

SUPREME COURT OF ARKANSAS

No. 09-791

JOHN PATRICK DICKINSON
APPELLANT

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
APPELLEE

Opinion Delivered October 6, 2011

PRO SE APPEAL FROM THE
LINCOLN COUNTY CIRCUIT
COURT,
LCV 2009-29, HON. JODI RAINES
DENNIS, JUDGE

AFFIRMED.

PER CURIAM

Appellant John Patrick Dickinson appeals from an order of the Lincoln County Circuit Court denying his pro se petition for writ of habeas corpus. For reversal, appellant makes three allegations of error concerning claims of ineffective assistance of counsel and being improperly charged by information instead of indictment. Because appellant failed to raise these arguments to the circuit court, we affirm.

Appellant was convicted by a Craighead County jury of capital murder and attempted first-degree murder and was sentenced to a term of life imprisonment without parole and a term of twenty years' imprisonment to run concurrently. We affirmed appellant's convictions on direct appeal. *Dickinson v. State*, 367 Ark. 102, 238 S.W.3d 125 (2006).

Appellant filed for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2005), and, in 2007, the circuit court denied his petition. We later declined his requests to pursue an appeal of the circuit court's denial of his petition because he lodged



Cite as 2011 Ark. 413

the record belatedly. *Dickinson v. State*, CR 08-1090 (Ark. Feb. 12, 2009) (unpublished per curiam); *Dickinson v. State*, CR 08-1090 (Ark. Nov. 20, 2008) (unpublished per curiam).

Appellant subsequently filed a petition for writ of habeas corpus in Lincoln County where he was incarcerated. In his petition, appellant asserted that the circuit court lost subject-matter jurisdiction before sentencing when it allegedly failed to follow the United States Constitution and Arkansas Constitution. Appellant further alleged three grounds for issuance of the writ: (1) insufficient evidence of his guilt due to the lack of physical evidence or conclusive scientific evidence connecting him to the crime scene; (2) the police's seizure of his gun allegedly violating his rights under the Fourth Amendment to the United States Constitution and article 2, section 15 of the Arkansas Constitution; (3) the State's method of charging him by felony information instead of indictment. Without a hearing, the court entered an order denying his petition and ruled that his claims of insufficiency of the evidence and Fourth Amendment violations were not cognizable in a petition for writ of habeas corpus and that charging by a felony information was a valid method of bringing a defendant to trial. From that order, appellant now brings his appeal.

On appeal, appellant raises similar arguments to those made in his petition for writ of habeas corpus. Specifically, appellant argues that his counsel was ineffective for failing to challenge either the sufficiency or the reliability of the evidence presented at trial, that his counsel was ineffective for failing to raise the issue of his alleged illegal seizure, and that he was improperly charged by felony information instead of indictment as required by the Fifth Amendment to the United States Constitution.



Cite as 2011 Ark. 413

The burden is on the appellant 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); *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). Under our statute, an appellant 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) (Repl. 2006).

Here, we are precluded from reaching the merits of appellant’s arguments. Appellant’s first two arguments, which include insufficiency of the evidence at trial and possible Fourth Amendment violations, fail because this court has held that trial irregularities and ineffective assistance of counsel issues are not grounds for issuance of a writ of habeas corpus. *McConaughy v. Lockhart*, 310 Ark. 686, 687, 840 S.W.2d 166, 167 (1992).

Further, we turn to appellant’s assertion that the Fifth Amendment required him to be charged by indictment. Challenges to the sufficiency of the charging instrument are not jurisdictional and must be raised prior to trial. *Sawyer v. State*, 327 Ark. 421, 938 S.W.2d 843 (1997) (per curiam). An information is a valid charging instrument. *Hamm v. State*, 296 Ark. 385, 757 S.W.2d 932 (1988). Any claim that appellant was allegedly improperly charged by information instead of indictment is invalid. *Gomez v. Sargent*, 308 Ark. 263, 821 S.W.2d 480 (1992). It is well settled that a defendant may be charged by information rather than indictment. *Peterson v. Norris*, 2009 Ark. 445 (per curiam) (citing *Ruiz v. State*, 299 Ark. 144,



Cite as 2011 Ark. 413

165, 772 S.W.2d 297, 308 (1989)). Based upon this well-established precedent, appellant's third claim fails because he was properly charged by felony information. Further, appellant's contention is without merit for the reason that relief by habeas corpus is proper only when it is shown that a commitment is invalid on its face or the trial court lacked jurisdiction. *Gomez*, 308 Ark. 263, 821 S.W.2d 480 (citing *Wallace v. Willock*, 301 Ark. 69, 781 S.W.2d 484 (1989)). Therefore, the circuit court did not err in denying appellant's petition for writ of habeas corpus. Accordingly, we affirm the circuit court's ruling.

Affirmed.