

FILED: February 1, 2012

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Appellant,

v.

CARRIE LYNN WILSON,
Defendant-Respondent.

Deschutes County Circuit Court
MI080152

A144705

Gary Lee Williams, Judge.

Argued and submitted on November 15, 2011.

Jennifer S. Lloyd, Attorney-in-Charge, Criminal Appeals, argued the cause for appellant. On the brief were John R. Kroger, Attorney General, David B. Thompson, Interim Solicitor General, and Denis M. Vannier, Assistant Attorney General.

Ingrid MacFarlane, Deputy Public Defender, argued the cause for respondent. With her on the brief was Peter Gartlan, Chief Defender, Office of Public Defense Services.

Before Ortega, Presiding Judge, and Brewer, Chief Judge, and Sercombe, Judge.

PER CURIAM

Reversed and remanded.

1 PER CURIAM

2 The state appeals from the trial court's dismissal with prejudice of
3 defendant's driving under the influence of intoxicants (DUII) charge, ORS 813.010
4 (2009),¹ on the ground that defendant had successfully completed diversion. We reverse
5 and remand.

6 On February 25, 2008, defendant entered a plea of guilty to the DUII
7 charge and simultaneously petitioned to enter into the DUII diversion program. The
8 court allowed the petition, accepted defendant's guilty plea, but withheld entry of a
9 judgment of conviction pending completion or termination of the diversion. The court
10 granted defendant until February 24, 2009, to complete diversion. Among other
11 requirements, the diversion agreement provided that defendant would pay a filing fee of
12 \$358, pay court-appointed attorney fees, and complete an alcohol evaluation and
13 treatment program at defendant's expense.

14 Defendant failed to pay the entire fee by February 24, 2009, and she did not
15 seek an extension of the diversion period. *See* ORS 813.225 (allowing a defendant to file
16 an application for a 180-day extension of the diversion period). On May 8, 2009, and
17 again on July 19, 2009, defendant was arrested for DUII. On August 11, 2009, the state
18 moved for an order requiring defendant to appear and show cause why the court should
19 not terminate defendant's diversion agreement. After the state filed its motion, but before
20 the show cause hearing, defendant paid the balance of the fee. At the show cause
21 hearing, defendant argued that she was indigent and the trial court should waive the

¹ All citations to ORS chapters 813 are to the 2009 version of the statutes.

1 diversion filing fee pursuant to ORS 813.210(2) (allowing the court to "waive all or part
2 of the filing fee in cases involving indigent defendants"). The trial court declined to
3 terminate the diversion agreement, determining that defendant's indigency excused her
4 failure to pay the fees by February 24, 2009, as required by the diversion agreement.
5 Ultimately, the court dismissed the DUII charge against defendant, concluding that she
6 had successfully completed diversion.

7 On appeal, the state asserts that, because defendant failed to pay all of the
8 court-ordered fees before the diversion period ended, the court had no choice but to
9 terminate her diversion agreement and enter her guilty plea. We agree.

10 In [*State v. Reed*](#), 241 Or App 47, 57-58, 249 P3d 557, *rev den*, 350 Or 574
11 (2011), we recently held that a defendant must pay the filing fee established for diversion
12 within the diversion period--including any extension period authorized by ORS 813.225.
13 If the defendant fails to do so, the trial court is required, pursuant to ORS 813.255(5)(a),
14 to enter the plea of guilty to the crime of DUII. *Id.* Because defendant failed to pay the
15 entire fee by the end of the diversion period, the same result must follow here.

16 Reversed and remanded.