



panel of this Court recently held the same in a capital case. Barber v. State, No. 01C01-9408-CR-00281 (Tenn. Crim. App., Feb. 23, 1995).

\_\_\_\_\_ Nonetheless, we have considered the substance of the petitioner's claim and determine it to be without merit. Hill represents a direct appeal from a case involving an indictment rendered subsequent to the 1989 revisions to the Criminal Code. Conversely, the appeal in the present case stems from a denial of a petition for writ of habeas corpus and involves an indictment issued prior to the 1989 changes in the Code. The opinion in Hill was based upon this Court's interpretation of T.C.A. § 39-11-301(c), which was enacted in 1989. That statute provides, in pertinent part, that "[a] culpable mental state is required within this title unless the definition of the offense plainly dispenses with a mental element." Prior to 1989, however, the Criminal Code did not contain a comparable statute. Accordingly, the decision in Hill does not control our review of the issue raised herein.

At the time of the offense in this case, assault with intent to commit rape was defined as "committing an assault and battery upon any female of the age of twelve (12) years or upwards, with an intent, forcibly and against her will, to have unlawful carnal knowledge of her." T.C.A. § 39-605 (1973 supp.). Though the indictment at issue is not contained in the record, the petitioner alleges it charged that he committed "assault and battery on a female with intent to have carnal knowledge of her."

This language was sufficient under the law as it existed at the time. As noted above, the Criminal Code did not contain a provision similar to § 39-11-301(c) (1989). The statutory requirements for an indictment were found in § 40-1802 (now § 40-13-202 (1990)), which provided simply that:

The indictment must state the facts constituting the offense in ordinary and concise language, without prolixity or repetition, in such a manner as to enable a person of common understanding to know what is intended, and with that degree of certainty which will enable the court, on conviction, to pronounce the proper judgment.

By containing the words found in the language of the statute, the indictment at issue here sufficiently apprised the appellant of the offense charged under the law at the time, and is therefore valid. See e.g. State v. Dison, No. 03C01-9602-CC-00051 (Tenn. Crim. App., Jan. 31, 1997) Thus, the petitioner's attack must fail.

For the reasons stated above, it is hereby ORDERED, pursuant to Rule 20, Rules of the Court of Criminal Appeals, that the judgment of the trial court dismissing the petition for writ of habeas corpus is affirmed. Costs of this appeal shall be assessed against the petitioner.

Enter, this the \_\_\_\_ day of April, 1997.

---

DAVID G. HAYES, JUDGE

---

JOE B. JONES, PRESIDING JUDGE

---

PAUL G. SUMMERS, JUDGE