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**DISTRICT II**

November 25, 2015

To:

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Racine County Courthouse  
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Quordalis V. Sanders, #178350  
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Waupun, WI 53963-0351

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

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2014AP2976-CRNM      State of Wisconsin v. Quordalis V. Sanders (L.C. #2014CF110)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Quordalis V. Sanders appeals from a judgment of conviction for exposing genitals to a child, causing a child to view sexual activity, stalking a victim under eighteen years of age, and disorderly conduct, all as a repeat offender. His appellate counsel, Attorney Timothy Baldwin, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Sanders filed three responses to the no-merit report. RULE 809.32(1)(e). Upon consideration of these submissions and an independent review of the record,

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

we conclude that an arguably meritorious issue exists as to whether Sanders should have been assessed mandatory DNA surcharges under WIS. STAT. § 973.046(1r), a provision which did not take effect until after Sanders committed the crimes of which he is convicted. We reject the no-merit report and extend the time for Sanders to file a postconviction motion under WIS. STAT. RULE 809.30.

A jury found Sanders guilty of three crimes which occurred on December 6, 2013. The jury also found Sanders guilty of stalking between January 2011 and December 6, 2013. On July 15, 2014, Sanders was sentenced to time served on the misdemeanor disorderly conduct conviction, two years' initial confinement and three years' extended supervision on the causing a child to view sexual activity conviction, a concurrent term of two years' probation on the exposing genitals to a child conviction, and two years' initial confinement and three years' extended supervision on the stalking conviction, which was stayed in favor of a consecutive three-year term of probation. The court imposed a DNA surcharge on every count of conviction and indicated it did so because it was required to do so.<sup>2</sup> See WIS. STAT. § 973.046(1r).

*State v. Elward*, 2015 WI App 51, ¶7, 363 Wis. 2d 628, 866 N.W.2d 756, holds that the mandatory \$200 DNA surcharge under WIS. STAT. § 973.046(1r) for misdemeanor crimes committed before January 1, 2014, but sentenced after that date and before April 1, 2015, is an unconstitutional ex post facto punishment. If a \$200 DNA surcharge was imposed on Sanders'

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<sup>2</sup> The record does not include a judgment of conviction for the disorderly conduct conviction. The circuit court docket indicates that as to that conviction, court costs and "DNA surcharge" were part of the sentence.

disorderly conduct conviction, a postconviction motion would be appropriate to vacate the surcharge.

In *State v. Radaj*, 2015 WI App 50, ¶35, 363 Wis. 2d 633, 866 N.W.2d 758, we held that the new mandatory, per-count, 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. The timeline for Sanders' crimes and convictions mirrors that found unconstitutional in *Radaj*. Thus, it appears that a postconviction motion challenging the imposition of the multiple DNA surcharges would be meritorious.

The no-merit report does not discuss the mandatory DNA surcharges applied in this case. The potential issue with the DNA surcharges is not currently preserved for appellate review in this case because no postconviction motion was filed raising it. See *State v. Barksdale*, 160 Wis. 2d 284, 291, 466 N.W.2d 198 (Ct. App. 1991) (generally a motion to modify a sentence is a prerequisite to appellate review of a defendant's sentence). We cannot conclude that further postconviction proceedings on Sanders' behalf lack arguable merit.

Upon the foregoing reasons,

IT IS ORDERED that the WIS. STAT. RULE 809.32 no-merit report is rejected, appointed counsel's motion to withdraw is denied, and this appeal is dismissed.

IT IS FURTHER ORDERED that the deadline to file 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