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DISTRICT I

August 17, 2017

To:

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

2016AP1858-CRNM State of Wisconsin v. Jimmy Montrell Dudley
(L.C. # 2013CF2070)

Before Brennan, P.J., Brash and Dugan, 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).

Jimmy Montrell Dudley appeals from a judgment of conviction. Attorney Stephen M. Compton filed a no-merit report concluding that further postconviction or appellate proceedings would lack arguable merit. Upon review, we conclude that a challenge to the DNA surcharge would not lack arguable merit. Accordingly, we reject the no-merit report, dismiss this appeal without prejudice, and extend the deadline for filing a postconviction motion.

The State alleged in a criminal complaint that on April 29, 2013, Dudley possessed a firearm while a felon. A jury convicted Dudley of the crime. At sentencing in December 2014, the circuit court ordered Dudley to pay a mandatory DNA surcharge.

On June 28, 2017, this court released *State v. Williams*, 2017 WI App 46, ___ Wis. 2d ___, ___ N.W.2d ___. In *Williams*, we held that a mandatory DNA surcharge imposed after January 1, 2014, for a felony committed before that date when the surcharge was discretionary constitutes a prohibited *ex post facto* law if the defendant previously provided a DNA sample. See *id.*, ¶¶25-26. In the instant case, the record includes a certified judgment of conviction showing that in October 2012, Dudley was convicted of a felony in case No. 2012CF2168. The judgment further shows that the circuit court presiding in that case ordered Dudley to provide a DNA sample and to pay a \$250 DNA surcharge. In light of *Williams*, we cannot conclude that a challenge to the \$250 DNA surcharge imposed in the instant case would lack arguable merit. We therefore will dismiss this appeal and, pursuant to *Williams*, extend the deadline for filing a postconviction motion in circuit court. See *id.*, ¶27. We add that our conclusion regarding the arguable merit of a challenge to the DNA surcharge does not mean we have reached a conclusion about the merit of any other potential issues in this case. Dudley is not precluded from raising any issue in the postconviction proceeding that counsel may now believe has merit.

IT IS ORDERED that the no-merit report is rejected and this appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that the deadline for Dudley to file a postconviction motion is extended through September 29, 2017. See WIS. STAT. RULE 809.82(2)(a)(2015-16).

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

Diane M. Fremgen
Clerk of Court of Appeals