

SUPREME COURT OF ARKANSAS

No. 10-1138

JAMES ROBERT LOWE

APPELLANT

V.

RAY HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION

APPELLEE

Opinion Delivered September 29, 2011

PRO SE APPEAL FROM THE
JEFFERSON COUNTY CIRCUIT
COURT, CV 2010-368, HON. JODI
RAINES DENNIS, JUDGE

AFFIRMED.

PER CURIAM

This is a pro se appeal from an order of the Jefferson County Circuit Court denying a petition for writ of habeas corpus filed by appellant James Robert Lowe. We affirm.

In 1996, appellant entered a plea of no contest to a charge of first-degree sexual abuse and was sentenced to a term of eighteen months' imprisonment, with an additional 102 months' suspended sentence. His sentence was to run concurrently with sentences that he was serving in Oklahoma. In 2008, he pled guilty to a charge of failing to register as a sex offender. The circuit court withheld imposition of sentence for a ten-year period, provided that appellant met certain terms and conditions. Thereafter, the State sought to revoke his suspended sentence, alleging that he committed the offense of possession of drug paraphernalia with the intent to manufacture methamphetamine and that he failed to pay court-ordered fees. The circuit court entered an order revoking his suspended sentence, and that order was affirmed on appeal. *Lowe*



v. State, 2010 Ark. App. 284. ¹

Appellant filed the instant petition for writ of habeas corpus on May 17, 2010, arguing that his sentence in the sexual-abuse case was illegal because it exceeded the maximum sentence allowed and that there was a speedy-trial violation, in that he was charged in 1992 but did not plead guilty until 1996. He further argued that his sentence in the failure-to-register case was a direct result of the first illegal sentence and was, thus, illegal too.

The circuit court entered an order denying appellant's petition after finding that he failed to demonstrate a basis for habeas relief. We do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Gaye v. State*, 2009 Ark. 201, 307 S.W.3d 1. 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. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

On appeal, appellant argues that the circuit court failed to address the jurisdictional nature of his speedy-trial claim and failed to consider his constitutional right to a speedy trial. He further asserts that the face of his judgment-and-commitment order in the sexual-abuse case demonstrates that he is entitled to habeas relief because of the speedy-trial violation. He also raises a due-process allegation based on his assertion that appellee Ray Hobbs, Director of the Arkansas Department of Correction, was not promptly served in this case, resulting in an

¹Appellant was subsequently convicted of the offense of possession of drug paraphernalia with the intent to manufacture methamphetamine, sentenced as a habitual offender to thirty years's imprisonment, and fined \$15,000. His conviction and sentence were affirmed on appeal. *Lowe v. State*, 2011 Ark. App. 68.



Cite as 2011 Ark. 400

unnecessary delay and causing injury to the presentation of his claim.

A petitioner is entitled to a writ of habeas corpus only where he demonstrates that the commitment order is invalid on its face or that the convicting court lacked jurisdiction. Ark. Code Ann. §§ 16-112-101 to -123 (Repl. 2006); *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). To do so, he must make a “showing, by affidavit or other evidence [of] probable cause to believe” that he is being illegally detained. Ark. Code Ann. § 16-112-103(a)(1); *Friend*, 364 Ark. 315, 219 S.W.3d 123.

In the instant case, appellant cannot demonstrate that he is being illegally detained as a result of his sentence in the sexual-abuse case.² His sentence in that case was eighteen months’ imprisonment, with an additional 102-month suspended sentence; thus, appellant completed his sentence in full by the end of 2006. He did not file his habeas petition until 2010. Even though appellant is currently incarcerated, he cannot obtain habeas relief from a sentence that has already been served in full. Accordingly, the circuit court did not err in denying appellant’s petition for writ of habeas corpus.

Affirmed.

²Although raised in his petition before the circuit court, appellant makes no reference in his brief on appeal to his conviction and sentence for failing to register as a sex offender; thus, he has abandoned any such argument on appeal. *See, e.g., Jordan v. State*, 356 Ark. 248, 147 S.W.3d 691 (2004).