STATE OF WISCONSIN

IN SUPREME COURT

No. 2020AP1876-CR

STATE OF WISCONSIN,

Plaintiff -Respondent,

v.

TOMAS JAYMITCHELL HOYLE,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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The State of Wisconsin opposes Tomas Jaymitchell Hoyle's petition for review. In an unpublished, per curiam decision, the court of appeals applied the correct standard of review and principles of law when it affirmed Hoyle's judgment of conviction. *State v. Hoyle,* No. 2020AP1876-CR, 2024 WL 190910 (Wis. Ct. App. Jan. 18, 2024) (per curiam) (unpublished) (Pet-App. 3–22). Hoyle asks this Court to review the court of appeals' decision on a run-of-the-mill newly discovered evidence claim, for reasons that amount to a request for error correction. This issue does not meet this Court's criteria for review, and the court of appeals' decision was correct, in any event. The claim for the victim's mental health records is a nonstarter. There is no compelling reason to disturb the court of appeals' decision, which is not citable and carries no persuasive value.

BACKGROUND

Hoyle was convicted of four sexual assault offenses, which stemmed from charges that he assaulted a fifteen-year-old girl in February 2017. The victim, Hannah, testified to the details of the sexual assault. *Hoyle,* 2024 WL 190910, ¶¶ 3–12. After relaying those details, Hannah admitted to consuming Vicodin and alcohol the day of the assault. *Id*. ¶ 11. She then testified that she disclosed the assault to a school resource officer and further disclosed that Hoyle was her assailant, several months after the incident. *Id*. ¶ 12. She didn't immediately disclose Hoyle's name because she was scared. *Id*. On cross examination, Hannah conceded that she could not recall exactly on what day in February 2017 the assault occurred. *Id*. ¶ 14.

At trial, the prosecutor asked Hannah if it was easy for her to talk about the assault, and Hannah answered no, because the assault was "very uncomfortable and traumatic." *Id*. ¶ 13. Hannah went to on to testify that she could now talk about it without crying because she had "gotten counseling to

help with dealing with this" and the counselor helped her process through the assault. *Id.* ¶ 13.

Following Hannah's testimony, an investigator testified briefly regarding her investigation of Hannah's allegations, and Hoyle elected not to testify in his own defense. *Id.* ¶ 15. The jury found Hoyle guilty of all four counts. *Id.* The court sentenced Hoyle to eight years of initial confinement and ten years of extended supervision for each count, all to run concurrently.

Hoyle moved for postconviction relief. Relevant to Hoyle's claims in his petition, Hoyle sought a new trial based on newly discovered evidence, alleging that Hannah told the author of the presentence investigation (PSI) report that she was attending counseling for substance abuse and had not "discussed the sexual assault with her counselor because she [did] not want to constantly relive the assault." *Id.* ¶ 16. "Hoyle argued that this statement was contrary to Hannah's trial testimony that she had received counseling that helped her deal with the effects of the assault." *Id.* Hoyle further argued that if the circuit court did not grant him a new trial based on newly discovered evidence, then he was entitled to postconviction discovery of Hannah's counseling records so that he could file an amended postconviction motion based on those records, pursuant to *Shiffra/Green*.[1] The postconviction court denied relief on those claims, and the court of appeals affirmed. *Hoyle,* 2024 WL 190910, ¶¶ 17–29.

[1] *State v. Shiffra*, 175 Wis. 2d 600, 499 N.W.2d 719 (Ct. App. 1993); *State v. Green*, 2002 WI 68, 253 Wis. 2d 356, 646 N.W.2d 298.

THIS COURT SHOULD DENY THE PETITION FOR REVIEW BECAUSE IT DOES NOT MEET THE CRITERIA SET FORTH IN WIS. STAT. § (RULE) 809.62(1r).

The court of appeals affirmed denial of Hoyle's newly discovered evidence claim "because there is no reasonable probability that the jury would have had a reasonable doubt about Hoyle's guilt if it had heard the newly discovered evidence." *Id.* ¶ 2. In other words, the alleged newly discovered evidence, Hannah's statement to the PSI author that she had not received counseling for the sexual assault, "if accurate, would have impeached only her testimony on the collateral issue of why her demeanor on the witness stand was unemotional." *Id.* ¶ 24. The court of appeals reasoned that the new evidence "would not have impeached any of Hannah's substantive testimony regarding the circumstances of the sexual assault or her identification of Hoyle as her assailant." *Id.*

The court also observed that Hannah's statements were not entirely inconsistent. *Id.* ¶ 25. Both at trial and to the PSI author, Hannah stated that the counseling she received had helped her deal with the assault. *Id.* "Thus, even if Hannah's statements to the PSI author had been introduced at trial, they would not have completely undermined Hannah's explanation for her unemotional demeanor while on the witness stand." *Id.* For these reasons, the court concluded that Hoyle was not entitled to a new trial based on newly discovered evidence. *Id.* ¶ 26.

Hoyle contends that Hannah's statement to the presentence investigator warrants a new trial because (in his view) her trial testimony about discussing the assault in therapy was essential to her credibility. (Pet. 10–16.) Hoyle seems to argue that Hannah's demeanor was not "collateral" because there was no evidence of Hoyle's guilt besides her testimony. (Pet. 13.)

Hoyle's arguments are misplaced. The new evidence, if accurate, impeaches only the issue of why Hannah had an unemotional demeanor on the witness stand. As the court of appeals correctly observed, this is a collateral issue. The alleged evidence does not impeach any of Hannah's substantive statements about her identification of Hoyle, her meeting with Hoyle, and his sexual assault of her. Hannah's account of the incident was coherent, consistent, and stood up to defense counsel's cross-examination. Hannah admitted to her own bad behavior, consuming multiple intoxicants at the age of 15, including prescription medication she illicitly took. Her testimony bore indicia of credibility in many ways, and the court of appeals correctly decided that the newly discovered evidence did not undermine the outcome at trial.

Hoyle cites *Plude*, but that case does not help him. (Pet. 14–15.) In *Plude*, the court found that the verdict was based on perjured evidence because the expert, Shaibani, lied about his credentials, and the rest of the expert testimony was inconclusive. *State v. Plude*, 2008 WI 58, ¶ 50, 310 Wis. 2d 28, 750 N.W.2d 42. Without Shaibani's perjured testimony, there would have been no guilty verdict. *See id.* As noted above and in the court of appeals' decision, that is not the case here. *Hoyle,* 2024 WL 190910, ¶ 24.

Further, as the court of appeals correctly observed, the statements were not entirely inconsistent. It's true that at trial, Hannah said she discussed the assault in therapy but told the presentence investigator she had not. But, in both statements, she said that the therapy had helped her deal with the emotional aftermath of the assault. In other words, Hannah consistently reported that therapy had helped her deal with the assault emotionally, whether she discussed the assault directly or not.

Hoyle's arguments to this Court on his newly discovered evidence claim break no new legal ground. They amount to nothing more than a request for error correction. But this is

not an error-correcting court. And further, as explained, there is no error to correct here. This Court should deny review of this issue.

Next, Hoyle argues that he is entitled to postconviction discovery of Hannah's mental health records. (Pet. 16.) This claim lacks merit.

After this Court decided *State v. Johnson*,[2] Hoyle filed a supplemental brief in the court of appeals to address his defunct *Shiffra/Greene* claim. He argued that if he is not granted a new trial on his newly discovered evidence claim, then the case should be remanded so Hoyle can have a rehearing on his newly discovered evidence claim, with an opportunity to subpoena Hannah and her counseling records, allegedly to verify their accuracy. Now, Hoyle argues that if this Court grants review of the newly discovered evidence claim but decides that he is not entitled to relief on that claim, "then remand is appropriate." (Pet. 18.) He's wrong.

Even assuming Hoyle's claim remained viable after *Johnson*, Hoyle has never needed the records to pursue his newly discovered evidence claim. The "newly discovered evidence" is Hannah's statement to the presentence investigator that she had not discussed the sexual assault with her counselor, in contrast to her trial testimony that she had. Hannah's conflicting statements are already in the record. (R. 31:4–5; 91:167–68.) The analysis turns on whether her statement to the presentence investigator, regardless of its accuracy, creates a reasonable probability that a jury hearing this evidence "would have had a reasonable doubt as to the defendant's guilt." *Plude*, 310 Wis. 2d 28, ¶ 32. As the court of appeals correctly concluded, it doesn't. Hannah's statement to the presentence investigator does not need to be

[2] *State v. Johnson*, 2023 WI 39, 407 Wis. 2d 195, 990 N.W.2d 174.

verified to make this determination. *Hoyle*, 2024 WL 190910, ¶ 29. Allowing him a remand to pursue a subpoena for those records could significantly compromise the rights of the victim, and would only broaden his claims beyond what has already been argued and briefed. Hoyle's claim for records is a nonstarter.

Hoyle's faulty arguments aside, his petition does not otherwise meet this Court's criteria for review. First, there is no risk of misapplication of newly discovered evidence jurisprudence in future cases based on the court of appeals' decision, because the per curiam decision is not citable and carries no persuasive value. For the reasons explained, the court of appeals' decision also creates no conflict or need for this Court to clarify law. Wis. Stat. § (Rule) 809.62(1r)(c). Hoyle's petition does not demonstrate a need for this Court "to consider establishing, implementing or changing a policy within its authority." Wis. Stat. § (Rule) 809.62(1r)(b). Similarly, Hoyle's petition does not demonstrate a need to reexamine current law. Wis. Stat. § (Rule) 809.62(1r)(e). Finally, because the court of appeals' decision was neither novel nor a deviation from well-settled law, Hoyle's petition presents no significant question of state or federal constitutional law. Wis. Stat. § (Rule) 809.62(1r)(a).

CONCLUSION

This Court should deny Hoyle's petition for review.

Dated this 18th day of March 2024.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this petition or response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a petition or response produced with a proportional serif font. The length of this petition or response is 1,705 words.

Dated this 18th day of March 2024.

Electronically signed by:

Jennifer L. Vandermeuse
JENNIFER L. VANDERMEUSE

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 18th day of March 2024.

Electronically signed by:

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