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DISTRICT I

August 16, 2017

To:

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

2015AP1021-CRNM State of Wisconsin v. David Bernard Moore
(L.C. # 2013CF5477)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

David Bernard Moore appeals from a judgment of conviction entered after a jury found him guilty of one count of felony intimidation of a witness in furtherance of a conspiracy, contrary to WIS. STAT. § 940.43(4) (2013-14).¹ Moore's postconviction/appellate counsel, Kiley Zellner, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Wis.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

STAT. RULE 809.32, and she also filed a supplement to the no-merit report at this court's direction. Moore has not filed a response. Because an arguably meritorious appellate issue exists with regard to the court-imposed DNA surcharge, we reject the no-merit report.

Specifically, we conclude that our recent decision in *State v. Williams*, 2017 WI App 46, ___ Wis. 2d ___, ___ N.W.2d ___, *petitions for review pending*, compels us to reject the no-merit report, dismiss the appeal, and extend the time for Moore to file a WIS. STAT. RULE 809.30 postconviction motion challenging the \$250 DNA surcharge. *Williams* holds that the imposition of the mandatory DNA surcharge for a single felony conviction that was discretionary when the crime was committed violates the *ex post facto* prohibition when applied to a defendant who has already given a DNA sample. *See id.*, 2017 WI App 46, ¶26. Under *Williams*, Moore—who, according to postconviction/appellate counsel's supplemental no-merit report, previously provided a DNA sample—has an arguably meritorious challenge to the imposition of the \$250 DNA surcharge that may be raised in the circuit court by a postconviction motion. *See id.*, ¶27.

Therefore,

IT IS ORDERED that the no-merit report is rejected and this appeal is dismissed without prejudice. Attorney Zellner or a successor counsel appointed by the State Public Defender shall continue to represent Moore.

IT IS FURTHER ORDERED that the time for Moore to file a postconviction motion is extended to sixty days from the date of this order.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals