

# SUPREME COURT

## Media Release



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Cases decided February 5, 2026.

*State of Oregon v. Allen Rex Roberts* (CC 21CR38424) (SC S071661)

Original proceeding in mandamus from an order of the Multnomah County Circuit Court, Benjamin Souede, Judge. The alternative writ of mandamus is dismissed as moot. Opinion of the Court by Justice Rebecca A. Duncan. Chief Justice Meagan A. Flynn did not participate in the consideration or decision of this case. Judge Ramón Pagán, Justice pro tempore, participated in the consideration and decision of this case.

Today, the Oregon Supreme Court held that dismissal without prejudice of a criminal case is required when, at any point post-arraignment, the state has failed to provide counsel to an eligible defendant for a period of more than 60 consecutive days in a misdemeanor case or more than 90 consecutive days in a felony case.

Relator was the defendant in the underlying criminal case in Multnomah County Circuit Court. In 2024, he was arraigned on a grand jury indictment. He requested, and was eligible for, counsel, but no lawyer was available to represent him. After being without counsel for months, relator filed a motion to dismiss the criminal case, asserting, among other things, that the state had violated his right to counsel under Article I, section 11, of the Oregon Constitution, which provides, in part, that "[i]n all criminal prosecutions, the accused shall have the right \* \* \* to be heard by himself and counsel." The trial court denied the motion.

Relator then filed this proceeding. The Supreme Court issued an alternative writ directing the trial court to either vacate its order denying relator's motion or show cause for not doing so. The trial court did not vacate its order. While the parties briefed this mandamus case, relator's criminal case remained pending in the trial court and relator remained unrepresented. Then, almost a year after relator's arraignment, the trial court dismissed the criminal case because of the unavailability of counsel.

In a unanimous opinion by Justice Rebecca A. Duncan, the Supreme Court determined that, although the case was moot, review was warranted because it presented

legal issues that are "capable of repetition" and "likely to evade judicial review" under ORS 14.175. The Court agreed with relator that the state had violated his Article I, section 11, right to counsel by failing to appoint counsel for an extended period of time. The Court explained that the right to counsel helps ensure that criminal prosecutions are conducted fairly and in accordance with the law by guaranteeing that a defendant has access to a legal advocate to respond to the state's exercise of its prosecutorial powers. The Court continued that a failure to appoint counsel results in several pretrial harms. First, the defendant is subject to restraints on their liberty but lacks counsel to challenge or modify them. Second, the defendant is deprived of the means to move their case forward. Third, the failure to appoint counsel can have a coercive effect, putting pressure on the defendant to abandon their right to counsel. The Court reasoned that dismissal without prejudice can mitigate those harms while permitting the state to refile the charges later, when the defendant has access to counsel as the constitution requires.

The Court therefore held that there must be a limit to the amount of time that the state can maintain a criminal prosecution without appointing counsel for an eligible defendant. Thus, as a general rule, the Court determined that dismissal without prejudice is required when, at any point post-arraignment, the state has failed to provide counsel to an eligible defendant for a period of more than 60 consecutive days in a misdemeanor case or more than 90 consecutive days in a felony case. Accordingly, relator, who was unrepresented for more than 90 consecutive days while appearing for court as required, was entitled to dismissal of his criminal case without prejudice.

*State of Oregon v. Dominic Agapito Earl Fletes* (CC 22CR09099, 22CR09574) (SC S072586)

On petition for a writ of mandamus filed January 16, 2026, and considered and under advisement on February 3, 2026. The petition for writ of mandamus is denied. Opinion of the Court Per Curiam. Justice Stephen K. Bushong dissented and filed an opinion.

Today, the Oregon Supreme Court denied the state's petition for writ of mandamus.

Justice Stephen K. Bushong filed a dissent explaining that he would issue an alternative writ of mandamus and, if appropriate, set the case for briefing and argument on the merits.