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DISTRICT III

September 15, 2026

To:

Hon. Timothy A. Hinkfuss
Circuit Court Judge
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

Michael C. Sanders
Electronic Notice

Anthony Dewayne Oliver 120103
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Oshkosh, WI 54903-3310

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

2025AP610-CR

State of Wisconsin v. Anthony Dewayne Oliver
(L. C. No. 2017CF1810)

Before Stark, P.J., Hruz, and Gill, 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).

Anthony Dewayne Oliver, pro se, appeals an order denying his motion to vacate two DNA surcharges. 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 (2023-24).¹ Because the DNA surcharges were mandated by statute and the circuit court had no discretion not to impose them, we summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

In 2019, Oliver was convicted of two felonies—armed robbery and aggravated battery with use of a dangerous weapon. At sentencing, the circuit court imposed a \$250 DNA surcharge for each felony conviction, pursuant to WIS. STAT. § 973.046(1r).

In 2025, Oliver filed a motion to vacate the DNA surcharges. He argued that the circuit court had erroneously exercised its discretion by imposing the surcharges without first considering the factors set forth in *State v. Cherry*, 2008 WI App 80, ¶10, 312 Wis. 2d 203, 752 N.W.2d 393. In particular, Oliver noted that the court had failed to consider the fact that he had previously given a DNA sample and paid a DNA surcharge after being convicted of a crime in 1994. Oliver also noted that he had been ordered to pay a DNA surcharge in a 2007 case, but he was subsequently “rei[m]burse[d]” for that amount in 2008 because his “DNA was already in the ‘DNA Database.’”

The circuit court denied Oliver’s motion to vacate the DNA surcharges. The court explained that under WIS. STAT. § 973.046(1r) and current Wisconsin Supreme Court precedent interpreting that statute, the imposition of a \$250 DNA surcharge for each felony conviction is mandatory, not discretionary. Oliver now appeals.

The interpretation and application of WIS. STAT. § 973.046(1r) are questions of law that we review independently. *State v. Cox*, 2018 WI 67, ¶7, 382 Wis. 2d 338, 913 N.W.2d 780. As relevant here, § 973.046(1r)(a) provides that when a court “imposes a sentence or places a person on probation, the court *shall* impose a deoxyribonucleic acid analysis surcharge” of \$250 “[f]or each conviction for a felony.” (Emphasis added.) In *Cox*, our supreme court determined that the word “shall” in § 973.046(1r) is mandatory, not directory, meaning that “with respect to crimes committed after January 1, 2014”—the effective date of the relevant amendment to the statute—

“courts must impose the indicated surcharge; there is no discretion to waive it.” **Cox**, 382 Wis. 2d 338, ¶¶8, 24-25.

Oliver committed the two felonies at issue in this case on October 14, 2017. As such, under WIS. STAT. § 973.046(1r) and **Cox**, the circuit court was required to impose two \$250 DNA surcharges on Oliver at the time of sentencing—one for each felony conviction. As the court correctly recognized in its order denying Oliver’s motion to vacate the DNA surcharges, the court had no discretion not to impose the surcharges.

On appeal, Oliver renews his arguments that the circuit court failed to consider the factors set forth in **Cherry** before imposing the DNA surcharges and that, because he gave a DNA sample and paid a DNA surcharge when he was convicted in 1994, he should not have to pay DNA surcharges again in this case. Oliver also reiterates that in 2008, he was “reimbursed” for a DNA surcharge imposed in a 2007 case because “his DNA was already within the DNA Database.”

These arguments fail because at the time **Cherry** was decided—and at the time of Oliver’s conviction in the 2007 case—WIS. STAT. § 973.046 provided that a court “may” impose a DNA surcharge of \$250 when sentencing a person for a felony conviction. See § 973.046(1g) (2007-08); see also **Cherry**, 312 Wis. 2d 203, ¶5. Under that statutory language, a circuit court had discretion to decide whether to impose a DNA surcharge. See **Cherry**, 312 Wis. 2d 203, ¶5; **Cox**, 382 Wis. 2d 338, ¶13. However, the legislature subsequently amended the statute to state that a court “shall” impose a \$250 DNA surcharge for each felony conviction. See 2013 Wis. Act 20, §§ 2354-55. Consequently, as discussed above, the circuit court was required to impose a \$250 DNA surcharge for each of Oliver’s felony convictions in this case, and the court had no

discretion not to do so. As a result, the court properly denied Oliver's motion to vacate the DNA surcharges. See **Cox**, 382 Wis. 2d 338, ¶25 (concluding that the circuit court correctly denied the defendant's motion to vacate a DNA surcharge because the imposition of the surcharge was mandatory under § 973.046(1r)).

Therefore,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals