

FILED: February 06, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

RONALD JOSHUA MILTON RICE,
Defendant-Appellant.

Morrow County Circuit Court
10CF009

A147115

Jeffrey M. Wallace, Senior Judge.

Submitted on August 23, 2012.

Kenneth A. Kreuzscher and Portland Law Collective, LLP, filed the brief for appellant.

John R. Kroger, Attorney General, Anna M. Joyce, Solicitor General, and Doug M. Petrina, Senior Assistant Attorney General, filed the brief for respondent.

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

PER CURIAM

Affirmed.

1 PER CURIAM

2 Defendant appeals a judgment of conviction and sentence for one count of
3 fourth-degree misdemeanor assault, ORS 163.160(2), and one count of recklessly
4 endangering another person, ORS 163.195. The misdemeanor sentencing statute allows
5 the court to suspend "a part of" a sentence and impose probation with conditions,
6 including jail time. ORS 137.010(4). Defendant contends that the trial court erred by
7 suspending his entire sentence, instead of "a part of" the sentence. The state responds
8 that defendant failed to preserve that issue for appeal. *See* ORAP 5.45(1) ("No matter
9 claimed as error will be considered on appeal unless the claim of error was preserved in
10 the lower court * * *, provided that the appellate court may consider an error of law
11 apparent on the record."); *see also State v. Wyatt*, 331 Or 335, 343, 15 P3d 22 (2000)
12 (requiring specific objections for preservation purposes). During the sentencing hearing,
13 defendant argued that the court was limited to imposing and suspending a jail sentence
14 that did not exceed 180 days or that the court was required to impose a jail sentence and
15 to specify the number of days of jail time that the court was suspending so that the
16 sentence would be clear. Defendant did not cite ORS 137.010 or assert below what he
17 argues now--that the trial court could not suspend *all* of his sentence, only "a part of" his
18 sentence, before it could impose probation. Accordingly, defendant's assignments of
19 error were not preserved below; nor does defendant contend that they amount to plain
20 error. *State v. Tilden*, 252 Or App 581, 589, 288 P3d 567, (2012) ("We ordinarily will
21 not proceed to the question of plain error unless an appellant has explicitly asked us to do

1 so[.]").

2 Affirmed.