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**DISTRICT II**

March 15, 2016

To:

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

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2015AP1839-CRNM      State of Wisconsin v. Damario T. Redmond (L.C. #2013CF1675)

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

Damario T. Redmond appeals from a judgment of conviction for first-degree reckless injury while armed and armed robbery. His appellate counsel, Attorney Angela Kachelski, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)<sup>1</sup> and *Anders v. California*,

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

386 U.S. 738 (1967). Redmond has filed a response asking this court to give him the opportunity for early release by allowing him to participate in “bootcamp” after ten years.<sup>2</sup> Upon consideration of the report and an independent review of the record, we conclude that an arguably meritorious issue exists as to whether Redmond should have been assessed two mandatory DNA surcharges under WIS. STAT. § 973.046(1r), a provision which did not take effect until after Redmond committed the crimes of which he is convicted. We reject the no-merit report and extend the time for Redmond to file a postconviction motion under WIS. STAT. RULE 809.30.

On December 2, 2013, Redmond and another man robbed a convenience store. During the robbery, Redmond shot a store customer. Redmond was sixteen years and ten months old at the time of the robbery. Redmond entered a no-contest plea to the amended charge of first-degree reckless injury while armed and armed robbery. Three other charges were dismissed as read-ins. On January 8, 2015, Redmond was sentenced to concurrent terms totaling fifteen years’ initial confinement and ten years’ extended supervision. The sentencing court ordered Redmond to “provide a DNA sample and be responsible for a surcharge on each conviction per statute.” The judgment of conviction reflects \$500 in DNA surcharges.<sup>3</sup>

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

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<sup>2</sup> As the sentencing court stated, Redmond is not eligible for participation in the statutory early release programs because of the nature of his crime.

<sup>3</sup> Restitution was not set at sentencing. Although the court intended to set a hearing to determine restitution, the circuit court docket does not reflect that such a hearing ever occurred.

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 Redmond's 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 Redmond's 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*