Cite as 2012 Ark. 343

ARKANSAS SUPREME COURT

No. 12-480

BRIAN KEITH MISENHEIMER
APPELLANT

V.

RAY HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION
APPELLEE

Opinion Delivered September 20, 2012

PRO SE MOTION FOR APPOINTMENT OF COUNSEL AND FOR EXTENSION OF TIME TO FILE BRIEF [JEFFERSON COUNTY CIRCUIT COURT, CV 12-81, HON. JODI RAINES DENNIS, JUDGE]

APPEAL DISMISSED; MOTION MOOT.

PER CURIAM

In 2006, appellant Brian Keith Misenheimer entered a plea of guilty to four felony offenses in the Pulaski County Circuit Court. He later entered a plea of guilty in Saline County to four additional felony offenses and was sentenced in Saline County as a habitual offender to an aggregate term of 1500 months' imprisonment. The four felony convictions in Pulaski County were used to establish at the Saline County trial that appellant was a habitual offender. Appellant reserved the right to appeal the appropriateness of the sentencing as a habitual offender. He argued on appeal that the habitual offender statute, Arkansas Code Annotated section 5-4-501 (Supp. 2007), should not have been applied because all eight offenses arose from one criminal episode that stretched over Pulaski and Saline counties. The Arkansas Court of Appeals affirmed. *Misenheimer v. State*, 100 Ark. App. 189, 265 S.W.3d 764 (2007).

On February 16, 2012, appellant, who was incarcerated at a unit of the Arkansas Department of Correction in Jefferson County, filed a pro se petition for writ of habeas

corpus in the Jefferson County Circuit Court,[1] in which he challenged the Saline County judgments. The circuit court dismissed the petition, and appellant lodged an appeal of that order in this court. Now before us is appellant's motion for appointment of counsel and an extension of time to file the appellant's brief.

We need not consider the motion, 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. *Williams v. Norris*, 2012 Ark. 30 (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 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.

Appellant argued in his petition for writ of habeas corpus that the writ should issue

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

because he was not a habitual offender when he entered his pleas of guilty to the four offenses in Saline County. (Appellant raised essentially the same challenge to his habitual-offender status on appeal.) He also argued that he was placed in double jeopardy on the ground that he was charged in both counties for fleeing and because he was charged in Pulaski County with stealing a truck and in Saline County for being in possession of the same stolen truck in that county.

In its opinion, the court of appeals noted that appellant stole a truck in Pulaski County and two days later drove it over the front-end of a police car in Pulaski County. Running over the police car in Pulaski County began a high-speed chase that ended in Saline County where appellant crashed the truck into a state trooper's vehicle, severely injuring the trooper. We need not reiterate the court of appeals' reasons for concluding that the four felonies committed in Pulaski County were separate offenses from those committed in Saline County. Appellant's claims concerning his habitual-offender status were considered by the court when the pleas of guilty were entered, and the court's finding that the status was correct under the facts of the case was affirmed on appeal. A habeas proceeding does not afford appellant the opportunity to revisit the issue. *See Williams*, 2012 Ark. 30.

Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Williams*, 2012 Ark. 30; *Anderson v. State*, 2011 Ark. 35; *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. *Williams*, 2012 Ark. 30. It is true that we will treat allegations of void or illegal sentences similarly to the way that we treat problems of subject-matter jurisdiction. *Friend v. State*, 364 Ark. 315, 219 S.W.3d 12 (citing

Taylor v. State, 354 Ark. 450, 125 S.W.3d 174 (2003)). Detention for an illegal period of time is what a writ of habeas corpus is designed to correct. *Id.* at 455, 125 S.W.3d at 178. However, a habeas-corpus proceeding does not afford a prisoner an opportunity to retry his case, and it is not a substitute for direct appeal or postconviction relief. *Meny v. Norris*, 340 Ark. 418, 420, 13 S.W.3d 143, 144 (2000). Determining whether the prior convictions used to establish that he was a habitual offender were valid requires the kind of factual inquiry that goes beyond the facial validity of the judgment and commitment order and does not, in itself, call into question the court's jurisdiction. *See Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 12 (2005). If there were some challenge to be made to the proof used to establish his status as a habitual offender, it should have been settled in the trial court and on the record in the appeal to the court of appeals.

Appellant also contended that the sentences were excessive because the criminal-history score on the judgment was incorrectly listed as "zero." The notation, however, was clearly a clerical error, and clerical errors in judgments are subject to correction at any time. *See Samples v. State*, 2012 Ark. 146 (per curiam). Clerical errors do not entitle a petitioner to relief in a habeas-corpus proceeding.

With respect to appellant's allegation that he was placed in double jeopardy, such claims do not raise a question of jurisdiction for purposes of habeas-corpus relief. *Randolph v. State*, 2012 Ark. 501 (per curiam); *see also Smith v. State*, 2011 Ark. 333 (per curiam) (citing *Johnson v. State*, 298 Ark. 479, 769 S.W.2d 3 (1989)).

In short, none of appellant's claims in his petition raised a question of jurisdiction or established that the commitment was invalid on its face. Appellant's claims could have been

raised in the trial court and in the appeal that appellant brought in the court of appeals. A habeas-corpus proceeding does not afford a prisoner a means to revisit the merits of matters that could have been addressed, and settled, in the trial court or on appeal. *Douthitt v. Hobbs*, 2011 Ark. 416 (per curiam).

Because appellant failed to state cognizable claims, he did not meet his burden of demonstrating a basis for a writ of habeas corpus to issue. *McArty v. Hobbs*, 2012 Ark. 501 (per curiam); *Rodgers v. Hobbs*, 2011 Ark. 443; *Henderson v. White*, 2011 Ark. 361 (per curiam). Appellant could not, therefore, prevail on appeal of the order denying his petition. *Douthitt*, 2011 Ark. 416; *Dickinson v. State*, 2011 Ark. 413 (per curiam).

Appeal dismissed; motion moot.

BROWN, J., not participating.