STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRI N. GREEN, a/k/a TERRI REESE,

Defendant-Appellant.

UNPUBLISHED
February 5, 2004

No. 241590
Wayne Circuit Court
LC No. 01-009082-01

Before: Schuette, P.J., and Murphy and Bandstra, JJ.

MEMORANDUM.

Defendant appeals as of right her jury trial conviction of felonious assault, MCL 750.82, for which she was sentenced to one to four years in prison. We affirm.

Defendant was charged with assault with intent to do great bodily harm less than murder. Defendant requested that the trial court instruct the jury on self-defense, as well as the lesser included offenses of felonious assault, assault and battery, and aggravated assault. The trial court granted defendant's request regarding self-defense and felonious assault, but denied the request with respect to the remaining offenses.

Defendant first argues on appeal that the trial court erred in refusing to instruct the jury on the cognate lesser offenses of aggravated assault and assault and battery. We disagree.

In *People v Cornell*, 466 Mich 335, 354-355; 646 NW2d 127 (2002), our Supreme Court held that MCL 768.32 only permits instruction on necessarily lesser included offenses, not cognate lesser offenses. Accordingly, because this matter was pending on appeal at the time *Cornell* was decided, the trial court's refusal to instruct on the subject offenses does not constitute error requiring reversal.[1] See *id*. at 367.

[1] In support of her argument that the trial court's failure to give a requested instruction on these cognate lesser included offenses constitutes error requiring reversal, defendant relies heavily on *People v Stephens*, 416 Mich 252; 330 NW2d 675 (1982), *People v Chamblis*, 395 Mich 408; 236 NW2d 473 (1975), and *People v Jones*, 395 Mich 379; 236 NW2d 461 (1975). However, in reaching its decision in *Cornell*, *supra*, our Supreme Court specifically overruled these cases
(continued…)

Defendant also argues that the trial court failed to properly indicate on the judgment of sentence the specific number of jail credit days to be applied to defendant's sentence. However, after defendant filed her brief on appeal, she successfully moved for entry of an amended judgment of sentence reflecting the proper amount of jail credit. We find, therefore, that this issue is moot, and decline to address it. See *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

We affirm.

/s/ Bill Schuette
/s/ William B. Murphy
/s/ Richard A. Bandstra

(…continued)

"[t]o the extent that [they] and their progeny conflict with [its] holding" that instructions on lesser cognates offenses are prohibited. *Id*. at 358.