

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Appellant,

v.

JOSEPH RICHARD VENTRIS,
Defendant-Respondent.

Columbia County Circuit Court
961155; A163907

Ted E. Grove, Judge.

Argued and submitted November 28, 2018.

Timothy A. Sylwester, Assistant Attorney General, argued the cause for appellant. Also on the brief were Ellen F. Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Jason E. Thompson argued the cause for respondent. Also on the brief was Ferder Casebeer French & Thompson, LLP.

Before Powers, Presiding Judge, and Egan, Chief Judge, and Landau, Senior Judge.*

EGAN, C. J.

Reversed and remanded.

* Egan, C. J., *vice* Garrett, J. pro tempore.

EGAN, C. J.

The state appeals a corrected judgment and sentencing order entered by the trial court in 2016 pursuant to *former* ORS 138.083 (2015), *repealed by* Or Laws 2017, ch 529, § 26, under which the court corrected a May 2000 judgment because it contained an “erroneous term.” For the reasons that follow, based on our decisions in *State v. Hubbard*, 290 Or App 640, 417 P3d 498, *rev den*, 363 Or 283 (2018), and *State v. Haynes*, 168 Or App 565, 7 P3d 623, *rev den*, 331 Or 283 (2000), we reverse and remand for the trial court to reinstate the May 2000 judgment.

Defendant was originally sentenced to life imprisonment following his conviction for felony murder, ORS 163.115(1)(b) (1995), as required by ORS 163.115(5). Defendant committed the crimes underlying the conviction in 1996, and the trial court imposed sentence and entered the judgment of conviction in 2000; the judgment was later affirmed in *State v. Ventriss*, 337 Or 283, 96 P3d 815 (2004).¹ In 2016, defendant moved to delete the life imprisonment term under *former* ORS 138.083 (2015), arguing that it was “erroneous” because it was unconstitutional under *State v. McLain*, 158 Or App 419, 974 P2d 727 (1999). Defendant also argued that the term was erroneous because the sentence was not imposed orally in defendant’s presence. The trial court granted defendant’s motion and deleted the term. The state appeals.

On appeal, the parties focus primarily on the constitutional issue. In *McLain*, we held that life sentences for murder under ORS 163.115 (1995) were unconstitutionally disproportionate in violation of Article I, section 16, of the Oregon Constitution, because, at the time of that decision, the statute did not authorize the Board of Parole and Post-Prison Supervision to parole persons convicted of murder. Thus, life sentences for murder were, in effect, “true life” sentences; meanwhile, the board *could* parole persons

¹ The Supreme Court affirmed the trial court’s merger of defendant’s convictions for felony murder, ORS 163.115(1)(b) (1995), and first-degree robbery, ORS 164.415, and the resulting imposition of one sentence rather than two consecutive sentences. *See Ventriss*, 337 Or at 296-97. The legal issues in *Ventriss* are unrelated to those in this appeal.

convicted of the more serious offense of aggravated murder, ORS 163.105 (1995). *McLain*, 158 Or App at 425. Relying on *McLain*, defendant argues that his life sentence for murder was unconstitutional, and therefore constitutes an “erroneous term” in the judgment under *former* ORS 138.083(1)(a) (2015).

We recently addressed and rejected an identical argument in *Hubbard*, a case that was decided while this appeal was pending. In *Hubbard*, the defendant argued, as in this case, that his life sentence for murder was unconstitutional under *McLain*, and therefore “erroneous.” In rejecting that view, we noted that the legislature in 1999 granted the board the same authority to parole persons convicted of murder that it had for persons convicted of aggravated murder. In *Haynes*, we held that the 1999 amendment could constitutionally be applied retroactively to convictions for murders committed before the bill’s adoption. Thus, the constitutional defect in “true life” sentences for murders committed before 1999 was “cured” by the 1999 legislation. *State v. Giles*, 254 Or App 345, 349-50, 293 P3d 1086 (2012). In short, even assuming that the defendant’s life sentence was an “erroneous term” at some point, it had ceased to be so.

The facts of this case are materially indistinguishable from those in *Hubbard*. Although defendant takes issue with the reasoning in *Haynes* and *Hubbard*, he has not argued that either decision was “plainly wrong” and should therefore be overruled. *State v. Civil*, 283 Or App 395, 406, 388 P3d 1185 (2017). Accordingly, we conclude that defendant’s argument is foreclosed under *Hubbard*, and we reject it without further discussion.

We briefly address what may have been a different basis for the trial court’s order correcting the judgment. When the trial court announced its ruling, it quoted language from the Supreme Court’s opinion in *Ventris*, 337 Or at 289-90, that described defendant’s sentence as “a single term of 25 years’ imprisonment without the possibility of parole, with lifetime post-prison supervision.” The trial court stated that “the issues before the court today have already been resolved by [*Ventris*]” and concluded that the language

describing defendant’s sentence “needs to be inserted into the judgment and that language [in the sentence] indicating that there was any sort of life sentence needs to be stricken.” *Ventris*, however, concerned an unrelated issue: whether the trial court correctly merged defendant’s murder and robbery convictions. The issues before the Supreme Court in *Ventris* had nothing to do with the validity of defendant’s life sentence for murder under ORS 163.115(5). To the extent that the trial court interpreted *Ventris*, which *affirmed* the trial court’s judgment including the life sentence, to require removal of that term, that was error.

Finally, as an alternative basis for affirmance, defendant argues that the trial court had authority under *former* ORS 138.083 (2015) to delete the life imprisonment term on the ground that the judgment should be corrected to match the sentence that was imposed orally. It is true that, when the trial court sentenced defendant in 2000, it orally imposed a sentence of 25 years imprisonment and failed to mention the mandatory life sentence under ORS 163.115(5); later, the court included the life imprisonment term in the written judgment.² Although defendant is correct that, in past cases, we have held that courts generally have discretion to correct written judgments under *former* ORS 138.083 (2015) that are inconsistent with orally imposed sentences, *see, e.g., State v. Dizick*, 285 Or App 1, 9, 395 P3d 945, *rev den*, 362 Or 281 (2017); *State v. Johnson*, 242 Or App 279, 285, 255 P3d 547, *rev den*, 350 Or 530 (2011), we have not held in any of those cases that courts may do so by deleting statutorily mandated terms, like the term at issue here. *See Johnson*, 242 Or App at 285 (implying that doing so would be error).

Reversed and remanded.

² Defendant did not assign error to the trial court’s oral omission of the life imprisonment term in a direct appeal.