

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

SILVERIO LOPEZ-SILVA,
Defendant-Appellant.

Washington County Circuit Court
C131737CR; A157371

Eric Butterfield, Judge.

Submitted March 28, 2016.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Stephanie J. Hortsch, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Paul L. Smith, Deputy Solicitor General, and Patrick M. Ebbett, Assistant Attorney General, filed the brief for respondent.

Before Armstrong, Presiding Judge, and Egan, Judge, and Shorr, Judge.

PER CURIAM

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

PER CURIAM

Defendant was convicted of first-degree sexual abuse, ORS 163.427, and sentenced to 75 months of imprisonment and 10 years of post-prison supervision, minus time served. Among other terms, the trial court ordered defendant to pay \$1,858 in court-appointed attorney fees. On appeal, defendant raises two assignments of error. We reject his first assignment of error without written discussion. In his second assignment of error, defendant asserts the trial court erred in imposing attorney fees. Defendant acknowledges that he did not preserve his claim of error, but contends that we should exercise our discretion under ORAP 5.45(1) to correct the error because the trial court ordered him to pay those fees in the absence of evidence about his ability to pay. The state concedes that the trial court's imposition of attorney fees in this case constitutes plain error under our decision in *State v. Coverstone*, 260 Or App 714, 320 P3d 670 (2014) (holding that the imposition of court-appointed attorney fees is plain error where the record is silent as to the defendant's ability to pay the fees ordered). We agree that the trial court committed plain error, accept the state's concession, and conclude that it is appropriate to exercise our discretion to correct the error in this case for the reasons stated in *Coverstone*—*viz.*, the gravity of the error, the length of defendant's prison term, and the lack of any evidence of financial resources. *Id.* at 716-17.

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