

FILED: September 17, 2014

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

WILLIAM ELLIS BUCHANAN,
Defendant-Appellant.

Douglas County Circuit Court
12CR1027CT

A152372

George William Ambrosini, Judge.

Submitted on August 19, 2014.

Peter Gartlan, Chief Defender, and Kali Montague, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Laura S. Anderson, Senior Assistant Attorney General, filed the brief for respondent.

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

PER CURIAM

Reversed and remanded with instructions to enter judgment finding defendant in contempt of court; otherwise affirmed.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Appellant

- No costs allowed.
 - Costs allowed, payable by
 - Costs allowed, to abide the outcome on remand, payable by
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1 PER CURIAM

2 Defendant appeals a judgment of conviction for contempt, asserting three
3 assignments of error. We reject without discussion defendant's second and third
4 assignments of error, in which he contends that the trial court erred in imposing a \$400
5 fine and \$60 in attorney fees, and write only to address his first assignment of error. In
6 that assignment, defendant contends that the court erred in entering a misdemeanor
7 conviction for contempt because contempt is not a crime. Although defendant did not
8 raise that contention before the trial court, he asserts that we should review the issue as
9 plain error. *See* ORAP 5.45(1); *Ailes v. Portland Meadows, Inc.*, 312 Or 376, 381-82,
10 823 P2d 956 (1991) (court has discretion to review unpreserved error of law apparent on
11 the face of the record). The state concedes that the trial court plainly erred in entering a
12 misdemeanor conviction for contempt and that, therefore, "the case should be reversed
13 and remanded with instructions to enter a judgment finding defendant in contempt of
14 court, and omitting reference to a conviction for an unclassified misdemeanor." We
15 agree and accept the state's concession. Furthermore, considering the interests of the
16 parties and the ends of justice, we conclude that it is appropriate to exercise our discretion
17 to correct the error in this case. *See State v. Gostevskiyh*, 256 Or App 472, 473, 300 P3d
18 306 (2013) (exercising discretion to correct, as plain error, trial court's entry of a
19 misdemeanor conviction for contempt); *State v. Quade*, 252 Or App 577, 578, 287 P3d
20 1278 (2012) (correcting as plain error the trial court's entry of misdemeanor convictions
21 for contempt); *see also State v. Caldwell*, 247 Or App 372, 375 n 1, 270 P3d 341 (2011)

1 ("A conviction for contempt is not a proper disposition.").

2 Reversed and remanded with instructions to enter judgment finding

3 defendant in contempt of court; otherwise affirmed.