

**ARKANSAS SUPREME COURT**

No. 12-1092

JOHNNIE LEE HILL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 4, 2013

PRO SE APPELLANT'S MOTION FOR  
EXTENSION OF TIME TO FILE  
BRIEF [LEE COUNTY CIRCUIT  
COURT, 30CV 12-60, HON. L.T. SIMES,  
JUDGE]APPEAL DISMISSED; MOTION  
MOOT.**PER CURIAM**

In 2012, appellant Johnnie Lee Hill, who was incarcerated at a unit of the Arkansas Department of Correction located in Lee County, filed a pro se petition for writ of habeas corpus in the Lee County Circuit Court.<sup>1</sup> He contended in the petition that (1) he was subjected to an unnecessarily suggestive pretrial identification by his victims, (2) his trial and appellate counsel were ineffective, (3) the prosecutor at trial questioned his invocation of his right to remain silent after arrest, and (4) he was placed in double jeopardy when he was subjected without his consent to retrial after a mistrial was declared at his first trial. The circuit court denied 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.

While appellant timely tendered his brief after the motion was filed, we dismiss the appeal, and the motion is moot, inasmuch as it is clear from the record that appellant could not

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<sup>1</sup>As of the date of this opinion, appellant remains incarcerated at the prison facility in Lee County.

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. *Roberson v. State*, 2013 Ark. 75 (per curiam); *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 proper only 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.

The allegations raised by appellant concerning the pretrial identification of him by the victims, the prosecutor’s questioning of his post-arrest silence, and counsels’ representation did not call into question the trial court’s jurisdiction or the facial validity of the judgment-and-commitment order. Assertions of trial error and due-process claims do 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).

With respect to appellant's contention that he was denied effective assistance of counsel, 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).

Appellant's argument that he was placed in double jeopardy because he was retried after a mistrial was declared without his consent was insufficient to demonstrate that there was a constitutional violation that implicated the jurisdiction or facial validity of the judgment entered against him. Some claims of double jeopardy are cognizable in a habeas proceeding. *See Bliss*, 2012 Ark. 315; *Flowers v. Norris*, 347 Ark. 760, 68 S.W.3d 289 (2002). Detention for an illegal period of time is precisely what a writ of habeas corpus is designed to correct. *Flowers*, 347 Ark. At 763, 68 S.W.3d at 291. But, where a double jeopardy claim does not allege that, on the face of the commitment order, there was an illegal sentence imposed on a conviction, the claim does not implicate the jurisdiction of the court to hear the case, and the claim is not one cognizable in a habeas corpus proceeding. *See Misenheimer v. Hobbs*, 2012 Ark. 343 (per curiam); *Randolph v. State*, 2011 Ark. 510 (per curiam); *see also Johnson v. State*, 298 Ark. 479, 769 S.W.2d 3 (1989).

Here, appellant failed to establish that the claim was cognizable in his case.

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)). 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). 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). When a petitioner in a habeas proceeding failed to raise a claim within the purview of a habeas action, the petitioner failed to 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 did not meet his burden, and, therefore, he could not prevail on appeal. *See Douthitt*,

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2011 Ark. 416.

Appeal dismissed; motion moot.

*Johnnie Lee Hill*, pro se appellant.

*Dustin McDaniel*, Att’y Gen., by: *Pamela A. Rumpz*, Ass’t Att’y Gen., for appellee.