



COURT OF APPEALS

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The Court of Appeals issued these opinions:

Central Oregon Landwatch v. Deschutes County
(A172110 - Land Use Board of Appeals)
State of Oregon v. Alex David Murray Lorenzo
(A170384 - Clackamas County Circuit Court)
Michael Wilson Yann v. Troy Bowser
(A168272 - Umatilla County Circuit Court)
Friends of Yamhill County v. Yamhill County
(A171950 - Land Use Board of Appeals)
Tyrone Earl Walton v. John Myrick
(A162169 - Umatilla County Circuit Court)

The Court of Appeals issued these *per curiam* opinions:

Claudia S. Stryker v. SAIF Corporation
(A159793 - Workers' Compensation Board)
State of Oregon v. Gregory Leon Hightower
(A166654 - Multnomah County Circuit Court)
State of Oregon v. D. S.
(A167682 - Washington County Circuit Court)
State of Oregon v. Koel Douglas Alan Hullinger
(A168355 - Lincoln County Circuit Court)
Martin Allen Johnson v. John Doe
(A168366 - Washington County Circuit Court)
State of Oregon v. Douglas Michael May
(A169282 - Clatsop County Circuit Court)
State of Oregon v. E. G.
(A170981 - Clackamas County Circuit Court)

The Court of Appeals affirmed these cases without opinion:

- Glenn Allen Burkhaw, Jr. v. Brandon Kelly
(A167489 - Umatilla County Circuit Court)
- Dale Richard Randant v. Colette Peters
(A167908 - Marion County Circuit Court)
- State of Oregon v. Daezhar Omani Banks
(A168210 - Multnomah County Circuit Court)
- Diaz Roberto Caballero v. Brad Cain
(A168266 - Malheur County Circuit Court)
- Janel A. Phillips v. Appraiser Certification and Licensure Board
(A169361 - Appraiser Certification and License Board)
- State of Oregon v. J. R.
(A169709 - Multnomah County Circuit Court)
- Marcella Ruiz v. Employment Department
(A170170 - Employment Appeals Board)

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Central Oregon Landwatch v. Deschutes County

(Egan, C. J.)

Petitioner seeks judicial review of a final order of the Land Use Board of Appeals (LUBA) affirming Deschutes County's approval of an amendment to its acknowledged comprehensive plan. Petitioner assigns error to LUBA's determination that a comprehensive plan amendment does not require the county to revisit its prior determinations that the subject property is not agricultural land as defined by Statewide Planning Goal 3 when the property was not included in the county's acknowledged Goal 3 inventory. Held: A local government's post-acknowledgement plan amendment is not reviewable for compliance with a statewide planning goal unless the potential goal noncompliance is a consequence of the amendment. Accordingly, LUBA correctly determined that the county was not required to re-evaluate whether the subject property was agricultural land subject to Goal 3 when the county was amending its acknowledged plan to change the subject property's designation from one non-Goal 3 designation to another. Affirmed.

State of Oregon v. Alex David Murray Lorenzo

(DeVore, P. J.)

The state appeals a trial court order dismissing the state's information charging defendant with attempted third-degree assault constituting domestic violence. The trial court dismissed the information under ORCP 55 G after the alleged victim disobeyed the state's subpoena and failed to appear at trial. Held: Although a crime victim has rights protected by the Oregon Constitution, the victim is not a "party" to a criminal proceeding; therefore, the trial court lacked authority under ORCP 55 G to dismiss the state's charging instrument. Reversed and remanded.

Michael Wilson Yann v. Troy Bowser

(Lagesen, P. J.)

Petitioner was convicted of attempted aggravated murder and unlawful use of a weapon (two counts each) for shooting at two police officers while intoxicated. His defense theory at trial, that he was too intoxicated to form criminal intent, was undercut when his expert witness admitted that the analysis of petitioner's intoxication level assumed that petitioner consumed no alcohol after the shooting. In his second claim for relief in this post-conviction proceeding, petitioner alleges that trial counsel was ineffective for not calling his wife to testify that petitioner had not consumed alcohol after the time of the shooting. The superintendent moved for summary judgment on that claim on the ground that petitioner would not be able to come forward with admissible evidence on that point, and that any evidence brought by petitioner would be cumulative because other witnesses testified that petitioner was intoxicated when he shot at the officers. Petitioner responded by submitting an affidavit from his wife, explaining that she could have testified that petitioner did not drink alcohol after his encounter with the police. The post-conviction court granted the superintendent's motion nonetheless, concluding that petitioner had not supported the claim with relevant, admissible evidence and that, to the extent that he had, the evidence was cumulative. Petitioner appeals, assigning error to the court's grant of the motion and arguing that the affidavit is relevant, admissible, and noncumulative evidence. Held: The post-conviction court erred in granting the superintendent's motion for summary judgment because petitioner's affidavit was relevant, admissible, and not cumulative. Reversed and remanded on second claim for relief; otherwise affirmed.

Friends of Yamhill County v. Yamhill County

(Powers, J.)

Petitioners seek judicial review of a final order of the Land Use Board of Appeals (LUBA) concerning Yamhill County's approval of a permit to conduct beer-tasting events on land that was zoned for exclusive farm use. The statute governing such permits, ORS 215.283(4)(d), allows a county to authorize certain "agri-tourism or other commercial events or activities" if, among other requirements, they are "incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area." Petitioners argue that LUBA and the county erroneously believed that the "incidental and subordinate" prong of that requirement could be satisfied simply by comparing the number of days of tasting events to the number of days of farm use. Held: The phrase "incidental and subordinate to" is a term of art in the land-use context that means more than that the accessory use occurs less frequently than the primary use. Although frequency is one factor in comparing the main and accessory uses, the related concepts of "incidental" and "subordinate" reflect a conclusion about predominant use in light of many relevant factors, including the nature, intensity, and economic value of the respective uses. Because the county focused on the frequency of the events to the exclusion of other relevant factors, LUBA erred by affirming that aspect of the county's order. Reversed and remanded.

Tyrone Earl Walton v. John Myrick

(Hadlock, J. pro tempore)

Petitioner appeals a judgment denying his successive petition for post-conviction relief (PCR), assigning error to the PCR court's decision to grant defendant's motion for summary judgment. Petitioner contends that he was entitled to raise new PCR claims in a successive petition because his counsel failed to raise those claims, and he unsuccessfully attempted to file a pro se petition raising them himself, in the initial PCR proceeding. Held: Petitioner's assignment of error regarding raising new claims in his successive petition fails in light of the Supreme Court's decision in *Bogle v. State of Oregon*, 363 Or 455, 423 P3d 715 (2018).

Under Bogle, a petitioner who is dissatisfied with his or her counsel may choose either to remain represented by counsel or to proceed pro se. The petitioner may not, however, pursue hybrid representation by filing both counseled and pro se PCR petitions. Accordingly, the PCR court did not err in denying petitioner's petition for relief. Affirmed.

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