

SUPREME COURT OF ARKANSAS

No. 12-672

LISA MURPHY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 11, 2013

PRO SE MOTIONS REQUESTING
EVIDENTIARY HEARING AND TO
FILE BELATED REPLY BRIEF
[APPEAL FROM JACKSON COUNTY
CIRCUIT COURT, CV 12-53, HON.
HAROLD S. ERWIN, JUDGE]

MOTION REQUESTING
EVIDENTIARY HEARING DENIED;
MOTION TO FILE BELATED REPLY
BRIEF GRANTED; APPEAL
REVERSED AND REMANDED.

PER CURIAM

Appellant Lisa Murphy filed a petition for writ of habeas corpus in the county where she was, and is currently, incarcerated. The petition sought to challenge a 2011 judgment that imposed a sentence of 132 months' incarceration on a guilty plea. The challenged judgment revoked appellant's probation following her entry of a guilty plea to one count of delivery of a controlled substance, methamphetamine. The circuit court denied the petition and appellant lodged this appeal. She has filed a motion that requests an evidentiary hearing on the issues on appeal and a motion that requests that she be allowed to file a belated reply brief.

Appellant states no basis in her motion for a hearing that supports the need for an evidentiary hearing, and we deny that motion. Because appellant tendered a reply brief within a short time after the deadline for filing, we grant the motion to file appellant's reply brief. The case has now been fully briefed, and, concerning her appeal of the petition for the writ, we

reverse the circuit court's denial of the petition and remand to the trial court with directions to strike an unlawful condition in the judgment.

Appellant alleged multiple grounds for the writ in her petition. She alleged (1) a conflict of interest and bias on the part of the judge, the prosecution, and her defense attorneys; (2) that her confession had been coerced; (3) mental incompetency that resulted from duress; (4) the denial of her right to proceed pro se; (5) double jeopardy based on five arrests and receiving an eleven-year sentence on revocation after agreeing to enter a guilty plea to a sentence imposing a 10-year period of probation; (6) a speedy-trial violation; (7) prosecutorial misconduct in that the prosecutor allowed her to enter a plea when the requirements for a speedy trial had not been met; (8) that the sentence was illegal in that it was a second sentence, that it imposed a sentence that required appellant's participation in a drug-treatment program, and it was in violation of the speedy-trial rules; (9) ineffective assistance of counsel; (10) judicial misconduct; and (11) due-process violations based on all the foregoing claims. The circuit court found that none of the claims that appellant asserted were cognizable in habeas proceedings. While some of the claims in the petition may have been of the type that are cognizable in a habeas proceeding, only a portion of appellant's claim alleging an illegal sentence presented a meritorious claim.

A petitioner who seeks a writ of habeas corpus must plead either the facial invalidity of the judgment or lack of jurisdiction under the applicable statutes. *Girley v. Hobbs*, 2012 Ark. 447 (per curiam). Under our statute, a petitioner who does not allege his actual innocence and proceed under Act 1780 of 2001 Acts of Arkansas must additionally make a showing by affidavit or other evidence of probable cause to believe that he is illegally detained. *Darrough v. State*, 2013

Ark. 28 (per curiam); Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006). Proceedings for the writ are not intended to require an extensive review of the record of the trial proceedings, and the court's inquiry into the validity of the judgment is limited to the face of the commitment order. *See Darrough*, 2013 Ark. 28.

Assertions of trial error, such as appellant's allegations of conflict of interest, a coerced confession, speedy-trial violations, prosecutorial or judicial misconduct, and due-process violations, do not implicate the facial validity of the judgment or the jurisdiction of the trial court, and those claims are not cognizable in proceedings for the writ. *See Hooper v. Hobbs*, 2013 Ark. 31 (per curiam); *Girley*, 2012 Ark. 447; *Bliss v. Hobbs*, 2012 Ark. 315 (per curiam). Claims of ineffective assistance of counsel are not cognizable in a habeas proceeding. *Hooper*, 2013 Ark. 31. 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. *Id.*

As the State correctly notes in its brief, appellant's claim of incompetency at the time she entered her plea, even if the claim was cognizable in a habeas proceeding, is not supported with a factual basis. A petitioner who asserts incompetence for the first time in postconviction proceedings must overcome the presumption that she was competent to stand trial by pointing to specific evidence that would demonstrate that, at the time of her trial or the entering of the guilty plea, the petitioner lacked the ability to consult with her lawyer with a reasonable degree of rational understanding and lacked a rational, as well as factual, understanding of the proceedings against her. *Little v. State*, 2012 Ark. 194 (per curiam). Even though a petitioner can

document a history of mental illness or show that counsel could have argued incompetence, that showing without more is not sufficient to warrant postconviction relief. *Camacho v. State*, 2011 Ark. 235 (per curiam). Conclusory statements concerning a fragile emotional state such as those made in this case are not sufficient. *See Robertson v. State*, 2010 Ark. 300, 367 S.W.3d 538 (per curiam). Appellant clearly did not demonstrate the requisite probable cause for this claim.

Appellant also asserted that the judgment violated the prohibition against double jeopardy. The bases for this claim are not entirely clear from the statements in the petition, but appellant appeared to allege that the violations arose from multiple arrests, and that the court was without authority to impose a sentence in the revocation proceedings when she had already been sentenced to probation on the original charge. 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). To the extent that appellant may have stated a cognizable double-jeopardy claim, it was without merit. *See Rickenbacker v. Norris*, 361 Ark. 291, 206 S.W.3d 220 (2005) (per curiam) (holding that because no sentence had been imposed when a habeas petitioner was placed on probation, the sentence imposed on revocation was valid if

within the statutory range for the original charge).

Appellant alleged two bases for her claim that her sentence was illegal that were without merit. The first meritless basis was that the sentence imposed on revocation was an illegal second sentence. As already noted, this court held in *Rickenbacker* that, where the court had placed the defendant on probation, no sentence was imposed and the sentence on revocation was not illegal. *Rickenbacker*, 361 Ark. at 296-97, 206 S.W.3d at 224.¹ The second basis without merit was appellant's allegation that the sentence was void or illegal because it was imposed in spite of a speedy-trial violation. A speedy-trial violation is not jurisdictional. *State v. Wilmoth*, 369 Ark. 346, 351, 255 S.W.3d 419, 423 (2007) (citing *Locklear v. State*, 290 Ark. 70, 716 S.W.2d 766 (1986)). A sentence is void or illegal when the trial court lacks authority to impose it. *Richie v. State*, 2009 Ark. 602, 357 S.W.3d 909. Because the right to a speedy trial may be waived by a defendant, the defect alleged was not sufficient to void the judgment, and, in the event that a speedy-trial violation had occurred, the sentence was not illegal. See *Pineda v. Norris*, 2009 Ark. 471 (per curiam) (holding that an error not sufficient to void the judgment is not an allegation of an illegal sentence).

Appellant's final basis for her claim of an illegal sentence, as the State concedes, does have merit. The judgment entered that imposed her sentence on the revocation proceedings includes this notation: "DEFENDANT TO COMPLETE LONG TERM DRUG TREATMENT PROGRAM." Appellant alleged in the petition for the writ that the court that

¹Appellant cited a case, *Easley v. State*, 274 Ark. 215, 623 S.W.2d 189 (1981), under prior statutes that dealt with a period of probation imposed that was the equivalent of a suspended sentence. The period at issue was not a sentence under the statutes applicable here; the statute in this case imposed an actual period of probation.

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revoked her probation did not have authority to order her to complete a drug rehabilitation program.

Under the applicable statute, the court revoking probation could impose any sentence that might have been imposed originally for the offense. Ark. Code Ann. § 5-4-309(f)(1)(A) (Repl. 2006).² The judgment imposing probation appears to reflect that appellant entered a guilty plea to a violation under Arkansas Code Annotated section 5-64-401(a)(1)(A)(i) (Supp. 2007). Under that statute, the penalty was imprisonment for ten to forty years, or life, and a fine not exceeding \$25,000. The statute does not authorize a trial court to order a criminal defendant to participate in drug treatment as a condition of imprisonment. If no statute authorized the action taken, the circuit court imposed an illegal sentence when it attempted to require appellant to undergo drug treatment as a condition of incarceration. *See Richie*, 2009 Ark. 602, 357 S.W.3d 909. We therefore reverse the denial of the habeas petition on this single point and remand to the trial court with directions to strike the unlawful condition and to enter a new judgment-and-commitment order consistent with this opinion.

Motion requesting evidentiary hearing denied; motion to file belated reply brief granted; appeal reversed and remanded.

Lisa Murphy, pro se appellant.

Dustin McDaniel, Att’y Gen., by: *Valerie Glover Fortner*, Ass’t Att’y Gen., for appellee.

²The State cites Arkansas Code Annotated section 16-93-308 (Supp. 2011). That statute is not applicable because the crime was committed in May 2009. However, the language at issue is identical.