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**SUPREME COURT OF ARKANSAS**

No. CV-21-272

COREY JOHNSON

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-20-99]

HONORABLE JODI RAINES  
DENNIS, JUDGE

AFFIRMED.

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**SHAWN A. WOMACK, Associate Justice**

Corey Johnson appeals from the denial and dismissal of his pro se petition for writ of habeas corpus filed pursuant to article 2, section 11 of the Arkansas Constitution and Arkansas Code Annotated sections 16-112-101 to -123 (Repl. 2016). Johnson contended that he is illegally detained without lawful authority because the trial court lacked jurisdiction to convict and sentence him on two separate counts of aggravated robbery. The circuit court dismissed the petition for habeas relief, finding that Johnson's allegations should have been addressed at trial, on direct appeal, or in a timely petition for Rule 37 relief. We affirm.

*I. Background*

A Pulaski County jury convicted Johnson of two counts of aggravated robbery, for which he received two consecutive terms of 240 months' imprisonment. Johnson appealed to the Arkansas Court of Appeals, arguing that the trial court erred by denying his motion

to suppress a statement taken without *Miranda* warnings. Johnson's convictions and sentences were affirmed. *Johnson v. State*, CACR-04-258, 2005 Ark. App. LEXIS 86 (Ark. App. Feb. 2, 2005) (unpublished).

Johnson subsequently sought postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1 (2005). The trial court denied relief, and Johnson appealed. This court determined that Johnson's Rule 37.1 petition did not state sufficient facts upon which the trial court could have granted relief under the rule and dismissed the appeal. *Johnson v. State*, 366 Ark. 286, 234 S.W.3d 858 (2006) (per curiam).

## II. *Standard of Review*

A circuit court's decision on a petition for a writ of habeas corpus will be upheld 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. *Ratliff v. Kelley*, 2018 Ark. 105, 541 S.W.3d 408.

## III. *Grounds for Issuance of the Writ*

A writ of habeas corpus is proper when a judgment and commitment order is invalid on its face or when a trial court lacked 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 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 commitment order. *Jones v. Kelley*, 2020 Ark. 290. Unless the petitioner can show that the trial 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. *Fields v. Hobbs*, 2013 Ark. 416.

#### IV. *Claims for Relief*

On appeal, Johnson first contends that the circuit court erred by finding that he did not attach a certified copy of his judgment and commitment order to his habeas petition and that his claims should have been timely raised in a postconviction petition. The writ of habeas corpus shall be granted to any person who shall apply “by petition showing, by affidavit or other evidence, probable cause to believe he or she is detained without lawful authority.” Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2016). Although the circuit court cited *In re Beard*, 4 Ark. 9 (1842), our habeas statutes do not specifically require a certified judgment or indictment to support granting habeas relief so long as probable cause is shown by affidavit or other evidence.

Johnson next argues that he was convicted of two counts of aggravated robbery rather than one count in violation of the multiple-offense-prosecution statute pursuant to Arkansas

Code Annotated section 5-1-110 (Repl. 1997). Johnson contends that he entered Spot Liquor Store, approached Marvin Taylor, an employee of the store, and attempted to rob the store utilizing a handgun. Johnson disputes that on the same evening, he threatened Brenda Gartin, another employee of the store, and attempted to rob her. Johnson argues that the business, Spot Liquor, was the principal victim, and he intended to commit a theft of the store—not of the individual employees. Johnson claims that because he only intended to rob the store, he should not have been convicted of more than one count of aggravated robbery.

Specifically, Johnson's contention is that count 2 of his aggravated-robbery conviction is essentially a lesser-included offense of his first count of aggravated robbery. However, an allegation that an offense is a lesser-included offense of another is an issue that could have been raised at trial, and it cannot be discerned from the face of the judgment that Johnson was convicted of an offense and also convicted of a lesser-included offense to that offense. *See Edwards v. Kelley*, 2017 Ark. 254, 526 S.W.3d 825.

Johnson also asserts that the trial court lacked authority to sentence him due to a defective criminal information that charged count 2 as a duplicate offense of count 1. Johnson contends that he committed, and was arrested for, only one offense; hence, the information reflecting two counts of aggravated robbery was defective when it was filed, which rendered any resulting judgment void. Claims of a defective information that raise a jurisdictional issue, such as a claim of an illegal sentence, are cognizable in habeas proceedings; however, general defective-information allegations are not. *Rayford v. Payne*, 2022 Ark. 2. Johnson's defective-information claim does not implicate the legality of his

sentence for two counts of aggravated robbery. Allegations such as those raised by Johnson are treated as trial error, and the proper time to object to the sufficiency of the information is prior to trial. *Id.*

To the extent Johnson raises a double-jeopardy claim, his claim fails. While some double-jeopardy claims are cognizable in habeas proceedings, where the petitioner does not show that on the face of the commitment order 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 one that is cognizable. *Edwards*, 2017 Ark. 254, 526 S.W.3d 825. Johnson's claim is nothing more than an attack on the sufficiency of the evidence to sustain his conviction for both counts of aggravated robbery. An argument that could have been made regarding whether Johnson could legally be found guilty of both counts should have been raised, and settled, at trial or on direct appeal. *Id.* A habeas proceeding does not afford a prisoner an opportunity to retry his case, and it is not a substitute for raising an issue at trial or on direct appeal. *Philyaw v. Kelley*, 2015 Ark. 465. Johnson failed to establish that the trial court lacked jurisdiction in his case, and he did not meet his burden of showing that the face of the judgment was invalid.

Affirmed.

*Corey Johnson*, pro se appellant.

*Leslie Rutledge*, Att'y Gen., by: *David L. Eanes Jr.*, Ass't Att'y Gen., for appellee.