

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

HEWAD NOORZAI,
Defendant-Appellant.

Washington County Circuit Court
D143973M; A159866

Eric Butterfield, Judge.

On appellant's motion to dismiss filed June 18, 2018, respondent's objection to motion and alternative motion to vacate opinion filed June 20, 2018, and appellant's reply filed June 21, 2018.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Erin J. Snyder Severe, Deputy Public Defender, Office of Public Defense Services, for motion.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Jennifer S. Lloyd, Assistant Attorney General, for response.

Before DeHoog, Presiding Judge, and Egan, Chief Judge, and Aoyagi, Judge.

PER CURIAM

Appeal dismissed; the court's opinion in *State v. Noorzai*, 292 Or App 248, ___ P3d ___ (2018), is vacated.

PER CURIAM

Following the issuance of our opinion in this case, *State v. Noorzai*, 292 Or App 248, ___ P3d ___ (2018), defendant moved to dismiss his appeal. In its response, the state objected to dismissal; the state alternatively moved on equitable grounds that we vacate our opinion. Defendant does not oppose vacatur. We agree that equitable considerations support vacatur in this case. *See Kerr v. Bradbury*, 340 Or 241, 247-50, 131 P3d 737, *adh'd to on recons*, 341 Or 200, 140 P3d 1131 (2006). Accordingly, we grant defendant's motion to dismiss his appeal and the state's motion to vacate the opinion.

Appeal dismissed; the court's opinion in *State v. Noorzai*, 292 Or App 248, ___ P3d ___ (2018), is vacated.