

_____ Nonetheless, we have considered the substance of the petitioner's claim and determine it to be without merit. Aggravated sexual battery is defined as the "unlawful sexual contact with a victim by the defendant" accompanied by certain enumerated aggravating circumstances, including that the victim is less than thirteen (13) years old. T.C.A. § 39-13-504 (1996 supp.). Statutory rape is "sexual penetration of a victim by the defendant . . . when the victim is at least thirteen (13) but less than eighteen (18) years of age and the defendant is at least four (4) years older than the victim." T.C.A. § 39-13-506 (1996 supp.).

The indictments at issue before us charged that the petitioner did "unlawfully engage in sexual contact as defined in T.C.A. § 39-13-501 with [the victim], a person less than thirteen (13) years of age, in violation of T.C.A. § 39-13-504," and "did unlawfully sexually penetrate [the victim], a person of the age of fifteen (15) years, the [defendant] being at least four (4) years older than [the victim], in violation of T.C.A. § 39-13-506." We find that the indictments at issue here sufficiently apprised the appellant of the offenses charged, and are therefore valid.

A valid indictment in this state must contain the elements constituting the offense and must sufficiently apprise the accused of the offense he is called upon to defend. State v. Tate, 912 S.W.2d 785, 789 (Tenn. Crim. App. 1995). When the legislature neglects, however, to include the requisite mental state in the definition of an offense, permitting the application of any one of the three mental states set forth in T.C.A. § 39-11-301(c), an allegation of criminal conduct will provide the accused constitutionally adequate notice of the facts constituting the offense. State v. Dison, No. 03C01-9602-CC-00051 (Tenn. Crim. App., Jan. 31, 1997). The accused's culpable mental state, therefore, is not an essential element of the offense. Id. Consequently, the failure to allege a culpable mental state in this case did not invalidate the indictments.

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 March, 1997.

DAVID G. HAYES, JUDGE

JOE B. JONES, PRESIDING JUDGE

PAUL G. SUMMERS, JUDGE