

FILED: May 15, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

DENNIS DWAIN MCCALLUM,
Defendant-Appellant.

Lane County Circuit Court
201020073

A147699 (Control)
A151373

Maurice K. Merten, Judge.

Submitted on April 08, 2013.

Garrett A. Richardson and Multnomah Defenders, Inc., filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Jamie K. Contreras, Assistant Attorney General, filed the brief for respondent.

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

PER CURIAM

Remanded for resentencing; otherwise affirmed.

1 PER CURIAM

2 A jury found defendant guilty of nine offenses: two counts of first-degree
3 sexual abuse; three counts of second-degree unlawful sexual penetration; three counts of
4 first-degree criminal mistreatment; and one count of second-degree animal abuse. He
5 appeals the resulting convictions and sentences, advancing multiple assignments of error.
6 We write to address one of those assignments and reject the others without discussion.

7 In his third assignment of error, defendant argues that, on each of the three
8 convictions for criminal mistreatment, the trial court imposed 36-months of post-prison
9 supervision, which, when added to defendant's 36-month prison term, exceeded the five-
10 year statutory maximum indeterminate sentence for those class C felonies. ORS
11 161.605(3) (maximum term of an indeterminate sentence of imprisonment is, "[f]or a
12 Class C felony, 5 years"); OAR 213-005-0002(4) ("The term of post-prison supervision,
13 when added to the prison term, shall not exceed the statutory maximum indeterminate
14 sentence for the crime of conviction."). The state concedes that the 72-month sentences
15 imposed by the trial court are plainly erroneous, and we agree. *See State v. Donner*, 230
16 Or App 465, 469, 215 P3d 928 (2009) (trial court plainly erred in imposing a "total
17 sentence of 72 months--36 months' incarceration and 36 months' post-prison supervision-
18 -on a Class C felony"). For the same reasons expressed in *Donner*, we exercise our
19 discretion to correct the error in this case.

20 Remanded for resentencing; otherwise affirmed.