

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

ANTONIO MICHAEL MORRIS,  
*Defendant-Appellant.*

Lincoln County Circuit Court  
19CR48742; A173378

Amanda R. Benjamin, Judge pro tempore.

Submitted December 2, 2021.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Andrew D. Robinson, Deputy Public Defender, Office of Public Defense Services, filed the briefs for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Joanna L. Jenkins, Assistant Attorney General, filed the brief for respondent.

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

PER CURIAM

Remanded for resentencing; otherwise affirmed.

**PER CURIAM**

Defendant appeals his convictions and sentences for second-degree kidnapping, ORS 163.225, felony strangulation, ORS 163.187, and felony fourth-degree assault, ORS 163.160. He was tried to the court, but argues on appeal that his waiver of jury trial rights was not knowing and voluntary; we reject that argument for the reasons set forth in *State v. Austin*, 316 Or App 56, \_\_\_ P3d \_\_\_ (2021), and *State v. Gomez*, 310 Or App 693, 485 P3d 314 (2021). He also challenges the sufficiency of the evidence to support his kidnapping conviction, and the court's imposition of a departure sentence on that conviction; we reject those arguments without discussion. Finally, defendant asserts that the trial court plainly erred in imposing incorrect post-prison supervision terms on all of the offenses. He notes that none of the post-prison supervision terms imposed in this case were of the correct length as specified in OAR 213-005-0002(2). The state concedes that defendant is correct as to that issue, and also points out that the post-prison supervision term for the kidnapping conviction failed to take into account the provisions of OAR 213-005-0002(4), which would limit the combined prison and post-prison supervision terms for that offense to a total of ten years. We agree and accept the concession, and we remand for the court to consider on resentencing the proper application of OAR 213-005-0002.

Remanded for resentencing; otherwise affirmed.