

Enrolled
House Bill 2224

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

CHAPTER

AN ACT

Relating to remands of criminal cases from appellate courts; creating new provisions; and amending ORS 138.222.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 138.222 is amended to read:

138.222. (1) Notwithstanding the provisions of ORS 138.040 and 138.050, a sentence imposed for a judgment of conviction entered for a felony committed on or after November 1, 1989, may be reviewed only as provided by this section.

(2) Except as otherwise provided in subsection (4)(c) of this section, on appeal from a judgment of conviction entered for a felony committed on or after November 1, 1989, the appellate court may not review:

(a) Any sentence that is within the presumptive sentence prescribed by the rules of the Oregon Criminal Justice Commission.

(b) A sentence of probation when the rules of the Oregon Criminal Justice Commission prescribe a presumptive sentence of imprisonment but allow a sentence of probation without departure.

(c) A sentence of imprisonment when the rules of the Oregon Criminal Justice Commission prescribe a presumptive sentence of imprisonment but allow a sentence of probation without departure.

(d) Any sentence resulting from a stipulated sentencing agreement between the state and the defendant which the sentencing court approves on the record.

(e) Except as authorized in subsections (3) and (4) of this section, any other issue related to sentencing.

(3) In any appeal from a judgment of conviction imposing a sentence that departs from the presumptive sentence prescribed by the rules of the Oregon Criminal Justice Commission, sentence review is limited to whether the sentencing court's findings of fact and reasons justifying a departure from the sentence prescribed by the rules of the Oregon Criminal Justice Commission:

(a) Are supported by the evidence in the record; and

(b) Constitute substantial and compelling reasons for departure.

(4) In any appeal, the appellate court may review a claim that:

(a) The sentencing court failed to comply with requirements of law in imposing or failing to impose a sentence;

(b) The sentencing court erred in ranking the crime seriousness classification of the current crime or in determining the appropriate classification of a prior conviction or juvenile adjudication for criminal history purposes; or

(c) The sentencing court erred in failing to impose a minimum sentence that is prescribed by ORS 137.700 or 137.707.

(5)(a) The appellate court may reverse or affirm the sentence. If the appellate court concludes that the trial court's factual findings are not supported by evidence in the record or do not establish substantial and compelling reasons for a departure, it shall remand the case to the trial court for resentencing. If the appellate court determines that the sentencing court, in imposing a sentence in the case, committed an error that requires resentencing, the appellate court shall remand the entire case for resentencing. The sentencing court may impose a new sentence for any conviction in the remanded case.

(b) If the appellate court, in a case involving multiple counts of which at least one is a felony, reverses the judgment of conviction on any count and affirms other counts, the appellate court shall remand the case to the trial court for resentencing on the affirmed count or counts.

(6) The appellate court shall issue a written opinion whenever the judgment of the sentencing court is reversed and may issue a written opinion in any other case when the appellate court believes that a written opinion will provide guidance to sentencing judges and others in implementing the sentencing guidelines adopted by the Oregon Criminal Justice Commission provided that the appellate courts may provide by rule for summary disposition of cases arising under this section when no substantial question is presented by the appeal.

(7) Either the state or the defendant may appeal a judgment of conviction based on the sentence for a felony committed on or after November 1, 1989, to the Court of Appeals subject to the limitations of chapter 790, Oregon Laws 1989. The defendant may appeal under this subsection only upon showing a colorable claim of error in a proceeding if the appeal is from a proceeding in which:

(a) A sentence was entered subsequent to a plea of guilty or no contest;

(b) Probation was revoked, the period of probation was extended, a new condition of probation was imposed, an existing condition of probation was modified or a sentence suspension was revoked; or

(c) A sentence was entered subsequent to a resentencing ordered by an appellate court or a post-conviction relief court.

SECTION 2. The amendments to ORS 138.222 by section 1 of this 2005 Act apply to appeals filed on or after the effective date of this 2005 Act.

Passed by House May 13, 2005

Repassed by House June 30, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate June 28, 2005

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President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State