

STATE OF NORTH CAROLINA
COUNTY OF ALAMANCE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
88 CRS 2342, 2343, 2638 and 4178

ROBERT ALAN LILLIE,)
)
Petitioner)
)
vs.)
)
MICHAEL BALL,)
Superintendent of Avery-Mitchell)
Correctional Institution,)
)
Respondent.)

ORDER DENYING PETITION
FOR WRIT OF HABEAS CORPUS

THIS MATTER came before the undersigned Judge in chambers, on the defendant's Petition for Writ of Habeas Corpus filed October 31, 2016. It is the defendant's contention the Court lacked jurisdiction due to invalid indictments, thus depriving the Court of subject matter jurisdiction. The defendant is not entitled to prosecute a writ of habeas corpus for two reasons:

A. He has been committed to the Department of Corrections as a result of a final judgment of a competent tribunal of criminal jurisdiction, the Superior Court of Alamance County; N.C.G.S. 17-4 (2).

B. There is no probable ground for the relief shown in the application.

1. The Court incorporates the procedural history set out in defendant's Petition.

2. Defendant has previously raised the issue of lack of jurisdiction in a Motion to Dismiss filed July 29, 2016, which was denied by order filed October 25, 2016.

3. Defendant wrongly contends the indictment charging him with First Degree Rape, to which he voluntarily and knowingly pled guilty, was defective because it was missing certain elements. One of the purposes of the indictment is to give the defendant notice of the charge against him. State v. Sills, 311 N.C. 370, 1984. N.C.G.S. 15-144.1, Essentials of bill for rape, clearly states it is not necessary for the State to allege every matter required to be proved at trial. After naming the person accused, the date of the offense, and county in which the rape was committed, it is only necessary to aver that the act was done "with force and arms" and that the accused person unlawfully, willfully and feloniously did ravish and carnally know the victim, naming her, and by force and against her will. The indictment in this case complies with each of these requirements. The body of the indictment includes the county, the defendant's name and the date of offense by reference to the information "named above", thus making these allegations part of the body of the indictment. Moreover, they clearly apprise defendant of these facts and protect

him from double jeopardy. The North Carolina short form indictment for first degree murder, rape and sexual offense have been approved and upheld, notwithstanding Jones v. United States, 526 U.S. 227 (1999). In State v. Almond, 112 N.C. App. 137, 1993 our appellate court has upheld the practice of utilizing the phrase "in the county named above" to incorporate by reference information into the body of the indictment. Because the indictment complies with the minimum requirements of the statute, defendant's contentions have no merit. Because defendant voluntarily chose to plead guilty, he cannot now argue that matters, including elements of the crime not required to be pled, were not proven. Moreover, a negative rape kit finding and lack of physical evidence of sexual intercourse, do NOT establish the rape did not occur.

4. As to defendant's argument that the use or threatened use of a weapon must be alleged in the indictment, he is incorrect for the reasons set out above.

5. Defendant makes the same arguments in reference to the court's jurisdiction (again alleging a defective indictment) over his First Degree Sex Offense charge as he does his rape charge. N.C.G.S. 15-144.2, Essentials of bill for sex offense, expressly states it is not necessary to allege every matter required to be proved. The indictment, in the body, must allege the name of the person accused, date of offense, county where the act was committed with force and arm, name the victim and allege a sex offense was against her will. The subject indictment meets each and every one of these requirements. Numerous cases have upheld this approach, including State v. Shepherd, 156 N.C. App. 69 (2003), State v. Harris, 140 N.C. App. 208 (2000), State v. Dillard, 90 N.C. App. 318, (1988). Defendant's argument is frivolous and without merit.

6. As to defendant's arguments regarding ineffective assistance of counsel, which are based upon defendant's misunderstanding/misstatement of the law, those arguments have no merit. Defendant has otherwise failed to even allege any legitimate claim that his counsel failed to meet minimum acceptable standards.

7. The defendant contends that the Court had no jurisdiction over the kidnapping charge. He contends the rape and sex offense charges cited in the indictment and used to elevate the charge from second degree kidnapping to first degree was improper because he pled guilty to the rape and sexual offense as separate, substantive crimes. The issue is not one of jurisdiction. The Court has jurisdiction of the kidnapping charge. The defendant's contention is that if a rape or sex offense charge elevates kidnapping to First Degree, and he is sentenced on the rape or sex offense charges, he cannot be sentenced for First Degree Kidnapping, but only Second Degree. To the extent defendant may be entitled to a remedy, the defendant could assert by way of a Motion for Appropriate Relief, that the first degree kidnapping charge should have been arrested and judgment entered on second degree kidnapping. The Court notes, but does not rule, that this would have no effect on defendant's sentence inasmuch as he was given a life sentence, the penalty for First Degree Rape and Sex Offense.

8. The defendant contends the indictment, conviction and sentence for Breaking and/or Entering is totally defective, because it fails to allege "without consent" and no aggravating factors were included in the body of the indictment. Defendant was sentenced to five years to run at the expiration of his life sentence. Defendant's contentions regarding aggravating factors is simply wrong. Defendant was sentenced pursuant to the Fair Sentencing Act which was the law in effect

at that time. There were no statutory aggravating factors. Judges were required to recite the reasons a sentence greater than the presumptive (five years in this case) was imposed UNLESS, by statute, the sentence was pursuant to a plea arrangement. Defendant agreed to accept a life sentence plus a five year sentence for the breaking and/or entering. Defendant's contention that the burglary indictment is defective for failing to allege "without consent" is also without merit. There is a long history, including common law cases, of the North Carolina Appellate Courts holding that an indictment which does not allege "without consent" is not defective. State v. McCormick. 204 N.C. App. 105, 2070. "Our case law does not require that this element be specifically pled for the crime of burglary. See State v. Pennell, 54 N.C. App. 252; (1981). Language in the indictment which states that the defendant "unlawfully and willfully did break and enter a building" implies defendant did not have consent. Id at 260. The indictment in defendant's case states "unlawfully, willfully and feloniously." Thus, defendant's contention has no merit. The Court had jurisdiction to accept defendant's plea of guilty to felony breaking and entering a lesser included offense.

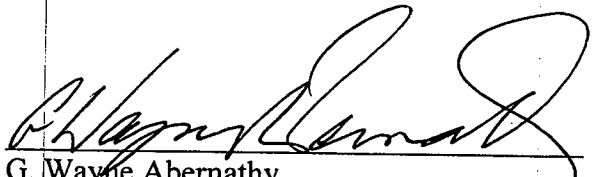
BASED UPON THE FOREGOING, THE COURT CONCLUDES AS A MATTER OF LAW as follows:

1. Defendant is not entitled to a Writ of Habeas Corpus.
2. The indictments for First Degree Rape, First Degree Kidnapping, First Degree Sex Offense and Burglary (Breaking and Entering plea) were valid.
3. The Superior Court of Alamance County had subject matter jurisdiction over each charge to which defendant pled guilty.

THEREFORE, IT IS ORDERED as follows:

1. Defendant's Petition for Habeas Corpus is DENIED.
4. That a copy of this Order be mailed to the defendant and to the District Attorney.

This the 22 day of November, 2016.


G. Wayne Abernathy
Senior Resident Superior Court Judge
15A Judicial District



EXHIBIT

#8

North Carolina Court of Appeals

Fax: (919) 831-3615
Web: <http://www.nccourts.org>

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Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

No. P17-154

ROBERT ALAN LILLIE,
PETITIONER,

VS.

G. WAYNE ABERNATHY,
SENIOR RESIDENT SUPERIOR COURT
JUDGE OF ALAMANCE COUNTY,
RESPONDENT.

From Alamance
(88CRS2342-43 88CRS2638 88CRS4178)

ORDER

The following order was entered:

The petition filed in this cause on the 12th of April 2017 and designated 'Petition for Writ of Certiorari' is denied.

By order of the Court this the 1st of May 2017.

The above order is therefore certified to the Clerk of the Superior Court, Alamance County.

WITNESS my hand and the seal of the North Carolina Court of Appeals, this the 1st day of May 2017.

Daniel M. Horne Jr.
Clerk, North Carolina Court of Appeals

Copy to:
Attorney General, For State of North Carolina
Mr. Robert Alan Lillie, For Lillie, Robert Alan
Ms. Anne M. Middleton, Special Deputy Attorney General
Hon. David J.P. Barber, Clerk of Superior Court

APPENDIX B



Supreme Court of North Carolina

J. BRYAN BOYD, Clerk
Justice Building, 2 E. Morgan Street
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Web: <http://www.nccourts.org>

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Raleigh, NC 27602

From N.C. Court of Appeals
(P10-650 P15-454 P17-154)
From Alamance
(88CRS2342-2343 88CRS2638 88CRS4178)

22 August 2017

Mr. Robert Alan Lillie
Pro Se
Caswell Correctional Institution
#0241579
444 County Home Road
Blanch, NC 27212

RE: Lillie v Carver - 421P10-6

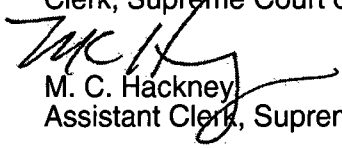
Dear Mr. Lillie:

The following order has been entered on the motion filed on the 28th of June 2017 by Petitioner for Petition for Discretionary Review:

"Motion Denied by order of the Court in conference, this the 17th of August 2017."

**s/ Morgan, J.
For the Court**

J. Bryan Boyd
Clerk, Supreme Court of North Carolina


M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:
North Carolina Court of Appeals
Ms. Anne M. Middleton, Special Deputy Attorney General, For State of North Carolina - (By Email)
Mr. Robert Alan Lillie, For Lillie, Robert Alan
Mr. Patrick Nadolski, District Attorney
Hon. David J.P. Barber, Clerk
West Publishing - (By Email)
Lexis-Nexis - (By Email)

APPENDIX C



Supreme Court of North Carolina

CHRISTIE SPEIR CAMERON ROEDER, Clerk

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From N.C. Court of Appeals
(P10-650 P15-454 P17-154)
From Alamance
(88CRS2342-2343 88CRS2638 88CRS4178)

12 December 2017

Mr. Robert Alan Lillie
Pro Se
Caswell Correctional Institution
#0241579
444 Country Home Road
Blanch, NC 27212

RE: Lillie v Carver - 421P10-7

Dear Mr. Lillie:

The following order has been entered on the motion filed on the 21st of September 2017 by Petitioner to Reconsider:

"Motion Dismissed by order of the Court in conference, this the 7th of December 2017."

**s/ Morgan, J.
For the Court**

Christie Speir Cameron Roeder
Clerk, Supreme Court of North Carolina

A handwritten signature in black ink, appearing to read "M. C. Hackney".

M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:
North Carolina Court of Appeals
Ms. Anne M. Middleton, Special Deputy Attorney General, For State of North Carolina - (By Email)
Mr. Robert Alan Lillie, For Lillie, Robert Alan
Mr. Patrick Nadolski, District Attorney
Hon. David J.P. Barber, Clerk
West Publishing - (By Email)
Lexis-Nexis - (By Email)

APPENDIX D

**Additional material
from this filing is
available in the
Clerk's Office.**