

ARKANSAS SUPREME COURT

No. 11-945

JAMES CHARLES FUDGE
APPELLANT

V.

RAY HOBBS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
APPELLEE

Opinion Delivered February 23, 2012

PRO SE MOTIONS TO FILE
BELATED BRIEF AND FOR
DUPLICATION OF BRIEF AT
PUBLIC EXPENSE [LINCOLN
COUNTY CIRCUIT COURT, NO.
LCV 2011-43, HON. JODI RAINES
DENNIS, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

In 1999, appellant James Charles Fudge was found guilty by a jury in the Pulaski County Circuit Court of capital murder and sentenced to death. We affirmed. *Fudge v. State*, 341 Ark. 759, 20 S.W.3d 315 (2000). In subsequent proceedings under Arkansas Rule of Criminal Procedure 37.5 (2011), the trial court granted appellant a new sentencing hearing based upon trial counsel's failure to object to evidence that was presented as an aggravating circumstance. This court affirmed the order. *State v. Fudge*, 361 Ark. 412, 206 S.W.3d 850 (2005). In 2006, on resentencing, appellant was sentenced to life imprisonment without parole.

In 2011, appellant, who was incarcerated at a unit of the Arkansas Department of Correction in Lincoln County, filed a pro se petition for writ of habeas corpus in the Lincoln

County Circuit Court.¹ The circuit court denied the petition, and appellant lodged an appeal of that order in this court. Now before us are appellant's motions to file a belated brief and for duplication of the brief at public expense. 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. *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 order 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 one issue that called into question the trial court's jurisdiction. He contended that the murder for which he was convicted in Pulaski County occurred in Lonoke

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

County, not in Pulaski County and that, therefore, jurisdiction to try him for the offense was in Lonoke County only.

As we noted when appellant raised the same issue in this court in a petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis, the victim was last seen alive in Pulaski County, and her body was found buried in a shallow grave in Pulaski County. Appellant offers no substantiation for his claim that the victim was killed in Lonoke County, but, in any event, our cases have consistently recognized that, when a crime begins in one county and proceeds to culmination in another county, both counties have jurisdiction to prosecute the crime. *Ridling v. State*, 360 Ark. 424, 203 S.W.3d 63 (2005); *Cloird v. State*, 352 Ark. 190, 99 S.W.3d 419 (2003); *Cozzaglio v. State*, 289 Ark. 33, 709 S.W.2d 70 (1986); *see also Wilson v. State*, 298 Ark. 608, 770 S.W.2d 123 (1989). In *Patterson v. State*, 306 Ark. 385, 815 S.W.2d 377 (1991), this court held that although the murder occurred in Greene County, Craighead County had jurisdiction to try the appellant because some of the acts requisite to the murder occurred in Craighead County. *See also Pilcher v. State*, 303 Ark. 335, 796 S.W.2d 845 (1990) (holding that both Saline County and Grant County had jurisdiction to try the appellant for murder, where the actual killing occurred in one county, but the acts requisite to the consummation of the murder and the subsequent disposal of the body occurred in the other county). As the victim's body was buried in Pulaski County, Pulaski County had jurisdiction to try appellant for murder in the death of the victim. *See Pilcher*, 303 Ark. 335, 796 S.W.2d 845.

The other claims raised by appellant as grounds for a writ of habeas corpus were not cognizable in a habeas proceeding. He contended that the State at his trial relied on perjured

testimony and failed to reveal to the defense all exculpatory evidence that was available, that the trial court erred in the admission of certain evidence, and that he was denied the right to confront certain witnesses. Such claims of trial error do not call into question the jurisdiction of the court or the facial validity of the judgment. *Willis*, 2011 Ark. 509; *Wilkins v. Norris*, 2011 Ark. 169 (per curiam); *Morgan v. State*, 2011 Ark. 403 (per curiam).

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.