

Cite as 2010 Ark. 500

# SUPREME COURT OF ARKANSAS

No. 09-314

KENNETH RAY MARSHALL  
Appellant

v.

STATE OF ARKANSAS  
Appellee

**Opinion Delivered** December 16, 2010

PRO SE APPEAL FROM THE LEE  
COUNTY CIRCUIT COURT, CV  
2009-9, HON. RICHARD L.  
PROCTOR, JUDGE

AFFIRMED.

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## PER CURIAM

Appellant Kenneth Ray Marshall filed a petition for writ of habeas corpus in the county in which he is incarcerated in an Arkansas Department of Correction facility, and the petition was denied. He now brings this appeal, and we affirm the decision of the circuit court denying the petition.

On October 7, 2005, appellant entered a negotiated plea on charges of theft of property, breaking and entering, and theft of property under \$500 in value. The trial court sentenced appellant to three terms of sixty months' probation. The judgment and an amended judgment reflecting the plea were entered on October 12, 2005.

On the same day, October 12, 2005, the State filed a petition and amended petition to revoke probation. A judgment was entered on October 14, 2005, that reflects that the trial court granted the revocation and imposed an aggregate sentence of 420 months' imprisonment. Appellant appealed the revocation of probation, and the Arkansas Court of Appeals affirmed. *Marshall v. State*, CACR 06-384 (Ark. App. Nov. 15, 2006) (unpublished).

Appellant unsuccessfully sought postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2007). *Marshall v. State*, CR 08-391 (Ark. May 1, 2008) (unpublished per curiam).

In his petition and on appeal, appellant first asserts that the trial court exceeded its jurisdiction in revoking probation because the acts on which the revocation were based were committed prior to execution and that he was not provided with a written copy of the terms of his probation. Appellant's claim that he was not provided a written copy of the conditions, however, is refuted by a statement signed by appellant on a copy of the conditions of probation in the record. Although appellant points to testimony during the revocation proceeding as additional support for his claim, the referenced testimony does not indicate that appellant was not provided a copy of the document. Appellant stated no facts that supported his claim that he was not given a copy of the conditions of his probation until later, and the record contradicts his claim.

Appellant in his petition failed to state a claim that the trial court was without jurisdiction to hear the revocation petition or to make a showing of probable cause in support of the claim. 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 should issue. *McCullough v. State*, 2010 Ark. 394 (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 that he is illegally detained. *Id.* A court with personal

and subject-matter jurisdiction over the defendant in a criminal proceeding has authority to render judgment. *Id.*

That the petition for revocation was based upon appellant's acts prior to the entry of judgment did not deprive the trial court of jurisdiction to hear the petition for revocation as appellant alleges. Appellant does not assert that the trial court was initially without jurisdiction to hear the matter or to render the judgment convicting him. Instead, he appears to allege that the court somehow lost or was without jurisdiction after the judgment was pronounced until the time that it was entered of record.

The original petition for revocation was filed at the same time as the initial entry of the judgment of probation. The amended petition for revocation was filed later in the same day, after the original and amended judgments sentencing appellant to probation. The trial court had subject-matter jurisdiction to hear revocation proceedings once the judgment was entered of record, and it had retained jurisdiction over the matter to modify its pronounced order prior to entry of the order. *See Bradford v. State*, 351 Ark. 394, 94 S.W.3d 904 (2003).

We note that under Arkansas Code Annotated § 5-4-307 (Repl. 2006), a period of probation commences on the day it is imposed, not on the date that a judgment is entered. Ark. Code Ann. § 5-4-307(a).<sup>1</sup> Whether the judgment was incorrect is not, however, an issue that affects the trial court's jurisdiction to render the judgment. Appellant could have questioned the validity of the basis for the State's petition to revoke in the proceedings to

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<sup>1</sup>We also note that the conditions of probation were marked as filed in open court on the date the judgment was pronounced.

Cite as 2010 Ark. 500

revoke and did in fact contest on appeal the judgment on other bases. A habeas corpus proceeding does not afford a convicted defendant an opportunity to retry his case, and it is not a substitute for direct appeal. *Henderson v. State*, 2010 Ark. 30 (per curiam).

Appellant's remaining two bases for the writ and for error on appeal are likewise founded on issues that concern the correctness of the judgment, not the trial court's jurisdiction to render the judgment. Appellant asserts that the trial court determined that he was a habitual offender without sufficient evidence to do so and therefore sentenced him to a longer term than legally permitted if he were not a habitual offender. He does not, however, allege that the sentence was otherwise illegal, and his sole basis for the claim asserts appealable error in rendering the judgment rather than a lack of jurisdiction to render the judgment. Appellant's final point on appeal and basis for the writ alleges a due-process violation for failure to provide adequate notice of the grounds for revocation of probation. As previously discussed, appellant failed to make a showing of probable cause for the claim, and the challenge is again one that goes to the basis for the judgment rendered but not to jurisdiction.

Affirmed.