

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 30, 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. 2010AP1947-CR

Cir. Ct. No. 2003CF1368

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

WILLIE RILEY,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
JEAN A. DiMOTTO, Judge. *Affirmed.*

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

¶1 PER CURIAM. Willie Riley appeals an order for reconfinement after revocation of his extended supervision and an order denying his postconviction motion for a new reconfinement hearing. He argues that the circuit court relied on inaccurate information in sentencing him. We affirm.

¶2 Riley pled guilty to delivery of cocaine and received a six-year sentence, with three years of initial confinement and three years of extended supervision, stayed in favor of four years of probation. One year later, Riley's probation was revoked. He served his time and was then released on extended supervision. After several months on extended supervision, he was revoked for a variety of reasons, including the fact that he used marijuana and cocaine, and absconded from supervision. The circuit court reconfined him for the maximum amount of time left on his sentence, which was three years and ten days.

¶3 Riley contends that he was sentenced based on inaccurate information because the circuit court erroneously inferred from a Department of Corrections revocation memorandum that he had threatened the women who rented him a room after he absconded from a halfway house, possibly with a weapon. The Department briefly noted in its lengthy memorandum:

The offender was arrested at his new residence that he moved to while he was absconding when the police were called for a subject with a weapon call. Mr. Riley was arguing with the women who rented the room to him. [Riley] was arrested for the warrant [previously] issued by the Department of Corrections. There was no information that the police found a weapon when he was arrested.

Riley points to the following comment by the circuit court at sentencing: "I think the community, including people who rent you a room, deserve to be protected from you."

¶4 "A defendant has a constitutionally protected due process right to be sentenced upon accurate information." *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. "A defendant who requests resentencing due to the circuit court's use of inaccurate information at the sentencing hearing 'must show both that the information was inaccurate and that the court actually relied on the

inaccurate information in the sentencing.” *Id.*, ¶26. “Whether the court ‘actually relied’ on the incorrect information at sentencing [is] based upon whether the court gave ‘explicit attention’ or ‘specific consideration’ to it, so that the misinformation ‘formed part of the basis for the sentence.’” *Id.*, ¶14.

¶5 We reject Riley’s argument that the circuit court relied on inaccurate information in sentencing him. The circuit court explained that it was imposing the maximum remaining three-year term on Riley because he had been given repeated chances to reform his behavior, but he instead chose to do what he wanted to do, when he wanted to do it. Summarizing the opportunities Riley had been given, the circuit court stated:

Let’s see. Probation revoked, probation, probation, probation, couple of days in the House of Correction, probation, 10 days in the House of Correction, 30 days in the House of Correction, probation revoked, 105 days which is clearly a time served disposition because judges don’t pick that number of the air, not typically. 30 days, 20 days, probation, probation, and here you were on—you were given a chance again and you blew it.

After discussing at length Riley’s refusal, for whatever reason, to conform his conduct to the law, and the fights he had gotten into with the staff and residents at the halfway house where he had been staying before he absconded, the circuit court made a passing comment that the community, “including people who rent you a room” deserved protection. The circuit court never explicitly mentioned the fact that the police had responded to a call about a weapon when they arrested Riley, or the fact that he had been arguing with the women who rented him a room. The circuit court never even made reference to a weapon. The circuit court’s sentencing comments, read as a whole, make clear that its sentence was based on Riley’s past poor conduct and bad attitude, not any altercation he may have had when he was apprehended. Because Riley has not shown that the circuit

court mistakenly believed that he threatened the women who rented him a room, much less that it relied on this information in sentencing him, we reject Riley's argument that he is entitled to sentence modification because the circuit court based its sentence on erroneous information.

By the Court.—Orders affirmed.

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

