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ARKANSAS SUPREME COURT

No. CV-11-1081

ANTHONY REED
APPELLANT

V.

RAY HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION
APPELLEE

Opinion Delivered February 9, 2012

PRO SE MOTION TO CORRECT RECORD [JEFFERSON COUNTY CIRCUIT COURT, NO. CV-2011-506, HON. JODI RAINES DENNIS, JUDGE]

APPEAL DISMISSED; MOTION MOOT.

PER CURIAM

In 2000, appellant Anthony Reed was found guilty by a jury of aggravated robbery, theft of property, and two counts of second-degree battery. He was sentenced as a habitual offender to an aggregate term of 900 months' imprisonment. The Arkansas Court of Appeals affirmed. *Reed v. State*, CACR 01-701 (Ark. App. Feb. 27, 2002) (unpublished).

In 2011, appellant, who was incarcerated at a unit of the Arkansas Department of Correction in Jefferson County, filed a pro se petition for writ of habeas corpus in the Jefferson County Circuit Court.[1] The circuit court dismissed the petition, and appellant lodged an appeal of that order in this court. Now before us is appellant's motion to correct the record.

We need not consider the motion, 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

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

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 argued in his petition for writ of habeas corpus that the writ should issue because the 900-month sentence imposed on him was excessive. He also contended that the box on the original judgment intended to reflect that the defendant was sentenced as a habitual offender was not checked, rendering the judgment invalid. (The judgment and commitment order was amended nunc pro tunc in 2011 to reflect appellant's status as a habitual offender.)

Appellant was charged by felony information with being a habitual offender with more than four prior felony convictions. In the sentencing phase of his trial, the jury was informed that he had nine prior convictions. The instructions to the jury also informed the jury that appellant was a habitual offender. Appellant did not demonstrate that the mere failure to check the box on the judgment to reflect that he was sentenced as a habitual offender was more than a clerical error. It is well settled that clerical errors do not entitle a petitioner to a writ of habeas

corpus. *Smith v. State*, 2011 Ark. 333 (per curiam); *Burgie v. Norris*, 2010 Ark. 265 (per curiam); *Carter v. Norris*, 367 Ark. 360, 363, 240 S.W.3d 124, 127 (2006) (per curiam). Our case law has dealt with a number of examples of a clerical error in judgment and commitment orders. *See, e.g.*, *McCuen v. State*, 338 Ark. 631, 999 S.W.2d 682 (1999). Such clerical errors do not prevent enforcement of the order. *Id.* (appellant owed fine omitted from the judgment and commitment order but pronounced in open court). Clerical errors also have not prevented other legal documents from effectuating the intended result.[2] As clerical errors do not speak the truth, courts have the power to enter an amended judgment and commitment order nunc pro tunc to correct an erroneous judgment. *Carter*, 367 Ark. 360, 240 S.W.3d 124; *McCuen*, 338 Ark. 631, 999 S.W.2d 682.

With respect to appellant's assertion that his 900-month sentence was excessive, as a habitual offender found guilty of aggravated robbery, he was subject to a sentence of ten years to life imprisonment. *See* Ark. Code Ann. § 5-4-501(b)(2)(A) (Repl. 1997). The jury returned a sentence of 900 months' imprisonment, which was within the statutory range and not illegal.

Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Anderson v. State*, 2011 Ark. 35 (per curiam); *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's claims in his petition did not raise a question of jurisdiction or establish that the commitment order was invalid on its face. Because

[2] *See, e.g.*, *Fullerton v. McCord*, 339 Ark. 45, 2 S.W.3d 775 (1999) (petition for writ of habeas corpus denied where defendant's incorrect initial on extradition document did not prevent positive identification of defendant); *Smith v. Cauthron*, 275 Ark. 435, 631 S.W.2d 10 (1982) (petition for writ of habeas corpus denied where discrepancies in defendant's social security number and date of birth did not invalidate arrest warrant in extradition proceeding).

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 v. Hobbs*, 2011 Ark. 443 (per curiam); *Henderson v. White*, 2011 Ark. 361 (per curiam). Appellant could not, therefore, prevail on appeal of the order denying his petition. *Douthitt v. Hobbs*, 2011 Ark. 416 (per curiam); *Dickinson v. Norris*, 2011 Ark. 413 (per curiam).

Appeal dismissed; motion moot.