

**FILED: January 25, 2012**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

THOMAS LEE LOWELL,  
Defendant-Appellant.

Marion County Circuit Court  
09C51793

A145894

Joseph V. Ochoa, Judge.

Submitted on December 02, 2011.

Kenneth A. Kreuzscher and Portland Law Collective, LLP, filed the brief for appellant.

John R. Kroger, Attorney General, Anna M. Joyce, Solicitor General, and Susan G. Howe, Senior Assistant Attorney General, filed the brief for respondent.

Before Schuman, Presiding Judge, and Wollheim, Judge, and Nakamoto, Judge.

PER CURIAM

Remanded for resentencing; otherwise affirmed.

1 PER CURIAM

2 Defendant was convicted of conversion, a Class C felony under ORS  
3 163.275(2), and was sentenced to 36 months of imprisonment and 36 months of post-  
4 prison supervision. On appeal, defendant argues that the trial court plainly erred in  
5 imposing a sentence that exceeds 60 months, the maximum allowed by law for a Class C  
6 felony. ORS 161.605(3) (maximum term of an indeterminate sentence of imprisonment  
7 is, "[f]or a Class C felony, 5 years"); OAR 213-005-0002(4) ("The term of post-prison  
8 supervision, when added to the prison term, shall not exceed the statutory maximum  
9 indeterminate sentence for the crime of conviction."). The state concedes that the 72-  
10 month sentence imposed by the trial court is plainly erroneous. ORAP 5.45; *Ailes v.*  
11 *Portland Meadows, Inc.*, 312 Or 376, 823 P2d 956 (1991). That concession is well  
12 founded. [State v. Donner](#), 230 Or App 465, 469, 215 P3d 928 (2009) (trial court plainly  
13 erred in imposing a "total sentence of 72 months--36 months' incarceration and 36  
14 months' post-prison supervision--on a Class C felony"). For the same reasons expressed  
15 in *Donner*, we exercise our discretion to correct the error in this case.

16 Remanded for resentencing; otherwise affirmed.