

STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Court of Appeals No. 305353

-vs-

Circuit Court No. 10-13458

KAREEN HALL,
Defendant-Appellant.

WAYNE COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee _____/

DAWN VAN HOEK (P26614)
Attorney for Defendant-Appellant _____/

MOTION FOR PEREMPTORY REVERSAL

Defendant-Appellant **KAREEN HALL**, through his attorneys, the **STATE APPELLATE DEFENDER OFFICE**, by **DAWN VAN HOEK**, respectfully requests that this Honorable Court peremptorily reverse the trial court's ruling pursuant to MCR 7.211(C)(4). In support of this motion, Mr. Hall states:

1. Following a two-day bench trial on April 6-7, 2011, the Honorable Vera Massey Jones of the Wayne Circuit Court convicted Defendant-Appellant Kareem Hall of two counts of felonious assault, MCL 750.82, and one count of felony firearm, MCL 750.227b. Mr. Hall had been charged with and stood trial on two counts of assault with intent to murder, MCL 750.83, along with one of felony firearm.

2. On June 3, 2011, Judge Jones sentenced Mr. Hall to concurrent prison terms of 17 months to four years for the felonious assault convictions, to follow the consecutive two-year term for felony firearm.

3. Mr. Hall timely requested appointment of appellate counsel, and is contemporaneously filing his timely brief on appeal, along with this motion for peremptory reversal of all convictions and sentences.

4. Peremptory reversal is warranted where “reversible error is so manifest that an immediate reversal of the judgment or order appealed from should be granted without formal argument or submission.” MCR 7.211(C)(4).

5. In this case there are two manifest errors requiring relief from judgment, both based on Judge Jones’s mistaken understanding of well-settled law.

6. First, Judge Jones entered verdicts on two lesser included cognate offenses which were neither charged nor requested by either party, violating the rule established in *People v Cornell*, 455 Mich 335 (2002), which precludes instruction and conviction on anything other than necessarily lesser included offenses. Mr. Hall was charged with two counts of assault with intent to murder (MCL 750.83) and felony firearm, but convicted of two counts of felonious assault and felony firearm. That felonious assault is a lesser cognate offense of assault with intent to murder is settled, *People v Vinson*, 93 Mich App 483, 486 (1979). Moreover, the Michigan Supreme Court has repeatedly applied *Cornell* to vacate felonious assault convictions in cases virtually identical to this case. *People v Otterbridge*, 477 Mich 875 (2006); *People v Wheeler*, 480 Mich 965 (2007); *People v Fox*, 482 Mich 1011 (2008).

7. Mr. Hall’s felony firearm conviction must also be vacated as it is inextricably related to the felonious assault verdicts entered by Judge Jones. Unlike a jury, a judge sitting as trier of fact does not enjoy the freedom to be inconsistent or to compromise. *People v Vaughn*, 409 Mich 463, 466 (1980); *People v Burgess*, 419 Mich 305, 311 (1984). The only logical conclusion to be drawn from Judge Jones’s decision to convict Mr. Hall of both felonious assault

and felony firearm is that she was convinced that he possessed a firearm during the commission of the felonious assault. [*see Brief in Support.*]

8. Second, Judge Jones did not recognize that sentencing Mr. Hall to prison, where the guidelines recommended an intermediate sanction, amounted to a guidelines departure for which substantial and compelling reasons must be given. The parties and Judge Jones agreed that the proper guidelines range for Mr. Hall's felonious assault convictions was two to 17 months, the "C III" grid for Class F Offenses. [*Sentencing of 5-20-11, 7.*] As the upper limit of the range was less than 18 months, MCL 769.34(4)(a) required the judge to impose an intermediate, non-prison, sanction, unless the court stated on the record substantial and compelling reasons for the sentence to prison. *People v Stauffer*, 465 Mich 633 (2002). Despite the settled statutory and caselaw authority, Judge Jones was unaware that sentencing Mr. Hall to prison amounted to a guidelines departure, as reflected in both her statements at sentencing (" . . . I'm not going to exceed the guidelines,") and her completion of the Sentencing Information Report (guidelines departure not checked off.) [*see Brief in Support.*] Mistaken understanding of this basic rule of sentencing led to sentence relief in *People v Lucey*, 287 Mich App 267 (2010).

9. Granting preemptory relief on the verdict-related claim (Issue I) is dispositive of the entire appeal, as vacating the convictions would eliminate the need to reach the sentencing claim (Issue II). Should this Court disagree and affirm his felonious assault convictions, Mr. Hall requests consideration of the sentencing claim as a ground for preemptory relief.

10. The need for preemptory relief is based not only on the clear legal errors, but also the short length of Mr. Hall's sentences (17 months to four years for felonious assault, and a consecutive two years for felony firearm.) Should this Court decide to vacate just the felonious

assault convictions, leaving the felony firearm conviction intact, it is possible that that two-year term would be served before any appellate decision. And, should this Court agree that all convictions must be vacated, any additional time in prison would be extremely prejudicial to Mr. Hall.

11. Should this Court decide that peremptory relief is appropriate in part, vacating his felonious assault convictions or felonious assault sentences, Mr. Hall submits that the remaining issue as to relief on his felony firearm conviction should continue to resolution during his appeal of right.

WHEREFORE, for the foregoing reasons, Defendant-Appellant respectfully requests that this Honorable Court peremptorily reverse both of his convictions for felonious assault and felony firearm, and order the charges dismissed with prejudice. Should this Court disagree and affirm his felonious assault convictions, Mr. Hall requests consideration of the sentencing claim as a ground for peremptory relief. Should this Court decide that peremptory relief is appropriate in part, vacating his felonious assault convictions or felonious assault sentences, Mr. Hall submits that the remaining issue as to relief on his felony firearm conviction should continue to resolution during his appeal of right. Alternatively, he asks this Court to expedite this appeal and place this matter on the first available case call.

STATE APPELLATE DEFENDER OFFICE

/s/ Dawn Van Hoek

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