

Filed: December 12, 2013

IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,

Respondent on Review,

v.

LEONARD LLOYD REINKE,

Petitioner on Review.

(CC 090130185; CA A144138; SC S059760)

On petitioner on review's petition for reconsideration filed October 7, 2013; considered and under advisement on November 19, 2013.

Ernest G. Lannet, Chief Deputy Defender, Office of Public Defense Services, Salem, filed the petition for reconsideration. With him on the petition was Peter Gartlan, Chief Defender.

No appearance *contra*.

Before Balmer, Chief Justice, and Kistler, Walters, Linder, and Landau, Justices.**

PER CURIAM

The petition for reconsideration is allowed. The former opinion is adhered to as modified.

*Appeal from Multnomah County Circuit Court, Richard C. Baldwin, Judge. 245 Or App 33, 260 P3d 820 (2011).

**Brewer and Baldwin, JJ., did not participate in the consideration or decision of this case.

1 PER CURIAM

2 Defendant has petitioned for reconsideration of our decision in *State v.*
3 *Reinke*, 354 Or 98, 309 P3d 1059 (2013), which affirmed the Court of Appeals decision
4 and the trial court's judgment. As defendant correctly notes, the Court of Appeals
5 decision affirmed the trial court's judgment in every respect except one. The Court of
6 Appeals "reversed and remanded [the trial court's judgment] for resentencing" because
7 count 15 of the indictment did not include a determinate and indeterminate term of
8 incarceration, but "otherwise affirmed" the judgment. *State v. Reinke*, 245 Or App 33,
9 34, 260 P3d 820 (2011). The state had conceded in the Court of Appeals that the trial
10 court had erred in not including a determinate and indeterminate term of incarceration on
11 count 15, and it did not challenge that aspect of the Court of Appeals decision on review.
12 We accordingly allow the petition for reconsideration and modify our disposition of this
13 case as follows: The Court of Appeals decision is affirmed. The judgment of the circuit
14 court is affirmed in part and reversed in part, and the case is remanded to the circuit court
15 for further proceedings.

16 The petition for reconsideration is allowed. The former opinion is adhered
17 to as modified.