

ARKANSAS SUPREME COURT

No. 12-797

JAMES GIRLEY

APPELLANT

V.

RAY HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION

APPELLEE

Opinion Delivered November 29, 2012

PRO SE APPELLANT'S MOTION FOR
EXTENSION OF TIME TO FILE
BRIEF [LINCOLN COUNTY CIRCUIT
COURT, LCV 12-39, HON. JODI
RAINES DENNIS, JUDGE]APPEAL DISMISSED; MOTION
MOOT.**PER CURIAM**

In 1998, appellant James Girley was found guilty of rape by a jury in the Pulaski County Circuit Court. He was sentenced to 300 months' imprisonment. The Arkansas Court of Appeals affirmed as modified.¹ *Girley v. State*, CACR 98-1108 (Ark. App. Mar. 24, 1999) (unpublished).

Appellant subsequently sought postconviction relief in the trial court pursuant to Arkansas Rule of Criminal Procedure 37.1 (1998). The petition was denied, and this court affirmed the order. *Girley v. State*, CR 98-461 (Ark. Sept. 27, 2001) (unpublished per curiam).

On May 23, 2012, appellant, who was incarcerated at a unit of the Arkansas Department of Correction located in Lincoln County, filed a pro se petition for writ of habeas corpus in the

¹The judgment entered erroneously reflected a sentence of 400 months' imprisonment. The court of appeals modified the sentence to the correct sentence of 300 months' imprisonment and directed the trial court to entered an order reflecting the modification.

Lincoln County Circuit Court.² He contended in the petition that (1) he had new scientific evidence to prove his innocence, (2) his trial attorney was ineffective, (3) he was denied due process of law by myriad trial errors and the failure of the prosecution to comply with discovery requests and the reliance by the prosecution on perjured testimony to gain the conviction, and (4) the evidence was insufficient to sustain the judgment. 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 extension of time to file his brief-in-chief.

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

²As of the date of this opinion, appellant remains incarcerated at the prison facility in Lincoln County.

“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 allegations raised by appellant did not call into question the trial court’s jurisdiction or the facial validity of the judgment-and-commitment order. We first note that appellant’s claims of actual innocence and new evidence did not constitute a basis for the writ. Such assertions of innocence, including claims that the evidence was insufficient to sustain the judgment of conviction, were issues that did not challenge the jurisdiction of the court or the facial validity of the judgment-and-commitment order.³ *Christopher v. Hobbs*, 2011 Ark. 469 (per curiam).

Likewise, the assertions of trial error and due-process claims did not implicate the facial validity of the judgment or the jurisdiction of the trial court. *Bliss v. Hobbs*, 2012 Ark. 315 (per curiam); *see also McHaney v. Hobbs*, 2012 Ark. 361 (per curiam) (due-process allegations are not cognizable in a habeas proceeding); *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 matters of trial error not cognizable in a habeas proceeding). The claims were

³Petitioners claiming the right to be released on a writ of habeas corpus on the ground of actual innocence based on scientific evidence under Act 1780 of 2001, codified at Arkansas Code Annotated sections 16–112–201 to –208 (Repl. 2006), may proceed in the trial court with a petition for the writ. Ark. Code Ann. § 16–112–201(a).

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. *Bliss*, 2012 Ark. 315; *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. *Culbertson*, 2012 Ark. 112; *Tryon*, 2011 Ark. 76. 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 123 (2005) (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. *Taylor*, 354 Ark. 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). The grounds advanced by appellant for a writ of habeas corpus were not within the purview of a habeas proceeding. Appellant's allegations could have been raised in the trial court, on direct appeal, or in a postconviction proceeding. 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, on appeal, or in a postconviction proceeding. See *Douthitt v. Hobbs*, 2011 Ark. 416 (per curiam). A habeas proceeding does not afford a convicted defendant an opportunity to retry his case, and it is not a substitute for direct appeal. *Bliss v. Hobbs*, 2012 Ark. 315 (per curiam); *Van v. Hobbs*, 2011 Ark. 287 (per curiam).

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With respect to appellant's contention that he was denied effective assistance of counsel at trial, this court has consistently held that allegations of ineffective assistance of counsel are not cognizable in a habeas proceeding. *McHaney*, 2012 Ark. 361; *Robinson v. State*, 2012 Ark. 356 (per curiam); *Smith v. Hobbs*, 2012 Ark. 360 (per curiam); *Hill v. State*, 2012 Ark. 309 (per curiam); *McConaughy v. Lockhart*, 310 Ark. 686, 840 S.W.2d 166 (1992).

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*, 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.

James Girley, pro se appellant.

No response.