

ARKANSAS SUPREME COURT

No. CR 11-1085

TONY THOMAS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 23, 2012

PRO SE MOTIONS TO FILE BELATED BRIEF AND FOR APPOINTMENT OF COUNSEL [PULASKI COUNTY CIRCUIT COURT, CR 2007-4269, HON. BARRY SIMS, JUDGE]

APPEAL DISMISSED; MOTIONS MOOT.

PER CURIAM

In 2008, appellant Tony Thomas entered a plea of guilty in the Pulaski County Circuit Court to aggravated robbery and theft of property. He was sentenced to serve an aggregate term of 240 months' imprisonment.

In 2011, appellant, who was incarcerated at a unit of the Arkansas Department of Correction in Pulaski County, filed a pro se petition for writ of habeas corpus pursuant to Arkansas Code Annotated sections 16-112-101 to -123 (Repl. 2006) in the circuit court in Pulaski County.¹ The circuit court denied the petition, and appellant lodged an appeal from that order in this court. Now before us are appellant's motions to file a belated brief and for appointment of counsel. 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

¹As of the date of this opinion, appellant remains incarcerated at the prison facility in Pulaski County. While a writ of habeas corpus pursuant to Arkansas Code Annotated sections 16-112-101 to -123 is a civil action, appellant's petition was filed under the docket number for his criminal judgment, which was entered in the Pulaski County Circuit Court.

not be permitted to go forward where it is clear that the appellant could not prevail. *Willis v. Hobbs*, 2011 Ark. 509 (per curiam); *Russell v. Howell*, 2011 Ark. 456 (per curiam); *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam).

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; see also *Randolph v. State*, 2011 Ark. 510 (per curiam).

Appellant raised the following grounds for issuance of the writ, all of which were stated in conclusory terms: appellant’s signature was forged on the agreement for his retained attorney to represent him, rendering the judgment of conviction void; he was denied his civil and constitutional rights; “criminal procedures, critical stages, and equal dignities rule” were violated by counsel; he was denied effective assistance of counsel. None of the claims calls into question the trial court’s jurisdiction or the validity of the judgment-and-commitment order. Neither the question concerning the validity of the agreement between appellant and his attorney for representation nor the assertions of trial error were sufficient to warrant granting the writ. See *Willis*, 2011 Ark. 509; *Wilkins v. Norris*, 2011 Ark. 169 (per curiam); *Morgan v. State*, 2011 Ark. 403 (per curiam). With respect to appellant’s contention that his attorney was ineffective, this court

has held many times that allegations of ineffective assistance of counsel are not cognizable in a habeas proceeding. *Rodgers v. State*, 2011 Ark. 443 (per curiam); *Willis v. Hobbs*, 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. Hobbs*, 2010 Ark. 380 (per curiam); *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).

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 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). As appellant failed to establish that the writ should issue, he could not 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; motions moot.