

SUPREME COURT OF ARKANSAS

No. 12-602

JEREMIE DALE BRYANT
APPELLANT

V.

LARRY MAY, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION
APPELLEE

Opinion Delivered April 18, 2013

PRO SE MOTIONS FOR
APPOINTMENT OF COUNSEL, ORAL
ARGUMENT, TO ORDER INMATE'S
PRESENCE AT ALL SCHEDULED
HEARINGS, AND TO REFILE
APPEAL RECORD AS RECORD FOR
CERTIORARI AND PETITION FOR
WRIT OF CERTIORARI [APPEAL
FROM THE LEE COUNTY CIRCUIT
COURT, CV 12-39, HON. L.T. SIMES II,
JUDGE]

MOTION TO REFILE RECORD
DENIED; APPEAL DISMISSED;
MOTIONS FOR APPOINTMENT OF
COUNSEL, ORAL ARGUMENT, AND
TO ORDER INMATE'S PRESENCE
AND PETITION FOR WRIT OF
CERTIORARI MOOT.

PER CURIAM

In 2002, the prosecuting attorney in Craighead County charged appellant Jeremie Dale Bryant with the capital murder and kidnapping of Aaron Griffin. Appellant entered a negotiated plea to first-degree murder in Griffin's death, and, in accord with that plea agreement, appellant testified against his codefendant, William Joseph Lenox.

The evidence in the case against Mr. Lenox, which was based largely on appellant's testimony, showed that appellant was angry with Griffin and that he had asked Lenox to help him beat up Griffin. *See Lenox v. State*, CACR 03-197 (Ark. App. May 19, 2004) (unpublished).

Lenox and appellant got together to plan how they would deceive Griffin into going with them, and appellant then called Griffin and told him a fabricated story about moving furniture for Lenox so that Griffin would think that he could earn some money. *Id.* Appellant and Lenox picked Griffin up at a church, drove him to an isolated area, beat him unconscious, and left him partially submerged in the Cache River, where Griffin died. *Id.*

In 2012, appellant filed a petition for writ of habeas corpus in the Lee County Circuit Court that was denied, and he has lodged an appeal of that order in this court.¹ Appellant filed motions requesting appointment of counsel, oral argument, and to order his presence at all scheduled hearings, and he later filed a motion that requested permission to refile the record on appeal as a record for certiorari and a petition for writ of certiorari.

The later two filings appear to stem from appellant's mistaken belief that the proper means of review of a habeas corpus proceeding is through writ of certiorari rather than appeal. In fact, we now permit review of habeas corpus proceedings only by appeal. *See In re Review of Habeas Corpus Proceedings*, 313 Ark. 168, 852 S.W.2d 791 (1993) (per curiam). Accordingly, we deny appellant's motion to refile the record, and the petition for writ of certiorari is moot. Because we dismiss the appeal, the remaining motions are also moot.

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). Our review of the record has made it clear that appellant cannot prevail.

¹Appellant was incarcerated in Lee County at the time that he filed his petition, and he remains incarcerated in the same facility.

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. *Murry v. Hobbs*, 2013 Ark. 64 (per curiam). The burden is on the petitioner in a proceeding 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. *Id.* Under our statute, a petitioner who does not allege his actual innocence 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 illegally detained. *Id.*; Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006). In his petition, appellant did not allege actual innocence, and he did not demonstrate a basis for the writ to issue.

Appellant alleged grounds for issuance of the writ as follows: (1) the trial court lacked jurisdiction because the murder was committed in Greene County and not Craighead County; (2) the filing of the information, which alleged capital murder based on kidnapping as the underlying felony and a separate kidnapping charge, subjected appellant to prejudice and was a double-jeopardy violation; (3) the first-degree-murder conviction was invalid in that the prosecution did not prove the underlying felony of kidnapping because it nol-prossed the separate kidnapping charge, in that kidnapping was a lesser-included offense of first-degree murder, and in that it was a breach of the plea agreement not to drop the kidnapping charge. To the extent that these claims alleged that the trial court lacked jurisdiction or that the commitment was invalid on its face, none demonstrate probable cause to support the basis alleged.

In his first ground for the writ, appellant asserted that the trial court lacked jurisdiction to convict him when the murder was committed in another county. Our cases, however, have consistently recognized that when a crime begins in one county and proceeds to culmination in another county, both counties have jurisdiction to prosecute the crime. *Cloird v. State*, 352 Ark. 190, 99 S.W.3d 419 (2003). This court has held that, when the actual killing occurred in another county, the trial court had jurisdiction if acts requisite to the consummation of the murder occurred within its jurisdiction. *Fudge v. Hobbs*, 2012 Ark. 80 (per curiam). Appellant only alleged that the actual killing occurred outside of the trial court's jurisdiction, and not that the codefendants planned the assault, contacted the victim, and picked him up in some other jurisdiction. In fact, the probable-cause affidavit that appellant points to in support of his claim appears to indicate that these other acts, which were requisite to the consummation of the murder, occurred in Jonesboro. Jonesboro is in Craighead County and within the jurisdiction of the trial court.

Appellant's second ground for the writ was based on alleged defects in the information charging him. This court will consider claims of defective charging documents as cognizable in habeas proceedings only in limited circumstances when we consider the issue to be a jurisdictional one. *See Cook v. Hobbs*, 2011 Ark. 382 (per curiam); *see also Murry*, 2013 Ark. 64; *Craig v. Hobbs*, 2012 Ark. 218 (per curiam); *Willis v. Hobbs*, 2011 Ark. 509 (per curiam). A deficiency within a felony information does not render a judgment invalid on its face. *Cook*, 2011 Ark. 382. In the circumstances here, where appellant's conviction was based on a negotiated plea to a lesser charge, rather than the charges in the information, the claim set out

in the petition for the writ clearly failed to establish any jurisdictional issue. To the extent that appellant's intention may have been to assert a facially invalid sentence, it appears to have been on a sentence that was never imposed, rather than the sentence that was actually imposed on appellant's conviction. Moreover, any claim of a double-jeopardy violation, where there was no acquittal, conviction, or punishment on the charges that appellant contends were at issue, would fail as jeopardy could not have attached. *See N.D. v. State*, 2012 Ark. 265, ___ S.W.3d ___.

Appellant's third and last claim presented another argument that the conviction was invalid, based on appellant's assertions that, because the separate kidnapping charge was nolle prossed, the prosecution did not "prove" an underlying felony for the first-degree-murder charge. Appellant appears to contend, that the dismissal of the separate kidnapping charge also dismissed the underlying felony charge that comprised an element of the murder charge. He asserts that his plea would have violated the plea agreement if the prosecution did not also dismiss the element of kidnapping that composed the underlying felony in the murder charge and that the prosecution was barred from asserting any facts that supported kidnapping. The logic behind this position that dismissing a separate charge should also require dismissal of an underlying felony based on the same facts in another charge is not obvious. Appellant failed to provide facts or authority to state a cognizable claim in the petition, and he therefore did not meet his burden to demonstrate a basis for the writ to issue. *See Girley v. Hobbs*, 2012 Ark. 447 (per curiam).

In any event, the allegations were not of the type cognizable in a petition for the writ. He did not show a lack of jurisdiction or that the commitment order was invalid on its face by

asserting that the evidence against him was insufficient or that the prosecution had failed to comply with its plea agreement with him. Claims based on trial error that could have been addressed on appeal or in other postconviction proceedings are not cognizable. *See Hooper v. Hobbs*, 2013 Ark. 31 (per curiam).

Furthermore, appellant's guilty-plea statement indicated that he was aware that he was entering a plea to first-degree murder with an underlying felony of kidnapping. Appellant also attached to the petition a document that he signed acknowledging a factual basis for the plea. To the extent that appellant's claims may have stated some cognizable claim if those claims had been sufficiently developed, he clearly failed to state probable cause for the assertions that he made.

Motion to refile record denied; appeal dismissed; motions for appointment of counsel, oral argument, and to order inmate's presence and petition for writ of certiorari moot.

Jeremie Dale Bryant, pro se appellant.

No response.