1 year initial confinement and 1 year extended supervision consecutive to Count 2, and any other sentence and on Count 2, Bail Jumping to 1 year initial confinement and 1 year extended supervision. (14AP2064:22, 27, 28; 14AP2065:13; 14AP2066:11, 12; 14AP2067:9,10; App. 101-108).

Trial counsel timely filed a Notice of Intent to Pursue Postconviction Relief on June 24, 2013. (14AP2064:21; 14AP2065:12; 14AP2066:10; 14AP2067:8). On June 17, 2014, Williams filed a postconviction motion requesting a new sentencing hearing based on the trial court relying on inaccurate information when sentencing Williams. (14AP2064:37; App. 109-151).

The circuit court set a briefing schedule. (14AP2064:38). The State filed a response on July 25, 2014. (14AP2064:39). Williams filed a reply to the State's Response on August 11, 2014. (14AP2064:40; App. 152-154).

Without holding any hearing on the motion, the circuit court, the Honorable Mel Flanagan, presiding, denied the motion in an order dated August 15, 2014. (14AP2064:41, App. 155-157). A timely Notice of Appeal was filed on September 3, 2014, along with a motion to consolidate the appeals. (14AP2064:44,42: 14AP2065:19; 14AP2066:17: 14AP2067:14).

ARGUMENT

I. WILLIAMS IS ENTITLED TO A NEW SENTENCING HEARING DUE TO THE FACT THAT THE COURT RELIED ON INACCURATE INFORMATION

A defendant has a due process right to be sentenced upon accurate information. *State v. Tiepelman*, 2006 WI 66 ¶¶ 9, 26 291 Wis. 2d 179, 717 N.W.2d 1. Whether this right has been denied is a constitutional issue this court reviews de novo. *Tiepelman*, 291 Wis. 2d 179, ¶9. To establish that the defendant is entitled to a resentencing based on the circuit court relying on inaccurate information a defendant must show that (1) that the information was inaccurate and (2) that the circuit court relied on the inaccurate information. *Id.*, ¶ 26. If the defendant is able to meet both of these standards, then the burden shifts to the State to prove the error was harmless. *Id.* An error is harmless if there is no reasonable probability that it contributed to the outcome. *State v. Payette*, 2008 WI App 106, ¶ 46, 313 Wis.2d 39, 756 N.W.2d 423.

Inaccurate information was presented to the court by the State in the form of referrals for non-charged offenses and for criminal convictions which were alleged to have involved Ms. Hamilton as the victim. (14AP2064:37:2-42; App. 110-149). The State informed the court that in 2005 Williams was referred for a battery that was against Ms. Hamilton. (14AP2064:37:2-3, 5; App. 110-111, 113-114). That alleged battery was not actually against Ms. Hamilton but was against Ms. M. per the police call of 1/13/2014. (14AP2064:37:6; App. 114). The State informed the court that in 2005 Williams was referred for a possession of firearm by a felon against Ms. Hamilton. (14AP2064:37:5; App. 113). The police report that alleged possession of a firearm by a felon does not mention Ms. Hamilton therefore that case does not have anything to do with her.

(14AP2064:37:7-16; App. 115-124). The State informed the court that in 2008 Ms. Hamilton was the victim in a first degree reckless endangering safety. (14AP2064:37:5; App. 113). The police report that alleged the first degree reckless endangering safety does not mention Ms. Hamilton. (14AP2064:37:17-36; App. 125-134). The State informed the court that in 2007 there was a referral for a battery that involved Ms. Hamilton. (14AP2064:37:5; App. 113). The police report for the referral for battery does not allege that Ms. Hamilton is the victim. (14AP2064:37:37-41; App. 145-149). Further the 2007 battery that the State alleged was charged against Williams and that Ms. Hamilton is the victim is not listed in CCAP. (14AP2064:37:5; App. 113).

The State in their response to Williams postconviction motion concedes that Ms. Hamilton is not the victim in the instances outlined in the postconviction motion. (14AP2064:39:1-2). Therefore, the information presented to the trial court was inaccurate.

Further, the court relied on this information when promulgating its sentence. The court stated that in between 2007 to 2010 that Williams had a "break from the referrals from this victim, a break in, you know charges of abuses by you". (14AP2064:54:25; App. 150). The court stated that there are many referrals with this victim and this is a chronic problem, and that they have a bad relationship. (14AP2064:54:27; App. 151). The trial court considered all of the referrals a chronic problem even though some of the referrals were inaccurate. The court clearly considered the inaccurate information when sentencing Williams based on the fact that the trial court was so concerned over the referrals and discussed the bad relationship between the two.

CONCLUSION

For, the reasons stated above Williams asks this Court to remand the case to the circuit court for a resentencing hearing.

Respectfully submitted this
18th day of November, 2014.

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stats. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is **1,433** words.

Respectfully submitted this
18 th day of November, 2014.

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CERTIFICATION OF ELECTRONIC FILING

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, which complies with the requirements of s. 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief report filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated: November 18, 2014

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APPENDIX CERTIFICATION

I hereby certify that filed with this brief either as a separate document or as a part of this brief, is an appendix that complies with Wis. Stats. §809.19(2)(a) and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings, or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juvenile and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated: November 18, 2014

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