

Cite as 2009 Ark. 363 (unpublished)

ARKANSAS SUPREME COURT

No. 08-940

BILLY J. HENSON
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Appellee

Opinion Delivered June 18, 2009

PRO SE APPEAL FROM THE
CIRCUIT COURT OF JEFFERSON
COUNTY, CV 2008-248, HON.
ROBERT H. WYATT, JR., JUDGE

AFFIRMED.

PER CURIAM

In 2004, appellant Billy J. Henson, who is also known as Billy Joe Henson, was found guilty by a jury of theft by receiving. He was sentenced as a habitual offender to twenty years' imprisonment. The Arkansas Court of Appeals affirmed. *Henson v. State*, 94 Ark. App. 163, 227 S.W.3d 450 (2006). In 2006, he sought postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. We affirmed the trial court's denial of relief. *Henson v. State*, CR 06-598 (Ark. Nov. 9, 2006) (per curiam).

Subsequently, appellant filed a petition for writ of habeas corpus in the circuit court of the county in which he was incarcerated. The circuit court denied the petition, and appellant has lodged an appeal here from the order.

We do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly



Cite as 2009 Ark. 363 (unpublished)

erroneous when, although there was 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. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

A petitioner is entitled to a writ of habeas corpus only where he demonstrates that the commitment order is invalid on its face or that the convicting court lacked jurisdiction. Ark. Code Ann. §§ 16-112-101 to -123 (Repl. 2006); *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). To do so, he must make a “showing, by affidavit or other evidence, [of] probable cause to believe” that he is being illegally detained. Ark. Code Ann. § 16-112-103(a)(1); *Friend v. Norris*, *supra*.

In appellant’s first point on appeal, he maintains that he received ineffective assistance of counsel. He also contends under Point I that insufficient evidence supported his conviction and points to his alleged lack of intent to commit the crime. Neither claim for habeas relief contained in Point I alleges or demonstrates that the conviction was invalid on its face or that the trial court lacked jurisdiction over the case.

First, a habeas corpus proceeding is not a substitute for raising claims of ineffective assistance of counsel in a timely Rule 37.1 petition. *Friend v. Norris*, *supra*. Further, as noted, appellant unsuccessfully sought Rule 37.1 relief, and he may not again seek such relief, through a habeas petition or otherwise. Ark. R. Crim. P. 37.2(b).

In addition, habeas relief does not afford a prisoner an opportunity to challenge the sufficiency of the evidence, which would be tantamount to allowing appellant to retry his



Cite as 2009 Ark. 363 (unpublished)

case. The proper remedy in such a case is a direct appeal. *Meny v. Norris*, 340 Ark. 418, 13 S.W.3d 143 (2000) (per curiam). In the direct appeal from the criminal conviction, appellant did challenge the sufficiency of the evidence.

Appellant fails to establish in Point I either ground for the trial court to have issued a writ of habeas corpus. We find no error and we affirm the trial court on this point.

In Point II on appeal, appellant maintains that the trial court erred by failing to conduct an evidentiary hearing, but no hearing was required under the circumstances. Appellant's habeas petition claimed only ineffective assistance of counsel, insufficient evidence and speedy-trial claims. As the petition did not allege either of the grounds for relief that are proper in a habeas proceeding, i.e., that the commitment order is invalid on its face or that the convicting court lacked jurisdiction, the trial court was not required to conduct a hearing. *Baker v. Norris*, 369 Ark. 405, 255 S.W.3d 466 (2007). We find no error on this point.

Affirmed.