

1 *State of Oregon*)

CA: **A186563**(Control)

2 ***Respondent,***)

TC: 20CR42051

3 *Vs.*)

State of Oregon

4 *Jacob Daniel Anderson*)

Respondent,

5 ***Appellant,***)

vs.

Jacob Daniel Anderson

Appellant,

7) **MOTION TO VACATE AND REMAND**

8) ORCP 71(A,D)

9) ORS 138.530

10
11
12 **UTCR 5.050 COMPLIANCE**

13 Time requested for oral argument: 0 Minutes

14 Telecommunication attendance requested: If Available and Requested/Ordered to Confer

15 Court reporter services requested: No

16 Counsel more than 25 miles from courthouse: Unknown

17
18
19
20 **1. JURISDICTIONAL STATEMENT**

21 The Appellate Court retains jurisdiction in ORS 19.270(e), and ORS 138.530,

22 Notwithstanding Potential State Assertion of ORS 138.105 (9) if present, due to

23 Waiver of that clause of statute in plea agreement, Number 11, which states if the Appellant

24 “I can show the sentence exceeds maximum allowed by law, or is unconstitutional.”

25 Plea Petition 11/10/2020, 20CR42051, U.S. Const. Amend. 8 “Excessive Sentencing”.

26
27
28 A186563(Control)

State of Oregon(Respondent) vs. Jacob Daniel Anderson(Appellant)

Motion to Vacate and Remand

ORCP 71(A),(D) and ORS 138.530

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

With due respect to counsel, the Appellant requests permission of the Court and counsel to enter this Motion to Vacate and Remand into record, on grounds outlined in ORS 138.530, and ORCP 71(a) mistake, inadvertence, surprise, or excusable neglect; (d) the judgment is void.

4. RELIEF REQUESTED

Requesting Order Reversal And Remand to Trial Court for Immediate Resentencing as in ORS 138.530.

5. AUTHORITIES OF MOTION

ORS 137.669,

“Guidelines control sentences
Mandatory sentences

The guidelines adopted under ORS 137.667 (Amendments to sentencing guidelines), together with any amendments, supplements or repealing provisions, **shall control the sentences for all crimes committed after the effective date of such guidelines.** Except as provided in ORS 137.637 (Determining length of determinate sentences) and **137.671** (Authority of court to impose sentence outside guidelines), the incarcerative guidelines and any other guidelines so designated by the Oregon Criminal Justice Commission **shall be mandatory** and constitute presumptive sentences. [1987 c.619 §5; 1989 c.790 §95; 1995 c.420 §7; 1997 c.691 §4]”. In

addition, “OAR 213-004-0001 Sentencing Guidelines Grid”.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States Constitution Amendment 1

“Congress shall make no law abridging the freedom of speech.”

United States Constitution Bill of Rights Amendment 8

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted”

United States Constitution Bill of Rights Amendment 14 §1

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

6. STATEMENT

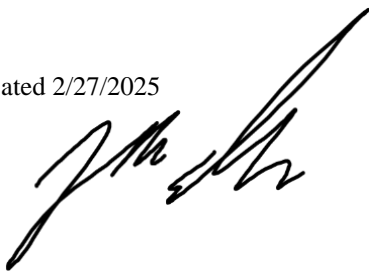
I reserve the ability of my counsel to strike this pleading in part due to his legal knowledge in excess of mine and in Professional capacity of the Oregon State Bar. On 9/5/2024 Judge Cynthia Easterday Imposed a condition that probation which is in violation The First Amendment Protections of “Congress shall make no law abridging the freedom of speech” and Article 1 §8 of The Oregon Constitution freedom to “speak or write on any subject matter whatsoever “, yet was related to the incident of finding my probation officer of a dating site and saying she was beautiful in her personal capacity. The Revocation relating to insults in majority relating to the condition being added after her reporting it to her supervisor and the court. This further violates Evidence Rule 202, under an en banc United States Of America Supreme Court

1 Decision relating to disparagement clauses, for the limine of 9/5/2024 and Judge Michael
2 Wynhausen revocation of probation sentence dated 10/14/2024, the Original condition
3 Unlawful due to the 8-0 decision of the U.S. Supreme Court outlined in
4 *Matal v. TAM 582 U. S. ____ (2017) Opinion of ALITO, J,*
5
6 Where the court interpreted the freedom to speak to not be subject to restrictions even based
7 Disparagement Clauses, which has in recent months been the subject of incarceration
8 when reimplemention of the identical condition was done by the Oregon Parole Board Local
9 Supervisory Authority. This being in the Appeals Court currently in A186490, where it is
10 Cited to be a violation of The Bill of Rights of Constitutions, and Wrongfully imposed.
11 The Oregon Supreme Court in *State v. Henry is 732 P.2d 9, 302 Or. 510.* Imposed that
12 Obscenities, may not be viewed as a state imposed violation of speech, and *State v. Johnson*
13 *345 Or. 190, 191 P.3d 665,* where the court invalidated the insulting speech clause of
14 Disorderly Conduct statutes. The Full context of the direction of the Supreme Court of The
15 United States of America is,

16
17
18 “We need not resolve this debate between the parties because the disparagement clause cannot
19 withstand even Central Hudson review.¹⁷ Under Central Hudson, a re-striction of speech
20 must serve “a substantial interest,” and It must be “narrowly drawn.” *Id.*, at 564–565 (internal
21 Quotation marks omitted). This means, among other Things, that “[t]he regulatory technique
22 may extend only As far as the interest it serves.” *Id.*, at 565. The disparagement clause fails
23 this requirement. It is claimed that the disparagement clause serves two Interests. The first is
24 phrased in a variety of ways in the Briefs. Echoing language in one of the opinions below, the
25 Government asserts an interest in preventing ““under-represented groups”” from being
26 ““bombarded with Demeaning messages in commercial advertising.”” Brief For Petitioner 48

1 (quoting 808 F.3d, at 1364 (Dyk, J., Concurring in part and dissenting in part)). An amicus
2 Supporting the Government refers to “encouraging racial tolerance and protecting the privacy
3 and welfare of individuals.” Brief for Native American Organizations as Amici Curiae 21. But
4 no matter how the point is phrased, Its unmistakable thrust is this: The Government has an
5 Interest in preventing speech expressing ideas that offend. And, as we have explained, that
6 idea strikes at the heart Of the First Amendment. Speech that demeans on the Basis of race,
7 ethnicity, gender, religion, age, disability, or Any other similar ground is hateful; but the
8 proudest boast Of our free speech jurisprudence is that we protect the Freedom to express “the
9 thought that we hate.” United States v. Schwimmer, 279 U. S. 644, 655 (1929) (Holmes, J.,
10 dissenting).” Matal v. TAM 582 U. S. ____ (2017) Opinion of ALITO, J

11
12
13
14
15
16
17
18
19
20 Dated 2/27/2025



21
22 Submitted by:
23 Jacob Daniel Anderson
24 1259 14th Avenue NW
25 Salem, Oregon 97304
26 (503)551-6909

1 CERTIFICATE OF SERVICE

2 I hereby certify that I caused to be served the foregoing MOTION TO VACATE AND REMAND

3 FOR RESENTENCING on the date indicated below,

4 Via First-Class Mail with postage prepaid

5 Via Facsimile Transmission

6 Via Electronic Filing Notice

7 Via Email

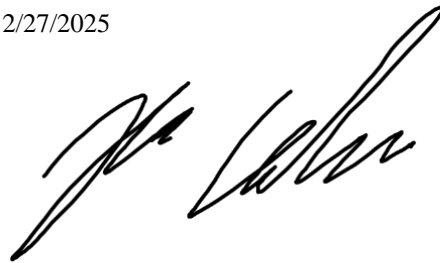
8 Via Hand Delivery

9 Via Overnight Delivery

10 To the following person(s) a true copy thereof, contained in a sealed envelope (if other than by
11 Facsimile transmission), addressed to said person(s) at their last known addresses indicated below:
12
13
14

15
16
17 Benjamin Gutman
18 Oregon Department of Justice
19 Appellate Division
20 1162 Court Street NE, Salem 97301
21 503-378-4402
Benjamin.gutman@doj.state.or.us

Dated 2/27/2025



22 Matthew Blythe
23 Oregon Public Defense Commission
24 Appellate Division
25 1175 Court Street NE Salem, OR 97301
26 503-378-3349
Matthew.blythe@opds.state.or.us

Submitted by,
Appellant
Jacob Daniel Anderson
1259 14th Avenue NW
Salem, Oregon 97304
(503)551-6909

27
28