

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

AUBREY RICKETTS,
Defendant-Appellant.

Union County Circuit Court
17CR46024; A166922

Thomas B. Powers, Judge.

Submitted January 14, 2020.

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

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Philip Thoennes, Assistant Attorney General, filed the brief for respondent.

Before DeVore, Presiding Judge, and DeHoog, Judge, and Mooney, Judge.

PER CURIAM

Remanded for resentencing; otherwise affirmed.

PER CURIAM

Defendant was convicted after jury trial of driving under the influence of intoxicants (DUII), ORS 813.010, and resisting arrest, ORS 162.315. On appeal, she challenges the sufficiency of the evidence supporting the DUII conviction, and also argues that the trial court erred in imposing several conditions of probation. We reject without discussion defendant's challenge to her DUII conviction. With respect to the conditions of probation, the state concedes that the trial court erred in imposing conditions that effectively prohibited defendant from participating in the state's medical marijuana program. We accept the state's concession. Special conditions of probation concerning marijuana must contain an exception for marijuana use that complies with the state's medical marijuana laws. *See State v. Bowden*, 292 Or App 815, 818-19, 425 P3d 475 (2018) (court does not have discretion to impose special condition of probation that "runs counter to ORS 137.540(1)(b) and ORS 137.542").

The parties agree that the appropriate disposition in the current circumstance is to remand for resentencing. *See, e.g., State v. Miller*, 299 Or App 515, 517, 450 P3d 578 (2019), *rev den*, 366 Or 97 (2020) (explaining need for remand in such circumstances); *State v. Kilgore*, 295 Or App 602, 604-05, 435 P3d 817 (2019) (same).

Remanded for resentencing; otherwise affirmed.