

Cite as 2018 Ark. 170
SUPREME COURT OF ARKANSAS
No. CV-17-1067

KELVIN COLLIER

APPELLANT

V.

WENDY KELLEY, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered: May 17, 2018

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT AND PRO
SE MOTION TO SUPPLEMENT
APPELLANT'S BRIEF
[NO. 35CV-17-486]

HONORABLE JODI RAINES DENNIS,
JUDGE

AFFIRMED; MOTION GRANTED.

RHONDA K. WOOD, Associate Justice

Appellant Kelvin Collier appeals the dismissal of his petition for writ of habeas corpus by the circuit court in the county where he is incarcerated. He has filed a motion to supplement his brief on appeal. We grant Collier's motion to supplement his brief with two pages inadvertently left out during the copying process. Because the circuit court did not err when it found Collier failed to state a ground for the writ, we affirm.

In 1997, Collier pleaded guilty to multiple offenses including first-degree murder and aggravated robbery. He argued in his habeas petition that (1) he was innocent; (2) he was merely an accomplice to second-degree murder and that no robbery occurred; (3) the trial court failed to inform him of the minimum sentences when he entered his guilty plea; (4) his codefendant was the principal perpetrator but was convicted of only second-degree

murder and sentenced to 240 months' imprisonment, rendering Collier's sentence of 420 months' imprisonment "grossly disproportionate"; (5) he was denied equal protection of law because he was an indigent and a greater sentence was imposed on him than on his codefendant who was not indigent; (6) he was misled when he entered his guilty plea as to the statutes that applied to the charges against him and the length of the terms of imprisonment that would be imposed. Collier asserted that these grounds for relief established that the trial court lacked jurisdiction to enter the judgment in his case and that the judgment was illegal on its face. On appeal he challenges the circuit court's finding that his claims were not cognizable in a writ of habeas corpus.

A circuit court's decision on a petition for writ of habeas corpus will be upheld unless it is clearly erroneous. *Hobbs v. Gordon*, 2014 Ark. 225, 434 S.W.3d 364. 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 writ of habeas corpus is proper when a judgment of conviction is invalid on its face or when a circuit court lacks jurisdiction over the cause. *Philyaw v. Kelley*, 2015 Ark. 465, 477 S.W.3d 503. Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Baker v. Norris*, 369 Ark. 405, 255 S.W.3d 466 (2007). Under our statute, a petitioner for the writ who does not allege his 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 is being illegally detained. Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2016). Unless the 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. *Fields v. Hobbs*, 2013 Ark. 416.

Collier's first two points grounds for habeas relief are that no aggravated robbery occurred and that he was guilty of no more than second-degree murder. These constitute a challenge to the sufficiency of the evidence and are not actual innocence claims. They are direct attacks on the judgment and not cognizable in a habeas proceeding. *Johnson v. State*, 2018 Ark. 42, 538 S.W.3d 819. Collier entered a guilty plea, and when a defendant enters a plea of guilty, the plea is his trial. *Id.* A habeas corpus proceeding does not afford a prisoner an opportunity to retry his or her case. *Id.* Accordingly, Collier's claims of error by the trial court that accepted his plea of guilty were not within the scope of this remedy because the writ will not be issued to correct errors or irregularities that occurred in a guilty-plea proceeding. *Barber v. Kelley*, 2017 Ark. 214. Claims of an involuntary plea or of improper plea procedures do not raise a question of a void or illegal sentence that may be addressed in a habeas proceeding. *Id.*

The circuit court was correct that Collier's third through sixth claims also are not cognizable in a writ of habeas corpus. These claims primarily revolve around his dissatisfaction with his sentence. And, if the sentence is within the limits set by statute, it is legal. *Beyard v. State*, 2017 Ark. 203. Collier fails to claim his sentence is outside the statutory range or disproportionate to the offense of which he was convicted such that it

violated the Eighth Amendment. The mere disproportionality of the sentence when compared to his codefendant does not render the sentence illegal on its face. Also, a difference in the sentence imposed on Collier as compared to his codefendant did not deprive the trial court of jurisdiction.

Finally, Collier contends in his brief that the circuit court erred in not holding a hearing on his habeas petition. While our statutory habeas corpus scheme contemplates a hearing in the event the writ is issued, there is no requirement that a hearing be given a petitioner regardless of the content of the petition. *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991). A hearing is not required on a habeas petition, even where the petition alleges an otherwise cognizable ground, when probable cause for the issuance of the writ is not shown by affidavit or other evidence. As Collier failed to state a ground for the writ or to demonstrate probable cause for the issuance of the writ, the circuit court was not required to hold a hearing. *Johnson*, 2018 Ark. 42, 538 S.W.3d 819.

Affirmed; motion granted.

HART, J., concurs.

JOSEPHINE LINKER HART, Justice, concurring. I agree with the majority's conclusion that Collier has not established that he is entitled to a writ of habeas corpus, but I write separately for the reasons outlined in *Stephenson v. Kelley*, 2018 Ark. 143, __ S.W.3d __ (Hart, J., dissenting). This court has never justified its restriction of State habeas corpus relief to claims of "facial invalidity or lack of jurisdiction," despite the fact that Arkansas's habeas corpus statute so plainly contemplates there being other cognizable

grounds for the writ. *See* Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2016). Even so, habeas corpus is not the proper vehicle for the specific arguments raised in Collier's petition.