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DISTRICT I

March 21, 2016

To:

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

2014AP2710-CRNM State of Wisconsin v. Michael Adrian Fields (L.C. #2013CF919)

Before Curley, P.J., Kessler and Brennan, JJ.

Michael Adrian Fields was convicted after a jury trial of first-degree recklessly endangering safety and armed robbery, both as a party to a crime. His appointed appellate counsel, Attorney Michael S. Holzman, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Fields received a copy

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

of the report and was advised of his right to respond, but elected not to do so. After conducting an independent review of the record as mandated by *Anders*, we reject the no-merit report.

The judgment of conviction imposes \$500 in DNA surcharges for the crimes, which Fields committed in 2012. The date of the crimes, not the date of conviction or sentencing, controls the imposition of DNA surcharges. See *State v. Radaj*, 2015 WI App 50, ¶1, 363 Wis. 2d 633, 866 N.W.2d 758. The statute in effect at the time these offenses were committed allowed only one DNA surcharge for multiple offenses. *Id.*, ¶8. Here, the sentencing court imposed two surcharges. Moreover, the decision to impose a surcharge was not mandatory at the time Fields committed these crimes, unless the underlying conviction was for certain sex crimes; it was committed to the circuit court's discretion. *Id.*; *State v. Cherry*, 2008 WI App 80, ¶5, 312 Wis. 2d 203, 752 N.W.2d 393. The sentencing court did not explain why it imposed the surcharge or otherwise indicate that it exercised discretion in the matter. Therefore, imposition of the DNA surcharges creates an issue of arguable merit.

The DNA surcharge issue is not currently preserved for appellate review 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). Because we have concluded that there is at least one arguably meritorious issue that must be raised in the circuit court by postconviction motion, we dismiss this appeal without prejudice, and direct counsel to file a postconviction motion.

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

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

IT IS FURTHER ORDERED that the deadline for filing a postconviction motion under WIS. STAT. RULE 809.30 is extended until sixty days from the date of this order.

Diane M. Fremgen
Clerk of Court of Appeals