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SUPREME COURT OF ARKANSAS

No. CV-08-1489

	Opinion Delivered January 21, 2010
DAVID HENDERSON APPELLANT	PRO SE APPEAL FROM THE LINCOLN COUNTY CIRCUIT COURT
V.	[LCV 2008-82]
	HON. ROBERT H. WYATT, JR., JUDGE
STATE OF ARKANSAS APPELLEE	
	AFFIRMED.

PER CURIAM

Appellant David Henderson was found guilty by a jury of attempted murder in the first degree, aggravated robbery, and residential burglary. He was sentenced as a habitual offender to an aggregate term of life imprisonment. We affirmed. *Henderson v. State*, 360 Ark. 356, 201 S.W.3d 401 (2005).

In 2008, appellant filed in the county in which he was incarcerated a pro se petition for writ of habeas corpus. The circuit court dismissed the petition, and appellant brings this appeal. We find no error and affirm the order.

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. *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). A habeas corpus proceeding does not afford a prisoner an opportunity to retry his case and is not a substitute for postconviction relief. *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005)

(per curiam). 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*, 365 Ark. 219.

Appellant raises four arguments for reversal of the circuit court order. In the first two arguments, he asserts that his petition satisfied the requirements of Arkansas Code Annotated § 16-112-103 (Repl. 2006), the statute governing habeas actions, and thus the court erred in declining to issue the writ. As he failed in the petition, however, to demonstrate that the judgment was facially invalid or that the court was without jurisdiction, appellant did not state a ground on which the writ was warranted.

Appellant next argues that the trial court lacked jurisdiction to try him because, despite the fact that he gave notice at trial of his intention to raise the defense of mental incompetence, the trial court proceeded without first determining his competence. Although appellant bases his argument on the contention that the court erred by not determining whether he was competent, he concedes that the court required that a mental evaluation be conducted before he was tried. Appellant seems to argue that jurisdiction was lost because the mental evaluation ordered by the trial court was flawed and failed to reflect his true mental condition. The argument does not state a ground for the writ to issue because it fails to demonstrate that the trial court lacked either personal or subject-matter jurisdiction in appellant's case. Any claim that appellant desired to raise regarding the evaluation was one that could have been raised in the trial court at the time of trial, and on the record on direct appeal. 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. *Meny v. Norris*, 340 Ark. 418, 420, 13 S.W.3d 143, 144 (2000) (per curiam).

In his third argument, appellant contends that the court erred by failing to hold an evidentiary hearing on his petition and ordering another mental evaluation. He alleges that an evidentiary hearing and a mental evaluation would have established the validity of his claim that he was not competent to stand trial. The claim does not establish that a writ of habeas corpus should have been issued because the claim did not demonstrate that the trial court was without jurisdiction or that the commitment was invalid on its face. Again, the question of appellant's competency was addressed at trial, and any challenge he desired to raise could have been raised at that time and on the record on direct appeal. A hearing is not required if a petition for writ of habeas corpus does not state a basis for the writ to issue. *See Baker v. Norris*, 369 Ark. 405, 255 S.W.3d 466 (2007).

Finally, appellant urges this court to overturn *Wallace v. Willock*, 301 Ark. 69, 781 S.W.2d 484 (1989), on the ground that it illegally and unconstitutionally limits the authority of a circuit court to grant a petition for writ of habeas corpus and conflicts with section 16-112-103. In *Wallace*, we noted that this court had repeatedly held that one is entitled to issuance of the writ only when it can be established that the petitioner is held without lawful authority because the commitment is invalid on its face or the court lacked jurisdiction. *See Alexander/Ryahim v. State*, 2009 Ark. 532 (per curiam); *Young*, 365 Ark. 221 (citing *Wallace*. 301 Ark. 69, 781 S.W.2d 484); *Johnson v. State*, 298 Ark. 479, 769 S.W.2d 3 (1989); *George v. State*, 285 Ark. 84, 685 S.W.2d 141 (1985); *Stover v. Hamilton*, 270 Ark. 310, 604 S.W.2d 934 (1980). As appellant offers no authority for the proposition that *Wallace*, and

the many cases before and after it with the same holding, misinterpreted the habeas statute, the argument will not be considered in this appeal. This court will not consider arguments, even constitutional ones, that are not supported by legal authority or convincing argument and will not address arguments when it is not apparent without further research that the argument is well taken. *See Williams v. State*, 371 Ark. 550, 558, 268 S.W.3d 868, 874 (2007); *Williams v. State*, 363 Ark. 395, 214 S.W.3d 829 (2005); *Flanagan v. State*, 368 Ark. 143, 243 S.W.3d 866 (2006).

Affirmed.

No briefs filed.