

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JANUARY 1998 SESSION

FILED

March 5, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

LEWIS PURKEY,

*

C.C.A. # 03C01-9707-CR-00265

Appellant,

*

MORGAN COUNTY

VS.

*

Hon. E. Eugene Eblen, Judge

CHARLES JONES, WARDEN,
and STATE OF TENNESSEE,

*

(Petition for Writ of Habeas Corpus)

*

Appellees.

*

For Appellant:

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For Appellees:

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OPINION FILED: _____

AFFIRMED

GARY R. WADE, JUDGE

OPINION

The petitioner, Lewis Purkey, entered a guilty plea to three counts of aggravated rape. On May 26, 1992, the trial court imposed concurrent sentences of fifteen years. On August 6, 1996, over four years after the convictions, the petitioner filed this action for a writ of habeas corpus which the trial court denied. In this appeal of right, the single issue is whether the content of the indictment was sufficient to support the convictions.

We affirm the judgment of the trial court.

The petitioner contends that the indictment failed to include the essential elements of a culpable mental state. Each of the three counts included an allegation that the defendant "did unlawfully and feloniously sexually penetrate [the victim], a minor less than thirteen years of age...." The petitioner asserts that there is no statute of limitations on a petition for habeas corpus and that his convictions for rape, which were based upon a defective indictment, are void.

The petitioner bases his claim on the holding of a panel of this court in State v. Roger Dale Hill, Sr., No. 01C01-9508-CC-00267 (Tenn. Crim. App., at Nashville, June 20, 1996), rev'd, 954 S.W.2d 725 (Tenn. 1997). In that case, this court ruled that the statutory offense of rape did not "plainly dispense" with the mens rea of the crime and thus, the indictment, which did not allege mens rea, did not include an essential element of the offense. More specifically, the panel held that an indictment that alleged the defendant "did unlawfully sexually penetrate a person less than thirteen years of age, in violation of Tenn. Code Ann. § 39-13-512" was "fatally defective because [the indictment] does not allege that he sexually penetrated [the victim] intentionally, knowingly, or recklessly." Hill, slip op. at 5.

Later, the supreme court reversed the ruling of this court. In State v. Hill, 954 S.W.2d 725 (Tenn. 1997), the high court held that the language alleging "unlawful sexual penetration" adequately charged the defendant with the mental state necessary to support the offense of aggravated rape.

A hearing on the petition was not warranted in this instance. If the allegations within the petition do not suggest any reason that the convictions might be void, the trial court may dismiss the petition and refuse the issuance of the writ. See Tenn. Code Ann. §§ 29-21-101, -109. "If the petition fails to state a cognizable claim, the suit may be summarily dismissed by the trial court." Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). The appointment of counsel, under these circumstances, was unnecessary. See Tenn. Code Ann. § 40-14-204.

Accordingly, the judgment is affirmed.

Gary R. Wade, Judge

CONCUR:

William M. Barker, Judge

Curwood Witt, Judge