

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

DANIEL WYNE RHAMY,
Defendant-Appellant.

Clackamas County Circuit Court
CR1501798, 16CR64234;
A165294 (Control), A165295

Robert D. Herndon, Judge. (Judgment entered June 1, 2017)

Jeffrey S. Jones, Judge. (Judgment entered June 27, 2017)

Submitted September 7, 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 Peenesh Shah, Assistant Attorney General, filed the brief for respondent.

Before Lagesen, Presiding Judge, and DeVore, Judge, and James, Judge.

PER CURIAM

Remanded for resentencing; otherwise affirmed.

PER CURIAM

Defendant challenges a probation condition, imposed in each of these consolidated cases, that prohibits him from applying for or using a registry identification card pursuant to the Oregon Medical Marijuana Act (OMMA). He argues that, under ORS 137.542(2), the conditions of supervision for an OMMA registry cardholder “must be imposed in the same manner as the conditions of supervision of a person sentenced to probation related to prescription drugs,” and that the court’s unqualified prohibition on his participation in the OMMA—in the absence of any findings to justify that special condition—violates that statute. The state concedes that the trial court erred in imposing the condition and that, because it appeared for the first time in the judgments, ordinary preservation requirements are excused. We agree with the state in both respects, and we remand each case for resentencing.

Remanded for resentencing; otherwise affirmed.