

IN THE SUPREME COURT OF THE STATE OF OREGON

State of Oregon,
Plaintiff-Respondent,
Respondent on Review,

v.

Kristopher Jacob Freda,
Defendant-Appellant,
Petitioner on Review.

Oregon Court of Appeals
A179873

S071214

ORDER DISMISSING MOTIONS AND DENYING REVIEW

Upon consideration by the court.

The *pro se* ORAP 7.35 motions are dismissed.

The court has considered the petition for review and the supplemental *pro se* petition for review and orders that they both be denied.



Meagan A. Flynn
Chief Justice, Supreme Court
October 24, 2024

c: Stacy Du Clos
Timothy A Sylvester

ORDER DISMISSING MOTIONS AND DENYING REVIEW

Appellate Court Administrator, Appellate Court Records Section
1163 State Street, Salem, Oregon 97301-2563
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Appendix
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STATE OF OREGON, Plaintiff-Respondent,
v.
KRISTOPHER JACOB FREDA, Defendant-Appellant.

A179873

Court of Appeals of Oregon

June 5, 2024

This is a nonprecedential memorandum opinion pursuant to ORAP 10.30 and may not be cited except as provided in ORAP 10.30(1).

Submitted on April 24, 2024.

Washington County Circuit Court 21CR24980; Ricardo J. Menchaca, Judge.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Stacy M. Du Clos, Deputy Public Defender, Office of Public Defense Services, filed the opening brief for appellant. Kristopher Freda filed the supplemental brief *pro se*.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Timothy A. Sylvester, Assistant Attorney General, filed the brief for respondent.

Before Aoyagi, Presiding Judge, Joyce, Judge, and Jacquot, Judge.

Remanded for resentencing; otherwise affirmed.

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[333 Or.App. 123] PER CURIAM

Defendant was convicted of stalking, ORS 163.732 (2)(b) (Count 1); second-degree criminal trespass, ORS 164.245 (Count 2); witness tampering, ORS 162.285 (Count 3); and telephonic harassment, ORS 166.090 (Count 4). On appeal, defendant raises four assignments of error through counsel and six supplemental *pro se* assignments of error.^[1]

We reject the first assignment of error, challenging the denial of defendant's motion for a judgment of acquittal on Count 1, because we agree with the state that the evidence was legally sufficient to go to the jury. We reject the second assignment of error, challenging a jury instruction for the first time on appeal, because even if it was plain error to give that instruction, the error was harmless, or we would not exercise our discretion to correct it in these circumstances. We reject the third assignment of error,

asserting that the trial court should have *sua sponte* entered a judgment of acquittal on Count 3, because we agree with the state that it is not obvious and beyond reasonable dispute that the evidence was legally insufficient to go to the jury. As to the fourth assignment of error, defendant argues, the state concedes, and we agree, that the trial court erred by imposing 36 months of post-prison supervision on Count 1, which resulted in a combined total sentence in excess of the statutory maximum, and we exercise our discretion to correct that plain error.

Turning to the supplemental *pro se* assignments of error, we reject the first supplemental *pro se* assignment of error, asserting that the trial court should have *sua sponte* entered a judgment of acquittal on Count 4, because it is not obvious and beyond reasonable dispute that the evidence was legally insufficient to go to the jury. We reject

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[333 Or.App. 124] the second supplemental *pro se* assignment of error, challenging the court's decision not to give certain jury instructions requested by defendant regarding threatening speech, because the court was not legally required to give those instructions. We reject the third supplemental *pro se* assignment of error, challenging the admission of the victim's testimony regarding prior bad acts by defendant when the victim was a child, because it was not error to admit that evidence. We reject the fourth supplemental *pro se* assignment of error, in which defendant asserts for the first time on appeal that the court should have intervened when the prosecutor "intentionally misled the jury by falsely labeling the defendant's text messages to [the victim] as threats," because the prosecutor's statements in rebuttal closing argument were permissible and not cause for intervention by the court. We reject the fifth supplemental *pro se* assignment of error, in which defendant claims that the trial court erred in ordering him not to possess firearms, because we agree with the state that the court did not enter such an order. We reject the sixth supplemental *pro se* assignment of error, challenging for the first time on appeal the trial court's calculation of defendant's criminal history score as an "A," because defendant has failed to identify any obvious error in the trial court's calculation.

Remanded for resentencing; otherwise affirmed.

Notes:

¹⁴ Some of the claims of error raised on appeal were not preserved in the trial court. "Generally, an issue not preserved in the trial court will not be considered on appeal." *State v. Wyatt*, 331 Or. 335, 341, 15 P.3d 22 (2000). However, we have discretion to review for "plain" errors. ORAP 5.45(1). An error is "plain" when it is an error of law, the legal point is obvious and not reasonably in dispute, and the error is apparent on the record without having to choose among competing inferences. *State v. Vanomum*, 354 Or. 614, 629, 317 P.3d 889 (2013). It is a matter of discretion whether we will correct a plain error. *State v. Gomick*, 340 Or. 160, 166, 130 P.3d 780 (2006). We incorporate the plain-error standard when discussing unpreserved claims of error in the text.

State of Oregon vs Kristopher Jacob Freda, Case No. 21CR24980

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF
WASHINGTON

DEFENDANT

True Name: Kristopher Jacob Freda
Date Of Birth: 06/19/1985
Fingerprint Control No (FPN): JWAS221876888

Sex: Male
State Identification No (SID): 158676250R

HEARING

Proceeding Date: 09/27/2022
Judge: Ricardo J. Menchaca
Court Reporter: Recording, FTR

Defendant appeared in person and was in custody. The court determined that the defendant was indigent for purposes of court-appointed counsel, and the court appointed counsel for the defendant. The defendant was represented by Attorney(s) ADRIAN W SMITH, OSB Number 045143. Plaintiff appeared by and through Attorney(s) Pendrey Pauline Trammell, OSB Number 194675.

COUNT(S)

It is adjudged that the defendant has been convicted on the following count(s):

Count 1 : Stalking

Count number 1, Stalking, 163.732(2)(b), Felony Class C, committed on or about 04/24/2021. Conviction is based upon a Jury Verdict of Guilty on 09/15/2022.

Sentencing Guidelines

The Crime Severity Classification (CSC) on Count Number 1 is 8 and the Criminal History Classification (CHC) is A.

Incarceration

Defendant is sentenced to the custody of Oregon Dept of Corrections, for a period of 45 month(s). Defendant is remanded to the custody of the Washington Sheriff for transportation to the Oregon Dept of Corrections for service of this sentence. Defendant may receive credit for time served.

The Defendant may be considered by the executing or releasing authority for any form of reduction in sentence, temporary leave from custody, work release, or program of conditional or supervised release authorized by law for which the Defendant is otherwise eligible at the time of sentencing. The Defendant may not be considered for release on post-prison supervision under ORS 421.508(4) upon successful completion of an alternative incarceration program.

Post-Prison Supervision

The term of Post-Prison Supervision is 3 year(s). If the Defendant violates any of the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State Sentencing Guidelines Board. The court recommends as a condition of post-prison supervision:

- No contact with the victim(s) in this case.
- Participate in Mental Health Treatment Program.
- Participate in Substance Abuse Treatment Program.
- No contact with the victim's son or Baktun Calela Sulemma.

Statutory Provisions

Defendant is ordered to submit blood or buccal sample and thumbprint pursuant to ORS 137.076.

Monetary Terms

Defendant shall be required to pay the following amounts on this count:

Compensatory Fine/Restitution:

Restitution is ordered to be paid to the court and disbursed to the payee(s) named below.

Payee	Not To Exceed	Amount
-CRIMINAL INJURIES COMPENSATION ACCOUNT		\$2,149.98
Total		\$2,149.98

Count 2 : Criminal Trespass in the Second Degree

Count number 2, Criminal Trespass in the Second Degree, 164.245, Misdemeanor Class C, committed on or about 04/24/2021. Conviction is based upon a Jury Verdict of Guilty on 09/15/2022.

Incarceration

Defendant is sentenced to the custody of Oregon Dept of Corrections, for a period of 30 day(s). Defendant is remanded to the custody of the Washington County Sheriff for transportation to the Supervisory Authority for service of this sentence. Defendant may receive credit for time served.

The Defendant may be considered by the supervisory authority for any form of alternative sanction authorized by ORS 423.478, and the Defendant shall pay any required per diem fees.

This sentence shall be concurrent with the following cases served concurrent to Count 1 of this case..

Count 3 : Tampering with a Witness

Count number 3, Tampering with a Witness, 162.285, Felony Class C, committed on or about 04/24/2021. Conviction is based upon a Jury Verdict of Guilty on 09/15/2022.

Sentencing Guidelines

The Crime Severity Classification (CSC) on Count Number 3 is 6 and the Criminal History Classification (CHC) is A.

Incarceration

Defendant is sentenced to the custody of Oregon Dept of Corrections, for a period of 25 month(s). Defendant is remanded to the custody of the Washington Sheriff for transportation to the Oregon Dept of Corrections for service of this sentence. Defendant may receive credit for time served.

The Defendant may not be considered by the executing or releasing authority for any form of Reduction in Sentence, Conditional or Supervised Release Program, Temporary Leave From Custody, Work Release. The Defendant may not be considered for release on post-prison supervision under ORS 421.508(4) upon successful completion of an alternative incarceration program.

For the reasons stated on the record, this sentence shall be consecutive to the sentence(s) on the following cases: consecutive to Count 1 in this case.

Defendant is recommended for the following program(s) and/or treatment(s) while incarcerated:

- Good Behavior Credit (ORS 169.110)(Good Time)
- Work Credit (ORS 169.120)(Earned Time)

Post-Prison Supervision

The term of Post-Prison Supervision is 2 year(s). If the Defendant violates any of the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State Sentencing Guidelines Board.

Statutory Provisions

Defendant is ordered to submit blood or buccal sample and thumbprint pursuant to ORS 137.076.

Count 4 : Telephonic Harassment

Count number 4, Telephonic Harassment, 166.090, Misdemeanor Class B, committed on or about 04/24/2021. Conviction is based upon a Jury Verdict of Guilty on 09/15/2022.

Incarceration

Defendant is sentenced to the custody of Oregon Dept of Corrections, for a period of 6 month(s). Defendant is remanded to the custody of the Washington County Sheriff for transportation to the Supervisory Authority for service of this sentence. Defendant may receive credit for time served.

The Defendant may be considered by the supervisory authority for any form of alternative sanction authorized by ORS 423.478, and the Defendant shall pay any required per diem fees.

This sentence shall be concurrent with the following cases served concurrent with count 1 in this case.

Payment Schedule

Payment of the fines, fees, assessments, and/or attorney's fees noted in this and any subsequent Money Award shall be scheduled by the clerk of the court pursuant to ORS 161.675.

Payable to:

Washington County Circuit Court
150 N First Avenue
Hillsboro, Oregon 97124
P: 503-846-8888
F: <http://courts.oregon.gov/washington>

10/14/2022 9:51:57 AM

Dated the _____ day of _____, 20____

Circuit Court Judge, Ricardo Menchaca

Signed: _____
Ricardo J. Menchaca

CONSTITUTIONAL + STATUTES

U.S. Constitution 1st Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Constitution 8th Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Constitution 14th Amendment - Section 1

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 3582(c)(1)(A). Imposition of a sentence of imprisonment

(c) MODIFICATION OF AN IMPOSED TERM OF IMPRISONMENT.-The court may not modify a term of imprisonment once it has been imposed except that-

(1) in any case-

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that-