

Cite as 2012 Ark. 361

SUPREME COURT OF ARKANSAS

No. CV-12-357

WILLIAM McHANEY

APPELLANT

V.

RAY HOBBS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered September 27, 2012

PRO SE MOTIONS TO STAY
BRIEFING TIME AND FOR
PHOTOCOPYING AT PUBLIC
EXPENSE [APPEAL FROM THE
PULASKI COUNTY CIRCUIT
COURT, CV 10-5712, HON. JAY
MOODY, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

Pursuant to a negotiated plea agreement, appellant William McHaney pled guilty to manufacturing a controlled substance (methamphetamine), two counts of possession of drug paraphernalia with the intent to manufacture methamphetamine, and failure to appear. A cumulative sentence of 540 months' incarceration in the Arkansas Department of Correction was imposed.

Appellant subsequently filed in the Pulaski County Circuit Court a petition for writ of habeas corpus pursuant to Arkansas Code Annotated sections 16-112-101 to -123 (Repl. 2006) and a motion to proceed in forma pauperis. The circuit court granted the motion, but denied the petition by written order, and appellant timely filed a notice of appeal from that order on February 14, 2012, and lodged an appeal in this court.

Now before us are appellant's motions to stay the briefing time in his appeal and

requesting that this court order the Pulaski County Circuit Clerk to provide appellant with a copy of the record on appeal at no cost to appellant.¹ Because it is clear that appellant could not prevail if his appeal were allowed to proceed, the appeal is dismissed, and appellant's motions are moot.

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 when it is clear that the appellant could not prevail. *Bliss v. Hobbs*, 2012 Ark. 315 (per curiam) (citing *Fudge v. Hobbs*, 2012 Ark. 80 (per curiam)). The burden is on the petitioner in proceedings for a 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. *Culbertson v. State*, 2012 Ark. 112 (per curiam). Under our statute, a petitioner 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 being illegally detained. *Bliss*, 2012 Ark. 315; Ark. Code Ann. § 16-112-103(a)(1).

In appellant's petition for writ of habeas corpus, he first argued that the trial court was without jurisdiction to accept appellant's guilty plea on, and sentence appellant for, the charges of possession of drug paraphernalia with intent to manufacture methamphetamine, as that charge is a lesser-included offense of manufacturing methamphetamine. This is simply incorrect. An offense is a lesser-included offense of the offense charged if the offense

¹Appellant filed a motion to stay briefing time and for photocopying at public expense on May 21, 2012. Before this court acted on that motion, he filed a second, identical motion on August 15, 2012.

is established by proof of the same or less than all the elements required to establish the commission of the offense charged. *See Myers v. State*, 2012 Ark. 143, 400 S.W.3d 231; Ark. Code Ann. § 5-1-110(b) (Supp. 2011). We have consistently held that the possession of drug paraphernalia with the intent to manufacture methamphetamine is not a lesser-included offense of a charge of manufacturing methamphetamine. *See Myers*, 2012 Ark. 143 (citing *Hester v. State*, 362 Ark. 373, 208 S.W.3d 747 (2005)). A conviction for manufacturing methamphetamine requires the State to prove that a defendant was engaged in the production, preparation, propagation, compounding, conversion, or processing of methamphetamine, whereas possession of drug paraphernalia with intent to manufacture methamphetamine requires no such proof. *See id.*

Appellant's second alleged basis for writ of habeas corpus was that the trial court should not have sentenced him for manufacturing a controlled substance because "the record is clear that [he] manufactured the substance for his own use." However, to obtain a conviction for manufacturing methamphetamine, the State did not need to demonstrate that appellant manufactured the drugs with the intent to distribute. *See, e.g., Myers*, 2012 Ark. 143. Even appellant's own petition for writ of habeas corpus admits that he manufactured the drugs, which is the crime to which he pled guilty. Such an argument does not call into question the trial court's jurisdiction or establish that the commitment was facially invalid, and it is not grounds for a writ of habeas corpus to issue.

Finally, we note that appellant's petition asserted additional errors, including allegations of ineffective assistance of counsel and due process. Such allegations are not cognizable in a petition for writ of habeas corpus. *See Thomas v. State*, 2012 Ark. 79 (per

curiam).

Because none of the allegations contained in appellant's petition provided a basis for finding that a writ of habeas corpus should issue, it is clear that appellant could not prevail if his appeal were allowed to proceed. His appeal is therefore dismissed, and his motions are moot.

Appeal dismissed; motions moot.

William McHaney, pro se appellant.

No response.