

Cite as 2009 Ark. 446

ARKANSAS SUPREME COURT

No. 09-414

LEWIS JAMES WHITE
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Appellee

Opinion Delivered September 24, 2009

PRO SE MOTIONS FOR
SUPPLEMENTAL ADDENDUM FOR
REPLY BRIEF AND FOR EXTENSION
OF TIME TO FILE REPLY BRIEF
[CIRCUIT COURT OF CHICOT
COUNTY, CV 2009-48, HON. ROBERT
BYNUM GIBSON, JR., JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

Appellant Lewis James White, an inmate incarcerated in the Arkansas Department of Correction, filed in the county in which he is incarcerated a petition for writ of habeas corpus under Arkansas Code Annotated §§ 16-112-103 – 16-112-123 (Repl. 2006) that was denied. Appellant lodged an appeal of the denial of the petition in this court and has now filed two motions in which he seeks to include a supplemental addendum in his reply brief and for additional time to file his reply brief. We need not consider the merits of appellant's motions.

An appeal of the denial of postconviction relief, including an appeal from an order that denied a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam). Here, it is clear that appellant cannot prevail because his petition failed to state grounds upon which the writ could issue. We dismiss the appeal and the motions are therefore moot.

Cite as 2009 Ark. 446

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). 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. *Id.* at 221, 226 S.W.3d at 798-799.

Appellant based his grounds for the writ upon his allegations that the victim and other witnesses had made inconsistent statements after his conviction that would show that the testimony at trial was perjury. He also contended that the victim's testimony was prejudicial and that his confession should be invalid because of the victim's perjury. None of the bases for relief alleged in the petition supported either of the two grounds for granting the writ.

None of the claims presented was a challenge to the trial court's jurisdiction, despite appellant's conclusory assertion to the contrary. Each of the claims in the petition presented a challenge to the validity of the commitment order that would have required the circuit court to have gone beyond the face of the commitment to resolve. Each of the claims was based upon allegations concerning the evidence presented during the trial and the credibility of the witnesses. 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). Because the petition did not set forth grounds sufficient for the circuit court to grant the writ, appellant cannot prevail on appeal and the appeal is dismissed.

Appeal dismissed; motions moot.