

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

RANDALL JAY KRAGT,  
*Defendant-Appellant.*

Yamhill County Circuit Court  
CR99474; A163964

John L. Collins, Judge. (Second Amended Judgment)

Ronald W. Stone, Judge. (Third Amended Judgment)

Submitted December 1, 2017.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Kyle Krohn, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Shannon T. Reel, Assistant Attorney General, filed the brief for respondent.

Before Lagesen, Presiding Judge, and DeVore, Judge, and James, Judge.

PER CURIAM

Second and third amended judgments vacated and remanded.

## PER CURIAM

Defendant appeals two amended judgments that were entered in this criminal case. He assigns error to the trial court's entry of those judgments without notice to defendant, without a hearing, and without obtaining a waiver of any kind from defendant. We vacate and remand.

A judgment convicting defendant of three counts of first-degree sodomy and imposing sentences on those counts was entered in 1999. That judgment imposed a single term of post-prison supervision (PPS) and \$5,400 in restitution. In 2014, the trial court entered an amended judgment, which is not at issue in this appeal. In November 2016, the court entered a second amended judgment, which imposed separate PPS terms on each of the three counts. The court did not notify defendant or provide defendant an opportunity to be present before doing so. In December 2016, the court entered a third amended judgment, which incorporated the changes from the second amended judgment, and changed the recipient of the restitution. Again, the court did not provide notice to defendant or the opportunity to be present.

Defendant had statutory and constitutional rights to be present for the pronouncement of judgment. *State v. Jacobs*, 200 Or App 665, 672-73, 117 P3d 290 (2005). The state concedes that the sentencing court did not provide the written notice required by *former* ORS 138.083(1), *repealed* by Or Laws 2017, ch 529, § 26, and that the error requires correction. We agree and accordingly vacate the second and third amended judgments and remand.<sup>1</sup>

Second and third amended judgments vacated and remanded.

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<sup>1</sup> In this appeal, defendant argues only that the trial court erred by entering the amended judgments without providing notice and the opportunity for defendant to be present. He does not argue that the trial court lacked authority to alter the terms of his sentences at all, *see, e.g., State v. DeCamp*, 158 Or App 238, 973 P2d 922 (1999) (“A trial court’s power to modify a sentence ends when that sentence has been ‘executed.’”), and we express no opinion on that matter.