

STATE OF NORTH CAROLINA FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

2008 NOV 21 PM 12:00

05 CRS 24505-10,
05 CRS 10835

WAKE COUNTY, C.S.C.

BY _____

STATE OF NORTH CAROLINA

V.

**ORDER DENYING
MOTION FOR APPROPRIATE RELIEF**

DANIEL OLIVER HACKNEY,
Defendant

THIS MATTER is before the court on a "Motion For Appropriate Relief" filed by the defendant on October 2nd, 2008. The defendant is represented by Mr. Donald R. Vaughan of the Guilford County bar. The defendant is seeking to have his sentence vacated on the basis that the trial court did not have subject matter jurisdiction in these matters, thus rendering the sentence void. He is also alleging that his trial counsel rendered ineffective assistance of counsel.

Upon review of the record proper and the defendant's motion, it appears to the court that the undisputed facts in this matter are that the defendant was indicted in Wake County Criminal Superior Court on April 19th, 2005 for three counts of First Degree Statutory Sexual Offense, three counts of First Degree Sexual Exploitation of a Minor, one count of Second Degree Sexual Exploitation of a Minor, and three counts of Taking Indecent Liberties With a Child. The Wake County file numbers are 05 CRS 24505-13 and 05 CRS 10835. Each of the Wake County indictments lists the victim as "L.R, W/F, dob: 10-18-96". The defendant was indicted on June 6th, 2005 in Durham County for three counts of Second Degree Sexual Exploitation of a Minor. The Durham County file numbers are 05 CRS 41898, 05 CRS 41903 and 05 CRS 41908. Each of the Durham County indictments lists the victim's full name (which this court will not publish in this

document), and that the victim was "a child eight years of age". The full name of the victim as listed on the Durham County indictments is consistent with the initials "L.R." as listed in the Wake County indictments. On July 5th, 2005 the defendant executed a Waiver of Venue pursuant to North Carolina General Statute §15A-133, thereby consenting to the Durham County matters being transferred to Wake County. It does not appear that the defendant filed any motions pursuant to N.C.G.S. §15A-952 seeking an order from the court requiring the state to provide a Bill of Particulars as allowed pursuant to N.C.G.S. §15A-925. On September 29th, 2005 the defendant appeared in Wake County Superior Court and entered pleas of guilty to one count of Second Degree Sexual Exploitation of a Minor, three counts of Attempted First Degree Sexual Offense and three counts of First Degree Sexual Exploitation of a Minor before the Honorable J.B. Allen, Jr. The charges were consolidated for judgment in file number 05 CRS 24505 and the defendant was sentenced to a 119 month minimum, 152 month maximum active sentence. The defendant was represented at all times by Mr. Randolph J. Hill of the Wake County bar. The guilty plea and sentence were negotiated and listed on the transcript of plea. Pursuant to the plea agreement the three Durham County cases were dismissed by the Durham County District Attorneys Office on October 4, 2005 and the remaining Wake County cases were dismissed by the Wake County District Attorneys Office.

The essence of the defendant's argument in support of the Motion for Appropriate Relief is that the Wake County indictments were fatally defective for failing to list the full name of the victim, and therefore, the court lacked subject matter jurisdiction to enter the judgments in these cases. Further, the defendant contends that his counsel's failure to move to dismiss the alleged fatally defective indictments constitutes ineffective assistance of counsel.

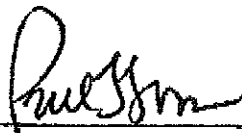
Based upon a full review of the entire record, the motion, and the case law cited in support of the motion, this court finds and concludes that the allegedly defective indictments contained sufficient identifying information about the victim and her age to satisfy the constitutional and statutory requirements for criminal indictments, and that the defendant had sufficient notice as to the nature of the offenses charged, and who the victim was. There is (federal case law) that generally supports the practice of using

initials to protect the identity of minor victims of sexual assaults. See, U.S. v. Pliego, 2008 WL 371160 (D. Minn. Feb. 8, 2008) (Slip Op.) (approving indictment that used initials to protect the identity of a minor victim); U.S. v. Jones, 2007 WL 2071267 (N.D. Ga. July 19, 2007) (Slip Op.) (same); U.S. v. Wabo, 290 F.Supp.2d 486, 490 (D.N.J. 2003) ("In the instant case, the Superseding Indictment contains sufficient factual and legal information for the defense to prepare its case. Although the victims are identified by initials, it is not essential that an indictment identify victims by their given names."). This court also recognizes the strong privacy interests at stake in these cases with minor victims. ✓

THEREFORE, based upon the totality of all the circumstances and a full review of the record, this court finds and concludes that the indictments were not fatally defective, and the court had subject matter jurisdiction in these cases, and that the defendants trial counsel did not render ineffective assistance of counsel by failing to file a motion to dismiss the indictments.

The defendants Motion for Appropriate Relief is denied.

SO ORDERED, this the 21 day of November, 2008.



Paul G. Gessner
Resident Superior Court Judge