

_____ Nonetheless, we have considered the substance of the petitioner's claim and determine it to be without merit. Aggravated rape is defined as the "unlawful sexual penetration of a victim by the defendant" accompanied by certain enumerated aggravating circumstances, including that the "defendant causes bodily injury to the victim." T.C.A. § 39-13-502 (1996 supp.).

The indictment at issue before us charged that the petitioner did "unlawfully sexually penetrate and cause bodily injury to [the victim], in violation of T.C.A. 39-13-502." We find that the indictment at issue here sufficiently apprised the petitioner of the offenses charged, and is therefore valid.

A valid indictment in this state must contain the elements constituting the offense and must sufficiently apprise the accused of the offense he is called upon to defend. State v. Tate, 912 S.W.2d 785, 789 (Tenn. Crim. App. 1995). When the legislature neglects, however, to include the requisite mental state in the definition of an offense, permitting the application of any one of the three mental states set forth in T.C.A. § 39-11-301(c), an allegation of criminal conduct will provide the accused constitutionally adequate notice of the facts constituting the offense. State v. Dison, No. 03C01-9602-CC-00051 (Tenn. Crim. App., Jan. 31, 1997). The accused's culpable mental state, therefore, is not an essential element of the offense. Id. Consequently, the failure to allege a culpable mental state in this case did not invalidate the indictment.

For the reasons stated above, it is hereby ORDERED, pursuant to Rule 20, Rules of the Court of Criminal Appeals, that the judgment of the trial court dismissing the petition for writ of habeas corpus is affirmed. Costs of this appeal shall be assessed against the petitioner.

Enter, this the ____ day of April, 1997.

PAUL G. SUMMERS, JUDGE

JOE B. JONES, PRESIDING JUDGE

DAVID G. HAYES, JUDGE