

SUPREME COURT OF ARKANSAS

No. CR 12-891

FRANK WATTS II

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 31, 2013

APPELLEE'S MOTIONS TO DISMISS
APPEAL AND TO STAY BRIEF TIME
[PULASKI COUNTY CIRCUIT COURT,
60CR 97-2871, HON. WENDELL
GRIFFEN, JUDGE]MOTION TO DISMISS APPEAL
GRANTED; MOTION TO STAY BRIEF
TIME MOOT.**PER CURIAM**

In 2012, appellant Frank Watts II filed in Pulaski County Circuit Court a motion to vacate a void judgment. The motion challenged a judgment reflecting appellant's conviction on multiple felony-drug charges and imposing an aggregate life sentence that was entered in the same court on January 21, 1999. Appellant lodged in this court an appeal of the circuit court's denial of his motion to vacate, and the appellee State has filed a motion to dismiss the appeal and a motion to stay brief time pending a determination of the motion to dismiss. We grant the motion to dismiss the appeal, and the motion to stay brief time is therefore moot.

The State contends that the circuit court correctly determined that it did not have jurisdiction to consider appellant's motion to vacate because it correctly determined that the motion was an untimely petition under Arkansas Rule of Criminal Procedure 37.1 (2012). In his response to the motion to dismiss, appellant asserts that the circuit court did have jurisdiction to consider his claim because he challenged the court's jurisdiction and a challenge to the court's

jurisdiction can be raised as a matter of common law, without regard to jurisdiction conferred by any statute or rule. While issues of jurisdiction may be raised at any time in a proceeding that is properly before a court, appellant is mistaken in concluding that merely raising a question of jurisdiction in a pleading confers jurisdiction on the court to hear the matter.

The State correctly asserts that the issue raised by appellant's motion to vacate, a claim of a double-jeopardy violation, was one that is cognizable in a proceeding on a Rule 37.1 petition. See *Tornavacca v. State*, 2012 Ark. 224, ___ S.W.3d ___; *Myers v. State*, 2012 Ark. 143, ___ S.W.3d ___; *Lee v. State*, 2010 Ark. 261 (per curiam). A petition that seeks postconviction relief cognizable under Rule 37.1 is governed by that rule regardless of the label placed on it by a petitioner. *Winnett v. State*, 2012 Ark. 404 (per curiam); *Hickman v. State*, 2012 Ark. 359 (per curiam); *Hill v. State*, 2012 Ark. 309 (per curiam). As the State notes in its motion to dismiss, appellant has previously sought to raise this claim in the trial court without success. *Watts v. State*, CR 08-1280 (Ark. Jan. 30, 2009) (unpublished per curiam). In that case, this court determined that the earlier petition containing the claim was also an untimely Rule 37.1 petition. His attempt to distinguish the latest claim as one under common law rather than statute or rule is to no avail.

In Arkansas, the common-law doctrine that permits a challenge to a judgment on a jurisdictional basis without time limitation has been codified at Arkansas Code Annotated sections 16-112-101 to -123 (Repl. 2006). While Arkansas Code Annotated section 16-112-102 confers broad subject-matter jurisdiction on a circuit court to issue the writ, this court has recognized limitations on a circuit court's personal jurisdiction to issue the writ. A circuit court

does not have jurisdiction to release on a writ of habeas corpus a prisoner not in custody in that court's jurisdiction. *Wilencewicz v. Hobbs*, 2012 Ark. 230 (per curiam). Appellant did not allege, and the files of this court do not reflect, that he was at the time or is now currently incarcerated within the jurisdiction of Pulaski County Circuit Court. Unless appellant was incarcerated within its jurisdiction, that court was without jurisdiction to provide relief under the common-law doctrine that appellant alleges should apply.

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). It is clear that appellant cannot prevail because appellant cannot establish that the circuit court had jurisdiction to consider his motion to vacate. Accordingly, we grant the State's motion to dismiss the appeal, and the motion to stay brief time is moot.

Motion to dismiss appeal granted; motion to stay brief time moot.