

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

MICHAEL DAVID JEPSEN,
Defendant-Appellant.

Douglas County Circuit Court
15CR39407, 16CR49464, 16CR52000;
A163918 (Control), A163919, A163920

Frances Elaine Burge, Judge.

Submitted June 7, 2018.

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

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

Before Lagesen, Presiding Judge, and James, Judge, and Schuman, Senior Judge.

PER CURIAM

In Case Nos. 15CR39407 and 16CR49464, remanded for resentencing; otherwise affirmed. In Case No. 16CR52000, affirmed.

PER CURIAM

Defendant's probation was revoked in these cases that were consolidated for appeal. In Case No. 15CR39407, defendant was convicted of unauthorized use of a vehicle, ORS 164.135, and third-degree robbery, ORS 164.395, and he was sentenced to probation on each of those convictions. In Case No. 16CR49464, defendant was convicted of identity theft, ORS 165.800, and he was sentenced to probation.¹ Defendant's probation on all three offenses was revoked and, on each of the convictions, the sentencing court imposed a concurrent 58-month prison sentence, with 36 months' post-prison supervision.

Defendant assigns error to those sentences, arguing on appeal that the sentencing court plainly erred because the sentences exceed the maximum total sentence for those offenses, and he requests that we exercise our discretion to correct the unpreserved errors. Each sentence's total length is 94 months. Defendant's convictions are subject to a 60-month maximum indeterminate sentence of imprisonment. ORS 161.605(3). OAR 213-005-0002(4) provides that "[t]he term of post-prison supervision, when added to the prison term, shall not exceed the statutory maximum indeterminate sentence for" the offense. The state concedes that the sentences in Case Nos. 15CR39407 and 16CR49464 are erroneous "for the reason that defendant identifies," and it agrees that we should remand those cases for resentencing. We agree that the sentencing court plainly erred in imposing total sentences that exceed the 60-month maximum sentence for those convictions. *State v. Carter*, 272 Or App 161, 162, 354 P3d 764 (2015). We exercise our discretion to correct the error for the reasons expressed in *State v. Evans*, 281 Or App 771, 773, 383 P3d 444 (2016), *rev den*, 360 Or 752 (2017) (error would have significant effect on sentence, can be corrected with minimum of judicial resources, and state lacks interest in a defendant serving an unlawful sentence). Accordingly, we remand for resentencing.

¹ The probation violation cases were heard together. Defendant also appealed from the judgment in another case, Case No. 16CR52000, but he does not assign error to any aspect of that judgment. Accordingly, we affirm that judgment.

In Case Nos. 15CR39407 and 16CR49464, remanded for resentencing; otherwise affirmed. In Case No. 16CR52000, affirmed.