

ARKANSAS SUPREME COURT

No. 06-1009

BOBBY POSEY
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered March 22, 2007

PRO SE APPEAL FROM THE CIRCUIT
COURT OF LEE COUNTY, CV 2005-
134, HON. HARVEY YATES, JUDGE

AFFIRMED.

PER CURIAM

In 1997, appellant Bobby Posey entered a plea of guilty to robbery and was placed on probation for ten years. In 2003, the State filed a petition to revoke probation on the ground that appellant had violated the conditions of probation by, among other things, associating with others violating criminal laws and committing various offenses, including theft of a car, breaking or entering, and criminal mischief. After a hearing, the court determined that the State had met its burden of proving by a preponderance of the evidence that appellant had associated with others in the commission of a crime and broken into and stolen a car. The court revoked probation and sentenced appellant to a term of 120 months' imprisonment. The Arkansas Court of Appeals affirmed the revocation. *Posey v. State*, CACR 04-610 (Ark. App. May 18, 2005).

Appellant subsequently filed in the trial court a pro se petition for postconviction relief pursuant to Criminal Procedure Rule 37.1, which was denied. Finding that appellant could not prevail on appeal because the Rule 37.1 petition was not timely filed, this court dismissed the appeal.

Posey v. State, CR 06-518 (Ark. Jun. 29, 2006) (per curiam).

In 2005, appellant, proceeding pro se, filed a petition for writ of habeas corpus in the county in which he was incarcerated. The petition was denied, and appellant brings this appeal from the order.

In his petition, appellant contended that he was entitled to a writ of habeas corpus because the hearing on the petition to revoke his probation was not held within sixty days of his arrest as required by Ark. Code Ann. § 5-4-310(b)(2) (Repl. 2006). He further asserted that the revocation was invalid because the car-theft charge was ultimately dismissed. Appellant did not challenge the court's finding that he had consorted with others in the commission of a crime and broken into and entered the car.

It is well settled that the burden is on the petitioner in a habeas corpus proceeding under Ark. Code Ann. § 16-112-103 (Repl. 2006) to establish that the trial court lacked jurisdiction or that the commitment was invalid on its face; otherwise, there is no basis for a finding that a writ of habeas corpus should issue. *Young v. Norris*, 365 Ark. 219, ___ S.W.3d ___ (2006) (per curiam); *McConaughy v. Lockhart*, 310 Ark. 686, 840 S.W.2d 166 (1992); see *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991); *Wallace v. Willock*, 301 Ark. 69, 781 S.W.2d 484 (1989). We hold that appellant's claims did not demonstrate that the trial court lacked jurisdiction or that the commitment in his case was invalid on its face.

In *Haskins v. State*, 264 Ark. 454, 572 S.W.2d 411 (1978), we held that the sixty-day requirement for the revocation hearing was not intended by the General Assembly to be jurisdictional. Rather, the sixty-day limitation represented the period beyond which the hearing could not be delayed if the defendant objected. Failure to demand a hearing within the sixty-day

period waived the right to insist on a timely hearing. *See Cobbins v. State*, 306 Ark. 447, 816 S.W.2d 161 (1991).

With respect to appellant's contention that the revocation was invalid because the substantive car-theft charge was dismissed, the argument amounted to an attack on the validity of the revocation. A habeas corpus proceeding does not afford a prisoner an opportunity to retry his case and is not a means of correcting errors or irregularities that occurred in the trial court or a substitute for raising an issue on appeal. *Birchett v. State*, 303 Ark. 220, 795 S.W.2d 53 (1990). Moreover, whether there was substantial evidence to support a revocation order does not in itself call into question the jurisdiction of the court or the facial validity of the judgment and commitment entered in a revocation proceeding. *See Friend v. Norris*, 364 Ark. 315, ___ S.W.3d ___ (2005); *see also Mitchell v. State*, 233 Ark. 578, 346 S.W.2d 201 (1961). Thus, even if the issue of the validity of the revocation in a particular case was an issue that could not have been raised during the revocation proceeding or addressed on direct appeal because the substantive charge was dismissed after the revocation order was entered, the fact remains that the issue is not one that could have affected the trial court's jurisdiction or the facial validity of a commitment rendered as the result of a revocation proceeding.

As appellant failed to state a valid challenge to the trial court's jurisdiction and failed to show that the commitment rendered in his case was facially invalid, the court did not err when it refused to issue a writ of habeas corpus. Accordingly, the court's order is affirmed.

Affirmed.