

SUPREME COURT OF ARKANSAS

No. CV-14-1124

FRANKLIN L. CHANCE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 9, 2015

PRO SE APPEAL FROM THE CHICOT
COUNTY CIRCUIT COURT AND
MOTIONS FOR TRANSCRIPT AND
FOR APPOINTMENT OF COUNSEL
[NO. 09CV-14-89]HONORABLE ROBERT BYNUM
GIBSON, JR., JUDGEAFFIRMED; MOTIONS MOOT.**PER CURIAM**

On November 14, 2014, appellant Franklin L. Chance, who is incarcerated in Chicot County, Arkansas, filed a pro se petition for writ of habeas corpus in the Chicot County Circuit Court.¹ The circuit court denied the petition, and appellant lodged an appeal in this court. Appellant has also filed motions for a copy of the “original trial transcript” and for appointment of counsel.

We do not reach the merits of the motions because it is clear from the record that appellant did not allege a basis on which the circuit court could properly grant a writ of habeas corpus. Accordingly, the circuit court’s order is affirmed. The motions are moot.

Unless a petitioner can show that the trial court lacked jurisdiction or that the commitment was invalid on its face, there is no basis for a finding that a writ of habeas corpus

¹As of the date of this opinion, appellant remains incarcerated in Chicot County.

should issue. *Hobbs v. Gordon*, 2014 Ark. 225, 434 S.W.3d 668 (citing *Birchett v. State*, 303 Ark. 220, 795 S.W.2d 53 (1990)). 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. *Young v. Norris*, 365 Ark. at 221, 226 S.W.3d at 798 (2006) (per curiam).

In his habeas petition, appellant argued that the writ should issue on the ground that a jury was empaneled for his trial but that he appeared before the trial court in chambers and was declared guilty in a bench trial. He further contended that he did not waive his right to trial by jury and that the trial court did not comply with Arkansas Criminal Procedure Rule 24.3 through Rule 24.7. Those rules govern the taking of a plea of guilty or nolo contendere by a defendant, including the information that the trial court must impart to the defendant when accepting the plea, the requirement that a trial court determine that the plea is voluntary, the requirement that the trial court establish that there is a factual basis for the plea, and the requirement that a verbatim record of the plea proceeding be preserved.

The face of the judgment in appellant’s case indicates that he appeared before the court on November 16, 2004, was advised of the nature of the charges against him, was advised of his constitutional and legal rights and the effect of a guilty plea upon those rights, and was advised of the right to make a statement before sentencing. The judgment further states that appellant voluntarily, intelligently, and knowingly entered a plea directly to the court to a charge of rape and a charge of incest. The words, “nolo contendere,” are underlined, indicating the type of plea.

Appellant did not establish in his petition that the judgment was facially invalid or that the trial court lacked jurisdiction to enter the judgment.² The arguments raised by appellant did not call into question the trial court's jurisdiction or the facial validity of the judgment. Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Bliss v. Hobbs*, 2012 Ark. 315 (per curiam). Appellant's arguments did not demonstrate that the trial court in his case lacked subject-matter jurisdiction to hear and determine cases involving violations of criminal statutes or establish that the judgment-and-commitment order entered in the case was flawed on its face. When a petitioner in a habeas proceeding fails to raise a claim within the purview of a habeas action, the petitioner fails to meet his burden of demonstrating a basis for a writ of habeas corpus to issue. *Benton v. State*, 2013 Ark. 385 (per curiam). A circuit court's denial of habeas relief will not be reversed unless the court's findings are clearly erroneous. *Rayford v. Hobbs*, 2014 Ark. 244 (per curiam). A finding is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been committed. *Decay v. State*, 2014 Ark. 387, 441 S.W.3d 899. Inasmuch as appellant failed to state a basis on which the writ

²On March 12, 2014, at a time when appellant was incarcerated in Lee County, he filed a petition for writ of habeas corpus in Lee County in which he raised the allegations that he did not agree to waive a jury trial and that Rule 24.3 through Rule 24.7 were not complied with by the trial court. The Lee County Circuit Court denied the petition, and we affirmed the order on the ground that the petition did not state a ground for issuance of the writ. *Chance v. Hobbs*, 2014 Ark. 400, 441 S.W.3d 897 (per curiam). Even though appellant raised the same issues in Lee County that he raised in the instant habeas proceeding, the allegation that the trial court lacked jurisdiction is a claim sufficient to void a judgment absolutely, and jurisdictional issues are always open. *Cloird v. State*, 349 Ark. 33, 76 S.W.3d 813 (2002). For that reason, res judicata is inapplicable in a habeas proceeding in a criminal case. *Id.* (citing *Fay v. Noia*, 372 U.S. 391 (1963)).

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could issue, the circuit court did not err in denying relief. *See Christopher v. Hobbs*, 2011 Ark. 469 (per curiam).

Affirmed; motions moot.

Franklin L. Chance, pro se appellant.

Dustin McDaniel, Att’y Gen., by: *Rebecca B. Kane*, Ass’t Att’y Gen., for appellee.