

COURT OF APPEALS OF OREGON

Lutcavich v. Pedro

346 Or. App. 1 (2025) · No. A184752 · Decided December 24, 2025

SUMMARY

The Oregon Court of Appeals affirmed the denial of post-conviction relief to a petitioner convicted of two counts of second-degree rape. Applying the standard governing Balfour submissions, the court concluded that the record disclosed no arguably meritorious issues, including claims concerning post-conviction counsel's performance and alleged trial-counsel deficiencies.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	Lagesen, C. J.; Lagesen, Chief Judge; Egan, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	December 24, 2025
DOCKET	A184752
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed a judgment of the Umatilla County Circuit Court denying post-conviction relief. Appointed appellate counsel filed a Balfour brief containing a Section B, and the Court of Appeals reviewed the record to determine whether any arguably meritorious issues required supplemental briefing.
STANDARD OF REVIEW	For a Balfour submission, the court asks whether the record—not the briefing—discloses any arguably meritorious issue requiring supplemental briefing.
PRECEDENTIAL VALUE	Published
PARTIES	Gerry Lee Lutcavich v. David Pedro, Superintendent, Eastern Oregon Correctional Institution

TOPICS

- post-conviction relief
- appellate procedure
- standard of review
- ineffective assistance
- criminal procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. What standard governs appellate review of a Balfour brief and whether the record disclosed any arguably meritorious issue requiring supplemental briefing.
2. Whether alleged deficient performance by post-conviction counsel constituted a ground for post-conviction relief.
3. Whether petitioner's remaining claims presented arguably meritorious issues when they were not supported by the record.

HOLDINGS

1. In reviewing a Balfour submission, the court determines whether the record, rather than the briefing, discloses any arguably meritorious issue requiring supplemental briefing.
2. Alleged deficient performance by post-conviction counsel is not itself a ground for post-conviction relief under ORS 138.530(1)(a).
3. Because petitioner did not bring his complaint about post-conviction counsel's failure to raise a ground for relief before the post-conviction court through a Church motion, the record presented no arguably meritorious issue concerning whether the court should have directed counsel to act.
4. The remaining claims did not present arguably meritorious issues because they were not supported by the record.

KEY QUOTATIONS

“The applicable standard of review for Balfour submissions, however, is “whether the record—not the briefing—discloses any ‘arguably meritorious’ issues for the court’s review, such that the court must order supplemental briefing to address the arguably meritorious issue.”” (346 Or. App. at 3)

“petitioner's post-conviction counsel’s allegedly deficient performance is not itself a ground for post-conviction relief.” (346 Or. App. at 3)

FACTUAL BACKGROUND

Petitioner was indicted on four counts of second-degree rape. The trial court entered a judgment of acquittal on one count, the jury acquitted petitioner on another, and the jury convicted him on two counts, for which he received consecutive 75-month sentences. In post-conviction proceedings, petitioner alleged that trial counsel was ineffective in handling discovery and witnesses, the use of a stun vest and restraints, and suppression of statements to investigating officers. On appeal, petitioner also challenged the performance of post-conviction counsel and renewed some trial-counsel arguments.

PROCEDURAL HISTORY

Petitioner was convicted of two counts of second-degree rape after the trial court granted judgment of acquittal on one count and the jury acquitted him on another. He received two consecutive 75-month prison sentences.

The post-conviction court denied relief, finding that petitioner's ineffective-assistance claims were unsupported by the record and that petitioner failed to establish prejudice. The Court of Appeals affirmed after finding no arguably meritorious issue in the Balfour submission.

DISPOSITION

affirmed

CASES CITED

- State v. Balfour, 311 Or. 434, 814 P.2d 1069 (1991)
- State v. Hernandez-Camacho, 343 Or. App. 654, 656, 578 P.3d 1234 (2025)
- State v. Dempsey, 340 Or. App. 156, 167, 570 P.3d 646 (2025)
- Church v. Gladden, 244 Or. 308, 417 P.2d 993 (1966)
- Bogle v. State, 363 Or. 455, 473, 423 P.3d 715 (2018)
- Walton v. Myrick, 301 Or. App. 740, 744-45, 459 P.3d 250, rev. denied, 366 Or. 692 (2020)