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CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

No. 2024AP440-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

A.M.N.,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

JOSHUA L. KAUL
Attorney General of Wisconsin

KATHLEEN E. WOOD
Assistant Attorney General
State Bar #1120632

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-2065
(608) 294-2907 (Fax)
woodke@doj.state.wi.us

INTRODUCTION

Aiden¹ seeks review of the unpublished court of appeals decision that upheld a circuit court order committing him to be treated to competency.² (Pet-App. 3–4.) The State opposes Aiden’s petition. Although Aiden frames the issues broadly, his particular case presents a narrower, fact-specific question: whether the court of appeals could reach the issue of harmless error when the substance of the State’s arguments persuaded it that any error was harmless, but the State’s arguments did not use the phrase “harmless error.” Neither this issue, nor the underlying issue of whether the circuit court’s error was harmless, meet the criteria for review. This Court should deny the petition.

CRITERIA FOR REVIEW

As a preliminary matter, the issue of whether the circuit court’s error was harmless in this particular case is a fact-specific request for error correction that clearly does not merit this Court’s review. This Court is “not, primarily, an error-correcting tribunal, and [it] normally hear[s] only those cases that present something more than just an error of law.” *State ex rel. DNR v. Wis. Ct. of Appeals, Dist. IV*, 2018 WI 25, ¶ 43, 380 Wis. 2d 354, 909 N.W.2d 114 (footnote omitted). Aiden does not contend that the underlying question of whether harmless error occurred meets the criteria for

¹ For continuity, the State refers to A.M.N. by the pseudonym “Aiden” as did the court of appeals and petitioner, pursuant to Wis. Stat. § (Rule) 809.109.

² Aiden was subsequently found competent and entered into a deferred prosecution agreement for the misdemeanor charges in this case. As such, the State wishes to flag that mootness may be an additional issue that this Court would likely need to decide, if it took this case.

review, and the State will not discuss it further. (*See* Pet. 4–5.)

The issue of whether the court of appeals erred by reaching the issue of harmless error also does not merit this Court’s review, but it does merit further discussion here.

Aiden contends that his case meets the criteria for review set out in Wis. Stat. § (Rule) 809.62(1r)(c)(2) and (3), (*See* Pet. 4) which provide that review is appropriate if a decision from this Court will “help develop, clarify, or harmonize the law” and:

(2) The question presented is a novel one, the resolution of which will have statewide impact; or

(3) The question presented is not factual in nature but rather is a question of law of the type that is likely to recur unless resolved by the Supreme court.

Wis. Stat. § (Rule) 809.62(1r)(c)(2) and (3).

This case does not meet either of these two criteria. As to section (Rule) 809.62(1r)(c)(2), Aiden takes issue with the court of appeals’ application of *State v. Harvey*, in which this Court said that “[t]he harmless error rule . . . is an injunction on the courts, which, if applicable, the courts are required to address regardless of whether the parties do.” *State v. Harvey*, 2002 WI 93, ¶ 47 n.12, 254 Wis. 2d 442, 647 N.W.2d 189. But *State v. Harvey* has been around for over 20 years, and the court of appeals’ opinion here is unpublished and thus does not do anything in and of itself to develop harmless error doctrine. The question Aiden presents in his petition is not novel.

As to section (Rule) 809.62(1r)(c)(3), it may at first glance appear that this case presents a legal question that is likely to recur unless resolved, but when one looks at the facts of this particular case, it becomes apparent that the question presented here is more unique, fact-specific, and unlikely to recur than it might initially appear.

This is not the sort of straightforward case where the State failed to present any arguments that could support a harmless error determination. The harmless error inquiry asks whether the error affected the substantial rights of the defendant, which in turn depends on whether the error affected the outcome of the proceedings at issue. *State v. Nieves*, 2017 WI 69, ¶ 17, 376 Wis. 2d 300, 897 N.W.2d 363. As the court of appeals explained here, the State *did* argue in its appellate briefing that Aiden’s substantial rights were not impacted by appearing over Zoom rather than in person. (Pet-App. 13.) In making these arguments, the State gave several reasons to explain why Aiden’s physical presence would not have made a difference at the competency hearing. (Pet-App. 13–14.) The court of appeals explicitly agreed with and relied upon the State’s arguments when making the harmless error determination. (Pet-App. 13–14.)

In other words, even though the State did not specifically frame its arguments as “harmless error” arguments, the substance of its arguments persuaded the court of appeals that the error was harmless. The court of appeals then adopted the State’s arguments in substance but decided to frame the arguments differently in its opinion. Consequently, the question presented by this particular case is whether the court of appeals was permitted to decide the case based on harmless error when the State made arguments in its appellate brief that spoke to whether the error was harmless, but did not explicitly use the phrase, “harmless error.” That question is specific to the particular way in which the State briefed this case and to how the court of appeals decided it here. There is little indication that it is likely to recur.

Although the State does not believe that this case warrants this Court’s review, it will very briefly speak to its merits. It is well-established that an appellate court “is not circumscribed by the parties’ legal analyses.” *Watts v. Watts*,

152 Wis. 2d 370, 384, 448 N.W.2d 292 (Ct. App. 1989). It is also well-established that the court of appeals “may affirm the circuit court on any grounds.” *State v. Scull*, 2014 WI App 17, ¶ 13 n.3, 352 Wis. 2d 733, 843 N.W.2d 859. As such, the court of appeals here, having been persuaded by the substance of the State’s arguments that any error was harmless, was entitled to apply a different legal framing in its opinion than what the State applied in its brief. *See Watts*, 152 Wis. 2d at 384.

Aiden’s points about fairness to litigants are well-taken, but they could be applied to any case where the court frames the legal issues in a different way than the parties frame the issues. (*See* Pet. 12–13.) Courts generally will abide by the parties’ framing of the arguments as a prudential matter, but they are not bound to do so. *See State v. Marhal*, 172 Wis. 2d 491, 494 n.2, 493 N.W.2d 758 (Ct. App. 1992). And Aiden’s concerns were somewhat mitigated here for the following reasons: (1) the State did make an argument that the error did not violate Aiden’s substantive rights or impact the hearing, (Pet-App. 13), which Aiden could have refuted in his reply brief; and (2) Aiden was able to raise his arguments that the error was not harmless in a motion for reconsideration, (Pet-App. 17–21), which the court of appeals denied (Pet-App. 27).

Taking a step back, it is worth emphasizing that the question presented in this case is simply about the court of appeals’ propriety in departing from the State’s presentation of its arguments when it determined that there was a better way to frame the substance of those arguments. The State submits that this question neither meets the criteria for review, nor merits this Court’s time.

CONCLUSION

This Court should deny the petition.

Dated this 15th day of May 2025.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

Kathleen E. Wood
KATHLEEN E. WOOD
Assistant Attorney General
State Bar #1120632

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-2065
(608) 294-2907 (Fax)
woodke@doj.state.wi.us

FORM AND LENGTH CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a response produced with a proportional serif font. The length of this response is 1,247 words.

Dated this 15th day of May 2025.

Electronically signed by:

Kathleen E. Wood
KATHLEEN E. WOOD
Assistant Attorney General

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 15th day of May 2025.

Electronically signed by:

Kathleen E. Wood
KATHLEEN E. WOOD
Assistant Attorney General