

FILED: September 25, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

JOEL EUGENE DELZELL,
Petitioner-Appellant,

v.

RICK COURSEY,
Superintendent,
Eastern Oregon Correctional Institution,
Defendant-Respondent.

Umatilla County Circuit Court
CV120716

A151983

Christopher R. Brauer, Judge.

Submitted on June 07, 2013.

Joel Eugene Delzell filed the brief *pro se*.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Ryan Kahn, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Sercombe, Judge, and Hadlock, Judge.

PER CURIAM

Appeal dismissed.

1 PER CURIAM

2 Petitioner appeals a judgment dismissing his petition for post-conviction
3 relief, arguing that the court erred in dismissing his petition without first ruling on his
4 motion to appoint counsel. The state concedes that the court should have ruled on
5 petitioner's motion to appoint counsel before dismissing the petition.

6 Despite the state's concession of error, we dismiss petitioner's appeal
7 because, under ORS 138.525(3), "a judgment dismissing a meritless petition is not
8 appealable." *See Young v. Hill*, 347 Or 165, 218 P3d 125 (2009) (dismissal of petition as
9 meritless is not appealable under ORS 138.525(3)); *Pedroso v. Nooth*, 251 Or App 688,
10 284 P3d 1207 (2012), *rev den*, 353 Or 203 (2013) (same). In this case, the court checked
11 a box on the judgment that provided, "Per ORS 138.525, the Petition is dismissed as
12 meritless, and this judgment is therefore not appealable." Because the petition was
13 dismissed as meritless, the judgment was not appealable. ORS 138.525(3).

14 Appeal dismissed.