

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

In the Matter of D. S.,
a Person Alleged to have Mental Illness.

STATE OF OREGON,
Respondent,

v.

D. S.,
Appellant.

Marion County Circuit Court
21CC03056; A176289

Matthew L. Tracey, Judge pro tempore.

Submitted December 3, 2021.

Alexander C. Cambier and Multnomah Defenders, Inc.,
filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman,
Solicitor General, and Jona J. Maukonen, Assistant Attorney
General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Shorr, Judge, and
Powers, Judge.

PER CURIAM

Reversed.

PER CURIAM

Appellant appeals a judgment committing him to the Oregon Health Authority for a period not to exceed 180 days based on a finding of mental illness. He asserts that the court plainly erred in committing him because the record contains no return of service or evidence that he had been served with the citation, as required by ORS 426.080 and ORS 426.090. The state agrees and concedes the error. We agree and accept the state's concession. ORS 426.090 requires the court to issue a citation that informs a person alleged to have a mental illness of specific rights, and ORS 426.080 specifies that the person serving the citation "shall, immediately after service thereof, make a return upon the original warrant or citation showing the time, place and manner of such service and file it with the clerk of the court." See *State v. J. R. W.*, 307 Or App 372, 475 P3d 138 (2020) (reversing similar error as plain error); *State v. R. E. J.*, 306 Or App 647, 474 P3d 461 (2020) (same). For the reasons set forth in *J. R. W.* and *R. E. J.*, we exercise our discretion to correct the error.

Reversed.