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**SUPREME COURT**

STATE OF WISCONSIN  
IN SUPREME COURT

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No. 2024AP2291-CR

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STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

BRIAN TYRONE RICKETTS, JR.,

Defendant-Respondent-Petitioner.

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**RESPONSE TO PETITION FOR REVIEW**

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## ISSUE PRESENTED

This appeal presents a single narrow issue: Does Brian Tyrone Ricketts, Jr., qualify for the domestic abuse repeater penalty enhancement in Wis. Stat. § 939.621?

## ARGUMENT

**This Court should deny the petition because no special and important reason is present to warrant review.**

This Court should deny the petition for review. Ricketts identifies three criteria in support of granting review. (Ricketts' Pet. 3–4 (citing Wis. Stat. § (Rule) 809.62(1r)(c)2., (d), and (e)).) But none of the identified criteria support review. First, the court of appeals' decision is not in conflict with controlling opinions so Wis. Stat. § (Rule) 809.62(1r)(d) is not a basis for review. Second, no supreme court opinion is ripe for reexamination so Wis. Stat. § (Rule) 809.62(1r)(e) is not grounds for review. Third, a decision by this Court is unnecessary to develop, clarify, or harmonize the law so Wis. Stat. § (Rule) 809.62(1r)(c)2. is not a sufficient reason for review. There is no special and important reason present to warrant review.

**A. The court of appeals' decision is not in conflict with controlling opinions.**

Wis. Stat. § (Rule) 809.62(1r) and (1r)(d) states that this Court's "review is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented," such as when "[t]he court of appeals' decision is in conflict with controlling opinions of the United States Supreme Court or the supreme court or other court of appeals' decisions."

Here, there is no conflict between the court of appeals' decision and any controlling opinions. The petition correctly states: "This is the first, and only, case to interpret the 'separate occasions' language in Wis. Stat. § 939.621." (Ricketts' Pet. 3.) But then, one paragraph later, the petition cites to Wis. Stat. § (Rule) 809.62(1r)(d), as justification for this Court's review. (Ricketts' Pet. 4.) Reliance on this criterion is in error because there is no conflict with controlling law.

The court of appeals' decision comports with this Court's opinions 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). Neither *Hopkins* nor *Wittrock* directly control. See *State v. Rector*, 2023 WI 41, ¶ 25 n.7, 407 Wis. 2d 321, 990 N.W.2d 213 ("this case is not about whether to overrule *Wittrock* and *Hopkins* but whether we should extend those cases' interpretation of Wis. Stat. § 939.62 to a different statute"). But there certainly is no conflict between the court of appeals' decision and *Hopkins* and *Wittrock*; to the contrary, they are in harmony with one another, *State v. Ricketts*, No. 2024AP2291-CR, 2025 WL 3526886, ¶¶ 21–37 (Wis. Ct. App. Dec. 9, 2025) (recommended for publication) (interpreting "separate occasions" in the domestic abuse repeater statute consistently with prior judicial interpretations of the phrase in the habitual criminality statute) (Pet-App. 3–27).

The court of appeals' decision is not in conflict with this Court's opinion in *Rector*, either. *Rector* does not deal with the statute at issue here, and the opinion makes clear that the phrase "separate occasions" may have different meaning depending on the context in which it is used. *Rector*, 407 Wis. 2d 321, ¶¶ 25–39. For example, the phrase might mean one thing among closely related statutes and another in an unrelated statute. See *id.* Thus, the opinion here—which holds that "separate occasions" means the same thing in two

closely related statutes, *Ricketts*, 2025 WL 3526886, ¶¶ 21–37—hardly conflicts with *Rector*. It is instead consistent with *Rector*.

The criterion in Wis. Stat. § (Rule) 809.62(1r)(d) is not a justification for review by this Court because there is no conflict with controlling law.

**B. No supreme court opinion is ripe for reexamination.**

Wis. Stat. § (Rule) 809.62(1r) and (1r)(e) states that this Court’s “review is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented,” such as when “[t]he court of appeals’ decision is in accord with opinions of the supreme court or the court of appeals but due to the passage of time or changing circumstances, such opinions are ripe for reexamination.”

This criterion is not met because there are no opinions ripe for reexamination. As *Ricketts* explains in his petition, “[t]his is the first, and only, case to interpret the ‘separate occasions’ language in Wis. Stat. § 939.621.” So there is no earlier opinion to reexamine. *Ricketts* mistakenly believes that review here is a forum to reexamine this Court’s opinions in *Hopkins*, *Wittrock*, and *Rector*. But it is not, as this Court explained in *Rector*.

This Court explained that *Rector* was “not about whether to overrule *Wittrock* and *Hopkins* but whether we should extend those cases’ interpretation of Wis. Stat. § 939.62 to a different statute.” 407 Wis. 2d 321, ¶ 25 n.7. Specifically, it was about whether to extend the *Wittrock* and *Hopkins* interpretation to the sex offender registration statute in Wis. Stat. § 301.45(5)(b)1. This Court decided that it should not be extended because the statute under review in Wis. Stat. ch. 301 was not closely related to the penalty enhancement statute in Wis. Stat. ch. 939 and each must be analyzed in its unique context within its respective statutory

scheme. *Id.*, ¶ 25. In making its decision in *Rector* in 2023, this Court acknowledged that “the operation of the criminal repeater statute appears to be settled.” *Id.*

There has not been a sufficient passage of time since this Court decided *Rector* two and a half years ago to warrant review. *Rector*’s framework remains: When analyzing the language in a different statute it is “not about whether to overrule *Wittrock* and *Hopkins*.” 407 Wis. 2d 321, ¶ 25 n.7. Rather, it’s about whether a court “should extend those cases’ interpretation of Wis. Stat. § 939.62 to a different statute.” *Id.* Here, the court of appeals’ decision concerned interpreting the domestic abuse repeater statute in Wis. Stat. § 939.621. It’s neither a forum to review the interpretation of the habitual criminality statute in Wis. Stat. § 939.62, nor a vehicle to overrule *Wittrock* and *Hopkins*.

The one notable change in circumstance since *Rector* does not support Ricketts’ petition for review. The Legislature amended the sex offender registration statute in Wis. Stat. § 301.45(5)(b)1. after this Court’s decision in *Rector*. 2023 Wis. Act 254, § 1 (amending Wis. Stat. § 301.45(5)(b)1.) Ricketts asks this Court to “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.” (Ricketts’ Pet. 4.) But this is an appeal that concerns interpreting the domestic abuse repeater in Wis. Stat. § 939.621. It’s the wrong forum to reexamine the interpretation of Wis. Stat. § 301.45(5)(b)1. following the Legislature’s amendment to that unrelated statute. A future appeal that requires interpreting the amended sex offender registration statute in Wis. Stat. § 301.45(5)(b)1. is a better vehicle to interpret that statute and the Legislature’s amendment to it.

The criterion in Wis. Stat. § (Rule) 809.62(1r)(e) is not a justification for review. There are no opinions ripe for reexamination. *Hopkins*, *Wittrock*, and *Rector* didn’t interpret the domestic abuse repeater statute in Wis. Stat. § 939.621.

The framework laid out in *Rector* two and a half years ago explains that “this case is not about whether to overrule *Wittrock* and *Hopkins* but whether we should extend those cases’ interpretation of Wis. Stat. § 939.62 to a different statute.” 407 Wis. 2d 321, ¶ 25 n.7. There has not been a sufficient passage of time to revisit this framework. Ricketts errs when arguing review of the domestic abuse repeater statute is a forum to overturn *Wittrock’s* and *Hopkins’* interpretation of the habitual criminality statute because that statute is not under review. And the only notable change in circumstance weighs against relying upon an interpretation to the unrelated sex offender registration statute that has since been heavily amended by the Legislature in response to *Rector*.

**C. A decision by this Court is unnecessary to develop, clarify, or harmonize the law.**

Wis. Stat. § (Rule) 809.62(1r) and (1r)(c)2. states that this Court’s “review is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented,” such as when a “decision by the supreme court will help develop, clarify or harmonize the law, and . . . [t]he question presented is a novel one, the resolution of which will have statewide impact.”

Although Ricketts casts his argument on the need for clarity, his opening argument reveals that he asks for little more than error correction. Ricketts’ opening argument section articulates his disagreement with the court of appeals’ decision. (Ricketts’ Pet. 7–9.) Insofar as Ricketts seeks review because he disagrees with the court of appeals’ decision, then he is asking this Court to correct a perceived error of law. But 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. Dep’t of Nat. Res.*

*v. Wisconsin Ct. of Appeals, Dist. IV*, 2018 WI 25, ¶ 43, 380 Wis. 2d 354, 909 N.W.2d 114 (footnote omitted).

Ricketts attempts to bolster his argument by suggesting that this Court should accept review to air “disputes over the proper roles of canons” and clarify the use of canons of statutory interpretation. (Ricketts’ Pet. 10.) But such a statement is at odds with a position Ricketts takes two pages later in his petition to “give force to the plain text analysis it already conducted in *Rector*.” (Ricketts’ Pet. 12.) The problem for Ricketts is that *Rector* identified that the prior-construction canon aligns with *Kalal* because a prior interpretation of a closely-related statute may help in the plain-meaning analysis. *Rector*, 407 Wis. 2d 321, ¶ 25 (citing *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶¶ 45–46, 271 Wis. 2d 633, 681 N.W.2d 110. *Rector* did not reject this canon; instead, this Court concluded that the sex offender registration statute in Wis. Stat. ch. 301 was not closely related to a penalty enhancement statute in Wis. Stat. ch. 939, such that the canon did not apply. *Id.*; See *James v. Heinrich*, 2021 WI 58, ¶¶ 19–20, 397 Wis. 2d 517, 960 N.W.2d 350 (related-statutes canon aligns with *Kalal*).

Part of the criterion in Wis. Stat. § (Rule) 809.62(1r)(c)2. is about harmonization in the law. But Ricketts asks this Court for disharmony. This appeal does not develop or clarify the use of canons. Granting review to reject reliance on canons as Ricketts advocates would put this case in disharmony with *Rector*. And granting review to take a position contrary to that in *Hopkins* and *Wittrock* would result in disharmony in the law. Wis. Stat. § (Rule) 809.62(1r)(c)2. supports granting review to harmonize the law, not to create disharmony.

The criterion in Wis. Stat. § (Rule) 809.62(1r)(c)2. is not a justification for review. *Rector* recently clarified and developed the law, both as to the use of canons in statutory interpretation and the framework to apply when considering whether to extend the *Wittrock* and *Hopkins* interpretation of

the habitual criminality statute to a different statute. The court of appeals' decision comports with the framework in *Rector* and it is in harmony with *Hopkins* and *Wittrock*. There are not special and important reasons for further review by this Court.

\* \* \* \* \*

This Court has many opportunities to develop statutory interpretation law. But this appeal is not one of them. It pertains to a specific statutory phrase that this Court already recently examined in *Rector*, albeit in a different unrelated statute. The appeal centers upon whether to extend the *Wittrock* and *Hopkins* interpretation of the habitual criminality statute to the nearby and closely related domestic abuse repeater statute. It involves a very specific and unique set of statutory history and case law that the court of appeals' decision has resolved. Given the specific and narrow issue presented by this appeal, it is not a good candidate for law development.

## CONCLUSION

This Court should deny the petition because no special and important reason is present to warrant review.

Dated: January 9, 2026

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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 2034 words.

Dated: January 9, 2026

Electronically signed by:

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### **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: January 9, 2026

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