

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 21, 2012

Diane M. Fremgen
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. 2011AP1519-CR

Cir. Ct. No. 2009CF4804

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

AHMAD R. JOHNSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DAVID L. BOROWSKI, Judge. *Affirmed.*

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

¶1 PER CURIAM. Ahmad R. Johnson appeals a judgment convicting him of aggravated battery to a physically disabled person. He also appeals an order denying his motion for sentence modification or resentencing. He argues

that his due process rights were violated because the circuit court sentenced him based on inaccurate information. We affirm.

¶2 “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. “Whether a defendant has been denied this due process right is a constitutional issue that an appellate court reviews de novo.” *Id.* A defendant who seeks resentencing because the circuit court based its sentence on inaccurate information must show that the information was inaccurate and that the circuit court actually relied on the inaccurate information at sentencing. *Id.*, ¶26.

¶3 Johnson contends that the circuit court relied on inaccurate information when it sentenced him because it believed that he harassed, intimidated and abused the victim, and framed its sentence with that information in mind. We reject this argument because Johnson has failed to show that the sentencing court relied on inaccurate information. During the initial stages of the case, the circuit court rescinded Johnson’s jail telephone privileges because he repeatedly attempted to dissuade the victim from testifying against him. At the sentencing hearing, the victim told the circuit court that she had suffered physical and mental abuse at Johnson’s hands for a lengthy period of time. Based on Johnson’s repeated attempts to dissuade the victim from pursuing the case and the victim’s testimony at sentencing that Johnson had abused her for a lengthy period of time, the circuit court properly concluded that Johnson had harassed, intimidated and abused the victim.

By the Court.—Judgment and order affirmed.

This opinion will not be published.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

