

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

RANDY ALLEN MOORE,  
*Defendant-Appellant.*

Deschutes County Circuit Court  
14FE1395; A161200

Walter Randolph Miller, Jr, Judge.

Submitted August 30, 2017.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Meredith Allen, Deputy Public Defender, Office of Public Defense Services, filed the briefs for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Shannon T. Reel, Assistant Attorney General, filed the brief for respondent.

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

PER CURIAM

Reversed and remanded for resentencing.

## PER CURIAM

Defendant appeals a judgment of conviction for three counts of first-degree sexual abuse, ORS 163.427, assigning error to the trial court's imposition of a \$5,000 compensatory fine. Defendant argues that (1) the trial court erred in ordering the fine to be paid to the victim's mother when the record contains no evidence that the mother incurred economic damages that she could recover in a civil action, and (2) the trial court plainly erred in imposing a \$5,000 compensatory fine when it had imposed only a \$200 punitive fine, under ORS 161.625(1), on each count of first-degree sexual abuse. The state concedes that, under *State v. Nichols*, 281 Or App 658, 383 P3d 988 (2016), the trial court plainly erred in imposing the compensatory fine in addition to a separately imposed punitive fine of \$200 on each count. The state contends that the appropriate remedy is to remand the entire case for resentencing. We accept the state's concession and agree that the appropriate remedy is to remand for resentencing. We reject defendant's remaining contention without written discussion.

ORS 137.101(1) provides that,

“[w]henver the court imposes a fine as penalty for the commission of a crime resulting in injury for which the person injured by the act constituting the crime has a remedy by civil action, unless the issue of punitive damages has been previously decided on a civil case arising out of the same act and transaction, the court may order that the defendant pay any portion of the fine separately to the clerk of the court as compensatory fines in the case.”

As we explained in *State v. Moore*, 239 Or App 30, 34, 243 P3d 151 (2010), “ORS 137.101(1) does not itself authorize a court to impose a fine, compensatory or otherwise. \*\*\* What ORS 137.101(1) does is authorize the court to order the state to share a portion of any fine that the court imposes with the victim or victims of the crime of conviction.” Thus, it is plain error for a trial court to impose a compensatory fine *in addition to* a punitive fine imposed under ORS 161.625(1). *Id.* at 35; *Nichols*, 281 Or App at 660. Here, the trial court plainly erred in imposing a \$5,000 compensatory fine in addition to the \$200 punitive fines imposed for each count of

first-degree sexual abuse. And, for the same reasons articulated in *Nichols*, 281 Or App at 660, we exercise our discretion to correct the error.

We also agree with the state that, under these circumstances, the appropriate remedy is to remand the entire case for resentencing. Here, as in *Nichols*, the trial court made it clear that its intention was to impose a compensatory fine for the benefit of the victim, based on costs that had been incurred for counseling for the victim. Cf. *State v. Garlitz*, 287 Or App 372, 377, \_\_\_ P3d \_\_\_ (2017) (“amount of the compensatory fine need not be calibrated to—or limited to—the economic damages sustained by the victim” (footnote omitted)). Because defendant was convicted of three Class B felonies, the court was permitted to impose fines in the total amount that it did, see ORS 161.625(1)(c) (authorizing fine of up to \$250,000 for Class B felony conviction), and then order that all or a portion of the fines be paid to the victim pursuant to ORS 137.101(1). Under the circumstances, we conclude that the case should be remanded for resentencing.

Reversed and remanded for resentencing.