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October 20, 2015

To:

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Circuit Court Judge, Br. 15
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You are hereby notified that the Court has entered the following opinion and order:

2014AP2663-CRNM State of Wisconsin v. Dewon Q. Walker (L.C. # 2013CF5191)

Before Kloppenburg, P.J., Lundsten and Sherman, JJ.

Attorney Kiley Zellner has filed a no-merit report seeking to withdraw as appellate counsel for appellant Dewon Walker. *See* WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Walker was sent a copy of the report and did not file a response. Because an arguably meritorious appellate issue exists with regard to the court-imposed DNA surcharge, we reject the no-merit report.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Walker pled guilty to two counts of possession of a firearm by a felon. The circuit court sentenced Walker to four years of initial confinement and four years of extended supervision on one count and to two years and six months of initial confinement and two years and six months of extended supervision on the other count. The court ordered that the sentences be served concurrent with each other and consecutive to any other sentence. The court imposed a DNA surcharge of \$500.

The crimes were committed on August 23, 2013 and September 30, 2013. Walker was sentenced on March 6, 2014. Because he was sentenced after January 1, 2014, Walker was subject to the revised DNA surcharge statute, WIS. STAT. § 973.046(1r)(a). *See* 2013 Wis. Act 20, §§ 2355, 9426(1)(am). That revision provides for a mandatory DNA surcharge of \$250 per felony conviction. *See State v. Radaj*, 2015 WI App 50, ¶1, 363 Wis. 2d 633, 866 N.W.2d 758. If Walker had been convicted and sentenced before January 1, 2014, he would have been subject to a discretionary \$250 DNA surcharge rather than a mandatory DNA surcharge of \$500. *See id.*, ¶¶4-5.

In *Radaj*, we held that the new mandatory, per-conviction, DNA surcharge was an unconstitutional ex post facto law as applied to a defendant convicted of multiple felonies after January 1, 2014, when the underlying crimes were committed before January 1, 2014. *Id.*, ¶35. The timeline for Walker's crimes and convictions mirrors that found unconstitutional in *Radaj*. Thus, it appears that a challenge to the imposition of the \$500 DNA surcharge would be meritorious and, accordingly, we reject the no-merit report.

Therefore,

IT IS ORDERED that the no-merit report is rejected and this appeal is dismissed without prejudice. Attorney Zellner or a successor counsel appointed by the State Public Defender shall continue to represent Walker.

IT IS FURTHER ORDERED that the time for Walker to file a postconviction motion is extended to December 15, 2015.

Diane M. Fremgen
Clerk of Court of Appeals