

FILED: August 3, 2011

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

JOHN LEE MCLAUGHLIN,
Defendant-Appellant.

Multnomah County Circuit Court
080733272

A142664

Michael J. McShane, Judge.

On appellant's petition for reconsideration filed May 31, 2011. Opinion filed May 25, 2011. 243 Or App 214, ___ P3d ___ (2011).

Peter Gartlan, Chief Defender, and Marc D. Brown, Deputy Public Defender, Office of Public Defense Services, for petition.

Before Schuman, Presiding Judge, and Wollheim, Judge, and Nakamoto, Judge.

PER CURIAM

Reconsideration allowed; former disposition withdrawn; judgment awarding restitution reversed; otherwise affirmed.

1 PER CURIAM.

2 Defendant petitions for reconsideration of our disposition in this case,
3 which stated: "Judgment awarding restitution vacated and remanded for resentencing;
4 otherwise affirmed." [State v. McLaughlin](#), 243 Or App 214, 221, __ P3d __ (2011).
5 Defendant requests that we delete the phrase "and remanded for resentencing." We allow
6 the petition and modify the disposition.

7 We draw a distinction between cases overturning the restitution judgment
8 outright and those remanding for resentencing based on whether the trial court still
9 retains authority to impose restitution. [State v. Tippetts](#), 239 Or App 429, 433, 244 P3d
10 891 (2010). Defendant relies on cases in which we have simply overturned a
11 supplemental judgment awarding restitution rather than remanding when the trial court
12 erroneously extended the time period for imposing restitution, thereby causing the
13 supplemental judgment to be untimely entered. See [State v. Canady/Calhoun](#), 225 Or
14 App 299, 300, 201 P3d 225 (2009); [State v. Biscotti](#), 219 Or App 296, 304, 182 P3d 269
15 (2008).

16 Although the trial court in this case timely entered the supplemental
17 judgment awarding restitution, the prosecution failed to meet its procedural deadline in
18 ORS 137.106(1) to present evidence of the nature and amount of damages prior to the
19 time of sentencing. Accordingly, the trial court has no basis and does not retain authority
20 to impose restitution, and we need not remand the case for resentencing.

21 Petition for reconsideration allowed; former disposition withdrawn;
22 judgment awarding restitution reversed; otherwise affirmed.