

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

CHRISTOPHER WALKER,
Defendant-Appellant.

Lake County Circuit Court
18CR59363; A173166

David M. Vandenberg, Judge.

Submitted June 29, 2021.

Kenneth A. Kreuscher filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Timothy A. Sylwester, Assistant Attorney General, filed the brief for respondent.

Before Lagesen, Presiding Judge, and James, Judge, and Kamins, Judge.

PER CURIAM

Affirmed.

PER CURIAM

Defendant appeals a judgment of conviction for sodomy in the first degree, arguing that the trial court erred in declining to order a presentence report as required by ORS 144.791(2) (mandating that a trial court “shall” order a presentence report in felony sex abuse cases absent an exception). The state responds that defendant’s sentence qualified for a statutory exception to that requirement because the offense for which defendant was convicted entails “a mandatory minimum prison sentence and no departure is sought by the court, district attorney or defendant.” ORS 144.791(2)(b). In the trial court, defendant did challenge the sentencing scheme as unconstitutional, but he did not seek a departure based on any fact specific to his crime or background. Because defendant did not seek a departure based on circumstances specific to him or his crime, the trial court was not obligated to order a presentence report under ORS 144.791(2)(b).

Defendant further argues that, although the verdict was unanimous, the trial court committed structural error in instructing the jury that it could return nonunanimous verdicts. That argument is foreclosed by *State v. Flores Ramos*, 367 Or 292, 294, 478 P3d 515 (2020).

Affirmed.