

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

SCOTT ALAN KUHL

Appellant,

Appeal No. CRC 10-00070APANO
UCN 522010MM008013XXXXNO

STATE OF FLORIDA

Appellee.

_____ /

Opinion filed _____.

Appeal from a Judgment
entered by the Pinellas County Court
County Judge Robert Dittmer

Thomas Matthew McLaughlin, Esquire
Attorney for Appellant

Theodora Taktikos-Danzig, Esquire
Assistant State Attorney
Attorney for Appellee

ORDER AND OPINION

PETERS, Judge.

THIS MATTER is before the Court on Appellant, Scott Alan Kuhl's appeal from an order denying his Motion to Dismiss. The Appellant pleaded no contest to the charged offense but reserved the right to appeal. After reviewing the briefs and record, this Court affirms the order and the judgment of the trial court.

Factual Background and Trial Court Proceedings

Appellant, Scott Alan Kuhl, made a verbal agreement in which he was to install both vinyl siding and windows in a home. The homeowner paid the Appellant \$3,000 as a deposit for work to be performed. Thereafter Mr. Kuhl performed no work. Appellant was charged with two counts of Unlicensed Specialty Contracting. Count One alleged that Mr. Kuhl “did engage in the business or act in the capacity of a Glass & Glazing Specialty Contractor during his transaction...” Count Two alleged that Mr. Kuhl “did engage in the business or act in the capacity of a Veneer Specialty Contractor during his transaction...” Mr. Kuhl pleaded no contest to Count One and was sentenced to time served and probation. Mr. Kuhl then filed an Amended Motion to Dismiss Count Two asserting it would be a violation of double jeopardy to sentence him on that second count. The trial court denied the motion to dismiss and Appellant entered a plea of no contest to Count Two reserving the right to appeal.

Standard of Review

Determining whether double jeopardy is violated based on undisputed facts is a legal determination, and thus the standard of review is de novo. *State v. Paul*, 934 So.2d 1167, 1171 (Fla. 2006).

Appellant’s Argument

Essentially, Appellant argues there was one criminal transaction or episode in the present case and he can only be lawfully charged with one offense of conducting business without a license. To do otherwise, he argues, would violate the double jeopardy protections afforded by the United States Constitution and the Florida Constitution.¹

¹ The Fifth Amendment of the United States Constitution provides that no person shall be “subject for the same offence to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. Likewise, article I, section

Specifically, Appellant argues that pursuant to Florida Statute § 489.127(1)(f), which proscribes a person engaging in the business of a contractor without being duly registered or certified, the “allowable unit of prosecution” is each contract, not each phase of construction under a contract.

Double Jeopardy

Despite the constitutional protection against double jeopardy, there is no constitutional prohibition against multiple punishments for different offenses arising out of the same criminal transaction as long as the Legislature intends to authorize separate punishments. *Valdes v. State*, 3 So.3d 1067, 1069 (Fla. 2009).

The prevailing standard for determining the constitutionality of multiple convictions for offenses arising from the same criminal transaction is whether the Legislature “intended to authorize separate punishments for the two crimes.” *M.P. v. State*, 682 So.2d 79, 81 (Fla.1996); see *State v. Anderson*, 695 So.2d 309, 311 (Fla.1997) (“Legislative intent is the polestar that guides our analysis in double jeopardy issues....”). Absent a clear statement of legislative intent to authorize separate punishments for two crimes, courts employ the *Blockburger* test, as codified in section 775.021, Florida Statutes (1997), to determine whether separate offenses exist. See *Gaber v. State*, 684 So.2d 189, 192 (Fla.1996) (“[A]bsent an explicit statement of legislative intent to authorize separate punishments for two crimes, application of the *Blockburger* ‘same-elements’ test pursuant to section 775.021(4) ... is the sole method of determining whether multiple punishments are double-jeopardy violations.”) (footnote omitted).

Valdes, 3 So.3d at 1070 (quoting *Gordon v. State*, 780 So.2d 17, 19-20 (Fla.2001)).

The Present Case

In the present case, Florida Statute § 489.127 and the related statutory provisions contain no explicit statement of legislative intent as to the present issue. Therefore the *Blockburger* ‘same-elements’ test pursuant to § 775.021 (4) is applicable. The difficulty

9, of the Florida Constitution provides a similar protection: “No person shall ... be twice put in jeopardy for the same offense.” Art. I, § 9, Fla. Const. *State v. Paul*, 934 So.2d 1167, 1171 (Fla. 2006), FN 1.

with Appellant's argument is that it ignores this requirement and the fact that the present case involves two separate offenses. That is, each offense requires proof of an element that the other does not.² See § 775.021 (4) Fla. Stat. (1988); *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932); *Beahr v. State*, 992 So.2d 844, 845 -846 (Fla. 1st DCA 2008). Mr. Kuhl contracted to install windows and contracted to install siding in the home. A different specialty contracting license is required for windows and for siding. The prohibition against double jeopardy does not prohibit multiple convictions and punishments where a defendant commits two or more distinct criminal acts. *Hayes v. State*, 803 So.2d 695, 700 (Fla. 2001). The license requirements involved in this case cannot be lawfully avoided by simply agreeing to do separate and distinct types of work requiring different specialty contracting licenses under one agreement or in one transaction.

Conclusion

This court concludes that the order denying Appellant's Motion to Dismiss and the judgment of the trial court should be affirmed.

IT IS THEREFORE ORDERED that the order denying Appellant's Motion to Dismiss and the judgment of the trial court are affirmed.

ORDERED at Clearwater, Pinellas County, Florida this 29th day of April, 2011.

² Count One requires proof that Mr. Kuhl "did engage in the business or act in the capacity of a Glass & Glazing Specialty Contractor" without the applicable required license and Count Two requires proof that Mr. Kuhl "did engage in the business or act in the capacity of a Veneer Specialty Contractor" without the applicable required license.

