STATE OF WISCONSIN

COURT OF APPEALS – DISTRICT II

Case No. 2020AP1213 - CR

STATE OF WISCONSIN,

Plaintiff-Respondent-Cross-Appellant,

v.

COREY T. RECTOR,

Defendant-Appellant-Cross-Respondent.

Appeal of a judgment and an order entered in the
Kenosha County Circuit Court,
the Honorable Jason A. Rossell, presiding

COMBINED BRIEF OF APPELLANT AND CROSS-RESPONDENT

ANDREW R. HINKEL
Assistant State Public Defender
State Bar No. 1058128

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 267-1779
hinkela@opd.wi.gov

Attorney for Defendant-Appellant-Cross-Respondent

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ARGUMENT

The circuit court denied Mr. Rector substance abuse program eligibility according to a preconceived sentencing policy.

As Mr. Rector noted in his opening brief, the circuit court originally denied him eligibility for the substance abuse and challenge incarceration Programs because it had been informed—incorrectly—that the statutes excluded him from these programs. In its response, the State agrees that this was error. App. Br. 3-4; Resp. Br. 20-21.

But, the state says, the circuit court's remarks at the postconviction hearing corrected its earlier error and, what's more, demonstrated a sound exercise of its discretion to deny Mr. Rector eligibility. Resp. Br. 22-24.

The state's argument ignores the bulk of the circuit court's postconviction comments and reads into the remainder words the court did not utter. Here's the entirety of the court's material remarks:

> First of all, it's not a substance abuse crime. I only authorize the Substance Abuse Program when it directly goes to the criminogenic factor that caused the crime. So if there's an operating while intoxicated case or maybe a domestic violence case in which alcohol was used or in some way, shape or form the substance abuse was the reason for the crime. In this case it's a possession of child pornography….

> [T]he problem in this case as I indicated at sentencing is it's not a substance abuse crime.
>
> It doesn't address the criminogenic factors and therefore the Court is not gonna grant the relief and will deny the motion.

(70:4-5; App. 105-06).

The circuit court's only comment specific to Mr. Rector's case was that his convictions were for possessing child pornography, which in the court's view is "not a substance abuse crime." This division of statutory offenses into "substance abuse crime[s]" (like operating while intoxicated) and non-"substance abuse crime[s]" (like possessing child pornography) is a pre-conceived, blanket sentencing policy of the sort condemned in *State v. Ogden*, 199 Wis. 2d 566, 571, 544 N.W.2d 574 (1996).

But the state's brief simply doesn't acknowledge the court's "substance abuse crime" rubric. It says Mr. Rector "misconstrues" the court's remarks, Resp. Br. 22, but doesn't point to any suggestion in those remarks that the court was considering the circumstances of Mr. Rector's individual case. Though the court allowed that domestic violence offenses *might* involve substance abuse as a contributing factor, its only comment about the case (and defendant) before it was "[i]n this case it's a possession of child pornography." And though the state goes on to argue about the specifics of Mr. Rector's alcohol use, Resp. Br. 24, there's no indication that this was on *the court*'s mind: regarding Mr. Rector, the court's only

comment was about the statutory offense he'd committed, which it implied ruled out SAP eligibility.

Though it doesn't quite say so, the state may mean to argue that the court's comments about a domestic-violence offense potentially being factually alcohol-related were meant to highlight the lack of such a factual connection in Mr. Rector's case. This would be a stretch—again, the court referred only to the name of Mr. Rector's offense; its comments about domestic abuse were directed at highlighting the differences between the types of offenses it considered "substance abuse crimes" and Mr. Rector's offense of possessing child pornography. Upholding the circuit court's decision on this basis would not be sustaining a valid exercise of discretion; it would be substituting an arguably valid reason for the actual—and unlawful—reason the circuit court gave. *Ogden* places the circuit court's rationale outside the bounds of acceptable exercises of sentencing discretion, and so this Court should reverse.

CONCLUSION

Because the circuit court refused to make Mr. Rector eligible for the substance abuse program according to a preconceived sentencing policy, he respectfully requests that this Court reverse the denial of his postconviction motion and remand for a proper exercise of discretion.

CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 637 words.

CERTIFICATE OF COMPLIANCE

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of the Interim Rule for Wisconsin's Electronic Filing Project, Order No. 19-02

I further certify that a copy of this certificate has been served with the brief filed with the court and served on all parties either by electronic filing or by paper copy.

Dated this 26th day of March, 2021.

Signed:

Electronically signed by Andrew R. Hinkel
ANDREW R. HINKEL
Assistant State Public Defender

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ISSUE PRESENTED[1]

Corey Rector pleaded guilty to five counts of possession of child pornography in a single case at a single hearing. Did his convictions occur "on 2 or more separate occasions" such that he must register as a sex offender until his death?

The circuit court held that lifetime registration was not mandatory in this instance, and it required Mr. Rector to register for 15 years after completion of his sentence. This Court should affirm.

ARGUMENT

A. Standard of review and summary of argument.

Mr. Rector concurs with the state that whether the statutes mandate[2] lifetime registration in this case is a question of law for this Court's *de novo* review. Resp. Br. 7. But for several reasons, he does not agree that his five simultaneous convictions

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[1] In accord with Supreme Court Order No. 19-02 (April 15, 2019) regarding electronic filing, and following the practice of the state in this appeal, Mr. Rector omits the red dividing page typically required before the second portion of an Appellant and Cross-Respondent's combined brief.

[2] The state's brief says that a person who isn't subject to the mandatory-lifetime provision registers for 15 years. This is not quite right; a court ordering registration always has the discretion to order it for life. Wis. Stat. §973.048(4). The dispute in this case is whether lifetime registration is *mandatory*—that is, whether the circuit court's discretion is curtailed—where multiple convictions are entered on the same occasion.

happened "on 2 or more separate occasions," as Wis. Stat. § 301.45(5)(b)1. requires.

First, in plain English, two things that happen at the same time don't happen on "2 occasions," let alone "2 *separate* occasions." A fisherman whose net hauls in two fish at once does not catch those fish on "2 separate occasions." Second, the cases the state cites to prove otherwise—*State v. Wittrock*, 119 Wis. 2d 664, 350 N.W.2d 647 (1984), and *State v. Hopkins*, 168 Wis. 2d 802, 484 N.W.2d 549 (1992)—don't govern. They construed a separate statute in a separate chapter, relying not on plain language but on legislative history. Third, the state's "absurd results" argument overlooks the case law, common sense, and scientific research supporting disparate treatment of those whose convictions are entered at different times and those whose convictions are entered all at once. More fundamentally, it overlooks the breadth of the legislature's authority to make these judgment calls.

This Court should give meaning to the words of the statute: separate occasions are separate occasions.

B. "On 2 or more separate occasions" does not mean "at the same time."

Corey Rector entered five identical pleas, one by one, to five identical counts of possessing child pornography. (66:11-12). Immediately after Mr. Rector said "guilty" for the fifth time, the court said that it accepted the pleas, and that it found him "guilty … in Counts 1 through 5." (66:12). The question for this Court is whether the convictions just described

occurred "on 2 or more separate occasions." It should answer no.

"Separate" means "set or kept apart." Merriam-Webster.com/dictionary/separate, *last accessed* March 19, 2021. An "occasion" is "a time at which something happens." Merriam-Webster.com/dictionary/occasion, *last accessed* March 19, 2021. So something that happens on two "separate occasions" happens at two times apart from one another—not, as here, as part of a single episode.

But while the dictionary definitions are clear, they're not really necessary here. "Separate" and "occasion" are not obscure terms; everyone knows what they mean. Someone who went to the supermarket, picked up two apples, and paid for them at the checkout counter would not claim he or she had obtained the apples on "two separate occasions." Asked if that were the case, he or she would deny it: "no, I bought them at the same time."

Many writings confirm this universally-understood meaning of the phrase "separate occasions." Consider this: "Fifty years ago a series of great fires took place, which made terrible havoc on five separate occasions." Bram Stoker, *Dracula* p. 3 (Doubleday 1897). Plainly, the "terrible havoc" did not happen all at once; that is what "five separate occasions" conveys. Or this: "[Vincent Jopp … was one of those men who marry early and often. On three separate occasions before I joined his service he had jumped off the dock, to scramble back to shore again

later by means of the Divorce Court lifebelt." P.G. Wodehouse, *The Clicking of Cuthbert* p.182 (1922). We all understand that Mr. Jopp was not thrice married on the same day.

Many, many cases use the phrase as well. "[T]he petitioner's blood pressure was taken 11 times on two separate occasions." *Seitz v. Suffolk Cty. Dep't of Civ. Serv.*, 536 N.Y.S.2d 536, 537 (1989). "Mr. Nwabuoku signed his name five times, on three separate occasions." *Y & N Furniture, Inc. v. Nwabuoku*, 734 N.Y.S.2d 382, 388 (Civ. Ct. 2001); "[A]n undercover agent with the CTPD purchased crack cocaine four times on three separate occasions from a bartender at Cracker Jacks." *J.D.D., Inc. v. Clinton Twp.*, No. 12-10396, 2013 WL 6474120, at *2 (E.D. Mich. Dec. 10, 2013). In each instance, the phrase "separate occasions" clearly denotes two or more distinct periods of time: that is why it's possible to separate multiple instances of blood-pressure readings, signatures, and cocaine sales into meaningfully distinct groups.

Courts have also construed "separate occasions" and related phrases in statutes. *State v. LaPointe*, 404 P.3d 610, 616 (Wash. App. 2017) noted that "separate occasions" means "independent, different, and distinct occurrences or incidents." *Woods v. State*, 176 S.W.3d 711, 712 (Mo. 2005) held that an enhancer requiring conviction on "two separate occasions" was not satisfied by two guilty pleas on the same date in the same court. And in *Lett v. State*, 445 A.2d 1050, 1057 (Md. App. 1982), the court said "the term 'two

separate occasions' has a plain meaning and is not fairly susceptible of an interpretation other than that of two unconnected, distinct, or unique times."

There is also a case pending in the United States Supreme Court that involves the meaning of the word "occasions" in the federal Armed Career Criminal Act. *See Wooden v. United States*, USSC No. 20-5279 (regarding 18 U.S.C. § 924(e)). To determine whether increased penalties apply, ACCA tallies certain offenses "committed on occasions different from one another," just as the statute here looks to whether the defendant was convicted "on 2 or more separate occasions." The basic question—what it means for two events to occur on "different" or "separate" occasions[3]—is the same.

The federal circuits are divided on just how "different" different occasions must be. *See* James E. Hooper, Bright Lines, Dark Deeds: Counting Convictions Under the Armed Career Criminal Act, 89 Mich. L. Rev. 1951, 1970-1978 (1991). But *no* circuit holds that offenses occurring simultaneously occur on "different occasions." As the Seventh Circuit has said, "the term 'occasion' incorporates a temporal distinction, *i.e.*, one occasion cannot be simultaneous with another occasion…. [A] plain reading of the statutory language … supports the conclusion that Congress intended the … predicate offenses to be distinct in time."). *United States v. Hudspeth*, 42 F.3d

[3] "Different" is a synonym of "separate" Webster.com/dictionary/separate, *last accessed* March 19, 2021.

1015, 1023 (7th Cir. 1994), overruled on other grounds by *Shepard v. United States*, 544 U.S. 13 (2005).

In sum, the concept of something occurring "on 2 or more separate occasions" is not mysterious: it has a plain and universally-understood meaning. The state's proposed rule, though, would drain the phrase of any meaning. If the legislature had intended to say that any two convictions—even two convictions entered at the same time—would mandate lifetime registration, that would have been easy to do. The statute could simply read "2 or more convictions," rather than requiring "separate occasions." To say that any two convictions qualify, even if they are simultaneous, is to render the phrase "on 2 or more separate occasions" surplusage—which a Court construing a statute must avoid. *Donaldson v. State*, 93 Wis. 2d 306, 315, 286 N.W.2d 817 (1980).

The state suggests this surplusage can be avoided by construing "separate occasions" to refer "to the number of convictions, including multiple convictions imposed at the same time and based on the same complaint." Resp. Br. 16. First, this argument doesn't make "separate occasions" any less superfluous: just as described above, it could be removed from the statute without changing the statute's meaning. This is, of course, what "superfluous" means.

But the state's argument doesn't just make a statutory phrase meaningless: it also ignores the statute's syntax and thereby renders it nonsensical.

The statute requires convictions *on* 2 separate occasions; grammatically it simply does not say that the convictions *are* the 2 separate occasions. What's more, if, as the state says, "occasion" actually *means* "conviction" then what the statute prescribes is mandatory lifetime registration for a person who "has, on 2 or more separate [convictions], been convicted" of a sex offense. How can one be convicted on a conviction?

To return to the example of the supermarket trip, if a person said that two apples bought at the same time were purchased "on separate occasions," he or she would be wrong. He or she would not become any less wrong by asserting that the apples *themselves* were "separate occasions." But that's the form of the state's argument.

This Court should reject the state's construction of the statute—that is, avoid cutting words and avoid introducing syntactical nonsense—and instead give the phrase "2 or more occasions" its plain meaning. Simultaneous convictions are *not* convictions entered on two or more occasions.

C. *Wittrock* and *Hopkins* do not require the Court to rewrite the statute in the way the state suggests.

The above argument is clearly in tension with some of the discussion in *Wittrock* and *Hopkins*. Those two cases found the phrase "on … separate occasions" ambiguous; Mr. Rector maintains they have a plain

meaning, and that that meaning does not include events that occur simultaneously.

Both *Wittrock* and *Hopkins* preceded, by more than a decade, the Wisconsin Supreme Court's articulation of a modern, more textually-focused approach to statutory construction: *State ex rel. Kalal v. Cir. Ct. for Dane Cty.*, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110. *Kalal* directed the courts to "assume that the legislature's intent is expressed in the statutory language." *Id.*, ¶44. It cautioned, also, that "[s]tatutory interpretation involves the ascertainment of meaning, not a search for ambiguity." *Id.*, ¶47.

The *Wittrock* and *Hopkins* opinions are quick to embrace ambiguity; they also feature normative discussions of how, in the court's view, the repeater statute *should* work. *Wittrock*, 119 Wis. 2d at 670-71, 674; *Hopkins*, 168 Wis. 2d at 807, 810. That is, they themselves are in tension with the modern approach to statutory construction articulated in *Kalal*.

But whatever their merits, *Wittrock* and *Hopkins* don't bind this Court on the question before it (not even the state has suggested that they do). Both cases addressed a different statute than the one under consideration here: Wis. Stat. § 939.62(2), the misdemeanor-repeater enhancement.

Precisely *because* they were legislative-history and policy based, these cases shed little light on the meaning of a different statute with a different history. And despite the state's claims, the legislative history of the provision before this Court gives almost no

guidance. Though the state's argument on the point covers several pages, it relies wholly on a single phrase from a DOC report outlining proposed changes: the recommendation for lifetime registration for those convicted "of two (2) or more sexual offenses." Resp. Br. 10-13. But the very same report—in fact, in the same sentence—clarifies that it is describing "*repeat* sex offenders"; it later specifies that the requirement would apply to those with "2 or more *separate* convictions" (emphasis added). These three short phrases—which in some ways simply mirror the statutory language—do not come close to substantiating the state's claim that the legislature intended the phrase "2 or more separate occasions" to have no meaning.

Regarding policy concerns, if the statutory language is plain and unambiguous, they don't enter the picture. The state, though, asserts that Mr. Rector's plain-language reading of the statute generates "absurd results"—a claim, in other words, that it would result in bad policy. As the next section will show, the state's argument is misguided.

D. Respecting the plain-meaning requirement of convictions occurring on "2 or more separate occasions" does not generate absurd results.

The state contends that giving effect to the legislative requirement of "separate occasions" of conviction would lead to absurd results. It presents a hypothetical in which a defendant who possessed two images of child pornography pleads in two cases in two

different counties, while another defendant possessing "hundreds" of files pleads to several counts in a single, multi-count case. How, the state asks, can it be that only the former defendant is required to register for life as a sex offender? Resp. Br. 15.

The state's hypothetical stacks the deck, to be sure: the person with two images pleads to both, while the person with hundreds pleads to only a few. And—as noted above in footnote 2—the statutes actually *do* permit a court to order lifetime registration any time registration is required. Wis. Stat. §973.048(4). So even in the state's hypothetical, the hundreds-of-files defendant is not necessarily treated as less risky than the two-files defendant: if the sentencing court found it warranted, it could use its discretion to order lifetime registration for the hundreds-of-files defendant as well.

But more basically, the only thing the state's hypothetical demonstrates is the obvious fact that counting to two—two of anything—is a crude tool for differentiating the dangerousness of offenders. *Any* simple rule can lead to arguably inequitable treatment in a particular case.

The state's simple rule has the same problem. Imagine two defendants, each of whom is accused of grooming a 15-year-old over the internet and attempting to arrange a meeting in a hotel room. The first ends up convicted of child enticement, a Class D felony with a 25-year maximum sentence. Wis. Stat. § 948.07(1). The second defendant—who has a viable

defense, or perhaps is only 19 and is thus viewed as less culpable—is charged only with two counts of exposing a child to harmful material, Class I felonies with a total of 7 years' possible imprisonment. Wis. Stat. § 948.11(2)(a)1. Under the state's rule, only the second defendant would be required to register for life; the first would not. Wis. Stat. §§ 301.45(5)(b)1.

The disparate outcomes generated by the state's rule are most likely to show up in cases like this one, involving the possession of child pornography. This offense has a mandatory minimum of three years of initial confinement and also a very severe maximum of 25 years imprisonment. Wis. Stat. §§ 948.12(3)(a); 939.617(1). It's also the nature of the offense that it's comparatively rare to find a defendant who could be charged with just *one* count of child pornography: possession of dozens, hundreds or even thousands of images is typical. *See State v. Hoppe*, 2009 WI 41, ¶10, 317 Wis. 2d 161, 765 N.W.2d 794; *State v. Gant*, 2015 WI App 83, ¶7, 365 Wis. 2d 510, 872 N.W.2d 137; *State v. Van Buren*, 2008 WI App 26, ¶4, 307 Wis. 2d 447, 746 N.W.2d 545.

For these reasons, it's not common for the state to charge a defendant for each and every image: it's unnecessary, as just a handful of images carry enough time to impose an effective life sentence, and just one count is all that's needed to impose a much longer sentence than is typical in these cases. Mr. Rector, for example, was charged with 10 counts and pleaded to 5; the circuit court could have given him up to 75 years of initial confinement but gave him 8. The court could

have given him this same sentence if he'd pleaded to only one count (as is also common in multi-count cases). He wouldn't be any more or less dangerous; but even the state would have to concede he wouldn't face mandatory lifetime sex-offender registration.

So the state's reading of the statute generates at least as much "absurdity" as it seeks to avoid. But the state's absurdity argument has a deeper failing too: it fails to consider the purpose of the registry. A construction of a statute isn't "absurd" if it serves the purpose of the enactment. Giving force to the requirement that convictions happen on "separate occasions" *does* advance the goals of the sex-offender registry, in a way that the state's proposed rule does not.

The purpose of the sex-offender registry is, of course, to protect the public from convicted sex offenders. *State v. Smith*, 2010 WI 16, ¶26, 323 Wis. 2d 377, 780 N.W.2d 90. (This also distinguishes it from the repeater provision at issue in *Wittrock* and *Hopkins*, one purpose of which is punishment, *Hopkins*, 168 Wis. 2d at 813; the supreme court has held the registry nonpunitive. *State v. Bollig*, 2000 WI 6, ¶27, 232 Wis. 2d 561, 605 N.W.2d 199). And the reason for this protection is, as the state notes, the perception (justified or not) that those who have been convicted of sex offenses are likely to commit more of them. Resp. Br. 12. Likewise, the purpose of the mandatory lifetime requirement for some sex offenders is to provide still more protection against a

subgroup of those offenders deemed more dangerous. *Id.*

As the discussion above shows, the simple *number* of eligible offenses for which a conviction has been entered in one case—besides failing to comport with the "separate occasions" language—is a suspect means to decide which offenders are in this high-danger category. But there is—in research on sex-offender recidivism, and in the case law—better reason to rely on the number of convictions actually entered on separate occasions.

This is the commonsense notion that a person who has offended, been punished, and offended again has demonstrated that he or she was not deterred or reformed by the efforts of the legal system. Common sense turns out to be accurate in this instance. Civil commitment schemes like our own state's ch. 980 have generated a great deal of research on what characteristics and factors are predictive of recidivism. And it turns out that prior opportunities to "learn a lesson"—when those opportunities are foregone—are a key sign of danger. For this reason, actuarial instruments like the Static-99R count multiple prior *sentencing dates* as a risk factor for future offenses. They also count the number of total sex offenses—but in so doing, they *exclude* the most recent offense, meaning that only those who have been convicted on two or more separate occasions are regarded as particularly risky. *See*, *e.g.*, R. Karl Hanson and David

Thornton, Notes on the Development of Static-2002,[4] (noting that research showed "the number of index offences" was unrelated to recidivism, whereas number of prior sentencings was most strongly correlated with reoffense).

Our supreme court also relied on this justification for the results in both *Wittrock* and *Hopkins*. In *Wittrock*, it said that the more severe punishment for repeat offenders was merited for "those persons who do not learn their lesson or profit by the lesser punishment given for their prior violations of criminal laws." 119 Wis. 2d at 664. In *Hopkins*, it said that a person who had previously been convicted of three misdemeanors—even if all convictions happened at once—would be guaranteed "one more chance to learn their lessons and profit from the lesser punishment given for their prior violations of the law. Receiving at least one opportunity to reflect on prior punishment is consistent with the rehabilitative purpose of the statute."[5] 168 Wis. 2d at 813.

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[4] *available at* https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/nts-dvlpmnt-sttc/nts-dvlpmnt-sttc-eng.pdf.

[5] It is, of course, possible, as in the state's multi-county hypothetical, for a person to be convicted on a second separate occasion even though all the conduct occurred before he or she was convicted on the first occasion. This does not mean, though, that the "separate occasions" rule is without basis; it just means it's an imperfect rule, as any counting rule would

Under the state's rule—unlike the one adopted in *Wittrock* and *Hopkins*—this purpose is jettisoned. A person like Mr. Rector—who had no criminal charges of any sort before this case—would be adjudged among the most dangerous offenders regardless of whether he ever committed another crime. He'd be placed in this category despite the fact that we have no reason to think he will not reform his behavior in response to the stiff sanction he has received. Putting Mr. Rector in this category solely because of the number of counts to which he happened to plead—a number that is, in child pornography cases particularly, often tenuously related to the severity of the offense or the severity of the punishment—is at least as absurd as any hypothetical the state can construct.

E. None of the state's other arguments have merit.

The state organizes its argument into five "reasons" in support of is position. Resp. Br. 13-15. Mr. Rector has addressed some of them—the state's claims about legislative history, its reliance on *Wittrock* and *Hopkins*, and its argument about absurdity—at some length above. This section will briefly address the remaining three.

1. The existence of *Wittrock* and *Hopkins* at the time the registry statute was amended does not justify reading "separate occasions" out of the law.

The state cites the maxim that the legislature is presumed to know of prior appellate constructions of the statutes; it goes on to argue that this means the legislature intended to import the *Wittrock*/*Hopkins* reading of "2 or more separate occasions" into the later-enacted provision for mandatory lifetime registration. Resp. Br. 14.

Though the cases recognize this presumption, it is merely that: a presumption. For all the reasons Mr. Rector has already given, it should give way to the plain meaning of the words the legislature used. What's more, the presumption can't be reconciled with another of the legislature's post-*Wittrock*, post-*Hopkins* enactments.

By 1993 Wis. Act. 194 (enacted April 6, 1994), the legislature created Wis. Stat. § 973.0135, which created a special parole scheme for a person who'd been convicted of a serious felony "on at least *one separate occasion* at any time preceding the serious felony for which he or she is being sentenced." S. 973.0135(1)(a)1 (emphasis added).

If, as the state would hold, the legislature knew that "separate occasion" had been defined to mean "any offense, regardless of when it was committed or when the person was convicted," then this section

must be applicable to anyone who has committed two serious felonies—say, two aggravated batteries—even if they happened within minutes of each other and the person is being sentenced for both. This would be an odd result, and it's clearly not what the legislature meant; it defined the defendant to whom the provision was to be applied as a "prior offender." But reading "separate occasion" in the way the state insists it be read—and ascribing that reading to any post-*Hopkins* enactment—necessarily requires this result.

2. The misdemeanor-repeater and sex-offender registry statutes are separate and have different aims; there is no presumption that the same phrase have an identical meaning in both.

The state cites *State v. Matasek*, 2014 WI 27, ¶36, 353 Wis. 2d 601, 846 N.W.2d 811, which notes that courts "generally hold that when the legislature uses the same word multiple times in a statute the word has the same meaning each time."

The state doesn't acknowledge, though, that there's no such presumption concerning *different* statutes. "The same term may have different meanings when it is used in different statutes." *Lang v. Lang*, 161 Wis. 2d 210, 218–19, 467 N.W.2d 772 (1991). "Most words have different shades of meaning and consequently may be variously construed, not only when they occur in different statutes, but when used more than once in the same statute or even in the same section." *State ex rel. Gebarski v. Cir. Ct. for*

Milwaukee Cty., 80 Wis. 2d 489, 495, 259 N.W.2d 531 (1977) (citing *Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427 (1932)).

And though the state suggests the misdemeanor-repeater and lifetime-registry statutes "pursue the same objective," Resp. Br. 14, this is not true (or is true only at the highest level of generality). As was explained above in Section D, the two statutes serve quite different objectives: punishment and rehabilitation for the criminal code; public protection for the sex-offender registry. Given these different ends there is ample reason to construe the two statutes differently.

3. The Attorney General's opinion adds little to nothing to the Attorney General's argument.

The state—which is, of course, represented by the Department of Justice, headed by the Attorney General—points to a 2017 Attorney General opinion on the meaning of "separate occasions" in a different but related statute, Wis. Stat. § 301.46(2m)(am). Naturally, that rather recent opinion advances the same position that the Attorney General now urges on this Court. It does so using a truncated version of the same analysis the state puts forth here.

Attorney General opinions don't bind this Court, and are persuasive only to the extent they are "well-reasoned." *Town of Vernon v. Waukesha Cty.*, 102 Wis. 2d 686, 692, 307 N.W.2d 227 (1981). If this Court finds the argument offered in the state's brief

convincing, it will have no need to look to the recent opinion the brief recapitulates. If, on the other hand, the Court disagrees with the state's argument—that is, doesn't find it well-reasoned—then the fact that the state recently memorialized the argument elsewhere adds nothing to its case.

CONCLUSION

Because the circuit court correctly construed the provision that mandates lifetime registry only where convictions occurred on "2 or more separate occasions," Mr. Rector respectfully requests that this Court affirm its order that he register for 15 years after the end of his sentence.

Dated this 26th day of March, 2021.

Respectfully submitted,

Electronically signed by Andrew R. Hinkel
ANDREW R. HINKEL
Assistant State Public Defender
State Bar No. 1058128

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 267-1779
hinkela@opd.wi.gov

Attorney for Defendant-Appellant-Cross-Respondent

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