

SUPREME COURT OF ARKANSAS

No. 10-274

JOHNNY TARKINGTON
APPELLANT

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
APPELLEE

Opinion Delivered April 5, 2012

PRO SE APPEAL FROM THE
JEFFERSON COUNTY CIRCUIT
COURT, CV 2009-1062, HON. JODI
RAINES DENNIS, JUDGE

AFFIRMED.

PER CURIAM

Appellant Johnny Tarkington appeals from an order of the Jefferson County Circuit Court denying his pro se petition for writ of habeas corpus. For reversal, appellant makes numerous allegations of error concerning claims of ineffective assistance of counsel. We affirm.

A Pope County jury found appellant guilty of aggravated robbery and sentenced him, as a habitual offender, to life imprisonment in the Arkansas Department of Correction. We affirmed. *Tarkington v. State*, 313 Ark. 399, 855 S.W.2d 306 (1993).

Appellant subsequently filed a pro se petition for writ of habeas corpus in the circuit court in the county where he was incarcerated, alleging that he was entitled to relief because he was denied his right to have an attorney present during a line-up that produced evidence that he later moved to suppress; that he was denied the right to remain silent and the right to a fair trial; that he was denied effective assistance of counsel; and that the circuit court abused its discretion by denying his motion to suppress, by denying him an independent medical examination, and



by denying his request for a different court-appointed attorney. Appellant also claimed actual innocence, which he styled as a miscarriage of justice. The circuit court denied appellant's petition, finding that he failed to establish the circuit court's lack of jurisdiction or that his commitment order was facially invalid. The court further ruled that appellant did not establish a claim of actual innocence based upon scientific evidence that was unavailable at the time of his trial. Appellant brings this appeal.

On appeal, appellant raises the same arguments articulated in his petition. An appeal from an order that denied a petition for postconviction relief, including a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Chappell v. Hobbs*, 2011 Ark. 220 (per curiam). 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).

In the present case, appellant's claims are not cognizable for a writ of habeas corpus to issue because appellant failed to show that the trial court lacked jurisdiction or that the commitment was invalid on its face. Thus, there was no basis for a finding that a writ of habeas



corpus should issue in appellant's case. *See Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). A habeas-corpus proceeding does not afford a prisoner an opportunity to retry his case. *Meny v. Norris*, 340 Ark. 418, 13 S.W.3d 143 (2000) (per curiam). Appellant's allegations were, or should have been, raised and argued at trial, on direct appeal, or in a timely postconviction proceeding. *See id.*

As to appellant's claim of actual innocence, a petitioner asserting the right to be released on a writ of habeas corpus on the ground of actual innocence must proceed under Act 1780 of 2001, codified at Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006). Pursuant to Arkansas Code Annotated section 16-112-201(a), such petitions are filed in the trial court where a petitioner was convicted. Appellant, who was incarcerated by virtue of a judgment entered in Pope County, was obligated to proceed in that county.

Affirmed.