

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

MARCH 1998 SESSION

FILED

April 7, 1998

Cecil Crowson, Jr.

Appellate Court Clerk

C.C.A. 03C01-9706-CC-00207

WASHINGTON COUNTY

Hon. Lynn W. Brown, Judge

(HABEAS CORPUS)

No. 22772

MOHAMED F. ALI,)
)
)
Appellant,)
)
vs.)
)
STATE OF TENNESSEE,)
)
Appellee.)

FOR THE APPELLANT:

MOHAMED F. ALI
P.O. Box 5000
North East Correctional Center
Mountain City, TN 37683

FOR THE APPELLEE:

JOHN KNOX WALKUP
Attorney General & Reporter

MICHAEL J. FAHEY, II
Assistant Attorney General
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Nashville, TN 37243

OPINION FILED: _____

AFFIRMED

CORNELIA A. CLARK
Special Judge

OPINION

The defendant appeals from the trial court's summary dismissal of his Petition for Writ of Habeas Corpus. He contends that the underlying conviction is void because it is based on an invalid indictment. We affirm the trial court.

In March 1990 defendant Mohamed F. Ali was indicted for the offense of rape. The indictment charged, in pertinent part, that the defendant "did unlawfully engage in sexual penetration of [the victim] while [he] knew or had reason to know that [the victim] was, at the time, mentally incapacitated or physically helpless...." On December 3, 1993, the defendant was convicted by a jury of one count of rape¹. His conviction was affirmed on appeal, although the case was remanded for resentencing. State v. Mohamed F. Ali, No. 03C01-9405-CR-00171, Washington County (Tenn. Crim. App., Knoxville, September 26, 1996). During the course of that appeal defendant filed a motion to vacate his rape conviction, contending that the indictment filed against him failed to state an offense. By separate order entered September 19, 1996, this court rejected that position. On June 2, 1997, the Tennessee Supreme Court denied permission to appeal.

In asserting that the original indictment does not adequately allege a *mens rea* element for the offense of rape, defendant relies primarily on this court's opinion in State v. Roger Dale Hill, Sr. No. 01C01-9508-CC-00267, Wayne County (Tenn. Crim. App., Nashville, June 20, 1996). His reliance is misplaced for several reasons, only two of which need to be addressed here. First, the decision in Hill involved a post-1989 indictment and specifically addressed Tenn. Code Ann. §39 -11-301 (c)(requirement of a culpable mental state). The appeal now before this court involves a pre-1989 indictment.² Prior to 1989, the code did not contain a provision comparable to Tenn. Code Ann. §39-11-301(c). On the date of the offense in this case, aggravated rape

¹ He was also indicted for, and convicted of, attempt to bribe a witness. That conviction is not at issue here. Neither does this case specifically address the issue of resentencing on remand.

² The offense is alleged to have occurred July 14, 1989. The Tennessee Criminal Sentencing Reform Act of 1989 took effect November 1, 1989.

was a crime that required a defendant to have “an unlawful” or “felonious” intent. Tenn. Code Ann. §39-2-603(a)(2). The language contained in the indictment in the present case is sufficient under the law as it existed at that time, and our Hill opinion is not applicable. See e.g., James Clyde Saylor v. Howard Carlton and State, No. 03C01-9612-CR-00453, Johnson County (Tenn. Crim. App., Knoxville, October 31, 1997).

Second, since the parties in this case filed their briefs, the Tennessee Supreme Court has reversed the decision of this court in Hill, holding that indictment language similar to that now before the court is adequate to meet the constitutional and statutory requirements of notice and form. State v. Hill, 954 S.W. 2d 725 (Tenn. 1997). In our view, the indictment in this case satisfies all the requirements of the Supreme Court’s holding in Hill. This issue is without merit.

The trial court’s dismissal of the appellant’s Petition for Writ of Habeas Corpus is affirmed.

CORNELIA A. CLARK
SPECIAL JUDGE

CONCUR:

JOHN H. PEAY
JUDGE

PAUL G. SUMMERS
JUDGE

MOHAMED F. ALI,)	C.C.A. 03C01-9706-CC-00207
)	WASHINGTON COUNTY
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Appellant,)	Hon. Lynn W. Brown, Judge
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vs.)	(HABEAS CORPUS)
)	No. 22772
STATE OF TENNESSEE,)	
)	
Appellee.)	

JUDGMENT

_____ Came the appellant, Mohamed F. Ali, pro se and also came the attorney general on behalf of the State, and this case was heard on the record on appeal from the Criminal Court of Washington County; and upon consideration thereof, this court is of the opinion that there is no reversible error in the judgment of the trial court.

Our opinion is hereby incorporated in this judgment as if set out verbatim.

It is, therefore, ordered and adjudged by this court that the judgment of the trial court is AFFIRMED, and the case is remanded to the Criminal Court of Washington County for execution of the judgment of that court and for collection of costs accrued below.

It appears that the appellant is indigent. Costs of this appeal will be paid by the State of Tennessee.

PER CURIAM

John H. Peay, Judge
Paul G. Summers, Judge
Cornelia A. Clark, Special Judge