

798, was repealed by implication with the passage of Title 21, sections 800 and 801, setting the minimum punishments for conjoint robbery and robbery with a dangerous weapon at five (5) years imprisonment. Since *Meschew*, the minimum sentence for robbery in the first degree has been five (5) years imprisonment. In *Watts v. State*, 2008 OK CR 27, ¶ 7, 194 P.3d 133, 136, this Court held:

Where a sentence is infirm due to instructional error on punishment, this Court may modify within the range of punishment, modify to the minimum punishment allowable by law, or remand to the trial court for re-sentencing.

Id., citing *Scott v. State*, 1991 OK CR 31, ¶ 14, 808 P.2d 73, 77. After considering the facts and circumstances of Appellant's crime, this Court concludes that Appellant's sentence should be modified to eight (8) years imprisonment.

In Proposition Two, we find that Appellant waived his right to a pre-sentence investigation report. A pre-sentence investigation report "may be waived upon *written waiver by the district attorney and the defendant and upon approval by the court.*" 22 O.S. Supp. 2002, §982(E). (emphasis added). Appellant and his counsel failed to timely request a pre-sentence investigation report prior to or at formal sentencing, a failure which is further memorialized by the failure to affirmatively respond to Question Nine of the "Sentencing After Jury Trial Summary of Facts" form. This is sufficient for a "written waiver" under the requirements of this statute. Proposition Two is denied.

DECISION

The judgment of conviction is **AFFIRMED**. The sentence is **MODIFIED** to eight (8) years imprisonment. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2009), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY,
HONORABLE JERRY D. BASS, DISTRICT JUDGE**

APPEARANCES AT TRIAL

JANICE HOWARD-CROFT
ASSISTANT PUBLIC DEFENDER
320 ROBERT S. KERR, STE. 600
OKLAHOMA CITY, OK 73102
ATTORNEY FOR DEFENDANT

ASHLEY ALTSHULER
ASSISTANT DISTRICT ATTORNEY
320 ROBERT S. KERR, STE. 505
OKLAHOMA CITY, OK 73102
ATTORNEY FOR STATE

OPINION BY: LEWIS, J.
C. JOHNSON, P.J.: Concur
A. JOHNSON, V.P.J.: Concur in Results
LUMPKIN, J.: Concur in Results
CHAPEL, J.: Specially Concur

APPEARANCES ON APPEAL

MARVA BANKS
ASSISTANT PUBLIC DEFENDER
320 ROBERT S. KERR, STE. 600
OKLAHOMA CITY, OK 73102
ATTORNEY FOR APPELLANT

W.A. DREW EDMONDSON
ATTORNEY GENERAL
JARED ADEN LOOPER
ASSISTANT ATTORNEY GENERAL
313 NE 21ST STREET
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR APPELLEE