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**DISTRICT II**

May 9, 2018

To:

Hon. Mark Rohrer  
Circuit Court Judge  
Manitowoc County Courthouse  
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Manitowoc, WI 54220

Lynn Zigmunt  
Clerk of Circuit Court  
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Scott B. Sanders 643586  
Waupun Corr. Inst.  
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Waupun, WI 53963-0351

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

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2017AP19-CRNM      State of Wisconsin v. Scott B. Sanders (L.C. # 2014CF37)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

**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).**

Counsel for Scott B. Sanders has filed a no-merit report concluding there is no arguable basis for Sanders to withdraw his *Alford* pleas or challenge the sentences imposed for sixty-two crimes. The judgment of conviction imposes DNA surcharges totaling \$15,500. Sanders committed twenty-seven of his crimes on or between 2012 and 2013; counts 11-14, 16-20, 22, 24, 34, 36-50. Under the law then in effect, he would have been subject to a discretionary \$250

DNA surcharge for twenty-two of those convictions, and a mandatory \$250 surcharge for the five crimes alleging a violation of WIS. STAT. § 948.02 (counts 24, 47-50). *See* WIS. STAT. § 973.046(1g) and (1r) (2011-12). Under the law in effect when Sanders was sentenced in 2014, a \$250 DNA surcharge for each of his sixty-two felony convictions was mandatory. *See* WIS. STAT. § 973.046(1r)(a) (2013-14).

The date of the crime, not the date of charging or conviction, controls the imposition of the DNA surcharge. *See State v. Radaj*, 2015 WI App 50, ¶12, 363 Wis. 2d 633, 866 N.W.2d 758. The statute in effect for Sanders's year 2012-13 offenses allowed only one DNA surcharge for multiple offenses. *Id.*, ¶8. Here, though the circuit court acknowledged that Sanders provided a DNA sample, it never ordered the payment of any DNA surcharge. As to the counts committed prior to January 1, 2014, the imposition of multiple surcharges is an ex post facto violation. *See id.*, ¶35.

There is another potentially meritorious claim we cannot overlook. At the time Sanders entered his *Alford* pleas to sixty-two counts, though the court warned him about the mandatory child pornography surcharges, it did not advise him that he would be required to pay multiple mandatory DNA surcharges. This issue is currently pending in a certification before the Wisconsin Supreme Court. *See State v. Freiboth*, No. 2015AP2535-CR (certified question of whether Freiboth has grounds for plea withdrawal because he was not advised at the time of his plea that he faced multiple mandatory DNA surcharges). Therefore,

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

IT IS FURTHER ORDERED that the time for Sanders to file a postconviction motion is extended to sixty days following remittitur.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*