

SUPREME COURT OF ARKANSAS

No. 11-761

CARDELL CHRISTOPHER
APPELLANT

V.

RAY HOBBS, DIRECTOR, ARKANSAS
DEPARTMENT OF CORRECTION
APPELLEE

Opinion Delivered November 3, 2011

APPELLANT'S PRO SE MOTION FOR
DUPLICATION OF BRIEF AT PUBLIC
EXPENSE [LINCOLN COUNTY
CIRCUIT COURT, LCV 2011-40, HON.
JODI RAINES DENNIS, JUDGE]APPEAL DISMISSED; MOTION MOOT.**PER CURIAM**

In 2010, appellant Cardell Christopher entered a plea of guilty to murder in the first degree and was sentenced to thirty years' imprisonment. In 2011, appellant filed in the county in which he was incarcerated a pro se petition for writ of habeas corpus pursuant to Arkansas Code Annotated sections 16-112-101 to -123 (Repl. 2006). In the petition, appellant argued that the trial court did not follow proper procedure in taking his guilty plea to determine whether the plea was voluntarily and intelligently entered, the evidence was not sufficient to sustain the judgment of first-degree murder, he was actually innocent of the offense, there was newly discovered evidence to prove his innocence, and he was not afforded effective assistance of counsel. The petition was denied without a hearing, and appellant lodged an appeal in this court. Now before us is appellant's motion seeking to have his brief-in-chief duplicated at public expense.

We need not address the merits of the motion because it is clear from the record that appellant could not prevail on appeal. Accordingly, the appeal is dismissed, and the motion is

moot. An appeal from an order that denied a petition for postconviction relief, including a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Burnley v. Norris*, 2011 Ark. 381 (per curiam); *Simpson v. Hobbs*, 2011 Ark. 346 (per curiam); *Smith v. Norris*, 2011 Ark. 331 (per curiam); *Chappell v. Hobbs*, 2011 Ark. 220 (per curiam); *Anderson v. State*, 2011 Ark. 35 (per curiam); *McCullough v. State*, 2010 Ark. 394 (per curiam); *Moore v. Hobbs*, 2010 Ark. 380 (per curiam); *Washington v. Norris*, 2010 Ark. 104 (per curiam); *Edwards v. State*, 2010 Ark. 85 (per curiam); *Pineda v. Norris*, 2009 Ark. 471 (per curiam).

The burden is on the petitioner in a petition for writ of habeas corpus 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. *Burnley*, 2011 Ark. 381; *Daniels v. Hobbs*, 2011 Ark. 192 (per curiam) (citing *Jackson v. Norris*, 2011 Ark. 49, ___ S.W.3d ___); *Moore*, 2010 Ark. 380; *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). Under our statute, a petitioner 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. *Young*, 365 Ark. at 221, 226 S.W.3d at 798–99; Ark. Code Ann. § 16-112-103(a)(1).

Appellant’s claims for relief were not grounds for a writ of habeas corpus. We first note that appellant’s claims of actual innocence and new evidence were based on assertions that appellant did not commit the crime, bolstered by affidavits of persons who contended that he was innocent. Such assertions of innocence amounted to claims that the evidence was insufficient to sustain the judgment of conviction and did not call into question the jurisdiction

of the court or the facial validity of the judgment-and-commitment.¹ When appellant entered into the plea of guilty, he waived any claim that the evidence was insufficient to sustain the judgment. *Guire v. State*, 309 Ark. 209, 832 S.W.2d 457 (1992) (per curiam).

With respect to appellant's allegations concerning whether the court conformed with proper procedure in taking his plea of guilty and his assertions that the court did not determine whether his plea was voluntarily and intelligently entered, the arguments were also not cognizable in a habeas proceeding. *Cook v. Hobbs*, 2011 Ark. 382 (per curiam) (citing *Graham v. State*, 358 Ark. 296, 188 S.W.3d 893 (2004) (per curiam)). This court has held that the remedy in place for challenging a guilty plea on the ground that it was not entered voluntarily or knowingly is a petition for postconviction relief filed pursuant to Arkansas Rule of Criminal Procedure 37.1 (2011). A petition for writ of habeas corpus is not a substitute for proceedings under Rule 37.1. *Cook*, 2011 Ark. 382; *Johnson v. Hobbs*, 2010 Ark. 459 (per curiam). Likewise, appellant's allegation that he was not afforded effective assistance of counsel should have been raised under Rule 37.1 (2011) and was not a ground for habeas relief. *Willis v. Hobbs*, 2011 Ark. 312 (per curiam).

Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Anderson*, 2011 Ark. 35; *Baker v. Norris*, 369 Ark. 405, 255 S.W.3d 466 (2007). A circuit court has subject-matter jurisdiction to hear and determine cases involving violations of

¹Petitioners claiming the right to be released on a writ of habeas corpus on the ground of actual innocence based on scientific evidence under Act 1780 of 2001, codified at Arkansas Code Annotated sections 16-112-201 to -208 (Repl. 2006), may proceed in the trial court with a petition for the writ. Ark. Code Ann. § 16-112-201(a).

criminal statutes. *Id.* Appellant raised no argument that demonstrated a jurisdictional defect in the proceeding against him. He further made no showing that the commitment in his case was invalid. Because the petition did not state a basis to warrant issuance of the writ, the circuit court did not err in denying the relief sought.

Appeal dismissed; motion moot.