

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

ROBERT CONNEL BINO,
Defendant-Appellant.

Washington County Circuit Court
17CR43966; A169461

Oscar Garcia, Judge.

Submitted June 29, 2020.

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

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Dashiell L. Farewell, Assistant Attorney General, filed the brief for respondent.

Before Armstrong, Presiding Judge, and Tookey, Judge, and Aoyagi, Judge.

PER CURIAM

Portion of judgment requiring defendant to pay attorney fees reversed; otherwise affirmed.

PER CURIAM

In this criminal appeal of a judgment of conviction for driving under the influence of intoxicants (DUII), ORS 813.010, defendant raises two assignments of error. In the first assignment, defendant argues that the trial court erred when it revoked his DUII diversion. That assignment is not reviewable. *State v. Merrill*, 311 Or App 487, ___ P3d ___ (2021); ORS 138.105(5). In the second assignment of error, defendant argues that the trial court erred in imposing \$400 in court-appointed attorney fees. We agree with defendant that the state did not meet its burden of establishing that he had the ability to pay attorney fees, ORS 151.505, ORS 161.665, and that the trial court erred in concluding otherwise. We reverse the attorney-fee award.

Portion of judgment requiring defendant to pay attorney fees reversed; otherwise affirmed.