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**SUPREME COURT OF ARKANSAS**

No. CV-21-271

ABRAHAM GRANT

APPELLANT

V.

DEXTER PAYNE, DIRECTOR,  
ARKANSAS DEPARTMENT OF  
CORRECTION

APPELLEE

Opinion Delivered: April 7, 2022

PRO SE APPEAL FROM THE  
LINCOLN COUNTY CIRCUIT  
COURT; MOTION FOR DEFAULT  
JUDGMENT; MOTION FOR  
JUDGMENT ON THE PLEADINGS  
[NO. 40CV-21-27]

HONORABLE JODI RAINES  
DENNIS, JUDGE

AFFIRMED; MOTIONS DENIED.

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**JOHN DAN KEMP, Chief Justice**

Appellant Abraham Grant appeals a Lincoln County Circuit Court dismissal of his pro se petition for writ of habeas corpus filed pursuant to Arkansas Code Annotated section 16-112-101 (Repl. 2016) in Lincoln County, the county where he is incarcerated. For reversal, Grant argues that the circuit court erred in dismissing the habeas petition because he provided sufficient proof to meet the probable-cause threshold for his habeas claims. Grant has filed a second motion for default judgment and a motion for judgment on the pleadings.<sup>1</sup> We affirm the circuit court's order and deny Grant's motions.

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<sup>1</sup>On October 5, 2021, Grant filed his first motion for default judgment, which was denied by this court on November 18, 2021. We deny Grant's motion as there is no basis for a default judgment during the course of an appeal. Additionally, Grant's motion for judgment on the pleadings simply reasserts his due-process argument that there was a conflict between the charge set forth in the arrest warrant and the charge for which he was convicted. We therefore deny the motion.

## I. Facts

In 2003, Grant was found guilty by a Phillips County jury of capital murder and first-degree battery. He was sentenced to life in prison without parole for capital murder and five years for first-degree battery, with the sentences to run concurrently. We affirmed. *Grant v. State*, 357 Ark. 91, 161 S.W.3d 785 (2004). The evidence adduced at trial demonstrated that Grant entered the apartment of his mother-in-law, Ms. Rosetta Pittman, and fatally shot her and wounded a niece who was close by when Grant fired the gun. As she was dying, Ms. Pittman told an officer who had arrived at the scene that “Abraham Grant shot me and ran out the back door.” *Id.* at 93, 161 S.W.3d at 786. We held that the statement Ms. Pittman made was a dying declaration and therefore admissible at trial as proof of Grant’s guilt. *Id.* at 94, 161 S.W.3d at 787. We rejected one of Grant’s multiple petitions for postconviction relief and noted that while the arrest warrant listed first-degree murder as the offense, the information charging Grant designated the offense as capital murder. See *Grant v. State*, CR-07-784 (Ark. Feb. 17, 2008) (unpublished per curiam); *Grant v. State*, 2014 Ark. 466.

In his habeas petition before the circuit court, Grant contended that his conviction for capital murder is illegal because his sentence exceeded the maximum sentence for first-degree murder, which is the crime designated in his arrest warrant. On May 4, 2021, the circuit court entered an order dismissing his claim for habeas relief. The court found that the warrant for arrest did not control the prosecutor’s authority to file an information charging Grant with a different crime and that Grant’s claims were not cognizable in habeas proceedings. Grant timely appealed the circuit court’s order.

## II. *Writ of Habeas Corpus*

A writ of habeas corpus is proper when a judgment and commitment order is invalid on its face or when a circuit court lacks jurisdiction over the cause. *Finney v. Kelley*, 2020 Ark. 145, at 3, 598 S.W.3d 26, 28. Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Id.*, 598 S.W.3d at 28. When the circuit court has personal jurisdiction over the appellant and also has jurisdiction over the subject matter, the court has authority to render the judgment. *Id.*, 598 S.W.3d at 28. A circuit court has subject-matter jurisdiction to hear and determine cases involving violations of criminal statutes and has personal jurisdiction over offenses committed within the county over which it presides. *Fuller/Akbar v. Payne*, 2021 Ark. 155, at 4, 628 S.W.3d 366, 368–69.

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 circuit court's lack of jurisdiction and make a showing, by affidavit or other evidence, of probable cause to believe that he or she is being illegally detained. *Id.* at 2, 628 S.W.3d at 368 (citing Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2016)). Proceedings for the writ do not require an extensive review of the record of the trial proceedings, and the circuit court's inquiry into the validity of the judgment is limited to the face of the commitment order. *Id.* at 3–4, 628 S.W.3d at 368. Unless the petitioner can show that the circuit court lacked jurisdiction or that the commitment order was invalid on its face, there is no basis for a finding that a writ of habeas corpus should issue. *Id.* at 3, 628 S.W.3d at 368. In habeas proceedings, an illegal sentence is one that exceeds the statutory maximum sentence. *Waller v. State*, 2020 Ark. 381, at 4.

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, at 5, 434 S.W.3d 364, 367. 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.*, 434 S.W.3d at 367.

### III. *Claims for Relief*

On appeal, Grant contends that the judgment of conviction in his case is illegal on its face because the arrest warrant charged him with first-degree murder, but he was tried and convicted of capital murder. Grant alleges that this violated due process and invalidated his conviction. Because the charge of capital murder was listed in the information as the offense for which Grant would be tried and convicted, Grant was provided with notice of the charge against him, and there was no due-process violation. Grant essentially claims that the information was defective in that the charges filed by the prosecutor did not comport with the charges set out in the arrest warrant. An allegation of a defective information that does not implicate the legality of the sentence is not a jurisdictional issue and is treated as trial error.<sup>2</sup> *Fuller/Akbar*, 2021 Ark. 155, at 5, 628 S.W.3d 366, 369.

The decision of the charge to be filed against any defendant rests with the prosecutor. *Simpson v. State*, 310 Ark. 493, 498, 837 S.W.2d 475, 478 (1992). The fact that the prosecutor chooses to charge an offense that carries with it a higher penalty does not, by

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<sup>2</sup>Although Grant claims that the sentence for capital murder exceeds the sentence for first-degree murder, he is mistaken. First-degree murder is classified as a Y felony. *See* Ark. Code Ann. § 5-10-102 (Repl. 1997). The maximum penalty for a Class Y felony is life imprisonment. *See* Ark. Code Ann. § 5-4-401 (Repl. 1997).

itself, give rise to a constitutional infringement. *Id.*, 837 S.W.2d at 478. Furthermore, only the prosecutor has the authority to amend an information. *Id.* at 497, 837 S.W.2d at 478. Allegations that the prosecutor filed a defective information are not cognizable in habeas proceedings because such assertions of trial error and due-process violations do not implicate the facial validity of the trial court's judgment or its jurisdiction. *Mister v. Kelley*, 2019 Ark. 187, at 3, 575 S.W.3d 410, 412.

Here, Grant has not cited any authority or developed sound argument for the proposition that the prosecutor's decision to alter the charge from first-degree murder on the arrest warrant to capital murder on the felony information deprived the circuit court of jurisdiction or rendered the sentence for the offense illegal. Thus, we hold that the circuit court did not clearly err by denying and dismissing Grant's petition for habeas relief. Accordingly, we affirm.

Affirmed; motions denied.

*Abraham Grant*, pro se appellant.

*Leslie Rutledge*, Att'y Gen., by: *Rebecca Kane*, Ass't Att'y Gen., for appellee.