

SUPREME COURT OF ARKANSAS

No. 11-185

DAVID DANIELS
Appellant

v.

RAY HOBBS
Appellee

Opinion Delivered April 28, 2011

APPELLANT'S PRO SE MOTION
FOR EXTENSION OF TIME TO FILE
BRIEF [JEFFERSON COUNTY
CIRCUIT COURT, CV 2010-581,
HON. JODI RAINES DENNIS,
JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 2007, appellant David Daniels was found guilty by a jury and sentenced as a habitual offender to an aggregate sentence of 360 months' imprisonment. The Arkansas Court of Appeals affirmed. *Daniels v. State*, CACR 07-647 (Ark. App. Jan. 30, 2008) (unpublished).

In 2010, appellant filed in the circuit court in the county in which he was incarcerated a pro se petition for writ of habeas corpus pursuant to Arkansas Code Annotated § 16-112-103 (a)(1) (1987). The petition was denied, and appellant lodged an appeal in this court. He now seeks by motion an extension of time to file his brief-in-chief.

We need not address the merits of the motion because it is clear from the record that appellant could not prevail on appeal. Accordingly, the appeal is dismissed, and the motion is moot. An appeal from an order that denied a petition for postconviction relief, including

a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Buckhanna v. Hobbs*, 2011 Ark. 119 (per curiam); *Anderson v. State*, 2011 Ark. 35 (per curiam); *McCullough v. State*, 2010 Ark. 394 (per curiam); *Moore v. Hobbs*, 2010 Ark. 380 (per curiam); *Hutcherson v. State*, 2010 Ark. 368 (per curiam); *Washington v. Norris*, 2010 Ark. 104 (per curiam); *Edwards v. State*, 2010 Ark. 85 (per curiam); *Pineda v. Norris*, 2009 Ark. 471 (per curiam).

Appellant failed to demonstrate in his petition that the writ was warranted. The burden is on the petitioner in a petition for writ of habeas corpus to establish that the trial court lacked jurisdiction or that the commitment was invalid on its face; otherwise, there is no basis for a finding that a writ of habeas corpus should issue. *Jackson v. Norris*, 2011 Ark. 49, 378 S.W.3d 103; *Moore*, 2010 Ark. 380; *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). Under our statute, a petitioner who does not allege his actual innocence¹ must plead either the facial invalidity of the judgment or the lack of jurisdiction by the trial court and make a “showing by affidavit or other evidence, [of] probable cause to believe” that he is illegally detained. *Young* at 221, 226 S.W.3d at 798–99; Ark. Code Ann. § 16-112-103(a)(1).

Appellant raised the following allegations in the petition for writ of habeas corpus: motions filed in the trial court were not heard by the court; he was subjected to an illegal

¹A petitioner who seeks a writ of habeas corpus and alleges actual innocence must do so in accordance with Act 1780 of 2001 Acts of Arkansas, codified as Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006). Ark. Code Ann. § 16-112-103(a)(2) (Repl. 2006).

search; the evidence was insufficient to sustain the judgment of conviction; he was improperly determined to be an habitual offender; “county officers” improperly served on the jury; he was not afforded a speedy trial; a proper chain of custody for the evidence was not established; the jury was prejudiced by false information that appeared in the media. Appellant further suggested that he was not afforded effective assistance of counsel.

The claims are not sufficient to make a showing that the commitment was invalid on its face or that the trial court lacked jurisdiction. The sufficiency of the evidence and claims of trial error, even if error were established, are matters to be addressed at trial. Such grounds are not grounds for habeas relief. *See Tryon v. Hobbs*, 2011 Ark. 76 (per curiam); *see also Hill v. Norris*, 2010 Ark. 287 (per curiam). A habeas corpus proceeding does not afford a convicted defendant an opportunity to retry his case, and it is not a substitute for direct appeal. *Key v. Norris*, 2010 Ark. 61 (per curiam); *Henderson v. State*, 2010 Ark. 30 (per curiam) (citing *Meny v. Norris*, 340 Ark. 418, 420, 13 S.W.3d 143, 144 (2000) (per curiam)). Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Anderson*, 2011 Ark. 35; *Baker v. Norris*, 369 Ark. 405, 255 S.W.3d 466 (2007). A circuit court has subject-matter jurisdiction to hear and determine cases involving violations of criminal statutes. *Anderson*, 2011 Ark. 35. Mere trial error does not deprive a court of jurisdiction. *Tryon*, 2011 Ark. 76; *see also Birchett v. State*, 303 Ark. 220, 795 S.W.3d 53 (1990).

With respect to appellant’s suggestion that he was not afforded effective assistance of counsel in the trial court, a claim of ineffective assistance of counsel is not cognizable in a

habeas proceeding. *Tryon*, 2011 Ark. 76; *Grimes v. State*, 2010 Ark. 97 (per curiam). Allegations concerning counsel's effectiveness are properly raised in a timely petition pursuant to our postconviction rule, Arkansas Rule of Criminal Procedure 37.1 (2010). *Moore*, 2010 Ark. 380; *Hill*, 2010 Ark. 287. A petition for writ of habeas corpus is not a substitute for proceeding under Rule 37.1, nor does the remedy provide a means to raise new issues that were omitted from a petition for postconviction relief.² See *Tryon*, 2011 Ark. 76; see also *Johnson v. Hobbs*, 2010 Ark. 459 (per curiam); *Rickenbaker v. Norris*, 361 Ark. 291, 206 S.W.3d 220 (2005).

Finally, if there was a speedy trial issue to be raised, it could have been raised in the trial court. The right to a speedy trial may be waived, and the issue is not cognizable in a habeas proceeding. *Davis v. State*, 2011 Ark. 6 (per curiam) (citing *Barker v. Wingo*, 407 U.S. 514 (1972); see *Eubanks v. Humphrey*, 334 Ark. 21, 972 S.W.2d 234 (1998)).

Appeal dismissed; motions moot.

²Appellant timely filed in the trial court a petition under Arkansas Rule of Criminal Procedure 37.1, which was denied in 2008. His motion to proceed with a belated appeal of the Rule 37.1 order was denied by this court. *Daniels v. State*, 2009 Ark. 607 (per curiam).