

SUPREME COURT OF ARKANSAS

No. CV-09-1274

DUSTIN VICKERS

APPELLANT

V.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered April 12, 2012

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT [NO.
CV-09-598, HON. JODI RAINES
DENNIS, JUDGE]

AFFIRMED.

PER CURIAM

Appellant Dustin Vickers appeals the circuit court's order denying his petition for writ of habeas corpus. In 1992, Vickers was convicted of first-degree murder and was sentenced to life imprisonment. He appealed his conviction and sentence, and this court affirmed. *Vickers v. State*, 313 Ark. 64, 852 S.W.2d 787 (1993). He subsequently filed a petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (1992); his petition was denied, and upon appeal to this court, we affirmed the denial of relief. *Vickers v. State*, 320 Ark. 437, 898 S.W.2d 26 (1995). In 2009, appellant filed his petition for writ of habeas corpus in the circuit court of the county in which he was incarcerated, and the circuit court denied it. He now brings this appeal from the circuit court's order. We affirm.

We do not reverse a denial of postconviction relief unless the circuit court's findings are clearly erroneous. *Henson v. Norris*, 2009 Ark. 363 (per curiam). A finding is clearly erroneous when, although there was evidence to support it, the appellate court, after

reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been made. *Id.*

The burden is on the petitioner 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). Under our statute, a petitioner who does not allege his actual innocence¹ 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. Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006); *Tryon v. Hobbs*, 2011 Ark. 76, at 2 (per curiam).

In his petition, appellant asserted that the circuit court lacked jurisdiction and that the judgment was invalid on its face. Specifically, appellant claimed that first-degree murder committed with the purpose of causing the death of another person and first-degree murder committed with the purpose of causing the death of a particular person are two separate and distinct crimes, which were required to be charged individually and with particularity. He contended that because he was charged with the former, but was convicted of the latter, he was convicted of a crime with which he was never charged. It is on this basis that appellant claimed habeas relief was proper.

Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Wilkins v. Norris*, 2011 Ark. 169 (per curiam). A circuit court has subject-matter

¹A petitioner who seeks a writ of habeas corpus and alleges actual innocence must do so in accordance with Act 1780 of 2001, codified as Arkansas Code Annotated §§ 16-112-201 to -208 (Repl. 2006). Ark. Code Ann. § 16-112-103(a)(2).

jurisdiction to hear and determine cases involving violations of criminal statutes. *Id.* Here, the circuit court clearly had jurisdiction over appellant's case in which he was charged with first-degree murder, a violation of a criminal statute. But in addition, this court has previously observed, in one of appellant's prior appeals, that the first-degree murder statute is broad enough to cover both the situation "in which a person intends to kill someone and does so and the situation in which a person intends to kill a particular person and kills someone else instead," which are the "two situations in which a purposeful killing might occur." *Vickers*, 313 Ark. at 69, 852 S.W.2d at 790. *Vickers* was charged with first-degree murder and was convicted of first-degree murder. Accordingly, *Vickers*'s claim for habeas relief fails.

Because *Vickers* fell short of establishing that the trial court in his case lacked jurisdiction or that the commitment was invalid on its face, there was no basis for a finding that a writ of habeas corpus should issue. We therefore affirm the circuit court's denial of habeas relief.

Affirmed.