SUPREME COURT OF ARKANSAS

No. 10-394

ROGER BRADFORD APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** November 17, 2011 PRO SE APPEAL FROM THE LEE COUNTY CIRCUIT COURT, CV 2009-201, HON. RICHARD PROCTOR, JUDGE AFFIRMED.

PER CURIAM

On December 15, 2009, appellant Roger Bradford filed a pro se petition for writ of habeas corpus in Lee County, where he was incarcerated. The circuit court denied the petition without a hearing, and appellant now appeals the circuit court's decision. He raises thirteen points for reversal. We find no merit in any of the issues raised and affirm.

In the petition, appellant challenged several of his convictions. In the heading of his petition for the writ and the introductory paragraphs, appellant indicated that he only challenged one judgment against him, a 1996 conviction for delivery of a controlled substance in case number CR 92-28, which we note was entered in Arkansas County Circuit Court, Southern District. In the body of the petition, appellant complained that several of his numerous other convictions were also invalid, and he devotes a portion of his argument on appeal to issues concerning other convictions. In order to simplify matters, we note that the public records of the Arkansas Department of Correction ("ADC") indicate that appellant is currently serving terms on three sentences: six years' incarceration on a 1990 conviction for second-degree

escape; fifteen years' incarceration on a 1994 conviction for second-degree escape; a life sentence on a 1995 conviction for possession of a controlled substance with intent to deliver.[1]

Under our statute, a petitioner who does not allege actual innocence[2] must plead either the facial invalidity of the judgment or the lack of jurisdiction by the circuit court and make a "showing by affidavit or other evidence [of] probable cause to believe" that he is being illegally detained. *Wilkins v. Norris*, 2011 Ark. 169 (per curiam); Ark. Code Ann. § 16-112-103(A)(1) (Repl. 2006). The burden is on the petitioner in a petition for writ of habeas corpus to establish that the circuit 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. *Jackson v. Norris*, 2011 Ark. 49, ___ S.W.3d ___.

Initially, appellant argues that he was denied due process because the circuit court did not hold a hearing on his petition. However, we have noted that, "[w]hile our statutory habeas corpus scheme contemplates a hearing in the event the writ is issued, we find nothing *requiring* a hearing be given any petitioner regardless of the content of the petition." *Mackey v. Lockhart*, 307 Ark. 321, 323, 819 S.W.2d 702, 704 (1991) (quoting *George v. State*, 285 Ark. 84, 685 S.W.2d 141, 142 (1985)). A hearing is not required on a habeas petition, even where the petition alleges an otherwise cognizable ground, when probable cause for the issuance of the writ is not shown

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[1]The original lower-court case numbers are CR 88-91, in Arkansas County Circuit Court, Southern District, for the 1990 conviction; CR 93-182, in Arkansas County Circuit Court, Northern District for the 1994 conviction; and CR 92-1, in Arkansas County Circuit Court, Southern District for the 1995 conviction.

[2]A petitioner who seeks a writ of habeas corpus and alleges actual innocence must do so in accordance with Act 1780 of 2001, which is codified as Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006). Ark. Code Ann. § 16-112-103(a)(2) (Repl. 2006).

by affidavit or other evidence. *Evans v. State*, 2010 Ark. 234 (per curiam). As shown in our discussion below, appellant failed to demonstrate probable cause for the issuance of the writ; therefore, the circuit court did not err by not conducting a hearing.

Appellant also contends that the circuit court failed to make written findings to support its decision. As authority for this requirement, appellant cites Arkansas Rule of Criminal Procedure 37.3(a) (2011), which requires written findings in postconviction proceedings brought under Rule 37.1. However, our statutes relating to habeas-corpus proceedings that are not filed under Act 1780 contain no similar requirement. *See* Ark. Code Ann. §§ 16-112-101 to -123. Accordingly, the circuit court committed no error if it did not make written findings.

Appellant bases the remainder of his arguments on appeal, as he did in his petition for the writ, on his 1996 conviction for delivery of a controlled substance, for which he was sentenced to life in prison. The arguments that he raised in the petition concerning the validity of his other convictions appeared to be directed to the use of those convictions to enhance his sentence; he did not appear to have sought habeas relief as to anything other than a life sentence, although there is some possibility that he may also have intended to challenge the judgment in his 1995 conviction for possession of a controlled substance with intent to deliver on the basis that the sentence was improperly enhanced.[3] There was evidence attached to appellant's petition that appeared to support the proposition that the records of the ADC, at the time, reflected that appellant was subject to an additional life sentence on his 1996 conviction in Arkansas County Circuit Court, Southern District, case number CR 92-28, for delivery of a controlled substance.

[3]The State takes the position in its brief that appellant did contest certain other judgments, but asserts that those sentences have been served by appellant.

Appellant asserted that he was still being held by the ADC, even though this conviction was reversed on appeal.[4] As previously noted, however, the ADC's current records do not reflect that appellant is incarcerated pursuant to his conviction in CR 92-28; any error in that regard appears to have been corrected. Where a petitioner is not incarcerated as a direct result of his conviction when he files his habeas-corpus conviction, the circuit court lacks jurisdiction to grant relief. *State v. Wilmoth*, 369 Ark. 346, 255 S.W.3d 419 (2007); *Anderson v. State*, 352 Ark. 36, 98 S.W.3d 403 (2003); *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam). By virtue of the passage of time, it is clear that appellant has served the two sentences noted in the ADC record for the escape charges that were still listed.[5] The only sentence that ADC public records currently reflect appellant serving is the life sentence imposed in CR 92-1.

Under the circumstances, appellant's challenge to this conviction in CR 92-28, even if valid at the time the petition was filed, is moot, as any judgment rendered would have no practical legal effect upon an existing legal controversy. *Anderson*, 352 Ark. 36, 98 S.W.3d 403; *see also Chappell v. Hobbs*, 2011 Ark. 220 (per curiam) (a circuit court does not have jurisdiction to issue the writ if a prisoner is not in custody in that court's jurisdiction); *Neely v. McCastlain*,

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[4] We indeed reversed and dismissed appellant's 1996 conviction in Arkansas County Circuit Court, Southern District, case number CR 92-28, for delivery of a controlled substance based on a speedy-trial violation. *Bradford v. State*, 329 Ark. 620, 953 S.W.2d 549 (1997). In the case for which appellant is currently incarcerated, however, his 1995 conviction and life sentence for possession of a controlled substance with intent to deliver in Arkansas County Circuit Court, Southern District, case number CR 92-1, we affirmed in *Bradford v. State*, 328 Ark. 701, 947 S.W.2d 1 (1997).

[5] The judgments on the two cases are contained within records filed with our clerk, and those judgments do not reflect that the sentences were to run consecutively to any other sentence. CR 88-91 reflects a sentence of six years imposed in 1990, and CR 93-182 reflects a sentence of fifteen years imposed in 1994.

2009 Ark. 189, 306 S.W.3d 424 (circuit court did not have jurisdiction over habeas-corpus claim where the petitioner was not in custody). The same is true of any allegations concerning any other conviction for which appellant is not now incarcerated; any claims not pertaining to appellant's conviction in CR 92-1 would not therefore support habeas relief.

To the extent that appellant may have contended that his conviction in CR 92-1 was invalid because some of the judgments used to enhance his sentence were invalid, he failed to present a claim that would support habeas relief. An allegation concerning a defect in the validity of prior convictions used to enhance a sentence is only treated as jurisdictional if the allegation concerns the failure to appoint counsel. *See Camp v. State*, 364 Ark. 459, 221 S.W.3d 365 (2006). Even if a conviction is later overturned on appeal, for purposes of sentence enhancement, a conviction is final when judgment is pronounced. *Birchett v. State*, 291 Ark. 379, 724 S.W.2d 492 (1987). Appellant's claims do not constitute a challenge to the jurisdiction of the trial court over the charge or to the facial validity of the commitment order. Consequently, appellant has stated no grounds upon which the writ could properly issue.

With regard to his 1994 conviction for second-degree escape, appellant contends that he received an illegal fifteen-year sentence and that the circuit court wrongfully dismissed his appeal from the conviction.[6] To the extent that appellant would directly challenge this conviction, however, as already noted, the sentence that appellant received for this conviction has since expired. *See Bradford v. State*, 2011 Ark. 359 (per curiam) (citing *Anderson*, 352 Ark. 36, 98 S.W.3d

[6] We denied appellant's pro se motion for a belated appeal. *Bradford v. State*, CR 95-449 (Ark. Feb. 26, 1996) (unpublished per curiam). We also denied appellant's motion to reconsider that decision. *Bradford v. State*, CR 95-449 (May 13, 1996) (unpublished per curiam).

403). To the extent that he would raise the issue of validity of the sentence concerning its use to enhance his life sentence in his 1995 conviction, as discussed above, he failed to raise a claim that would support relief.

The same is true of appellant's claims with regard to his 1990 conviction for second-degree escape.[7] The six-year sentence he received for that offense has passed, and, thus, any argument he now advances to challenge it directly is moot. *Id.* Any challenge concerning its use for enhancement purposes failed to raise a cognizable claim.

Affirmed.

[7]The court of appeals affirmed this conviction. *Bradford v. State*, CACR 91-229 (Ark. App. May 27, 1992) (unpublished).