

SUPREME COURT OF ARKANSAS

No. CV-15-887

MELVIN SMITH

APPELLANT

V.

WENDY KELLEY, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered February 25, 2016

APPEAL FROM THE LINCOLN
COUNTY CIRCUIT COURT
[NO. 40CV-15-54]

HONORABLE JODI RAINES
DENNIS, JUDGE

AFFIRMED.

PER CURIAM

In 1977, appellant Melvin Smith was found guilty by a jury of murder in the first degree and burglary and sentenced to life imprisonment for first-degree murder and a consecutive six years' imprisonment for burglary. No appeal was taken.

In 2015, Smith, who is incarcerated at a unit of the Arkansas Department of Correction in Lincoln County, filed a petition for a writ of habeas corpus, which he subsequently amended, in the Lincoln County Circuit Court.¹ The petition was dismissed, and Smith brings this appeal.

A circuit court's grant or denial of habeas relief will not be reversed unless the court's findings are clearly erroneous. *Hobbs v. Gordon*, 2014 Ark. 225, 434 S.W.3d 364. A finding is clearly erroneous when, although there is evidence to support it, the appellate court is

¹As of the date of this opinion, Smith remains incarcerated in Lincoln County.

left, after reviewing the entire evidence, with the definite and firm conviction that a mistake has been committed. *Id.*

Under our statute, a petitioner for the writ who does not allege his actual innocence and proceed under Act 1780 of 2001 Acts of Arkansas 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. Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006). The burden is on the petitioner in proceedings 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. *Fields v. Hobbs*, 2013 Ark. 416.

Smith argued in the habeas proceeding that the judgment in his case was illegal on its face because the judgment provided that the six-year term for burglary would not begin until expiration of the life sentence. He argued that, under this court's decision in *Hale v. Hobbs*, 2014 Ark. 405, 443 S.W.3d 533, his life sentence must be considered as allowing for parole inasmuch as he could not serve the six-year sentence after his death.

In *Hale*, the judgment provided that Hale was sentenced to life *with* the possibility of parole after one-third of his sentence was served. We held that the trial court exceeded its statutory authority to impose the sentence on the ground that the sentencing statute in effect at the time Hale committed the offense did not allow for parole when the defendant was sentenced to a life term. *Hale*, 2014 Ark. 405, at 5, 443 S.W.3d at 535.

At the time Smith committed first-degree murder, the offense was classified as a Class A felony. Ark. Stat. Ann. § 41-1502(3) (Repl. 1977). A Class A felony was punishable by

“not less than five years nor more than fifty years, or life.” Ark. Stat. Ann. § 41-901 (Repl. 1977). The imposition of a term of imprisonment to be served consecutively to Smith’s life sentence was permitted by the sentencing statute in effect when he committed his offenses. See Ark. Stat. Ann. § 43-2311 (Repl. 1977). The face of the judgment entered when Smith was convicted did not provide for parole as the judgment in *Hale* provided, and it was not illegal on its face.¹ Accordingly, the circuit court did not err when it declined to grant a writ of habeas corpus on the grounds raised by Smith.

Affirmed.

Melvin Smith, pro se appellant.

Leslie Rutledge, Att’y Gen., by: *Christian Harris*, Ass’t Att’y Gen., for appellee.

¹Smith appended to his petition for writ of habeas corpus documents generated by the Arkansas Department of Correction that listed his sentence as both “life with parole” and “life plus” a term of years. The documents were not a substitute for the judgment of conviction entered in the trial court when Smith was convicted, which was the official statement of the sentence imposed by the court.