

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOMINIQUE SENARIO WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

October 20, 2009

No. 281196

Wayne Circuit Court

LC No. 07-004196-01

Before: Fort Hood, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

Defendant was charged with assault with intent to do great bodily harm, MCL 750.84. Following a bench trial, she was convicted of aggravated assault, MCL 750.81a, and sentenced to probation for one year. She appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's conviction arises from an altercation between the complainant and defendant and defendant's companion, Darnell Geter, at a Subway restaurant. The trial court found that defendant struck the complainant in the nose and that Geter pushed the complainant, causing her to fall and injure her shoulder.

Defendant argues, and the prosecution agrees, that aggravated assault is a cognate lesser offense of the charged offense of assault with intent to do great bodily harm because the former offense contains an element, actual injury, that is not contained in the latter offense. *People v Cornell*, 466 Mich 335, 354-359; 646 NW2d 127 (2002). Therefore, the parties agree that a trial court may not normally consider aggravated assault as a lesser available offense to a charge of assault with intent to do great bodily harm. *Id.*; MCL 768.32(1).

In this case, however, defense counsel expressly requested that the trial court consider the lesser offense of aggravated assault. Where a defense attorney requests that a court consider a cognate offense as a lesser offense, a defendant is not entitled to relief pursuant to the "invited error" doctrine. *People v Nyx*, 479 Mich 112, 128 n 43; 734 NW2d 548 (2007) (Taylor, C.J.) "[A] party cannot seek appellate review of an instruction that the party itself requested. Appellate review is precluded because when a party invites the error, the party waives the right to seek appellate review, and any error is extinguished." *Id.*, citing *People v Jones*, 468 Mich 345, 352 n 6; 662 NW2d 376 (2003).

Defendant requests that this Court not apply the invited error doctrine because the issue whether aggravated assault should be considered was first raised by the prosecutor. We are not persuaded that application of the doctrine turns on which party first initiated the discussion that led to the claimed error. Here, the trial court directly asked defense counsel, “Do you want aggravated or not?” Defense counsel responded, “Yes, I want aggravated and/or . . . [assault and battery.]” Defendant’s request that the court consider the lesser offense of aggravated assault extinguished any error. *Nyx, supra*.

Affirmed.

/s/ Karen M. Fort Hood

/s/ David H. Sawyer

/s/ Pat M. Donofrio