Cite as 2012 Ark. 18

ARKANSAS SUPREME COURT

No. 11-579

JAMES E. SMITH
APPELLANT

V.

RAY HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION
APPELLEE

Opinion Delivered January 19, 2012

PRO SE MOTIONS FOR DUPLICATION OF BRIEF AT PUBLIC EXPENSE AND FOR INFORMATION ON STATUS OF MOTION FOR DUPLICATION OF BRIEF AND FOR LEAVE TO CORRECT DOCKET NUMBER ON MOTION FOR DUPLICATION OF BRIEF [JEFFERSON COUNTY CIRCUIT COURT, CV 2011-76, HON. JODI RAINES DENNIS, JUDGE]

APPEAL DISMISSED; MOTIONS MOOT.

PER CURIAM

On February 4, 2011, appellant James E. Smith, an inmate incarcerated in the Arkansas Department of Correction, filed a pro se petition for writ of habeas corpus in the Jefferson County Circuit Court, which is located in the county where he was incarcerated.[1] The circuit court dismissed the petition, and appellant lodged an appeal of that order in this court. Appellant tendered a brief that is in excess of five hundred pages in length. He then filed the two motions that are now before this court, seeking to have the brief duplicated at public expense and to correct the docket number that he placed on that motion and for an update on the status of the motion.

[1]As of the date of this opinion, appellant remains incarcerated at the prison facility in Jefferson County.

We need not consider the motions, inasmuch as it is clear from the record that appellant could not prevail on appeal. An appeal of the denial of postconviction relief, including an appeal from an order that denied a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Russell v. Howell*, 2011 Ark. 456 (per curiam); *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam). Here, the petition filed by appellant failed to state a ground on which the writ could issue. A writ of habeas corpus is only proper when a judgment of conviction is invalid on its face or when a circuit court lacked jurisdiction over the cause. *Abernathy v. Norris*, 2011 Ark. 335 (per curiam); *Davis v. Reed*, 316 Ark. 575, 873 S.W.2d 524 (1994). The burden is on the petitioner in a habeas-corpus petition 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. *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). The petitioner must plead either the facial invalidity or the lack of jurisdiction and make a "showing by affidavit or other evidence [of] probable cause to believe" that he is illegally detained. *Id.* at 221, 226 S.W.3d at 798–99.

Appellant raised the following grounds for the writ: appellant did not receive service of process of any document, writ, or order; the State induced "artifice and fraud" on him to obtain service of process; there was no complaint, declaration, police report, information bearing the prosecutor's signature, indictment, or claim filed in circuit court; the circuit clerk did not issue a "criminal summons"; the bench warrant issued for his arrest was invalid because there was no affidavit in support of it and a judge did not sign it; the bench warrant was not properly served on appellant; no probable-cause report was issued; appellant's attorney did not explain what

"waiver of arraignment" meant before appellant signed the waiver; appellant did not knowingly and intelligently waive his right to arraignment; appellant's attorney conspired with the trial judge and prosecutor to conceal that appellant was not properly served with a charging instrument or arrest warrant.

With respect to appellant's attacks on the arrest warrant and the waiver-of-arraignment, it is well settled that such challenges must be advanced at the time of trial or on the record on direct appeal. *Russell*, 2011 Ark. 456; *Cook v. Hobbs*, 2011 Ark. 382 (per curiam). Challenges to the sufficiency of the charging instrument are not jurisdictional challenges and must be raised before trial. *Dickinson v. Norris*, 2011 Ark. 413 (per curiam); *Sawyer v. State*, 327 Ark. 421, 938 S.W.2d 843 (1997). A deficiency in a felony information does not render a judgment invalid on its face. *Cook*, 2011 Ark. 382. Likewise, some flaw in the arrest procedure does not vitiate an otherwise valid judgment. *Id.*; *Biggers v. State*, 317 Ark. 414, 878 S.W.2d 717 (1994).

To the extent that any allegation raised by appellant was intended, or could be construed, as a claim that he was denied effective assistance of counsel, allegations of ineffective assistance of counsel are not cognizable in a habeas proceeding. *Rodgers v. State*, 2011 Ark. 443 (per curiam); *Willis v. State*, 2011 Ark. 312; *Tryon v. State*, 2011 Ark. 76 (per curiam); *Grimes v. State*, 2010 Ark. 97 (per curiam). Claims concerning counsel's effectiveness are properly raised pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011). *Rodgers*, 2011 Ark. 443; *Christopher v. Hobbs*, 2011 Ark. 399 (per curiam); *Moore v. State*, 2010 Ark. 380; *Hill v. Norris*, 2010 Ark. 287 (per curiam). A petition for writ of habeas corpus is not a substitute for proceeding under Rule 37.1. *Rodgers*, 2011 Ark. 443; *Tryon*, 2011 Ark. 76; *see also Johnson v. Hobbs*, 2010 Ark. 459 (per

curiam); *Rickenbacker v. Norris*, 361 Ark. 291, 206 S.W.3d 220 (2005).

None of appellant's claims in his petition raised a question of jurisdiction or asserted that the commitment was invalid on its face. All of appellant's claims could have been raised at trial and on the record on direct appeal or in a proceeding under Rule 37.1. A habeas-corpus proceeding does not afford a prisoner an opportunity to retry his case, and, as stated, it is not a substitute for pursuing postconviction relief. *Douthitt v. Hobbs*, 2011 Ark. 416 (per curiam); *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). If there were some violation of due process to be claimed by appellant, including irregularities at trial, those issues were factual issues that should have been addressed during trial and through a direct appeal. *See id.*

Because appellant failed to state cognizable claims, he did not meet his burden of demonstrating a basis for a writ of habeas corpus to issue. *Rodgers*, 2011 Ark. 443; *Henderson v. White*, 2011 Ark. 361 (per curiam). Appellant could not, therefore, prevail on appeal of the order denying his petition. *Douthitt*, 2011 Ark. 416; *Dickinson*, 2011 Ark. 413.

Appeal dismissed; motions moot.