

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JAMES RASHID HUNTER,

Appellant.

No. 42437-1-II

UNPUBLISHED OPINION

Hunt, J. — James Hunter appeals his jury convictions for first degree burglary and residential burglary.¹ He argues that (1) these convictions arose from the same act, convicting him of both crimes constituted double jeopardy, and the trial court erred in vacating his residential burglary conviction for sentencing purposes only; and (2) the trial court failed to enter written findings of fact and conclusions of law for his CrR 3.5 motion to suppress. The State concedes that, to avoid double jeopardy, Hunter’s residential burglary conviction must be vacated because it was based on the same act as his first degree burglary conviction. Accepting the State’s concession, we remand to the trial court to vacate the residential burglary conviction and to strike its mention from Hunter’s judgment and sentence for the first degree burglary. We also remand for the trial court to enter findings of fact and conclusions of law for the CrR 3.5 hearing.

The State charged Hunter with first degree burglary and residential burglary for entering

¹ The jury also found Hunter guilty of felony violation of a domestic violence court order. He does not appeal this conviction.

his child's mother's apartment with intent to commit a crime against a person. The trial court denied his CrR 3.5 motion to suppress his custodial statements; but it did not enter written findings of fact or conclusions of law. The jury found Hunter guilty on both counts. At sentencing, the trial court "vacate[d] [the residential burglary conviction] for purposes of sentencing." VI Report of Proceeding at 575. But it found Hunter guilty of residential burglary in his judgment and sentence. Hunter appeals the trial court's failure to vacate his residential burglary conviction outright and its failure to enter CrR 3.5 findings of fact and conclusions.²

Hunter argues that the trial court violated his constitutional right to be free from double jeopardy by refusing to vacate his conviction for residential burglary, which arose out of the same incident that supported his first degree burglary conviction. *State v. Turner*, 169 Wn.2d 448, 464-65, 238 P.3d 461 (2010). He contends that vacating the residential burglary conviction "for purposes of sentencing" was insufficient and that the residential burglary conviction cannot be included in his judgment and sentence. *Turner*, 169 Wn.2d at 464-65. The State concedes that Hunter is correct.

We accept the State's concession and remand to the trial court for entry of (1) an order vacating Hunter's residential burglary conviction, (2) a corrected judgment and sentence that omits the residential burglary conviction, and (3) written findings of fact and conclusions of law

² A commissioner of this court initially considered Hunter's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

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for Hunter's CrR 3.5 motion to suppress, as required by *State v. Head*, 136 Wn.2d 619, 624, 964 P.2d 1187 (1998).

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Johanson, A.C.J.

Van Deren, J.