

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

RYAN CHRISTOPHER SMITH,
Defendant-Appellant.

Lane County Circuit Court
15CR38168; A171823

Kamala H Shugar, Judge.

Submitted April 6, 2021.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Kyle Krohn, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Philip Thoennes, Assistant Attorney General, filed the brief for respondent.

Before DeVore, Presiding Judge, and DeHoog, Judge, and Mooney, Judge.

PER CURIAM

Portion of judgment requiring defendant to pay \$255 DUII conviction fee vacated; remanded for resentencing; otherwise affirmed.

PER CURIAM

Defendant appeals a judgment of conviction for driving under the influence of intoxicants (DUII), ORS 813.010(4), challenging, in his combined first three assignments of error, the court's termination of diversion and entry of judgment pursuant to his guilty plea. Those assignments of error, however, are not reviewable under ORS 138.105(5); defendant's arguments to the contrary are foreclosed by our recent decisions in *State v. Merrill*, 311 Or App 487, ___ P3d ___ (2021), and *State v. Redick*, 312 Or App 260, ___ P3d ___ (2021).

In his fourth assignment of error, defendant contends that the trial court erred by imposing a \$255 DUII conviction fee in the judgment that was not announced in his presence at sentencing. As in *Merrill*, “[t]hat claim of error does not challenge defendant’s conviction and is reviewable under ORS 138.105(7), which allows review of sentencing decisions for compliance with the law.” 311 Or App at 496. The state concedes the error, and we accept that concession. *See id.* at 496-97 (vacating \$490 “state obligation” and remanding for resentencing where court erred in imposing it outside the defendant’s presence).

Portion of judgment requiring defendant to pay \$255 DUII conviction fee vacated; remanded for resentencing; otherwise affirmed.