

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

MONDONKILIBE LUMEN TCHADJA,
Defendant-Appellant.

Washington County Circuit Court
17CR10419; A165413

Beth L. Roberts, Judge.

Submitted August 9, 2019.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Mary M. Reese, 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 Lagesen, Presiding Judge, and Powers, Judge, and Kistler, Senior Judge.

PER CURIAM

Remanded for resentencing; otherwise affirmed.

PER CURIAM

Defendant, who was 24 years old at the time, had sexual intercourse with a 17-year-old, knowing that she was 17. For that conduct, the trial court convicted him of one count of sexual abuse in the second-degree, ORS 163.425, after a stipulated facts trial. On appeal, defendant contends that the trial court erred in four ways: (1) by denying his motion to suppress certain statements that he made to police officers; (2) by imposing a condition of probation requiring him to “bear financial responsibility as directed by the supervising officer for any counseling, therapy, treatment and medical costs incurred by the victim(s) as a result of [his] offense”; (3) by imposing a probation condition prohibiting him from living within three miles of the victim; and (4) by imposing a probation condition prohibiting him from having contact with females between the ages of 11 and 17 without the prior permission of his probation officer. For the reasons that follow, we remand for resentencing.

We reject without written discussion defendant’s contention that the trial court erred in denying his motion to suppress.

As for the probation condition ordering defendant to pay the victim’s counseling, therapy, treatment, and medical costs as directed by his probation officer, defendant contends that it is an unlawful delegation of the court’s sentencing authority and is invalid for that reason. Defendant points out that the condition gives the officer the job of determining at least part of the amount of restitution that defendant must pay the victim, even though the legislature placed that job—determining the amount of restitution—squarely on the shoulders of the sentencing court.¹ See ORS 137.106(1)

¹ Defendant points out that, previously, a different statutory provision appeared to authorize a probation condition comparable the one at issue here. ORS 137.540(4) previously provided:

“[T]he court may order the defendant to pay to the provider the reasonable cost of psychiatric or psychological treatment or other counseling services provided to the victim or victims and the victim’s family resulting from or related to the crime or crimes of which the defendant was convicted.”

See, e.g., ORS 137.540(4) (1985), amended by Or Laws 1993, ch 680, § 16. In *State v. Karussos*, 82 Or App 248, 251-52, 728 P2d 559 (1986), we relied on that provision to uphold a probation condition requiring a defendant to pay the victim’s counseling costs. The legislature, however, amended that provision in 1993, eliminating that source of authority. Or Laws 1993, ch 680, § 16.

(requiring sentencing court to determine amount of restitution); *State v. Davis*, 57 Or App 322, 325, 644 P2d 623 (1982) (sentencing court could not delegate authority to determine amount of restitution to probation officer); *State v. Rose*, 45 Or App 879, 883, 609 P2d 875 (1980) (sentencing court could not delegate authority to set amount of restitution to victim assistance officer). The state—correctly—concedes the issue. Accordingly, we accept the concession and remand for resentencing. See *State v. Bell*, 276 Or App 21, 31, 366 P3d 756 (2016) (remanding for resentencing upon determination that a condition of probation was not authorized). In view of this disposition, we do not reach defendant's remaining two challenges to the other identified conditions of probation. The challenges are not preserved, and the sentencing court will be in a better position to consider them in the first instance at resentencing, at which time the record may be developed further.

Remanded for resentencing; otherwise affirmed.