

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

DIONICII BASARGIN,
Defendant-Appellant.

Marion County Circuit Court
19CR82158; A174265

Courtland Geyer, Judge.

Submitted October 1, 2021.

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, Robert M. Wilsey, Assistant Attorney General, filed the brief for respondent.

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

PER CURIAM

Remanded for resentencing; otherwise affirmed.

PER CURIAM

Defendant asserts on appeal that the trial court erroneously relied on two Alaska convictions for fourth-degree assault to classify his criminal history score as category B. In defendant's view, the Alaska fourth-degree assault statute that he violated in 2001 and 2006 has been construed more broadly than this state's fourth-degree assault statute, ORS 163.160, and, because neither the accusatory instruments nor the judgments for the Alaska convictions demonstrated that the convictions matched the elements of the Oregon offense, the trial could not consider them when it classified defendant's criminal history. *See State v. Tapp*, 110 Or App 1, 4, 821 P2d 1098 (1991) (to rely on an out-of-state conviction in calculating a defendant's criminal history score, the state must demonstrate that the elements of the out-of-state offense would have constituted a felony or Class A misdemeanor under Oregon law); *State v. Provencio*, 153 Or App 90, 95, 955 P2d 774 (1998) ("[I]t was incumbent on the state to demonstrate by way of the accusation instrument and the judgment that defendant's [out-of-state] conviction in fact matched the elements of the Oregon offense[.]"). The state concedes the error; we agree and accept the concession. We therefore remand for resentencing.

Remanded for resentencing; otherwise affirmed.