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SUPREME COURT OF ARKANSAS

No. CV-21-390

MAURICE TRAMMEL

APPELLANT

V.

DEXTER PAYNE, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION

APPELLEE

Opinion Delivered: April 7, 2022

PRO SE APPEAL FROM THE
CHICOT COUNTY CIRCUIT
COURT

[NO. 09CV-21-24]

HONORABLE ROBERT BYNUM
GIBSON III, JUDGE

AFFIRMED.

ROBIN F. WYNNE, Associate Justice

Maurice Trammel appeals from the denial of his pro se petition for writ of habeas corpus filed pursuant to Arkansas Code Annotated section 16-112-101 (Repl. 2016) in the county where Trammel is incarcerated. Trammel has alleged the same claim for habeas relief as he did in a previous petition, arguing that this court erred when it affirmed the denial of his first petition. We affirm.

In September 2018, Trammel pleaded nolo contendere in Hempstead County to multiple felony counts in three separate criminal cases that were docketed as case numbers 29CR-18-67, 29CR-18-68, and 29CR-18-102. Attached to Trammel's habeas petition were sentencing orders for the crimes of aggravated robbery, theft of property, and furnishing prohibited articles in case numbers 29CR-18-67 and 29CR-18-102, which reflect the imposition of concurrent sentences of 240 months' imprisonment with 60 months suspended. Trammel did not include case number 29CR-18-68 in his petition for relief.

In his first petition for writ of habeas corpus, Trammel alleged that the sentences in these two cases were illegal because a habitual-offender enhancement was imposed pursuant to Arkansas Code Annotated section 5-4-501(a) without proof that Trammel had committed more than one but less than four prior felonies. Trammel further claimed that the sentencing order was illegal on its face because it reflected a criminal-history score of zero. The circuit court denied the petition and found that because Trammel had entered a nolo contendere plea, the State was not required to present proof of his habitual-offender status. We affirmed, finding that Trammel's claim of error by the trial court that accepted his plea of nolo contendere was not within the purview of the remedy. *Trammel v. Kelley*, 2020 Ark. 342, at 4, 610 S.W.3d 158, 160. On appeal from the denial of his second habeas petition, Trammel raises the same arguments he raised in the circuit court and insists that the sentence is illegal on its face because the order reflects a criminal-history score of zero, which conflicts with his habitual-offender designation.

A writ of habeas corpus is proper when a judgment and commitment order is invalid on its face or when a trial court lacks jurisdiction over the cause. *Foreman v. State*, 2019 Ark. 108, 571 S.W.3d 484. 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).

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 he or she is being illegally detained. Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2016). Proceedings for the writ are not intended to 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 judgment. *McArthur v. State*, 2019 Ark. 220, 577 S.W.3d 385. Unless the petitioner can show that the trial court lacked jurisdiction or that the judgment 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.

This court views an issue of a void or illegal sentence as one of subject-matter jurisdiction. *Johnson v. Kelley*, 2019 Ark. 230, 577 S.W.3d 710. A sentence is void or illegal when the trial court lacks authority to impose it. *Id.* In Arkansas, sentencing is entirely a matter of statute, and this court has consistently held that sentencing shall not be other than in accordance with the statute in effect when the crime was committed. *Id.* When the law does not authorize the sentence that was pronounced by the trial court, that sentence is illegal. *Id.*

We will affirm the circuit court's decision on a petition for writ of habeas corpus 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.*

The abuse-of-the-writ doctrine may apply in habeas proceedings to subsume res judicata when the petitioner raises the same arguments addressed previously without

bringing forward additional facts that would support his or her argument. *Jones v. Payne*, 2021 Ark. 37, 618 S.W.3d 132. This court has the discretion to determine whether the renewal of a petitioner’s application for the writ will be permitted to go forward even if there are additional facts in support of repetitive grounds. *Id.*

Trammel argued in the circuit court and on appeal that he is entitled to habeas relief because he was sentenced as a habitual offender even though the sentencing order reflects a criminal-history score of zero. The sentencing order also reflects that Trammel was subject to enhancement under the habitual-offender statute, Arkansas Code Annotated section 5-4-501(a), and that Trammel is a “small habitual” offender. Furthermore, Trammel’s habitual-offender status is listed as an aggravating factor in the sentencing order. Trammel raised this same issue in his first habeas petition arguing primarily that the State failed to prove his habitual-offender status during his plea hearing, and he also alleged that the zero criminal-history score rendered the sentencing order illegal on its face. In affirming the denial of his habeas petition, this court explicitly addressed Trammel’s primary argument, and in so doing, it noted Trammel’s contention that the order was illegal on its face due to the designated criminal-history score of zero. *See Trammel*, 2020 Ark. 342, at 2, 610 S.W.3d at 159. While this court did not explicitly reject the argument pertaining to the criminal-history score, it did so implicitly. *See Foreman v. State*, 328 Ark. 583, 945 S.W.2d 926 (1997) (The doctrine of law of the case precludes the consideration of questions that were explicitly or implicitly determined on appeal.). Likewise, the doctrine of abuse of the writ forbids a petitioner from raising the same argument that was raised in a previous habeas petition and addressed on appeal. *Jones*, 2021 Ark. 37, 618 S.W.3d 132. Trammel argues that this court

erred when it did not explicitly address his argument regarding the criminal-history score of zero. However, if Trammel believed this court had erred by not explicitly addressing this issue, he should have filed a petition for rehearing pursuant to Arkansas Supreme Court Rule 2-3 (2020). In sum, Trammel's second habeas petition is an abuse of the writ.¹ *Id.*

Affirmed.

Maurice Trammell, pro se appellant.

Leslie Rutledge, Att'y Gen., by: *Christopher R. Warthen*, Ass't Att'y Gen., for appellee.

¹In any event, taking into consideration the designation of Trammel as a habitual offender on the face of the order, the criminal-history score merely represents a clerical error that does not render the order illegal on its face. Clerical errors do not prevent enforcement of a judgment, and a circuit court can enter an order nunc pro tunc at any time to correct clerical errors in a judgment or an order. *Rainer v. Kelley*, 2019 Ark. 359, 589 S.W.3d 366.