

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NICHOLAS TAKIS STAMBOULELLIS,

Defendant-Appellant.

UNPUBLISHED

April 1, 1997

No. 189543

Livingston Circuit Court

LC Nos. 93-007700-FH;

94-008418-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

The instant appeal arises from defendant's plea-based convictions secured in two separate criminal actions. In lower court docket no. 93-007700 FH, defendant's Holmes Youthful Trainee Act status was revoked and defendant pleaded guilty to receiving or concealing stolen property over \$100, MCL 750.535; MSA 28.803. He was sentenced to two years' probation, with the first thirty days to be served in the county jail. In lower court docket no. 94-008418 FH, defendant pleaded guilty to two counts of breaking and entering a building with intent to commit larceny, MCL 750.110; MSA 28.305, and one count of receiving or concealing stolen property over \$100. Thereafter, defendant was sentenced to four years' probation, with the first year to be served in the county jail, on one B&E conviction and to four years' probation on the remaining B&E and receiving or concealing convictions. All of defendant's sentences are to be served concurrently. Defendant appeals as of right. We vacate the second of defendant's breaking and entering convictions and sentences and affirm his remaining convictions and sentences. These cases have been decided without oral argument pursuant to MCR 7.214(A).

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

Defendant's B&E convictions and sentences arise from the same criminal transaction and, therefore, violate the Michigan Constitution's protection against double jeopardy. Const 1963, art 1, § 15; *People v McMiller*, 202 Mich App 82, 85; 507 NW2d 812 (1993). Accordingly, we vacate defendant's second B&E conviction and sentence.

Defendant's remaining convictions do not violate the double jeopardy protections. Each remaining conviction is for an offense arising from a separate criminal transaction. *McMiller, supra*; *People v Swinford*, 150 Mich App 507, 515; 389 NW2d 462 (1986).

Defendant's second B&E conviction and sentence are vacated; defendant's remaining convictions and sentences are affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar