

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

LISA RENEE ERB,
Defendant-Appellant.

Multnomah County Circuit Court
120748490, 091053116;
A153709 (Control), A153710

Henry Kantor, Judge.

Submitted February 26, 2015.

Peter Gartlan, Chief Defender, and David Sherbo-Huggins, Deputy Public Defender, Office of Public Defense Services, filed the opening brief for appellant. Lisa Renee Erb filed a supplemental brief *pro se*.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Jeff J. Payne, Assistant Attorney General, filed the brief for respondent.

Before Duncan, Presiding Judge, and Lagesen, Judge, and Flynn, Judge.

PER CURIAM

In Case No. 091053116, reversed and remanded for resentencing; otherwise affirmed. In Case No. 120748490, affirmed.

PER CURIAM

In Case Number 091053116, defendant was convicted of failure to perform the duties of a driver and to reckless driving, both misdemeanors. ORS 811.140(3); ORS 811.700(2). On March 12, 2010, the trial court imposed two years of bench probation on each conviction, to run concurrently. Defendant was later found guilty of reckless driving in another case (Case No. 120748490), and the trial court in Case Number 091053116 extended defendant's probation on the two misdemeanor convictions until January 15, 2016, resulting in a period of probation exceeding five years. On appeal, defendant argues that the term of probation on each misdemeanor conviction was limited to five years, *see* ORS 137.010(3), (4), and that the trial court plainly erred in exceeding that term.

The state concedes that defendant's term of probation is plainly erroneous, and we accept the concession. We further conclude that it is appropriate to exercise our discretion to correct the error, for the reasons expressed in [*State v. Marks*](#), 227 Or App 634, 635, 206 P3d 1102 (2009). Accordingly, we reverse and remand for resentencing in Case Number 091053116, but otherwise affirm.¹

In Case No. 091053116, reversed and remanded for resentencing; otherwise affirmed. In Case No. 120748490, affirmed.

¹ We reject defendant's *pro se* supplemental assignment of error without discussion.