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DISTRICT II

November 28, 2018

To:

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

2018AP388-CR

State of Wisconsin v. Donnis J. Jones (L.C.# 2015CF482)

Before Neubauer, C.J., Gundrum and Hagedorn, 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).

Donnis J. Jones appeals from a judgment of conviction and an order denying his postconviction motion. He challenges the circuit court's imposition of a DNA surcharge. Based

upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm.

Jones was convicted following a guilty plea to delivering less than one gram of cocaine. The charge, which is a felony, stemmed from his sale of cocaine to a confidential informant in 2014. The circuit court sentenced Jones to one year of initial confinement and five years of extended supervision. It also imposed a \$250 DNA surcharge.

Jones filed a postconviction motion asking the circuit court to vacate the DNA surcharge. Jones argued that (1) the court had discretion to waive the DNA surcharge, and (2) it should do so in his case. The court denied Jones' request, concluding that it was required to impose a DNA surcharge under WIS. STAT. § 973.046(1r).² This appeal follows.

On appeal, Jones renews his challenge to the circuit court's imposition of a DNA surcharge. We conclude that his case is governed by the Wisconsin Supreme Court's recent decision in *State v. Cox*, 2018 WI 67, 382 Wis. 2d 338, 913 N.W.2d 780.³

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

² WIS. STAT. § 973.046(1r) provides:

(1r) If a court imposes a sentence or places a person on probation, the court shall impose a deoxyribonucleic acid analysis surcharge, calculated as follows:

- (a) For each conviction for a felony, \$250.
- (b) For each conviction for a misdemeanor, \$200.

³ *State v. Cox*, 2018 WI 67, 382 Wis. 2d 338, 913 N.W.2d 780, was released after Jones filed his appellant's brief. In his reply brief, Jones concedes that *Cox* controls his case.

In *Cox*, the Wisconsin Supreme Court considered whether a circuit court has discretion under WIS. STAT. § 973.046(1r) to waive imposition of a DNA surcharge for a crime committed after January 1, 2014.⁴ *Cox*, 382 Wis. 2d 338, ¶6. The court concluded that it did not, as the imposition of a DNA surcharge is mandatory under the plain meaning of the statute. *Id.*, ¶¶24-25.

In light of *Cox*, we are satisfied that the circuit court correctly concluded that it was required to impose a DNA surcharge under WIS. STAT. § 973.046(1r). Accordingly, we affirm.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals

⁴ The version of WIS. STAT. § 973.046(1r) at issue in both *Cox* and this case went into effect on January 1, 2014.