

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

DARRELL SHAWN SMITH,  
*Defendant-Appellant.*

Multnomah County Circuit Court  
14CR32834; A159185

John A. Wittmayer, Judge.

On appellant's petition for reconsideration filed June 27, 2018. Opinion filed June 13, 2018. 292 Or App 335, 424 P3d 755.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Stacy M. Du Clos, Deputy Public Defender, Office of Public Defense Services, for petition.

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

PER CURIAM

Reconsideration allowed; former opinion modified and adhered to as modified.

**PER CURIAM**

Defendant seeks reconsideration of our decision in *State v. Smith*, 292 Or App 335, 424 P3d 755 (2018), in which we reversed defendant's conviction for unlawful possession of cocaine. We reversed the conviction on the ground that the trial court had applied an incorrect legal standard in ruling on defendant's suppression motion, and we remanded the case for the court to decide the suppression motion under the correct standard. *Id.* at 340-41.

Defendant contends in his reconsideration petition that we erred in our disposition of his appeal because we failed to properly account for the fact that his conviction was based on a conditional guilty plea under ORS 135.335(3). In his view, the proper disposition was for us to direct the trial court to allow defendant to withdraw his guilty plea and for the court to reconsider defendant's suppression motion under the correct legal standard if defendant withdraws his plea. We agree with defendant and modify our opinion accordingly.

Reconsideration allowed; former opinion modified and adhered to as modified.