

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
SEPTEMBER SESSION, 1997

FILED

October 3, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

SHANNON R. MARTIN,)
)
 Appellant)
)
 vs.)
)
 JAMES A. BOWLIN, Warden,)
 and STATE OF TENNESSEE,)
)
 Appellee)

No. 03C01-9701-CC-00022

BLEDSON COUNTY

Hon. THOMAS W. GRAHAM, Judge

(Writ of Habeas Corpus)

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OPINION FILED: _____

AFFIRMED PURSUANT TO RULE 20

David G. Hayes
Judge

OPINION

The appellant, Shannon R. Martin, appeals the trial court's dismissal of his *pro se* petition for writ of habeas corpus. The appellant is currently confined at the state correctional facility in Bledsoe County where he is serving a forty year sentence for aggravated rape. His conviction occurred on May 27, 1987. The appellant filed the instant petition on October 4, 1996, alleging that the judgment entered against him is void because the indictment failed to allege the *mens rea* of the offense charged. The trial court dismissed the petition, finding the indictment sufficient to support the entry of a judgment of conviction for aggravated rape. We affirm the trial court's dismissal of the petition.

Initially, we note that challenges concerning the sufficiency of the indictment are not the proper subject of habeas corpus relief. See Haggard v. State, 475 S.W.2d 186, 187 (Tenn. Code Ann. § . Crim. App. 1971); Brown v. State, 445 S.W.2d 669, 674 (Tenn. Code Ann. § . Crim. App. 1969); Barber v. State, No. 01C01-9408-CR-00281 (Tenn. Code Ann. § . Crim. App., Feb. 23, 1995).

Moreover, we find the substance of the appellant's claim to be without merit. The appellant's reliance on State v. Roger Dale Hill, No. 01C01-9508-CC-00267 (Tenn. Code Ann. § . Crim. App. June 20, 1996), is misplaced. The decision in Hill involves a post-1989 indictment and specifically addresses Tenn. Code Ann. § . Code Ann. § 39-11-301(c)(1989) (requirement of a culpable mental state). The appeal now before this court involves a pre-1989 Code indictment. Prior to 1989, the Code did not contain a provision comparable to Tenn. Code Ann. § . Code Ann. § 39-11-301(c). Accordingly, the decision in Hill does not control review of the issue before us.

On the date of the offense in this case, aggravated rape was defined as the “unlawful sexual penetration of another” accompanied by certain enumerated aggravating circumstances, including that the victim is less than thirteen (13) years old. Tenn. Code Ann. § . Code Ann. § 39-2-603(a)(4) (1982). The indictment in the present case charged that the appellant did “unlawfully, feloniously, sexually penetrate a certain female. . . the said female. . . being under the age of thirteen years at the time of the commission of the said act, in violation of T.C.A. 39-2-603. . .” This language was sufficient under the law as it existed at the time. See Campbell v. State, 491 S.W.2d 359, 361 (Tenn. Code Ann. § . 1973) (an indictment using the words “feloniously” or “unlawfully” is sufficient); Gates v. State, No. 03C01-9510-CC-00313 (Tenn. Code Ann. § . Crim. App. at Knoxville, Aug. 16, 1996). This issue is without merit.

The trial court’s dismissal of the appellant’s petition for writ of habeas corpus is affirmed pursuant to Rule 20, Rules of the Court of Criminal Appeals.

DAVID G. HAYES, Judge

CONCUR:

JOHN H. PEAY, Judge

WILLIAM M. BARKER, Judge