

Cite as 2009 Ark. 314 (unpublished)

# ARKANSAS SUPREME COURT

No. 09-181

EDWARD JOE HOOTEN  
Appellant

v.

STATE OF ARKANSAS  
Appellee

**Opinion Delivered** May 21, 2009

PRO SE MOTION FOR EXTENSION  
OF TIME TO FILE APPELLANT'S  
BRIEF [CIRCUIT COURT OF HOT  
SPRING COUNTY, CV 2008-300,  
HON. PHILLIP H. SHIRRON,  
JUDGE]

APPEAL DISMISSED; MOTION  
MOOT.

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## PER CURIAM

Appellant Edward Joe Hooten, an inmate incarcerated in the Arkansas Department of Correction, filed a petition for writ of habeas corpus under Arkansas Code Annotated §§ 16-112-101 to -123 (Repl. 2006) in Hot Spring County Circuit Court. The circuit court dismissed the petition and appellant lodged an appeal of the order in this court. Appellant now has filed a motion requesting an extension of time in which to file his brief. Because it is clear that appellant cannot succeed on appeal, we dismiss the appeal and the motion is 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. *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam). Here, it is clear that appellant failed to state a claim in his petition that was cognizable in a habeas proceeding.



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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" he is illegally detained. *Id.* at 221, 226 S.W.3d at 798–99.<sup>1</sup> Appellant did not plead facts in the petition concerning unlawful detention or challenge the judgment under which he was incarcerated. Rather appellant sought review of a prison disciplinary proceeding against him, seeking to have the disciplinary action overturned.

Although appellant refers to the action on the disciplinary proceeding as a “conviction,” the disciplinary proceeding is an administrative proceeding by the Arkansas Department of Correction and not a criminal proceeding. Appellant did not challenge his judgment or the commitment under which he is detained and the claims asserted were not cognizable in a habeas proceeding. The circuit court correctly dismissed the petition, and we dismiss the appeal. Because the appeal is dismissed, appellant’s motion for extension of time is moot.

Appeal dismissed; motion moot.

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<sup>1</sup>Appellant, in his petition, did not allege actual innocence of the charges under which he was detained. A petitioner who seeks a writ of habeas corpus and alleges actual innocence must do so in accordance with Act 1780 of 2001 Acts of Arkansas, codified as Arkansas Code Annotated §§ 16-112-201 to -208 (Repl. 2006). Ark. Code Ann. § 16-112-103 (Repl. 2006).