On petitioner on review's petition for reconsideration filed March 23, considered and under advisement April 12; petition for reconsideration allowed, former opinion modified and adhered to as modified April 21, 2022.*

STATE OF OREGON,
Respondent on Review,
v.
SCOTT WILLIAM KYGER,
Petitioner on Review.
(CC 17CR08793) (CA A165404) (SC S068337)

509 P3d 112

Defendant petitioned for reconsideration of the Oregon Supreme Court's decision in *State v. Kyger*, 369 Or 363, 506 P3d 376 (2022). *Held*: The opinion in *Kyger*, 369 Or 363, will be modified to revise the text of footnote 3, regarding the scope of review.

The petition for reconsideration is allowed. The former opinion is modified and adhered to as modified.

Anne Fujita Munsey, Deputy Public Defender, Office of Public Defense Services, Salem, filed the petition for reconsideration on behalf of petitioner on review. Also on the petition was Ernest G. Lannet, Chief Defender.

No appearance *contra*.

Before Walters, Chief Justice, and Balmer, Flynn, Duncan, Nelson, Garrett, and DeHoog, Justices.

GARRETT, J.

The petition for reconsideration is allowed. The former opinion is modified and adhered to as modified.

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* 369 Or 363, 506 P3d 376 (2022); on review from the Court of Appeals, 305 Or App 548, 471 P3d 764 (2020).

GARRETT, J.

Defendant has petitioned for reconsideration of our decision in *State v. Kyger*, 369 Or 363, 506 P3d 376 (2022), objecting to the phrasing of footnote 3, which stated:

> "Although defendant raised other issues in his petition for review, he failed to present any briefing or argument on those issues. Accordingly, we do not reach them."

Id. at 367 n 3. In his petition, defendant correctly points out that this court's order allowing review expressly limited review to the issue that we addressed in our opinion. Footnote 3 implies that defendant had, and abandoned, an opportunity to present argument on other issues. That is incorrect. Accordingly, we replace the text of footnote 3, quoted above, with the following:

> "Although defendant raised other issues in his petition for review, we denied review on those issues, and they are not before us."

The petition for reconsideration is allowed. The former opinion is modified and adhered to as modified.