

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of the Adoption of ) Chief Judge Order 16-05  
Temporary Oregon Rule of Appellate ) **AMENDED ORDER ADOPTING**  
Procedure 10.35 ) **TEMPORARY RULE 10.35**

Pursuant to ORS 2.560(2) (authorizing Court of Appeals to adopt rules of appellate procedure) and ORAP 1.10(3) (authorizing appellate court to adopt temporary rules outside of procedure provided in ORAP 1.10(2) for adoption of permanent rules of appellate procedure), the Court of Appeals adopts Temporary Rule 10.35 as set forth below. The temporary rule is effective August 15, 2016, and expires on December 31, 2018.

**Temporary Rule 10.35**  
**Form of Certain Decisions; Joint Motions for Resolution by**  
**Unpublished Order**

(1) On the motion of a party or on its own motion, a department of the Court of Appeals may decide by unpublished order or other summary disposition the merits of an appeal in a criminal action in which the only question or questions on appeal pertain to the sentence for a felony committed on or after November 1, 1989, if the department determines:

(a) The appeal does not present a substantial question of law<sup>1</sup>;  
and

(b) A published opinion would not provide significant guidance to judges, attorneys, or others who administer or implement the sentencing guidelines.<sup>2</sup>

(2) (a) Except as provided in subsection (1) of this rule, on joint motion of the parties to any appeal, a department of the Court of Appeals may decide the merits of an appeal by unpublished order if the department determines:

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<sup>1</sup> Cases discussing what does and does not constitute a "substantial question of law" include *Smith v. Board of Parole*, 343 Or 410, 416-17, 171 P3d 354 (2007); *Atkinson v. Board of Parole*, 341 Or 382, 387-90, 143 P3d 538 (2006); and *Rodriguez v. Board of Parole*, 187 Or App 282, 289-93, 67 P3d 970 (2003).

<sup>2</sup> This subsection implements ORS 138.222(6).

(i) The appeal does not present a substantial question of law;

(ii) All parties to the appeal agree both on the correct resolution of all questions raised on appeal and on the appropriate disposition of the appeal; and

(iii) A published opinion would not significantly benefit the bench, the bar, or the public.

(b) Parties seeking relief based on the assertion that the appeal does not present a substantial question of law must include a sufficient statement of the facts of the case to show that all of the questions raised on appeal are grounded in those facts.

(c) Parties are discouraged from moving for relief under this subsection when resolution of the merits of the appeal would require the appellate court to try the cause anew upon the record or to make one or more factual findings anew upon the record. The Court of Appeals will exercise its discretion to grant relief under this subsection in such cases only in exceptional circumstances.<sup>3</sup>

August 15, 2016  
Date

  
Chief Judge Erika Hadlock

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<sup>3</sup> See *also* ORS 138.227, ORS 138.665, and ORS 419A.209, pertaining, respectively, to criminal, post-conviction relief, and juvenile court cases, and authorizing the filing of a joint motion to vacate the trial court decision being appealed and to remand for reconsideration. Under ORS 2.570(6), such motions may be decided by order.