NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JESSICA PATRICE ANUCINSKI, Appellant, v. STATE OF FLORIDA, Appellee.	)	Case No. 2D10-3557

Opinion filed March 7, 2012.

Appeal from the Circuit Court for Collier County; Franklin G. Baker, Judge.

James Marion Moorman, Public Defender, and Alisa Smith, Assistant Public Defender, Bartow, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Sara Macks, Assistant Attorney General, Tampa, for Appellee.

VILLANTI, Judge.

After entering an open plea to charges of third-degree grand theft and dealing in stolen property, Jessica Anucinski appeals the trial court's adjudication of guilt on both charges. We hold that the trial court erred in adjudicating Anucinski guilty of both grand theft and dealing in stolen property because section 812.025, Florida

Statutes (2009), bars dual convictions arising from a single scheme or course of conduct. We reverse and remand with directions that the trial court make a factual determination as to which charge to adjudicate and that it resentence Anucinski accordingly.

The facts in this case are simple. Anucinski entered an unbargained-for, open plea to the trial court on charges of third-degree grand theft and dealing in stolen property. The two charges arose from a single scheme or course of conduct: Anucinski stole a ring from the Tiffany & Co. store located at a mall, biked to a pawn shop located on a nearby street, and pawned the ring the same day. See, e.g., Wilson v. State, 884 So. 2d 74, 77 (Fla. 2d DCA 2004) (finding a single scheme or course of conduct where the defendant "was accused of stealing and selling the same property on the same day").

Section 812.025 provides:

> Notwithstanding any other provision of law, a single indictment or information may, under proper circumstances, charge theft and dealing in stolen property in connection with one scheme or course of conduct in separate counts that may be consolidated for trial, but **the trier of fact may return a guilty verdict on one or the other, but not both, of the counts.**

(Emphasis added.) In Hall v. State, 826 So. 2d 268 (Fla. 2002), the supreme court held that section 812.025 prohibits dual convictions for dealing in stolen property and grand theft arising from a single scheme when a defendant pleads nolo contendere to both charges. The court explained that each statute addresses a different evil: the theft statute intends to punish a common thief who steals for personal use and for whom

redistribution is incidental, while the dealing statute intends to punish "fences" who knowingly redistribute stolen property. Id. Hall explained:

> The linchpin of section 812.025 is the defendant's intended use of the stolen property. The legislative scheme allows this element to be developed at trial and it is upon this evidence that the trier of fact may find the defendant guilty of one or the other offense, but not both. The legislative scheme is clear and the same legislative rationale militates against allowing a defendant to plead guilty to inconsistent counts, i.e., stealing property with intent to use under section 812.014 or stealing property with intent to traffic in the stolen goods pursuant to section 812.019. **Just as the trier of fact must make a choice if the defendant goes to trial, so too must the trial judge make a choice if the defendant enters a plea of nolo contendere to both counts**. Legislative history leads us to believe that this comports with legislative intent. Thus, we find that section 812.025 prohibits a trial court from adjudicating a defendant guilty of both theft and dealing in stolen property in connection with one scheme or course of conduct pursuant to a plea of nolo contendere.

Id. at 271 (emphasis added).

Based on the language of the statute and the Hall decision, it is clear that the trial court could not adjudicate Anucinski guilty of both dealing in stolen property and grand theft arising from a single scheme. See, e.g., Pomaski v. State, 989 So. 2d 721, 723 (Fla. 4th DCA 2008) (holding that trial court erred in accepting open plea to both grand theft and dealing in stolen property charges arising from a single scheme of stealing aluminum ramps and handrails and selling them to a scrap yard). Pursuant to Hall, we reverse and remand for the trial court to determine which of the two convictions should be vacated. See Hall, 826 So. 2d at 272. The court should then resentence Anucinski consistent with its determination. See id.

Reversed and remanded for further proceedings consistent with this opinion.

ALTENBERND and LaROSE, JJ., Concur.