

COURT OF APPEALS OF OREGON

State v. Cunningham

345 Or. App. 546 (2025) · No. A184370 · Decided December 10, 2025

SUMMARY

The Oregon Court of Appeals held that the trial court improperly relied on a probation officer-imposed curfew violation as a basis for revoking the defendant's probation. Because the record did not establish that the trial court would have revoked probation based solely on the defendant's failure to report, the court could not determine that the error was harmless. The revocation judgment was vacated and remanded for the trial court to reconsider its discretionary decision.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	O'Connor, J.; Shorr, Presiding Judge; Powers, Judge; O'Connor, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	December 10, 2025
DOCKET	A184370
DISPOSITION	vacated
PROCEDURAL POSTURE	Defendant appealed a judgment revoking his probation. The state conceded that the trial court erred by relying on a curfew violation as a basis for revocation, but argued that the error was harmless because the court also found that defendant failed to report to his probation officer.
STANDARD OF REVIEW	The appellate court will affirm a probation-revocation judgment only if it can determine that the defendant was not prejudiced by the trial court's error. The applicable standard is whether there is little likelihood that the error affected the outcome of the probation-revocation proceeding.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Noah Tyler Cunningham v. State of Oregon

TOPICS

- probation
- criminal procedure
- harmless error
- appellate procedure
- standard of review

PRACTICE AREAS

criminal law

probation

appellate practice

QUESTIONS PRESENTED

1. Whether the trial court improperly treated defendant's failure to comply with a probation officer's curfew directive as a violation of the general probation condition requiring him to report as required and abide by the supervising officer's direction.
2. Whether the trial court's erroneous curfew-violation finding was nonprejudicial because the court also found that defendant failed to report to his probation officer.

HOLDINGS

1. A probationer's failure to comply with a probation officer's curfew or other directive unrelated to the obligation to report as required does not violate the general probation condition requiring the probationer to report as required and abide by the supervising officer's direction.
2. The error was not shown to be harmless because the record did not establish that there was little likelihood that the erroneous curfew finding affected the trial court's discretionary decision to revoke probation.

KEY QUOTATIONS

"We will affirm a judgment revoking probation only if we can determine that the defendant was not prejudiced by the trial court's error." (547)

"A defendant is not prejudiced if there is "little likelihood" that the trial court's error affected the outcome of the probation revocation proceeding." (547)

"Thus, we remand the revocation judgment to the trial court for the court to exercise its discretion with a correct understanding of the probation violations before it." (551)

FACTUAL BACKGROUND

Defendant was required to report in person to his probation officer at 7:00 a.m. on February 20, 2025, but did not appear because he was stranded in a nearby town without transportation. He later contacted his supervising officer and reported the following day. The probation officer alleged several probation violations, including failure to report and violations based on defendant's absence from his approved residence. The trial court found that defendant violated a curfew directive in an agreed action plan, also noted the failure to report, revoked probation, and imposed imprisonment and post-prison supervision.

PROCEDURAL HISTORY

The Curry County Circuit Court found defendant in violation of probation, revoked probation, and imposed 13 months in prison followed by two years of post-prison supervision. The Oregon Court of Appeals held that one alleged violation—the failure to return to an approved residence before curfew—was legally impermissible and

that the record did not establish that the error was nonprejudicial. The court vacated and remanded for the trial court to reconsider revocation based on a correct understanding of the violations.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The trial court must reconsider and exercise its discretion to revoke probation using a correct understanding of which probation violations were legally established. The court may reinstate the revocation judgment after reconsideration.

CASES CITED

- State v. Hardges, 294 Or. App. 445, 432 P.3d 268 (2018)
- State v. Dowty, 299 Or. App. 762, 452 P.3d 983 (2019), rev. den., 366 Or. 259 (2020)
- State v. Kelemen, 296 Or. App. 184, 437 P.3d 1225 (2019)
- State v. Adams, 302 Or. App. 730, 462 P.3d 761 (2020)
- State v. Rivera-Waddle, 279 Or. App. 274, 379 P.3d 820 (2016)
- State v. Milnes, 256 Or. App. 701, 301 P.3d 966 (2013)
- State v. Monroe, 275 Or. App. 563, 365 P.3d 140 (2015)
- State v. Stutte, 339 Or. App. 87, 99 n. 7, 568 P.3d 247 (2025)