

SUPREME COURT OF ARKANSAS

No. 11-429

MARK WILLIAMS
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered June 23, 2011

APPELLANT'S PRO SE MOTION
FOR EXTENSION OF TIME TO FILE
BRIEF [LINCOLN COUNTY
CIRCUIT COURT, LCV 2010-151,
HON. JODI RAINES DENNIS,
JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 2008, appellant Mark Williams entered a plea of guilty to rape in the Chicot County Circuit Court. He was sentenced to 420 months' imprisonment.

In 2010, appellant filed in the county in which he was incarcerated a petition for writ of habeas corpus pursuant to Arkansas Code Annotated §§ 16-112-101 to -123 (Repl. 2006). In the petition, appellant argued that the trial court lacked jurisdiction in his case because he was not afforded a DNA test to prove his innocence. The petition was denied, and appellant lodged an appeal in this court. Now before us is appellant's motion for 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. *Chappell v. Hobbs*, 2011 Ark. 220 (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); *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. *Daniels v. Hobbs*, 2011 Ark. 192 (per curiam) (citing *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 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*, 365 Ark. at 221, 226 S.W.3d at 798–99; Ark. Code Ann. § 16-112-103(a)(1).

Appellant’s contention that the trial court lacked jurisdiction in his case on the ground that a DNA test was not performed did not establish a lack of jurisdiction. 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. *Id.* Appellant raised no argument that called into question the court’s jurisdiction to accept his plea of guilty and enter a judgment. *See Johnson v. Hobbs*, 2010 Ark. 459 (per curiam).

Cite as 2011 Ark. 288

Even if appellant's claim could be considered one of actual innocence, it was not cognizable as a ground to issue the writ in the county where he was incarcerated. A petitioner who seeks a writ of habeas corpus and alleges actual innocence must proceed in the trial court 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).

The court treated appellant's allegation as an assertion that his attorney was ineffective. If it was indeed appellant's argument that his attorney should have secured DNA testing of evidence before the plea of guilty was entered, a claim of ineffective assistance of counsel is not within the purview of a habeas proceeding. *Daniels*, 2011 Ark. 192; *Tryon v. Hobbs*, 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 (2011). *Daniels*, 2011 Ark. 192; *Moore*, 2010 Ark. 380; *Hill v. Norris*, 2010 Ark. 287. A petition for writ of habeas corpus is not a substitute for proceeding under Rule 37.1. *Johnson*, 2010 Ark. 459; *Rickenbaker v. Norris*, 361 Ark. 291, 206 S.W.3d 220 (2005).

Appeal dismissed; motion moot.