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**DISTRICT III**

February 17, 2015

To:

Hon. William C. Stewart Jr.  
Circuit Court Judge  
Dunn County Judicial Center  
615 Stokke Parkway, Suite 1500  
Menomonie, WI 54751

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Clerk of Circuit Court  
Dunn County Judicial Center  
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You are hereby notified that the Court has entered the following opinion and order:

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2014AP1955-CRNM      State of Wisconsin v. Stephen Ray Harmston (L.C. # 2013CF303)

Before Hoover, P.J., Stark and Hruz, JJ.

Counsel for Stephen Harmston has filed a no-merit report concluding there is no arguable basis for Harmston to challenge his convictions and sentences for felony substantial battery/domestic abuse and misdemeanor violating a domestic abuse order, both as a repeater. Harmston filed a response raising issues regarding the sentencing proceedings. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we cannot conclude that there is no basis for further postconviction proceedings related to the costs and surcharges imposed in the judgments of conviction.

On page thirty-seven of the sentencing transcript, the district attorney asked the court to impose costs on the felony of \$268 plus \$250 for the DNA surcharge, and \$243 on the misdemeanor, plus a \$100 domestic abuse surcharge added to both judgments. On page sixty-two, the court stated “I am going to -- conditions of extended supervision should include the DNA sample and paying for costs....” On page sixty-five the district attorney again itemized the costs and surcharges, this time requesting \$268 on the felony plus \$100 domestic abuse surcharge, and \$243 on the misdemeanor, plus a \$100 domestic abuse charge. The court responded “OK. I haven’t added up those totals, but I would order all those as a condition.”

The judgment of conviction for the felony includes court costs of \$163, other of \$113, the victim/witness surcharge of \$92, and a \$100 DNA surcharge. We cannot reconcile the amounts listed on the judgment with the amounts ordered by the court or with the mandatory DNA surcharge set out in WIS. STAT. § 973.046. The misdemeanor judgment includes court cost of \$163, other of \$113, and the victim/witness surcharge of \$67. It includes no DNA surcharge.

Because we are uncertain of the sentencing court’s intention and cannot reconcile the amounts stated in the judgments with the court’s imposition of specific costs or with the mandatory DNA surcharges, we cannot conclude that there is no arguable basis for further postconviction proceedings. Therefore, we reject the no-merit report and extend the time for filing a postconviction motion to seek clarification of the court’s decision on costs and surcharge and, if appropriate, modification of the judgments.

IT IS ORDERED that this appeal is dismissed without prejudice,

IT IS FURTHER ORDERED that the time for filing a postconviction motion is extended to sixty days from the date of this order.

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