

SUPREME COURT OF ARKANSAS

No. 10-425

PERCY HENDERSON

APPELLANT

V.

DAVID WHITE, WARDEN

APPELLEE

Opinion Delivered September 15, 2011

PRO SE APPEAL FROM THE
JEFFERSON COUNTY CIRCUIT COURT
[CV 2010-03], HON. JODI RAINES
DENNIS, JUDGEAFFIRMED.**PER CURIAM**

In 1974, appellant Percy Henderson was convicted of capital felony murder and was sentenced to life imprisonment without parole. This court affirmed. *Henderson v. State*, CR 74-173 (Ark. July 7, 1975) (unpublished). In 2010, appellant filed a pro se petition for writ of habeas corpus in the circuit court of the county where he was incarcerated pursuant to Arkansas Code Annotated §§ 16-112-101 to -123 (Repl. 2006) in which he challenged the judgment. The circuit court denied his petition, and appellant has lodged the instant appeal. We affirm the circuit court's order.

We do not reverse a denial of postconviction relief unless the circuit court's findings are clearly erroneous. *Henson v. Norris*, 2009 Ark. 363 (per curiam). A finding is clearly erroneous when, although there was 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 committed. *Id.*

In a petition for a writ of habeas corpus, it is the petitioner's burden 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. *See Daniels v. Hobbs*, 2011 Ark. 192 (per curiam). Under our statute, a petitioner who does not allege his actual innocence¹ 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 is illegally detained. Ark. Code Ann. § 16-112-103(a)(1); *Tryon v. Hobbs*, 2011 Ark. 76, at 2 (per curiam).

In his petition, Henderson contended that the trial court lacked jurisdiction over him, alleging that he was never arraigned on, or entered a plea to, an amended information that charged him with capital felony murder. He further asserted that he was being illegally detained because the penitentiary order entered in 1974 lacked the trial court’s name or signature. Neither allegation provided a basis for granting the writ, and the circuit court did not clearly err in so finding.

Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Wilkins v. Norris*, 2011 Ark. 169 (per curiam). A circuit court has subject-matter jurisdiction to hear and determine cases involving violations of criminal statutes, and mere trial error does not deprive a court of jurisdiction. *Id.* While appellant challenges the trial court’s jurisdiction, alleging that he was not properly arraigned on the charge of capital felony murder, whether a proper arraignment was conducted was a factual issue that should have been addressed on appeal. *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005). Even if there was an error at trial in the amended information, the error would not take away the court’s personal

¹A petitioner who seeks a writ of habeas corpus and alleges actual innocence must do so in accordance with Act 1780 of 2001, codified as Arkansas Code Annotated §§ 16-112-201 to -208 (Repl. 2006). Ark. Code Ann. § 16-112-103(a)(2).

or subject-matter jurisdiction. *Moore v. Hobbs*, 2010 Ark. 380 (per curiam). Because a court with personal and subject-matter jurisdiction over the defendant in a criminal proceeding has authority to render judgment, the circuit court did not clearly err in denying appellant's petition on this basis.

Henderson further challenged the lack of the trial judge's name or signature on the penitentiary commitment order issued by the trial court. However, to the extent appellant's allegation may go to the facial validity of the commitment order, his argument fails. Arkansas Statutes Annotated § 43-2601 (Repl. 1964), in effect and applicable to appellant's order in 1974, merely provided that

[w]here a judgment of death or confinement, either in the penitentiary or county jail, is pronounced, a certified copy thereof must be furnished forthwith to the sheriff, who shall thereupon execute it, and no other warrant or authority is necessary to its execution.

The statute's plain language at that time in no way required the signature of the trial judge on the commitment order.

For the foregoing reasons, appellant's petition failed to establish that a writ of habeas corpus should issue. We affirm the circuit court's order.

Affirmed.