

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 23, 2011

A. John Voelker
Acting 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. 2010AP405-CR

Cir. Ct. No. 2008CF6125

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT ALLEN SHEEHAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DENNIS R. CIMPL, Judge. *Affirmed.*

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

¶1 PER CURIAM. Robert Allen Sheehan appeals a judgment convicting him of one count of burglary and an order denying his motion for postconviction relief. Sheehan contends that he is entitled to resentencing because

the circuit court based his sentence on its erroneous belief that he had committed other uncharged burglaries. We affirm.

¶2 “[A] criminal defendant has a due process right to be sentenced only upon materially accurate information.” *State v. Lechner*, 217 Wis. 2d 392, 419, 576 N.W.2d 912 (1998). When a defendant moves for resentencing based on inaccurate information, “a defendant must establish that there was information before the sentencing court that was inaccurate, and that the circuit court actually relied on the inaccurate information.” *State v. Tiepelman*, 2006 WI 66, ¶2, 291 Wis. 2d 179, 717 N.W.2d 1.

¶3 Sheehan takes issue with the following comments made by the circuit court as it discussed Sheehan’s prior criminal history during sentencing:

That brings me to you, you are a burglar. Look at your record, burglary 1989, entry into a locked building 1990; one of the elements of burglary is entry into a building without consent. The computer records are too old, I can’t [g]o back and see whether or not that was plea bargained down. 94 a burglary, 95 a battery, 97 operating motor vehicle without consent, 97 receiving stolen property, 2000 a burglary.

There was at least one burglary here that you took to jury and you beat it. God knows how many businesses you broke into between 1989 and June 2009 in the last 20 years that you were never caught for. But I don’t believe for a minute that this is the only time that you violated the law by burglarizing a business. I believe there were probably others.

Sheehan argues that the circuit court’s statement that he probably committed other burglaries is not supported by anything in the record, and contends that he is entitled to resentencing because the circuit court relied on this inaccurate information about him in framing its sentence.

¶4 We reject Sheehan’s argument. When the circuit court’s comments are considered in context, it is clear that the circuit court was making rhetorical observations based on Sheehan’s prior criminal conduct. The circuit court pointed out that Sheehan had multiple convictions for crimes similar to the crime for which he was being sentenced, including three prior burglary convictions, a conviction for entering a locked building and a conviction for receiving stolen property. These convictions indicated a pattern of undesirable behavior that reflected negatively on Sheehan’s character, in particular his penchant for taking other people’s things. It is well-established that a sentencing court may consider a pattern of behavior that speaks to the defendant’s character. *See Elias v. State*, 93 Wis. 2d 278, 285, 286 N.W.2d 559 (1980). Based on this history, the circuit court drew a reasonable inference that there were “probably” other times that Sheehan had committed burglary but was not caught for it. In making these remarks, the circuit court was not meting out punishment in this case based on Sheehan’s speculative involvement in other burglaries, it was explaining that Sheehan’s extensive criminal history—with twenty years of involvement in burglary and related offenses—reflected poorly on his character and his prospects for rehabilitation. We reject Sheehan’s argument that the circuit court relied on inaccurate information when it sentenced him.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2009-10).

