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DISTRICT III

April 3, 2015

To:

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

2014AP2924-CRNM State of Wisconsin v. James D. Davis (L.C. # 2012cf1264)

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

Our review of the record discloses an issue of arguable merit regarding the DNA surcharge. The sentencing court imposed the surcharge without indicating any exercise of discretion. That would be permissible for sentences imposed after January 1, 2014 under WIS. STAT. § 973.046(1r) if the effective date of the statute is constitutional. Several circuit court's have ruled that the effective date is unconstitutional as an ex post facto law because it is an automatic penalty that runs from the date of sentencing rather than the date the crime was committed. That issue is currently pending in three cases on appeal. (*State v. Elward*,

2014AP2569-CR, *State v. Radaj*, 2014AP2496-CR and *State v. Monahan*, 2014AP2187-CR.)

Because we cannot conclude that there is no arguable merit to any issue that could be raised in this appeal,

IT IS ORDERED that the no-merit report is rejected and this appeal is dismissed.

IT IS FURTHER ORDERED that, within thirty days of the date of this order, counsel shall file a motion in the circuit court regarding the DNA surcharge.

Diane M. Fremgen
Clerk of Court of Appeals