

COURT OF APPEALS OF OREGON

Charlemagne v. Board of Parole and Post-Prison Supervision

347 Or. App. 769 (2026) · No. A183595 · Decided March 18, 2026

SUMMARY

The Oregon Court of Appeals held that the Board of Parole and Post-Prison Supervision lacked substantial evidence and substantial reason for deferring Antonio Alejandro Charlemagne’s projected parole release date based on a present severe emotional disturbance. The court concluded that a diagnosis of antisocial personality traits, without a diagnosis of a personality disorder, did not satisfy the prerequisite for a present severe emotional disturbance finding under ORS 144.125(3) (1983). The court reversed and remanded with directions to reinstate Charlemagne’s release date; the concurrence discussed, but declined to overrule, longstanding precedent concerning the statutory requirement.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	Kamins, J.; Tookey, Presiding Judge; Lagesen, Chief Judge; Kamins, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	March 18, 2026
DOCKET	A183595
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for judicial review of a final order of the Oregon Board of Parole and Post-Prison Supervision deferring petitioner's projected parole release date for 24 months.
STANDARD OF REVIEW	The court reviewed the board's order for legal error, substantial evidence, and substantial reason. Substantial evidence exists when the record viewed as a whole would permit a reasonable person to make the finding; substantial reason requires a rational connection between the facts and the legal conclusions. The court deferred to reasonable inferences but did not reweigh the evidence.
PRECEDENTIAL VALUE	Published precedential opinion of the Oregon Court of Appeals
PARTIES	Antonio Alejandro Charlemagne v. Board of Parole and Post-Prison Supervision

TOPICS

judicial review of agency action

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the board's finding that petitioner suffered from a present severe emotional disturbance was supported by substantial evidence and substantial reason when the psychological evaluation diagnosed only antisocial personality traits and not a personality disorder.
2. Whether the board could treat the evaluation as diagnosing an unspecified personality disorder even though the report did not identify that diagnosis.
3. Whether the court should overrule precedent requiring a psychiatric or psychological diagnosis of a disorder as a prerequisite to a PSED finding under ORS 144.125(3).
4. Whether petitioner was entitled to reinstatement of his release date after the board's PSED finding was invalid.

HOLDINGS

1. A psychiatric or psychological diagnosis of a disorder is a prerequisite to the board's determination that a prisoner suffers from a PSED under ORS 144.125(3). A diagnosis of antisocial personality traits, without a diagnosis of a personality disorder, is insufficient by itself.
2. The board's order lacked substantial evidence and substantial reason because it identified antisocial personality traits as the diagnosis supporting the PSED finding, while the underlying report stated that petitioner could not be diagnosed with a personality disorder.
3. The court declined to overrule its precedent because the board did not establish that the precedent was plainly wrong, a rigorous standard satisfied only in exceptional circumstances.
4. Petitioner was entitled to reinstatement of the release date associated with the sentence at issue because the board had no valid basis to defer it.

KEY QUOTATIONS

"In other words, while personality traits may be a necessary component of a disorder, they do not, standing alone, constitute a disorder." (772-773)

"The PSED finding was thus not supported by substantial evidence and substantial reason." (773)

"In order to overrule our precedents, we must be convinced that those cases are "plainly wrong," which is "a rigorous standard, satisfied only in exceptional circumstances." (775)

"We therefore reverse and remand with directions to reinstate petitioner's release date." (776)

FACTUAL BACKGROUND

Petitioner was convicted in 1985 of murdering his mother and assaulting his father and received a life sentence with the possibility of parole. The board repeatedly postponed his projected release date based on findings that he suffered from a present severe emotional disturbance (PSED) rendering him dangerous. In the most recent forensic evaluation, Dr. Millkey diagnosed antisocial personality traits, cannabis use disorder, and alcohol use disorder, but expressly stated that petitioner did not clearly meet the criteria for a personality disorder and opined that his future violence risk could be managed in the community.

PROCEDURAL HISTORY

The board determined that petitioner suffered from a present severe emotional disturbance that rendered him dangerous to the health or safety of the community and deferred his parole release date. After the board denied administrative review, petitioner sought judicial review in the Oregon Court of Appeals. The court reversed and remanded, directing the board to reinstate petitioner's release date.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse and remand with directions to reinstate petitioner's release date.

CASES CITED

- Weidner v. Armenakis, 154 Or. App. 12, 959 P.2d 623 (1998) (en banc), withdrawn by order, reaffirmed in Merrill v. Johnson, 155 Or. App. 295, 964 P.2d 284 (1998), rev. den., 328 Or. 40 (1998)
- Merrill v. Johnson, 155 Or. App. 295, 964 P.2d 284 (1998), rev. den., 328 Or. 40, 977 P.2d 1170 (1998)
- Morrison v. Board of Parole, 277 Or. App. 861, 863, 374 P.3d 948 (2016), rev. den., 360 Or. 465 (2016)
- Jenkins v. Board of Parole, 356 Or. 186, 195, 335 P.3d 828 (2014)
- Mendacino v. Board of Parole, 287 Or. App. 822, 834, 404 P.3d 1048 (2017), rev. den., 362 Or. 508 (2018)
- Ross v. Springfield School District No. 19, 294 Or. 357, 370, 657 P.2d 188 (1982)
- State v. Meighan, 324 Or. App. 136, 150, 525 P.3d 78 (2023), rev. den., 371 Or. 175 (2023)
- Christenson v. Thompson, 176 Or. App. 54, 59, 31 P.3d 449 (2001)
- Newcomb v. Thompson, 176 Or. App. 167, 168, 33 P.3d 319 (2001)
- Washington v. Board of Parole, 294 Or. App. 497, 499, 432 P.3d 372 (2018)
- State v. Civil, 283 Or. App. 395, 417, 388 P.3d 1185 (2017)
- Engwiler v. Persson / Department of Corrections, 354 Or. 549, 559 n. 6, 316 P.3d 264 (2013)
- Porter v. Board of Parole, 281 Or. App. 237, 245, 383 P.3d 427 (2016), rev. den., 361 Or. 100 (2017)
- Rivas v. Persson, 256 Or. App. 829, 835-36, 304 P.3d 765 (2013), rev. dismissed, 354 Or. 841 (2014)
- PGE v. Bureau of Labor and Industries, 317 Or. 606, 859 P.2d 1143 (1993)
- State v. Gaines, 346 Or. 160, 206 P.3d 1042 (2009)

- Weidner v. Armenakis, 327 Or. 317, 966 P.2d 220 (1998)
- State v. Hubbell, 314 Or. App. 844, 848, 500 P.3d 728 (2021), aff'd, 371 Or. 340 (2023)
- State v. Herried, Gray & Clagget, 3 Or. App. 462, 464, 474 P.2d 358 (1970)

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