

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON
OCTOBER 1997 SESSION

FILED
December 23, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

RODNEY DEWAYNE BOND,)
)
Appellant,)
)
VS.)
)
BILLY COMPTON, Warden)
)
Appellee.)

C.C.A. NO. 02C01-9610-CC-00346
LAKE COUNTY
HON. JOE G. RILEY, JR.,
JUDGE
(Habeas corpus)

FOR THE APPELLANT:

FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

JOHN H. PEAY,
Judge

OPINION

The petitioner filed his petition for writ of habeas corpus on September 12, 1996, alleging that he is being illegally restrained by virtue of a nine year sentence imposed in 1991 for a rape conviction. He claims that his sentence is illegal because the underlying conviction is based upon an invalid indictment. Specifically, he claims that the indictment fails to allege the necessary mens rea element of the offense. The petitioner relies on this Court's opinion in State v. Roger Dale Hill, Sr., No. 01C01-9508-CC-00267, Wayne County (Tenn. Crim. App. filed June 20, 1996, at Nashville). The court below summarily dismissed the petition. We affirm.

We first note that our Supreme Court has overruled this Court's decision in Hill. See State v. Hill, ___ S.W.2d ___ (Tenn. 1997). Moreover, the indictment against the petitioner alleges that he committed aggravated rape by “unlawfully and forcibly, while armed with a weapon, . . . sexually penetrat[ing] [the victim].” The use of the term “forcibly” is adequate to describe the mens rea element required for aggravated rape.¹ The petitioner's contention is therefore without merit.

The judgment below is affirmed.

JOHN H. PEAY, Judge

¹The mens rea requirement for aggravated rape is intentional, knowing or reckless. See State v. Hill, ___ S.W.2d ___, ___ (Tenn. 1997)

CONCUR:

PAUL G. SUMMERS, Judge

DAVID G. HAYES, Judge