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**DISTRICT I**

January 24, 2018

*To:*

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

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2017AP503-CR

State of Wisconsin v. Isaiah D. Jordan (L.C. # 2013CF5322)

Before Brennan, P.J., Kessler and Dugan, 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).**

Isaiah Jordan appeals a judgment convicting him of first-degree sexual assault, with use of a dangerous weapon, and third-degree sexual assault.<sup>1</sup> He also appeals the circuit court's order denying his postconviction motion. Jordan argues that the circuit court erred by imposing two \$250 DNA surcharges on him, one for each conviction. After review of the briefs and record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>2</sup> We summarily affirm in part and reverse in part.

Jordan contends that the circuit court violated the *ex post facto* clause by imposing a DNA surcharge for each crime because both acts occurred before January 1, 2014, the effective date of the statute requiring the circuit court to impose a mandatory DNA surcharge for each conviction. “[A] statute ‘which makes more burdensome the punishment for a crime[] after its commission’ is prohibited by the Ex Post Facto Clauses of the United States and Wisconsin Constitutions.” *State v. Scruggs*, 2017 WI 15, ¶14, 373 Wis. 2d 312, 891 N.W.2d 786 (citation omitted; second set of brackets in *Scruggs*).

The State concedes that the circuit court erred by imposing two DNA surcharges based on *State v. Radaj*, 2015 WI App 50, ¶1, 363 Wis. 2d 633, 866 N.W.2d 758. Citing WIS. STAT. § 973.046(1g) and (1r), *Radaj* held that, “The surcharge amount, if imposed, was \$250, regardless of the number or nature of the convictions.” *See id.*, ¶8. The court further held that the imposition of multiple surcharges under section 973.046(1r)(a), for felonies committed prior to January 1, 2014, violates the *ex post facto* clauses of the Wisconsin and United States

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<sup>1</sup> We note that Jordan was convicted of crimes charged in other cases. However, those cases are not before us.

<sup>2</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Constitutions. *See id.*, ¶35. Based on the holding in *Radaj*, we find that applying the statute to Jordan for crimes he committed before the effective date of the statute violates the *ex post facto* clauses of the Wisconsin and United States Constitutions. Therefore, we reverse the order denying the postconviction motion and remand to the circuit court to amend the judgment to impose only one DNA surcharge.

IT IS ORDERED that the judgment is affirmed in part, but reversed as to the DNA surcharge.

IT IS FURTHER ORDERED that the circuit court's order denying postconviction relief is summarily reversed and this case is remanded with directions for the circuit court to amend the judgment in accord with this order.

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

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*Diane M. Fremgen*  
*Acting Clerk of Court of Appeals*