

SUPREME COURT OF ARKANSAS

No. 12-341

CHARLES A.D. BLISS

APPELLANT

v.

RAY HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION

APPELLEE

Opinion Delivered August 14, 2012

P R O S E M O T I O N S F O R
A P P O I N T M E N T O F C O U N S E L A N D
F O R E X T E N S I O N O F T I M E T O F I L E
B R I E F [J E F F E R S O N C O U N T Y C I R C U I T
C O U R T , C V 1 2 - 1 0 7]APPEAL DISMISSED; MOTIONS MOOT.

PER CURIAM

Appellant Charles A. D. Bliss is a prisoner incarcerated in the Arkansas Department of Correction serving a life sentence on a rape conviction that followed his retrial after this court reversed and remanded for an error in not requiring the prosecutor to file a bill of particulars.¹ *See Bliss v. State*, 288 Ark. 546, 708 S.W.2d 74 (1986); *Bliss v. State*, 282 Ark. 315, 668 S.W.2d 936 (1984). In 2012, he filed a petition for writ of habeas corpus in the circuit court of the county where he is incarcerated, and the circuit court dismissed the petition. Appellant lodged in this court an appeal of the order dismissing the petition, and he has filed motions seeking the appointment of counsel for the appeal and an extension of time in which to file his brief. We need not consider the motions because we dismiss the appeal.

The burden is on the petitioner in proceedings for a writ of habeas corpus to establish

¹The opinion affirming the conviction also indicated that the reversal was based upon error in the failure of the trial judge to recuse. In *Holloway v. State*, 293 Ark. 438, 738 S.W.2d 796 (1987), this court reexamined the two cases and concluded that reversible error had only been determined as to the failure to file a bill of particulars.

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. *Culbertson v. State*, 2012 Ark. 112 (per curiam). Under our statute, a petitioner who does not allege his actual innocence and proceed under Act 1780 of 2001 Acts of Arkansas 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. *See id.*; Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006). Act 1780 proceedings are initiated through filing a petition in the court in which the conviction was entered. Ark. Code Ann. § 16-112-201(a); *see also* Ark. Code Ann. § 16-112-103. Appellant was convicted in a county other than that in which he filed his petition, and the circuit court that dismissed the petition had no jurisdiction for any claims that might be raised under Act 1780. Appellant did not plead facts that were sufficient to establish meritorious grounds cognizable in habeas proceedings not initiated under Act 1780, and we need not consider any other basis for issuance of the writ.

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. *Fudge v. Hobbs*, 2012 Ark. 80 (per curiam). Appellant alleged in his petition that the evidence against him was insufficient, that the judgment and sentence were void as a result of a double-jeopardy violation, and that the increase in his sentence was illegal. Appellant asserted that the double-jeopardy violation resulted from his having been twice tried for the same offense and because he received multiple punishments for the same offense. In the attachments to the habeas petition, appellant alleged that the victim had recanted, that

psychologists had determined that the offense had not occurred, that the more severe sentence that he received in his second trial resulted from vindictive sentencing, that certain actions by the prosecution and trial errors denied him a fair trial, that the judge in his case was biased and should have recused, and that there was a speedy-trial violation. It is clear from the allegations in appellant's petition that his claims, to the extent cognizable, were without merit and that he cannot prevail on appeal.

The majority of appellant's claims—his challenges to the sufficiency of the evidence and his claims that he was denied due process, his allegations of judicial bias and prosecutorial misconduct, and his allegation that he was denied a speedy trial—were assertions of trial error that did not implicate the facial validity of the judgment or the jurisdiction of the trial court. *See Craig v. Hobbs*, 2012 Ark. 218 (per curiam) (sufficiency of the evidence and admissibility of evidence not cognizable in a habeas proceeding); *Rodgers v. Hobbs*, 2011 Ark. 443 (per curiam) (speedy-trial issue is not cognizable in a habeas proceeding); *Clem v. Hobbs*, 2011 Ark. 311 (per curiam) (a claim of conflict of interest was not properly raised in a habeas proceeding); *Tryon v. Hobbs*, 2011 Ark. 76 (per curiam) (due process and prosecutorial misconduct are trial error not cognizable in a habeas proceeding). These claims were challenges to appellant's conviction, and the claims were not ones that might deprive a court of jurisdiction. Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Culbertson v. State*, 2012 Ark. 112 (per curiam). A circuit court has subject-matter jurisdiction to hear and determine cases involving violations of criminal statutes. *Id.* Mere trial error does not deprive a court of jurisdiction. *Tryon*, 2011 Ark. 76. A habeas proceeding does not afford a convicted defendant

an opportunity to retry his case, and it is not a substitute for direct appeal. *Van v. Hobbs*, 2011 Ark. 287 (per curiam).

Appellant's claims that concerned double jeopardy and having received an illegally severe sentence in his second trial were the type of claim that may be cognizable in a habeas proceeding, but, under the circumstances presented here, those claims were clearly without merit. The double-jeopardy claims have previously been addressed, and the claims concerning an illegally severe sentence are also without merit.

In appellant's case, double-jeopardy claims had been raised and addressed by this court. In appellant's direct appeal of his second trial, he argued that, because of general verdict forms and insufficiently distinguished forms of the charges, there had been an acquittal in the first trial that should have prohibited prosecution in his second. *Bliss*, 288 Ark. at 548–49, 708 S.W.2d at 76. Appellant did not make clear the basis for his claim of double jeopardy, but he presented no new argument concerning double jeopardy, aside from the issue of a more severe sentence discussed below. He may have intended to present the same claim that was raised and decided adversely before, because he did at one point refer to alleged inadequacy of the bill of particulars, but that claim has been finally resolved. Where the merits of a claim have been previously addressed and adjudicated, the conclusion of the court in one opinion becomes the law of the case on subsequent proceedings on the same cause, and the matter is res judicata. See *State v. Harrison*, 2012 Ark. 198, ___ S.W.3d ___; see also *Russell v. Howell*, 2011 Ark. 456 (per curiam); *Parmley v. Hobbs*, 2011 Ark. 75 (per curiam).

To the extent that appellant asserts that his sentence in the second trial could not exceed

the sentence imposed in his first trial, his claim does not fall within the category of claims that support issuance of the writ. Appellant did not allege that the sentence was outside the statutory range allowed. In fact, appellant previously had claimed that the sentence imposed was outside the appropriate statutory range. He did so in his application for permission to pursue postconviction relief, and, as noted in our opinion denying that petition, a life sentence falls within the appropriate range. *Bliss v. State*, 291 Ark. 184, 723 S.W.2d 1 (1987).

To the extent that his claims were that the trial court could not impose a higher sentence than what was imposed in his previous trial, appellant does not present a claim that may be resolved through a habeas proceeding. The issue is one concerning an excessive sentence and not an illegal sentence. *Smith v. State*, 286 Ark. 247, 256, 691 S.W.2d 154, 159 (1985). This court will address allegations of an illegal sentence in habeas proceedings, and detention for an illegal period of time is precisely what a writ of habeas corpus is designed to correct. *Taylor v. State*, 354 Ark. 450, 125 S.W.3d 174 (2003). Here, however, we need not determine whether the trial court lacked the authority to impose a sentence in excess of that imposed in appellant's first trial.

Where the trial was to a jury, there is no presumption of vindictiveness unless the jury was aware of the specific sentence imposed in the defendant's previous trial. *Smith*, 286 Ark. 247, 691 S.W.2d 154; *see also Butler v. State*, 2011 Ark. 435, ___ S.W.3d ___ (per curiam). Appellant's second trial was before a jury, and his petition included no allegation that the jury had been made aware of the specific sentence imposed in his first trial or documentation to support such a claim. Without such a presumption, the issue is one involving far too much factual inquiry to resolve in a habeas proceeding. It would present a question that requires a

factual inquiry that goes well beyond the face of the commitment and is not the type to be addressed by a proceeding for the writ. *See Culbertson*, 2012 Ark. 112. Although appellant alleged a presumption of vindictiveness in his petition, he did not provide a factual basis for the claim or establish probable cause for a presumption in his attachments.

To the limited extent that appellant may have presented claims in his petition that were cognizable for the writ, those claims were clearly without merit. Appellant cannot prevail, and we therefore dismiss the appeal. The motions are moot.

Appeal dismissed; motions moot.

Charles A.D. Bliss, pro se appellant.

No response.