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DISTRICT II

March 1, 2016

To:

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

2015AP2070-CRNM State of Wisconsin v. Trevoy K. Britts (L.C. #2013CF1141)

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

Counsel for Trevoy K. Britts has filed a no-merit report concluding there is no arguable basis for Britts to withdraw his no-contest pleas or challenge the sentences imposed for five crimes. The judgment of conviction imposes DNA surcharges totaling \$1250. Under the law when Britts committed his crimes in 2013, he would have been subject to a discretionary \$250 DNA surcharge. *See* WIS. STAT. § 973.046(1g) (2011-12). Under the law in effect when Britts was sentenced in 2014, a \$250 DNA surcharge for each of his five felony convictions was mandatory. *See* WIS. STAT. § 973.046(1r)(a) (2013-14).

The date of the crime, not the date of charging or conviction, controls the imposition of the DNA surcharge. *See State v. Radaj*, 2015 WI App 50, ¶12, 363 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, and its imposition was discretionary. *Id.*, ¶8. Here, the sentencing court did not exercise its discretion but stated that Britts was “required” to provide a DNA sample and pay the surcharge. Ordering Britts to submit a sample in that manner and assessing a \$1250 surcharge is an ex post facto violation. *See id.*, ¶35.

The court must apply the law as it existed when Britts committed his crimes. We therefore reject the no-merit report and direct counsel to file a postconviction motion challenging the multiple surcharges.

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

IT IS FURTHER ORDERED that this appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that counsel shall file a postconviction motion within sixty days.

Diane M. Fremgen
Clerk of Court of Appeals