

# APPRENDI / WARREN

Dear Readers,

I stepped away from the website for awhile for a couple reasons. One of which was my need to devote all my attention to my Federal Lawsuit against Lane County Oregon. It was filed on 1-14-2023, and can be read by clicking on FEDERAL DNA LAWSUIT. I'm back now and ready to get back to pulling the covers off the Oregon good ol' boy legal system, where they don't let a little old thing like Statutory Law and that tired old Constitution get in the way of watching each others' backs.

Today I'm going to be sharing my struggles while blind-folded. In 1987, I was transferred out of Oregon to be housed "out-of-state". I had no access to Oregon Lawbooks and I'm definitely not an attorney. I did have access to the Law Library in California, but all I could see was Federal Cases. According to all the cases I read, prisoners were suppose to seek "habeas corpus" relief from wrongful imprisonment. I had no way of knowing that only pertained to the Federal System. I'd also read (in Court opinions) that Judges are suppose to reassign cases that have been improperly "titled" by prisoners. THAT has never been the case in Oregon. Let me show you.

On June 26, 2000, the Supreme Court of the United States decided APPRENDI v NEW JERSEY, 530 U.S. 466, in which they quoted:

JONES v UNITED STATES, 119 S.Ct. 1215 (1999)  
"under the due process clause of the Fifth Amendment, and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt".

You can see from the following Trial Transcript I was charged in the indictment for one count of murder, two counts of attempted murder, and two counts of First Degree Assault. Nothing more. That's all that was submitted to the jury. But I was sentenced to an extra 30 years under ORS 161.725.

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LANE

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COURTROOM 2

EDWIN E. ALLEN, JUDGE

STATE OF OREGON,

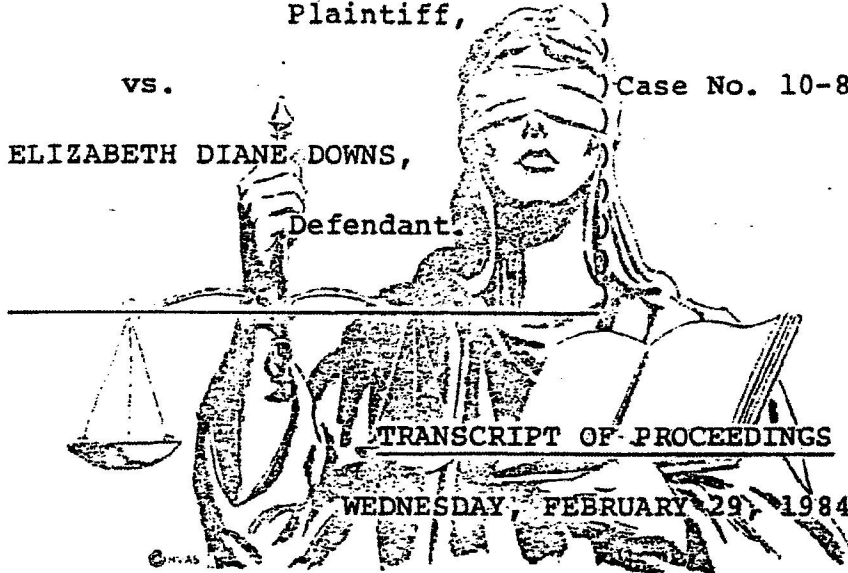
Plaintiff,

vs.

Case No. 10-84-01377

ELIZABETH DIANE DOWNS,

Defendant.



APPEARANCES:

For the State:

FREDERICK HUGI  
Deputy District Attorney

For the Defendant:

JAMES JAGGER  
Attorney at Law

1 THE COURT: Elizabeth Diane Downs. Is your true  
2 name Elizabeth Diane Downs?

3 THE DEFENDANT: Yes, it is.

4 THE COURT: You have been accused by an indictment  
5 returned by the Grand Jury of this county of murder, two  
6 counts of attempted murder and two counts of assault  
7 in the first degree.

8 You are not required to make any statement  
9 to any person. Any statement made by you can and will be  
10 used against you at a later time. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you want the indictment read?

13 MR. JAGGER: We'll waive.

14 THE COURT: Serve the defendant.

15 MR. HUGI: The defendant is served with the indictment  
16 in case number 10-84-01377.

17 THE COURT: Do you want to plead now or do you want  
18 more time?

19 MR. JAGGER: If I could have just a minute. This  
20 is the first chance I have had to see the indictment.

21 THE COURT: Go ahead.

22 MR. JAGGER: We're prepared to enter pleas of not  
23 guilty to each count at this time.

24 THE COURT: Very well. What is your plea to Count  
25 1 charging you with the crime of murder? Are you guilty or

APPENDIX 2

1 not guilty?

2 THE DEFENDANT: Not guilty.

3 THE COURT: What is your plea to Count 2 charging  
4 you with the crime of attempted murder? Are you guilty or  
5 not guilty?

6 THE DEFENDANT: Not guilty.

7 THE COURT: What is your plea to Count 3 charging  
8 you with the crime of attempted murder? Are you guilty or  
9 not guilty?

10 THE DEFENDANT: Not guilty.

11 THE COURT: What is your plea to Count 4 charging  
12 you with assault in the first degree? Are you guilty or not  
13 guilty?

14 THE DEFENDANT: Not guilty.

15 THE COURT: What's your plea to Count 5 charging  
16 you with the crime of assault in the first degree? Are you  
17 guilty or not guilty?

18 THE DEFENDANT: Not guilty.

19 THE COURT: Your pleas of not guilty will be  
20 entered to Count 1, Count 2, Count 3, Count 4, Count 5. The  
21 matter will be continued for trial.

22 MR. JAGGER: If I could have some time to move  
23 against the indictment, I think that may --

24 THE COURT: Well, it's my understanding that this  
25 case will be assigned to Judge Foote, and I suggest that

APPENDIX 2

1 you might direct any motions or demurrers to him.

2 MR. JAGGER: We'll do that. Thank you.

3 THE COURT: Very well. Stand in recess.

4 AFTER TRIAL (AFTER THE JURY WAS DISMISSED)  
5 JUDGE FOOTE PULLED ORS. 161.775 OUT OF  
6 HIS HAT + ENHANCED MY SENTENCE BY  
7 (UP TO) 30 YEARS, BECAUSE THE JUDGE  
8 ALLEGED I WAS A "DANGEROUS OFFENDER".

9  
10 MY ATTORNEY OBJECTED + "PLEA" NOT GUILTY  
11 BUT THE COURT SENTENCED ME WITHOUT  
12 A TRIAL OF THE FACTS, BASICALLY FINDING  
13 ME "GUILTY" OF VIOLATING ORS 161.775,  
14

15 APPARENTLY THAT HAS HAPPENED A LOT. IN  
16 1999, THE U.S. SUPREME COURT PUT AN END  
17 TO THESE CONSTITUTIONAL VIOLATIONS IN  
18 JONES V. U.S.. THIS WAS NOT A ONE-OFF.  
19 THE SUPREME COURT FOLLOWED WITH APPENDIX  
20 V NEW JERSEY.

21  
22 FACTS ALLEGED TO INCREASE A STATUTORY  
23 SENTENCE MUST BE TRIED BY A JURY AND  
24 PRISONERS ALREADY WRONGFULLY SENTENCED  
25 MUST BE RETURNED FOR RESENTENCING.

APPENDIX 2

The Supreme Court of the United States reversed the State Court Judgment and remanded Charles Apprendi to his trial court for resentencing. With the Apprendi decision in hand, I sought "habeas corpus" relief in Marion County Oregon because that's where my controlling prison was situated (even though I'd not been there since 1993). My Petition was accepted as Elizabeth Diane Downs v Sonja Hoyt, Marion County Case No: 01-C-10348.

On 1-17-2001, Judge Joseph C. Guimond dismissed my Petition because "the petition must allege with particularity facts, which, if true, would entitle the plaintiff to habeas corpus relief. There are no facts alleged in plaintiff's petition which indicate that".

I was genuinely confused. I'm not an attorney, but my entire petition was devoted to quoting:

United States v Reese, 92 U.S. 214, 232, 233 (1875)  
"the indictment must contain an allegation of every fact which is legally essential to the punishment to be inflicted".

Apprendi

"If a fact is by law the basis for imposing or increasing punishment ... it is an element ... I am aware of no historical basis for treating as a non-element a fact that by law sets or increases punishment".

I basically let the Supreme Court of the United States Justices quote the United States Constitution to the Marion County Court. How could Judge Guimond argue with that? How could he ignore the Law?

What I didn't understand, and what NO ONE was ever going to explain to me, was the fact I shouldn't have filed for "habeas corpus" relief in Oregon State. I should've sought Post Conviction Relief.

Judge Guimond wasn't saying my request to have the Sentence set aside was wrong. He was dismissing my HABEAS CORPUS Petition because I can't attack a Judgment through Habeas. That's what he meant, but that isn't what he said, so I didn't know what I should do differently to get relief. He knew what I was saying but he failed to reassign my case and give it a fair hearing.

1  
2  
3 ENTERED IN THE CIRCUIT COURT OF THE STATE OF OREGON  
4 JAN 17 2001  
5 # 20

FOR THE COUNTY OF MARION

Case No. 01C10348

STATE OF OREGON  
MARION COUNTY COURTS  
JAN 16 2001

FILED  
#32

6 ELIZABETH DIANE DOWNS, SID #49707 )  
7 Plaintiff, )  
8 vs. )  
9 SONIA HOYT, Superintendent, )  
Oregon Women's Correction Center, )  
Defendant. )

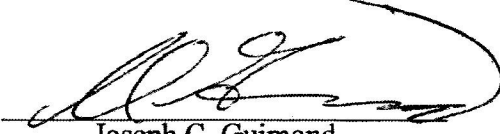
JUDGMENT OF DISMISSAL  
WITHOUT PREJUDICE

10  
11 The Petition for a Writ of Habeas Corpus is dismissed on the Court's own motion. The Writ is  
12 available in two kinds of cases: "(1) When a petition makes allegations which, if true, show that the  
13 prisoner, though validly in custody, is subjected to a further 'imprisonment of restraint' of his person  
14 that would be unlawful if not justified to the Court, and (2) when a petition alleges other deprivations of  
15 a prisoner's legal rights of a kind, which if true, would require immediate judicial scrutiny, if it also  
16 appears to the court that no other timely remedy is available to the prisoner." Penrod/Brown v. Cupp,  
283, Or 21 28, 581 P2d 034 (1978).

17 A trial court must treat petitions for Writs of Habeas Corpus liberally. Bedell v. Schiedler, 307  
18 Or 566 (1989). However, the petition must allege with particularity facts, which, if true, would entitle  
19 the plaintiff to habeas corpus relief. There are no facts alleged in plaintiff's petition which indicate that  
20 immediate judicial scrutiny is required. In the instant case, this Court finds that the petition fails to  
21 allege sufficient additional facts to entitle plaintiff Habeas Corpus relief or facts that require immediate  
22 judicial scrutiny.

23 IT IS THEREFORE ORDERED AND ADJUDGED that the petition is dismissed without  
24 prejudice.

25 DATED this 16<sup>th</sup> day of January, 2001.

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27   
28 Joseph C. Guimond  
Circuit Court Judge

f  
/

By 2004, numerous Federal Courts had overturned cases identical to Jones, Apprendi, and Reese. Some of them are:

Ring v Arizona, 536 U.S. 584 (2002)

Harris v United States, 536 U.S. 545 (2002)

Blakely v Washington, 542 U.S. 296 (2004)

Even the Oregon Court of Appeals was finally getting its Constitutional Act together by reversing and remanding the following cases after the United States Supreme Court reversed the effects of ORS 161.725 in DILTS v OREGON on 6-28-2004:

Oregon v Sawatzky, 96 P3d 1288 (2004)

Oregon v Warren, 5 P3d 1115 (2004)

I honestly believed I'd get a fair hearing and ruling in Oregon because the Oregon Courts were finally recognizing what the rest of the Country had known since 1999. You can't just sentence a person without charging them with an offense and trying the facts before a jury of the accused's peers.

It wasn't as if I was asking for a new trial or to have the charges against me set aside. That would be another fight in another arena. This was about being legally sentenced in Lane County. Sooooo -- I sought Habeas Corpus Relief from the Unconstitutional ORS 161.725 in Lane County.

My Petition was filed 11-8-2004. It was titled Elizabeth Diane Downs v State of Oregon, Lane County Case NO: 16-04-22548. On 12-27-2004, Lane County Judge Karsten H. Rasmussen dismissed my Petition for Habeas Corpus Relief. He didn't even say why. Not a clue. Just dismissed.

Convinced the Oregon Court of Appeals would reverse and remand me for resentencing as it had in sooooo many Oregon cases that year, I appealed Judge Rasmussen's Order. It was Downs v Oregon, A127158. On 12-7-2005, Judges Landau, Schuman, and Ortega AWOP'd my appeal. That means they ruled against me and they didn't say why. Ditto my Oregon Supreme Court Petition for Review (S53090). Review denied. No reason given: 1-24-2006.

I now know my cases were dismissed because they were titled "Petition for Writ of Habeas Corpus". But nothing in their decisions even hinted at that fact.



*Noted  
1-3-05*

FILED  
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DEC 27 2004  
Circuit Court  
For Lane County, Oregon  
BY

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

ELIZABETH DIANE DOWNS,

Plaintiff,

v.

Case No. 16-04-22548

STATE OF OREGON,

ORDER

Defendant.

This matter came before the Court on the State's Motion to Dismiss Petition for Writ of Habeas Corpus (OJIN 3), now with the correct case number. The Court considered the Motion and the Defendant's Response (OJIN 2).<sup>1</sup> The Court also considered Defendant's Opposition to State's Motion To Dismiss filed December 13, 2004.

The State's Motion is GRANTED.

IT IS SO ORDERED.

Dated this 27<sup>th</sup> day of December, 2004.

*/s/ Karsten H. Rasmussen*  
Karsten H. Rasmussen  
Circuit Court Judge

<sup>1</sup>The original Motion to Dismiss was filed with the incorrect case number. Defendant responded to that Motion, resulting in a prior OJIN number (2) than the Motion itself.

FILED: December 7, 2005

IN THE COURT OF APPEALS OF THE STATE OF OREGON

ELIZABETH DIANE DOWNS,	)	
	)	Lane County Circuit Court
Appellant,	)	No. 16-04-22548
	)	
v.	)	
	)	
STATE OF OREGON,	)	A127158
	)	
Respondent.	)	

Karsten H. Rasmussen, Judge

Submitted on record and briefs: November 4, 2005

Before Landau, Presiding Judge, and Schuman and Ortega, Judges

Attorney for Appellant: Elizabeth Diane Downs *pro se*

Attorney for Respondent: Jennifer S. Lloyd

**AFFIRMED WITHOUT OPINION**

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

No costs allowed.  
 Costs allowed, payable by: Appellant

**EXHIBIT G** page 1 of 1

1/23/06

IN THE SUPREME COURT OF THE  
STATE OF OREGON

ELIZABETH DIANE DOWNS

Plaintiff-Appellant,  
Petitioner on Review,

v.

STATE OF OREGON,

Defendant-Respondent,  
Respondent on Review.

Lane County Circuit Court  
No. 16-04-22548

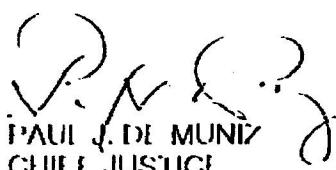
SC S53090  
CA A127158

**ORDER DENYING REVIEW**

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.

Dated this 24th day of January 2006.

  
PAUL J. DE MUNIZ  
CHIEF JUSTICE

c: Elizabeth Diane Downs  
Jennifer Scott Lloyd

While I was making a mess of things in Lane County (basically asking to be resentenced, but not activating the proper authority) I lodged a collateral claim for Habeas Relief in Washington County. That's where the Oregon Women's Prison had been moved (to Mule Creek), so that's where my presumed Superintendant was situated. It seemed to me the Superintendant had no authority to imprison me because my Sentence Order was ineffective (unconstitutional).

On 1-28-2005, Elizabeth Diane Downs, Washington County Case No: C-05-0300-CV was filed. V MICHAEL McGER

On 2-16-2005, my Petition was transferred to Marion County, renumbered, and reassigned to the Director of Corrections because the Court recognized what I was getting at in Downs v Max Williams, Marion County Case No: 05-C-42825. The Court understood exactly what point I was trying to make and did aaaaalllll that reassigning, but failed to say, "Hey, Ms. Downs, I get what you're saying, but you need to amend the Petition for Post Conviction Relief. Ya know what? Here, let me do it. I used to be a lawyer. I know what needs to be done".

It's not as if the Judge would be representing me. It's a matter of housekeeping. Of keeping order in his house. Clarity. Facility. Fairness. But that's not what the Court did. No, Judge Joseph V. Ochoa dismissed my Petition because: "inmates challenging enhanced sentences based on statute subsequently held to be unconstitutional denied habeas corpus relief".

THERE IT IS! Judge Ochoa absolutely knew I was Petitioning to be relieved of the Unconstitutional ORS 161.725 in my Sentence Order. He was actually the first to tell me about this whole Post Conviction thing, but he didn't reassign the case to Post Conviction and hear the case. He simply dismissed it.

I still had no access to Oregon Lawbooks and tried to seek Post Conviction Relief on 7-1-2005, but didn't know the proper ORS. I kinda expected the Court to fill in the blanks in Downs v Williams, 05-C-17681, but that Petition was also dismissed by Judge Ochoa on 8-17-2005. He just used the same GENERAL JUDGMENT OF DISMISSAL he used on 3-9-2005, to dismiss my first Petition.

I truly didn't know where to go from there. Every Oregon Judge knew what I was asking for and not one did the right thing.

3-9-2005

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MARION

Case No. 05C42825

STATE OF OREGON  
MARION COUNTY COURTS  
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**ENTERED**

MAR 10 2005

ELIZABETH DIANE DOWNS, )  
)  
Plaintiff, )  
)  
vs. )  
)  
MAX WILLIAMS, Director, Oregon Department of )  
Corrections, )  
)  
Defendant. )

**GENERAL JUDGMENT OF  
DISMISSAL WITHOUT  
PREJUDICE AND MONEY  
AWARD**

This matter was transferred from the Washington County Circuit Court. The court has reviewed the OJIN and sees no evidence that a filing fee was paid, that plaintiff requested that the filing fee was deferred, that the court ordered that such fee be deferred, or that a writ has been issued.

Before a writ of habeas corpus is issued, the petition for a writ of habeas corpus may be dismissed on the court's own motion pursuant to ORS 34.370(6). Because no writ has been issued, the court scrutinizes the claims set forth in plaintiff's petition.

The writ is available in two kinds of cases: "(1) When a petition makes allegations which, if true, show that the prisoner, though validly in custody, is subjected to a further 'imprisonment or restraint' of his person that would be unlawful if not justified to the court, and (2) when a petition alleges other deprivations of a prisoner's legal rights of a kind, if true, would require immediate judicial scrutiny, if it also appears to the court that no other timely remedy is available to the prisoner." *Penrod/Brown v. Cupp*, 283 Or 21, 28, 581 P2d 934 (1978).

Plaintiff alleges that she is unlawfully confined because she is incarcerated for a period imposed as a dangerous offender without the benefit of this status being determined by a jury. Plaintiff alleges that this procedure has been subsequently held to be unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2002) and *Blakely v. Washington*, 542 U.S. \_\_\_ (2004). Her state court

**JUDGMENT OF DISMISSAL WITHOUT PREJUDICE  
AND MONEY AWARD**

*cc. H. A. [Signature]*

1 appeal rights and post-conviction relief time have apparently expired.

2 "A petition for post conviction relief is the exclusive means for challenging the lawfulness  
3 of a criminal conviction and sentence." *Mora v. Maass*, 120 Or App 173, 176 (1993) (inmates  
4 challenging enhanced sentences base on statute subsequently held to be unconstitutional denied  
5 habeas corpus relief). An individual may not avail himself of habeas corpus relief for this purpose.  
6 *Allen v. Maass*, 124 Or App 195 (1993); *Mueller v. Benning*, 314 Or 615, 619 (1992); ORS 138.510-  
7 138.680. Plaintiff fails to state a claim for habeas corpus relief.

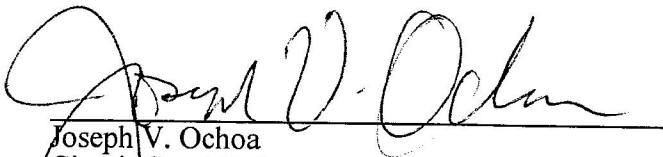
8 For this reason, the petition is dismissed without prejudice.

9 IT IS SO ORDERED AND ADJUDGED.

10 IT IS FURTHER ORDERED AND ADJUDGED that the filing fee deferred in this matter  
11 shall proceed to money award:

12	<b>JUDGMENT CREDITOR:</b>	STATE OF OREGON
13	<b>JUDGMENT DEBTOR:</b>	ELIZABETH DIANE DOWNS
14	<b>AMOUNT OF JUDGMENT:</b>	\$33.00

15 DATED March 9, 2005.

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19 Joseph V. Ochoa  
20 Circuit Court Judge  
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28 **JUDGMENT OF DISMISSAL WITHOUT PREJUDICE  
AND MONEY AWARD**

8-18-2005

ENTERED  
AUG 18 2005  
#23

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MARION

STATE OF OREGON  
MARION COUNTY COURTS

AUG 18 2005

Case No.05C17681

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ELIZABETH DIANE DOWNS, )  
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Plaintiff, )  
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vs. )  
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MAX WILLIAMS, Director, Oregon Department of )  
Corrections, )  
)  
Defendant. )

**GENERAL JUDGMENT OF  
DISMISSAL WITHOUT  
PREJUDICE**

Before a writ of habeas corpus is issued, the petition for a writ of habeas corpus may be dismissed on the court's own motion pursuant to ORS 34.370(6). Because no writ has been issued, the court scrutinizes the claims set forth in plaintiff's petition.

The writ is available in two kinds of cases: "(1) When a petition makes allegations which, if true, show that the prisoner, though validly in custody, is subjected to a further 'imprisonment or restraint' of his person that would be unlawful if not justified to the court, and (2) when a petition alleges other deprivations of a prisoner's legal rights of a kind, if true, would require immediate judicial scrutiny, if it also appears to the court that no other timely remedy is available to the prisoner." *Penrod/Brown v. Cupp*, 283 Or 21, 28, 581 P2d 934 (1978).

Plaintiff alleges that she is unlawfully confined because she is incarcerated for a period imposed as a dangerous offender without the benefit of this status being determined by a jury. Plaintiff alleges that this procedure has been subsequently held to be unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2002) and *Blakely v. Washington*, 542 U.S. \_\_\_\_ (2004). Her state court appeal rights and post-conviction relief time have apparently expired.

"A petition for post conviction relief is the exclusive means for challenging the lawfulness of a criminal conviction and sentence." *Mora v. Maass*, 120 Or App 173, 176 (1993) (inmates challenging enhanced sentences base on statute subsequently held to be unconstitutional denied habeas corpus relief). An individual may not avail himself of habeas corpus relief for this purpose.

**GENERAL JUDGMENT OF DISMISSAL WITHOUT PREJUDICE**

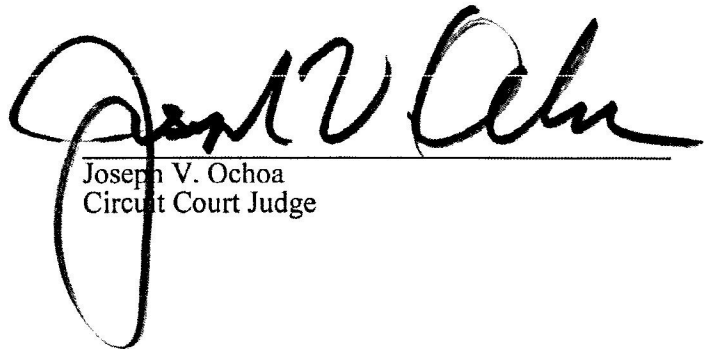
1 *Allen v. Maass*, 124 Or App 195 (1993); *Mueller v. Benning*, 314 Or 615, 619 (1992); ORS 138.510-  
2 138.680. Plaintiff fails to state a claim for habeas corpus relief.

3 The court takes judicial notice that a Petition for Writ of Habeas Corpus, based upon the same  
4 grounds in *Downs v. Williams*, Marion County Case No. 05C42825, was also dismissed without  
5 prejudice.

6 For this reason, the petition is dismissed without prejudice.

7 IT IS SO ORDERED AND ADJUDGED.

8 DATED August 17, 2005.

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12 Joseph V. Ochoa  
13 Circuit Court Judge  
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So! There I was, TWENTY ... YEARS ... LATER, looking through a new Federal Lawbook someone donated to the prison, and there it was. Statutes for every Post Conviction Law in every State in the Nation. The Oregon Revised Statute for Post Conviction Relief is ORS 138.510.

I'd never filed for Post Conviction Relief on the Apprendi claim because it was decided after my Federal appeal was exhausted. Therefore, I felt I had a right and a need to seek Post Conviction Relief in 2020.

ORS 161.725 was being used by the Sentencing Courts all across Oregon to impose increased Sentences that the Supreme Court of the United States and the Oregon Court of Appeals found were in violation of Oregonians' Constitutional Right to due process, so the Oregon Legislature revised the Statute to require the charge of ORS 161.725 be tried by a jury. *IN 2005*

WELCH v UNITED STATES, 136 U.S. 1257, 1265 (2016)  
Substantive rule changes like the one above are retroactive. When a clause within a Statute is struck down, "The clause is invalid ... it can no longer mandate or authorize any sentence" (quoting Johnson v United States, 135 S.Ct. 2551 (2015)).

Every Circuit Court Judge in Oregon knew the substantive clause within ORS 161.725, permitting the Court to Sentence the defendant as a "dangerous offender" without an indictment or trial of the facts, had been struck down.

Every Circuit Court Judge in the State of Oregon knew it was no longer permitted to enhance a defendant's sentence. You'd think that would indicate to every Circuit Court Judge in Oregon that my Unconstitutional Sentence also needed to be repaired, especially in light of:

In re Hubbard, 825 F3d 225 (4th Cir. 2016)  
United States v Adkins, 883 F3d 1207 (9th Cir. 2018)  
United States v Carter, 422 F.Supp.3d 299 (2019)

All these new cases were decided after my appeals were exhausted. <sup>1992</sup> There's no way I could've raised these issues before the substantive rule change in 2005, to ORS 161.725. Therefore, I was within the Law to seek Post Conviction Relief from a Sentence Order that was Unconstitutional.

12-9-2020

CIRCUIT COURT OF OREGON  
MARION COUNTY

Elizabeth Diane Downs,  
Petitioner

Docket Number: 20 CV 44790

v.

PETITION FOR POST CONVICTION RELIEF  
ORS 138.510

Collette S. Peters, Director ODC,  
ex. rel. Oregon Board of Parole,  
Respondents

AUTHORITY

COMES NOW PETITIONER, Elizabeth Diane Downs, pursuant to ORS 138.510, seeking relief from unauthorized restraint at the hands of Respondents, Collette S. Peters, Director of the Oregon Department of Corrections and their proxy, the Oregon Board of Parole.

JURISDICTION

Petitioner is an Oregon prisoner, subject to Oregon laws and parole guidelines.

CLAIM FOR RELIEF #1

Petitioner was sentenced as a "dangerous offender", under ORS 161.725 (1). SENTENCING ORDER ATTACHED



Matrix guidelines set her term of confinement between 180-248 months. BAF# 14 ATTACHED

ORS 161.725 allowed the Sentencing Court to depart from the Statutory Sentencing Guidelines to enhance a defendant's sentence. The Supreme Court found identical sentencing schemes to be unconstitutional.

APPRENDI v NEW JERSEY, 530 U.S. 466 (2000) held that any fact that raises a Statutory Sentence must be charged in the indictment and proved to a jury.

BLAKELY v WASHINGTON, 542 U.S. 296, 124 S.Ct. 2531 (2004) says a defendant has a right to a jury trial any time facts were used to increase a defendant's sentence beyond the maximum otherwise allowed by statute or sentencing guidelines.

In Petitioner's 1984 case, ORS 161.725 (1) was never charged in the indictment. The facts that were used to increase Petitioner's sentence were never tried by a jury. ORS 161.725 (1) was unconstitutional in its construction and application in 1984 because it deprived Petitioner of her right to due process.

  
Appointed by  


CLAIM FOR RELIEF #2

Respondents conducted a "dangerous offender" parole consideration hearing in 2020, pursuant to ORS 144.228 because Petitioner was sentenced under the 1983 "dangerous offender" clause of ORS 161.725 (1). In 2005, ORS 161.725 (1) was repealed and amended because the United States Supreme Court found identical sentencing schemes to be unconstitutional. REPEALED AND AMENDED ORS 161.725 ATTACHED

WELCH v UNITED STATES, 136 U.S. 1257, 1265 (2016) — says substantive rule changes like the one above are retroactive. When a clause within a statute is struck down, "The clause is invalid ... it can no longer mandate or authorize any sentence". (quoting JOHNSON v UNITED STATES, 135 S.Ct. 2551 (2015)).

In re HUBBARD, 825 F.3d 225 (4th Cir. 2016) says new substantive rules are retroactive.

UNITED STATES v ADKINS, 883 F.3d 1207 (9th Cir. 2018) says the deletion of a substantive clause applies to all defendants who were sentenced prior to the amendment of the law.

UNITED STATES v CARTER, 422 F.Supp.3d 299 (2019) says Sentencing Guidelines are mandatory. Substantive changes to the law would certainly result in the defendant receiving a much shorter sentence. Defendant's challenge to the former sentence was timely because he'd already served more time than he'd receive if sentenced without the deleted clause.

2004  
After ORS 161.725 (1) was repealed and amended, Plaintiff's 1984 "dangerous offender" sentence was no longer authorized. Petitioner's sentence reverted to Matrix guidelines which set her term of confinement between 180-248 months. Respondents had no authority to conduct any "dangerous offender" parole consideration hearing after 2005. Respondent should have discharged Plaintiff by "file pass" when the repealed clause was brought to their attention in 2008, 2010, and 2020.

CLAIM FOR RELIEF #3

ORS 161.725 (1) says: "the maximum term of ... imprisonment for a dangerous offender is 30 years".

ORS 144.228 (1)(b)(D) says: "In no event shall the prisoner be held beyond the maximum sentence ...".

BOARD of PARDONS v ALLEN, 482 U.S. 369, 376-378, 107 S.Ct. 2415, 2420-2421 (1987) says mandatory language in a statute "creates a liberty interest in parole release".

Plaintiff's inception date was 3-10-1984. Respondents have been illegally imprisoning Plaintiff since 2014 in violation of her Sixth and Fourteenth Amendment Constitutional Right to due process.

PRAYER FOR RELIEF

Petitioner prays for an order vacating the ORS 161.725 (1) judgement in her 1984 Sentencing Order.

Petitioner also prays for an order directing Respondents to immediately discharge her from custody.

I declare under penalty of perjury that the foregoing is true and correct.  
Signed this 4th day of December, 2020.

Elizabeth Diane Downs



CERTIFICATE OF MAILING

I certify a copy of this PETITION FOR POST CONVICTION RELIEF was mailed on 12-9-2020, addressed to:

Oregon Board of Parole  
321 Tandem Avenue NE  
Salem, Oregon 97301-0379

Oregon Attorney General  
2575 State Street  
Salem, Oregon 97301



Elizabeth Diane Downs W49707  
CCWF 512-02-1L  
PO Box 1508  
Chowchilla, CA 93610-1508

PAGE 3 of 3

POST CONVICTION

Appendix 4

*Parole Board Reads*

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

THE STATE OF OREGON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ELIZABETH DIANE DOWNS, )  
 )  
 Defendant. )

Case No. 10 84 01377

SENTENCE ORDER

FILED  
AUG 28 10 00 AM '84  
RECEIVED  
AUG 29 1984  
EUGENE DISTRICT COURT  
CLERK AND DEPUTY  
PAROLE AND PROBATION  
BY SHARON L. [Signature]

This matter came on to be heard on the 29th day of August, 1984, the State of Oregon being represented by Frederick Hugi, Assistant District Attorney for Lane County, Oregon, and the defendant, Elizabeth Diane Downs, appearing in custody and by her attorney, James C. Jagger, said defendant having been tried and convicted of the crimes of MURDER, ATTEMPTED MURDER, ATTEMPTED MURDER, ASSAULT IN THE FIRST DEGREE and ASSAULT IN THE FIRST DEGREE before a jury in the above court and cause, and this being the time set for imposing sentence herein, and the Court, having heard testimony and arguments of counsel, and being fully advised, and having advised the Defendant of her right to appeal;

The Court finds that for the purpose of imposing sentence herein, the defendant, Elizabeth Diane Downs, is a dangerous offender, as described in ORS 161.725(1).

The Court further finds that for the purpose of imposing sentence and conviction herein, the crime charged in Count IV of the Indictment merges with the crime charged in Count II; and that the crime charged in Count V merges with the crime charged in Count III.

IT IS HEREBY ORDERED AND ADJUDGED that the defendant, Elizabeth Diane Downs, be, and she hereby is, sentenced to pay restitution in an amount to be determined, and the District Attorney shall have thirty (30) days from the date of entry of this order to submit the restitution information to the Court.

COUNT I  
(Murder)

IT IS HEREBY CONSIDERED, ORDERED AND ADJUDGED that the defendant, Elizabeth Diane Downs, be and she hereby is sentenced to imprisonment for a term of life, and she hereby is committed to the legal and physical custody of the Corrections Division of the State of Oregon.

IT IS FURTHER ORDERED that said defendant shall serve not less than five (5) years minimum, pursuant to ORS 161.610.

COUNT II  
(Attempted Murder)

IT IS ORDERED AND ADJUDGED that said defendant be, and she hereby is, sentenced to imprisonment for a term not to exceed thirty (30) years, of which defendant is to serve not less than fifteen (15) years minimum, and she hereby is committed to the legal and physical custody of the Corrections Division of the State of Oregon.

IT IS FURTHER ORDERED that defendant shall serve not less than five (5) years minimum, pursuant to ORS 161.610, to be served concurrent with the fifteen (15) year minimum sentence set forth above.

IT IS FURTHER ORDERED AND ADJUDGED that the sentence imposed herein on Count II shall be served consecutively to the sentence imposed in Count I.

COUNT III  
(Attempted Murder)

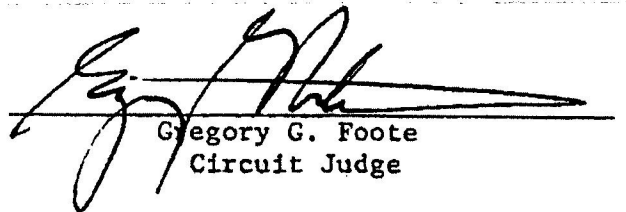
IT IS ORDERED AND ADJUDGED that said defendant be, and she hereby is, sentenced to imprisonment for a term not to exceed twenty (20) years, of which defendant is to serve not less than ten (10) years minimum, and she hereby is committed to the legal and physical custody of the Corrections Division of the State of Oregon.

IT IS FURTHER ORDERED that defendant shall serve not less than five (5) years minimum, pursuant to ORS 161.610, to be served concurrent with the ten (10) year minimum sentence set forth above.

IT IS FURTHER ORDERED AND ADJUDGED that the sentence imposed herein on Count III shall be served consecutively to the sentence imposed in Count II.

IT IS FURTHER ORDERED that the Sheriff of Lane County, Oregon, deliver said defendant to the custody of the Corrections Division of the State of Oregon.

Dated this 28<sup>th</sup> day of August, 1984.

  
\_\_\_\_\_  
Gregory G. Foote  
Circuit Judge

KAY CATES  
Official Reporter  
Lane County Courthouse  
Eugene, OR 97401

CERTIFIED TO BE A TRUE COPY OF THE  
ORIGINAL DOCUMENT CONSISTING OF  
2 PAGES, WHICH IS FILED IN  
THIS OFFICE AND OF WHICH I AM THE  
LEGAL CUSTODIAN.

DATED August 28, 1984  
Circuit Court  
Lane County, Oregon  
By Sharon Storey

STATE OF OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION  
BOARD ACTION FORM

Mailed 02/17/2021

Name: DOWNS, ELIZABETH DIANE

SID#: 6546106  
Inst: IBRO  
DOB: 08/07/1955

Hearing/Action DT: 02/16/2021  
Board Action #: 15  
Registered Victim: Y

Adjust Incept DT: 03/10/1984  
Current Adm DT: 07/21/1987  
Original Admit DT: 08/31/1984  
Offender Gt DT: Life  
Matrix Exp DT: Life  
PPS Exp DT:

Activity: IH  
Decision: A  
Group #: 1  
Dang Off: Y

Month Set: 504  
Cr Tm Svd: 185  
Parole Rel DT:  
Next Action: PCR P 09/01/2025

Original Length:  
Sanc Length:  
Cumulative Sanc:  
Days Avail:

ORS 161.725

OAR 255.35.025

A	B	C	D	E	F
3	2	1	2	2	1

H/RS 11  
CSR 8

Matrix  
180 TO 248

CHS

CSS 0

Grid

Min Supv 0

SPECIAL CONDITIONS

Any General Conditions and Special Conditions set forth in this order are listed for informational and tracking purposes only; the board actually imposes supervision conditions in an Order of Supervision Conditions. This order does not affect conditions imposed in any previous Order of Supervision Conditions.

1	2	3	4	5	6	7	8	9	10	11

SIGNATURE, PRESIDING MEMBER /S/ Michael Hsu

KC SIGNATURE DATE: 02/16/2021

ORS 161.725 OVERRIDES OAR 255.35.025 (MATRIX)  
UP TO 30 YEARS, THAT IS 2014.  
Sentencing Guidelines 180-248 months.

Appendix 2

**STATE OF OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION  
BOARD ACTION FORM**

NAME: 6546106 DOWNS, ELIZABETH DIANE      Decision: 15

CASE#	OFFENSE	OT	SENTENCE	ST	A	CSR	BASE	SENTENCED	CTS	PPSP	O	G
County	ORS	FC	Judge	CS	P	HRS	PRIN	Committed		PPS EXP DATE		
108401377	MURDER	MX	LIFE	CS	S	8	0 / 0	08/31/1984	185	0	1	1
LANE	163.115	UF	FOOTE	0	Y	11	120 / 168	01/01/1901		---		
108401377	MURDER AT	MX	30 / 0 / 0	CS	S	6	30 / 40	08/31/1984	0	0	2	1
LANE	163.115	AF	FOOTE	1	N	11	N	01/01/1901		---		
108401377	ASSA I	MX	30 / 0 / 0	MG		0	0 / 0	08/31/1984	0	0	3	1
LANE	163.185	AF	FOOTE	2	N	0	N 0 / 0	01/01/1901		---		
108401377	MURDER AT	MX	20 / 0 / 0	CS	S	6	30 / 40	08/31/1984	0	0	4	1
LANE	163.115	AF	FOOTE	2	N	11	N	01/01/1901		---		
108401377	ASSA I	MX	20 / 0 / 0	MG		0	0 / 0	08/31/1984	0	0	5	1
LANE	163.185	AF	FOOTE	4	N	0	N 0 / 0	01/01/1901		---		
87C21223	ESCAPE II	MX	5 / 0 / 0	CS	S	2	0 / 0	11/23/1987	0	0	6	2
MARI	162.155	CF	MCCONVILLE	4	Y	5	Y	01/01/1901		---		



120 - 168  
 30 - 40  
 30 - 40  
 180 - 248 MONTHS  
 ( 15 - 20 YEARS + 8 MONTHS )  
 3-10-1999 TO 11-10-2004



CRIMINAL HISTORY/RISK ASSESSMENT UNDER RULE 255.35.015

- A. No prior felony or misdemeanor convictions as an adult or juvenile: 3  
 One prior conviction: 2  
 Two or three prior convictions: 1 3  
 Four or more prior convictions: 0
  
- B. No prior incarcerations (i.e., executed sentences of 90 days or more) as an adult or juvenile: 2  
 One or two prior incarcerations: 1  
 Three or more prior incarcerations: 0 2
  
- C. Verified period of 3 years conviction free in the community prior to present incarceration: 1  
 Otherwise: 0 1
  
- D. Age at commencement of behavior leading to this incarceration: 2  
 26 or older and at least one point received in Items A, B or C: 1  
 26 or older and no points received in A, B or C: 1  
 21 to under 26 and at least one point received in A, B or C: 0  
 21 to under 26 and no points received in A, B or C: 0 2  
 Under 21: 0
  
- E. Present commitment does not include parole, probation, failure to appear, release agreement, escape or custody violation: 2  
 Present commitment involves probation, release agreement, or failure to appear violation: 1  
 Present commitment involves parole, escape or custody violation: 0 2
  
- F. Has no admitted or documented heroin or opiate derivative abuse problem: 1  
 Otherwise: 0 1

11

TOTAL HISTORY/RISK ASSESSMENT SCORE:

TIME TO BE SERVED UNDER RULE 255.35.025

HISTORY/RISK ASSESSMENT SCORE:	11-9 Excellent	8-6 Good	5-3 Fair	2-0 Poor
OFFENSE SEVERITY RATING: (All ranges in Categories 1-6 are shown in months.)				
Category 1 ----	6	6	6-10	12-18
Category 2 ----	6	6-10	10-14	16-24
Category 3 ----	6-10	10-14	14-20	22-32
Category 4 ----	10-16	16-22	22-30	32-44
Category 5 ----	16-24	24-36	40-52	56-72
Category 6 <del>XXXX</del>	30-40	44-56	60-80	90-130
Category 7 <del>X</del>				
Subcategory 2 ----	8-10 yrs.	10-13 yrs.	13-16 yrs.	16-20 yrs.
Subcategory 1 ----	10-14 yrs.	14-19 yrs.	19-24 yrs.	24-Life yrs.

*[Handwritten signature]*

MATRIX APPLICATION--MULTIPLE OFFENSE

	Crime Category	History /Risk	Matrix Range	
1. Offense <u>Murder (Subcategory 1)</u>	<u>7</u>	<u>11</u>	<u>Matrix Range 120 to 168 months</u>	
2. Offense <u>Attempted Murder</u>	<u>6</u>	<u>11</u>	<u>Matrix Range 30 to 40 months</u>	CS-Base Range
3. Offense <u>Assault I</u>	<u>merged</u>	<u>-</u>	<u>Matrix Range - to - months</u>	
4. Offense <u>Attempted Murder</u>	<u>6</u>	<u>11</u>	<u>Matrix Range 30 to 40 months</u>	CS-Base Rang
5. Offense <u>Assault I</u>	<u>merged</u>	<u>-</u>	<u>Matrix Range - to - months</u>	
			<u>Total Range 180 to 248 months</u>	

BOARD OF PAROLE

Inrate Downs, Elizabeth Diane OSPB#: 6546106 INST#: D100W

ITEM	Criminal History/Risk Assessment	SCORE
(A)	No prior felony or misdemeanor convictions as an adult or juvenile: One prior conviction: Two or three prior convictions: Four or more prior convictions:	3 2 1 0 <u>3</u>
(B)	No prior incarcerations (i.e., executed sentences of 90 days or more) as an adult or juvenile: One or two prior incarcerations: Three or more prior incarcerations:	2 1 0 <u>2</u>
(C)	Verified period of 3 years conviction free in the community prior to present incarceration: Otherwise:	1 0 <u>1</u>
(D)	Age at commencement of behavior leading to this incarceration: <u>DOB: 8-7-55</u> 26 or older and at least one point received in Items A, B or C: <u>Age 27 (Crimes committed 5-19-83)</u> 26 or older and no points received in A, B or C: 21 to under 26 and at least one point received in A, B or C: 21 to under 26 and no points received in A, B or C: Under 21:	2 1 1 0 0 <u>2</u>
(E)	Present commitment does not include parole, probation, failure to appear, release agreement, escape or custody violation: Present commitment involves probation, release agreement, or failure to appear violation: Present commitment involves parole, escape or custody violation:	2 1 0 <u>2</u>
(F)	Has not admitted or documented heroin or opiate derivative abuse problem: Otherwise:	1 0 <u>1</u>
TOTAL HISTORY RISK ASSESSMENT SCORE:		<u>11</u>

Severity 7/6/6  
Range 180-248 mo.

006 Prepared by T. Hammorschmith  
Parole Analyst  
2-28-84 (185 days CTS) --- 9-13-84

## 2017 ORS 161.725<sup>1</sup>

### Standards for sentencing of dangerous offenders

- (1) Subject to the provisions of ORS 161.737 (Sentence imposed on dangerous offender as departure from sentencing guidelines) the maximum term of an indeterminate sentence of imprisonment for a dangerous offender is 30 years, if because of the dangerousness of the defendant an extended period of confined correctional treatment or custody is required for the protection of the public and one or more of the following grounds exist:
- (a) The defendant is being sentenced for a Class A felony and the defendant is suffering from a severe personality disorder indicating a propensity toward crimes that seriously endanger the life or safety of another.
  - (b) The defendant is being sentenced for a felony that seriously endangered the life or safety of another, the defendant has been previously convicted of a felony not related to the instant crime as a single criminal episode and the defendant is suffering from a severe personality disorder indicating a propensity toward crimes that seriously endanger the life or safety of another.
  - (c) The defendant is being sentenced for a felony that seriously endangered the life or safety of another, the defendant has previously engaged in unlawful conduct not related to the instant crime as a single criminal episode that seriously endangered the life or safety of another and the defendant is suffering from a severe personality disorder indicating a propensity toward crimes that seriously endanger the life or safety of another.
- (2) As used in this section, "previously convicted of a felony" means:
- (a) Previous conviction of a felony in a court of this state;
  - (b) Previous conviction in a court of the United States, other than a court-martial, of an offense which at the time of conviction of the offense was and at the time of conviction of the instant crime is punishable under the laws of the United States by death or by imprisonment in a penitentiary, prison or similar institution for a term of one year or more; or

*[Handwritten signature]*

(c) Previous conviction by a general court-martial of the United States or in a court of any other state or territory of the United States, or of the Commonwealth of Puerto Rico, of an offense which at the time of conviction of the offense was punishable by death or by imprisonment in a penitentiary, prison or similar institution for a term of one year or more and which offense also at the time of conviction of the instant crime would have been a felony if committed in this state.

(3) As used in this section, "previous conviction of a felony" does not include:

(a) An offense committed when the defendant was less than 16 years of age;

(b) A conviction rendered after the commission of the instant crime;

(c) A conviction that is the defendant's most recent conviction described in subsection (2) of this section, and the defendant was finally and unconditionally discharged from all resulting imprisonment, probation or parole more than seven years before the commission of the instant crime; or

(d) A conviction that was by court-martial of an offense denounced only by military law and triable only by court-martial.

(4) As used in this section, "conviction" means an adjudication of guilt upon a plea, verdict or finding in a criminal proceeding in a court of competent jurisdiction, but does not include an adjudication which has been expunged by pardon, reversed, set aside or otherwise rendered nugatory. [1971 c.743 §85] 1989 c.790 §75; 1993 c.334 §5; 2005 c.463 §9,14; 2007 c.16 §4]

<sup>1</sup> Legislative Counsel Committee, *CHAPTER 161—General Provisions*,

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors161.html](https://www.oregonlegislature.gov/bills_laws/ors/ors161.html) (2017) (last accessed Mar. 30, 2018).

I didn't belabor the issues. I didn't feel the need to educate the Court on the meaning of the 2000 Apprendi ruling. That case, along with the 2004 Oregon cases that led to the amending of the ORS 161.725 Law in 2005, changed the way Courts in Oregon were permitted to Sentence defendants for the past 15 years. The Judge didn't need me to explain what it already knew.

What I wasn't prepared for was an honest Oregon Judge who read my Petition and found:

"One of Plaintiff's claims - the Third Claim for Relief - raised a claim for habeas relief and was brought to this Court's attention... this Court will be directing that an Order for a Writ of Habeas Corpus shall issue with respect to Plaintiff's Third Claim for Relief by way of a separate order."

OMG!! For 20 years the Marion County Court had been dismissing my Habeas Corpus Petitions BECAUSE they were titled "Petition for Writ of Habeas Corpus". Then, when I finally figure out I need to title my Petition for "Post Conviction Relief", a Marion County Judge reassigns one of my Claims as a "Petition for Writ of Habeas Corpus".

Why didn't the Court do this 20 years earlier? I can't be the only person asking that question.

So, Judge Courtland Geyer kept the HABEAS CASE he opened as Marion County Case No: 21-CV-04754.

He left my original Petition, Marion County Case No: 20-CV-44790, to be tried by Judge Thomas M. Hart. I quickly amended my Petition for Post Conviction Relief to exclude the Third Claim for Relief and waited for whatever was coming next.

Judge Geyer's case, the one he opened, is reading for another day because it became another matter. Another case that was handled by a liscensed attorney. I was bouyed with hope. How could a Judge rule against a case HE initiated? Well, spoiler alert. I'm still in prison two years later.

For now, though, we're examining this Apprendi/Warren matter. Let's see how it ended up.

Verified Correct Copy of Original 2/16/2021.

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

Case No. 21CV04754

STATE OF OREGON  
Marion County Circuit Courts  
FEB 15 2021  
FILED

ELIZABETH DIANE DOWNS,  
W49707

Plaintiff,

vs.

COLETTE PETERS, Director,  
Oregon Department of Corrections,

Defendants.

LIMITED JUDGMENT  
OF DISMISSAL (Claims 1 and 2)  
WITHOUT PREJUDICE

Plaintiff is an adult in custody of the Oregon Department of Corrections, lodged in another state. She initially filed this matter as a petition for post-conviction relief (see Marion County docket number 20CV44790). One of Plaintiff's claims – the Third Claim for Relief – raised a claim for habeas relief and was brought to this Court's attention. Without disposing of 20CV44790, this Court will be directing that an Order for a Writ of Habeas Corpus shall issue with respect to Plaintiff's Third Claim for Relief by way of a separate order. For the reasons set forth below, this court finds that Plaintiff's First and Second Claims do not raise any theory of habeas relief and those are dismissed on the court's own motion.

A petition for a writ of habeas corpus is available in two kinds of cases: "(1) When a petition makes allegations which, if true, show that the prisoner, though validly in custody, is subjected to a further 'imprisonment of restraint' of his person that would be unlawful if not justified to the court, and (2) when a petition alleges other deprivations of a prisoner's legal rights of a kind which, if true, would require immediate judicial scrutiny, if it also appears to the court that no other timely remedy is available to the prisoner." *Penrod/Brown v. Cupp*, 283 Or 21, 28; 581 P2d 934 (1978).

A petition for a writ of habeas corpus may be dismissed on the Court's own motion. ORS 34.320. The Court must construe the petition liberally "and assume the truth of all well-pleaded allegations and all reasonable inferences therefrom." *Riley v. Balawin*, 143 Or App 404, 407, 923 P3D 687 (1996). After such review, a court may dismiss any claims for relief that do not adequately set forth any claim for relief pursuant to Oregon habeas corpus law, as set forth above. ORS 34.320; ORS 34.362.

Plaintiff's First and second Claims for relief collaterally attack the lawfulness of her underlying conviction and sentence. Habeas Corpus relief may not be used as an alternative to appellate or post-conviction proceedings. ORS 138.510 – 138.680; *Allen v. Maass*, 124 Or App 195 (1993). Plaintiff's claims are exactly that – indeed, Plaintiff filed those claims request ng post-conviction relief and those proceedings have been left to proceed on their own merits. Rather, Plaintiff's Third Claim for relief – applying the liberal standard of review, cited above, will now be considered as a petition for habeas relief, as well.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the First and Second Claims of Plaintiff's Petition for Writ of Habeas Corpus filed herein are DISMISSED WITHOUT PREJUDICE. The Third Claim shall proceed as set forth in a separate order.

DATED: February 15, 2021



---

Courtland Geyer  
Circuit Court Judge

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

MAILED  
3-2-21

Elizabeth Diane Downs,  
Plaintiff

Case Number: 20-CV-44790

v.

Amended Petition for Post Conviction Relief

Collette S. Peters, Director,  
Oregon Department of Corrections,  
Defendant

---

AUTHORITY

COMES NOW PLAINTIFF, Elizabeth Diane Downs, to amend her Petition for Post Conviction Relief pursuant to a Court Order dated 2-15-2021 (received by Plaintiff on 2-23-2021).

---

CLAIM FOR RELIEF

In 1984, Plaintiff's sentence was lengthened by the dangerous offender clause in ORS 161.725. See the Sentence Order in OREGON v DOWNS, Lane County Case Number: 10-84-01377.

In 2005, Oregon Legislators amended the "dangerous offender" clause in ORS 161.725 to require a jury to find the prisoner is a "dangerous offender" defined in ORS 161.735.

In re HUBBARD, 825 F.3d 225 (4th Cir. 2016) says new substantive rules are retroactive."

WELCH v UNITED STATES, 136 U.S. 1257, 1265 (2016) — says substantive rule changes are retroactive. When a clause within a statute is struck down, "The clause is invalid ... it can no longer ... authorize any sentence". (quoting JOHNSON v US, 135 S.Ct. 2551 (2015)).

UNITED STATES v ADKINS, 883 F.3d 1207 (9th Cir. 2018) The Ninth Circuit Court of Appeals said: The deletion of a substantive clause applies to all defendants who were sentenced prior to the amendment of the law.

Neither ORS 161.725 nor ORS 161.735 were charged by the State or tried by a jury after the substantive rule change was amended. The invalidated (1983 version of) ORS 161.725 can no longer authorize Plaintiff's "dangerous offender" sentence and must be stricken from her Sentence Order.

UNITED STATES v CARTER, 422 F.Supp.3d 299 (2019) says Sentencing Guidelines are mandatory. Substantive changes to the law would certainly result in the defendant receiving a much shorter sentence. Defendant's challenge to the former sentence was timely because he'd already served more time than he'd receive if sentenced without the deleted clause.

Absent the 30 year enhancement clause in ORS 161.725, Plaintiff's mandatory Sentencing Guidelines set her presumptive term of incarceration within 180-248 months. She would have paroled in 2004. The invalid ORS 161.725 "dangerous offender" sentence must be stricken from Plaintiff's Sentence Order to prevent Defendant from illegally restraining Plaintiff of her liberty in violation of her Sixth and Fourteenth Amendment Constitutional Right to due process.

---

APPEARANCE



PRAYER FOR RELIEF

Plaintiff prays this Court for an ORDER striking ORS 161.725 from Plaintiff's 1984 Sentence Order.

Plaintiff further prays this Court for an ORDER discharging her from custody.

CERTIFICATE OF SERVICE

I certify a true copy of Plaintiff's AMENDED PETITION FOR POST CONVICTION RELIEF was placed in the mail, addressed to the following on 3-2-2001.

Oregon Attorney General  
~~463 State Street~~  
Salem, Oregon 97301

1162 COURT ST. NE



Elizabeth Diane Downs W49707  
CCWF 512-02-1L  
PO Box 1508  
Chowchilla, CA 93610-1508

Well, my Post Conviction Claims ended up in the same place as my Habeas Corpus Claims. Nowhere! I'm thinking my ignorance of the Law isn't the only factor at play here.

On 9-7-2021, Judge Hart dismissed 20-CV-44790 and again gave no legal reason why I was denied relief when aaaaalllll the prisoners named in the Oregon cases identical to mine were returned to their Counties of Commitment for Resentencing. I still don't understand it.

I appealed Judge Hart's decision in Downs v Peters, A177054, and waited an entire year for Appellate Court Judges Shorr, Mooney, and Pugin to Affirm Judge Hart's Opinion WITHOUT an Opinion of their own. But Judge Hart had no opinion. Neither did they. What law were they upholding? I still don't know after all these years.

It's like when my Petitions for Writ of Habeas Corpus kept getting denied, but no Judge would say why. It wasn't until Judge Ochoa "accidentally" used the words "post conviction" that I had a clue. Am I missing something in this secret Law Language again?

I asked the Oregon Supreme Court to review the case in Downs v Peters, S069833. Wanna bet what the Court said? Too easy? On 11-23-2022, Chief Justice Martha L. Walters AGAIN denied my case review and didn't say why.

Ya know, the Oregon media is quick to say, "Well, Diane must be guilty. She had her appeal and she lost". My goal here is to show you WHY I LOST EVERY APPEAL. If you can't find the reason in the Court's Opinions and I can't find the reason, then what is the reason I've lost my appeals?

A reviewing Court once told my attorney it wasn't his job to second-guess a Lower Court Decision. WHAT?! That's the reviewing Court's only job. But now I get what he was saying. How can he overturn a Lower Court's decision when there is no opinion given to review? THAT is why Oregon Judges NEVER give an opinion in their cases. THAT is the "secret language" by which they communicate. No opinion? Let it ride.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

ELIZABETH DIANE DOWNS,  
Petitioner,  
v.  
COLLETTE S. PETERS, Director,  
Oregon Department of Corrections,  
Defendant.

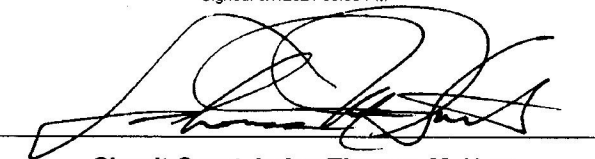
Case No. 20CV44790  
GENERAL JUDGMENT  
POST CONVICTION  
ORS 20.140 - State fees deferred at filing

**GENERAL JUDGMENT**

The Court having considered the record, the written arguments of counsel, and the oral arguments of counsel, and having previously issued an order granting defendant's Motion for Summary Judgment.

NOW, THEREFORE, IT IS HEREBY ADJUDGED that petitioner's Amended Petition for Post-Conviction Relief is denied, and this action is dismissed.

Signed: 9/7/2021 03:03 PM



**Circuit Court Judge Thomas M. Hart**

Submitted by: Paul Reim  
Assistant Attorney General  
Attorneys for Defendant

FILED: September 14, 2022

IN THE COURT OF APPEALS OF THE STATE OF OREGON

ELIZABETH DIANE DOWNS,  
Petitioner-Appellant,

v.

COLLETE S. PETERS, Director, Oregon Department of Corrections,  
Defendant-Respondent.

Marion County Circuit Court  
20CV44790

A177054

Thomas M. Hart, Judge.

Submitted on August 05, 2022.

Before Shorr, Presiding Judge, and Mooney, Judge, and Pagán, Judge.

Elizabeth Diane Downs filed the brief *pro se*.

Attorney for Respondent: Timothy A. Sylwester.

**AFFIRMED WITHOUT OPINION**

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**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Respondent

- No costs allowed.  
 Costs allowed, payable by Appellant.
-

*Rec'd  
11-29-22*

IN THE SUPREME COURT OF THE STATE OF OREGON

ELIZABETH DIANE DOWNS,  
Petitioner-Appellant,  
Petitioner on Review,

v.

COLLETE S. PETERS, Director, Oregon Department of Corrections,  
Defendant-Respondent,  
Respondent on Review.

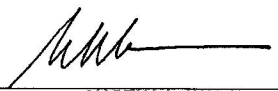
Court of Appeals  
A177054

S069833

**ORDER DENYING REVIEW**

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.



MARTHA L. WALTERS  
CHIEF JUSTICE, SUPREME COURT  
11/23/2022 10:46 AM

c: Timothy A Sylwester  
Elizabeth Diane Downs

tnb

**ORDER DENYING REVIEW**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

So, what am I to do now? Pretty much what you'd expect of me by this time. I'll Petition the Federal Court for Habeas Corpus Relief under 28 USCS 2254. AND, I'm posting the State's Court documents online so the world can know the stinky little truth about the Oregon Justice System. All the things the Oregon media won't tell you cuz if they did, they wouldn't be permitted in the Courtroom for the next trial. No Courtroom appearance, no story, no job. Everyone panders to someone. I'm laughing now because my family would give me a hard time for saying, "Good thing for the Internet". No one ever thought they'd hear that from me. I never thought I'd say it. Go figure. But it's the only way YOU can see the truth, the actual Court documents, without a middleman to stand in the way. I've shown soooooo many media people the documents (on camera) and they've NEVER been seen on ANY interview. That's one of the reasons I stopped answering media questions in 1994. There was no point in it. There still isn't.

Now, with the Internet, I can show you the truth you can see with your own eyes. No more will you be deceived by the State of Oregon unless you want to be. At least I know I've done all I can to make the truth available for you.

That said, it looks like I'll delay posting this until I've finished my Federal Petition so I can add it to this reading.

2-3-2023

DONE! THE FOLLOWING PETITION IS  
NOW ON THE WAY TO THE FEDERAL COURT.  
LET'S SEE WHAT HAPPENS NEXT.

LATER,



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OREGON

Elizabeth Diane Downs,  
Plaintiff

v

Collette S. Peters, Director  
Oregon Department of Corrections,  
Respondent

Docket Number  
28 USC 2254  
Petition for Writ of Habeas Corpus

=====

PLAINTIFF'S PETITION FOR  
WRIT OF HABEAS CORPUS  
(Expired and Invalid Sentence)

PLAINTIFF PRO SE  
Elizabeth Diane Downs W49707  
CCWF 512-02-1L  
PO Box 1508  
Chowchilla, California 93610-1508

RESPONDENT'S ATTORNEY  
Oregon Attorney General  
400 Justice Building  
1162 Court Street NE  
Salem, Oregon 97301

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OREGON

Elizabeth Diane Downs,  
Plaintiff

v

Collette S. Peters, Director  
Oregon Dept. of Corrections  
Respondent

Case Number:

28 USCS 2254

Petition for Writ  
of Habeas Corpus

---

I. AUTHORITY and JURISDICTION

Plaintiff, an Oregon prisoner, was convicted of Murder and two counts of Attempted Murder in 1984, in the case of Oregon v Downs, Lane County Case No. 10-84-01377. She was Sentenced as a "dangerous offender" under ORS 161.725, which was later found to be an Unconstitutional Sentencing Scheme by the United States Supreme Court in DILTS v OREGON on 6-28-2004.

Respondent, the Oregon Director of Corrections, restrains Plaintiff of her liberty by virtue of the Unconstitutional and invalid Sentence Order.

28 USCS 2254 has authority and jurisdiction over the parties and Constitutional Claims presented herein.

---

II. EXHAUSTION OF APPELLATE REMEDIES

Plaintiff sought Post Conviction Relief from illegal restraint in Downs v Peters, Marion County Case No: 20-CV-44790. The Court, on its own initiative, created a second Habeas Case for the Third Claim in Plaintiff's Petition and titled it, Downs v Peters,



Marion County Case No: 21-CV-04754.

44790

Post Conviction Case No: 20-CV-4470 was dismissed on 9-7-2021. Plaintiff appealed (A177054). The Court of Appeals AWOP'd the Circuit Court decision on 9-14-2022. Plaintiff sought Oregon Supreme Court Review (S069833). The Court denied review on 11-23-2022.

Habeas Corpus Case No: 21-CV-04754 was dismissed by the very Judge who initiated the case, on 6-28-2021. Plaintiff appealed (A176432). The Court of Appeals AWOP'd the Lower Court decision on 6-23-2022. Plaintiff sought Oregon Supreme Court Review (S069694). The Court denied review on 11-23-2022.

Plaintiff has exhausted her appellate remedies with regard to these issues.

The United States Supreme Court found the Federal Court is required to hold an Evidentiary Hearing when "the State's determination is not supported by the record".

Townsend v Sain, 372 U.S. 293; 83 S.Ct. 745, 757 (1963)  
Wellons v Hall, 558 U.S. 220 (2010)  
Pierce v Administrator, 808 Fed.App'x. 111 (3rd Cir. 2020)

Plaintiff will prove her Sentence Order has no authority to restrain her of liberty for the following reasons:

- #1 --- Expired Sentence
- #2 --- Invalid Sentence

Without a valid Sentence Order authorizing Plaintiff's imprisonment, Respondent has no authority to restrain her of liberty. In the Interest of Justice, the Federal Court must conduct a trial of facts to ensure Plaintiff's due process is protected.

### III. HISTORY

In 1984, Plaintiff was sentenced for Murder and Attempted Murder (ORS 163.115) in Lane County Oregon. Per Statutory Right, Plaintiff's Sentence Order should've read: (App. 1)

Count I	Murder	Life
Count II	Attempted Murder	20 years
Count III	Attempted Murder	20 years

In fact, the Oregon Board of Parole subsequently calculated Plaintiff's actual time to be served under OAR 255-35-025 (App. 2):

Count I	Murder	8-14 years
Count II	Attempted Murder	30-40 months
Count III	Attempted Murder	30-40 months
		<u>13 years to 20 y &amp; 8 m</u>

The Sentencing Court increased Plaintiff's sentence up to 30 years by sentencing her as a "dangerous offender" under ORS 161.725. Plaintiff's Sentence Order says (App. 1):

" ... for purpose of imposing sentence herein the defendant, Elizabeth Diane Downs, is a dangerous offender, as described in ORS 161.725".

ORS 161.725 says (App. 3):

" ... the maximum term of ... imprisonment for a dangerous offender is 30 years".

The Sentencing Court then misused ORS 161.725 to improperly re-write the Statutorily Determinate Sentence in Count II, thus illegally enhancing the 20 year sentence to 30 years and by attaching an inappropriate 15 year minimum (App. 1):

Count I	Murder	Life _____ (14 years)
Count II	Attempted Murder	30 years w/a 15 year min.
Count III	Attempted Murder	20 years w/a 10 year min.
		<u>39 years</u>

That illegal enhancement moved Plaintiff's mandatory minimum release date to 2-28-2023.

In 1999, the United States Supreme Court found "enhancing" Sentencing Schemes like the one just described to be Unconstitutional.

JONES v UNITED STATES, 119 S.Ct. 1215 (1999)  
"Under the due process clause of the Fifth Amendment, and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt".

This was not a new way of thinking. It's just that State Legislators seemed to forget:

UNITED STATES v REESE, 92 U.S. 214, 232-233 (1875)  
"The indictment must contain an allegation of every fact which is legally essential to the punishment to be inflicted".

The Supreme Court Justices said it plainly in:

APPRENDI v NEW JERSEY, 530 U.S. 466 (2000)  
"If a fact is ... the basis for imposing or increasing punishment ... it is an element ... I am aware of no historical basis for treating a non-element as a fact that by law sets or increases punishment".

On 6-28-2004, the United States Supreme Court overturned ORS 161.725 in DILTS v OREGON. The Oregon Court of Appeals then reversed and remanded for resentencing:

Oregon v Sawatzky, 96 P3d 1288 (2004)  
Oregon v Warren, 5 P3d 1115 (2004)

Plaintiff had plenty of reason to believe the finding in their cases, that ORS 161.725 was Unconstitutional, also meant

the ORS 161.725 in her Sentence Order was equally Unconstitutional. That being the case, Plaintiff sought Post Conviction Relief to Order the Respondent to release her from custody.

The Court did not do so and the State's determination is not supported by the record.

---

#### IV. STATEMENT OF FACTS

##### EXPIRED SENTENCE

Habeas Corpus Case: 21-CV-04754; A176432; S069694

Plaintiff's 1984 Sentence Order reads (App. 1)

"for purpose of imposing sentence herein,  
THE DEFENDANT, Elizabeth Diane Downs,  
IS A DANGEROUS OFFENDER, as described in  
ORS 161.725".

ORS 161.725 reads (App.3):

"THE MAXIMUM TERM OF ... IMPRISONMENT  
FOR A DANGEROUS OFFENDER IS 30 YEARS".

Plaintiff's inception date was 3-9-1984. Per Statute, her maximum term of imprisonment expired in 2014. The Marion County Court, on its own motion, recognized this and opened the Habeas Case itself. Then dismissed the case on the grounds Plaintiff failed to make a claim for which Habeas Relief may be granted.

STRONG v GLADDEN, 225 OR 345, 351 (1961)  
The Ancient Writ of Habeas Corpus may be used  
where the given sentence was said to have expired.

Plaintiff doesn't want to sound like an Eyore, here, but she's beginning to think the Laws in Oregon seem to pertain to everyone except her.

The Habeas Court's finding, dismissing the Court's own Habeas Case, is not supported by Law. In fact, ORS 161.725 supports Plaintiff's theory that she should've been discharged from custody in 2014, but no Oregon Appellate Court will give a reason why Relief was denied Plaintiff.

WELLONS v HALL, 558 U.S. 220 (2010)  
If the defendant is reasonably diligent in trying to present facts, there's cause for a Federal Evidentiary Hearing.

Three Oregon Courts gave no reason for refusing to comply with Oregon Statute. In the Interest of Justice, the District Court must conduct a Federal Evidentiary Hearing to protect Plaintiff's due process rights guaranteed by the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

~~\_\_\_\_\_~~

#### INVALID SENTENCE

Post Conviction Case: 20-CV-44790; A177054; S069833

The Sentencing Court manufactured an unauthorized 30 year Sentence for Count 2 (App. 1). Attempted Murder carries a Statutorily Determinate Sentence of 20 years (not the 30 years imposed). ORS 161.725 governs INDETERMINATE SENTENCES (App. 3). The Sentencing Court had no authority to disturb the Statutory mandate of Attempted Murder in Count 2.

OREGON v BRAUGHTON, 28 Or App 891, 893; 561 P2d 1040 (1977)  
"The sentencing authority of a court exists solely by virtue of a statutory grant of power and therefore cannot be exercised in any manner not specifically authorized. WHEREAS ... A SENTENCING COURT HAS EXCEEDED ITS STATUTORY AUTHORITY ... THE SENTENCE ORDER (IS) VOID".

OREGON v COTTON, 240 Or 252; 400 P2d 1022 (1965)  
"The Court in imposing punishment for a criminal offense is limited to the provisions of the applicable statute, and ANY DEVIATION FROM THE STATUTE in mode, extent, or place of punishment RENDERS THE JUDGMENT VOID".

The Oregon Director of Corrections has no legal authorization to imprison Plaintiff because there is no actionable Sentence Order restraining her of liberty. None of the Oregon Courts gave a reason for refusing to discharge Plaintiff from custody.

PIERCE v ADMINISTRATOR, 808 Fed.Appx. 108, 111 (3rd Cir. 2020)  
When the State's determination is not supported by the record A FEDERAL EVIDENTIARY HEARING IS REQUIRED.

---

#### INVALIDATED SENTENCE

Post Conviction Case: 20-CV-44789; A177054; S069833

In 2005, Plaintiff's already invalid Sentence Order was further invalidated when the dangerous offender clause driving her Sentence was stricken from ORS 161.725 by Oregon Legislators.

OREGON v WARREN, 168 Or App 1; 5 P3d 1115 (2004)  
"The imposition on defendant of a 30-year dangerous offender sentence violated defendant's rights, under the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution to have the fact on which the sentence was based be proved to a jury beyond a reasonable doubt. We therefore vacate Defendant's dangerous offender sentence ..."

All these Oregon Courts found the imposition of ORS 161.725 on these other cases was Unconstitutional, but these same Oregon Courts refuse to abide by the Law in Plaintiff's case.

RHODEN v ROWLAND, 10 F3d 1457, 1460 (9th Cir. 1993)

The Ninth Circuit Court of Appeals required an evidentiary hearing in the Federal Court after Plaintiff developed a record of prejudice.

UNITED STATES v CARTER, 422 F.Supp.3d 299 (2019)  
Sentencing Guidelines are mandatory. Substantive changes to the law would certainly result in the defendant receiving a much shorter sentence. Defendant's challenge to the former sentence was timely because he'd already served more time than he'd receive if sentenced without the deleted clause.

Without the deleted clause in ORS 161.725, Plaintiff's Sentence would've expired in 2004. That means, when the dangerous offender law changed in 2005, Plaintiff should've been discharged from custody.

WELCH v UNITED STATES, 136 U.S. 1257, 1265 (2016)  
When a clause within a statute is struck down, "The clause is invalid ... it can no longer ... authorize any sentence" [quoting Johnson v United States, 135 S.Ct. 2551 (2015)].

UNITED STATES v ADKINS, 883 F3d 1207 (9th Cir. 2018)  
The Ninth Circuit Court of Appeals found the deletion of a substantive clause within a Statute applies to all defendants who were sentenced prior to the amendment of the law.

The Ninth Circuit Court made it very clear: The deletion of the dangerous offender clause within ORS 161.725 applies to Plaintiff. Because Plaintiff's Sentence Order rests on the strength of the dangerous offender clause in ORS 161.725 (App. 1), the Sentence Order is void and has no authority to imprison Plaintiff.

Without a valid Sentence Order in hand, the Oregon Director of Corrections has no authority to restrain Plaintiff of her liberty. Plaintiff was correct to seek Post Conviction Relief and the Oregon Courts were wrong to dismiss her Petition without giving a valid reason why.

TOWNSEND v SAIN, 372 U.S. 293; 83 S.Ct. 745, 757 (1963)  
When the State's determination is not supported by the record, A FEDERAL EVIDENTIARY HEARING IS REQUIRED.

---

PRAYER FOR RELIEF

Plaintiff prays this Court for an Order vacating her invalid Sentence Order;

Plaintiff further prays this Court for an Order directing the Oregon Director of Corrections to discharge her from custody because the 1984 Sentence Order restraining her of liberty expired in 2014.

I swear under penalty of perjury the aforesaid is true.

Dated this 4th day of February, 2023.

*DS*

Elizabeth Diane Downs

---

CERTIFICATE OF MAILING

I certify a true copy of this PETITION FOR WRIT OF HABEAS CORPUS was placed in the mail, addressed to the following on 2-4-2023:

Oregon Attorney General  
400 Justice Building  
1162 Court Street NE  
Salem, Oregon 97301

Elizabeth Diane Downs W49707  
CCWF 512-02-1L  
PO Box 1508  
Chowchilla, CA 93610-1508

*Elizabeth Diane Downs*



Parole Board Records

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

THE STATE OF OREGON, )  
)  
Plaintiff, )  
)  
vs. )  
)  
ELIZABETH DIANE DOWNS, )  
)  
Defendant. )

Case No. 10 84 01377

SENTENCE ORDER

FILED  
AUG 28 1984  
8:00 CLOK  
EUGENE  
COURT ADMINISTRATOR  
Circuit Court  
BY Sharon E. Pangle  
CLERK  
EUGENE PROBATION  
BRANCH OFFICE  
RECEIVED  
AUG 29 1984

This matter came on to be heard on the 29th day of August, 1984, the State of Oregon being represented by Frederick Hugi, Assistant District Attorney for Lane County, Oregon, and the defendant, Elizabeth Diane Downs, appearing in custody and by her attorney, James C. Jagger, said defendant having been tried and convicted of the crimes of MURDER, ATTEMPTED MURDER, ATTEMPTED MURDER, ASSAULT IN THE FIRST DEGREE and ASSAULT IN THE FIRST DEGREE before a jury in the above court and cause, and this being the time set for imposing sentence herein, and the Court, having heard testimony and arguments of counsel, and being fully advised, and having advised the Defendant of her right to appeal;

The Court finds that for the purpose of imposing sentence herein, the defendant, Elizabeth Diane Downs, is a dangerous offender, as described in ORS 161.725(1).

The Court further finds that for the purpose of imposing sentence and conviction herein, the crime charged in Count IV of the Indictment merges with the crime charged in Count II; and that the crime charged in Count V merges with the crime charged in Count III.

IT IS HEREBY ORDERED AND ADJUDGED that the defendant, Elizabeth Diane Downs, be, and she hereby is, sentenced to pay restitution in an amount to be determined, and the District Attorney shall have thirty (30) days from the date of entry of this order to submit the restitution information to the Court.

COUNT I  
(Murder)

IT IS HEREBY CONSIDERED, ORDERED AND ADJUDGED that the defendant, Elizabeth Diane Downs, be and she hereby is sentenced to imprisonment for a term of life, and she hereby is committed to the legal and physical custody of the Corrections Division of the State of Oregon.

IT IS FURTHER ORDERED that said defendant shall serve not less than five (5) years minimum, pursuant to ORS 161.610.

COUNT II  
(Attempted Murder)

IT IS ORDERED AND ADJUDGED that said defendant be, and she hereby is, sentenced to imprisonment for a term not to exceed thirty (30) years, of which defendant is to serve not less than fifteen (15) years minimum, and she hereby is committed to the legal and physical custody of the Corrections Division of the State of Oregon.

IT IS FURTHER ORDERED that defendant shall serve not less than five (5) years minimum, pursuant to ORS 161.610, to be served concurrent with the fifteen (15) year minimum sentence set forth above.

IT IS FURTHER ORDERED AND ADJUDGED that the sentence imposed herein on Count II shall be served consecutively to the sentence imposed in Count I.

COUNT III  
(Attempted Murder)

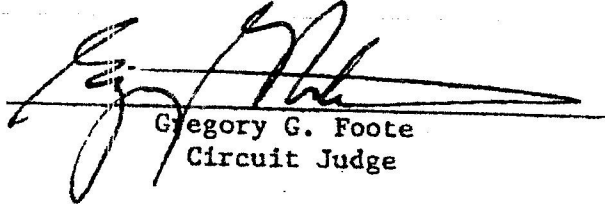
IT IS ORDERED AND ADJUDGED that said defendant be, and she hereby is, sentenced to imprisonment for a term not to exceed twenty (20) years, of which defendant is to serve not less than ten (10) years minimum, and she hereby is committed to the legal and physical custody of the Corrections Division of the State of Oregon.

IT IS FURTHER ORDERED that defendant shall serve not less than five (5) years minimum, pursuant to ORS 161.610, to be served concurrent with the ten (10) year minimum sentence set forth above.

IT IS FURTHER ORDERED AND ADJUDGED that the sentence imposed herein on Count III shall be served consecutively to the sentence imposed in Count II.

IT IS FURTHER ORDERED that the Sheriff of Lane County, Oregon, deliver said defendant to the custody of the Corrections Division of the State of Oregon.

Dated this 28<sup>th</sup> day of August, 1984.

  
Gregory G. Foote  
Circuit Judge

KAY CATES  
Official Reporter  
Lane County Courthouse  
Eugene, OR 97401

CERTIFIED TO BE A TRUE COPY OF THE  
ORIGINAL DOCUMENT CONSISTING OF  
2 PAGES, WHICH IS FILED IN  
THIS OFFICE AND OF WHICH I AM THE  
LEGAL CUSTODIAN.

DATED August 28, 1984  
Circuit Court  
Lane County, Oregon  
By Sharon Strong

CRIMINAL HISTORY/RISK ASSESSMENT UNDER RULE 255.35.015

- A. No prior felony or misdemeanor convictions as an adult or juvenile: 3  
 One prior conviction: 2  
 Two or three prior convictions: 1 3  
 Four or more prior convictions: 0 0
  
- B. No prior incarcerations (i.e., executed sentences of 90 days or more) as an adult or juvenile: 2  
 One or two prior incarcerations: 1  
 Three or more prior incarcerations: 0 2
  
- C. Verified period of 3 years conviction free in the community prior to present incarceration: 1  
 Otherwise: 0 1
  
- D. Age at commencement of behavior leading to this incarceration: 2  
 26 or older and at least one point received in Items A, B or C: 1  
 26 or older and no points received in A, B or C: 1  
 21 to under 26 and at least one point received in A, B or C: 0  
 21 to under 26 and no points received in A, B or C: 0 2  
 Under 21: 0
  
- E. Present commitment does not include parole, probation, failure to appear, release agreement, escape or custody violation: 2  
 Present commitment involves probation, release agreement, or failure to appear violation: 1  
 Present commitment involves parole, escape or custody violation: 0 2
  
- F. Has no admitted or documented heroin or opiate derivative abuse problem: 1  
 Otherwise: 0 1

TOTAL HISTORY/RISK ASSESSMENT SCORE:

11

TIME TO BE SERVED UNDER RULE 255.35.025

HISTORY/RISK ASSESSMENT SCORE:	11-9 Excellent	8-6 Good	5-3 Fair	2-0 Poor
<b>OFFENSE SEVERITY RATING: (All ranges in Categories 1-6 are shown in months.)</b>				
Category 1 ----	6	6	6-10	12-18
Category 2 ----	6	6-10	10-14	16-24
Category 3 ----	6-10	10-14	14-20	22-32
Category 4 ----	10-16	16-22	22-30	32-44
Category 5 ----	16-24	24-36	40-52	56-72
Category 6 <del>XXXX</del>	30-40	44-56	60-80	90-130
Category 7 <del>X</del>				
Subcategory 2 ----	8-10 yrs.	10-13 yrs.	13-16 yrs.	16-20 yrs.
Subcategory 1 ----	10-14 yrs.	14-19 yrs.	19-24 yrs.	24-Life yrs

## 2017 ORS 161.725<sup>1</sup>

### Standards for sentencing of dangerous offenders

(1) Subject to the provisions of ORS 161.737 (Sentence imposed on dangerous offender as departure from sentencing guidelines), the maximum term of an indeterminate sentence of imprisonment for a dangerous offender is 30 years, if because of the dangerousness of the defendant an extended period of confined correctional treatment or custody is required for the protection of the public and one or more of the following grounds exist:

- (a) The defendant is being sentenced for a Class A felony and the defendant is suffering from a severe personality disorder indicating a propensity toward crimes that seriously endanger the life or safety of another.
- (b) The defendant is being sentenced for a felony that seriously endangered the life or safety of another, the defendant has been previously convicted of a felony not related to the instant crime as a single criminal episode and the defendant is suffering from a severe personality disorder indicating a propensity toward crimes that seriously endanger the life or safety of another.
- (c) The defendant is being sentenced for a felony that seriously endangered the life or safety of another, the defendant has previously engaged in unlawful conduct not related to the instant crime as a single criminal episode that seriously endangered the life or safety of another and the defendant is suffering from a severe personality disorder indicating a propensity toward crimes that seriously endanger the life or safety of another.

(2) As used in this section, "previously convicted of a felony" means:

- (a) Previous conviction of a felony in a court of this state;
- (b) Previous conviction in a court of the United States, other than a court-martial, of an offense which at the time of conviction of the offense was and at the time of conviction of the instant crime is punishable under the laws of the United States by death or by imprisonment in a penitentiary, prison or similar institution for a term of one year or more; or

APPENDIX 3