

MAR 25 2010

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA  
MICHAEL S. RICHIE  
CLERK

JAMES LEE COPELAND, JR., )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

NOT FOR PUBLICATION

Case No. F-2009-236

**SUMMARY OPINION**

**C. JOHNSON, PRESIDING JUDGE:**

Appellant, James Lee Copeland, was convicted after non-jury trial in Comanche County District Court, Case No. CF-2008-197, of Attempted Robbery with a Dangerous Weapon. The trial court sentenced Appellant to fifteen years imprisonment with seven years suspended and a \$1,000 fine. It is from this Judgment and Sentence that Appellant appeals to this Court.

Appellant raises the following proposition of error:

1. The Judgment and Sentence should be corrected by an order *nunc pro tunc*.

After thorough consideration of the proposition, and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm Mr. Copeland's Judgment and Sentence. However, we agree that the record clearly indicates that Appellant was convicted of the crime of Attempted Robbery with a Dangerous Weapon rather than the crime of Robbery with a Weapon as the Judgment and Sentence indicates. Accordingly, we direct the district court to correct the Judgment and Sentence by order *nunc*

*pro tunc* to reflect the proper conviction of Attempted Robbery with a Dangerous Weapon. See *Brown v. State*, 2008 OK CR 3, ¶ 21, 177 P.3d 577, 581-82. We also find that because this crime is not one listed in 21 O.S.Supp.2002, § 13.1 as a crime subject to the 85% limit on parole eligibility, the district court is also directed to correct the Judgment and Sentence, by order *nunc pro tunc*, by striking the notation that "The defendant is to serve 85% of his sentence." See *Chavis Lenard Day v. State*, F-2007-526 (November 19, 2008).

### DECISION

The Judgment and Sentence of the district court is **AFFIRMED**. The district court is directed to correct the Judgment and Sentence by order *nunc pro tunc* to reflect the proper conviction of Attempted Robbery with a Dangerous Weapon and by striking the notation that "The defendant is to serve 85% of his sentence." Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2010), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF COMANCHE COUNTY  
THE HONORABLE KEITH B. AYCOCK, DISTRICT JUDGE

**APPEARANCES AT TRIAL**

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**OPINION BY C. JOHNSON, P.J.**

A. JOHNSON, V.P.J.: CONCUR  
LUMPKIN, J.: CONCUR  
CHAPEL, J.: CONCUR  
LEWIS, J.: CONCUR

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