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SUPREME COURT OF ARKANSAS
No. CV-18-873

TRAVIS A. BELL

APPELLANT

V.

JAMES GIBSON, WARDEN,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered April 25, 2019

PRO SE MOTIONS FOR EXTENSION OF
BRIEF TIME, TO AMEND PARTY TO
HABEAS PETITION, AND TO
SUPPLEMENT BRIEF
[LINCOLN COUNTY CIRCUIT COURT,
NO. 40CV-18-116]

APPEAL DISMISSED; MOTIONS MOOT.

KAREN R. BAKER, Associate Justice

Appellant Travis A. Bell appeals the circuit court’s denial of his petition for writ of habeas corpus. Now before us are Bell’s motions for an extension of time to file his brief-in-chief, to amend the party named in his habeas petition from a warden to the director of the Arkansas Department of Correction, and to file a supplement to the brief-in-chief to allow for a brief with more pages than is allowed by the rules of this court. Because there was clearly no ground stated in the petition on which a writ of habeas corpus could be issued, the appeal is dismissed, and the motions are moot. A circuit court’s decision on a petition for writ of habeas corpus will be upheld unless it is clearly erroneous. *Hobbs v. Gordon*, 2014 Ark. 225, 434 S.W.3d 364. A decision is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been made. *Id.* 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.

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). When the trial court has personal jurisdiction over the appellant and also has jurisdiction over the subject matter, the court has authority to render the judgment. *Johnson v. State*, 298 Ark. 479, 769 S.W.2d 3 (1989).

Under our statute, a petitioner for the writ who does not allege his or her 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 the petitioner 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.

Bell entered a plea of guilty to first-degree murder and was sentenced to 240 months' imprisonment. Bell argued in his habeas petition that the writ should issue on the grounds that his attorney gave him false information concerning the laws governing speedy-trial requirements and misled him about the expected testimony of a witness. He

also stated without further explanation that his rights under “U.S.C.A. Const. Amend V, VI and XIV, AR Const. Art. 2 § 10, Rules Crim. Proc. 28.1, 28.2, 28.3” were “violated with prejudice.” In a brief in support of the petition, Bell expanded on the claims, contending that he was denied a speedy trial by the trial court as well as by virtue of bad advice from his attorney. He further asserted that his plea of guilty was not voluntarily and intelligently entered because his attorney lied to him, did not conduct a proper investigation of his case, misled him on the likely testimony of the State’s star witness, and withheld exculpatory evidence that Bell had provided to him as a defense. Bell appended to the brief the affidavits of three persons who he contended could support his claims that he was not afforded effective assistance of counsel and that there was proof that he was not guilty. Bell did not contend that the sentence imposed was outside the statutory range for the offense.

Bell’s petition constituted an attack on his plea of guilty and the sufficiency of the evidence to sustain the judgment of conviction. It is well settled that such challenges are outside the scope of a habeas proceeding. When a defendant enters a plea of guilty, the plea is the defendant’s trial. *Crockett v. State*, 282 Ark. 582, 584, 669 S.W.2d 896, 898 (1984). A habeas corpus proceeding does not afford a prisoner an opportunity to retry his or her case. *Hobbs v. Turner*, 2014 Ark. 19, 431 S.W.3d 283. Accordingly, claims of trial error such as those advanced by Bell in his petition are not within the purview of the remedy because the writ will not be issued to correct errors or irregularities that occurred at trial. Speedy-trial issues are also issues of trial error and, as such, are not a ground for the

writ. *Williams v. Kelley*, 2017 Ark. 200, 521 S.W.3d 104. The failure to afford the defendant a speedy trial does not implicate the facial validity of the judgment or the jurisdiction of the trial court. *Id.*

Likewise, Bell's claims of an involuntary plea or of improper plea procedures do not raise a question of a void or illegal sentence that may be addressed in a habeas proceeding. *Barber v. Kelley*, 2017 Ark. 214. Furthermore, habeas proceedings are not a means to challenge the sufficiency of the evidence in a case. *Johnson v. State*, 2018 Ark. 42, 538 S.W.3d 819.

With respect to Bell's allegations of ineffective assistance of counsel, such claims are not cognizable in habeas corpus proceedings. *McConaughy v. Lockhart*, 310 Ark. 686, 840 S.W.2d 166 (1992). When a convicted defendant who has entered a plea of guilty desires to challenge that plea after entry of judgment on the ground that counsel was ineffective, his or her remedy is a timely petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 (2017). *State v. Tejada-Acosta*, 2013 Ark. 217, 427 S.W.3d 673. A habeas proceeding is not a substitute for a petition under the Rule. *Gardner v. Kelley*, 2018 Ark. 300.

Appeal dismissed; motions moot.

HART, J., dissents.

JOSEPHINE LINKER HART, Justice, dissenting. I dissent for the reasons set forth in *Stephenson v. Kelley*, 2018 Ark. 143, 544 S.W.3d 44 (Hart, J., dissenting). As set forth

therein, the majority's conception of habeas corpus is dated, senselessly narrow, and legally incorrect.