

Cite as 2011 Ark. 76

SUPREME COURT OF ARKANSAS

No. 10-1189

RONALD TRYON

APPELLANT

V.

RAY HOBBS

APPELLEE

Opinion Delivered February 17, 2011

PRO SE MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF AND FOR APPOINTMENT OF COUNSEL [LINCOLN COUNTY CIRCUIT COURT, NO. LCV 2010-80]

HON. JODI RAINES DENNIS, JUDGE

APPEAL DISMISSED; MOTION MOOT.

PER CURIAM

In 2006, appellant Ronald Tryon was found guilty by a jury in the Sebastian County Circuit Court of possession of a controlled substance with intent to deliver, possession of drug paraphernalia, and theft by receiving. He was sentenced as a habitual offender to an aggregate term of life imprisonment. This court affirmed. *Tryon v. State*, 371 Ark. 25, 263 S.W.3d 475 (2007).

On July 29, 2010, appellant, who is incarcerated in the custody of the Arkansas Department of Correction by virtue of the convictions, filed in the circuit court in the county where he was incarcerated a pro se petition for writ of habeas corpus pursuant to Arkansas Code Annotated §§ 16-112-101 to -123 (Repl. 2006) in which he challenged the judgment. The petition was denied, and appellant lodged an appeal here.

Appellant now seeks by pro se motion an extension of time to file his brief-in-chief

and appointment of counsel. We need not address the merits of the motion because it is clear from the record that appellant could not prevail on appeal. Accordingly, the appeal is dismissed, and the motions are moot. An appeal from an order that denied a petition for postconviction relief, including a petition for writ of habeas corpus, will not be permitted to go forward when it is clear that the appellant could not prevail. *McCullough v. State*, 2010 Ark. 394 (per curiam); *Moore v. Hobbs*, 2010 Ark. 380 (per curiam); *Hutcherson v. State*, 2010 Ark. 368 (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); *Pineda v. Norris*, 2009 Ark. 471 (per curiam).

Appellant failed to state a claim in his petition that was cognizable in a habeas proceeding. The burden is on the petitioner in a petition for writ of habeas corpus to establish that the trial court lacked jurisdiction or that the commitment was invalid on its face; otherwise, there is no basis for a finding that a writ of habeas corpus should issue. *Moore*, 2010 Ark. 380; *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). Under our statute, a petitioner who does not allege his actual innocence¹ 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 illegally detained. *Young* at 221, 226 S.W.3d at 798-99; Ark. Code Ann. § 16-112-103(a)(1).

Appellant contended in his petition that the trial court lacked jurisdiction over him

¹A petitioner who seeks a writ of habeas corpus and alleges actual innocence must do so in accordance with Act 1780 of 2001 Acts of Arkansas, codified as Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006). Ark. Code Ann. § 16-112-103(a)(2) (Repl. 2006).

and that the manner in which the judgment in his case was obtained was a violation of due process of law. He based the due-process argument on claims that he was denied the right to counsel, the habitual offender statute was misapplied in his case, his attorney was ineffective, he was denied a speedy trial, evidence used against him was seized as the result of an illegal search, his arrest was illegal, there was prosecutorial misconduct at his trial, he was denied his right to self-representation, and there was insufficient evidence to sustain the judgment. In addition, appellant challenged the trial court's jurisdiction on the ground that a court in Oklahoma had declared him incompetent in 2004 and that, as a result, the Arkansas court lacked authority to conduct criminal proceedings against him.

The claims were not sufficient to establish that the judgment was invalid on its face or that the trial court lacked jurisdiction in the matter. We first note that a claim of ineffective assistance of counsel is not cognizable in a habeas proceeding. *Grimes v. State*, 2010 Ark. 97 (per curiam). Allegations concerning counsel's effectiveness are properly raised in a timely petition pursuant to our postconviction rule, Arkansas Rule of Criminal Procedure 37.1 (2010). *Moore*, 2010 Ark. 380; *Hill*, 2010 Ark. 287. A petition for writ of habeas corpus is not a substitute for proceeding under Rule 37.1. *Johnson v. Hobbs*, 2010 Ark. 459 (per curiam); *Rickenbaker v. Norris*, 361 Ark. 291, 206 S.W.3d 220 (2005).

With respect to appellant's assertions of trial error and a failure to afford him due-process of law, the issues could, and should, have been raised at trial or on the record on direct appeal. Such claims are not cognizable in a habeas proceeding. *Hill v. Norris*, 2010 Ark. 287 (per curiam). In determining whether the denial of a petition for writ of habeas corpus was proper, this court must look to the invalidity on the face of the judgment, not

to trial error. *See id.*; *see also Key v. Norris*, 2010 Ark. 61 (per curiam). 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) (citing *Meny v. Norris* 340 Ark. 418, 420, 13 S.W.3d 143, 144 (2000) (per curiam)). 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). A circuit court has subject-matter jurisdiction to hear and determine cases involving violations of criminal statutes. *Id.* Mere trial error does not deprive a court of jurisdiction. *See Birchett v. State*, 303 Ark. 220, 795 S.W.3d 53 (1990).

Finally, appellant's allegation that the trial court lacked jurisdiction in his case because he had been declared incompetent in an Oklahoma court was not supported by convincing argument to establish that a finding of incompetence in an out-of-state proceeding affected the Arkansas court's jurisdiction. An argument without convincing citation to authority or convincing argument in its support that cannot be sustained without further research on the part of the court is not well taken. *See Morgan v. State*, 2010 Ark. 504 (per curiam); *see also Watkins v. State*, 2010 Ark. 156, 362 S.W.3d 910 (citing *Weatherford v. State*, 352 Ark. 324, 101 S.W.3d 227 (2003)).

As appellant fell short of establishing that the trial court in his case lacked jurisdiction or that the commitment was invalid on its face, there was no basis for a finding that a writ of habeas corpus should issue. *Hill*, 2010 Ark. 287.

Appeal dismissed; motion moot.