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SUPREME COURT OF ARKANSAS

No. CV-10-1222

		Opinion Delivered February 17, 2011
WILLIE HUTCHERSON	APPELLANT	PRO SE MOTION TO FILE SUPPLEMENTAL BRIEF [LEE COUNTY CIRCUIT COURT, NO. CV 2010-139]
V.		
STATE OF ARKANSAS	APPELLEE	HON. RICHARD PROCTOR, JUDGE
		<u>APPEAL DISMISSED; MOTION MOOT.</u>

PER CURIAM

On October 21, 2010, appellant Willie Hutcherson 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). The petition was denied, and appellant lodged an appeal here. He filed his brief-in-chief and now seeks by pro se motion leave to file a supplemental brief.

We need not address the merits of the motion as it is clear from the record that appellant could not prevail on appeal. Accordingly, the appeal is dismissed, and the motion is 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. *Johnson v. Hobbs*, 2010 Ark. 459 (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 establish in his petition that a writ of habeas corpus should issue. The burden is on the petitioner in a habeas corpus petition 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. *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 being illegally detained. *Id.* at 221, 226 S.W.3d at 798–99; Ark. Code Ann. § 16-112-103(a)(1).

In 2000, a jury found appellant guilty of four counts of aggravated robbery, three counts of misdemeanor theft of property, and one count of felony theft of property. He was sentenced as a habitual offender to an aggregate term of 2880 months’ imprisonment, which included 60 months’ imprisonment for possession of a firearm by a felon. The Arkansas Court of Appeals affirmed. *Hutcherson v. State*, 74 Ark. App. 72, 47 S.W.3d 267 (2001).

Appellant contended in his petition for writ of habeas corpus that he should have been found guilty of only one aggravated robbery because the offenses were a continuing course of conduct. The claim is not one that calls into question the court’s jurisdiction to

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 §§ 16-112-201 to –208 (Repl. 2006). Ark. Code Ann. § 16-112-103(a)(2) (Repl. 2006).

try the accused. Appellant offered nothing to demonstrate that the trial court lacked personal jurisdiction over him or jurisdiction over the subject matter. A court with personal and subject-matter jurisdiction over the defendant in a criminal proceeding has authority to render judgment. *Hutcherson v. State*, 2010 Ark. 368 (per curiam) (citing *Johnson v. State*, 298 Ark. 479, 769 S.W.2d 3 (1989)). Likewise, appellant offered no substantiation for a contention that the judgment was illegal on its face or excessive. Accordingly, there was no ground stated to issue the writ.

Appeal dismissed; motion moot.