

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
OCTOBER SESSION, 1997

**FILED**

November 4, 1997

Cecil Crowson, Jr.  
Appellate Court Clerk

DAVID DOUGLAS, )  
 )  
Appellant )  
 )  
vs. )  
 )  
BILLY COMPTON, Warden )  
and STATE OF TENNESSEE, )  
 )  
Appellee )

No. 02C01-9610-CC-00330

LAKE COUNTY

Hon. JOE G. RILEY, Judge

(Writ of Habeas Corpus)

For the Appellant:

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For the Appellee:

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OPINION FILED: \_\_\_\_\_

AFFIRMED

**David G. Hayes**  
Judge

## OPINION

The appellant, David Douglas, appeals the dismissal of his *pro se* petition for writ of habeas corpus. The appellant was indicted on December 1, 1992 for aggravated rape. The appellant pled guilty to attempted aggravated rape on January 31, 1994 and the Shelby County Criminal Court sentenced him to eight years incarceration in the Department of Correction. The appellant filed his petition on August 8, 1996. Relying in part upon State v. Roger Dale Hill, No. 01C01-9508-CC-00267 (Tenn. Crim. App. at Nashville, June 20, 1996) and State v. Nathaniel White, No. 03C01-9408-CR-00277 (Tenn. Crim. App. at Knoxville, June 7, 1995), he contends that the judgment entered against him is void because the indictment for aggravated rape failed to allege the *mens rea* of the offense charged. The trial court dismissed the petition finding that, “[s]ince the judgment is not void on its face, this is not the proper subject of habeas corpus relief.” The appellant now appeals the trial court’s dismissal.

It is well established that challenges to the sufficiency of an indictment cannot be tested in a habeas corpus proceeding. See Haggard v. State, 475 S.W.2d 186, 187 (Tenn. Crim. App. 1971); Brown v. State, 445 S.W.2d 669, 674 (Tenn. Crim. App. 1969). A panel of this Court has held the same in a capital case. Barber v. State, No. 01C01-9408-CR-00281 (Tenn. Crim. App., Feb. 23, 1995). Writs of habeas corpus will issue only in the case of a void judgment or to free a prisoner held in custody after his term of imprisonment has expired. TENN. CONST. Art. 1 § 15; Tenn. Code Ann. § 29-21-101 *et seq.* (1990); see Potts v. State, 833 S.W.2d 60 (Tenn. 1992); see also Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). The appellant has not asserted either argument. Instead, he bases his assertions on a number of federal, rather than state, cases. The strictness of Tennessee law is a

marked contrast to federal habeas corpus proceedings which offer a broad basis for review. See Voss v. Raney, No. 02C01-9501-CC-00022 (Tenn. Crim. App. at Jackson, Aug. 2, 1995), perm. to appeal denied, (Tenn. Nov. 20, 1995). “We are not obligated to incorporate federal habeas corpus limits and laws into our state habeas corpus procedure.” Turks v. State, No. 02C01-9502-CR-00035 (Tenn. Crim. App. at Jackson, Jan. 3, 1997). This issue is without merit.

Nonetheless, we have considered the substance of the appellant’s claim and determine it to be without merit. Aggravated Rape is defined as the “unlawful sexual penetration of a victim by the defendant” accompanied by certain enumerated aggravating circumstances, including that “force or coercion is used to accomplish the act and the defendant is armed with a weapon.” Tenn. Code Ann. § 39-13-502(a)(1) (1991). The indictment at issue before us charged in pertinent part:

. . .That David Douglas. . . did unlawfully and forcibly, while armed with a weapon, to wit: a Pistol, sexually penetrate [the victim], in violation of T.C.A. 39- 13-502. . .

We find that the indictment at issue here sufficiently apprised the petitioner of the offense charged, and is 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); see also Tenn. Code Ann. § 40-13-202 (1990); State v. Perkinson, 867 S.W.2d 1, 5 (Tenn. Crim. App. 1992). 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 Tenn. Code Ann. § 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). Moreover, since under the circumstances the accused's culpable mental state is not an essential element of the offense and need not be alleged in the indictment, the appellant's challenge is not jurisdictional in nature, *i.e.*, defects that render the indictment invalid. *Id.* Other panels of this court have upheld the validity of indictments under similar challenges. See e.g., Slagle v. State, No. 03C01-9704-CR-00145 (Tenn. Crim. App. at Knoxville, June 10, 1997); State v. James, No. 01C01-9601-CR-00016 (Tenn. Crim. App. at Nashville, Mar. 27, 1997); State v. Burrell, No. 03C01-9404-CR-00157 (Tenn. Crim. App. at Knoxville, Feb. 11, 1997). Contrary to the appellant's assertions, the allegations in the indictment sufficiently apprise the accused of the offense of aggravated rape. Consequently, we find the indictment valid.

For the reasons stated above, we affirm the trial court's dismissal of the appellant's petition for writ of habeas corpus.

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DAVID G. HAYES, Judge

CONCUR:

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JOHN H. PEAY, Judge

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PAUL G. SUMMERS, Judge