

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

FILED

RICHARD CAPANYOLA,

Appellant,

VS.

STATE OF TENNESSEE,

Appellee.

)
) C.C.A. NO. 01C01-9811-CC-00472
) February 5, 1999
) Cecil W. Crowson
) WAYNE COUNTY Appellate Court Clerk
) (No. 11561 Below)
)
) The Hon. Robert Holloway
)
) (Dismissal of Habeas Corpus Petition)
) AFFIRMED PURSUANT TO RULE 20

ORDER

This matter is before the Court upon the state's motion to affirm the judgment of the trial court pursuant to Rule 20, Rules of the Court of Criminal Appeals. After reviewing the state's motion, the appellant's brief, and the record on appeal, the Court finds that this is an appropriate matter for affirmance under Rule 20.

The petitioner is appealing the trial court's denial of his petition for writ of habeas corpus. In January of 1994, the petitioner was indicted on two counts of rape of a child under the age of 13. Subsequently, the petitioner pled guilty to two counts of aggravated rape. The petitioner contends that the judgment entered against him is void because the indictment failed to allege the mens rea of the offense charged. He also argues that because the culpable mental state was not included in the indictment, the trial court was without jurisdiction to enter judgments of conviction.

While habeas corpus is a proper vehicle for seeking review of whether an indictment is fatally defective, thus depriving the trial court of jurisdiction, Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998), the petitioner in the present case is not entitled to relief based on our Supreme Court's opinions in State v. Hill, 954 S.W.2d 725 (Tenn. 1997), and Crittenden v. State, 978 S.W.2d 929, 930 (Tenn. 1998).

IT IS, THEREFORE, ORDERED that the state's motion to affirm the judgment pursuant to Rule 20 is granted. The judgment of the trial court is hereby affirmed. The petitioner being indigent, costs of this appeal are taxed to the state. IT IS

FURTHER ORDERED that the appellant's request for appointment of counsel, which was attached to his brief, is respectfully denied.

DAVID H. WELLES, JUDGE

CONCUR:

JOHN H. PEAY, JUDGE

THOMAS T. WOODALL, JUDGE