

JUL 11 2006

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

SAUL E. MINTZ,)	
)	
Appellant,)	Not for publication
v.)	Case No. F-2005-1057
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUMMARY OPINION

CHAPEL, PRESIDING JUDGE:

Saul Mintz was tried by jury and convicted of two counts of Robbery with a Firearm in violation of 21 O.S.2001, § 801 in Tulsa County District Court Case No. CF-2005-780. In accordance with the jury's recommendation, the honorable Clancy Smith sentenced Mintz to ten (10) years' imprisonment and a \$1,500.00 fine for Count I and fifteen (15) years' imprisonment and a \$2,000.00 fine for Count II. The trial court ordered the sentences to be served consecutively. Mintz has perfected his appeal to this Court.

Mintz raises the following proposition of error:

The eighty-five (85%) jury instruction requirement of *Anderson v. State*, 2006 OK CR 6, __ P.3d __, (Decided February 22, 2006), should be applied to Appellant Mintz's case for the limited purpose of reducing the sentence imposed, where Appellant Mintz's trial took place during the pendency of the *Anderson* appeal and where Appellant Mintz specifically requested the eighty-five (85%) jury instruction at trial.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, briefs and exhibits of the parties, we find that while reversal is not required under the law and evidence, sentence

modification is warranted. We find in Proposition I that the trial court erred by not granting Mintz's request that his jury be instructed that he would have to serve eighty-five (85%) of his sentence before becoming eligible for parole.¹ As a result of this error, we order the trial court to modify Mintz's sentence for Count II to ten (10) years' imprisonment.

Decision

The Judgment and Sentence for Count I is **AFFIRMED** and the Judgment for Count II is **AFFIRMED**, but the Sentence is **MODIFIED** to ten years' imprisonment. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

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¹ *Anderson v. State*, 2006 OK CR 6, 130 P.3d 273 ¶ 24. See also 21 O.S.2001, §§ 12.1, 13.1. Mintz is entitled to relief on this issue as his appeal was pending in this Court when *Anderson* was decided. *Griffin v. Kentucky*, 479 U.S. 314, 327, 107 S.Ct. 708, 716, 93 L.Ed.2d 649 (1987).

OPINION BY: CHAPEL, P. J.

LUMPKIN, V.P.J.:	CONCUR IN RESULTS
C. JOHNSON, J.:	CONCUR
A. JOHNSON, J.:	CONCUR
LEWIS, J.:	CONCUR