

Claude and Gemini agree that the petition for review should be granted in *State v. Travis J. Gandy*, 2023AP002398-CR

Claude's analysis:

Yes — the court should grant review.

This is one of the stronger pro se petitions I've seen, and the State's one-paragraph letter response does nothing to rebut it.

The case sits exactly where *Rector* left off. Footnote 5 reserved the question of convictions meeting only one of the two conditions — same case filing *or* same hearing. Gandy is that reserved case: three case numbers, one hearing, one global plea, concurrent sentences. The court told litigants it would answer this "another day," and the day has arrived. Declining now leaves the reservation open indefinitely while the court of appeals fills the vacuum case by case — which is precisely what happened here.

The doctrinal disarray is real, not rhetorical. *Wittrock*, *Hopkins*, *Rector*, *Ricketts*, and now *Gandy* produce a phrase that means the total number of convictions in one line of cases, a temporal disposition inquiry in another, and an unexplained multi-factor balance in a third. *Ricketts* (2026 WI App 4) declared the phrase ambiguous fourteen months after *Rector* held it plain — an appellate court effectively working around a supreme court decision. That is § 809.62(1r)(d) territory, and it is also the kind of instability only this court can fix. "Separate occasions" appears throughout the repeater and enhancer statutes; this is not a one-off.

The Act 254 retroactivity question is genuinely novel and no one has answered it. Section 5's "first applies to determinations made on September 2, 2017" is close to unparseable — it doesn't say who makes the determination, when, or whether DOC can manufacture a new one at will. Gandy's three readings are all plausible, which is itself the point. If, as the AG apparently represented in *Maldonado*, DOC re-ran qualifying determinations for every registrant after Act 254, then the third reading swallows the partial-retroactivity provision entirely and the Legislature's chosen cutoff date means nothing. That affects a large legacy class of registrants, involves lifetime GPS monitoring, and satisfies (1r)(c)2 and (c)3 comfortably.

The procedural posture argues for review rather than against it. The parties briefed Act 254. The court of appeals sat for nearly two years, then decided on an unbriefed "separate occasions" ground the State never advanced, without ordering supplemental briefing, and never reached the question actually presented. The order of operations is also backward: if Act 254 reaches Gandy, he loses regardless of *Rector*, so the retroactivity question is logically antecedent and the separate-occasions holding was arguably unnecessary. The dispositive rationale in this case has never been adversarially tested by anyone.

And the State's position is hard to reconcile with itself. In *Ricketts* the AG argued that a domestic-abuse-repeater case was the wrong vehicle and that a future appeal interpreting amended § 301.45(5)(b)1. would be better. That appeal is this one. The State now opposes in a single sentence, with no argument and no acknowledgment of what it said three months ago. If the State believes *Gandy* is also the wrong vehicle, it owes the court an explanation.

The weaknesses, honestly stated. The petition is pro se and its Act 254 section canvasses three possibilities without committing to one — the court would benefit from appointing counsel or ordering supplemental briefing. There may be a threshold vehicle problem: Gandy challenged a DOC administrative determination by motion in his criminal cases, and DOC is not a party; whether that is the right procedural mechanism (as opposed to certiorari or a declaratory action, the *Maldonado* route) is worth the court's attention. And the record characterization is contested — the court of appeals described the cases as joined "only for judicial economy reasons," which is in some tension with Gandy's framing of formal prosecutorial consolidation. None of these is disqualifying; the operative facts are undisputed and the questions are pure law.

What I'd do with it. Grant, and either consolidate with *Ricketts* or hold *Ricketts* pending the outcome — resolving both under one framework is the only way to stop the drift. Appoint counsel. And direct briefing on the Act 254 applicability question first, since it may be dispositive and has never been decided by any court.

The consequence here is lifetime GPS monitoring turning on whether a prosecutor filed a consolidation motion instead of an amended complaint. Even accepting *Muldrow*'s holding that such monitoring is non-punitive, a distinction of that magnitude resting on a clerical choice deserves a considered answer from the court that created the ambiguity.

Gemini's analysis:

Yes, the Wisconsin Supreme Court should accept this case for review.

While the State's brief letter asserts that the petition fails to meet the criteria for review under Wis. Stat. § 809.62(1r), the arguments raised in "2023AP002398-CR State v. Travis J. Gandy.pdf" highlight an unresolved legal gray area that warrants final resolution from the state's highest court.

The Lingering *Rector* Ambiguity

The petitioner rightfully points out that *State v. Rector* (2023 WI 41) intentionally left a void in Wisconsin jurisprudence.

- Footnote 5 in *Rector* explicitly declined to define whether convictions spanning different case files, but resolved at a single hearing, constitute "separate occasions".
- This leaves a formalistic trap where severe consequences—like lifetime GPS tracking—hinge on whether a prosecutor filed an amended complaint versus a motion to consolidate.
- For a post-conviction condition as invasive as lifetime monitoring, the rule of law demands predictability rather than arbitrary administrative distinctions.

The Retroactivity Quagmire of 2023 Act 254

Even if the legislature attempted to fix the "separate occasions" language via 2023 Act 254, the new law introduces a separate, novel question of statutory interpretation.

- The retroactivity provision applies to "determinations made on September 2, 2017".
- As the petition argues, it is entirely unclear whether this refers to judicial determinations at sentencing or administrative determinations by the Department of Corrections years later.
- Leaving this statutory gap unaddressed gives the DOC unchecked discretion to classify offenders, potentially creating absurd scenarios where identically situated defendants face different registration statuses based solely on their prison release dates.

The State's Minimalist Response

The Attorney General's one-page response simply declines to brief the issue unless ordered. While the State might view this as a dying issue due to the Act 254 amendments, the liberty interests at stake for the remaining class of affected individuals justify the court stepping in to establish a clear, statewide precedent. Evaluating these types of petitions often comes down to assessing whether an issue will continue to fracture lower courts, and this one clearly has that potential.