

FILED: April 30, 2014

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

GORDON FRASER STRONG,
Defendant-Appellant.

Marion County Circuit Court
11C45285

A151445

James Lou Rhoades, Judge.

Submitted on March 25, 2014.

Peter Gartlan, Chief Defender, and Mary M. Reese, Senior Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

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

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

PER CURIAM

Portion of judgment requiring defendant to pay attorney fees reversed; otherwise affirmed.

1 PER CURIAM

2 Defendant appeals a judgment convicting him of five counts of first-degree
3 sexual abuse, asserting that the trial court plainly erred in ordering him to pay \$11,760 in
4 court-appointed attorney fees in the absence of evidence in the record of his ability to
5 pay those fees. *See* ORS 151.505(3) (a court may not order a defendant to pay fees
6 unless the defendant "is or may be able" to pay them); ORS 161.665(4) (same); *see also*
7 *State v. Kanuch*, 231 Or App 20, 24, 217 P3d 1082 (2009) (the state bears the burden of
8 proving that a defendant is or may be able to pay fees). Defendant points out that, at the
9 time of sentencing, he was 64 years old, that he was sentenced to 186 months of
10 imprisonment, and that no evidence was adduced that he had an ability to pay the fees.
11 We agree with defendant that the trial court in this case committed plain error. *See State*
12 *v. Coverstone*, 260 Or App 714, 320 P3d 670 (2014). Furthermore, for the reasons set
13 forth in *Coverstone*, 260 Or App at 717, we conclude that it is appropriate to exercise our
14 discretion to correct the error in this case.

15 Portion of judgment requiring defendant to pay attorney fees reversed;
16 otherwise affirmed.