

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

CODY MICHAEL GREEN,  
*Defendant-Appellant.*

Lane County Circuit Court  
15CR10743; A172027

Jay A. McAlpin, Judge.

Submitted July 23, 2021.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Sarah De La Cruz, 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 James, Presiding Judge, and Kamins, Judge, and Kistler, Senior Judge.

PER CURIAM

Affirmed.

**PER CURIAM**

Defendant appeals from a judgment entered after the termination of a failed driving under the influence of intoxicants diversion. The state responds that defendant's assignments of error are not reviewable on appeal in light of ORS 138.105(5). Defendant argues that they are reviewable despite the limitation on reviewability of guilty pleas in ORS 138.105(5), or that if unreviewable, that the statute violates equal protection. We have recently rejected similar arguments to those made by defendant in *State v. Merrill*, 311 Or App 487, 492 P3d 722 (2021), *adh'd to as modified on recons*, 314 Or App 460, \_\_\_ P3d \_\_\_ (2021), and *State v. Redick*, 312 Or App 260, 491 P3d 87 (2021). In light of *Merrill* and *Redick*, we affirm on the ground that the assignments of error are unreviewable, but we note that this issue is currently pending before the Oregon Supreme Court in *State v. Colgrove*, 308 Or App 441, 489 P3d 1026, *rev allowed*, 368 Or 347 (2021), and the decision there will likely affect this case.

Affirmed.