

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

ANDREW JOSEPH VALENTI,
Defendant-Appellant.

Jefferson County Circuit Court
17CR69513; A173899

Annette C. Hillman, Judge.

Submitted January 24, 2022.

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

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Jonathan N. Schildt, Assistant Attorney General, filed the brief for respondent.

Before Tookey, Presiding Judge, and Aoyagi, Judge, and Sercombe, Senior Judge.

PER CURIAM

Remanded for resentencing; otherwise affirmed.

PER CURIAM

Defendant, who was convicted of unlawful delivery of a marijuana item, ORS 475B.356, appeals from a judgment revoking his probation and imposing a stipulated sentence of 60 months' imprisonment. The judgment also included a post-prison supervision term of 36 months. Defendant argues on appeal that the trial court plainly erred in imposing the 60-month stipulated sentence. We reject that argument as unreviewable. *State v. Davis-McCoy*, 300 Or App 326, 454 P3d 48 (2019). Defendant also argues that the trial court plainly erred in imposing the 36-month post-prison supervision term because that term, when added to the prison term, exceeds the maximum allowable sentence for the offense. See ORS 161.605 (describing maximum indeterminate sentences); OAR 213-005-0002(4) ("The term of post-prison supervision, when added to the prison term, shall not exceed the statutory maximum indeterminate sentence for the crime of conviction."). The state concedes that the error in the post-prison supervision term constitutes plain error and agrees that the case should be remanded for resentencing. We accept that concession and, for the reasons set forth in *State v. Cunningham*, 299 Or App 523, 525-26, 451 P3d 268 (2019), exercise discretion to correct the error.

Remanded for resentencing; otherwise affirmed.