

Cite as 2018 Ark. 147  
**SUPREME COURT OF ARKANSAS**  
No. CV-17-867

JAMES LEE KING

APPELLANT

V.

WENDY KELLEY, DIRECTOR,  
ARKANSAS DEPARTMENT OF  
CORRECTION

APPELLEE

Opinion Delivered April 26, 2018

PRO SE APPEAL FROM THE LINCOLN  
COUNTY CIRCUIT COURT  
[NO. 40CV-17-51]

HONORABLE JODI RAINES DENNIS,  
JUDGE

AFFIRMED.

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**RHONDA K. WOOD, Associate Justice**

Appellant James Lee King brings this appeal from the denial of his pro se petition for a writ of habeas corpus. Because the circuit court's denial was not clearly erroneous, we affirm.

A Pulaski County jury convicted King of simultaneous possession of drugs and firearms, possession of a controlled substance, and possession of drug paraphernalia. The jury sentenced him as a habitual offender to 840 months', 240 months', and 120 months' imprisonment to be served consecutively. The Arkansas Court of Appeals affirmed his convictions and sentences. *King v. State*, CR-07-1242 (Ark. App. May 14, 2008) (unpublished).

King filed a pro se petition for a writ of habeas corpus in the county where he is incarcerated and alleged that his sentence is excessive and illegal because the information

was defective in that it did not contain a habitual-offender charge. King contends that the defective information failed to provide notice that he was subject to enhanced sentences, and therefore, the sentences are illegal.

The circuit court denied King's petition because King had failed to establish that his sentence was facially illegal or that the trial court lacked jurisdiction. A circuit court's decision on a petition for writ of habeas corpus will be upheld unless it is clearly erroneous. *Garrison v. Kelley*, 2018 Ark. 8, 534 S.W.3d 136. A decision 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 made. *Id.*

A petitioner for writ of habeas corpus, who does not allege his or her actual innocence and proceed under Act 1780 of 2001, 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 or she is being illegally detained. *Id.*; Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2016). Allegations of a defective information are not generally considered to be jurisdictional and are treated as trial error. *Clay v. Kelley*, 2017 Ark. 294, 528 S.W.3d 836. Assertions of trial error and due-process claims do not implicate the facial validity of the judgment or the jurisdiction of the trial court. *Philyaw v. Kelley*, 2015 Ark. 465, 477 S.W.3d 503.

In any event, King's allegation that the information lacked any reference to his being charged as a habitual offender is belied by the supplemental record submitted by appellee, which demonstrates that the information contained the allegation that King had

been convicted of four or more previous felonies and that his sentences should be increased as provided by Arkansas Code Annotated section 5-4-501(b). A felony information which contains language referring to the habitual-offender statute is sufficient to put the defendant on notice that his or her prior convictions may be introduced in assessing an enhanced sentence. *Glaze v. State*, 2011 Ark. 464, 385 S.W.3d 203.

In sum, apart from his discredited allegation regarding a defective information, King made no allegations to establish that his sentences are illegal or that the trial court did not have jurisdiction. The circuit court did not clearly err when it denied King's petition.

Affirmed.

HART, J., concurs.

**JOSEPHINE LINKER HART, JUSTICE, concurring.** I concur with the majority's resolution in this case; now that the record has been supplemented, it is apparent that Mr. King was, in fact, charged as a habitual offender, and his argument on appeal is without merit. I write separately because I cannot sign on to the majority's adherence to the "facial invalidity or lack of jurisdiction" rule for purposes of Arkansas habeas corpus proceedings. See *Stephenson v. Kelly*, \_\_ Ark. \_\_, \_\_ S.W.3d \_\_ (2018) (Hart, J. dissenting).

*James Lee King*, pro se appellant.

*Leslie Rutledge*, Att'y Gen., by: *Kathryn Henry*, Ass't Att'y Gen., for appellee.