

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 19, 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 Nos. 2010AP2719-CR
2010AP2720-CR**

**Cir. Ct. Nos. 2009CM218
2009CF136**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TAZ MILTON VERHAGEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Marinette County: TIM A. DUKET, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Taz VerHagen appeals a judgment sentencing him following no contest pleas to attempted burglary, contributing to the delinquency of a child, and six counts of receiving stolen property. He also appeals an order

denying his postconviction motion in which he alleged that the sentencing court relied on erroneous information. VerHagen identifies three allegedly inaccurate statements that affected the sentences. Because the trial court fully explained its use of the challenged statements, we affirm the judgment and order.

¶2 A defendant who requests resentencing based on the court's consideration of allegedly inaccurate information must show the inaccuracy of the information and the court's reliance on it. *State v. Tiepelman*, 2006 WI 66, ¶26, 291 Wis. 2d 179, 717 N.W.2d 1. The defendant carries the burden of proving both prongs by clear and convincing evidence. *State v. Payette*, 2008 WI App 106, ¶46, 313 Wis. 2d 39, 756 N.W.2d 423.

¶3 First, VerHagen argues that the court erroneously attributed a statement to VerHagen's father. In the presentence investigation report VerHagen's father was quoted as saying he "believes Taz has mental problems and has a chemical imbalance.... He knows right from wrong but does not go the right way...." At the sentencing hearing, the court commented:

His own dad in the presentence says despite his physical problems, he knows right from wrong, and he just chooses to do wrong because it's easier than apparently working for a living and making your own money and buying your own things, you just steal those things from other people.

VerHagen argues that his father never said the second part of the court's statement and it was highly prejudicial for the court to believe these harsh words came from VerHagen's father. However, at the postconviction hearing, the court determined that although the first part of the statement came from VerHagen's father, the second part was the court's extrapolation and was not intended to be attributed to VerHagen's father. That explanation is fully consistent with the use of the words

“your” and “you,” indicating that the court was no longer quoting VerHagen’s father but was directly addressing VerHagen using the court’s own analysis. Therefore, VerHagen has not established by clear and convincing evidence that the court relied on statements erroneously attributed to VerHagen’s father when it imposed the sentences.

¶4 Second, VerHagen argues that the court inaccurately faulted him for attending a number of different high schools in California. He argues that all but one of his school transfers were due to his father’s military career and housing changes, and the court should not have blamed him for that. However, at the postconviction hearing, the court clarified its statement by noting the context. The court had been speaking of VerHagen’s “troubling past,” including several prison sentences and “even when in high school, apparently he was a fighter and a seller of drugs ... then also in California, party to a crime of arson, inhabited structure.” It is that conduct, not the fact that VerHagen went to a number of different high schools, that the court called “highly negative antisocial behavior.” At the postconviction hearing, the court noted that imposing a harsher sentence because a defendant went to multiple schools “sounds crazy” and “defies common sense.” VerHagen has not shown the sentences were enhanced by improper consideration of his school transfers.

¶5 Third, VerHagen argues that the court mischaracterized his probation as being “mostly negative.” He argues that the only reason he was still

on probation at the time of these offenses was because of unpaid restitution due to back problems and inability to pay. As the court explained at the postconviction hearing, VerHagen's probation can be considered a failure because, while on probation, VerHagen committed the attempted burglary involving a nine-year-old child in the offense, the six counts of receiving stolen property and five other counts that were dismissed and read-in for sentencing purposes. Regardless of the reason VerHagen's probation was extended, the court accurately described the probation as "mostly negative" based on the thirteen crimes VerHagen committed while on probation.

By the Court.—Judgment and order affirmed.

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

