

COURT OF APPEALS OF OREGON

State of Oregon v. Sage Bruce Butler

346 Or. App. 187 (2025) · No. A177563 · Decided December 31, 2025

SUMMARY

The Oregon Court of Appeals held that a trial judge’s nonbinding advice concerning a tentative plea agreement was not a ruling on a petition, demurrer, or motion under ORS 14.260(3). The defendant’s motion to change judge therefore was improperly denied on timeliness grounds. The court vacated the judgment and remanded for further proceedings, while rejecting or declining to reach the defendant’s other assignments of error as presented.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	Powers, Presiding Judge; Hellman, Judge; Armstrong, Senior Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	December 31, 2025
DOCKET	A177563
DISPOSITION	vacated
PROCEDURAL POSTURE	Defendant appealed from a judgment of conviction and challenged the denial of his motions to disqualify the trial judge after the judge rejected a tentative plea agreement and advised the parties about a disposition the judge might accept.
STANDARD OF REVIEW	Errors of law, because the appeal required construction of ORS 14.260 and ORS 135.432.
PRECEDENTIAL VALUE	Published Oregon Court of Appeals opinion
PARTIES	Sage Bruce Butler v. State of Oregon

TOPICS

- criminal procedure
- plea bargaining
- statutory interpretation
- appellate procedure
- due process

PRACTICE AREAS

- criminal procedure
- plea bargaining
- judicial disqualification
- statutory interpretation
- appellate procedure

QUESTIONS PRESENTED

1. Whether a trial judge's nonbinding advice about whether the judge would concur in a tentative plea agreement constitutes a ruling on a petition, demurrer, or motion that bars a later motion to disqualify the judge under ORS 14.260(3).
2. Whether the State could affirm the denial of the motion to change judge on the alternative ground that the trial judge had previously ruled on a protective-order motion.
3. What disposition was appropriate after the trial court incorrectly treated the motion to change judge as untimely and therefore did not reach the motion's merits.

HOLDINGS

1. A trial judge's nonbinding advice about whether the judge would accept a tentative plea and sentencing agreement is not a ruling on a petition, demurrer, or motion within the meaning of ORS 14.260(3). Therefore, the advice did not preclude defendant's motion to change judge.
2. The court declined to affirm on the State's alternative argument that the trial judge's earlier protective-order ruling barred the motion to change judge.
3. The proper disposition was to vacate the judgment and remand for further proceedings rather than reverse the convictions and order a new trial before a different judge.

KEY QUOTATIONS

“We conclude that when a judge provides the parties with nonbinding advice about whether the judge would accept a tentative plea and sentencing agreement, the legislature did not intend that to be considered a ruling on a petition, motion, or demurrer within the meaning of ORS 14.260(3).” (195-196)

“The nonbinding tentative-plea advice was not a ruling precluding a change of judge under ORS 14.260.” (196)

“For those reasons, we conclude that defendant’s motion to change judge should not have been denied on the basis that the trial court had ruled on a petition, demurrer, or motion in relation to the court’s discussion about whether it anticipated concurring with the plea agreement.” (200)

FACTUAL BACKGROUND

Before trial, defendant and the State reached a tentative plea agreement under which defendant would plead guilty to one count of first-degree rape and three counts of first-degree sexual abuse, with consecutive sentences totaling approximately 27 to 34.5 years. During a pre-plea conference, the trial judge rejected the agreement, criticized its treatment of defendant's conduct and the harm to the victim, and expressed skepticism about the psychosexual evaluation's assessment of defendant's risk of reoffending. The judge then stated that she would accept a different agreement involving two rape counts and two first-degree sexual-abuse counts. After the parties proceeded to trial, defendant was convicted and sentenced to more than 70 years in prison.

PROCEDURAL HISTORY

A Lincoln County grand jury indicted defendant on multiple counts of first-degree rape, first-degree sexual abuse, unlawful delivery of a marijuana item, and incest. Before trial, the trial judge rejected a tentative plea agreement and suggested different terms that would be acceptable. Defendant entered not-guilty pleas and moved to change judges, but the presiding judge denied the motion as untimely under ORS 14.260(3). Defendant was tried before the same judge, convicted of the submitted charges, and sentenced to more than 70 years in prison. The Oregon Court of Appeals held that the timeliness ruling was legally erroneous, vacated the judgment, and remanded for further proceedings on the motion to change judge and related issues.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remand for further proceedings on defendant's motion to change judge, including any challenge by the trial judge or presiding judge to the good faith of the affidavit and any resulting hearing before a disinterested judge. Defendant may also present additional arguments concerning recusal, including arguments previously cut off by the erroneous timeliness ruling.

CASES CITED

- State v. Gaines, 346 Or. 160, 206 P.3d 1042 (2009)
- PGE v. Bureau of Labor and Industries, 317 Or. 606, 859 P.2d 1143 (1993)
- Comcast Corp. v. Department of Revenue, 356 Or. 282, 337 P.3d 768 (2014)
- Outdoor Media Dimensions Inc. v. State of Oregon, 331 Or. 634, 659-660, 20 P.3d 180 (2001)