



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT II**

December 23, 2014

To:

Hon. S. Michael Wilk  
Circuit Court Judge  
Kenosha County Courthouse  
912 56th Street  
Kenosha, WI 53140

Rebecca Matoska-Mentink  
Clerk of Circuit Court  
Kenosha County Courthouse  
912 56th Street  
Kenosha, WI 53140

Randall E. Paulson  
Asst. State Public Defender  
735 N. Water St., #912  
Milwaukee, WI 53202-4116

Gregory M. Weber  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Robert D. Zapf  
District Attorney  
Molinaro Bldg  
912 56th Street  
Kenosha, WI 53140-3747

Brenden S. Paquette  
9427 67th St  
Kenosha, WI 53142

You are hereby notified that the Court has entered the following opinion and order:

---

2014AP1543-CRNM      State of Wisconsin v. Brenden S. Paquette (L.C. # 2013CF622)

Before Brown, C.J., Reilly and Gundrum, JJ.

Brenden S. Paquette appeals from a judgment of conviction for substantial battery by use of a dangerous weapon, for which he was sentenced to serve probation for fifteen months. Paquette's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12),<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Paquette received a copy of the report and was advised of his right to file a response. He has elected not to do so. Upon

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

consideration of the report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* RULE 809.21.

Paquette, age twenty-two, was charged with four crimes as a result of two separate incidents involving “road rage.” He is convicted of the charge arising when he brandished a knife when confronted by another driver and slashed the arm of the other driver causing a wound requiring two to three staples to close. With his guilty plea to the substantial battery by use of a dangerous weapon charge, the other three misdemeanor charges were dismissed as read-ins. The prosecution agreed to recommend probation and did so at sentencing. In addition to the fifteen months of probation, Paquette was ordered to pay \$2,955.75 in restitution. Paquette was also required provide a DNA sample and pay the surcharge to facilitate identification of Paquette by law enforcement in the future. The sentencing court rejected Paquette’s request that the conviction be expunged upon successful completion of probation.

The no-merit report addresses the potential issues of whether Paquette’s plea was freely, voluntarily and knowingly entered and whether the sentence, including the denial of the possibility of expungement, was the result of an erroneous exercise of discretion. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further.<sup>2</sup> By his guilty plea, Paquette forfeited the right to raise

---

<sup>2</sup> The plea questionnaire stated the wrong maximum penalty Paquette faced. It stated the maximum was five and one-half years. The maximum, due to the dangerous weapon enhancer, was eight and one-half years. During its plea colloquy with Paquette, the circuit court correctly recited the eight and one-half year maximum.

nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886.

Not addressed by the no-merit report is the reason given for imposing the DNA surcharge. *State v. Simonis*, 2012 WI App 84, ¶1, 343 Wis. 2d 663, 819 N.W.2d 328, holds that a circuit court may not justify the DNA surcharge because a defendant might, in the future, “commit a crime that would generate costs for DNA analysis.” Here the sentencing court imposed the surcharge to facilitate identification in the event Paquette committed future crimes. The stated reason may violate the *Simonis* holding. However, to challenge the surcharge Paquette would have to establish that imposition of the surcharge was unreasonable. *State v. Ziller*, 2011 WI App 164, ¶12, 338 Wis. 2d 151, 807 N.W.2d 241. This was Paquette’s first felony conviction and therefore he was required to give a DNA sample pursuant to WIS. STAT. § 973.047(1f). That certain costs are incurred in obtaining the sample is an acceptable reason for imposing the surcharge. See *State v. Long*, 2011 WI App 146, ¶8, 337 Wis. 2d 648, 807 N.W.2d 12. “What is obvious need not be repeated.” *Ziller*, 338 Wis. 2d 151, ¶13. There is no arguable merit to a claim that it was unreasonable to impose the DNA surcharge at sentencing.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction and discharges appellate counsel of the obligation to represent Paquette further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction is summarily affirmed. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Randall E. Paulson is relieved from further representing Brenden S. Paquette in this appeal. *See* WIS. STAT. RULE 809.32(3).

---

*Diane M. Fremgen*  
*Clerk of Court of Appeals*