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SUPREME COURT OF ARKANSAS

No. 09-981

	Opinion Delivered February 4, 2010
ANTHONY KEY APPELLANT	PRO SE MOTION FOR EXTENSION OF BRIEF TIME [LINCOLN COUNTY CIRCUIT COURT, CV 2009-42, HON. JODI RAINES DENNIS, JUDGE]
V.	
LARRY NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION APPELLEE	APPEAL DISMISSED; MOTION MOOT.

PER CURIAM

In 1995, appellant Anthony Key was found guilty of capital murder and sentenced to life imprisonment without parole. We affirmed. *Key v. State*, 325 Ark. 73, 923 S.W.2d 865 (1996).

On April 30, 2009, appellant, who was incarcerated in Lincoln County, filed a pro se petition for writ of habeas corpus in the circuit court in that county. The court denied the petition, and appellant has lodged a pro se appeal here from the order.

Now before us is appellant's pro se motion seeking an extension of time to file his brief-in-chief. As appellant could not prevail on appeal, the appeal is dismissed. The motion for extension of brief time 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 where it is clear that the appellant could not prevail. *Alexander/Ryahim v. Norris*, 2009 Ark. 532 (per curiam) (citing *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam); *Wingfield v. State*, 2009 Ark. 499 (per curiam); *Pineda v. Norris*, 2009 Ark. 471 (per curiam)).

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. *Alexander/Ryahim*, 2009 Ark. 532, at 1; *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). The petitioner 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" he is illegally detained. *Young*, 365 Ark. at 221, 226 S.W.3d at 798–99; Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006).

In his petition, appellant contended solely that the State failed to provide him access to a psychiatrist to aid in the evaluation and preparation of his defense and mitigating evidence.[1] The claim was not a cognizable basis for a writ of habeas corpus to issue. In

[1]Appellant raised the issue of his competence to stand trial in the trial court. This court affirmed the trial court's ruling that appellant had not shown that he was incompetent. We referred on appeal to multiple psychiatric or psychological experts who testified concerning appellant's competence, in addition to a report submitted by a psychiatrist at the Arkansas State Hospital. When appellant was tried, the statutory procedures required to be followed when the defense of mental disease or defect was raised were found in Ark. Code Ann. § 5-2-305 (Repl. 1993). Examination by the State Hospital satisfied the statute. *See Dirickson v. State*, 329 Ark. 572, 576–77, 953 S.W.2d 55, 57 (1997). An evaluation performed under this section did not normally require a second opinion, *Richmond v. State*,

determining whether the denial of a writ of habeas corpus was proper, this court must look for the invalidity only on the face of the judgment. *See Cleveland v. Frazier*, 338 Ark. 581, 999 S.W.2d 188 (1999). Clearly, the issue of whether appellant was afforded the assistance of a psychiatrist at this trial does not in itself call into question the jurisdiction of the trial court or the facial validity of the judgment. Having failed to show that the trial court 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 in appellant's case. *See Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). A habeas corpus proceeding does not afford a prisoner an opportunity to retry his case. *Meny v. Norris*, 340 Ark. 418, 13 S.W.3d 143 (2000) (per curiam).

Appeal dismissed; motion moot.

BROWN, J., not participating.

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320 Ark. 566, 899 S.W.2d 64 (1995), and further evaluation was discretionary with the trial court. *Rucker v. State*, 320 Ark. 643, 899 S.W.2d 447 (1995). The State was not required to pay for appellant to shop from doctor to doctor until he found one who would declare him incompetent to proceed with his trial. *Brown v. State*, 316 Ark. 724, 875 S.W.2d 828 (1994).