

SUPREME COURT OF ARKANSAS

No. 10-955

RICHARD DAVIS
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered January 13, 2011

PRO SE MOTION FOR
APPOINTMENT OF COUNSEL
[LINCOLN COUNTY CIRCUIT
COURT, LCV 2010-56, HON. JODI
RAINES DENNIS, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 1988, appellant Richard Davis was convicted by a jury of capital murder, aggravated robbery, and theft of property. He was sentenced to life imprisonment without parole, life imprisonment, and thirty years' imprisonment. No appeal was taken from the judgment.

In 1990, appellant filed in the trial court a petition for postconviction relief, challenging the convictions for aggravated robbery and theft of property as violating the constitutional provision forbidding double jeopardy on the ground that those convictions were lesser included offenses of capital murder. He also argued that the evidence to sustain the conviction for capital murder was insufficient. The petition was granted with respect to the double-jeopardy claim, and the convictions for aggravated robbery and theft of property were set aside in an order entered January 29, 1991.

In 2000, appellant filed in this court a motion for belated appeal of the original judgment of conviction entered in 1988 that was denied as untimely filed. *Davis v. State*, CR 00-899 (Ark. Jan. 18, 2001) (unpublished per curiam). In 2004, appellant filed a motion for belated appeal of the January 29, 1991 order. The motion was dismissed. *Davis v. State*, CR 04-85 (Ark. March 4, 2004) (unpublished per curiam). We denied appellant's motion for reconsideration. *Davis v. State*, CR 04-85 (Ark. May 27, 2004) (unpublished per curiam). For a reason not evident from the record in the postconviction proceedings, an amended judgment was entered in the trial court on March 11, 2005, reflecting the modifications in the judgment made in 1991. Appellant then sought a belated appeal of the amended judgment, which was denied. *Davis v. State*, CR 05-632 (Ark. June 30, 2005) (unpublished per curiam). Reconsideration of that decision was denied. *Davis v. State*, CR 05-632 (Ark. Oct. 20, 2005) (unpublished per curiam).

In 2010, appellant filed in the county in which he was incarcerated a pro se petition for writ of habeas corpus. The court denied the petition on August 24, 2010. Appellant lodged in this court an appeal from the order, and he now seeks by pro se motion appointment of counsel.

We need not consider petitioner's motion inasmuch as it is clear from the record that the habeas petition was wholly without merit. This court has consistently held that an appeal of a postconviction order, including an order that denied a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the petitioner could not prevail.

Cite as 2011 Ark. 6

Moore v. Hobbs, 2010 Ark. 380 (per curiam); *Washington v. Norris*, 2010 Ark. 104 (per curiam); *Edwards v. State*, 2010 Ark. 85 (per curiam); *Grissom v. State*, 2009 Ark. 557 (per curiam); *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam).

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. *Hill v. Norris*, 2010 Ark. 287 (per curiam); *Burgie v. Norris*, 2010 Ark. 267 (per curiam); *Birchett v. State*, 303 Ark. 220, 795 S.W.2d 53 (1990) (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. Ark. Code Ann. § 16-112-103 (Repl. 2005); *Hill*, 2010 Ark. 287; see *Wallace v. Willock*, 301 Ark. 69, 781 S.W.2d 478 (1989); see also *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991).

Appellant asserted in the habeas petition the following grounds for the writ: this court erred in denying his motion for belated appeal of the 2005 amended judgment; the trial court lacked jurisdiction to impose a life sentence in the amended judgment entered fourteen years after the original judgment was entered; the trial court lacked jurisdiction to impose sentence on him one year after the 1991 order was entered; he was denied a speedy trial; it was a violation of state law for his sentence to be modified by means of the amended judgment without his being present, without his being allowed to make a statement, and without his being advised of his right to appeal the amended judgment.

In determining whether the denial of a writ of habeas corpus was proper, this court must look to the invalidity on the face of the judgment. *Hill*, 2010 Ark. 287; *Key v. Norris*, 2010 Ark. 61 (per curiam). A court with personal and subject-matter jurisdiction over the defendant in a criminal proceeding has authority to render judgment. *Hill*, 2010 Ark. 287; *Johnson v. State*, 298 Ark. 479, 769 S.W.2d 3 (1989). Petitioner offered no support for his claims that the trial court that had jurisdiction in his case when the original judgment was entered no longer had jurisdiction to amend the judgment.

With respect to the arguments that this court erred in denying the motion for belated appeal, that appellant was denied a speedy trial, and that the judgment could not be amended without his being present, the claims do not call into question the trial court's jurisdiction or the validity of the judgment.¹ None of the grounds for the writ advanced by appellant in his petition demonstrated that the judgment or amended judgment was invalid on its face or that the trial was without jurisdiction. Thus appellant failed to meet his burden of showing that he was entitled to issuance of the writ. *See Washington*, 2010 Ark. 104.

Appeal dismissed; motion moot.

¹If there was a speedy trial issue to be raised, it could have been raised in the trial court. The right to a speedy trial may be waived. *See Barker v. Wingo*, 407 U.S. 514 (1972); *see also Eubanks v. Humphrey*, 334 Ark. 21, 972 S.W.2d 234 (1998).