

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA  
JUL - 6 2001  
JAMES W. PATTERSON  
CLERK

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

RICK ALAN HAUNSCHILD, )  
 )  
Appellant, ) NOT FOR PUBLICATION  
v. ) Case No. F 2000-740  
 )  
THE STATE OF OKLAHOMA, )  
 )  
Appellee. )

**SUMMARY OPINION**

**JOHNSON, VICE-PRESIDING JUDGE:**

Appellant, Rick Alan Haunschild, was convicted of Attempted Escape, in violation of 21 O.S.Supp.1998, §§ 42, 443, in Comanche County District Court, Case No. CRF 99-194. On May 15, 2000, after a non-jury trial before the Honorable Mark Smith, District Judge, Appellant was found guilty and was sentenced to three and one half (3-½) years imprisonment. From the Judgment and Sentence imposed, Appellant filed this appeal.

In his sole proposition of error, Appellant complains his sentence "is excessive in that it is in excess of that provided by specific state law." After thorough consideration of this proposition and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we have determined that Appellant's conviction should be affirmed, but find his sentence should be modified for the reasons set forth below.

The facts of the case show Appellant attempted to escape from the Lawton Correctional Facility, a private prison owned and operated by the Wackenhut

Corrections Corporation. The facility is not a statutorily listed penal institution. 57 O.S.Supp.1999, § 509. Because the facility was not a penitentiary, Appellant should have been charged and convicted under the more specific statute "Attempt to Escape from Prison Not a Penitentiary," found in Title 21, Section 436. See 21 O.S.Supp.1998, § 11; *McWilliams v. State*, 1989 OK CR 39, ¶ 10, 777 P.2d 1370, 1372 (section 11 mandates that a crime be brought under the specific statutory provisions rather than more general codifications). We also find the "by force or fraud" language of 21 O.S.Supp.1998, § 436 does not preclude a conviction under this statute for the same reasons set forth in *McWilliams. Id.* at ¶ 9, 777 P.2d at 1372.

Accordingly, we find Appellant's sentence for Attempted Escape should be and hereby is modified to two (2) years imprisonment. 21 O.S.Supp.1998, § 436; 21 O.S.Supp.1998, § 9.

#### **DECISION**

The Judgment of the trial court is hereby **AFFIRMED**, but the Sentence imposed is **MODIFIED** to two (2) years imprisonment.

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**OPINION BY: JOHNSON, V.P.J.**

LUMPKIN, P.J.: CONCURS IN PART/DISSENTS IN PART  
CHAPEL, J.: CONCURS IN RESULT  
STRUBHAR, J.: CONCURS  
LILE, J.: DISSENTS

rb

**LUMPKIN, PRESIDING JUDGE: CONCUR IN PART/DISSENT IN PART**

I concur in the Court's decision to affirm the conviction in this case, however, I dissent to the modification of the sentence. *See McWilliams v. State*, 777 P.2d 1370-72 (Okl.Cr.1989) (Lumpkin, J.: Dissenting).

**LILE, JUDGE: DISSENTS**

I dissent to the Court's decision for the reasons set forth in Judge Lumpkin's dissent in *McWilliams v. State*, 1989 OK CR 39, 777 P.2d 1370.