

Cite as 2012 Ark. 192

SUPREME COURT OF ARKANSAS

No. 10-376

JESSIE GOINS
APPELLANT

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
APPELLEE

Opinion Delivered May 3, 2012

PRO SE APPEAL FROM THE
JEFFERSON COUNTY CIRCUIT
COURT, CV 2009-1202, HON. JODI
RAINES DENNIS, JUDGEAFFIRMED.**PER CURIAM**

Appellant Jessie Goins was convicted by a Grant County jury of aggravated robbery, and he was sentenced as a habitual offender to life imprisonment. This court affirmed. *Goins v. State*, 318 Ark. 689, 890 S.W.2d 602 (1994). Subsequently, appellant filed an untimely petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (1994) that was denied, and this court dismissed his appeal from that order. *Goins v. State*, CR 95-653 (Ark. July 3, 1995) (unpublished per curiam).

In 2002, appellant filed in the circuit court a petition to correct his sentence pursuant to Arkansas Code Annotated section 16-90-11 (Supp. 1995), in which he contended that his sentence was illegal. That petition was denied, and this court affirmed. *Goins v. State*, CR 02-972 (Ark. Apr. 24, 2003) (unpublished per curiam).¹ The following year, appellant filed a petition

¹Appellant's motion for reconsideration of our decision was denied. *Goins v. State*, CR 02-972 (Ark. Oct. 9, 2003) (unpublished per curiam).

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for writ of habeas corpus in the circuit court of the county in which he was incarcerated, and the petition was denied by written order. This court dismissed appellant's appeal of that order due to appellant's failing to timely lodge the record on appeal. *Goins v. Norris*, 05-142 (Ark. Mar. 31, 2005) (unpublished per curiam).

Nearly five years later, appellant filed a second petition for writ of habeas corpus, asserting the same grounds for the writ as he alleged in the 2004 habeas petition: (1) the judgment of conviction was facially illegal, invalid, and unconstitutional; (2) the trial court lacked jurisdiction; (3) appellant was being detained without lawful authority; (4) appellant was actually innocent of the crime for which he was convicted; (5) the trial court lacked the jurisdiction to instruct the jury on the charge of aggravated robbery and the habitual-offender enhancement because the State alleged that appellant had committed aggravated assault and had never charged the habitual-offender enhancement. This petition was denied, and it is from this denial that appellant brings the instant appeal.

On appeal, appellant asserts two arguments. First, he argues that the circuit court erred in determining that the claims presented in appellant's petition were not the kind that could support habeas-corpus relief. Second, appellant claims that the trial court lacked subject-matter jurisdiction to convict him of a charge that was not spelled out in the felony information charging appellant.

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. *Asbby v. State*, 2012 Ark. 48 (per curiam); *Willis v. Hobbs*, 2011 Ark. 509; *Daniels v. Hobbs*, 2011 Ark. 192 (per curiam); *Abernathy*

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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.

The trial court held that appellant’s allegations did not demonstrate a lack of jurisdiction by the trial court or that his commitment was invalid on its face, and the allegations were the type that should have been raised at trial or on direct appeal. The gravamen of appellant’s first argument is that the felony information by which he was charged was defective in that the information purported to charge appellant with aggravated robbery, but the description of the crime contained in the information was that of aggravated assault. Further, appellant points out that the felony information contained no mention of appellant’s being a habitual offender, yet the judgment of conviction shows that appellant was convicted as a habitual offender under Arkansas Code Annotated section 5-4-501 (Repl. 1993). Based on these flaws, appellant argues that his sentence was “facially illegal, invalid, and unconstitutional” within the meaning of the habeas statute, and the circuit court erred in determining that appellant had not presented a habeas issue.

Appellant’s argument concerning the description of the crime contained in the information is, essentially, that the State failed to provide sufficient information to allow

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appellant to identify the crime with which he was charged. This type of claim is not cognizable in a petition for writ of habeas corpus. *See Willis v. Hobbs*, 2011 Ark. 509 (per curiam) (holding that claims of failure to include sufficient information to identify the crime are not cognizable in a habeas-corpus petition); *see also Davis v. State*, 2011 Ark. 88 (per curiam) (claims alleging that an information is defective generally are not considered to be jurisdictional and are not cognizable in a petition for writ of habeas corpus).

Furthermore, the circuit court did not need to consider appellant's claim that he was never charged as a habitual offender, because appellant's petition failed to demonstrate probable cause to believe that his sentence is illegal. The felony information charged appellant with aggravated robbery, and the judgment-and-commitment order shows that appellant was convicted of aggravated robbery and sentenced to life imprisonment. Arkansas Code Annotated section 5-12-103 (Repl. 2005) defines aggravated robbery as a Class Y felony, for which Arkansas Code Annotated section 5-4-401(a)(1) (Repl. 2005) allows a sentence of "not less than ten (10) years and not more than forty (40) years, or life." The habitual-offender enhancement as applicable to appellant allows for a sentence upon conviction of a Class Y felony of "not less than ten (10) years nor more than life." Ark. Code Ann. § 5-4-501(b)(2)(A). Appellant's sentence was therefore within the statutory range, irrespective of any enhancement as a habitual offender, and a sentence that is within the prescribed range is not illegal. *See Reed v. Hobbs*, 2012 Ark. 61 (per curiam).

The other argument raised by appellant on appeal is that the circuit court lacked subject-matter jurisdiction to convict him of a charge that was not spelled out in the felony information.

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As this claim is merely a challenge to the sufficiency of the charging information, such a claim should have been raised prior to trial and is not cognizable in a petition for writ of habeas corpus.² *See Willis*, 2011 Ark. 509; *see also Davis*, 2011 Ark. 88. The circuit court was therefore not clearly erroneous in determining that appellant's argument on this point was not cognizable in a habeas-corpus petition.

Appellant has failed to demonstrate that the circuit court's denial of his petition for writ of habeas corpus was clearly erroneous. Accordingly, the circuit court's decision is affirmed.

Affirmed.

² Moreover, we note that appellant is incorrect; he was charged with aggravated robbery, in violation of Arkansas Code Annotated section 5-12-103, and the circuit courts have subject-matter jurisdiction over violations of Arkansas's criminal statutes. *See Vickers v. Norris*, 2012 Ark. 160 (per curiam); Ark. Const. amend. 80, § 6.