

Cite as 2019 Ark. 76  
**SUPREME COURT OF ARKANSAS**  
No. CV-18-777

BRAD PAUL SMITH

APPELLANT

V.

WENDY KELLEY, DIRECTOR,  
ARKANSAS DEPARTMENT OF  
CORRECTION

APPELLEE

Opinion Delivered: March 14, 2019

PRO SE MOTION FOR EXTENSION OF  
TIME TO FILE BRIEF; MOTION FOR  
COPY OF NOTICE OF APPEAL AT  
PUBLIC EXPENSE  
[LINCOLN COUNTY CIRCUIT  
COURT, NO. 40CV-18-102]

APPEAL DISMISSED; MOTIONS  
MOOT.

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COURTNEY HUDSON GOODSON, Associate Justice

Appellant Brad Paul Smith appeals the circuit court's denial of his petition to proceed in forma pauperis in an action seeking a writ of habeas corpus on the basis that Smith failed to state a colorable cause of action in the habeas petition. Now before this court is Smith's pro se motion for an extension of time to file his brief and motion for a copy of the notice of appeal at public expense. Because we find that it is clear from the record that the circuit court did not err when it denied Smith's petition to proceed in forma pauperis, we dismiss the appeal. The motion for an extension of time to file his brief and motion for a copy of the notice of appeal are therefore 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. *Love v. Kelley*, 2018 Ark. 206, 548 S.W.3d 145.

The circuit court denied Smith's petition to proceed as a pauper, finding that although Smith demonstrated that he was indigent, Smith's allegations were ones that should have been addressed to the trial court or in a timely petition under Rule 37.1 of the Arkansas Rules of Criminal Procedure, and concluded that Smith had failed to state a colorable cause of action that would entitle him to habeas relief. Our standard of review of a decision to grant or deny a petition to proceed in forma pauperis is abuse of discretion, and the circuit court's factual findings in support of its exercise of discretion will not be reversed unless clearly erroneous. *Breeden v. Kelley*, 2018 Ark. 299, 557 S.W.3d 264. An abuse of discretion occurs when the court acts arbitrarily or groundlessly. *Id.*

A writ of habeas corpus is proper when a judgment of conviction is invalid on its face or when a circuit court lacks jurisdiction over the cause. *Philyaw v. Kelley*, 2015 Ark. 465, 477 S.W.3d 503. 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). Under our statute, a petitioner for the writ who does not allege his actual innocence and proceed under Act 1780 of 2001 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. Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2016). Unless the 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. *Fields v. Hobbs*, 2013 Ark. 416.

In the petition for writ of habeas corpus filed in conjunction with the request to proceed as a pauper, Smith alleged that he pleaded guilty in 2016 to commercial burglary, criminal mischief, second-degree battery, fleeing, and theft of property. Smith did not attach the judgment of conviction and did not indicate what sentence was imposed as a result of his convictions. Accordingly, Smith did not contend that the sentences imposed were illegal and outside the statutory range for the offenses. Nor did Smith challenge the jurisdiction of the trial court to convict and sentence him.

Instead, Smith alleged in his petition for habeas relief that he pleaded guilty while under the influence of pain medications that had been prescribed as a result of a brain injury. Smith further alleged he pleaded guilty on the false assumption that he would be allowed to enter the Arkansas Department of Correction's boot-camp program. The circuit court did not abuse its discretion when it denied Smith's petition to proceed as a pauper because the claims raised in the petition were claims that should have been raised in a timely petition for Rule 37.1 relief and were not claims that are cognizable in habeas proceedings. *Fields*, 2013 Ark. 416.

Appeal dismissed; motions moot.