



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

November 16, 2017

To:

Hon. Timothy G. Dugan
Circuit Court Judge
Br. 10
821 W. State St.
Milwaukee, WI 53233-1427

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Angela Conrad Kachelski
Kachelski Law Office
Suite 6A
7101 N. Green Bay Ave.
Milwaukee, WI 53209

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Jonathan Oliver Sellers 562405
Waupun Corr. Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2016AP73-CRNM State of Wisconsin v. Jonathan Oliver Sellers
(L.C. # 2013CF5375)

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).

Jonathan Oliver Sellers appeals from a judgment of conviction, entered upon his guilty plea, for felony murder. Appellate counsel, Angela Kachelski, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2015-16),

to which Sellers has responded.¹ 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, 377 Wis. 2d 247, 900 N.W.2d 310, *pets. for review granted*, compels us to reject the no-merit report, dismiss the appeal, and extend the time for Sellers 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.*, 377 Wis. 2d 247, ¶26.

At the sentencing hearing in this matter, the State set forth Sellers' criminal history for the court. That history included two adult convictions for felony drug charges. Under *Williams*, Sellers—who, according to CCAP records previously provided a DNA sample²—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.

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

² Prior orders by the circuit court that Sellers provide a DNA sample are reflected in CCAP records. *See* Milwaukee Cty. Circuit Court case Nos. 2010CF3883 & 2012CF5087; *see also Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, ¶5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522 (noting that this court can take judicial notice of CCAP records).

Therefore,

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

IT IS FURTHER ORDERED that the time for Sellers 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