FILED
12-18-2025
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2024AP002291-CR

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

BRIAN TYRONE RICKETTS, JR.,

Defendant-Respondent-Petitioner.

PETITION FOR REVIEW

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ISSUES PRESENTED

Under Wisconsin law, some persons charged with crimes of domestic abuse are eligible for an enhanced sentence when, among other factors, they have been "convicted on 2 or more separate occasions of a felony or a misdemeanor" for which a domestic abuse surcharge under Wis. Stat. § 973.055(1) applies.

Although the "separate occasions" language appears throughout the statutes, this Court has not relied on a uniform definition of that phrase; instead, the Court has reached diametrically opposed holdings depending on where in the code the language appears.

Is Mr. Ricketts correct that, for the domestic abuse repeater to apply, his qualifying convictions needed to stem from separate incidents?

The circuit court granted Mr. Rickett's motion to dismiss the domestic abuse repeater from the charging document. The State appealed and the court of appeals reversed.

CRITERIA FOR REVIEW

This case cleanly presents a straightforward issue of statutory construction meriting conclusive resolution by this Court. This is the first, and only, case to interpret the "separate occasions" language in Wis. Stat. § 939.621. The issue is therefore novel and, as it impacts a charging scheme invoked in hundreds

if not thousands of criminal cases filed across the state of Wisconsin each year, review of this issue satisfies Wis. Stat. § 809.62(1r)(c)2.

More fundamentally, this Court must also weigh in on this controversy to clarify the force of its recent decision in *State v. Rector,* 2023 WI 41, 407 Wis. 2d 321, 990 N.W.2d 213 and to analyze the continued viability of its dated decisions in *State v. Hopkins*, 168 Wis. 2d 802, 484 N.W.2d 549 (1992) and *State v. Wittrock*, 119 Wis. 2d 664, 350 N.W.2d 647 (1984). Resolution of this important issue merits review pursuant to Wis. Stat. § 809.62(1r)(d)&(e).

Here, the court of appeals relied on this Court's decisions in *Wittrock* and *Hopkins* when it chose an interpretation of this statute which focuses not on the timing of prior convictions, as seemingly indicated by the plain text, but instead on the mere existence of prior convictions, period. However, those cases, as Mr. Ricketts argued in his brief, are of questionable validity. They predate this Court's landmark decision in *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110 and fail to engage in the kind of rigorous textualism that the last 20 years of existing precedent has tried to rely on for guidance. Moreover, their logic is unambiguously contradicted by this Court's assessment of identical language in its *Rector* decision, where it rejected arguments directly parroting the language of *Hopkins* and *Wittrock*.

While this apparent inconsistency in our law is excused, in the view of the court of appeals, by the fact that *Rector* was dealing with an identical phrase that happened to be located elsewhere in the statutes, the lack of consistency and clarity generated by this Court's decision in *Rector*—which comes just shy of outright overruling *Wittrock* and *Hopkins*—cannot be ignored. Accordingly, this Court should accept review and if it concludes that these cases stand in the way of Mr. Rickett's urged-for plain text reading, overrule those authorities, and hold that the commonsense plain language interpretation it favored in *Rector* should also prevail here.

STATEMENT OF FACTS

The facts are undisputed and fairly recited in the decision of the court of appeals. Mr. Ricketts was charged in this case with two misdemeanors, both as acts of domestic abuse. (2:1-2). In addition, the State alleged that, because of Mr. Rickett's history, the enhanced penalty for repeated domestic abuse applied. (2:1-2). Application of that statute transforms these misdemeanors into felony offenses. Wis. Stat. § 939.621(2). As a basis for this enhancer, the State relied on Mr. Ricketts's convictions in a 2021 case, where Mr. Ricketts was convicted of two domestic abuse-related charges as part of the same court proceeding in relation to an ongoing and underlying course of conduct. (2:1-2).

Mr. Ricketts moved to dismiss the enhancers and the circuit court agreed that the State had

improperly applied those modifiers to Mr. Ricketts's case. Relying on this Court's decision in *Rector*, the circuit court concluded that the two underlying convictions did not satisfy the statutory text requiring "separate occasions" and therefore granted Mr. Ricketts's motion. (23:8); (App. 35).

The State appealed and the court of appeals reversed. It concluded that while the text of the statute was ambiguous, canons of construction favored the State's reading. *State v. Ricketts*, No. 2024AP2291-CR, ¶ 21.[1] (App. 12). Central to the court's analysis was this Court's prior decisions in *Wittrock* and *Hopkins*, which had analyzed identical language in Wis. Stat. § 939.62. *Id.* ¶ 30. (App. 16). The court of appeals determined that this Court had rejected analogous arguments presented by Mr. Ricketts in those two cases and instead held that "'each conviction for a misdemeanor constitutes a separate occasion for purposes of'" the general repeater statute." *Id.*, ¶ 35. (App. 18).

Accordingly, the court held "that a person is a domestic abuse repeater if he or she was convicted of two or more qualifying domestic abuse offenses during the requisite statutory time period, regardless of whether those convictions arose out of the same incident, had the same offense date, or occurred during the same court appearance. Consistent with *Wittrock* and *Hopkins*, what matters is the quantity of the defendant's prior domestic abuse

[1] Recommended for publication.

crimes, not the time of commission or the time of conviction." *Id.*, ¶ 37. (App. 19). It further rejected the circuit court's reliance on *Rector* for two reasons: (1) although the language at issue was identical, it appeared in a different part of the statutes and (2) the Wisconsin legislature amended the sex offender registration statute to reject the reading identified by a majority of this Court. *Id.*, ¶ 43. (App. 22).

This petition follows.

ARGUMENT

I. A plain text analysis of the statute shows that two convictions from the same incident, resolved as part of the same court appearance, cannot satisfy the "separate occasions" test.

Here, the statutory text is plain. For a person to be a DV repeater, they must have been convicted on "2 or more separate occasions." Wis. Stat. § 939.621(1)(b). If the legislature wanted the person to merely have two convictions, period, it could have said so directly. Instead, the legislature imposed an additional requirement—that those convictions occur on "separate occasions." Thus, two convictions that occur as part of the same occasion fail this plain text requirement.

Moreover, this logic tracks the Court's interpretation of identical language in *Rector*. There, Rector challenged another statute related to

sentencing: the sex offender registration requirements under Wis. Stat. § 301.45. Notably, that statute (since amended) used language identical to that under review here and required the person to have been "convicted" on "2 or more separate occasions" to qualify for lifetime registration. *Rector*, 2023 WI 41, ¶ 11.

The issue presented for the Court's review also mirrors this appeal, with both parties taking familiar positions:

The State averred "that a person meets the criteria of being convicted 'on 2 or more separate occasions' when that person has been convicted of two or more offenses." *Id.*

In contrast, Rector argued "that a person fails to meet the criteria of being convicted 'on 2 or more separate occasions' when that person is convicted based on charges filed in a single case, and the convictions occur during the same hearing." *Id.* "According to Rector, the State's interpretation of the statute reads out the phrase 'separate occasions' altogether." *Id.*

Notably, the Court then conducted the plain text analysis called-for in this case and agreed with Rector. In this Court's view, "a separate occasion is an incident or time at which an event occurred, which is set apart from another incident or time at which a different event occurred." *Id.*, ¶ 12. Because "separate occasions" clearly modifies the statute's use of "conviction," then it logically follows that the sex offender registration requirements are activated "if

the event of conviction occurred at two or more separate (set apart) times." *Id.* Thus, convictions stemming from the same court hearing cannot be counted together to constitute qualifying prior offenses: "Convictions that are filed in a single case and pronounced within the same hearing are not significantly 'set apart' or 'disunited,' and so are not 'separate occasions.'" *Id.*, ¶ 17.

As the foregoing discussion shows, the *Rector* Court assessed identical language, albeit language located elsewhere in the statutes. Unlike the court of appeals, it did not find that language ambiguous. Instead, it clearly applied commonsense textualist principles and concluded that, for the requirement of "separate occasions" to be meaningful at all, then the convictions needed to be set apart. *Id.*

Rector's plain text analysis is persuasive and convincing evidence that, as the circuit court concluded in this case, the State's interpretation of the statute is simply incorrect.

Accordingly, this Court should accept review, apply those plain text principles and reverse so that similar words in the Wisconsin statutes can be accorded similar meanings.

II. This Court should also accept review and reject the resort to canons of construction which obscure the reality compelled by plain text.

In the court of appeals, the State relied not on the plain text but on another source of authority: canons of construction. And the court of appeals agreed that resorting to those canons was appropriate and dispositive to the outcome of this appeal. *Ricketts*, No. 2024AP2291-CR, ¶ 26. (App. 14).

But wait a minute: If the plain text of the statute is meant to be taken as "gospel," then why do we need academically derived "canons" to guide us toward some other meaning altogether? After all these are extrinsic sources of meaning; they are "not the law." *James v. Heinrich*, 2021 WI 58, ¶ 63, 397 Wis. 2d 517, 960 N.W.2d 350 (Dallet, J., dissenting). And, those tools—like any other—can in fact be wielded by judicial decisionmakers to sometimes obscure or distort the authentic meaning of the statute, *id*., ¶ 79, which should instead be derived from a plain text analysis. Moreover, when judges lose sight of their obligations to plain text meanings, all manner of constitutionally-cognizable "mischief" may result. *Friends of Frame Park v. City of Waukesha*, 2022 WI 57, ¶ 96, 403 Wis. 2d 1, 976 N.W.2d 263 (R.G. Bradley, J., concurring).

Accordingly, this case is also a great opportunity to air these disputes over the proper roles of canons and clarify—as the court of appeals should have done

in this case—that canons have no place when statutory language is clear. This Court should therefore accept review, give effect to that plain text, and reverse.

III. To the extent this Court's decisions in *Wittrock and Hopkins* are relevant, those decisions should be overturned.

Finally, review is also warranted to address the elephant in the room: the obvious lack of fit between this Court's decisions in *Wittrock* and *Hopkins* on one hand and *Rector* on the other. The two sources of authority address identical language; inexplicably, they reach different results.

Notably, there may have been valid reasons to overturn those cases in *Rector*. They are poorly reasoned and rely largely on nontextual considerations; as such, it is difficult to imagine their holdings being reached in a post-*Kalal* world. *Wittrock*, for example, derives much of its interpretative force not from plain text but from a 1950 law review article. *Wittrock*, 19 Wis. 2d 672. And, in *Hopkins*, this Court explicitly invoked public policy considerations in determining legislative meaning, thereby arguably transgressing its constitutionally-mandated boundaries. *Hopkins*, 168 Wis. 2d at 810-812.

This Court came close to overruling those cases in *Rector* but instead invoked canons of construction to avoid that result. *Rector*, 2023 WI 41, ¶ 25 n.7. Yet, as the dissent pointed out, this does not erase the obvious inconsistencies now existing in our law because of the

decision in *Rector*. *Id*., ¶ 87 (R.G. Bradley, J., dissenting). And, as this case shows, it was exactly this inconsistency that forced the lower court to pick and choose between two conflicting sources of authority.

Accordingly, this Court should accept review and, to the extent that it feels bound by its decisions in *Wittrock* and *Hopkins*, it must confront that inconsistency head-on, overrule these dated decisions, and give force to the plain text analysis it already conducted in *Rector*.

CONCLUSION

For the reasons set forth herein, Mr. Ricketts asks this Court to accept review and reverse the court of appeals.

Dated this 18th day of December, 2025.

Respectfully submitted,

Electronically signed by Christopher P. August

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this petition conforms to the rules contained in s. 809.19(8)(b), (bm) and 809.62(4). The length of this petition is 2,078 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this petition is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rules or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review or an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 18th day of December, 2025.

Signed:

Electronically signed by
Christopher P. August
CHRISTOPHER P. AUGUST
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