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SUPREME COURT OF ARKANSAS

No. CV-21-387

JOE E. MORGAN

APPELLANT

V.

DEXTER PAYNE, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered: April 7, 2022

PRO SE APPEAL FROM THE
LINCOLN COUNTY CIRCUIT
COURT
[NO. 40CV-21-34]

HONORABLE JODI RAINES
DENNIS, JUDGE

AFFIRMED.

RHONDA K. WOOD, Associate Justice

Joe E. Morgan appeals the circuit court’s denial and dismissal of his pro se petition for a writ of habeas corpus filed pursuant to Arkansas Code Annotated sections 16-112-101 to -123 (Repl. 2016). Morgan alleged in the petition that he was convicted twice for the same offense in violation of the prohibition against double jeopardy. We affirm because Morgan’s claim lacks factual support and fails to demonstrate entitlement to the writ.

I. *Background*

Morgan pleaded guilty to rape and sexual assault in the first degree. He received an aggregate sentence of sixty years in prison. Morgan later filed a petition in circuit court for a writ of habeas corpus under Act 1780 of 2001 alleging he was entitled to neurological testing to demonstrate his incompetence to enter a guilty plea. The circuit court denied the petition, and this court affirmed. *Morgan v. State*, CR 07-799 (Ark. Nov. 29, 2007) (unpublished per curiam).

In 2015, Morgan filed the first of several petitions for habeas relief under sections 16-112-101 to -123. Initially, he alleged that the circuit court did not have the jurisdiction to apply the habitual-offender statute to his sentence. This court affirmed the circuit court's denial of the petition. *Morgan v. Kelley*, 2016 Ark. 84, 483 S.W.3d 290 (per curiam).

Next, Morgan petitioned and alleged that the circuit court did not hold a plea hearing before entering judgment. On appeal, this court found that Morgan failed to present a colorable cause of action because his pleading did not satisfy the additional statutory requirement that he make a showing of probable cause; we also affirmed the circuit court's order denying Morgan's petition to proceed as a pauper. *Morgan v. Kelley*, 2019 Ark. 189, 575 S.W.3d 108. Morgan filed a subsequent petition alleging again that no plea hearing took place. We affirmed the circuit court's denial of the petition because we found the petition represented an abuse of the writ. *Morgan v. Payne*, 2020 Ark. 239, 602 S.W.3d 736. Morgan now appeals from the denial of another habeas petition.

II. *Legal Background*

A writ of habeas corpus is proper when a judgment of conviction is invalid on its face or when a trial court lacked 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). 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 judgment was invalid on its face, no basis exists for issuing the writ. *Fields v. Hobbs*, 2013 Ark. 416.

III. *Analysis*

Morgan claims that his judgment of conviction violated the prohibition against double jeopardy. According to Morgan, the judgment-and-commitment order is illegal because it showed he pleaded guilty to rape and first-degree sexual assault on December 4, 2003, but an order referring him for a sex-offender assessment reflected that Morgan was convicted of rape on November 5, 2003. Morgan claims that because the sex-offender assessment order showed a rape conviction in November, and the judgment showed a rape conviction in December, this December judgment constituted a second conviction for the same crime. Morgan's claim lacks merit.

While some double-jeopardy claims are cognizable in habeas corpus proceedings, when the petitioner does not show that on the face of the judgment there was an illegal sentence imposed, the claim does not implicate the jurisdiction of the court to hear the case, and the claim is not cognizable. *Sims v. State*, 2018 Ark. 271, 555 S.W.3d 868. The record demonstrates that the judgment and the order for Morgan's sex-offender assessment were filed on the same date. The judgment reflects that Morgan was convicted of one count of rape with the offense occurring between March 1 and March 23, 2002, and that Morgan was convicted of first-degree sexual assault with the offense occurring between March 23 and May 20, 2002.

The face of the judgment does not show that Morgan was convicted twice for the same offense. A separate order pertaining to a petitioner's sex-offender assessment is not an additional judgment of conviction, and Morgan confuses these two documents. We affirm the circuit court's order denying the petition for writ of habeas corpus.

Affirmed.

Joe E. Morgan, pro se appellant.

Leslie Rutledge, Att'y Gen., by: *Jacob H. Jones*, Ass't Att'y Gen., for appellee.