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DISTRICT I

September 7, 2018

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

2016AP1169-CRNM	State of Wisconsin v. Demarco C. Wade (L.C. # 2015CF74)
2016AP1170-CRNM	State of Wisconsin v. Demarco C. Wade (L.C. # 2015CF1701)

Before Kessler, P.J., Brennan 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).

Demarco C. Wade pled guilty to a felony count of possessing a firearm while a felon and a misdemeanor count of intimidating a victim. *See* WIS. STAT. §§ 941.29(1) (2013-

14),¹ 940.44(2). The circuit court imposed an evenly bifurcated eight-year term of imprisonment for the felony and a concurrent nine-month sentence for the misdemeanor.² Wade appeals.

Appellate counsel, Attorney Brian C. Hagner, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Wade did not file a response. Based upon our review of the no-merit report and the records, we conclude that no arguably meritorious issues exist for an appeal, and we summarily affirm. See WIS. STAT. RULE 809.21.

According to the criminal complaint filed in Milwaukee County case No. 2015CF74, which underlies appeal No. 2016AP1169-CRNM, police responded to Wade's home in Milwaukee, Wisconsin, on January 4, 2015, after receiving a report that he was pointing a gun at his wife, V.C., and making death threats. Police eventually persuaded V.C. to allow them into the home, where officers arrested Wade as he emerged from the back of the residence. Police subsequently found a loaded semi-automatic pistol on the cellar steps. The complaint went on to allege that Wade had previously been convicted of a felony in November 1999 and that the

¹ Although the charges against Wade arose in 2015, amendments to WIS. STAT. § 941.29 enacted in the 2015-16 legislative session took effect after these cases were resolved in circuit court in August 2015. See 2015 Wis. Act 109, §§ 6-16 (eff. Nov. 13, 2015), 2015 Wis. Act 352, § 34 (eff. Apr. 13, 2016). All subsequent references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² The judgments of conviction in this case reflect a \$250 DNA surcharge for the felony and a \$200 DNA surcharge for the misdemeanor. In light of those surcharges, we previously put these appeals on hold pending the Wisconsin Supreme Court's decision in *State v. Odom*, No. 2015AP2525-CR, which was expected to address whether a defendant could withdraw a plea because the defendant was not advised at the time of the plea that he or she faced multiple mandatory DNA surcharges. The supreme court subsequently dismissed *Odom* before oral argument. We then held these appeals pending a decision in *State v. Freiboth*, 2018 WI App 46, ___ Wis. 2d ___, ___ N.W.2d ___. *Freiboth* holds that "plea hearing courts do not have a duty to inform defendants about the mandatory DNA surcharge." See *id.*, ¶12. Consequently, there is no arguable merit to a claim for plea withdrawal based on the assessment of mandatory DNA surcharges. Accordingly, following release of *Freiboth*, we granted Wade's motion to lift the hold in these matters.

conviction remained of record and unreversed. A certified copy of a judgment reflecting Wade's earlier conviction was attached to the complaint. The State charged Wade with one count of possessing a firearm while a felon and one count of disorderly conduct by use of a dangerous weapon as an act of domestic abuse.

In April 2015, while the charges in Milwaukee County case No. 2015CF74 were pending, the State filed a criminal complaint in Milwaukee County case No. 2015CF1701, which underlies appeal No. 2016AP1170-CRNM. According to the complaint in the latter case, Wade contacted V.C. on multiple occasions while in custody and attempted to dissuade her from either attending court appearances or assisting the State in connection with the charges filed in case No. 2015CF74. The State charged Wade with one felony count of intimidating a witness and one misdemeanor count of intimidating a victim, both as acts of domestic abuse.

Soon after the State filed the second complaint, Wade decided to resolve the charges against him with a plea bargain. Wade agreed to plead guilty to possessing a firearm while a felon and to intimidating a victim. The parties were free to argue for any disposition they believed was warranted for the crimes of conviction, and the remaining charges would be dismissed and read in for sentencing purposes. The circuit court accepted Wade's guilty pleas on April 22, 2015, and the matters proceeded to sentencing on August 14, 2015. The State recommended a global disposition of four years of initial confinement and four years of extended supervision. The circuit court followed the State's recommendation. The circuit court also awarded Wade the 223 days of sentence credit he requested and determined that a domestic abuse surcharge was not warranted.

The no-merit report addresses the potential issues of whether Wade entered his guilty pleas knowingly, intelligently, and voluntarily, and whether the circuit court properly exercised its sentencing discretion. Upon our independent review of the record, we agree with appellate counsel's analysis of these issues, and we agree with appellate counsel's conclusion that further pursuit of either issue would be frivolous within the meaning of *Anders*. Additional discussion of these issues is not warranted.

The court observes that at the conclusion of the sentencing proceeding, the circuit court advised that it would impose a DNA surcharge for Wade's felony conviction but would not impose a DNA surcharge for Wade's misdemeanor conviction. The judgment entered in Milwaukee County case No. 2015CF1701, however, reflects a \$200 DNA surcharge in connection with the misdemeanor conviction. We conclude that Wade cannot pursue an arguably meritorious claim for relief from the \$200 DNA surcharge reflected on the judgment. While this appeal was pending, the supreme court determined that, pursuant to WIS. STAT. § 973.046, courts sentencing defendants after January 1, 2014, are required to impose a mandatory \$250 DNA surcharge for each felony conviction and a mandatory \$200 DNA surcharge for each misdemeanor conviction. *See State v. Williams*, 2018 WI 59, ¶26, 381 Wis. 2d 661, 912 N.W.2d 373. Further, the supreme court determined that the surcharges cannot be waived. *See State v. Cox*, 2018 WI 67, ¶1, 382 Wis. 2d 338, 913 N.W.2d 780. Accordingly, no basis exists to challenge the \$200 DNA surcharge reflected on the judgment of conviction in case No. 2015CF1701.

Our independent review of the records does not disclose any other potential issues for appeal. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the judgments of conviction are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Brian C. Hagner is relieved of any further representation of Demarco C. Wade on appeal. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals