



# COURT OF APPEALS

## Media Release

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The Court of Appeals issued these opinions:

State of Oregon v. Amy Kathryn Wedebrook  
(A170421 - Clackamas County Circuit Court)

State of Oregon v. C. L. E.  
(A171787 - Lane County Circuit Court)

Precision Castparts Corp - PCC Structurals v. Melonie Cramer  
(A174551 - Workers' Compensation Board)

Audrey J. King v. Gallagher Bassett Insurance Services  
(A173989 - Workers' Compensation Board)

Department of Human Services v. T. L. M.  
(A175708 - Multnomah County Circuit Court)

Double Tree Hotel v. Azam Ansarinezhad  
(A172330 - Workers' Compensation Board)

State of Oregon v. Thomas Lloyd Austin  
(A173041 - Jackson County Circuit Court)

David Jon Dickerson v. Corey Fhuere  
(A168534 - Coos County Circuit Court)

State of Oregon v. James Brian Halfmoon, Jr.  
(A172699 - Umatilla County Circuit Court)

Roberta Haas v. Mark Steven Carter  
(A169932 - Multnomah County Circuit Court)

The Court of Appeals issued these *per curiam* opinions:

State of Oregon v. Brett Joseph McQuiston  
(A171167 - Multnomah County Circuit Court)

State of Oregon v. Russell Orlando Courtier  
(A172468 - Multnomah County Circuit Court)

State of Oregon v. Seneca Honjuay Isaiah Cayson  
(A172919 - Washington County Circuit Court)

Javier Ivan Sanchez-Perez v. Brandon Kelly  
(A173153 - Marion County Circuit Court)  
State of Oregon v. Erik Daniel Kadin  
(A173155 - Klamath County Circuit Court)  
Junki Yoshida v. Samuel Watson  
(A173162 - Multnomah County Circuit Court)  
State of Oregon v. Terry Lee Jaquan Spencer  
(A173479 - Clackamas County Circuit Court)  
State of Oregon v. Oscar Guadalupe Alvarez-Lopez  
(A173541 - Multnomah County Circuit Court)  
Brice Schroeder v. Rebecca White  
(A173578 - Linn County Circuit Court)  
State of Oregon v. Carl D. Todd, Jr.  
(A173692 - Washington County Circuit Court)  
East Side Plating, Inc. v. City of Portland  
(A174138 - Multnomah County Circuit Court)  
State of Oregon v. P. C. G. C.  
(A175485 - Tillamook County Circuit Court)  
Department of Human Services v. A. H.  
(A175909 - Douglas County Circuit Court)  
Department of Human Serves v. C. A. G.  
(A175958 - Lincoln County Circuit Court)

The Court of Appeals affirmed these cases without opinion:

State of Oregon v. Payton Bradford Smith  
(A171612 - Washington County Circuit Court)  
State of Oregon v. Brian Peter Warzinik  
(A172015 - Lincoln County Circuit Court)  
State of Oregon v. Sierra Michelle Kerlee  
(A172018 - Coos County Circuit Court)  
State of Oregon v. Kade McLean  
(A172245 - Crook County Circuit Court)  
State of Oregon v. Brian A. Duran  
(A172356 - Crook County Circuit Court)  
State of Oregon v. Mark Allen Anderson  
(A172679 - Deschutes County Circuit Court)  
State of Oregon v. Shaelynn Shastine Center  
(A172795 - Multnomah County Circuit Court)  
State of Oregon v. Allen King  
(A173151 - Marion County Circuit Court)  
State of Oregon v. Kristopher Tolbert  
(A173160 - Multnomah County Circuit Court, Clackamas County Circuit Court)

Erin M. Evers v. Brenise Andre  
(A173247 - Multnomah County Circuit Court)  
State of Oregon v. Rodney Lane Parham  
(A173317 - Coos County Circuit Court)  
State of Oregon v. George Henry Allen III  
(A173346 - Douglas County Circuit Court)  
State of Oregon v. Desire' Laree Tenbusch  
(A173539 - Linn County Circuit Court)  
State of Oregon v. Sanson Murauo  
(A173609 - Marion County Circuit Court)  
State of Oregon v. Yohance Badru Belt  
(A173716 - Multnomah County Circuit Court)  
State of Oregon v. John Rockwood Gentry  
(A173724 - Multnomah County Circuit Court)  
State of Oregon v. Alexander James Halbersma  
(A174030 - Lincoln County Circuit Court)  
Jason Ray Dizick v. Board of Parole and Post-Prison Supervision  
(A174077 - Board of Parole and Post-Prison Supervision)  
Richard W. Salmon v. Board of Parole and Post-Prision Supervision  
(A174285 - Board of Parole and Post-Prison Supervision)  
Shawn Lee Hensley v. Board of Parole and Post-Prison Supervision  
(A174325 - Board of Parole and Post-Prison Supervision)  
State of Oregon v. Blayne Benham Stone  
(A174509 - Coos County Circuit Court)

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**State of Oregon v. Amy Kathryn Wedebrook**  
(Armstrong, P. J.)

In this criminal appeal, defendant contests, among other things, the trial court's imposition of 12 months' jail time when it sentenced defendant to probation. Defendant requests plain-error review of that aspect of the sentence, which exceeded the administrative rules limit of 90 days' jail time in the circumstances of this case. The state concedes that that portion of the sentence was legally erroneous. Held: The sentencing record allows the view that defendant made a tactical or strategic choice that encouraged the court to impose the erroneous sentence that the court announced at sentencing, as part of an effort by defendant to avoid a longer prison sentence requested by the state. Because of that choice, defendant may have avoided, to her benefit, a longer term of imprisonment, and the Court of Appeals therefore declined to exercise its discretion to correct the plainly erroneous sentence. Affirmed.

**State of Oregon v. C. L. E.**  
(Lagesen, P. J.)

Youth appeals a juvenile court order denying his motion to set aside his adjudication for acts that, if committed by an adult, would constitute attempted sexual abuse in the first degree. ORS 419C.615; ORS 163.427(1)(a)(A); ORS 161.405(1)(c). Youth contends that his adjudication was in violation of his state and federal constitutional rights because (1) youth was not competent to be adjudicated at the time that he entered his plea; and (2) youth's trial counsel rendered inadequate and ineffective assistance by failing to have youth's competency evaluated. Held: Trial counsel rendered constitutionally inadequate assistance of counsel by not having youth's competency evaluated before advising youth to enter a plea. Reversed and remanded with instructions to grant youth's motion to set aside the adjudication.

**Precision Castparts Corp - PCC Structural v. Melonie Cramer**  
(Lagesen, P. J.)

Employer petitions for judicial review of a final order of the Workers' Compensation Board. Employer asserts that the board applied the wrong standard in its review of the Appellate Review Unit's (ARU) order on reconsideration because the ARU declined to consider the medical arbiter report in its impairment determination, and thus, employer claims, the board should have reviewed for abuse of discretion. Instead, the board made a de novo determination of impairment based on the record at reconsideration and the medical arbiter report. Held: All relevant authority provides that the board reviews de novo upon the entire record, including any arbiter report prepared in the course of the administrative proceedings. Therefore, the board was not required to assess whether the ARU abused its discretion when it declined to consider the arbiter report. Affirmed.

**Audrey J. King v. Gallagher Bassett Insurance Services**  
(Tookey, P. J.)

Claimant seeks review of an order of the Workers' Compensation Board (the board) affirming an order of an administrative law judge (ALJ) and upholding SAIF's denial of her mental disorder claim. Held: The Court of Appeals addressed the process for evaluating the work connection of a mental disorder claim and explained that such a claim will be found compensable if, when weighing the causal relationship of nonexcluded work-related factors against the causal relationship of statutorily excluded work-related factors and nonwork-related factors, clear and convincing evidence establishes that the nonexcluded work-related factors outweigh all other factors. The Court of Appeals rejected as inconsistent with the court's case law claimant's contention that, in considering the stress-inducing conditions of the employment, the board should evaluate whether the work environment as a whole was injurious and the major contributing cause of claimant's mental disorder, rather than separately considering each allegedly causative aspect of the work environment. The board is delegated responsibility under ORS 656.802(3)(b) to determine whether the "conditions [are] generally inherent in every working situation" for purposes of assessing the work connection of alleged stress-inducing circumstances. The court held that the board did not err in excluding, as "generally inherent," two factors alleged to be stress-inducing. The court upheld the board's determination that claimant did not establish her allegations relating to the stress-inducing conduct of her supervisor. Finally, the court upheld the board's determination that the claim failed for lack of proof of medical causation. Affirmed.

**Department of Human Services v. T. L. M.**  
(Tookey, J.)

In this juvenile dependency case, mother appeals a juvenile court judgment requiring that she undertake a psychological evaluation. On appeal, mother argues, among other points, that the juvenile court erred by ordering her to undertake the psychological evaluation because the record is insufficient to show that a psychological evaluation is rationally related to the established jurisdictional bases. Held: The psychological evaluation in this case was not for a service that was rationally related to the findings that brought the child into the juvenile court's jurisdiction, as required by Dept. of Human Services v. W. C. T., 314 Or App 743, 745, \_\_\_ P3d \_\_\_ (2021). Consequently, the Court of Appeals reversed and remanded. Reversed and remanded.

**Double Tree Hotel v. Azam Ansarinezhad**  
(James, J.)

Employer petitions for judicial review of a final order of the Workers' Compensation Board (the board) that affirmed an administrative law judge's (ALJ) order to set aside employer's denial of claimant's injury claim. Employer denied the claim on the ground that claimant had failed to give timely notice under ORS 656.256. The issue on review is the intended meaning of the phrase "notice required by this section" in ORS 656.265(4), and whether it refers to notice of an accident or to notice of a claim. Held: The plain and unambiguous text of the statute, in its context, provided that the phrase "notice required by this section" referred to notice of an accident, which claimant timely provided. Accordingly, the board did not err in affirming the ALJ's order to set aside employer's denial. Affirmed.

**State of Oregon v. Thomas Lloyd Austin**  
(Aoyagi, J.)

Defendant was convicted of arson and reckless burning. On appeal, he makes an unpreserved argument that the trial court erred by accepting his jury waiver and proceeding to a bench trial. That waiver occurred five months before the United States Supreme Court held in *Ramos v. Louisiana*, 590 US \_\_\_, 140 S Ct 1390, 206 L Ed 2d 583 (2020), that, under the Sixth Amendment, a criminal defendant may be convicted of a serious offense only by unanimous verdict. Defendant contends that his waiver of his constitutional right to a jury trial was not "knowing" because, given Oregon law before *Ramos*, he could not have known that the right he was relinquishing was the right to a jury trial with a unanimity requirement. Held: Under existing United States Supreme Court case law, it is not obvious or beyond dispute that the Sixth Amendment right to be convicted of a serious offense only by unanimous jury verdict is the type of information that a defendant must know for a jury waiver to be knowing and intelligent. Any error in accepting defendant's jury waiver was not "plain," defeating the unpreserved claim of error. Affirmed.

**David Jon Dickerson v. Corey Fhuere**  
(Powers, J.)

In this post-conviction proceeding, petitioner contends that he was erroneously denied relief in the form of a delayed appeal from his criminal convictions, because his trial counsel was constitutionally inadequate by failing to ensure that a notice of appeal was filed to initiate a direct appeal. Despite acknowledging that petitioner may have expressed a "vague wish" to appeal, the post-conviction court denied petitioner relief.

Held: The post-conviction court's decision was based on an error of law and, as a result of that error, the court never made the factual determinations necessary to allow for resolution of petitioner's claim under the correct legal standard. Accordingly, the Court of Appeals reversed and remanded for the post-conviction court to consider petitioner's claim under the correct legal standard. Reversed and remanded.

**State of Oregon v. James Brian Halfmoon, Jr.**

(Kamins, J.)

Defendant appeals a supplemental judgment imposing restitution. Defendant assigns error to the trial court's finding of "good cause" to extend the 90-day timeline to present the nature and amount of damages for restitution established by ORS 137.106(1)(a). The state contends that there was "good cause" to extend the timeline because the victim was the source of the delay, not the prosecutor. The state argues in the alternative that any error was harmless because the trial court would have imposed restitution directly pursuant to its authority under Article I, section 42, of the Oregon Constitution. Held: The trial court erred in finding "good cause" to extend the 90-day timeline because there was no reason provided of why the victim could not obtain the necessary information sooner. That error was not harmless because the Court of Appeals could not say for certain that the trial court would have imposed restitution pursuant to Article I, section 42, after denying restitution under ORS 137.106. Supplemental judgment ordering restitution vacated; otherwise affirmed.

**Roberta Haas v. Mark Steven Carter**

(Hadlock, J. pro tempore)

In this negligence case, plaintiffs contest the trial court's refusal to give a "substantial-factor" uniform jury instruction in addition to the "but-for" uniform instruction on causation. After plaintiffs' car was struck from behind by a car driven by one of the defendants, both plaintiffs had surgery related to back and neck pain and other symptoms. Evidence showed that both plaintiffs had underlying back and neck conditions that had existed before the automobile collision; evidence also suggested that those underlying conditions had left plaintiffs more susceptible to injury. Following trial, the jury returned a verdict for defendants. On appeal, plaintiffs argue for a rule that would require a substantial-factor jury instruction in all cases where there is evidence that the plaintiff's underlying conditions made them more susceptible to injury. Held: The substantial-factor instruction is appropriate only when multiple factual causes, or multiple tortfeasors, act on a plaintiff to cause the injury. Moreover, a plaintiff's underlying condition can be said to be a cause of the plaintiff's injury only when it actively contributes to causing that injury (and does not merely make the plaintiff more susceptible to harm). In this case, plaintiffs did not identify any evidence showing that their underlying conditions actively contributed to causing their injuries. Because no evidence suggested that multiple factors causally contributed to plaintiffs' injuries the court did not err by refusing to give the substantial-factor instruction. Affirmed.

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