

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

APRIL 1999 SESSION

FILED

June 1, 1999

**Cecil W. Crowson
Appellate Court Clerk**

AARON M. BRYANT

Appellant,

vs.

STATE OF TENNESSEE,

Appellee.

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C.C.A. No. 01C01-9811-CC-00471

Wayne County

Hon. Robert Holloway, Judge

(Habeas Corpus)

FOR THE APPELLANT:

AARON M. BRYANT (pro se)
South Central Correctional Center
P.O. Box 279
Clifton, TN 38425-5346

FOR THE APPELLEE:

JOHN KNOX WALKUP
Attorney General & Reporter

ELLEN H. POLLACK
Assistant Attorney General
425 Fifth Ave. N., 2d Floor
Nashville, TN 37243-0493

VICTOR S. (TORRY) JOHNSON III
District Attorney General

STEVE R. DOZIER
Assistant District Attorney
Washington Square
222 Second Ave. N., Suite 500
Nashville, TN 37201-1649

OPINION FILED: _____

AFFIRMED

JAMES CURWOOD WITT, JR., JUDGE

OPINION

The petitioner, Aaron M. Bryant, appeals from the Wayne County Criminal Court's order dismissing his petition for *habeas corpus* relief.¹ The petitioner pleaded guilty to aggravated sexual battery,² and the trial court imposed a sentence of confinement for ten years in the Department of Correction. On May 6, 1998, he filed a pro se petition for *habeas corpus* relief. The trial court denied *habeas corpus* relief because it found that the petitioner did not assert grounds which would entitle him to the writ of *habeas corpus*. The petitioner alleges that his conviction is based on a defective indictment. Following a review of the record and the briefs of the parties, we affirm the trial court's dismissal of the petition.

Habeas corpus relief is very limited because it is only available when "it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered' that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence of imprisonment or other restraint has expired." Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993) (quoting State v. Galloway, 45 Tenn. (5 Cold.) 326, 336-37 (Tenn. 1868)). In other words, *habeas corpus* relief is granted only when a judgment is void. "A void judgment is one in which the judgment is facially invalid because the court did not have the statutory authority to render such judgment." Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998) (citing Archer, 851 S.W.2d at 161). A petition for *habeas corpus* relief may be summarily dismissed "[i]f, from the showing of the

¹ Additionally, the petitioner filed a petition for *habeas corpus* relief in Davidson County alleging a defective indictment. The trial court denied relief and this court affirmed. See Aaron Bryant v. State, No. 01C01-9801-CR-00038 (Tenn. Crim. App., Nashville, Apr. 21, 1999).

² "Aggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim [when] . . . [t]he victim is less than thirteen (13) years of age." Tenn. Code Ann. § 39-13-504(a)(4) (1994).

petitioner, the plaintiff would not be entitled to any relief.” Tenn. Code Ann. § 29-21-109 (1998); see also James R. Twitty v. Howard Carlton, No. 03C01-9707-CR-00310, slip op. at 5 (Tenn. Crim. App., Knoxville, Jan. 6, 1999) (citing Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994)).

We must first determine if the allegation made by the petitioner may be reviewed in a *habeas corpus* proceeding. The petitioner contends that the indictment was defective because it did not state a *mens rea*. In Dykes v. Compton, the Tennessee Supreme Court addressed the issue of whether a challenge to indictments could be reviewed in a *habeas corpus* proceeding. The court stated that “the validity of an indictment and the efficacy of the resulting conviction may be addressed in a petition for *habeas corpus* when the indictment is so defective as to deprive the court of jurisdiction.” Dykes, 978 S.W.2d at 529. “A valid indictment is an essential jurisdictional element, without which there can be no prosecution.” Id. (citing State v. Hill, 954 S.W.2d 725, 727 (Tenn. 1997)). Therefore, a challenge to an indictment which would deprive the court of jurisdiction may be reviewed in a *habeas corpus* proceeding.

The petitioner contends that the indictment charging him with aggravated sexual battery was defective because it did not allege a mental state. The petitioner argues that the mental state “knowingly” is an essential element of the offense of aggravated sexual battery, which should have been included in the indictment.

The state contends that the indictment sufficiently alleged a mental state according to State v. Hill, 954 S.W.2d 725 (Tenn. 1997). In Hill, the Tennessee Supreme Court decided the issue of whether an indictment charging aggravated rape was sufficient without alleging a culpable mental state. The

indictment in Hill stated that the defendant “did unlawfully sexually penetrate” the victim. State v. Hill, 954 S.W.2d 725, 727 (Tenn. 1997). The court stated:

for offenses which neither expressly require nor plainly dispense with the requirement for a culpable mental state, an indictment which fails to allege such mental state will be sufficient to support prosecution and conviction for that offense so long as

(1) the language of the indictment is sufficient to meet the constitutional requirements of notice to the accused of the charge against which the accused must defend, adequate basis for entry of a proper judgment, and protection from double jeopardy;

(2) the form of the indictment meets the requirements of Tenn. Code Ann. § 40-13-202; and

(3) the mental state can be logically inferred from the conduct alleged.

Id. at 726-27. The court found Hill’s indictment met the constitutional and statutory requirements of notice and form. Therefore, it was valid. Id. at 729.

The Tennessee Supreme Court applied the reasoning of Hill in Ruff v. State, 978 S.W.2d 95 (Tenn. 1998). Ruff challenged his indictment for aggravated sexual battery as being defective because no culpable mental state was alleged. The court found that the aggravated sexual battery statute does not describe a culpable mental state. Ruff v. State, 978 S.W.2d 95, 97 (Tenn. 1998). However, aggravated sexual battery requires “sexual contact,” which describes a culpable mental state of intent. Id.; see Tenn. Code Ann. § 39-13-501(6) (1997) (“sexual contact” is intentional touching). “Thus, to establish the offense of aggravated sexual battery, the perpetrator must have acted with intent;” however, the mental state of intent may be inferred from the language “unlawful sexual contact.” Ruff, 978 S.W.2d at 97. The court found Ruff’s indictment satisfied the requirements of Hill and upheld Ruff’s conviction. Id. at 97-98. The language of the indictment in Ruff is virtually identical to the language at issue here. In Ruff, the indictment alleged that Ruff “did unlawfully engage in sexual contact.” Id. at 96-97.

The indictment in this case said the petitioner “did engage in unlawful sexual contact.” Accordingly, we find the indictment against the petitioner was sufficient.

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

JAMES CURWOOD WITT, JR., JUDGE

CONCUR:

JOHN H. PEAY, JUDGE

DAVID H. WELLES, JUDGE