

**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I**

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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**

REPLY BRIEF 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

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.

The court relied on the inaccurate information provided by the State. The court specifically alleges that between 2007-2009 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 State alleged that this comment was taken out of context. The court did comment that the break in Williams conduct was due to his prison stay but also specifically commented on the fact that the break was from the referrals from this victim.

(14AP2064:54:25; App. 150). Further the court talks about Williams many referrals with this victim, that it is a chronic problem, and that they have a bad relationship. (14AP2064:54:27; App. 151). The court clearly considered this information when sentencing Williams due to the fact that the court addressed the many referrals numerous times.

Further the error was not harmless. It cannot be said that there is no reasonable probability that the inaccurate information that the court relied on did not contribute to the outcome. The court was given inaccurate information and the court discusses the many referrals with this victim, so clearly it was not harmless error that this information was given to the court.

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
29th day of December, 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 **417** words.

Respectfully submitted this
29 th day of December, 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: December 29, 2014

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