

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

GERRY LEE LUTCAVICH,
aka Jerry Lee Lutcavich,
Defendant-Appellant.

Umatilla County Circuit Court
CF150715; A163666

Christopher R. Brauer, Judge.

Submitted April 6, 2018.

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

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Robert M. Wilsey, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Garrett, Judge, and Powers, Judge.

PER CURIAM

Remanded for entry of judgment omitting the challenged provisions; otherwise affirmed.

PER CURIAM

Defendant was convicted of two counts of second-degree rape, and the trial court sentenced him to consecutive 75-month imprisonment sentences. What defendant challenges in this appeal are the judgment's instructions imposing a "sex offender package" (among other things, sex-offender treatment and registration; refrain from use or possession of nonprescription controlled substances, alcohol, and pornography; and no contact with the victim and the victim's daughter). Defendant argues that the court was not authorized to order conditions of an incarceration sentence, noting that only the Department of Corrections may do that.¹ See *State v. Langmayer*, 239 Or App 600, 601, 244 P3d 894 (2010) (sentencing court erred by imposing an instruction of no-contact with the victim). Further, defendant contends that the error is plain and asks us to exercise our discretion to correct it. See *State v. Hall*, 282 Or App 9, 10, 385 P3d 1225 (2016), *rev den*, 360 Or 752 (2017) (trial court plainly erred by including a no-contact provision in the judgment because court lacked authority to impose conditions of incarceration). The state concedes that the trial court plainly erred. We agree and accept the state's concession. Furthermore, we exercise our discretion to correct the error for the reasons we stated in *Hall. Id.* at 11 (lack of "competing interests of the parties" and sentencing a defendant "according to the law serves the ends of justice" weighed in favor of exercising plain error discretion).

Remanded for entry of judgment omitting the challenged provisions; otherwise affirmed.

¹ Defendant raises two assignments of error; the resolution of his first assignment obviates the need to address his second assignment.