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August 21, 2017

To:

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

2016AP1950-CRNM State of Wisconsin v. Brandon Deshawn Harris
(L.C. # 2013CF5770)

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).

Brandon Deshawn Harris appeals a judgment convicting him of armed robbery, party to a crime, and an order denying his motion for postconviction relief. Attorney Marcella De Peters filed a no-merit report seeking to withdraw as appellate counsel. See WIS. STAT. RULE 809.32 (2015-16),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Harris was advised of his right to respond, but he has not done so. 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 Harris 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*, Harris—who has previously provided and paid for 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 De Peters or a successor counsel appointed by the State Public Defender shall continue to represent Harris.

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

IT IS FURTHER ORDERED that the time for Harris 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IT IS FURTHER ORDERED that this summary disposition order will not be published.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