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DISTRICT III

December 4, 2015

To:

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

2015AP1297-CRNM State of Wisconsin v. David G. Tlahuel (L.C. # 2013CF1587)

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

Counsel for David Tlahuel has filed a no-merit report concluding there is no arguable basis for Tlahuel to withdraw his no contest pleas or challenge the sentences imposed for seven crimes. We reject the no-merit report for three reasons. First, the judgment of conviction imposes DNA surcharges totaling \$1500 for crimes committed in 2011. The date of the crime, not the date of charging or conviction, controls the imposition of the DNA surcharge. *State v. Radaj*, 2015 WI App 50, ¶8, 263 Wis. 2d 633, 866 N.W.2d 758. The statute in effect at the time

of these offenses allowed only one DNA surcharge for multiple offenses. *Id.* In addition, the imposition of any DNA surcharge was discretionary. Here, the sentencing court did not exercise any discretion regarding the surcharge. Therefore, imposition of the DNA surcharges creates an issue of arguable merit.

Second, the court relied on COMPAS assessments at sentencing. The Wisconsin Supreme Court has granted a certification in *State v. Loomis*, 2015AP157, to decide whether due process prohibits a sentencing court from relying on COMPAS assessments, either because it is proprietary in nature, preventing the defense from challenging its scientific validity, or because it takes gender into account. Here, the sentencing court's reliance on the COMPAS assessments presents an issue of arguable merit.

Third, the no-merit report is too conclusory to be helpful. The no-merit report is only three pages long and cites no case law. It devotes literally one sentence to the sufficiency of the court's colloquy. Counsel's conclusory statements that he is unable to identify any meritorious issues do not fulfill counsel's obligations when filing a no-merit report.

IT IS ORDERED that the no-merit report is stricken.

IT IS FURTHER ORDERED that this appeal is dismissed.

IT IS FURTHER ORDERED that counsel shall file a postconviction motion within sixty days of the date of this order.

Diane M. Fremgen
Clerk of Court of Appeals