Appeal No. **2014AP2331-CR**

Cir. Ct. No. **2010CF5028**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS**
**DISTRICT I**

STATE OF WISCONSIN,

   PLAINTIFF-RESPONDENT,

  V.

GREGORY M. WILLIAMS, JR.,

   DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: REBECCA F. DALLET, Judge. *Affirmed.*

Before Kessler, Brennan and Bradley, JJ.

¶1    PER CURIAM. Gregory M. Williams, Jr., *pro se*, appeals a judgment convicting him of first-degree reckless injury by use of a dangerous weapon and an order denying his postconviction motion for resentencing.

Williams contends that the circuit court relied on inaccurate information in sentencing him. We reject this argument. Accordingly, we affirm.

¶2      "'A defendant has a due process right to be sentenced based on accurate information.'" ***State v. Payette***, 2008 WI App 106, ¶46, 313 Wis. 2d 39, 756 N.W.2d 423 (citation omitted). "'[A] defendant who requests resentencing based on inaccurate information must show both that the information was inaccurate, and that the court actually relied on the inaccurate information in the sentencing.'" ***State v. Tiepelman***, 2006 WI 66, ¶17, 291 Wis. 2d 179, 717 N.W.2d 1 (citation omitted).

¶3      Williams argues that the circuit court incorrectly stated at sentencing that D.P., the victim, had been trying to resolve their dispute peacefully when Williams shot him. Williams points to D.P.'s trial testimony that he went to the home where the shooting occurred with his uncles "to confront" Williams about an earlier incident during which Williams had tried to jump him and D.P.'s testimony that he wanted to locate Williams "to fight."

¶4      Williams's argument is unavailing. The trial testimony supports the circuit court's statement at sentencing that D.P. was attempting to resolve the dispute peacefully when Williams shot him. D.P. testified that he initially wanted to confront Williams and wanted to fight. But D.P. also testified that he had changed his mind about fighting before the shooting occurred. D.P. testified that his uncle told him they should go find the boys and sort it out by talking with the parents. D.P. also testified that when he and his uncles arrived at the home where they located Williams, a woman on the porch holding a baby urged them to resolve the matter peacefully. D.P. said that he did not want to fight after hearing the woman's comments, and testified that they were calmly talking to her about

the situation when Williams began shooting. D.P.'s uncles also testified at trial that they went with D.P. in an attempt to discuss the dispute with the parents of the boys involved. D.P.'s uncles testified that they hoped to resolve the matter positively by having a discussion about what the problem was.

¶5 As the circuit court explained in its order denying the postconviction motion:

> Although the victim testified that his original purpose in returning with family members was "just to fight" he clearly abandoned that idea by the time he reached the scene and observed his older family members trying to negotiate the dispute peacefully…. There was no evidence that [D.P.] or anyone else initiated or attempted to instigate a fight at the scene. There was no evidence that [D.P.] or his family members brought a weapon to the scene. The only evidence was that while the [victim] and his family members were trying to resolve the dispute peacefully, *the defendant* retrieved a weapon, returned to the scene and started shooting.

Therefore, we reject the argument that Williams was sentenced based on inaccurate information.

*By the Court.*—Judgment and order affirmed.

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