

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 3, 2008

David R. Schanker
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. 2007AP2099-CR

Cir. Ct. No. 2000CF6191

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JAMEL C. MOSLEY,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JEFFREY A. WAGNER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Jamel C. Mosley, *pro se*, appeals from an order denying a motion for sentence modification. We affirm.

BACKGROUND

¶2 In 2001, Mosley pled guilty to second-degree intentional homicide, by use of a dangerous weapon. *See* WIS. STAT. §§ 940.05(1)(b), 939.63 (1997-98).¹ The court sentenced Mosley to thirty-five years in prison.² Mosley did not appeal the conviction. In 2006, Mosley moved to disclose the contents of the presentence investigation report (PSI). The circuit court denied Mosley’s motion. This court reversed and directed the circuit court “to provide Mosley with the opportunity to review the PSI report so that he can determine whether the report contains any basis upon which a motion to modify his sentence can be made.” *State v. Mosley*, No. 2006AP1269, unpublished slip op. at 3 (WI App Feb. 23, 2007).

¶3 Thereafter, Mosley filed a motion for sentence modification in which he argued that the PSI was inaccurate because it was incomplete and that the agent who prepared the PSI was biased against him.³ The circuit court denied the motion and Mosley appeals.

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

² The homicide was committed on June 14, 1998, prior to the effective date of “truth-in-sentencing.”

³ In his motion, Mosley also asserted that he was denied his right to allocution before sentencing. The sentencing spanned two court dates, and Mosley spoke to the court at the conclusion of the first hearing. Mosley was also asked if he wanted to say anything before sentence was imposed during the second hearing and he declined. Mosley does not pursue this argument on appeal and, therefore, it is deemed to be abandoned. *See State ex rel. Peckham v. Krenke*, 229 Wis. 2d 778, 782 n.3, 601 N.W.2d 287 (Ct. App. 1999), *overruled on other grounds by State v. Popenhagen*, 2008 WI 55, ___ Wis. 2d ___, 749 N.W.2d 611.

DISCUSSION

¶4 On appeal, Mosley complains that the PSI did not include statements from his former employers that would have “define[d] [his] character,” presumably in a positive fashion. Mosley states that sentencing “should have been delayed so the PSI could be completed.” Given this record, Mosley’s argument is not persuasive.

¶5 Sentencing began on April 16, 2001. The court first asked Mosley whether he had any additions or corrections to the PSI. Mosley’s attorney informed the court that he had reviewed the PSI with Mosley and that they did not have additions or corrections to the “factual items” in the PSI. In their sentencing remarks, the prosecutor and defense attorney set forth contrasting versions of the incident in which Mosley shot Raymond Barfield. That contrast extended to the sentencing recommendations, with the State recommending a forty-year sentence and Mosley asking for probation. Additionally, several persons spoke on Mosley’s behalf, attesting to his good character.

¶6 Because of the disparity in the factual perspectives and sentencing recommendations, the court adjourned the sentencing so that it could review the police reports. The court asked the State to provide the police reports, and it also invited Mosley to “submit whatever you believe is in contradiction of those reports.”

¶7 When sentencing resumed on April 23, 2001, the prosecutor indicated that “[b]oth sides” had submitted “written materials” to the court, and the court stated that it had “read the reports.” After a discussion with Mosley about his conduct between the shooting and his arrest, the court proceeded to

impose sentence. As noted, the court sentenced Mosley to thirty-five years in prison.

¶8 “Defendants have a due process right to be sentenced on the basis of accurate information.” *State v. Johnson*, 158 Wis. 2d 458, 468, 463 N.W.2d 352 (Ct. App. 1990). In order to prove a violation of due process, a defendant must establish that the information was inaccurate, and that the court actually relied on the inaccurate information in sentencing. *State v. Tiepelman*, 2006 WI 66, ¶2, 291 Wis. 2d 179, 717 N.W.2d 1. Although sentencing is within the trial court’s discretion, whether a defendant’s due process right was violated is a question of law, which we review independently. *State v. Littrup*, 164 Wis. 2d 120, 126, 473 N.W.2d 164 (Ct. App. 1991), *overruled on other grounds by Tiepelman*, 291 Wis. 2d 179.

¶9 After describing Mosley’s employment history, the PSI agent wrote that she had “requested information” from Mosley’s employers but the “information was not received in time to include” in the PSI. The absence of that information from the PSI did not violate Mosley’s due process right. At the first sentencing hearing, several persons spoke on Mosley’s behalf. Mosley could have arranged to have his employers appear and speak to his good character. Moreover, the court adjourned sentencing to allow the court to review the police reports. When sentencing resumed seven days later, Mosley had a second opportunity to present character witnesses. He did not do so, however, and he cannot now complain that his due process right was violated because the PSI agent did not obtain statements from Mosley’s employers.

¶10 Mosley also argues that the agent who prepared the PSI was biased against him because she “did not contact anyone ... who could have given a more

positive view of his character.” This argument fails for the same reason that the prior argument failed. Mosley presented character witnesses at sentencing. He could have presented additional witnesses when sentencing resumed after the seven-day adjournment. Mosley’s due process right was not violated by the PSI agent.

¶11 Lastly, Mosley argues that the PSI contained inaccurate information because it suggested that he “attempted to hide his car after the incident.” Mosley did not raise this issue in the circuit court and, therefore, we need not address it.⁴ *See State v. Rogers*, 196 Wis. 2d 817, 826, 539 N.W.2d 897 (Ct. App. 1995).

By the Court.—Order affirmed.

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

⁴ We agree with the State’s observation that the PSI makes no mention of Mosley’s automobile and what changes, if any, he made to it after the shooting.

