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DISTRICT III

October 5, 2015

To:

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

2015AP164-CRNM	State of Wisconsin v. Jesse C. Petroski (L.C. #2011CF876)
2015AP165-CRNM	State of Wisconsin v. Jesse C. Petroski (L.C. #2012CF235)
2015AP166-CRNM	State of Wisconsin v. Jesse C. Petroski (L.C. #2012CF264)
2015AP167-CRNM	State of Wisconsin v. Jesse C. Petroski (L.C. #2012CF371)
2015AP168-CRNM	State of Wisconsin v. Jesse C. Petroski (L.C. #2012CF442)

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

Attorney Peter Heyne filed a no-merit report addressing various issues and noting that the circuit court imposed multiple DNA surcharges. He concluded, however, that no issue could be made of the DNA surcharges because the judgments of conviction reflect only one DNA surcharge. We conclude that imposition of the DNA surcharges presents an arguable issue for

appeal. Where there is a discrepancy between the court's oral pronouncement at sentencing and the written judgments of conviction, the oral pronouncement controls. *State v. Lo*, 228 Wis. 2d 531, 540, 599 N.W.2d 653 (Ct. App. 1999). Therefore, the fact that the written judgments reflect only one DNA surcharge is not dispositive. We are also unable to discern whether the circuit court imposed four or five DNA surcharges and, regardless of the number, whether imposition of multiple DNA surcharges was authorized under the version of WIS. STAT. § 973.04(6) in effect at the time of sentencing. Finally, we also question whether the court stated adequate reasons for imposing any DNA surcharge.

IT IS ORDERED that the no-merit report is rejected and these appeals are dismissed.

IT IS FURTHER ORDERED that counsel shall file a postconviction motion challenging the DNA surcharges within sixty days of the date of this order. Counsel may raise any other issue he deems appropriate in the postconviction motion.

Diane M. Fremgen
Clerk of Court of Appeals