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SUPREME COURT OF ARKANSAS

No. CV-17-361

KENDRICK C. STORY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered December 14, 2017

PRO SE APPEAL FROM THE LEE
COUNTY CIRCUIT COURT AND
APPELLANT'S MOTIONS FOR
ADVERSE RULING AND FOR RULE
ON CLERK
[NO. 39CV-17-37]

HONORABLE RICHARD L.
PROCTOR, JUDGE

AFFIRMED; MOTIONS MOOT.

KAREN R. BAKER, Associate Justice

Appellant Kendrick C. Story brings this appeal from the denial by the circuit court of his pro se petition for writ of habeas corpus. Story argues on appeal, as he did in his habeas petition, that he was entitled to issuance of the writ on the following grounds: the judgment in his criminal case was illegal, and the trial court lacked jurisdiction in the case because the judgment entered did not conform to the plea bargain he signed; he was sentenced for both aggravated robbery and first-degree murder, but the sentencing order reflects only the first-degree-murder conviction; the authorities illegally seized his property;

and his arrest was illegal. Because the grounds raised do not constitute a basis for a writ of habeas corpus, the circuit court order is affirmed.¹

I. *Background*

On March 15, 2017, Story filed his habeas petition in Lee County where he is currently imprisoned. The allegations in the petition are unclear, but Story appended an incomplete copy of the first-degree-murder judgment entered in case no. 14CR-17-16 to his petition, and it appears that he was primarily challenging the legality of that judgment.

II. *Standard of Review*

A circuit court's decision in a habeas proceeding will be upheld unless it is clearly erroneous. *See Hobbs v. Gordon*, 2014 Ark. 225, at 5, 434 S.W.3d 364, 367. 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. *Id.*

III. *Grounds for the Writ*

A writ of habeas corpus is proper when a judgment of conviction is invalid on its face or when the trial court lacked jurisdiction over the cause. *Williams v. Kelley*, 2017 Ark. 200, 521 S.W.3d 104; *Philyaw v. Kelley*, 2015 Ark. 465, 477 S.W.3d 503. Under our statute, a petitioner for the writ who does not allege his actual innocence and proceed under Act

¹ Story filed a motion for “adverse ruling,” seeking reversal of the circuit court order based on the erroneous contention that the appellee did not timely file its brief in this appeal. He also filed a motion for rule on clerk that is unclear but appears to contend that he was denied an opportunity to file a reply brief because the appellee did not provide him with a copy of the State’s brief. As the order is affirmed, the motions are moot.

1780 of 2001 Acts of Arkansas 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 being illegally detained. Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2016). Unless the petitioner in proceedings for a writ of habeas corpus can show that the trial court lacked jurisdiction or that the commitment 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. Story did not invoke Act 1780.

IV. *Jurisdiction of the Trial Court and Facial Validity of the Judgment*

Story argues that he is being illegally imprisoned because he was sentenced for both aggravated robbery and first-degree murder, but the sentencing order that was entered reflects only the first-degree murder-charge in case no. 14CR-17-16. Because Story only appended an incomplete sentencing order to his habeas petition that reflected the conviction for first-degree murder, he did not produce a record to substantiate the claim that the trial court lacked jurisdiction to enter the judgment or that the judgment-and-commitment order was illegal on its face. A court considering a habeas action is not obligated to go beyond the face of the petition to address the claims in the petition, and the petitioner bears the burden of showing that the face of the judgment at issue was invalid. *Edwards v. Kelley*, 2017 Ark. 254, 526 S.W.3d 825. Story's assertion was entirely conclusory, and the circuit court did not err in declining to issue the writ.

Story also claims that the judgment in his cases was illegal on its face because the trial court did not sentence him in accordance with the plea bargain that he signed. Allegations pertaining to whether a plea was voluntary or whether plea procedures were proper do not

raise a question of a void or illegal sentence that may be addressed in a habeas proceeding. *Barber v. Kelley*, 2017 Ark. 214. Such claims are not a ground for the writ because the assertions do not call into question the trial court's jurisdiction or the facial validity of the judgment-and-commitment order. Story's challenge pertaining to the terms of the plea bargain would have required the circuit court to go behind the face of the judgment.

We have held that an allegation that concerns the factual basis for a plea goes beyond the face of the judgment and is not the kind of inquiry to be addressed in a habeas proceeding. *Fields*, 2013 Ark. 416. Likewise, Story's claims that the terms of the plea bargain were not enforced does not establish that he is being detained without lawful authority and entitled to issuance of a writ of habeas corpus. *See Baker v. Norris*, 369 Ark. 405, 255 S.W.3d 466 (2007).

V. *Illegal Search, Seizure, and Arrest*

Questions pertaining to whether there was some error in the investigation or prosecution of a criminal offense are not within the purview of a habeas corpus proceeding unless the error impinges on the jurisdiction of the court to enter the judgment or the facial validity of the judgment. *See Singleton v. State*, 256 Ark. 756, 510 S.W.2d 283 (1974) (holding that the trial court's jurisdiction to try the accused does not depend on the validity of the arrest). Any challenge that Story desired to raise to the illegality of a search, seizure, or arrest in his cases could, and should, have been made in the trial court. Habeas proceedings are not an opportunity to raise, or relitigate, claims of trial error that could have been addressed in the trial court and, if applicable, on direct appeal from the judgment. *See*

Hobbs v. Turner, 2014 Ark. 19, 431 S.W.3d 283 (A habeas corpus proceeding does not afford a petitioner a means to retry his case.).

Affirmed; motions moot.

Kendrick C. Story, pro se appellant.

Leslie Rutledge, Att’y Gen., by: *Ashley Argo Priest*, Ass’t Att’y Gen., for appellee.