

**FILED: January 9, 2013**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

ERIC JOE PENN,  
Defendant-Appellant.

Multnomah County Circuit Court  
080632799

A143276

Michael J. McShane, Judge.

Argued and submitted on November 27, 2012.

Laura A. Frikert, Deputy Public Defender, argued the cause for appellant. With her on the briefs was Peter Gartlan, Chief Defender, Office of Public Defense Services.

Shannon T. Reel, Assistant Attorney General, argued the cause for respondent. With her on the answering brief were John R. Kroger, Attorney General, and Mary H. Williams, Solicitor General. With her on the supplemental brief were John R. Kroger, Attorney General, and Anna M. Joyce, Solicitor General.

Before Ortega, Presiding Judge, and Haselton, Chief Judge, and Sercombe, Judge.

PER CURIAM

Reversed and remanded. [\*State v. Richardson\*](#), 253 Or App 75, 288 P3d 995 (2012).