

NOTICE

Decision filed 06/29/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2011 IL App (5th) 090456-U  
NO. 5-09-0456  
IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Clinton County.
	)	
v.	)	No. 09-CF-12
	)	
MICHAEL R. MEEKS,	)	Honorable
	)	William J. Becker,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE DONOVAN delivered the judgment of the court.  
Justices Welch and Spomer concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant was wrongly convicted of two counts of burglary and sentenced as a Class X offender when his two entries into the same store were parts of a single plan and continuous act of burglary and one of his prior felony convictions was in fact a Class 3 felony conviction as opposed to a Class 2.
- ¶ 2 Michael R. Meeks, defendant, was convicted after a jury trial of two counts of burglary (720 ILCS 5/19-1(a) (West 2008)) and one count of retail theft (720 ILCS 5/16A-3(a) (West 2008)), and he was sentenced by the circuit court of Clinton County as a Class X offender under section 5-5-3(c)(8) of the Unified Code of Corrections (730 ILCS 5/5-3(c)(8) (West 2008)) to concurrent terms of 20 years' imprisonment on each burglary. Defendant appeals both his convictions and sentence. We reverse and remand for further proceedings.
- ¶ 3 At approximately 2 p.m. on January 19, 2009, defendant entered an Aldi's store in Centralia. As recorded on the store's video surveillance, defendant placed boxes of steaks

and bags of shrimp in a shopping cart. He then left the store by the exit door, leaving the shopping cart with the frozen merchandise inside the store. Defendant then went back inside the entrance door around 2:05 p.m. Aldi's has two different doors, completely enclosed in two separate glass foyers, for entering and exiting the premises. The automatic "in" door will not open for customers already inside the store, while the "out" door will not open for customers trying to enter the store. Defendant was next seen leaving the store via the entrance door with his accomplice, a white female wearing a red ball cap, with a grocery cart full of merchandise. Another shopper notified the cashier that defendant and the female had just left the store with a full cart through the entrance door. The cashier testified she had not checked defendant or the female out of the store. Defendant and his accomplice were then seen throwing groceries across the backseat of a small car in the parking lot. The cashier further noted that defendant did not return the shopping cart to its proper place to get back the quarter required to get out a shopping cart. The police were called, and a short time later, defendant and his accomplice were arrested at defendant's residence. The police also went to a certain bar in the area known as a potential outlet for stolen products. Inside the freezer of the bar, the police found 11 bags of shrimp and one box of steaks from Aldi's. Two large packages of toilet paper and paper towels from Aldi's were found in the vehicle at defendant's residence. Defendant was subsequently found guilty of two counts of burglary and one count of retail theft.

¶ 4 Defendant argues on appeal that one of his burglary convictions must be vacated under the one-act, one-crime doctrine. The State charged defendant with separate burglary counts for the two entries made at two different times by defendant into Aldi's in a plan to commit a retail theft of merchandise. Under the State's theory, defendant entered Aldi's with the intent to steal steaks and shrimp. Once inside the store, he put steaks and shrimp into a grocery cart and then left that cart by the entrance door. He exited the store and, a few

minutes later, entered the store again. His accomplice, the female wearing the red baseball cap, was at the entrance door with the cart. She pushed the cart out the entrance door once the door was activated, and defendant accompanied her to his car, where he placed the merchandise inside the car. The State contends that multiple convictions and concurrent sentences are permitted when a defendant has committed several acts, despite the interrelationship of the acts. Defendant counters there could not be multiple burglary convictions merely because he entered the store two times when they were parts of a single plan and continuous act of burglary. We agree. When two or more related offenses arise from the same conduct, only one conviction is permitted. *People v. Price*, 221 Ill. 2d 182, 193-94, 850 N.E.2d 199, 205 (2006); *People v. King*, 66 Ill. 2d 551, 363 N.E.2d 838 (1977). Here, there were two physical entries into the Aldi's store, but the second entry was a continuation of the original plan to commit a retail theft at Aldi's. Neither defendant nor his accomplice could leave the store via the front entrance without someone activating the "in" door. Neither could leave via the exit door without passing the cashiers' station. In order to accomplish the retail theft, one of the two people, either defendant or his accomplice, had to exit the store to open the entrance door for the other person with the shopping cart. Even though the prosecution attempted to carve out multiple acts from the two entries into Aldi's, the convictions arose out of one continuous act of burglary. There was but one overriding act of unlawful entry into Aldi's for the purpose of retail theft, and allowing the State to obtain multiple convictions and sentences for this one overriding act is error. Therefore, one of defendant's convictions must be vacated.

¶ 5 Defendant also argues on appeal that he was erroneously sentenced as a Class X offender because there was only one qualifying prior felony conviction. Whether a defendant is eligible for Class X sentencing is a question of law, mandating *de novo* review. *People v. Baumann*, 314 Ill. App. 3d 947, 948, 733 N.E.2d 417, 418 (2000).

¶ 6 At defendant's sentencing hearing, the State argued that defendant could be sentenced to a Class X sentence on the basis of two Class 2 felonies—a 1990 burglary conviction and a 1993 reckless homicide conviction. The reckless homicide conviction was in fact a Class 3 felony conviction. Defendant was therefore improperly sentenced under the statute. When a sentencing court misapprehends the applicable range of punishment and relies on that misapprehension in sentencing, the defendant is entitled to have his sentence vacated and his cause remanded for resentencing. *People v. Eddington*, 77 Ill. 2d 41, 48, 394 N.E.2d 1185, 1188 (1979). While it appears from the record that defendant has other qualifying Class X qualifying convictions to satisfy the statute, given that we are also vacating one of defendant's burglary convictions, we choose to remand his cause for a new sentencing hearing. Additionally, we need not address the issue of the length of the mandatory supervised release raised by defendant in his supplemental brief on appeal, because defendant may or may not be sentenced as a Class X offender on remand.

¶ 7 For the foregoing reasons, we reverse the judgment of the circuit court of Clinton County and remand this cause for a new sentencing hearing.

¶ 8 Reversed; cause remanded.