

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

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OF WISCONSIN**

Appeal Case Nos.
2014AP002064-CR, 2014AP002065-CR
2014AP002066-CR, 2014AP002067-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

TRAVIS DEON WILLIAMS,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION
AND ORDER DENYING POST CONVICTION RELIEF
ENTERED IN THE MILWAUKEE COUNTY CIRCUIT
COURT, THE HONORABLE MEL FLANAGAN,
PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Did the circuit court rely on inaccurate information when
sentencing Williams?

The Circuit Court answered: No

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State of Wisconsin does not request oral argument or publication. The case can be resolved by applying well-established legal principles to the facts of the case.

STATEMENT OF THE CASE

On May 21, 2013, the defendant, Travis D. Williams, was set to proceed to trial on seven separate misdemeanor cases charging seventeen criminal counts. (64R.53). Rather than proceed to trial, Williams reached a plea deal with the State to plead guilty to seven counts with the remaining ten counts either dismissed outright or dismissed and read into the record. (64R.53:1-8). Williams entered guilty pleas in Milwaukee County cases 12CM4565, 12CM5249, 13CM992 and 13CM2202.¹ *Id.*

On August 24, 2012, Shavonica Hamilton contacted the Milwaukee Police department to report that she was assaulted by her live-in boyfriend Travis D. Williams. (64R.2:2). According to Ms. Hamilton, she was in her apartment in the 6600 block of N. 75th Street in Milwaukee, when Mr. Williams became threatening and abusive toward her, calling her a “bitch” and threatened to shoot her with a firearm. *Id.* When Milwaukee police officers later attempted to arrest Mr. Williams, he ran away and fled into a random apartment in the 4700 block of N. 36th Street in Milwaukee. (64R.2:2-3). Officers forced entry into the apartment and arrested Mr. Williams. *Id.* Officers also recovered a bag of marijuana during the arrest. *Id.* The apartment occupants told officers that they were frightened and did not know Mr. Williams nor did they give him consent to enter their apartment. *Id.* According to the criminal complaint in 12CM4565, Mr. Williams was charged with three criminal misdemeanor counts. (64R.2:1-2). Mr. Williams plead guilty to Count One, Domestic Abuse Disorderly Conduct for the abusive conduct toward Ms.

¹ This brief cites to the record contained in 2014AP2064 as “64_”, 2014AP2065 as “65_”, 2014AP2066 as “66_” and in 2014AP2067 as “67_”. When citing to documents that are contained in all files, this brief will use “64_” as a reference.

Hamilton and plead guilty to Count Two, Criminal Trespass to a Dwelling. Count Three, Possession of Marijuana THC, was dismissed. (64R.53:16-18).

Three months later on November 26, 2012, Ms. Hamilton again contacted Milwaukee police to report that Mr. Williams had assaulted her. (65R.2:1-2). According to Ms. Hamilton, she was struck in the head by Mr. Williams without her consent causing her pain. *Id.* Ms. Hamilton told police that she was in the process of moving from her apartment on North 75th Street, when Mr. Williams struck her in the back of the head and stated, “Oh bitch, you don’t want to tell me when you moving.” *Id.* Ms. Hamilton and Mr. Williams have a two-year-old child together, who witnessed the attack. *Id.*

According to the Criminal Complaint in 12CM5249, Mr. Williams was charged in Count One with Domestic Abuse Battery and in Count Two with Domestic Abuse Bail Jumping because following his arrest and release in 12CM4565, Mr. Williams was ordered not to have any contact with Ms. Hamilton. *Id.* Mr. Williams plead guilty to count one, Domestic Abuse Battery. (64R.53:18-21).

During the early morning hours of February 16, 2013, Ms. Hamilton heard pounding on the front door of her residence in the 7000 block of W. Thurston Court, Milwaukee. (66R.2:1-3). Ms. Hamilton immediately recognized Mr. Williams voice. *Id.* Mr. Williams threatened Ms. Hamilton and stated, “open the door bitch, open the door!” *Id.* This conduct scared Ms. Hamilton, because, according to Ms. Hamilton, a few days prior to this incident Mr. Williams approached her and said, “I should have killed you before...I bet you didn’t think I would find you.” *Id.* According to the Criminal Complaint in 13CM992, Mr. Williams was again charged with Domestic Abuse Disorderly Conduct and Domestic Abuse Bail Jumping for violating the No Contact Order with Ms. Hamilton. *Id.* Mr. Williams plead guilty to both counts in the Criminal Complaint. (64R.53:21-25).

On March 12, 2013, Mr. Williams failed to appear before Milwaukee County Circuit Court Judge Mel Flanagan for a jury trial on cases 12CM4565 and 12CM5249. (67R. 2:1-16). According to the Criminal Complaint in 13CM2202, Mr.

Williams was charged with two counts of Domestic Abuse Bail Jumping for his failure to appear. *Id.* Mr. Williams plead guilty to both counts. (64R.53:25-28).

On June 12, 2013, Mr. Williams appeared before Milwaukee County Circuit Court Judge Mel Flanagan for sentencing. (64R.54:1). The court at sentencing asked the prosecutor to provide the court with Mr. William's prior criminal history. (64R.54:4). While providing the court with Mr. Williams' prior record, the prosecutor incorrectly indicated to the court that Ms. Hamilton, the victim in the present cases, was also the victim in several uncharged referrals dating back to 2004. (64R.54:4-8). At sentencing, Mr. Williams did not challenge the criminal conduct in the uncharged referrals, but advised the court that Ms. Hamilton was not the victim in the earlier listed referrals and that he did not begin his relationship with Ms. Hamilton until 2007. (64R.54:15-16). The circuit court sentenced Mr. Williams to a total of two and half years of initial confinement, to be followed by a period of extended supervision. (64R. 54:31-33).

One year after his sentencing, Mr. Williams filed a post-conviction motion for relief on June 17, 2014. (64R.37:1-4). The basis for the post-conviction motion was that the court relied on inaccurate information at sentencing. *Id.* Mr. Williams again challenged the allegation that the pre-2007 criminal referrals involved the current victim, Ms. Hamilton. *Id.* The circuit court denied Mr. Williams' motion for post-conviction relief on August 15, 2014. (R. 41:2-3). The circuit court, in denying the motion, indicated that it did not rely on the inaccurate information during sentencing. *Id.*

STANDARD OF REVIEW

Criminal defendants have a due process right to be sentenced on accurate information. *See 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) (citations 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 (citation omitted).

To be entitled to resentencing, Williams must show “that there was information before the sentencing court that was inaccurate, and that the circuit court actually relied on the inaccurate information.” *Tiepelman*, 291 Wis. 2d 179, ¶ 31. “Proving inaccurate information is a threshold question – you cannot show actual reliance on inaccurate information if the information is accurate.” *State v. Harris*, 2010 WI 79, ¶ 33 n.10, 326 Wis. 2d 685, 786 N.W.2d 409. 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.’” *Tiepelman*, 291 Wis. 2d 179, ¶ 14 (quoting *U.S. ex rel. Welch v. Lane*, 738 F.2d 863, 866 (7th Cir. 1984)).

Williams must show the court’s actual reliance on inaccurate information by clear and convincing evidence.

Requiring defendants who challenge their sentence to prove their case by clear and convincing evidence ‘promotes the policy of finality of judgments and satisfies the purpose of sentence modification, which is the correction of unjust sentences.’

Harris, 326 Wis. 2d 685, ¶ 34 (quoting *State v. Littrup*, 164 Wis. 2d 120, 132, 473 N.W.2d 164 (Ct. App. 1991), *abrogated on other grounds by Tiepelman*, 291 Wis. 2d 179). If Williams establishes by clear and convincing evidence that the circuit court actually relied on inaccurate information at the sentencing hearing, then the burden shifts to the State to prove that the error was harmless. *Tiepelman*, 291 Wis. 2d 179, ¶ 26.

ARGUMENT

THE SENTENCING COURT DID NOT RELY ON INACCURATE INFORMATION IN SENTENCING WILLIAMS

A. The Circuit Court Was Presented Inaccurate Information.

The State concedes that the prosecutor at sentencing misspoke, and during his recitation of Mr. Williams' criminal history, incorrectly stated that the victim in the present cases, Ms. Hamilton, was also the victim in four earlier uncharged criminal referrals. Therefore, inaccurate information was provided to the court. It is important to note that Mr. Williams, at the time of sentencing, challenged the prosecutor's assertion as to the victim information and put the court on notice that the victim information was not correct. (64R.54:15). Mr. Williams never challenged the underlying criminal conduct of the referrals, only the assertion that Ms. Hamilton was the victim. *Id.*

B. The Circuit Court Did Not Rely On Inaccurate Information When Sentencing Mr. Williams.

The presentation of inaccurate information at sentencing alone does not require an automatic resentencing of the defendant. Mr. Williams must show by clear and convincing evidence that the court relied on the inaccurate information at sentencing, which he cannot do. 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.'" *State v. Tiepelman*, 2006 WI 66, ¶ 9, 291 Wis. 2d 179, 717 N.W.2d 1,5 (quoting *U.S. ex rel. Welch v. Lane*, 738 F.2d 863, 866 (7th Cir. 1984).

In support of his assertion that the court relied upon inaccurate information at sentencing, Mr. Williams points to several comments by the sentencing court as to the volatile nature of Mr. Williams' relationship with Ms. Hamilton. Unfortunately for Mr. Williams, the court's comments are supported by the uncontested facts of the case.

The sentencing comments were made during a sentencing hearing in which the court was sentencing Mr. Williams for seven misdemeanor domestic abuse convictions with Ms. Hamilton as the victim. The convictions were the results of repeated threats and acts of violence against Ms. Hamilton, which clearly outlined a violent domestic relationship.

In further support of his position that the court relied on inaccurate information, Mr. Williams highlights a comment the court made in regards to a “break” in police contacts. The court commented at sentencing that between 2007 to 2010, Williams had a “break from referrals from this victim, a break in, you know charges of abuses by you.” (64R.54:25). The problem with this quote is that it is taken somewhat out of context, as the court was reviewing Mr. Williams criminal history on the record and correctly noted that Mr. Williams was in prison from 2007 until 2010. The court went on to note that the break in criminal activity did not reflect well on Mr. Williams because it, “unfortunately wasn’t because you were here making a life for yourself and trying to be a good person and father , it was because you were in prison.” *Id.*

Mr. Williams alleges that the court’s use of the term “break” implies that the court relied on and considered the inaccurate information provided by the prosecutor, that Ms. Hamilton was the victim of criminal referrals before 2004. Again the record does not support the position that the court relied on the pre-2007 conduct. When sentencing Mr. Williams, the court commented that Mr. Williams had tormented and threatened Ms. Hamilton repeatedly with comments like, “Bitch, I should have killed you. You don’t think I can find where you’re living? I should have killed you before. Bitch, you gonna die tonight.” (64R. 54:25). The court, in placing a time frame on the abuse of Ms. Hamilton, told Mr. Williams he was “doing it between all of 2012 and March of 2013. That is a long time to keep up this behavior.” (64R. 54:25-26). The circuit court clearly did not rely on the inaccurate information regarding the 2004 criminal referrals.

In addition, the circuit court in denying Mr. Williams initial motion for post-conviction relief, confirmed that it did not rely on the inaccurate information while sentencing Mr. Williams. (64R.41:2-3). The record supports this assertion when the court at sentencing acknowledged the uncertainty of Mr. Williams prior record. The court at sentencing reminded Mr. Williams that he had victimized Ms. Hamilton and their child when it stated,

you have made this a really difficult year for them and its not just this year because according to the State’s records,

the referrals go back to '04. According to yourself it is '08, but no matter what, they've been constant and that's just a real bad scene.

(64R.54:28).

The court, in denying Mr. Williams post-conviction motion, found that even excluding the inaccurate information regarding the victim, “there was clearly a significant history of referrals between the defendant and this victim, and the court appropriately relied upon that information at sentencing.” (64R.41:2-3).

The State recognizes that this Court is not required to accept the circuit court’s postconviction assertion that an inaccuracy would not have affected the original sentencing decision. *State v. Littrup*, 164 Wis. 2d 120, 132, 473 N.W.2d 164 (Ct. App. 1991) (“A postconviction court’s assertion of non-reliance on allegedly inaccurate sentencing information is not dispositive.”), *modified on other grounds by Tiepelman*, 291 Wis. 2d 179, ¶¶ 2, 31. However, even though it is not dispositive, it does provide support for the position that the sentencing court did not rely on the inaccurate information at sentencing.

Again the test for reliance on inaccurate information is “whether the court gave ‘explicit attention’ or ‘specific consideration’ to it, so that the misinformation ‘formed part of the basis for the sentence.’” *Tiepelman*, 291 Wis. 2d 179, ¶ 14 (quoting *Welch*, 738 F.2d at 866). Here, the criminal conduct committed by Mr. Williams remained undisputed; the only issue in dispute was whether the prior criminal referrals involved the same victim. The conduct in the criminal referrals was violent and dangerous regardless of who was the intended victim. The circuit court relied on the seriousness of the conduct and the need for punishment and rehabilitation. The fact that is in dispute; whether Ms. Hamilton was the prior victim; did not form part of the basis of the sentence.

What did form a basis for the sentence was the violent nature of the offenses themselves and the fact that Mr. Williams continued his history of domestic violence. (64R.54:25-30). Since there was no actual reliance on the

alleged misinformation, Mr. Williams is not entitled to resentencing.

**C. If This Court Concludes that Mr. Williams Met
His Burden, Any Error Was Harmless.**

In the event that this court finds that Mr. Williams has met his burden and shown actual reliance on the inaccurate sentencing information, then the burden shifts to the State to prove that any error was harmless. *See Tiepelman*, 291 Wis. 2d 179. To demonstrate an error is harmless, the State must prove beyond a reasonable doubt the sentence would have been the same had the court not considered the inaccurate information. *Cf. State v. Harrell*, 2008 WI App 37, ¶ 37, 308 Wis. 2d 166, 747 N.W.2d 770. The determination of whether an error is harmless presents a question of law which this Court reviews de novo. *See, e.g., Cf. State v. Harrell*, 2008 WI App 37, ¶ 37, 308 Wis. 2d 166, 747 N.W.2d 770.

In the present case the circuit court properly exercised its sentencing discretion. In denying Mr. Williams' post-conviction motion, the circuit court found that its sentencing decision would have been no different if the court had been informed that four of the referrals referenced by the prosecutor did not pertain to Ms. Hamilton. (R. 41:2-3). The circuit court properly based its sentence on Mr. Williams' significant prior criminal record and history of violence. The court noted that Mr. Williams presented a significant prior record, including seventeen convictions, seven of which he was being sentenced for by the court. *Id.* According to the sentencing court's order denying Mr. Williams post-conviction motion,

no matter how the defendant purports to parse out a couple referrals from his record with this victim, the fact remains that he had a long-standing volatile relationship with this victim involving threats and violations of court orders. Simply stated, the State's reference to referrals that did not involve this victim had no impact on the court's sentencing decision, and therefore, the defendant was not prejudiced.

Id.

CONCLUSION

For the reasons stated above, this Court should affirm the judgment of conviction and the order denying post-conviction relief.

Dated this _____ day of December, 2014.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b) and (c) for a brief produced with a proportional serif font. The word count of this brief is 2,720.

Date

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CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, 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 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.

Date

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