

Cite as 2009 Ark. 340 (unpublished)

## ARKANSAS SUPREME COURT

No. 08-667

KENNETH WHITE  
Appellant

v.

M.D. REED, WARDEN, CUMMINS  
UNIT  
Appellee

Opinion Delivered June 4, 2009

PRO SE APPEAL FROM THE  
CIRCUIT COURT OF LINCOLN  
COUNTY, LCV 2008-31, HON.  
ROBERT H. WYATT, JR., JUDGE

AFFIRMED.

### PER CURIAM

In 1976, appellant Kenneth White entered a plea of guilty to first-degree murder in Howard County Circuit Court and was sentenced to life imprisonment. Subsequently, in 1981, appellant filed in the trial court a pro se petition pursuant to Arkansas Rule of Criminal Procedure 37.1. We affirmed the trial court's denial of the petition. *White v. State*, 277 Ark. 429, 642 S.W.2d 304 (1982).

In 2008, appellant filed a petition for writ of habeas corpus in the circuit court of the county in which he was incarcerated. A petitioner is entitled to a writ of habeas corpus only where he demonstrates that the commitment order is invalid on its face or that the convicting court lacked jurisdiction. Ark. Code Ann. §§ 16-112-101 to -123 (Repl. 2006); *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). To do so, he must 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); *Friend v. Norris, supra*.



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The circuit court denied the petition for writ of habeas corpus, and appellant has lodged an appeal here from the order. We do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there was 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 committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

On appeal, appellant argues two points for reversal. First, appellant contends that the trial court erred in finding that the sentencing court had jurisdiction over appellant's criminal case. In the habeas petition, appellant cited several grounds as support for the lack-of-jurisdiction claim. Those grounds included the familial relationship of uncle and nephew that existed between the judge and the prosecutor and the alleged errors committed by the judge.<sup>1</sup> Beyond recognizing that the judge was related to the prosecutor, appellant failed to articulate in the petition how that relationship supported a claim for habeas relief.

In contrast, appellant's brief to this court addresses the uncle/nephew relationship as the only basis for finding that the sentencing court lacked jurisdiction to hear and rule in appellant's first-degree murder case. The core of appellant's argument here is that the judge

<sup>1</sup>In the petition, appellant maintained that the judge committed errors when, among other things, he refused to allow appellant to speak during the plea hearing, failed to assess whether appellant actually understood the rights he waived by entering a plea of guilty and improperly relied upon assurances from the prosecutor and trial counsel that appellant intended to enter a plea of guilty.



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violated various canons contained in the Arkansas Code of Judicial Conduct. He further argues that, based on these alleged violations, the judge should have voluntarily recused from hearing the matter and the judge's failure to do so resulted in the judge's loss of jurisdiction over the criminal matter.

Appellant's argument concerning alleged violations of the judicial canons was not raised in the petition for writ of habeas corpus filed in the circuit court. Generally, parties are bound by the scope and nature of the objections and arguments presented at trial and may not change the grounds for an objection on appeal. *Tester v. State*, 342 Ark. 549, 30 S.W.3d 99 (2000). However, when the issue is whether the trial court acted in excess of its authority, it becomes a question of subject-matter jurisdiction. *State v. Boyette*, 362 Ark. 27, 207 S.W.3d 488 (2005). A trial court's loss of jurisdiction over a defendant is always open, cannot be waived, and can be questioned for the first time on appeal. *Id.* Here, even though appellant could raise the issue of lack of jurisdiction for the first time in this appeal, appellant's claim nevertheless does not demonstrate that the court was without jurisdiction in this case.

Appellant's second point for reversal is that the trial court erred in failing to conduct an evidentiary hearing on appellant's petition for writ of habeas corpus. He set out this argument in the Points on Appeal section of the brief but fails to address it in the argument portion of the brief. Even if we considered the claim, appellant would have been unsuccessful in obtaining a reversal on this basis.

A hearing is not required if a petition for writ of habeas corpus does not allege that the



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commitment order is invalid on its face or that the convicting court lacked jurisdiction. *Baker v. Norris*, 369 Ark. 405, 255 S.W.3d 466 (2007). Moreover, the mere failure to conduct a hearing is not grounds to grant habeas relief. *Friend v. Norris, supra*.

Other grounds for relief set out in the habeas petition but not addressed on appeal are considered abandoned. *State v. Grisby*, 370 Ark. 66, 257 S.W.3d 104 (2007). Appellant has failed to demonstrate error and we affirm the circuit court order.

Affirmed.