

SUPREME COURT OF ARKANSAS

No. 09-915

CHARLES MARSHALL

APPELLANT

V.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered September 8, 2011

PRO SE APPEAL FROM THE CHICOT
COUNTY CIRCUIT COURT, CV-09-
101, HON. DON GLOVER, JUDGE

AFFIRMED.

PER CURIAM

Appellant Charles Marshall appeals from the circuit court's order denying his motion seeking a writ of habeas corpus. In 2004, appellant was found guilty of first-degree murder and was sentenced to twenty-five years' imprisonment. Our court of appeals affirmed. *Marshall v. State*, 92 Ark. App. 188, 211 S.W.3d 597 (2005). On July 2, 2009, appellant, who is incarcerated by virtue of his conviction, filed in the circuit court of the county where he was incarcerated a pro se petition for writ of habeas corpus pursuant to Arkansas Code Annotated sections 16-112-101 to -123 (Repl. 2006), challenging the judgment. The petition was denied, and appellant has lodged the instant appeal.

We do not reverse a denial of postconviction relief unless the circuit court's findings are clearly erroneous. *Henson v. Norris*, 2009 Ark. 363 (per curiam). A finding is clearly erroneous when, although there was evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has



been committed. *Id.*

In a petition for a writ of habeas corpus, it is the petitioner's burden 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. *See Daniels v. Hobbs*, 2011 Ark. 192 (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. Ark. Code Ann. § 16-112-103(a)(1); *Tryon v. Hobbs*, 2011 Ark. 76, at 2 (per curiam).

In his petition, appellant contended that the trial court lacked jurisdiction over him and that the manner in which the judgment in his case was obtained was a violation of due process of law. He based his claims on the following allegations: (1) the prosecutor was biased due to his relation to the victim and acquaintance with one of the State's star witnesses; (2) the prosecution allowed a witness to knowingly commit perjury; (3) the police initiated contact with him after he invoked his right to counsel; (4) the admission of a replica weapon and not the actual weapon used in the crime constituted a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). However, none of the bases for relief alleged in appellant's petition supported either of the two grounds for granting a writ of habeas corpus.

To the extent that appellant's claims could have been taken as challenges to the trial court's jurisdiction, his claims nonetheless failed, as he did not demonstrate that the trial court

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



was without jurisdiction in this case. Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Daniels*, 2011 Ark. 192. A circuit court has subject-matter jurisdiction to hear and determine cases involving violations of criminal statutes. *Wilkins v. Norris*, 2011 Ark. 169. Mere trial error does not deprive a court of jurisdiction. *Id.*

Furthermore, were appellant's claims in his petition taken as challenges to the validity of the commitment order, it would have required the circuit court to go beyond the face of the commitment to resolve those claims. A habeas corpus proceeding does not afford a prisoner an opportunity to retry his case and is not a substitute for postconviction relief. *White v. Norris*, 2009 Ark. 446 (per curiam). Moreover, claims of constitutional violations, including prosecutorial misconduct, *Brady* violations, or other irregularities at trial, are factual issues that should have been addressed during trial or through a direct appeal. *Russell v. Norris*, 2009 Ark. 349 (per curiam).

Because appellant failed to show in his petition that the trial court lacked jurisdiction or that the commitment was invalid on its face, there was no basis for a finding by the circuit court that a writ of habeas corpus should issue in his case. *Brim v. Norris*, 2010 Ark. 71. We therefore affirm the circuit court's order.

Affirmed.