

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

MARK WILLIAM LARSON, II,
Defendant-Appellant.

Umatilla County Circuit Court
CR150908; A161754

Eva J. Temple, Judge.

Submitted September 29, 2017.

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

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Leigh A. Salmon, Assistant Attorney General, filed the brief for respondent.

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

PER CURIAM

Portion of judgment requiring defendant to pay a \$1,685 fine, a \$255 “State Obligation,” and a \$60 “Mandatory State Amt.” vacated; remanded for resentencing; otherwise affirmed.

PER CURIAM

Defendant appeals a judgment of conviction for driving under the influence of intoxicants (DUII). Among other terms, defendant's sentence included serving 60 days in county jail and an order to pay a \$1,685 fine, a \$255 "State Obligation," and a \$60 "Mandatory State Amt." On appeal, defendant raises four assignments of error. We reject defendant's first assignment of error without written discussion. In assignments of error two through four, defendant challenges the monetary penalties set out above.

At sentencing, the trial court announced that it was imposing against defendant a \$2,000 mandatory fine. See ORS 813.010(6) (setting out minimum fines for DUII convictions). In the judgment of conviction, the monetary penalties included a \$1,685 fine, a \$255 "State Obligation," and a \$60 "Mandatory State Amt.," which add up to \$2,000. Defendant argues that the trial court erred because the imposition of a \$2,000 statutory fine for a third or subsequent DUII conviction is not mandatory when the sentence includes time served in the county jail. See *State v Frier*, 264 Or App 541, 548, 333 P3d 1093 (2014) (so holding). Likewise, defendant argues, the court is permitted to waive all or part of a \$255 fee on a DUII conviction when the case involves an indigent defendant. See ORS 813.030. As a result, defendant argues that the trial court was required to consider his ability to pay before imposing either fine, which it failed to do. Finally, defendant argues that we should reverse the imposition of the \$60 "Mandatory State Amt." because the court was not authorized to impose it. See *State v. Lindemann*, 272 Or App 780, 781, 358 P3d 328, *rev den*, 358 Or 248 (2015) (reversing \$60 "mandatory state amount" because the court was not authorized to impose it as a separate fee). Defendant argues that we should reverse the monetary obligations with directions to impose the \$1,500 mandatory minimum fine that defendant recognizes would apply to his case under ORS 813.010(6)(b). Defendant acknowledges that he did not preserve his claim of error with respect to the \$2,000 fine announced in open court, but asks us to correct it as plain error, ORAP 5.45(1). The state concedes that the trial court plainly erred as argued by defendant but requests that we

vacate the monetary obligations and remand for the court to reconsider the fine to impose.

We agree with and accept the state's concession. The court plainly erred in imposing the \$1,685 and \$255 fines without exercising its discretion, and in imposing the \$60 "Mandatory State Amt." as a separate obligation. Considering the gravity of the error and the ends of justice, we conclude that it is appropriate to exercise our discretion to correct the error. We also agree with the state that, here, the appropriate disposition is to vacate all three fines and remand to the trial court to give it an opportunity to reconsider the appropriate fine to impose that is consistent with the law. *See Frier*, 264 Or App at 549-50.

Portion of judgment requiring defendant to pay a \$1,685 fine, a \$255 "State Obligation," and a \$60 "Mandatory State Amt." vacated; remanded for resentencing; otherwise affirmed.