

COURT OF APPEALS OF OREGON

State v. McGowan

345 Or. App. 652 (2025) · No. A179480 · Decided December 17, 2025

SUMMARY

The Oregon Court of Appeals affirmed a judgment finding Robert Duane McGowan guilty except for insanity and committing him to the Oregon State Hospital and the jurisdiction of the Psychiatric Security Review Board. The court held that ORS 138.105(5) precluded appellate review of McGowan’s challenge to the validity of his guilty-except-for-insanity plea based on the trial court’s alleged failure to advise him about the possibility of conditional discharge. The court concluded that such a plea is a plea of guilty for purposes of the statute and that GEI proceedings are not special statutory proceedings.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	Powers, J.; Ortega, Presiding Judge; Powers, Judge; Hellman, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	December 17, 2025
DOCKET	A179480
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment entered after he pleaded guilty except for insanity, was found guilty except for insanity, was committed to the Oregon State Hospital, and was placed under the jurisdiction of the Psychiatric Security Review Board.
STANDARD OF REVIEW	Statutory interpretation is reviewed as a question of law. The court did not reach plain-error review because ORS 138.105(5) barred review of the challenge.
PRECEDENTIAL VALUE	published
PARTIES	Robert Duane McGowan, aka Robert D. McGown v. State of Oregon

TOPICS

- appellate procedure
- appellate jurisdiction
- statutory interpretation
- criminal procedure

PRACTICE AREAS

Oregon criminal appellate procedure

criminal procedure

statutory interpretation

guilty except for insanity proceedings

QUESTIONS PRESENTED

1. Whether ORS 138.105(5) precludes appellate review of a defendant's challenge to the validity of a guilty-except-for-insanity plea.
2. Whether a guilty-except-for-insanity plea is a plea of guilty for purposes of ORS 138.105(5).
3. Whether a guilty-except-for-insanity proceeding is a special statutory proceeding outside the reviewability limitations of ORS chapter 138.

HOLDINGS

1. A defendant's appeal from a guilty-except-for-insanity judgment is an appeal by a defendant governed by ORS 138.105, even though the judgment is appealable under ORS 161.327(8) and ORS 19.205(5).
2. A challenge based on the trial court's failure to advise a defendant, before accepting a guilty-except-for-insanity plea, of the possibility of commitment or conditional discharge challenges the validity of the plea.
3. A guilty-except-for-insanity plea is a plea of guilty for purposes of ORS 138.105(5), so the statute's prohibition on reviewing the validity of a defendant's guilty plea applies.
4. Proceedings under ORS 161.327 are criminal proceedings, not separate special statutory proceedings, and therefore are not excluded from ORS 138.105's reviewability limitations.

KEY QUOTATIONS

"Although ORS 161.327(8) authorizes defendant to appeal the order at issue, we must determine whether we have authority to review defendant's challenge." (654)

"Thus, based on the text and context of ORS 138.105, we conclude that defendant's challenge is an 'appeal by a defendant' that is governed by that statute." (656)

"Thus, ORS 161.295 'presupposes that the state has proved all elements of the crime, whatever they may be: the effect of proving a mental disease or defect is that the defendant is 'guilty except for insanity.''" (657)

"In short, based on the text, context, and legislative history of the relevant statutory framework, and cases that have construed the applicable statutes, we conclude that ORS 138.105 governs reviewability of GEI pleas." (659)

FACTUAL BACKGROUND

The state charged defendant with second-degree murder and unlawful use of a weapon. As part of plea negotiations, defendant pleaded guilty except for insanity to the murder charge, the state dismissed the weapons charge, and the trial court found defendant guilty except for insanity. The court committed defendant to the Oregon State Hospital and the jurisdiction of the Psychiatric Security Review Board for life.

PROCEDURAL HISTORY

The state charged defendant with second-degree murder and unlawful use of a weapon. Under a plea agreement, defendant pleaded guilty except for insanity to second-degree murder, the state dismissed the weapons charge, and the trial court found defendant guilty except for insanity, ordered commitment to the Oregon State Hospital, and placed him under the Psychiatric Security Review Board's jurisdiction for life. Defendant appealed, arguing that the trial court plainly erred by failing to advise him of the possibility of conditional discharge before accepting his plea.

DISPOSITION

affirmed

CASES CITED

- State v. Nix, 356 Or. 768, 772, 345 P.3d 416 (2015)
- State v. Merrill, 311 Or. App. 487, 489-90, 492 P.3d 722 (2021), adh'd to as modified on reconsideration, 314 Or. App. 460, 495 P.3d 219 (2021)
- State v. Gaines, 346 Or. 160, 171-73, 206 P.3d 1042 (2009)
- State v. Gile, 161 Or. App. 146, 155, 985 P.2d 199 (1999)
- Stelts v. State of Oregon, 299 Or. 252, 701 P.2d 1047 (1985)
- State v. Olmstead, 310 Or. 455, 463-64, 800 P.2d 277 (1990)
- State v. Reese, 156 Or. App. 406, 410, 967 P.2d 514 (1998)
- State v. Colgrove, 370 Or. 474, 492, 521 P.3d 456 (2022)
- State v. Threet, 294 Or. 1, 5, 653 P.2d 960 (1982)
- Garganese v. Department of Justice, 318 Or. 181, 185-86, 864 P.2d 364 (1993)
- State v. Gangi, 66 Or. App. 582, 583-84, 675 P.2d 181 (1984)
- State v. Orans, 56 Or. App. 681, 684, 642 P.2d 1197 (1982)
- Mueller v. Benning, 314 Or. 615, 619, 841 P.2d 640 (1992)

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