

FILED: September 19, 2012

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

ANDREW HAMILTON DIMMICK,
Defendant-Appellant.

Linn County Circuit Court
11040566

A149106

John A. McCormick, Senior Judge.

Submitted on August 03, 2012.

Kenneth A. Kreuscher and Portland Law Collective, LLP, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Doug M. Petrina, Senior Assistant Attorney General, filed the brief for respondent.

Before Schuman, Presiding Judge, and Wollheim, Judge, and Nakamoto, Judge.

PER CURIAM

Remanded for resentencing; otherwise affirmed.

1 PER CURIAM

2 Defendant was convicted of fleeing or attempting to elude a police officer,
3 ORS 811.540(1)(b)(A). At sentencing, the trial court orally imposed the presumptive 18-
4 month probationary term for that felony offense. In the written judgment that followed,
5 however, the court imposed a 24-month probationary term. On appeal, defendant
6 contends that the correct term was 18 months because the court did not make any
7 findings to support an upward departure from the presumptive term. He further contends
8 that, because he had no notice or opportunity to object to the imposition of that longer,
9 erroneous term, ordinary preservation principles are no barrier to our review.

10 The state concedes (1) that ordinary preservation principles are inapposite,
11 because defendant had no opportunity to object to the sentencing error, *see* [State v.](#)
12 [Selmer](#), 231 Or App 31, 34, 217 P3d 1092 (2009), *rev den*, 347 Or 608 (2010) (exception
13 to preservation principles exists when "the error arose when the court issued its order or
14 judgment, and not earlier"); and (2) that, in the absence of findings justifying an upward
15 departure, the correct probationary term was 18 months, *see* OAR 213-005-0008(1) and
16 OAR 213-008-0001. We agree with the state's concession on both points, and we
17 therefore remand for resentencing.

18 Remanded for resentencing; otherwise affirmed.